G20 ANTI-CORRUPTION WORKING GROUP

Anti-Corruption Accountability Report

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1. BACKGROUND

Accountability reporting has always been a relevant exercise for the **G20 Anti-Corruption Working Group (ACWG)** as the main tool through which progress towards past commitments can be reviewed.

The **2019-2021 Action Plan** directs the ACWG to "*strive to adapt its working methods and mechanisms to facilitate the implementation of past G20 commitments and increase the impact of the G20 anti-corruption agenda*".

Bearing in mind this commitment, and in cooperation with the G20 members, the **United Nations Office on Drugs and Crime (UNODC)**, the **Financial Action Task Force (FATF)** and other relevant international organizations, the **Italian G20 Presidency** intends to keep and further develop the new approach of the G20 **Accountability Report**.

This approach aims to provide a more detailed overview of progress made and challenges faced by G20 countries in **selected areas** addressed by the ACWG, rather than a broader overview of progress across all topics addressed by the Group.

This year, the **2021 Accountability Report** focuses on the topics of (i) **beneficial ownership transparency (BOT)**, (ii) **private sector transparency and integrity**, and (iii) **liability of legal persons,** and assesses progress made by G20 countries against commitments made by the Group in these areas.

2. INTRODUCTION

2.1 Foreword

Although very important steps have been taken to counter corruption, **its negative consequences on the economy, trade and development** continue to represent a threat to global growth and financial stability, undermining good governance and the rule of law, destroying public trust, hampering cross-border investment and trade, and distorting fair competition and resource allocation. The G20 ACWG remains cognizant of its commitment to lead by example in countering corruption and to monitor G20 members' progress towards commitments made.

Recognizing that the Accountability Report represents a key element for the ACWG to analyse and evaluate the progress made towards implementing **the G20 anti-corruption commitments**, the **2021 Accountability Report** contains a more detailed overview of the progress made and challenges faced by G20 countries in selected areas addressed by the ACWG[1], instead of pursuing a general and broader overview across all the topics covered by the Group.

This approach follows the request of the Group to focus on the effectiveness of the measures taken by G20 countries to meet their commitments as reflected in the **High-Level Principles (HLPs)** endorsed by the G20 Leaders[2], with the aim of being as compliant as possible with the agreed Principles.

The selection of specific topics is consistent with the principles established in the **G20 Anti-Corruption Action Plan 2019-2021**, i.e., to adapt working methods and mechanisms to facilitate as much as possible the implementation of past G20 commitments and increase the impact of the anti-corruption agenda. In this regard and keeping in mind the need to

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[1] See G20 ACWG Accountability Report 2020 – Executive Summary.

[2] 2020 G20 High-Level Principles for the Development and Implementation of National Anti-Corruption Strategies.

accelerate the process of implementation of past G20 commitments as one of the top priorities of the aforementioned Action Plan, this year the Accountability Report focuses on the topics of **beneficial ownership transparency (BOT)**[3], **private sector transparency and integrity**[4] and **liability of legal persons**[5]**.**

In line with the suggestions listed in the HLPs[6] of the 2020 G20 Presidency and the recommendations of the **United Nations Development Programme (UNDP)**[7] and bearing in mind the importance of achieving the **2030 Agenda for Sustainable Development**, including its **Sustainable Development Goals (SDGs)**, the Italian G20 Presidency of the ACWG launched a **questionnaire**, consistent with the aforementioned commitments, to identify specific, relevant parameters which could help to demonstrate the effectiveness of the achievements in implementing the G20 anti-corruption action plans.

The focus on BOT, private sector transparency and integrity, and liability of legal persons could also help assess the preparedness of G20 countries to prevent and counter corruption in emergency situations.

This 2021 Accountability Report highlights news and updates from G20 countries and their 2021 National Reports[8] annexed to it.

2.2 Substantive scope of the 2021 Accountability Report

The three topics of beneficial ownership transparency, private sector transparency and integrity and liability of legal persons have been chosen as focus topics for the 2021 Accountability Report as they are closely intertwined and warrant a joint assessment.

Despite increased international efforts and achievements, the lack of transparency in **beneficial ownership** information for legal persons and arrangements remains a critical issue in the global fight against corruption.

The use of opaque, complex corporate structures facilitates the transfer and laundering of proceeds of crime and makes the detection of criminal activity such as money-laundering and tax evasion, and asset recovery, more difficult.

A lack of beneficial ownership transparency undermines the efforts of the G20 to reach its goals of fostering the rule of law, promoting growth and protecting the global economic and financial systems.

G20 members are committed to promoting greater transparency through compliance with their **2014 G20 High-Level Principles on Beneficial Ownership Transparency** and the accompanying national implementation plans, as well as the international standards concerning the beneficial ownership of legal persons and arrangements set by the **FATF**[9].

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3 2014 G20 High-Level Principles on Beneficial Ownership Transparency.

4 2015 G20 High-Level Principles on Private Sector Transparency and Integrity.

5 2017 G20 High Level Principles on the Liability of Legal Persons for Corruption.

6 2020 G20 High-Level Principles for the Development and Implementation of National Anti-Corruption Strategies.

7 United Nations Development Programme (2009, P.58). *Handbook on Planning, Monitoring and Evaluating for Development Results. New York, NY.*

8 See Annexes.

9 It is also useful to recall in this framework the commitments taken in the current Anti-Corruption Action Plan: *"The ACWG will also explore ways, including on capacity building and technical assistance, as appropriate, to support other countries to implement beneficial ownership standards and promote the utilization of beneficial ownership information to tackle corruption and related money laundering."*

Private sector transparency and integrity is vital to achieving our anti-corruption goals. Robust and effective internal controls, ethics and compliance programmes are needed to minimize and manage risks of corruption, and governments and the private sector must work together as partners to implement existing commitments in this regard.

