

2003 Evian Interim Compliance Report World Economy and Growth

Commitment

2003 – 5: “We reaffirm our commitment to strengthen investor confidence by improving corporate governance, enhancing market discipline and increasing transparency”.

Background

Recent scandals involving large corporate entities have heightened concern over the accountability of both private and public firms. The G8 recognizes that effective regulation and transparent corporate governance practices are essential to the efficient functioning of capital markets and the fostering of economic growth. The Evian Summit resulted in the release of two documents that specifically address these concerns: *Fostering Growth and Promoting a Responsible Market Economy* and *Fighting Corruption and Improving Transparency: A G8 Action Plan*. French President Jacques Chirac, and the other G8 leaders, kept these documents in mind when they framed the above commitment in the macroeconomic growth section of the *Chair’s Summary*.

Assessment:

Score	Lack of Compliance -1	Work in Progress 0	Full Compliance +1
Canada		0	
France		0	
Germany			+1
Italy	-1		
Japan		0	
Russia		0	
United Kingdom		0	
United States			+1
Overall		0.125	

Individual Country Compliance Breakdown:

1. Canada: 0

Canada has been inconsistent yet active in working to uphold its commitments of improved corporate governance, market discipline and transparency. With regards to corporate governance, June 2003 saw 12 out of 13 provinces’ securities commissions put advance new rules to improve audit committees in public companies and demand chief executive and financial officers certify financial statements.¹² Complementing this, the federal budget of 2003 contained a promise to

¹² Department of Finance Canada. *Fostering Investor Confidence in Canadian Capital Markets*. 18 September 2003. www.fin.gc.ca/toce/2003/fosteringSum_e.html

improve the corporate governance standards in the Canadian Business Corporations Act and federal financial institution statutes.¹³

Among the factors that qualify Canada as a work in progress on this commitment, are bills in the works such as C-46 “an effort by the Ministry of Justice to modernize offences, and allow more detailed evidence gathering and longer sentencing for convictions”.¹⁴ Similarly, there is ongoing work on a Uniform Securities Legislation Project that provides evidence towards a Canadian effort to comply with the commitment.¹⁵

Interestingly, despite taking part in the Negotiation of the Future UN Convention against Corruption throughout its seven sessions, the first commencing on 21 January 2002 and the final on 29 September 2003,¹⁶ Canada did not provide its signature at the High Level Political Conference for the Signature of the United Nations Convention Against Corruption that took place from 9–11 December 2003.¹⁷ Yet, Canada continues to put forth efforts via the UN, OECD, OSCE, OAS, the Commonwealth, and regional and multilateral development banks to fulfil its commitment.¹⁸

Canada received the rank of 11, tied with the UK and both ahead of all other G8 members, with the score of 8.7 from Transparency International.¹⁹

2. France: 0

France has made significant progress in complying with its commitment. It has made important steps towards greater transparency and accountability in the realm of public finance. The French government has sought to reduce the number of discretionary and special funds available to ministries and departments. It has instead re-incorporated them into the general budget. Of particular importance is the abolishment of the FOREC, used to fund health insurance and financed directly by eight taxes. The previous beneficiaries of FOREC will now be funded by specific accounts in the general budget.²⁰ Government ordinances have also granted greater legal authority to the National Commission of Campaign Accounts and Political Finance (CNCCFP), which may now examine the balance sheets of political parties and the source of their finances.²¹ France, however, has failed to comply with one part of this commitment. Although a participant

¹³ Ibid.

¹⁴ Canadian Broadcasting Corporation. “CBC News Indepth: Liberal Party. Endangered House Bills”. 14 November 2003. www.cbc.ca/news/background/liberals/housebills.html.

¹⁵ Ontario Securities Commission. Hot Topics. www.osc.gov.on.ca/en/HotTopics/usl.html#expanded

¹⁶ United Nations Office on Drug and Crime. Ad Hoc Committee on the Negotiation of a Convention against Corruption. www.unodc.org/unodc/crime_cicp_convention_corruption_docs.html.

¹⁷ High Level Political Conference for the Signature of the United Nations Convention Against Corruption. www.un.org/webcast/merida/treaty.htm

¹⁸ Department of Foreign Affairs and International Trade. International Crime - Corruption. www.dfait-maeci.gc.ca/internationalcrime/corruption-en.asp

¹⁹ Transparency International. www.transparency.org/pressrelease_archieve/2003/2003.06.17.statement_g8_g8_revenues.html

²⁰ Ministère de l'Économie, de la Finance et de l'Industrie, “Projet de loi de finances de 2004”, 25 September 2003, www.minefi.gouv.fr/minefi/ministere/dossiers/index.htm.

