# Follow up Mechanism to OECD Convention against Bribery

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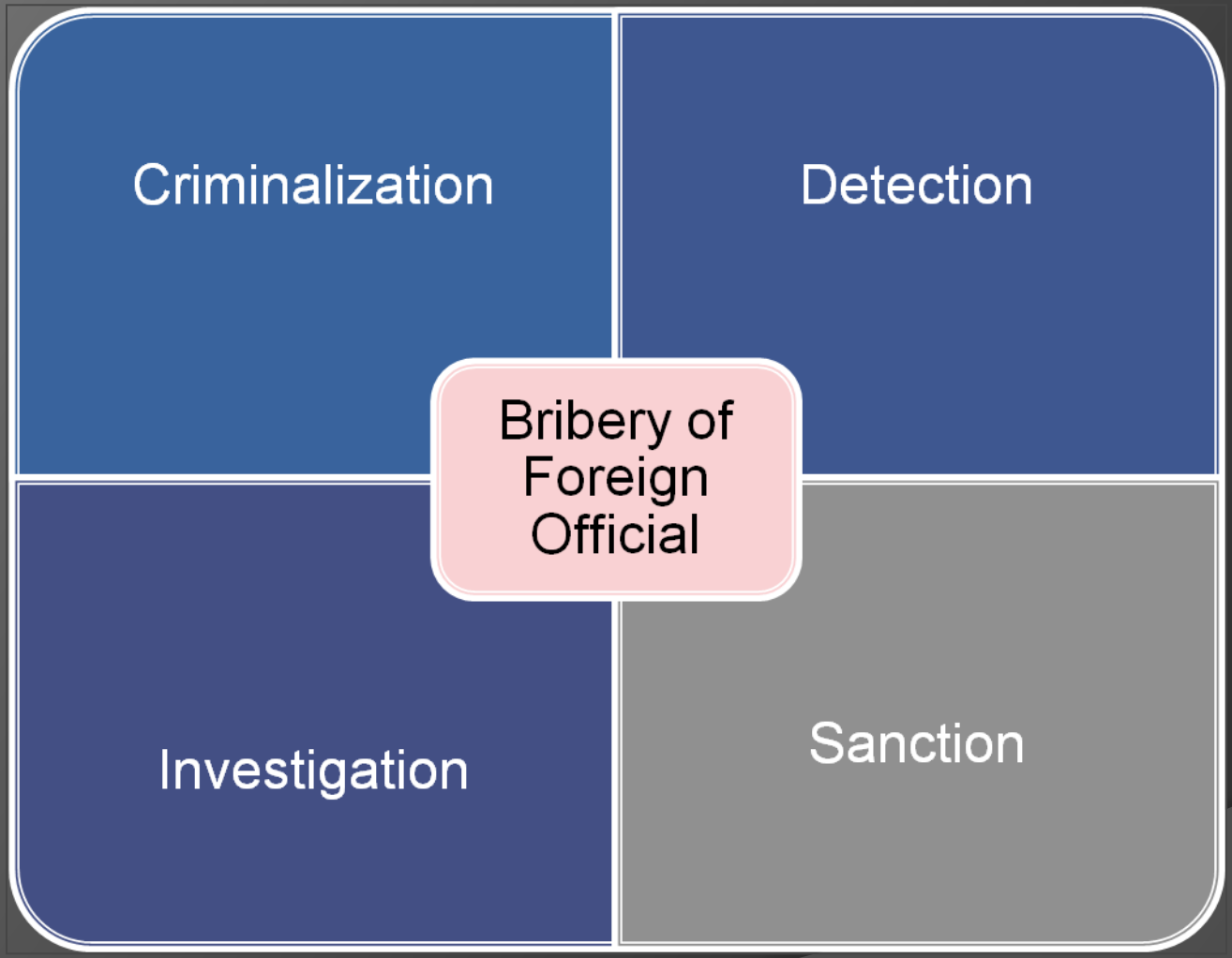
# The road to OECD Convention

- In 1977 US approved FCPA - Foreign Corrupt Practices Act
- European countries didn't have similar legislation
- Search for a "level field" for US companies
- Entry into force in 1999
- Entry into force conditioned to the ratification by larger economies

# OECD Convention - Purpose



# OECD Convention

- Other relevant provisions

  - Liability of legal persons
    - Jurisdiction
    - Accounting
  - Mutual Legal Assistance
    - Extradition

# OECD's "1997 Revised Recommendation"

- Approved by OECD's Council of Ministers
  - Prohibition of tax deductibility of Bribes
  - Accounting and auditing rules for transnational companies
  - Norms on registration of information for Banks and other financial institutions
  - Public Procurement
  - International cooperation

# OECD Convention – Working Group on Bribery

- An experts' group with representatives of countries that signed the Convention
- Technical analysis of the Convention Provisions
- Technical secretariat assist the labors of the Working Group on Bribery
- Follow up of implementation of the Convention
- 38 countries are part to the Convention against transnational bribery