The G20 works with a broad range of stakeholders, including the private sector and civil society in the above areas to tackle corruption.

Such an inclusive approach helps to ensure the broadest possible reach in the efforts to bolster private sector transparency and integrity. G20 countries will continue to work with the private sector and civil society to counter corruption by developing anti-corruption education and training for businesses, and identifying good practices in the implementation of robust anti-corruption ethics and compliance programmes.

This report and the national reports benchmark the implementation of commitments in the **2015 G20 High-Level Principles on Private Sector Transparency and Integrity**, providing an overview of the steps taken on the path to promoting private sector anti-corruption initiatives, with a specific emphasis on the ones taken for small- and medium-sized enterprises (SMEs).

Concerning the **liability of legal persons for corruption**, in a world where our economy is mainly led, both at the national and international level, by commercial entities (legal persons), the fight against corruption is bolstered when legal persons can be sanctioned for involvement in criminal acts in addition to natural persons.

On the other hand, the ever-growing complexity of the global economy can impede the identification and prosecution of individuals who control or direct a legal person engaged in criminal activity.

Besides the commitments to establish liability of legal persons for corruption offences in accordance with international conventions, the ACWG adopted the **G20 High Level Principles on the Liability of Legal Persons for Corruption** in 2017, which can inform future actions on the design and enforcement of corporate liability regimes, both in G20 and non-G20 countries. The ACWG's overview assesses good practices in this area, ideally without duplicating work already undertaken by other institutions[10].

3. OVERVIEW OF PROGRESS TOWARDS PAST COMMITMENTS

3.1 Beneficial ownership transparency

3.1.1 Background

The G20 is committed to leading by example by endorsing a set of core principles on the transparency of beneficial ownership of legal persons and arrangements for the fight against corruption. These principles are built on existing international instruments and standards, and commit countries to:

- have a definition of 'beneficial owner' that captures the natural person(s) who ultimately owns or controls the legal person or legal arrangement;

[10] The implementation review and monitoring mechanisms carried out under the United Nations Convention against Corruption (UNCAC) and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments already assess the compliance with obligations in relation to liability of legal persons. In addition, the Financial Action Task Force Mutual Evaluation Review has included recently a chapter focused on legal persons and arrangements.

- assess the existing and emerging risks associated with different types of legal persons and arrangements, which should be addressed from a domestic and international perspective;
- ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current;
- ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons; countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms;
- ensure that trustees of express trusts maintain adequate, accurate and current beneficial ownership information, including information of settlors, the protector (if any) trustees and beneficiaries: these measures should also apply to other legal arrangements with a structure or function similar to express trusts;
- ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal arrangements;
- require financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), including trust and company service providers, to identify and take reasonable measures, including taking into account country risks, to verify the beneficial ownership of their customers;
- ensure that their national authorities cooperate effectively domestically and internationally;
- ensure that their competent authorities participate in information exchange on beneficial ownership with international counterparts in a timely and effective manner.

3.1.2 Frameworks in place and ongoing challenges

Important developments at an international level, last but not least the **G20 Anti-Corruption Ministers Meeting Ministerial Communiqué of October 2020**[11], provided significant momentum over the past decade to the implementation of **beneficial ownership transparency**.

The outcomes of the G20 ACWG Accountability Report 2020 highlighted that the maintenance of beneficial ownership information remains an area with comparatively low compliance, even among jurisdictions that have signed up to global standards such as the **FATF Recommendations**[12] or the **G20 High-Level Principles on Beneficial Ownership Transparency**.

The G20 ACWG Accountability Report 2020 noted:

> G20 members show better implementation of the FATF Standards than the global average and have shown leadership particularly in taking a risk-based approach. However, there are significant gaps on beneficial ownership transparency, due diligence requirements for politically exposed persons, risk-based supervision of non-financial sectors and their implementation of preventative measures, and the detection and prosecution of money launderers. Without these building blocks in place, criminals - including those committing

[11] https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Leaders-Communiques/2020_G20_Anti-Corruption_Ministers_Meeting_Ministerial_Communique.pdf

[12] https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html

> offences relating to corruption - will continue to find it easy to move the proceeds of crime, making it more difficult or even impossible to recover them.
>
> […] Further, compliance related to beneficial ownership transparency is weak with only 38% of assessed G20 countries compliant or largely compliant with R.24 and R.25. This reflects the need for more action from all countries – and leadership from G20 countries – to strengthen laws and regulations on the availability of beneficial ownership information and relevant access by law enforcement agencies.

A growing number of countries having introduced BOT legislation.

The international legislative landscape is disparate, meaning that loopholes in regulatory regimes may be exploited as a means of arbitrage, circumventing weak or insufficient transparency regulations. Deficiencies in implementation of the international standard requiring countries to maintain beneficial ownership information in a way that ensures competent authorities have timely access to high-quality information means that corrupt actors may still find jurisdictions in which they can remain anonymous.

One of the biggest obstacles to the effective use of beneficial ownership information is the lack of verification processes for this information. Where information is inaccurate or unverified, this is likely to require increased regulation of trust and corporate service providers. In addition, there is growing concern in relation to illicit finance risks in immigration investment and the residential real estate market and transactions, which seems to remain opaque.

