



# Non-Trial Resolutions: Project Roll-Out Update and Lessons Learned to Date



IBA Anti-Corruption Annual Conference  
12 June 2024

# Panelists

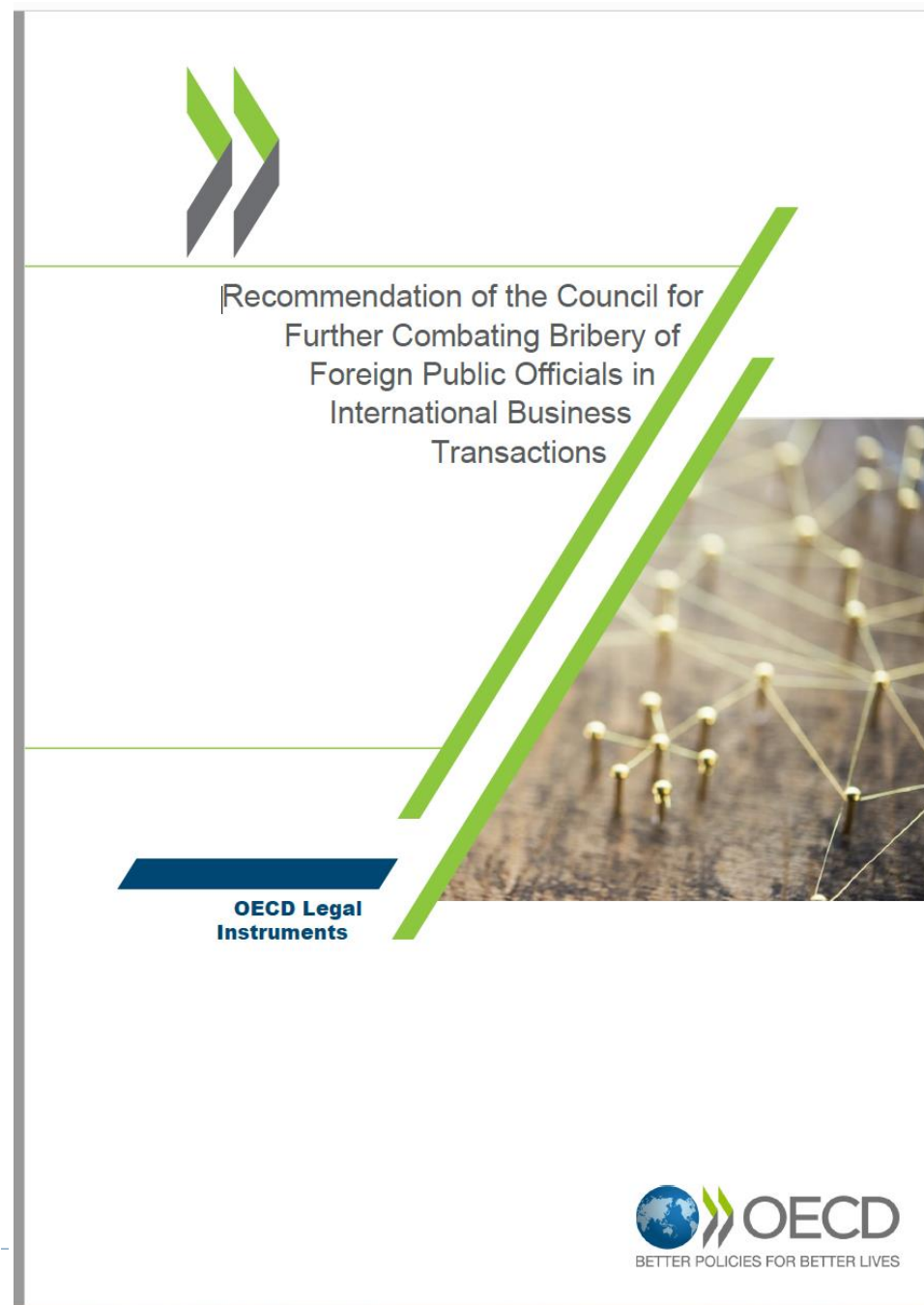
- ▶ **David Fuhr** — FCPA Unit Chief, Fraud Section, U.S. Department of Justice
- ▶ **Maria Schnebli** – Federal Public Prosecutor for International Corruption  
Federal Public Prosecutor’s Office, Switzerland
- ▶ **Elisabeth Danon** -- Legal Analyst, Anti-Corruption Division, Directorate for  
Financial and Enterprise Affairs, OECD
- ▶ **Michael Currie** — Primerio International (South Africa)
- ▶ **Robert Wyld** – Johnson, Winter, Slattery LLP (Australia)
- ▶ **Moderator:** Tom Best, Paul Hastings LLP (Washington, D.C./US)

