



PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN SLOVENIA

June 2014

This Phase 3 Report on Slovenia by the OECD Working Group on Bribery evaluates and makes recommendations on Slovenia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 5 June 2014.

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EXECUTIVE SUMMARY

The Phase 3 report on Slovenia by the OECD Working Group on Bribery evaluates and makes recommendations on Slovenia's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in Slovenia's legislative and institutional framework, as well as progress made since Slovenia's Phase 2 evaluation. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

While the Working Group welcomes Slovenia's recent efforts to implement the Convention and its efforts in combating domestic corruption, it has serious concerns about the lack of enforcement of, and priority given to, the foreign bribery offence. Only four foreign bribery allegations have surfaced since Slovenia became a party to the Convention in 1999. This figure is very low, given Slovenia's strong economic links to countries with high risks of corruption. Moreover, of the four allegations, one case has been terminated, one allegation of foreign bribery (which came to light in 2011) has yet to be investigated and two cases have not advanced beyond the preliminary stages. There remain serious concerns that the investigation and prosecution of foreign bribery has been afforded little to no priority and that prosecutions of this offence may be obstructed by political and economic considerations. The Working Group thus recommends that Slovenia seriously step up its enforcement of the foreign bribery offence and take concrete and meaningful steps to ensure that it is a priority for law enforcement authorities. In this regard, Slovenia should generate foreign bribery cases through more proactive means of detection, including by working with foreign law enforcement authorities and through international cooperation measures. Slovenia should also ensure that factors prohibited by Article 5 of the Convention do not influence the investigation and prosecution of foreign bribery. The Commission for the Prevention of Corruption (CPC) is an important element of Slovenia's legal and institutional anti-corruption framework and all efforts should be taken to maintain its independence and effectiveness. Slovenia should review the system of maximum 3-month or 6-month time limits imposed on the use of some special investigative techniques in foreign bribery cases, and law enforcement authorities should make full use of such measures at their disposal. Training should be provided to law enforcement authorities on the foreign bribery offence, as well as on the investigation and prosecution of legal persons for foreign bribery.

The report identifies additional areas for improvement. Effective enforcement also goes hand-in-hand with effective, proportionate and dissuasive sanctions; in this regard, Slovenia should ensure that penalties imposed in practice on both natural and legal persons meet the standards of the Convention. The Working Group is also concerned that Slovenia's foreign bribery offence does not fully meet the requirements of the Convention. It therefore recommends that Slovenia clarify that the offence covers bribery of officials of autonomous territories and separate customs territories, as well as any person exercising a public function for a foreign country through a public enterprise and regardless of whether that person has management powers and responsibilities. Slovenia should also ensure that its regime of liability of legal persons is fully in line with the Convention. There has also been a lack of priority afforded towards foreign bribery awareness-raising measures. Slovenia should therefore raise awareness of the Convention and the foreign bribery offence, especially within the Ministry of Foreign Affairs and other public agencies that interact with Slovenian companies operating abroad. Private sector awareness-raising measures should also refer to internal controls, ethics and compliance measures to prevent foreign bribery, including among Slovenian SOEs and SMEs.

The report also highlights positive aspects of Slovenia's efforts to fight foreign bribery. The Working Group welcomes the establishment of specialised anti-corruption law enforcement authorities through the National Bureau of Investigation and the Special State Prosecutor's Office, and looks forward to seeing

increased enforcement of the foreign bribery offence as a result. The Working Group is also encouraged by Slovenia's regime for the sharing of tax information and reporting of suspicions of criminal offences between the tax administration and law enforcement authorities. The Working Group also commends Slovenia for adopting comprehensive whistleblower reporting and protection mechanisms for those who report suspicions of foreign bribery, including within SOEs.

The report and its recommendations reflect findings of experts from Luxembourg and the Netherlands, and were adopted by the Working Group on 5 June 2014. It is based on legislation and other materials provided by Slovenia and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to Ljubljana on 22-24 October 2013, during which the team met with representatives of Slovenia's public and private sectors, judiciary and civil society. Within six months (i.e. by December 2014) and again within one year (i.e. June 2015) of the Working Group's approval of this report, Slovenia will make follow-up reports in writing on its implementation of certain recommendations. Slovenia will further submit a written report on the implementation of all recommendations within two years (i.e. by June 2016).

A. INTRODUCTION

1. The On-Site Visit

1. A team from the OECD Working Group on Bribery in International Business Transactions (the Working Group) visited Slovenia from 22 to 24 October 2013 as part of the Phase 3 evaluation of Slovenia's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention or the Anti-Bribery Convention), the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business (the 2009 Anti-Bribery Recommendation) and the Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the 2009 Tax Recommendation).

2. The evaluation team consisted of lead examiners from Luxembourg and the Netherlands and members of the OECD Secretariat.¹ During the on-site visit, the lead examiners met representatives of both the public and the private sectors (see Annex 2 for a list of participants). The evaluation team expresses its appreciation to Slovenia for its high level of cooperation throughout the evaluation process, and to all the participants at the on-site visit for their openness during the discussions.