Some progress has been made in cross-checking information against other government databases, bearing in mind that the inter-institutional and multi-agency approach has been identified as a good practice in resolving some discrepancies between information contained in different databases.

The most common ways chosen by G20 members are the use, or the commitment to introduce, automated cross-checking of data from various government databases to verify beneficial ownership data prior to allowing a legal entity to be registered, exploiting the possibilities offered by IT, and/or setting up a dedicated agency or service to bring together in one place the different registers managed by the various national entities.

3.1.3 Achievements and good practices

Since the G20 ACWG Accountability Report 2020 our more members have adopted new legislation or amended BOT-related legislation (e.g. anti-money-laundering legislation, anti-corruption legislation, financial and tax legislation), while three members committed to do so, having an ongoing legislative procedure[13].

Among the G20 countries which have implemented legislative or other actions to improve their compliance with the FATF Recommendations No. 24 and 25, several significant events have marked the year 2021.

In June 2021, China has announced a *Draft Amendment to the Anti-money Laundering Law*. The draft plans to establish a national centralized registry of BO information and to create a general obligation for legal entities to report BO information. The new arrangement for BO in the draft, if finally adopted, is widely considered as fundamental progress towards improving the market and financial transparency.

[13] For more details, please refer to the Annex and, in particular, to the national questionnaires of: Australia, China, Indonesia, Mexico, Turkey and United States.

The Corporate Transparency Act, enacted by the U.S. Congress in January 2021, requires corporations, limited liability companies, and similar entities to report certain information about their beneficial owners to the Financial Crimes Enforcement Network (FinCEN) the U.S. FIU. FinCEN may disclose this beneficial ownership information to law enforcement for use in investigations, and to financial institutions, with the consent of the reporting company, to facilitate compliance with customer due diligence requirements.

Moreover, Germany announced the opening of the access to the BO register to the general public, and Italy will make fully accessible its BO register by the end of 2021.

In September 2020, the United Kingdom announced a range of proposals to improve the reliability and accuracy of information on the Companies Register and, in December 2020, launched a consultation on proposed changes to public procurement, which include the introduction of a number of grounds for exclusion from contracting, including the non-disclosure by suppliers of their beneficial owners when requested by a contracting authority. All the Crown Dependencies and the six Overseas Territories have publicly committed to implementing publicly accessible registers of company beneficial ownership information.

Through the Law on Prevention of Distribution and Financing of Weapons of Mass Destruction, passed in December 2020, Turkey has taken significant steps on the implementation of the principles contained both in FATF Recommendation No. 24 and article 10 of the G20 High-Level Principles on Beneficial Ownership Transparency concerning the prevention of the misuse of bearer shares.

Mexico, the Russian Federation and South Africa remain fully committed, and have initiated legislative procedures and inter-institutional working groups to review key issues in order to fully comply with the FATF Recommendations No. 24 and 25.

To address challenges posed by different databases, registries and registers, Australia and South Africa have each opted to set up a Service/Committee (central or multi-agency) to bring together in one place several registers managed by different authorities, and/or to coordinate different stakeholders in the BOT area.

In Spain, Royal Decree Law 7/2021 includes the creation of a single Register of Beneficial Ownership of legal entities and trusts, which will not only bring together the information available in previously existing registers but also supplement it with the direct capture of data from those entities and structures that are not obliged to file annual accounts or that do not carry out public acts before a notary that require disclosing such information.

3.2 Private sector transparency and integrity

3.2.1 Background

The private sector is an essential partner of governments in the fight against corruption, and its commitment to transparency and integrity plays an integral role in achieving anti-corruption goals. The G20 has long recognized that corruption and bribery impose a heavy price on business and society as a whole, and the G20 has committed to lead by example in combating domestic and foreign bribery.

With the 2015 G20 High-Level Principles on Private Sector Transparency and Integrity, the G20 encourages businesses to develop strong, robust and effective internal controls, ethics and compliance programmes and/or measures on the basis of a risk assessment to better understand the risk exposure linked to the business industry, size, legal structure and geographical area of operation, and to allocate resources efficiently and effectively.

They are intended to provide suggested general elements for developing or enhancing effective internal controls and ethics and compliance programs for businesses, in particular SMEs, according to their individual circumstances, including their size, type, legal structure and geographical and industrial sector of operation, as well as the jurisdictional and other basic legal principles under which they operate.

The following Principles include elements that are important to consider in the development of effective internal controls and ethics and compliance programmes, and in promoting transparency and integrity in the private sector:

