



**Background:** The 2014 *OECD Foreign Bribery Report* reviewed a total 427 individuals and entities subjected to enforcement actions and concluded that “enforcement of anti-bribery laws has *drastically increased* since the entry into force of the Convention”.\* This study, in contrast, reviewed the performance of the Convention’s 41 signatories in investigating and prosecuting cases. The findings show that the aggregate increase in enforcement cited by the OECD Report is mainly due to U.S. and Germany. The majority of signatories have been ineffective in investigations and prosecutions (Tables 1 and 2).

Table 1: No Prosecutions as of 2015	
	Entry into Force
Chile	2001
Colombia	2013
Czech Republic	2000
Estonia	2005
Greece	1999
Iceland	1999
Ireland	2003
Israel	2009
Latvia	2014
Mexico	1999
Netherlands	2001
New Zealand	2001
Portugal	2001
Russia	2012
Slovak Republic	1999
Slovenia	2001
South Africa	2007
Spain	2000
Turkey	2000

Table 2: No Convictions as of 2015	
	Entry into Force
Argentina	1999
Austria	1998
Brazil	2000
Bulgaria	1999
Chile	2001
Colombia	2013
Czech Republic	2000
Denmark	2000
Estonia	2005
Greece	1999
Iceland	1999
Ireland	2003
Israel	2009
Latvia	2014
Luxembourg	2001
Mexico	1999
New Zealand	2001
Portugal	2001
Russia	2012
Slovak Republic	1999
Slovenia	2001
South Africa	2007
Spain	2000
Turkey	2000

**Research Questions:** What is the variance in performance among Convention signatories in enforcing foreign bribery laws? What factors explain the differences? What measures could enhance their enforcement?

**Methodology:** This study reviewed OECD Country Monitoring Reports on signatories’ compliance with the convention, Transparency International’s annual progress reports on the convention covering **2009-2014**, various reports of national government bodies, including those of anti-corruption agencies, and other relevant documents.

**Findings: Convictions:** The study finds that only 2 countries (U.S. and Germany), and

to a lesser extent 2 others (Switzerland and U.K.), have been enforcing foreign bribery laws. These 4, constituting 10% of signatories, delivered 84% of total convictions. Of the total, more than half (52%) came from U.S. (Fig.1). A remarkable 24 signatories – 58% of signatories – have not secured a single conviction (Table 2).

**Investigations:** 11 countries, comprising 27% of signatories, produced 87% of total investigations: U.S., Switzerland, Germany, France, Australia, South Africa, U.K., Italy, Austria, and Canada. Of these, 3 countries delivered more than half (57%) of total investigations: U.S., Switzerland, and Germany. 9 countries – 22% of signatories – have not conducted any investigations.

**Prosecutions:** 7 countries, representing 17% of signatories, delivered 84% of prosecutions: Germany, U.S., Italy, U.K., France, Canada and South Korea (Fig.2). 19 countries – 46% of signatories – have not prosecuted a single case (Table 1). Several countries have considerable investigations but curiously few prosecutions: France: 35 investigations, 5 prosecutions; Australia: 33 investigations, 2 prosecutions; South Africa: 25 investigations, 0 prosecution; Austria: 16 investigations, 0 prosecution (Fig.2)

**Analysis:** As an international agreement, the Convention’s implementation is evidently saddled with “free riders”. Most signatories have shifted the high costs of enforcement to the few countries that have demonstrated willingness and capacity to combat foreign bribery. They have also not removed or addressed various barriers to effective enforcement, which include legal, political, and cultural factors. There is also a neglected factor which is organisational in nature: the budget and staff of, and expertise available to, anti-corruption agencies for investigation and prosecution.

**Organisational Deficits:** Foreign bribery cases are complex crimes – by nature they have transnational dimensions usually involving secrecy jurisdictions – that require considerable resources to investigate. The volume of such cases facing anti-corruption agencies in most advanced economies (more so in developing countries) exceeds their existing capacities (see Box).