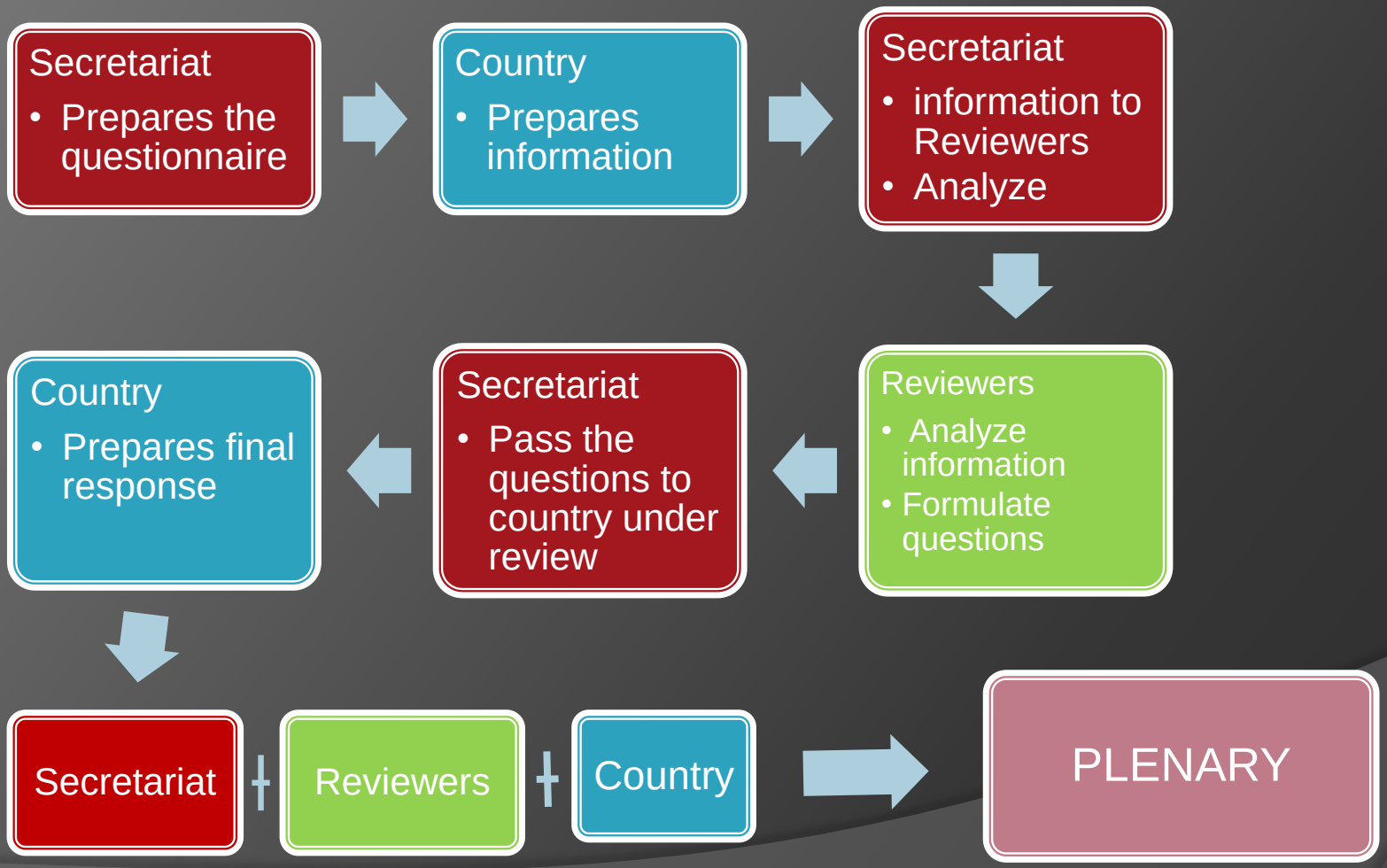
# Follow Up Mechanism

- Provided in article 12 of OECD Convention
- Peer review system
- Country Technical experts
- Analysis performed by Subgroups of experts of two different countries
- The working group adopts final reports with recommendations

# Follow up Mechanism

- Phase 1 – Analysis of the legal framework
  - Questionnaire on the contents of the Convention and the Revised Recommendations
  - Review of country legal instruments:
    - Is there in the Penal Code an offence criminalizing bribery of a foreign public official?
    - Is it typified in accordance with the provisions of the Convention?