- businesses should have a clear and accessible policy on prohibiting corruption.
- senior management, as well as the board of directors as appropriate, should clearly express and commit to the business's internal controls and ethics and compliance programme, good corporate governance, transparency and integrity, for the detection and prevention of corruption. The internal controls and ethics and compliance programmes must be enforced at all levels within the business, and senior managers must set the proper tone at the top for employees to follow.
- the board has a key role in setting the ethical tone of a business, not only by its own actions, but also in appointing and overseeing key executives and consequently the management in general.
- oversight of internal controls and the ethics and compliance programme should be the duty of one or more senior corporate officers, endowed with an adequate level of autonomy, resources and independence from management.
- in line with their duties, all individuals within the business should uphold the internal controls and ethics and compliance programme and take responsibility for ensuring the effectiveness of internal controls and the ethics and compliance programme.
- businesses should consider, where appropriate, external communication of their commitment to effective internal controls and ethics and compliance programmes.
- the compliance programme should be supported by auditing and monitoring of systems of internal accounting controls, which ensure the maintenance of fair and accurate records and detect and prevent corruption.
- depending on the business's individual circumstances, the internal controls and ethics and compliance programme should include appropriately detailed policies and procedures for particular risk areas; such as payments to domestic and foreign public officials, payments to third parties, facilitation payments, gifts, hospitality, entertainment and expenses, travel, political contributions, charitable donations and sponsorships, as well as conflicts of interest, solicitation and extortion.
- businesses should conduct appropriate due diligence. Due diligence includes vetting new hires, agents, and business partners, and extends to the formation of joint ventures and mergers and acquisitions. Due diligence should be an ongoing process and be commensurate with the associated corruption-related risk factors.
- in cases of mergers and acquisitions, businesses should, as appropriate, promptly incorporate the acquired business into its internal controls and ethics and compliance programme.
- businesses should ensure that their subsidiaries, as well as affiliates over whom they have effective control, have internal controls and ethics and compliance measures commensurate with the risks they face.
- businesses should take steps to encourage or, according to risk and where appropriate, ensure that their business partners have effective internal controls and ethics and compliance measures.

- periodic reviews of the internal controls and the ethics and compliance programme should be undertaken to evaluate and improve their effectiveness and take into account evolving standards, business risks, and other circumstances as appropriate.
- businesses should ensure regular training on their internal controls and ethics and compliance programmes.
- businesses should promote and incentivize observance of their internal controls, and ethics and compliance programmes.
- appropriate corrective and disciplinary action should be taken for failure to comply with internal controls and the ethics and compliance programme.
- effective and easily accessible reporting mechanisms and whistle-blower protection should be provided to employees and others who report, in good faith and on reasonable grounds, breaches of the law, or violations of the business's policies and procedures. Businesses should undertake appropriate action in response to such reports.

3.2.2 Frameworks in place and ongoing challenges

Since the inception of the ACWG, private sector transparency and integrity has been highlighted as one of the priority areas in all action plans.

Most recently, the **G20 Leaders' Declaration 2020** highlighted the need to promote global integrity in response to the COVID-19 pandemic, and to promote a multi-stakeholder approach, including with the private sector, to prevent and combat corruption.

The answers to the questionnaire prepared for this Accountability Report show that G20 members have generally put in place measures to incentivize or ensure that businesses have policies on preventing and tackling corruption and other related offences as envisaged also in the 2015 **G20 High-Level Principles on Private Sector Transparency and Integrity**.

They also reveal that national legislation generally provides for, or is in the process of implementing, legal frameworks to protect whistle-blowers, both in the public and the private sector in accordance with the **2019 G20 High-Level Principles for the Effective Protection of Whistleblowers**.

Legal frameworks generally provide for accessible mechanisms for the reporting of allegations of corruption and/or bribery. However, differences still exist in terms of scope of covered whistle-blowers, (financial) incentives, protections and non-discrimination/retaliation requirements, and between the public and the private sector. More visibility and public guidance could be provided on the accessibility and reporting mechanisms.

Some legal frameworks also encourage or require that internal controls, ethics and compliance programmes include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence, the management of conflicts of interest, and the prevention of solicitation and extortion.

More progress should be made to ensure that these areas are adapted to SMEs, and business organizations and professional associations support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Despite a growing number of countries having introduced measures to incentivize or ensure the fulfilment of commitments under the 2015 G20 High-Level Principles on Private Sector Transparency and Integrity, the international legislative landscape is disparate, which could

affect a level playing field. Countries should continue to provide transparent incentives for private sector compliance, including strong enforcement of anticorruption laws.

Progress has been made encouraging or requiring adequate or improved internal controls, ethics and compliance programmes. The positive trend should continue and be properly calibrated also to SMEs.

Finally, additional efforts should be made to incentivize business organizations and professional associations, to support the private sector, in particular SMEs, in the promotion of transparency and integrity.

3.2.3 Achievements and good practices

The following measures were reported by G20 countries in response to the questionnaire:

Argentina created an Integrity and Transparency Registry for Entities, an initiative of the Anticorruption Office, that promotes the construction of a platform for the voluntary registration of companies and entities interested in advancing the development of integrity actions to improve the transparency of their operations.

In October 2020, Australia launched the Bribery Prevention Network, a public-private partnership that brings together the private sector, government, civil society and academia to support businesses to prevent, detect and address bribery and corruption. On 1 July 2019, the Commonwealth Treasury Laws Amendment Act strengthened the corporate sector whistleblower protections and introduced new protections for tax whistleblowers. As of 1 January 2020, public companies, large proprietary companies, and corporate trustees of regulated superannuation entities in Australia are required under law to have in place a whistleblower policy. In November 2019, the Australian Securities and Investments Commission released Regulatory Guide 270 on Whistleblower policies which assists all companies (whether they are legally required to or not) in creating policies that support and protect whistleblowers. As of 1 January 2020, the Australian Securities Exchange guidelines took effect, requiring listed entities to have a whistleblower policy and an anti-bribery policy which they must publicly disclose in their annual report or on their website.

On 1 April 2021, the new Brazilian Public Procurement Law was enacted. The new law mandates the adoption of Integrity Programs (anti-corruption compliance programs) by the successful bidder in contracts above a certain value. Integrity programs were also listed by the legislator as a tiebreaker in public bids, as a mitigating factor in the application of sanctions for unlawful acts and as a condition for the rehabilitation of companies that have been penalized in the past for the practice of corruption or related acts. In April 2021, Brazil introduced a set of protections and incentives to whistleblowers reporting criminal activity and administrative misconduct.

