



# HELSINKI COMMISSION

## Foreign Extortion Prevention Act (FEPA) Frequently Asked Questions

### What is the Foreign Extortion Prevention Act?

The Foreign Extortion Prevention Act is a bill that would make it illegal for a foreign official to demand a bribe abroad. It would apply when the criminal act in question touches the U.S. economy (for example, if the bribe is demanded of a U.S. company or listed entity).

### How will the act be enforced?

If there is sufficient evidence to prove a violation, the U.S. Department of Justice will decide whether to indict foreign officials and seek their extradition. While extradition may not be possible in some cases (for example, in the absence of a bilateral extradition treaty), an indictment will nevertheless serve to limit the defendant's travel. If the indictment is public, it will highlight the crimes, pressure the defendant's home government to investigate, and deter future wrongdoing.

### Is there a risk of retaliation against U.S. officials?

The Department of Justice already indicts foreign officials for other offenses, such as money laundering and wire fraud. Visa bans and economic sanctions also are used against foreign officials despite the risk of retaliation. While it is a risk, it is one that the United States has already committed to undertake to protect itself and the rule of law. Moreover, it is anticipated that any indictments will be carefully considered by the Department of Justice before they are brought, including those under the Foreign Corrupt Practices Act (FCPA) and other cases that touch upon international relations.

### Does sovereign immunity protect foreign officials?

While the Foreign Sovereign Immunities Act shields foreign states from lawsuits, it does not shield individual government employees from prosecution for their malfeasance.

### How does FEPA complement the FCPA?

While the FCPA makes it illegal for a U.S. person or listed company to offer or pay a bribe abroad, it does not address the receipt of, or demand for, bribes by foreign government officials, often referred to as "passive bribery." As a result, U.S. global anti-corruption efforts, which play an essential role in the U.S. national security strategy, are focused almost exclusively on the supply side of bribery, with little attention to the demand side.

FEPA is designed to address this imbalance. By amending Title 18, rather than amending the FCPA itself, FEPA avoids numerous potential legal pitfalls, such as the fact that the FCPA is part of the U.S. securities regulatory structure primarily designed to cover the activities of companies that are publicly traded in the United States, as well as the various exceptions and affirmative defenses contained in the FCPA that would not be appropriate in a statute designed to combat foreign extortion.

#### Why do current laws not suffice to curb foreign extortion?

Though foreign extortionists have been indicted under other U.S. laws, such as money laundering, mail and wire fraud, or the Travel Act, these laws were not designed to tackle the sophisticated problem of transnational kleptocracy. This creates opportunities for defendants to challenge charges and makes existing legislation less than ideal for prosecuting foreign extortion.

For example, money laundering requires proof of financial transactions beyond the receipt of a bribe, which may be extremely difficult to prove, especially if a bribe is paid in cash. Similarly, mail and wire fraud require proof of an intent to defraud, which may not always exist in a bribery case, and the Travel Act, which in pertinent part criminalizes “interstate and foreign travel or transportation in aid of racketeering enterprises,” requires proof of travel in, or the use of, interstate or foreign commerce to violate state law.

Justice will be more effectively served if prosecutors can charge kleptocrats under a statute that criminalizes the core of their wrongdoing rather than being forced to shoehorn the charges into another statute designed to address other kinds of wrongdoing.

#### Have other countries implemented similar legislation?

Yes. Several countries—including the United Kingdom, France, the Netherlands, and Switzerland—have already criminalized foreign passive bribery.

#### Is the act in line with international law and multilateral commitments?

Yes. A [recent report](#) by the Organization for Economic Cooperation and Development (OECD), which maintains the OECD Anti-Bribery Convention—a key international mechanism for fighting foreign bribery—stated, “To have a globally effective overall enforcement system, both the supply-side participants (i.e., the bribers) and the demand-side participants (i.e., the public officials) of bribery transactions must face genuine risks of prosecution and sanctions.” The act is also consistent with Article 16 of the UN Convention Against Corruption (UNCAC), a central international anti-corruption treaty.

#### Where can I learn more about this bill?

The original argument for the approach can be found [here](#), and answers to a series of legal questions about the bill’s application can be found [here](#).