²¹ Le Monde, “Le gouvernement facilite et centralise le contrôle des comptes de campagne”, 28 December 2003

at the EITI conference in London in February 2003, France has thus far failed to take steps to implement the goals outlined by the initiative.

Transparency International's 2003 Corruption Perceptions Index ranks France 23rd in the world, behind Canada, the United Kingdom, Germany, the United States and Japan.²²

3. Germany: +1

Corporate governance reform in Germany has taken root over the past year in reaction to various crises in the corporate sector and turbulence in increasingly interconnected global financial markets.

Most actions taken by the German government to date took place before the Evian Summit in June 2003. On 25 February 2003 that Federal Government announced a catalogue of measure to improve investor protection and corporate integrity.²³ A package of reforms on the law on control and transparency in business known as KonTrag was approved by the Bundestag in March 2003 and came into force in April.²⁴ Through KonTrag, the Bundestag, aims to continue to grant companies the freedom to organize and accommodate the market and that the laws keep pace with public companies as they enter the international financial markets, orienting themselves more strongly towards shareholder value.²⁵ Some of the regulations of KonTrag include: an increase in the reporting obligations of the board of directors to the supervisory board over future corporate planning; an increase in the frequency of annual compulsory supervisory board meetings for quoted companies; contracts with auditors are no longer permitted to be awarded by the board of directors, but by the supervisory board; banks and companies must advise shareholders of alternative ways of participating in ballots at annual general meetings; plural voting rights are no longer permitted at annual general meetings; bank transparency in connection with annual report and accounts will increase; decrease income dependency of auditor, auditor is excluded from performing the audit if more than 30 percent, previously 50 percent, of his/her total revenue over the previous five years stems from that company; and, audit reports should be geared more to problems.²⁶

On 21 May 2003 the Commission of the German Corporate Governance Code addressed amendments to the Code that will adhere to the EU Commission's action plan for modernizing company law and improving corporate governance.²⁷ The following recommendation were made for amendment of the Code: a recommendation for individualized disclosure of Management and Supervisory Board compensation; a recommendation cap for stock options; a recommendation for disclosure of stock options; a recommendation for publication of compensation system on the

²² Transparency International, "Corruption Perceptions Index 2003," 7 October 2003
www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html.

²³ German Federal Ministry of Justice, "Federal Government to improve protection and corporate integrity," 25 February 2003.

www.bmj.bund.de/eng/themes/economy_and_law/10000668/?sid=79e68412b5cee8cb4a8b3a69936de849&offset=1

²⁴ German Federal Ministry of Justice, "Control and transparency in business (KonTrag): Corporate governance reform in Germany," www.burkardlaw.com/corporategovernance.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Commission of the German Corporate Governance Code, "News: Press release, May 21, 2003," www.corporate-governance-code.de/eng/news/presse-20030521.html.

internet; and, a recommendation for informing the Annual General Meeting about the compensation system.²⁸ The Commission also reported on a survey that was concluded in February 2003 that revealed that the Code “already being widely implemented in the first year since its introduction”.²⁹

On 8 December 2003 Justice Minister Brigitte Zypries and Finance Minister Hans Eichel announced a draft balance sheet monitoring bill that would establish an authority for monitoring annual financial statements of publicly traded companies.³⁰ The new authority will be jointly supported by corporate, sectoral, and investor associations and the German stock exchange. Zypries noted that the bill will “greatly improve investor protection as well as corporate integrity and help to strengthen the financial market”.³¹ Corporate cooperation with the bill will be voluntary but, Eichel added that the participation in the auditing procedure “could be seen as a quality seal for publicly traded companies”.³² The bill is to be deliberated in February 2004 and, if approved, would go into effect in the latter half of 2004.

Transparency International’s 2003 Corruption Perceptions Index ranks Germany 16th in the world, behind both Canada and the United Kingdom.³³ Germany’s ranking will certainly improve with the implementation of balance sheet monitoring bill.

4. Italy: –1

Italy has thus far failed to comply with the World Economy objectives stated at the Evian Summit in 2003. The recent events surrounding the alleged fraud perpetrated by Calisto Tanzi have given impetus to parliamentary activities to address the issues of transparency and corporate governance. Most notably, the Italian Senate has expedited hearings into strengthening the securities regulator’s ability to monitor corporate performance, which are due to begin January 14, 2004.³⁴ Responsible governance, however, has been weakened by the approval of the salva-Retequattro decree and the government’s insistence on passage of its media bill. The decree permits the continued terrestrial broadcasting of the television network Rete Quattro (owned by Prime Minister Silvio Berlusconi).³⁵ The media bill has already been sent back to Parliament by President Ciampi, who is concerned about perceived laxities in the proposed rules of media ownership and concentration.³⁶ The Italian government, a participant at the EITI

²⁸ Ibid.