China revised the Anti-Unfair Competition Law twice in 2017 and 2019, putting more emphasis on the protection of the rights and interests of businesses, and increasing the administrative penalties for businesses committing bribery. In 2021, all central enterprises in China have established internal compliance committees, with a view to improving compliance, self-discipline, and preventing corruption risks. China has introduced regulatory frameworks to encourage or require internal controls, ethics and compliance programs of commercial entities. In terms of governmental policy and guidance, China issued the Provisional Guidance on Compliance Management of Central Enterprises in 2018, which requires all central enterprises to establish sound compliance mechanisms.

France has adopted the Transparency, Anti-corruption and Economic Modernization Act, known as the Sapin II Act. This act revamped the institutional framework for corruption

prevention with the creation of the French Anti-Corruption Agency (AFA) and introduced new criminal policy provisions, including the judicial public interest agreement (CJIP), which established a transactional procedure that allows a company to negotiate a fine in order to avoid a trial. It sets up the general rules regarding whistleblowers protection which are effective for both private and public sectors. France is also in the process of transposing the EU Directive on the protection of persons who report violations of Union law (the "Whistle-blower Directive"). Moreover, the Sapin II Act has established a legal framework which sets out the measures and procedures that companies must implement to prevent and detect the commission of acts of corruption, both in France and abroad. The AFA monitors the existence and effectiveness of these measures. Third party due diligence, which is imposed to the organizations subjected to the Sapin II Act, is important for the promotion of transparency and integrity.

Germany has adopted joint guidance published by the Federal Ministry of Justice and for Consumer Protection and the Federal Ministry for Economic Affairs and Energy, on corruption prevention in companies, in particular when operating abroad. Germany is also in the process of transposing the EU Whistleblower Directive. Moreover, the Act to Strengthen Financial Market Integrity will introduce an explicit duty to establish a risk management system and an internal control system for the management board of publicly listed companies with effects from 1 July 2021. In addition, the new draft corporate liability act adopted by the German Government in June 2020 will strengthen incentives for companies to create ethics and compliance programs which, as appropriate, include detailed policies and procedures for particular risk areas.

Under the National Strategy on Corruption Prevention, Indonesia has been promoting the anti-bribery management system in the private sector. In 2018, the Corruption Eradication Commission (KPK) and the Indonesian Chamber of Commerce and Industry (KADIN), along with governance experts and practitioners, have published a book on Corruption Prevention Guidelines for the Business Sector. The book guides corporations to set up internal mechanism to prevent corruption and build compliance. On the reporting aspect, Indonesia has enacted the Law on Whistle-Blower Protection as well as Government Regulation on Procedures for Implementing Community Participation and Awarding in the Prevention and Eradication of Corruption. The regulation stipulates protection for reporting parties, witnesses and experts by law enforcers.

In 2020, India introduced the Companies (Auditor’s Report) Order (CARO 2020) with the objective of strengthening the corporate governance framework. CARO 2020 requires enhanced due diligence and disclosures on the part of auditors to bring in greater transparency in the financial state of affairs of the companies. Pursuant to CARO 2020, the auditor is required, inter alia, to disclose every year whether she/he has considered whistle-blower complaints, if any, received during the year by the company.

On 9 June 2021, the Italian National Anticorruption Authority (ANAC) has approved new guidelines on whistleblowing strengthening the framework in relation to the scope of the entities and beneficiaries covered, and the procedures and sanctioning powers of ANAC. Italy is also in the process of transposing the new EU Whistleblowing Directive thereby extending the whistleblowers’ protection to the private sector and expanding the list of public and private employees allowed to submit reports and ask for protection. Significant innovation has also been brought, both in the public and private sector, modifying the Code of Procedure for litigations before the Italian Supreme Audit Institution of Italy by Legislative Decree no. 114/2019.

With regard to foreign bribery, Japan published the revision of “Guidelines for the Prevention of Bribery of Foreign Public Officials” and “Guidance to Guidelines for the Prevention of

Bribery of Foreign Public Officials". The Guidance explains the main points of the Guidelines easily for SMEs. The Whistleblower Protection Act, enacted in 2004 and enforced in 2006, facilitates the reporting of violations of law by protecting people reporting the prescribed violations of law. The 2020 amendment of the Act, which will fully come into effect by June 2022, strengthens the protection of whistleblowers and facilitates further reporting.

As of June 2021, in Korea, the Anti-Corruption and Civil Rights Commission (ACRC) has launched on a pilot basis the Ethics and Compliance Management Certification System with the aim to establish a culture of ethical management for state-owned companies and private companies. The Ethics and Compliance Management Certification System requires state-owned companies to voluntarily adopt and adapt ethics and compliance programs. Moreover, to remove corruption of state-owned companies, state-owned companies formed a Transparent Society Council for State-owned Companies. The Council drafted a report concerning success and challenges on anti-corruption management.

In 2020, the Ministry of Labor of Russia prepared a set of methodological materials aimed at preventing corruption in the procurement of goods, works and services. The document considers the provisions of the 2015 G20 High-Level Principles on Private Sector Transparency and Integrity.

Mexico has developed a policy for all companies that are or want to become State's suppliers to reduce the risks of corruption. The General Law of Administrative Responsibilities provides the minimum elements of an integrity policy. Best practices were compiled in a project of Guidelines for the creation, promotion, operation and monitoring of the Business Integrity Register, soon to be published. The Guidelines for the Promotion and Operation of the System of Internal and External Corruption Alerting Citizens establish whistle-blower protections.