# OECD Working Group on Bribery 2021 Recommendations

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**XVII. RECOMMENDS** that member countries consider using a variety of forms of resolutions when resolving criminal, administrative, and civil cases with both legal and natural persons, including non-trial resolutions. **Non-trial resolutions refer to mechanisms developed and used to resolve matters without a full court or administrative proceeding, based on a negotiated agreement with a natural or legal person and a prosecuting or other authority.**

November 2021



# Non-Trial Resolutions (NTRs)

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## What Are NTRs?

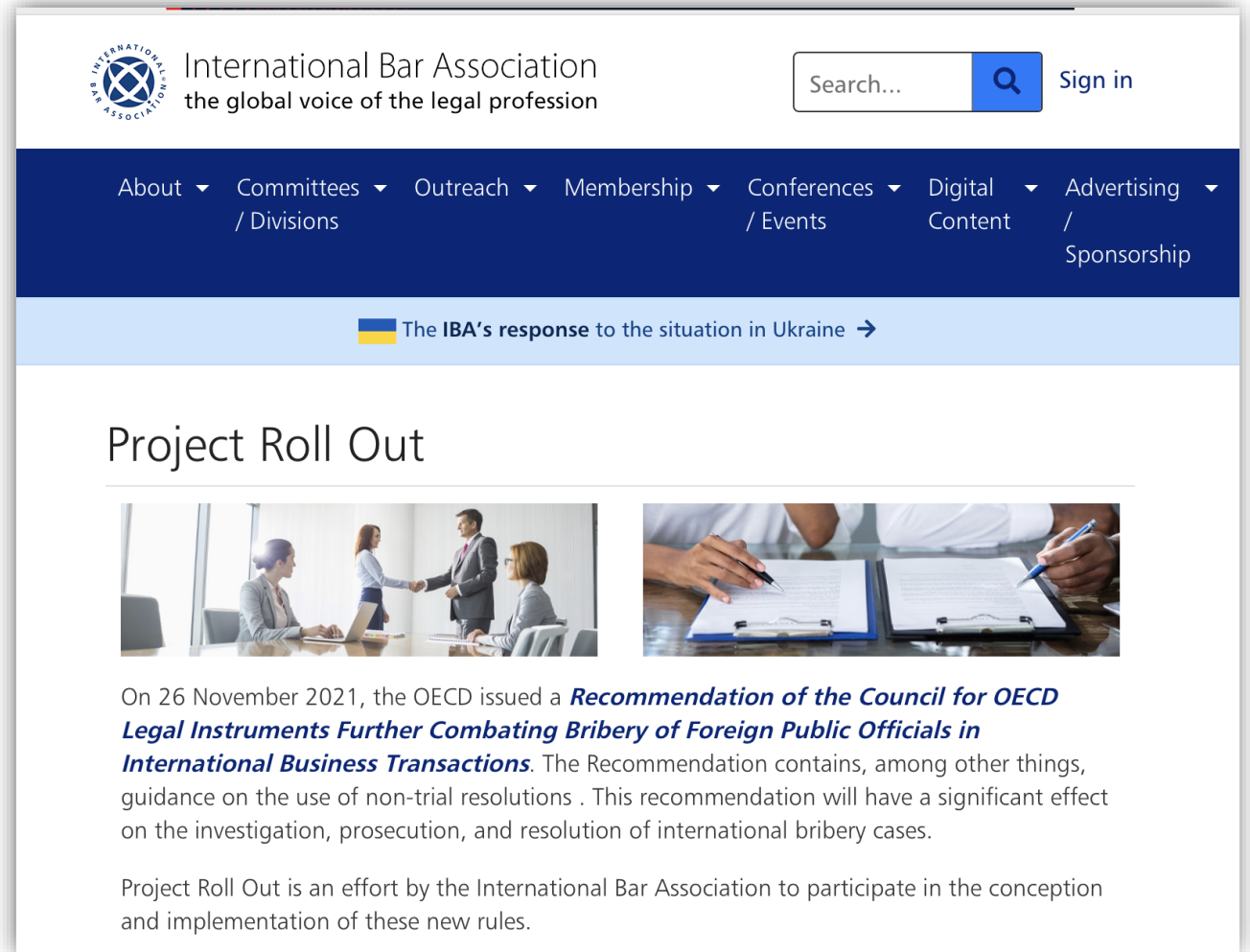
- ▶ Agreement between enforcement authority and entity or individual to resolve a matter before full trial on the merits
- ▶ Can impose fines and disgorgement of profits, compliance and reporting requirements, prison time for individuals
- ▶ Used extensively in US (guilty plea, DPA, NPA), UK (same), Brazil (leniency agreements) and France (CJIP)