2. Summary of the Monitoring Steps Leading to Phase 3

3. The Working Group previously evaluated Slovenia in Phase 1 (2005), Phase 2 (2007) and the Phase 2 Written Follow-Up Report (2009). As of October 2009, Slovenia had fully implemented five out of 24 Phase 2 Recommendations (see Annex 1); one recommendation was considered obsolete. The outstanding recommendations cover issues such as awareness-raising, detection and reporting, enforcement, the foreign bribery offence, corporate liability, sanctions, and money-laundering.

3. Outline of the Report

4. This report is structured as follows. Part B examines Slovenia's efforts to implement and enforce the Convention and 2009 Recommendations, having regard to Group-wide and country specific issues. Particular attention is paid to enforcement efforts and results, and weaknesses identified in previous evaluations. Part C sets out the Working Group's recommendations and issues for follow-up.

¹ Luxembourg was represented by: Mr. Lucien Schiltz Head of Economic and Financial Crime Department, Police – Financial Crime Unit; and Mr. Laurent Thyès, Government Attaché, first in rank, Ministry of Justice. The Netherlands was represented by Ms. Petra Borst, Senior Legal Officer, Public Prosecutor's Office; and Mr. Peter van Leusden, Project Manager, Fiscal Intelligence and Investigation Authority (FIOD-ECD). The OECD Secretariat was represented by Mr. Frédéric Wehrlé, Phase 3 Evaluation Coordinator, and Mr. Joydeep Sengupta, Junior Legal Analyst, both from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs. Ms. Melissa Khemani, Anti-Corruption Consultant/Legal Expert, joined the evaluation team after the on-site visit. For the Working Group on Bribery June 2014 Plenary, the OECD Secretariat was represented by Ms. Catherine Marty, Legal Analyst, Mr. Graeme Gunn, Anti-Corruption Analyst and Ms. Liz Owen, Anti-Corruption Analyst, from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

4. Economic Background

5. Slovenia is a relatively small economy by Working Group standards. In 2012, it was the 38th largest economy among the Working Group's 40 members.² The EU remains Slovenia's biggest market for exports, accounting for almost 75% of all exports between January-July 2013,³ as well as 80% of all imports for the same period. Key export industries include automobile manufacturing, pharmaceuticals, automotive parts and refined petroleum. Outside of the EU, Serbia, the Russian Federation, and Bosnia and Herzegovina were among the top export destinations in 2012. Slovenia ranked 37th out of the 40 Working Group countries in 2012 in terms of its FDI outflow stock.⁴ Slovenia's FDI outflows have continued to grow, from EUR 442 million in 2004 to EUR 5.7 billion in 2012,⁵ much of it directed towards countries with historic economic ties, including the Russian Federation and countries in the Western Balkans, such as Kosovo.

(a) *Slovenia's Banking and Economic Crisis*

6. The on-going economic crisis in Slovenia has led to a decline in several key sectors (including construction and manufacturing), growing concerns about the solvency of its banks, and a reduction in lending activity.⁶ The OECD noted that in 2013, "Slovenia is facing a severe banking crisis, driven by excessive risk taking, weak corporate governance of state-owned banks and insufficiently effective supervision tools".⁷ Likely corrupt behaviour has been linked to the misallocation of credit.⁸ There have also been high-level probes of mismanagement and possible criminal violations in the banking industry.⁹ Civil society and media representatives at the on-site visit stated that the bribery of foreign public officials may have been involved in the investment of fraudulently over-valued assets during past privatization initiatives in South East European countries through the use of loans issued by state-owned Slovenian banks without sufficiently rigorous scrutiny of credit-worthiness.

7. Several important banks, insurance groups and public funds are among Slovenia's large state-owned or state-controlled enterprises (SOEs) sector, which is facing increasing scrutiny due to stronger public demands for better performance and management, and increased transparency.¹⁰ Despite official plans to privatise several large state-owned enterprises in the future and on-going transition to a market economy, SOEs generated one sixth of the value added of the Slovenian economy and employed one out of eight people in the corporate sector in 2011.¹¹ Following the on-site visit, legislation had been enacted to

² International Monetary Fund; GDP at current prices.

³ Statistical Office of the Republic of Slovenia, [Exports and Imports of Goods](#), Provisional Data (July 2013).

⁴ UNCTADStat.

⁵ OECD data, [Outward FDI Stock](#).

⁶ The Guardian (28 May 2013), "[Eurozone fears for Slovenia as Bad Debt Brings Economy to Standstill](#)".

⁷ OECD: [Economic Survey of Slovenia](#) (2013).

⁸ OECD: [Economic Survey of Slovenia](#) (2013). "...preliminary findings of the Slovenian Corruption Prevention Commission have recently pointed to widespread credit misallocation, likely related to corrupt behaviour."

⁹ Zee News (21 September 2013), "[Slovenia's leading bank chief faces probe](#)."