In Saudi Arabia, the Oversight and Anti-corruption Authority (Nazaha) has built a strategic relationship with the Council of Saudi Chambers. Through this partnership, Nazaha has conducted several anti-corruption training courses for the private sector, starting with professional enablers, such as lawyers, as they play an essential gatekeeping role in preventing, detecting, and reporting corruption. Nazaha has also organized industry-specific workshops dealing with such issues as how to address corruption risks in the health sector generally and the health insurance sector specifically. Currently, Nazaha is working closely with the private sector to develop a compliance guide to promote good governance, effective internal controls and ethics in business. Also, Nazaha, in partnership with the Ministry of Human Resources and Social Development, has developed a regulation that governs the third Sector "NGOs".

In Spain, the adoption of Royal Decree Law 7/2021 has the overall goal of enhancing the transparency and availability of information on the beneficial owners of legal persons and other entities without legal personality, thus also helping improve private sector transparency and integrity. In 2019, and with a view to highlighting the need to fight corruption in international economic transactions and the importance of coordinated action by the public and private sectors, the Spanish Ministry of Justice and the Ministry of Industry, Trade and Tourism made available a Spanish translation of the Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, complemented with a compendium of Spanish legislation on this subject. The Royal Decree Law 11/2018 on the reporting of offences and protection of individuals, describes *inter alia* the basic features of the whistleblowing channel to be used by employees of obliged entities, who shall report offences to the Unidad de Inteligencia Financiera de España (SEPBLAC), as well as the applicable protection measures.

In South Africa, the Independent Regulatory Board of Auditors (IRBA) prescribes the IRBA Code of Professional Conduct for Registered Auditors (RAs). This was revised in 2018 and became effective as of 15 June 2019. The IRBA Code sets out fundamental principles of ethics for RAs, reflecting the profession's recognition of its public interest responsibility. The National Anti-Corruption Strategy adopted in November 2020, prioritized the promotion of whistle-blowing among citizens and protection of those who report corruption and unethical behaviour. Whistle-blowing is one of the pillars of the strategy. Moreover, the Companies and Intellectual Property Commission (CIPC) has issued a Guideline for Corporate Compliance Programme addressed to the Social and Ethics Committees of every state-owned company and every listed company. The Guideline was also released on the Johannesburg Stock Exchange News Service on 21 November 2018 informing all publicly listed companies of the CIPC Guideline.

In Turkey, Law No. 5018 on Public Financial Management and Control has introduced concepts such as fiscal transparency, accountability, strategic planning, budgetary principles, internal control, internal audit, and external audit, in public financial management.

The UK is piloting a new bribery and corruption reporting mechanism. The pilot mechanism is an online system where the public can report allegations of bribery and corruption; it will be in addition to the offer currently available on the current online system for reporting allegations of crime. The Business Integrity Initiative (BII) supports businesses to operate with integrity in developing countries. It is designed to provide practical guidance to help companies overcome barriers to doing business in frontier markets, including guidance on dealing with requests for bribes and human rights issues in supply chains. The BII was designed as a pilot to run from 2018 to March 2021.

The UK has also undertaken lots of relevant work on corporate governance more broadly. In June 2018, the UK introduced legislation to require all UK companies of a significant size that are not currently required to provide a corporate governance statement to disclose their corporate governance arrangements and the code, if any, which has been applied. In December 2018, the Financial Reporting Council (FRC) published 'The Wates Corporate Governance Principles for Large Private Companies' which sets out principles that are appropriate for private companies to report their corporate governance arrangements against. In March 2021, the UK launched a consultation on wide-ranging reforms to modernize the UK's audit and corporate governance regime.

In the United States, the Department of Justice released the 2017 Guidance "Evaluation of Corporate Compliance Programs" which was revised in 2019 and 2020, as part of the efforts to continuously improve and enhance enforcement policies. The United States has a comprehensive legal framework to protect reporting persons in the federal public sector and the private sector. Under the Department of Justice's Corporate Enforcement Policy and "Filip Factors," in addition to considering whether a company has self-reported, cooperated, and taken appropriate remedial actions, the Department of Justice and the SEC also consider the adequacy of a company's compliance program when deciding what, if any, action to take. A number of associations and private sector entities in the United States help support integrity in the private sector.

3.3 Liability of legal persons for corruption

3.3.1 Background

The G20 has highlighted the importance of the liability of legal persons in its Anti-Corruption Action Plans since 2013-2014. Following the G20 Leaders' commitment[14] in September 2016 to "*lead by example in combating bribery*" including by "*establishing and, where appropriate, strengthening the liability of legal persons for corruption offences*", in 2017, the G20 countries agreed on High Level Principles on the Liability of Legal Persons for Corruption.

G20 members have committed, in particular, to adopt a robust legal framework for the liability of legal persons for corruption, including domestic and foreign bribery, and related offences, capturing all entities with legal rights and obligations, not restricting this liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted and, in any case, not limiting to cases where the offence was committed by a senior manager.

G20 countries also committed to ensuring that a legal person should not be able to avoid responsibility by using intermediaries, including other legal persons to commit a corruption offence on its behalf, and should not be able to escape liability by altering their corporate identity. Legal persons should be subject to effective, proportionate, and dissuasive sanctions; the bribe and proceeds of corruption should be able to be seized and confiscated from legal persons or monetary sanctions of comparable effect should be applicable in accordance with domestic laws. Introducing additional measures against legal persons should be considered.

