

DENIAL OF ENTRY TO CORRUPT OFFICIALS

THE CHALLENGE

Corrupt individuals often enjoy the proceeds of illegal or corrupt activities outside their own country through the purchase of luxury goods and real estate abroad, which can also serve as a means to launder money. G20 countries have led on incorporating changes into their immigration law to deny visas to corrupt officials. These denial of entry measures can act as a sanction as well as a disincentive for the corrupt.

CURRENT STATUS

At the 2012 summit in Los Cabos, the G20 Leaders Declaration endorsed the *G20 Common Principles for Action: Denial of Safe Haven* and initiated a denial of entry experts' network. At the 2013 summit in St Petersburg, G20 leaders announced they had established a Denial of Entry Network contact list in all G20 jurisdictions to share information on corrupt officials.

According to the principles, member states shall:

- deny entry even absent a prior conviction, "where there is sufficient other information to make a determination."
- consider denying entry additionally to family members or close associates of the official.
- establish denial of entry authorities who deal specifically with corruption cases.

However, there are three key challenges to making the use of denial of entry an effective deterrent on a global scale:

- The specific definition of the conduct subject to denial of entry and all final decisions related to it are discretionary and reside with the relevant national authorities .
- The legal basis and enforcement of these measures differ greatly across G20 jurisdictions.
- No public information is currently available about the working methods and contact points of the G20 Denial of Entry Experts' Network. The *Common Principles for Action* state that contact points can be shared: "G-20 countries can usefully share points of contact for their respective relevant authorities for the purposes of cooperation, as a starting point." Coordination could be enhanced by making more of this information public.

RECOMMENDATIONS

The G20 Anti-Corruption Working Group should:

- Make public the contact points and working methods for their national level Denial of Entry Experts' Network and provide opportunities for the public to provide information where relevant. This could draw from the public National Contact Points for the OECD Guidelines for Multinational Enterprises¹
- Provide public information for how they plan to enable timely and accurate sharing of information on corrupt officials between jurisdictions.
- Establish, within the timeframe of the successor to the current G20 Anti-Corruption Action Plan, a common set of criteria for individuals to enter the list of officials denied entry across all G20 jurisdictions. This would help to reduce risks and concerns that enforcement is uneven or arbitrary.

G20 countries should:

- Ensure that any denial of entry decisions are subject to appeal and that due process guarantees are respected during the proceeding.
- Enact sufficient guarantees to prevent abuse of the denial of entry principles.

¹ National Contact Points for the OECD Guidelines for Multinational Enterprises, <http://www.oecd.org/corporate/mne/ncps.htm>

SUPPORTING INFORMATION

Due to the lack of publicly available information on the number and reasons of visas denied, it is difficult to assess this initiative's success. Few countries have specific legislation in place, while the majority of the G20 countries have the power to deny visa or entry for corruption offences based on general provisions of immigration law. Many countries possess lists of banned individuals, although in many cases they are not made public and therefore at risk of being subject to abuse. Countries participating in the Schengen agreement have a unified Information System (SIS II) where national authorities can file alerts to refuse entry on security grounds.

According to the G20-B20 Dialogue Efficiency Task Force, the level of compliance with this commitment on denial of entry is the lowest among all made by the G20.² Their report of June 2013 notes that no G20 member fully complied with the the Denial of Safe Haven Principles and only six members have showed partial compliance (Australia, Germany, Saudi Arabia, US, EU, Russia). The report states that whilst Australia and Russia promoted international cooperation on this issue, they did not take any measures to enforce relevant legislation on a domestic level. Four other partially complying members were said to have drafted or adopted legislation which complies with the Denial of Safe Haven principles.

Cases of refusal of entry on the basis of corruption charges have been recorded in Australia, Canada, China, India, Japan,³ South Africa, Spain, Turkey, UK and the US.⁴

In comparison to other G20 countries, the US has considerable legislation in place: corrupt officials and their family members can be denied entry also in absence of a conviction.⁵

² G20-B20 Dialogue Efficiency Task Force. *From Toronto to Saint Petersburg: Assessing G20-B20 Engagement Effectiveness. Draft Report*. June 2013.

³ <http://www.abc.net.au/news/2014-01-20/an-malaysian-opposition-leader-anwar-ibrahim-denied-entry-to-ja/5209070>

⁴ First Monitoring Report of the G20 Anti-Corruption Working Group

⁵ Various provisions of the Immigration and Nationality Act; Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014: Presidential Proclamation PP 7750