²⁹ Ibid.

³⁰ German Federal Government, “Independent balance sheet monitoring intended to bolster investor confidence,” 9 December 2003
eng.bundesregierung.de/top/dokumente/Artikel/ix_573545.htm?template=single&id=573545_2710&script=1&ixepf=_573545_2710

³¹ Ibid.

³² Ibid.

³³ Transparency International, “Corruption Perceptions Index 2003,” 7 October 2003
www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html

³⁴ Corriere della Sera, “Approvato il decreto per le grandi imprese”, 24 December 2003,
www.corriere.it/Primo_Piano/Economia/2003/12_Dicembre/23/parma.shtml

³⁵ Corriere della Sera, “Approvato il decreto salva-Retequattro”, 24 December 2003,
www.corriere.it/Primo_Piano/Politica/2003/12_Dicembre/23/retequattro.shtml

³⁶ BBC News, “Berlusconi Channel Wins Protection”, 23 December 2003,
news.bbc.co.uk/1/hi/world/europe/3344703.stm

conference in London in June 2003, has thus far failed to take steps to implement the goals outlined by the initiative. Finally, although Italy is perceived to be less corrupt than it was last year, serious concerns still remain about transparency in those parts of the Italian government which are closely linked to business.³⁷

Transparency International's 2003 Corruption Perceptions Index ranks Italy 35th in the world, behind all other G8 members except Russia.³⁸

5. Japan: 0

The Japanese Ministry of Economy, Trade and Industry (METI) released a White Paper on International Trade on 1 October 2003 that contains a section on efforts to improve the corporate economic system.³⁹ The White Paper notes that revisions to the Commercial Code took effect on 1 April 2003 that make it "possible for methods of choosing corporate governance to include a committee method" and allow reforms to enhance management mobility.⁴⁰ The White Paper calls for a continuance of "reforms with the intention of establishing a better corporate governance system that can respond to Japan's unique economy and culture".⁴¹ Recent changes to the *Shunto* wage setting process and the implementation of year-round university recruitment have also taken root.⁴²

Hideaki Miyajima of the Waseda University School of Economics examines the survey of listed and over-the-counter non-financial firms released by the Policy Research Institute of Japanese Ministry of Finance on 20 June 2003 entitled "Progress in Corporate Governance Reforms and the Revitalization of Japanese Companies".⁴³ The survey found that there has been a great increase in the number of firms that place high priority on markets, customers and stakeholders. The survey also found that reforms of the board of directors system are gathering speed: "the Japanese corporate board, which in the past was comprised of executives who were promoted through the ranks and lacked separation between supervision and execution, have greatly diversified".⁴⁴ The Finance Ministry found a significant positive correlation between corporate governance reforms and improved firm performance. Active information disclosure in particular was seen as contributing the most benefit and was promoted as a universal element of reform.⁴⁵ The report also finds that the "combination of long-term employment, merit-based wages and active information disclosure can be seen as a model for rejuvenating Japanese companies".⁴⁶ Finally, the report recommends that poorly performing firms can break out of their "balance of

³⁷ Transparency International, "Transparency International Corruption Perceptions Index 2003," 17 October 2003, www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html

³⁸ Transparency International, "Corruption Perceptions Index 2003," 7 October 2003 www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html

³⁹ Ministry of Economy, Trade and Industry, Japan, "White Paper on International Trade, Section 3," 1 October 2003 www.meti.go.jp/english/report/downloadfiles/gIT0313e.pdf.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Corporate Governance Japan, "The Latest Report on Corporate Governance Reform," 9 September 2003 www.rieti.go.jp/cgj/en/columns/columns_011.htm#note2

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

disadvantage through strong policy promotion measures, the cultivating of banks' supervisory capabilities, and the securing of new external monitors".⁴⁷

Takaya Seki, Head of Corporate Governance Research, J_IRIS Research, Japan Investor Relations and Investor Support, Inc., notes, in a October 2003 study, that a new shareholder-corporate relationship is emerging in Japan.⁴⁸ Seki points out that the size of boards in Japanese companies has shrunk in recent years and the appointment of outside-firm board members is becoming more common. Seki, however, notes some obstacles that the current Japanese corporate system has to overcome, including: better scheduling for account settlement and board meetings, and greater information disclosure. Seki also lists factors, beyond the evaluation of traditional business performance, that are increasingly being taken into account by Japanese shareholders when appointing new board members, including: management style; board size and composition; tenure of directors; capital efficiency; and, social responsibility.⁴⁹