Finally, the development of effective internal controls, ethics, and compliance programmes or measures to prevent and detect corruption should be encouraged and concrete incentives should be considered to foster effective compliance by businesses.

This section of the Report benchmarks implementation of the **2017 G20 High Level Principles on the Liability of Legal Persons for Corruption**, and highlights news and updates.

3.3.2 Frameworks in place and ongoing challenges

From the first big cases of corporate prosecution for economic crimes, to more recent examples of cross-jurisdictional investigations and prosecutions for suspected involvement in corruption and money-laundering, among other offences, liability of legal entities is steadily gaining equal footing to individual liability internationally. All G20 countries have in place some form of criminal liability or non-criminal liability (civil and administrative) of legal persons for corruption, including foreign bribery.

Across G20 countries, criminal, administrative, and civil liability are all built up from more or less similar elements: an offence, a legal person, a link between the offence and the legal person, and fault. However, the consequences of liability vary in the different national jurisdictions. Some countries have all three forms of sanctions – criminal, administrative and civil – whereas some only have administrative or civil liability[15].

[14] https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Action-Plans-and-Implementation-Plans/2015_G20_ACWG_Action_Plan_2017-2018.pdf

[15] For more details see https://www.oecd.org/corruption/liability-of-legal-persons-for-foreign-bribery-stocktaking-report.htm

Legal frameworks governing corporate liability are constantly evolving and countries are creating, adapting or modifying their laws, including by taking into account the 2017 G20 High Level Principles on the Liability of Legal Persons.

The major challenges on legal liability regard legislative aspects and enforcement.

Emerging tendencies can also be observed with regard to leveraging the prevention and repression standards of liability of legal persons.

However, some issues still remain to be addressed.

In addition, there is a general need to consider how to further encourage corporations to adopt internal controls, ethics and compliance programmes to mitigate corruption risks. Not all G20 countries have incentives to encourage the private sector to have integrity programmes.

Corporations need additional guidance on how they can implement frameworks to ensure their managers and employees comply with relevant legal provisions.

The necessity for an articulated policy against corruption – through codes of conduct, compliance policies and procedures, internal oversight mechanisms, risk assessments, training and continuing advice, availability of incentives and disciplinary measures, third-party due diligence – probably represents the new frontier of the liability of legal persons for the future.

In addition to these technical aspects, the legal frameworks on corporate responsibility need to put in place instruments to nurture a culture of integrity. A strong organizational culture based on integrity is an essential determinant of legitimate anti-corruption efforts.

An integrity culture is the result of many factors which are necessary to create a consensus around shared ethical values, and implementing realistic policies to uphold those values in the day-to-day operations of every company.

Government guidance on prevention procedures rarely mentions this integrity culture, but without it, no compliance management system would work.

3.3.3 Achievements and good practices

Measures reported by G20 countries include the following:

Germany introduced a new bill on corporate liability in June 2020 to inter alia strengthen the integrity of business conduct by replacing existing provisions for corporate liability for criminal offences. In the UK, the Law Commission of England and Wales was asked to undertake an expert review of the existing legislation, with a view to deepening corporate criminal liability, in particular for economic crime. Australia has introduced a bill to parliament, which, if passed, would introduce a new corporate offence for failure to prevent foreign bribery by an associate of the corporation for the profit or gain of the company[16].

France has extended the judicial agreement of public interest – a transactional mechanism applicable to legal entities intended to improve the effectiveness of the criminal response (reduction of delays and more dissuasive sanctions) – to the laundering of corruption and bribery of foreign public officials (by the Law n° 2020-1672 of 24 December 2020 on the European Public Prosecutor's Office, environmental justice and specialized criminal justice).

Some countries have recently developed their legislative framework by extending the predicate offences list for liability of legal persons, including some corruption related crimes:

[16] https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1246

Italy adopted Law Decree no. 124 of 26 October 2019, including tax crimes as predicate offences, completing the process through Legislative Decree no. 75/2020, by implementing EU Directive 2017/1371 on the fight against fraud to the Union's financial interests. Spain adopted Organic Law 1/2019, which amended the Penal Code (Article 31 bis), in order to transpose European Union Directives in the financial and terrorism fields, and to address international issues, increasing the number of criminal offences for which legal persons may be liable, and it modified the punitive regime applicable to legal persons in some cases.

Some countries recently amended provisions regulating the liability of legal persons, broadening the scope of legislation and increasing the amount of fines. For example, in December 2020, Turkey amended Article 43/A of the Misdemeanors Law in that direction.

Argentina is developing a complementary Guide for the implementation of integrity programs in Small and Medium Enterprises (SMEs).[17]

Several G20 countries have provided information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

A number of G20 countries have investigated, charged, prosecuted and successfully obtained convictions for and, in some cases, imposed sanctions on those found guilty of corruption and foreign bribery.

The UK Serious Fraud Office publishes details of all the anti-corruption investigations it is conducting (subject to operational or reporting constraints) or has taken forward, including any relevant data on its website[18].

Across G20 countries, various financial and non-financial sanctions for legal persons are available:

- fines can be criminal, administrative, or even civil in nature, as some jurisdictions allow for civil fines;
- asset forfeitures too are civil and criminal: the procedures involved in these two types of forfeiture are very different, but the results are the same; rights, title and interest of the property are transferred to the state;
- exclusion from public subsidies and grants;
- disqualification from public contracts;
- annulment of procurement decisions;
- ban of activities;
- supervision, probation and bail;
- public register;
- publication of judgement.