## Benefits of NTRs

- ▶ Provide certainty for both sides
- ▶ Allow for resolution of even complex cases without expending resources for lengthy trials
- ▶ Incentivize voluntary disclosure of misconduct and cooperation with prosecuting authorities
- ▶ Allow for simultaneous resolution across multiple jurisdictions
- ▶ Provide opportunity to minimize collateral consequences
- ▶ Reward companies with strong compliance programs and internal controls, thereby strengthening a country's corporate culture

# Project Rollout

- ▶ Encourage implementation of NTRs to enforce and resolve corruption cases
- ▶ Provide resources to help plan regional and national conferences to promote discussion of NTRs
- ▶ Recent regional conferences in Europe (Switzerland), Central and South America (Mexico) and planned for Asia



The screenshot shows the International Bar Association website. At the top left is the IBA logo and the text "International Bar Association the global voice of the legal profession". To the right is a search bar with "Search..." and a magnifying glass icon, and a "Sign in" link. Below this is a dark blue navigation bar with dropdown menus for "About", "Committees / Divisions", "Outreach", "Membership", "Conferences / Events", "Digital Content", and "Advertising / Sponsorship". A light blue banner below the navigation bar features a Ukrainian flag icon and the text "The IBA's response to the situation in Ukraine →". The main content area has a heading "Project Roll Out" and two images: one showing a group of people in a meeting and another showing hands signing documents. Below the images is a paragraph of text: "On 26 November 2021, the OECD issued a **Recommendation of the Council for OECD Legal Instruments Further Combating Bribery of Foreign Public Officials in International Business Transactions**. The Recommendation contains, among other things, guidance on the use of non-trial resolutions. This recommendation will have a significant effect on the investigation, prosecution, and resolution of international bribery cases." At the bottom, another paragraph states: "Project Roll Out is an effort by the International Bar Association to participate in the conception and implementation of these new rules."

# NTRs in Different Jurisdictions -- Status

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- ▶ Switzerland
- ▶ Australia
- ▶ South Africa
- ▶ United States
- ▶ Across the OECD



# Evolution of NTRs – Adoption and Resistance

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- ▶ Where NTRs have been implemented into national laws, what have been the driving factors?
- ▶ Where there has been resistance, why?
- ▶ Strategies and Capacity Building by the U.S., other governments?



# Advocacy for NTRs at the National Level – Best Practices?

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- ▶ South Africa: why has the effort (to date) worked?
- ▶ Australia: why have NTRs not been adopted, where other common law countries have adopted them? What – if anything – in the advocacy effort did not succeed?
- ▶ Switzerland: are there initiatives ongoing in the Swiss government to address the need for NTRs in the future?