An October 2003 IMF and World Bank assessment, part of the Financial Sector Assessment Program (FSAP), of Japan's financial system reveals that "despite a series of initiatives, Japan's financial sector remains weak and is holding back prospects for a sustained economic recovery".⁵⁰ FSAP found that a Japanese insurance supervisor had "practically no actuaries on its staff". This finding was surprising considering Japan has "one of the largest insurance sectors in the world". FSAP discussed the matter with the authorities and the insurer has hired more actuaries".⁵¹ FSAP called for corporate restructuring, particularly the furthering of the development of the market for distressed debt.

An IMF Working Paper published in October 2003 found "that well-designed restructuring in Japan could provide a medium-term output gain that substantially outweighs the short-run cost".⁵² Moreover, an IMF commentary on the Japanese financial sector was published in November 2003. The commentary noted that as "a condition for public re-capitalization, banks should adopt corporate governance reforms consistent with international best practice. In this context, the government's recent Resona Bank rescue operation-the replacement of top management and the appointment of a majority of outside directors to the board-is encouraging".⁵³

Transparency International's 2003 Corruption Perceptions Index ranks Japan 21st in the world, behind Canada, the United Kingdom, Germany and the United States.⁵⁴

⁴⁷ Ibid.

⁴⁸ Corporate Governance Japan, "Towards the Establishment of a New Shareholder-Corporate Relationship in Japan," 29 October 2003 www.rieti.go.jp/cgj/en/columns/columns_012.htm

⁴⁹ Ibid.

⁵⁰ IMF Survey, "Removing bad loans will be crucial first step in restoring health to banking sector," 6 October 2003 www.imf.org/External/Pubs/FT/SURVEY/2003/100603.pdf

⁵¹ Ibid.

⁵² Se-Jik Kim, "IMF Working Paper: Macro Effects of Corporate Restructuring in Japan," October 2003 www.imf.org/external/pubs/ft/wp/2003/wp03203.pdf

⁵³ International Monetary Fund, "Japan: The path to financial health," November 2003 www.imf.org/external/np/vc/2003/111303.htm

⁵⁴ Transparency International, "Corruption Perceptions Index 2003," 7 October 2003 www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html

6. Russia: 0

Russia has begun to complete some of the World Economy commitments made at the Evian Summit. Specifically, the government has been very active in pursuing initiatives to address the issues of corporate governance and transparency. In September 2003, new rules came into effect in order to streamline the registration of prospectuses and increase investor access to pertinent information about listed companies.⁵⁵ In November 2003, the Federal Commission approved a recommendation for the registration of all share offerings with the Federal Government within the following year. The initiative also provided for legal penalties for those companies that fail to comply.⁵⁶ Russia, however, still has much to do to clarify the exact nature of the information required and the manner in which such information will be organized and made available to investors. Russia has also come under criticism for the prosecution of Mikhail Khodorkovsky, a major shareholder in YUKOS, for fraud and tax evasion. YUKOS itself has been accused of failing to pay \$3.3 billion US in taxes to the Russian State.⁵⁷ The General Prosecutor has also sought to implicate YUKOS and Mr. Khodorkovsky in the registration of a number of companies in Cyprus whose purpose appears to be the laundering of money.⁵⁸ Despite allegations of political motivation of the arrest of Mr. Khodorkovsky, the Russian General Prosecutor insists on the accuracy and impartiality of the accusations. The Russian government has yet to announce any major anti-corruption initiatives since the Evian Summit. Indeed, Russia's perception as a transparent place of business has fallen in relation to other nations. Serious obstacles to the reduction of corruption remain.⁵⁹ The Russian government, in attendance at the EITI conference in London in February 2003, has thus far failed to take steps to implement the goals outlined by the initiative.

Transparency International's 2003 Corruption Perceptions Index ranks Russia 86th in the world, well behind all other G8 members.⁶⁰

7. United Kingdom: 0

The United Kingdom has made a considerable effort to uphold its commitments to the improvement of corporate governance, market discipline and transparency. Tackling corporate governance head on, the Financial Services Authority has proposed regulations on the management of conflict of interest which it hopes to implement in the summer of 2004.⁶¹

⁵⁵ Federal Commission for Securities Markets, "Standards for the issuance of securities, which have already entered into force, lead to a minimum of abuse in the process of creating an issue", 23 September 2003, www.fedcom.ru/document.asp?ob_no=1935 [unofficial translation].