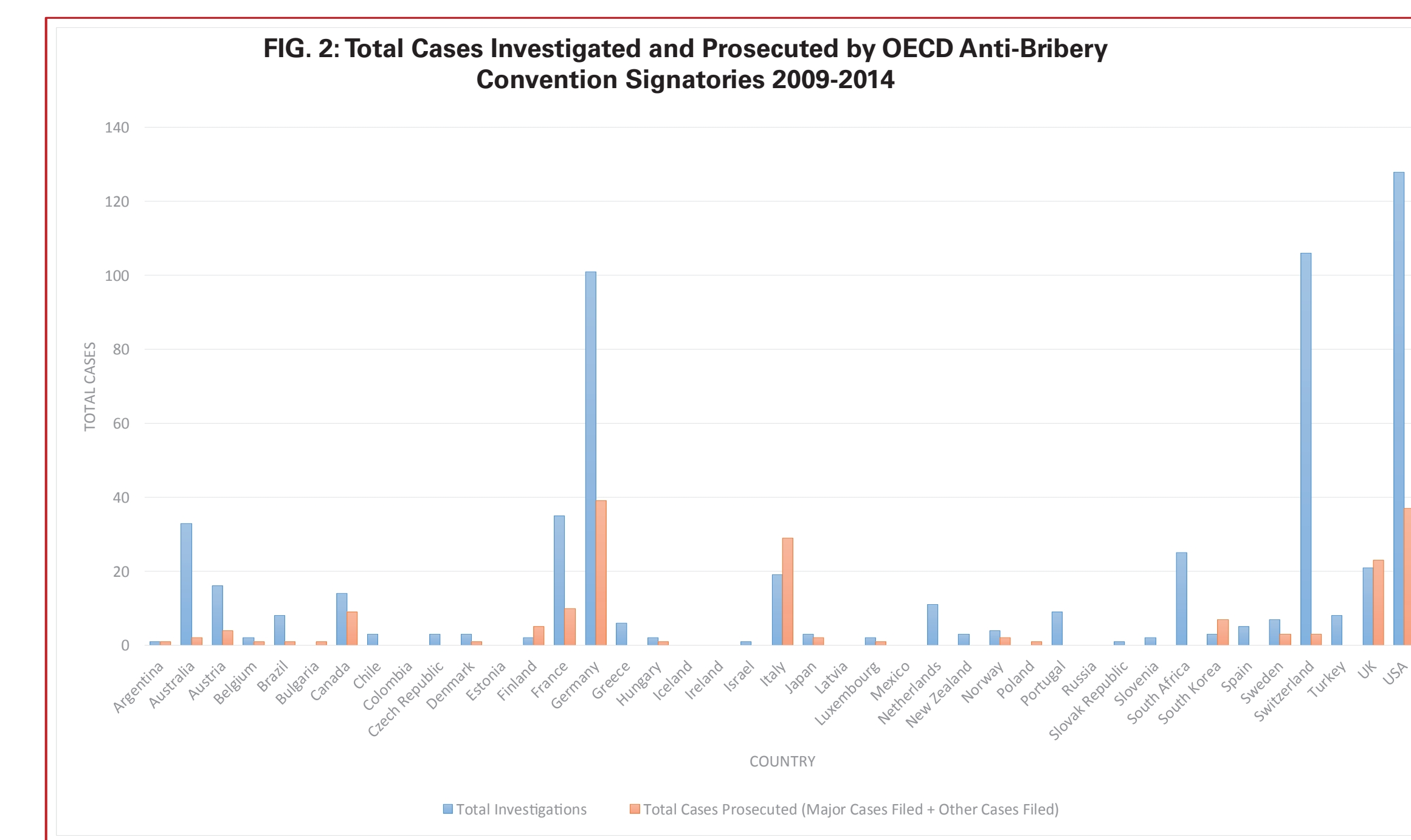
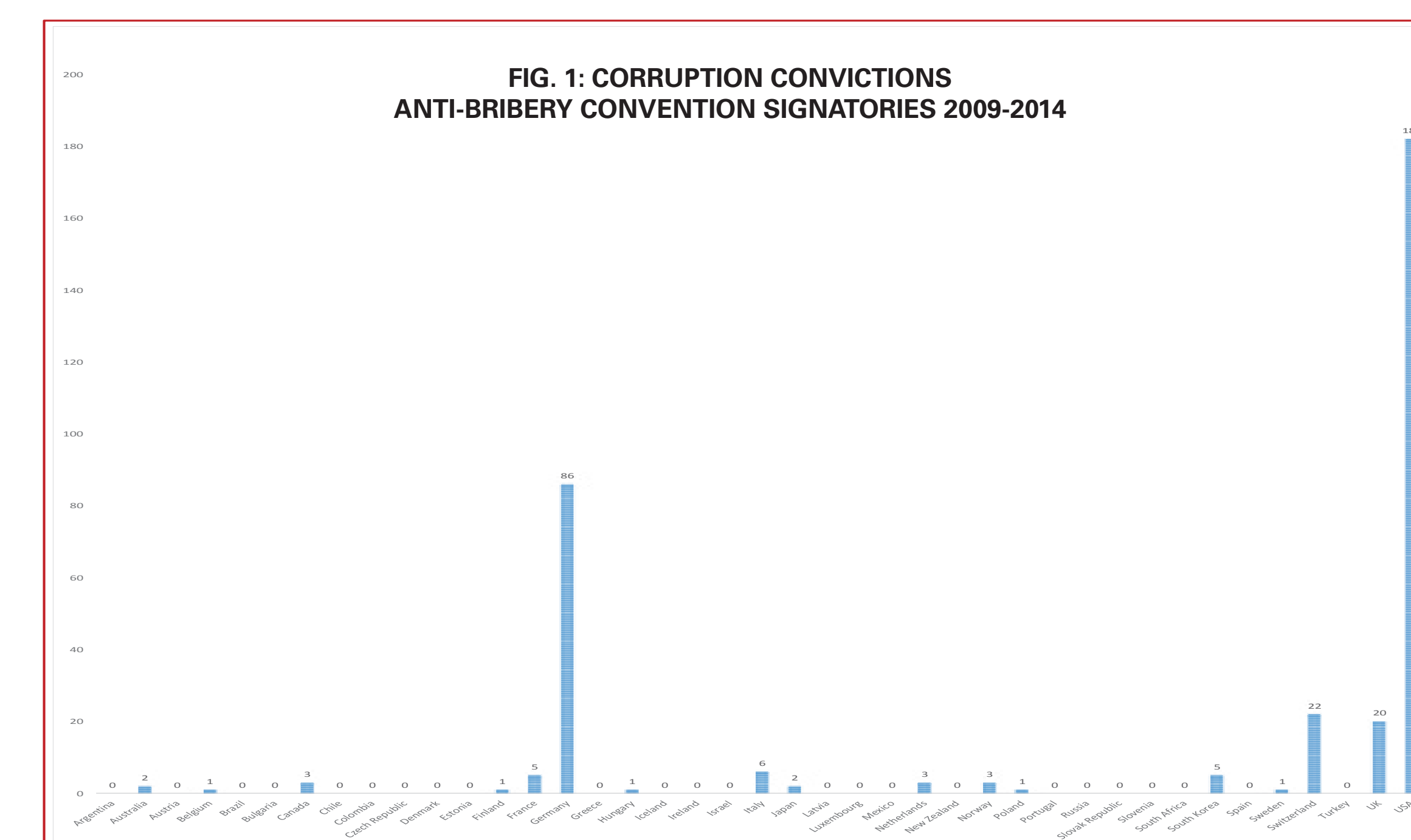
**Box: Examples of Organisational Overload**