For instance, South African companies convicted of bribery of foreign public officials may be barred from receiving public contracts, and South African courts may order the conviction to be registered if it also constitutes an offence under the Prevention and Combating of Corrupt Activities Act 12 of 2004.

The responses to the questionnaire revealed an increasing role for Deferred Prosecution Agreements (DPA). Similar agreements reached between a prosecutor and an organization which could be prosecuted, under the supervision of a judge, are contemplated in more than one country.

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17 https://www.argentina.gob.ar/sites/default/files/guia_pymes.pdf

18 https://www.sfo.gov.uk/our-cases/#azp

DPAs were introduced in 2014 in the UK. Also in France, the Sapin II Act introduced a mechanism designed to strengthen the effectiveness and speed of the response to corruption offences committed by legal persons: the CJIP, a transactional sanction mechanism. The Brazilian Law 12,846/2013 (CLL) established the instrument of Leniency Agreement, which is a non-trial resolution agreement with companies that voluntarily come forward with information on corrupt practices and assist authorities in the investigations. Companies that effectively collaborate may be exempted from certain sanctions or have the applicable sanctions attenuated – which include a fine reduction or avoid debarment. In December 2019, Australia introduced a project of reforms which would introduce a (DPA) scheme for certain corporate offences including domestic and foreign bribery. The legislation establishing the DPA scheme is currently before Parliament.

No particular problems were cited regarding the use of confiscation as a means of holding legal entities accountable for corruption offences. At the same time, steps could be taken to ensure the delivery of mutual legal assistance, including where it relates to asset recovery, extradition, and issues of concurrent jurisdiction in a more functional and effective way.

4. FINAL REMARKS

4.1 Summary of 2021 key achievements

Since the last Accountability Report, significant steps forward have been made by several countries in the introduction or amendment of laws and regulations concerning BOT, with a view to effectively implement the FATF Recommendations No. 24 and 25.

Moreover, there has been an increasing commitment among numerous G20 members to review key issues in order to comply with the above-mentioned FATF Recommendations. Examples in this regard include the setting up of legislative procedures and inter-institutional working groups, as well as national action plans, to implement these three sets of principles and to initiate the publication of data with the objective of having a register for legal persons in the near future.

Important efforts have been made to improve the use of existing databases, registries and registers, through the setting up of dedicated central or multi-agency services bringing together in one place several registers managed by different authorities and/or coordinating different stakeholders in the BOT area.

Progress and achievements could also be observed with regard to private sector transparency and integrity.

Steps forward have also been taken concerning the introduction in the public sector of a dedicated whistle-blower protection legislation or, when already existing, its extension to the private sector.

G20 members also introduced new regulatory frameworks encouraging or requiring internal controls, ethics and compliance programmes, or strengthening incentives for companies to create ethics and compliance programmes which, as appropriate, include detailed policies and procedures for particular risk areas.

In the framework of dedicated anti-corruption compliance programmes, several G20 countries have strived to bring together the private sector, government, civil society and academia to support businesses to prevent, detect and address bribery and corruption.

With regard to the liability of legal persons, an increasing number of investigations, prosecutions and convictions involving legal persons can be observed among G20 countries.

In general, putting more emphasis on the protection of the rights and interests of businesses, some countries introduced increased administrative penalties or criminal provisions for businesses involved in acts of bribery.

Legislative amendments have introduced, on the one hand, new procedures to strengthen the effectiveness and speed of response to corruption offences committed by legal persons, and established, on the other hand, non-trial resolution agreements with companies that voluntarily come forward with information on corrupt practices and assist authorities in investigations: the objective is to exempt effectively collaborating companies from certain sanctions or to have a reduction of the applicable sanctions.

4.2 Challenges and way forward

Besides the need to better implementing existing commitments on the three topics selected for the G20 Accountability Report 2021, for the coming years, **three main challenges** can be identified:

- **promote a culture of integrity**: the liability of legal persons has been approached mostly from a technical/legal point of view, but more efforts have to be made in involving the private sector, in a broader sense, to successfully cooperate in reaching the goal of transparency and integrity;

- **promote a holistic approach**: full accountability for legal persons can be better achieved with increased transparency into beneficial ownership; both issues have to be approached holistically, and implemented, as far as possible, in parallel;

- **invest in technical assistance**: even if a lot of efforts have been made to implement more efficient judicial cooperation in criminal matters related to corruption and foreign bribery, a still not fully exploited field of cooperation seems to be the one of mutual deliveries of technical assistance on those topics. More efforts should be made concerning mutual programmes on capacity-building, legislative and procedural harmonization and exchange of good practices.

Given the need to enhance beneficial ownership transparency, private sector transparency and integrity and liability of legal persons globally, these three areas will remain a priority for the G20 ACWG. The analysis of key achievements and challenges, and suggested areas for future work provided in this document will inform future efforts by the G20 ACWG in these areas, particularly as G20 countries seek to further strengthen cooperation in line with relevant principles previously endorsed by G20 leaders. This analysis will also help shape and refine related lines of work being pursued by the group.

In conclusion, while this year's accountability reporting exercise focused on the beneficial ownership transparency, private sector transparency and integrity and liability of legal persons, an in-depth overview of G20 countries' progress with regard to other key areas of the group's work have not yet been conducted. Given consensus of G20 countries, future presidencies may consider selection of other topics for future accountability reporting exercises conducted in this style.