⁵⁶ Federal Commission for Securities Markets, "A normative foundation has appeared in Russia for the regulation of questions relating to the absence of registration of securities released on and circulating in the market", www.fedcom.ru/fcsm/rnews/2003/inf1126.htm [unofficial translation].

⁵⁷ BBC News, "YUKOS saddled with \$3bn tax bill", 30 December 2003, news.bbc.co.uk/2/hi/business/3356821.stm

⁵⁸ Cayhill, Thomas. "The key to Khodorkovsky's fate may be in the hands of a Frenchwoman." *Beseda*, 28 November 2003, p. 5. [unofficial translation].

⁵⁹ Transparency International, "Transparency International Corruption Perceptions Index 2003", 17 October 2003, www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html

⁶⁰ Transparency International, "Corruption Perceptions Index 2003," 7 October 2003 www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html

⁶¹ www.icgn.org/documents/newsletter/1203.pdf

The UK has also been taking part in the CESR and its involvement in Content of Prospectus and Dissemination on Advertising.⁶² The UK's Universities Superannuation Scheme (USS) has also, in an effort to "increase their impact on activism, launched a network of UK and US institutional investors [to] work together and share information on corporate governance issues in both countries".⁶³

Shortly after the conclusion of the G8 Summit at Evian, on 17 June 2003, an Extractive Industries Transparency initiative meeting was held in London.⁶⁴ At this meeting Transparency International, the leading international non-governmental organization devoted to combating corruption, congratulated "the UK government on its initiative in [the] field" of transparency.⁶⁵

Taking on a more active role, on 9 December 2003 the UK took part in and signed the High Level Political Conference for the Signature of the United Nations Convention Against Corruption,⁶⁶ a Global Programme against Corruption launched by the UN Office on Drugs and Crime Prevention (UNODC).⁶⁷

The UK's efforts have paid off in 2003, the country was ranked 11th, scoring 8.7, by Transparency International.⁶⁸

8. United States: +1

The United States has complied with its commitment to enforce and promote a responsible market economy, both domestically and globally.

The current US Administration supports the passage of bill H.R. 3763 by the House of Representatives. The bill is consistent with the President Bush's own agenda in supporting his "Ten Point Plan" which calls for guided principles of providing better information to investors, making corporate officers more accountable, and a more independent audit system.⁶⁹ A report by Congress indicates progress in the regulatory reform that will come into full effect on 1 January 2004.⁷⁰ The SEC conducted a report to compel an oversight of the fall of Enron through a scrutiny of the private and public sector "watchdogs", like the Credit Rating Agencies and The Securities and Exchange Committee.⁷¹ A department under the U.S. Treasury, Financial Crimes

⁶² CESR: The Committee of European Securities Regulators www.fsa.gov.uk/pubs/cesr/02-04.pdf

⁶³ www.icgn.org/documents/newsletters/1203.pdf.

⁶⁴ www.dfid.gov.uk/News/News/files/eiti_intro_a.htm.

⁶⁵ www.transparency.org/pressrelease_archive/2003/2003.06.17.statement_g8_revenues.html

⁶⁶ Merida Conference. High Level Political Conference for the Signature of the United Nations Convention Against Corruption. www.un.org/webcast/merida.

⁶⁷ www.unodc.org/unodc/en/corruption/html

⁶⁸ Transparency International. Corruption Perceptions Index 2003.

www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html

⁶⁹ Executive Office of the President, H.R. 3763 - Corporate and Auditing Accountability, Responsibility, and Transparency Act of 2002 www.whitehouse.gov/omb/legislative/sap/107-2/HR3763-r.html.

⁷⁰ Executive Office of the President, Office of Management and Budget Washington, D.C.20503 Release 2003-38, Sep.2003. www.whitehouse.gov/omb/

⁷¹ United Nations Association of the United States of America and the Business Council for the United Nations. www.unausa.org/newindex.asp?place=www.unausa.org/news/gbc.asp.

Enforcement Network (FinCEN), was established. FinCEN supports all law enforcement agencies fighting domestic and global economic corruption.⁷²

In general, both the House and the Executive Office have been cooperating in fighting financial fraud and global corruption. Transparency International's 2003 Corruption Perceptions Index ranks the US 18th in the world, behind Canada, the UK and Germany.⁷³

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⁷² Financial Crimes Enforcement Network, United States Department of Treasury. www.fincen.gov/af_mission.html.

⁷³ Transparency International, "Corruption Perceptions Index 2003," 7 October 2003 www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html