**Austria:** Its Federal Bureau of Anti-Corruption, established in 2010, started with 55 investigators faced with over 1600 allegations. The Bureau was able to completely investigate only 414 allegations.

**Australia:** Its national Fraud and Anti-Corruption Centre, created in 2014, started with 25 staff. It contends with an average of 100 whistleblowing allegations a month. (Its budget was increased in 2016 to hire additional 25 staff.)

**New Zealand:** Its Serious Fraud Office has 55 staff and receives on average 550 complaints a year. The office conducts only about 25 investigations and pursues 12 prosecutions a year.

**Conclusion:** Foreign bribery cases require swift and competent investigation across multiple jurisdictions. When investigations are protracted and unfocused, prosecutions are hampered. Delays increase risks ill-gotten assets dissipating, evidence disappearing, witnesses losing interest, and investigators and prosecutors moving on. The OECD must address the unintended moral hazard generated by the dominance of a few countries in investigations and prosecutions. The OECD should include in its country monitoring and assessment reports a demand and organisational analysis of signatories’ anti-corruption bodies, benchmarked against the high performing jurisdictions. Enforcement of foreign bribery laws can only hope to be effective if its high costs are realistically estimated and shared among countries, and their enforcement agencies are competently staffed and adequately funded to operate (and co-operate) at the high-levels required.



\* OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials, OECD, 2014, italics supplied. **Source of tables and graphs:** Transparency International Progress Reports on the OECD Anti-Bribery Convention, various years. **Source of Box:** Austria – Rene Wenk, “Austrian Federal Bureau of Anti-Corruption,” Meeting of Directors of National Institutions and Agencies for Combating Corruption and Organised Crime, Budva/Becici, 9 May 2011; Australia: “AFP to lead government pursuit”, *The Australian*, 31 July 2014.; New Zealand: “Hard to keep staff on what it pays – Serious Fraud Office,” *Stuff.co.nz*, 13 June 2016.