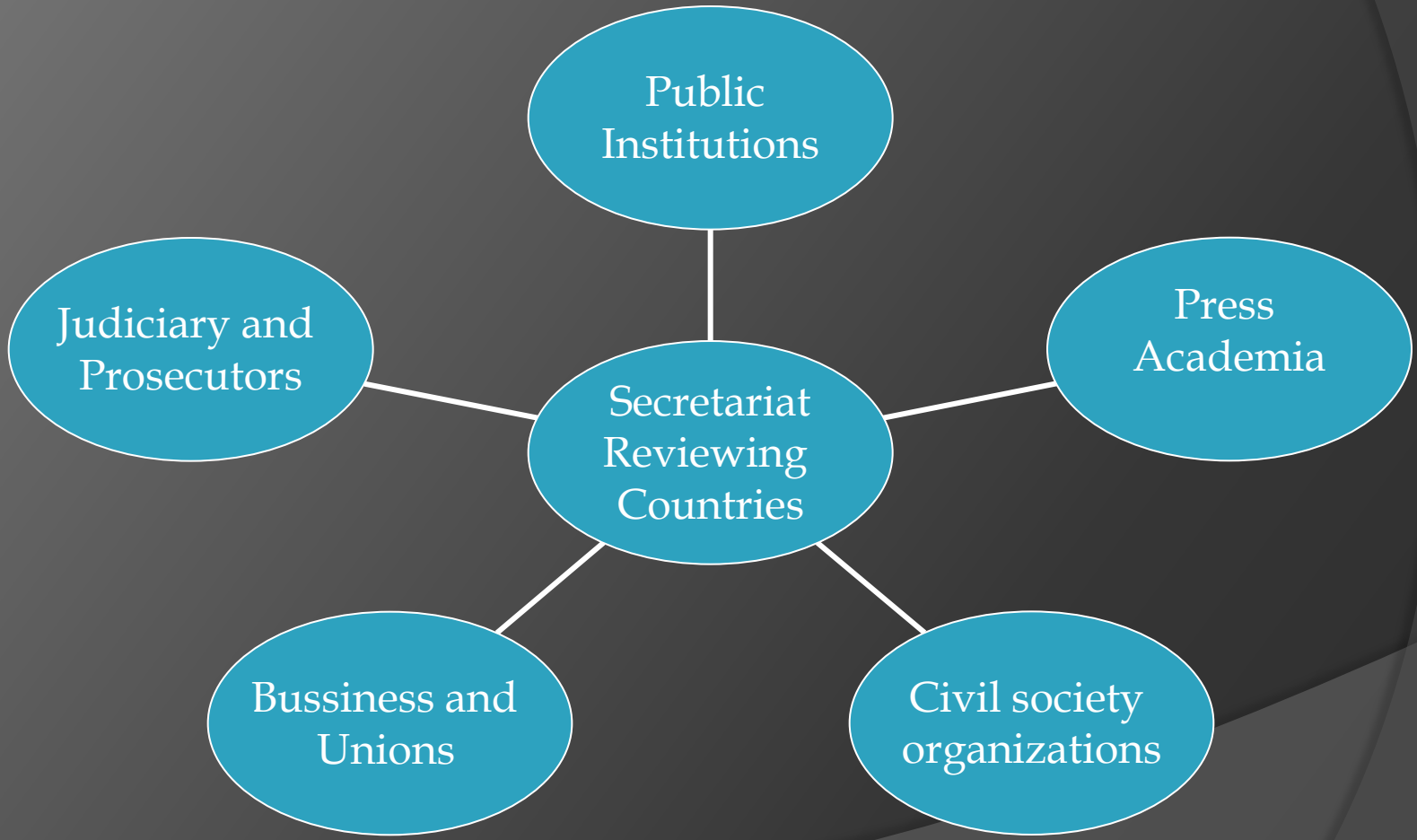
# Follow up Mechanism Phase 1 – Analysis of the legal framework: Process



# Follow up Mechanism – Review process

- Phase 2
  - Focus on findings and recommendations of Phase 1
  - Secretariat takes into consideration information from different sources (press, civil society organizations, academic papers)
  - Analysis of the operation of provisions of the Convention in real world
    - Number of corruption cases in the Judiciary
    - Number of cases of transnational bribery
    - Number of judicial decisions
    - Liability of legal persons

# Review process – Phase 2
# On site Visits



# Review process - Argentina

- Results & Impacts:
  - Foreign bribery criminal offence was modified according to OECD's standard
  - Key legislation regarding money laundering
  - Amendments to tax regulations
  - Implementation of transparency mechanisms in procurement
  - Dissemination in the business sector
  - Draft legislation on liability of legal persons

# Review process - Argentina

- Challenges :
  - Main focus only in criminal side of corruption
  - Involvement of the press & CSO in the panels can generate negative impact
  - Low number of cases of transnational bribe
    - Few local companies exporting corruption
    - Insufficient information in the business sector
  - Inefficiency of the Judiciary when investigating corruption cases
  - Liability of legal persons generates passionate technical debate

# Thank you for your attention!