¹⁰ In 2013 Slovenia announced plans to sell its interests in several key SOEs, including Adria Airlines, Telekom Slovenije, and Nova Kreditna Banka Maribor (the country's second largest bank). See e.g., The Wall Street Journal (9 May 2013), "[Slovenia Unveils Plan to Head Off Bailout](#)"; Reuters (30 August 2013), "[Slovenia Seeks Financial Advisors for Telekom Sale](#)".

¹¹ ECFIN (Vol. 10, Issue 3, June 2013), "[Slovenia: State-Owned and State-Controlled Enterprises](#)".

impose stricter corporate governance and internal controls rules on SOEs, including reporting of corruption – both domestic and foreign.

(b) Slovenia's latest developments in the fight against corruption

8. The economic crisis has brought focus on domestic corruption issues; in 2012, there were widely-attended street demonstrations calling for resignations of high-level public officials implicated in corruption allegations.¹² As discussed elsewhere in this report, Slovenia has strengthened many aspects of its national anti-corruption policies, institutions and legislative framework since Phase 2, which sharpened the focus on prevention, detection and enforcement of domestic (but not foreign) bribery, including high-profile cases such as the *Patria* case¹³ and the *Cash for Laws* case.¹⁴ However, a particularly alarming development took place following the on-site visit, when the top leadership of the Commission for the Prevention of Corruption (CPC) resigned on 29 November 2013, in a public protest against the lack of political support for more robust anti-corruption mechanisms.¹⁵

9. The Working Group and the Secretary General of the OECD expressed concern about this development, considering the CPC as an important element of Slovenia's legal and institutional anti-corruption framework.¹⁶ The Working Group highlighted in particular the importance to preserve the independence and resources of the Commission and maintain political support for its work. The concerns remained unanswered in substance. Further developments in March 2014 regarding the appointment process of the new leadership team of the CPC were likely to strengthen these concerns. These issues are further considered in Section B.5 of the Report.

5. Cases involving the Bribery of Foreign Public Officials

10. The Slovenian authorities provided information on some cases very late in the process and accordingly, the evaluation team did not have the opportunity to assess in more depth the actual status of the cases described below. The report was updated based on information provided at the time of the discussion by the Working Group.

11. Slovenia has not prosecuted any foreign bribery cases. Since Slovenia became a Party to the Convention in 1999, four allegations of Slovenian individuals and/or companies bribing foreign public officials have surfaced. Two allegations are under preliminary investigation. One case has been closed with regard to foreign bribery. The remaining one allegation has not resulted in the opening of an investigation of foreign bribery despite public information being available since 2011. Three other possible allegations of foreign bribery were discussed during the onsite visit. However, these were not foreign bribery. Case names have been anonymised at the request of Slovenian authorities.

¹² See Princeton University, Innovations for Successful Societies (April 2013), "[Toothless but Forceful: Slovenia's Anti-corruption Watchdog Exposes Systemic Graft 2004-2013](#)" by Gabriel Kuris. See also, Aegis Advisory Strategic Risk Alert (May 2012), [Slovenia's Corruption Climate](#).

¹³ See e.g., the *Patria* case: BBC (5 June 2013), "[Ex-Slovenian PM Janez Jansa Convicted of Corruption](#)".

¹⁴ See e.g., the *Cash for Laws* case: EurActiv.com (3 February 2014) "[Ex-MP to serve prison in the Cash for Laws scandal](#)".

¹⁵ Oman Daily Observer (29 November 2013), "[Anti-Fraud Officials Quit in Protest](#)"; The Star Online (Malaysia) (29 November 2013), "[Slovenian Anti-Graft Body Resigns, Cites Lack of Political Support](#)".

¹⁶ The importance of the work carried out by the CPC was highlighted in the Phase 2 Report at the time the future of the CPC was also uncertain (in 2006 the Parliament enacted legislation that provided for the abolition of the Commission).

(a) Foreign Bribery Cases Terminated without Prosecution

12. *Case #1 – Iraq Oil for Food:* Two Slovenian contractors working for the Russian and Jordanian missions in Iraq allegedly paid bribes in connection with the oil-for-food programme in Iraq. Investigations were carried out by the police and the State Prosecutor’s Office in 2006 and 2007. As mentioned in the Phase 2 Report¹⁷, a pre-trial investigation had been conducted but was subsequently closed in 2007. No reasonable suspicion that a criminal offence was committed could be established nor was circumstantial evidence found confirming that Slovenian contractors paid bribes to Iraqi officials or any other persons. The Independent Inquiry Commission was also unable to find evidence of wrongdoing.

(b) Foreign bribery Allegations where no Investigation has been Opened

13. *Case #2 – Pharmaceuticals Case:* Pharmaceutical company B, a Slovenian entity and subsidiary of pharmaceutical company A, paid bribes to doctors to prescribe certain pharmaceutical products in a third country, for which they sought reimbursement from the government. B generated approximately USD 3.5 million in profits between 2000 and 2007. Bribes included all-expense paid trips for the doctors and members of their families. In 2011, as part of a settlement agreement in another State Party to the Convention with jurisdiction over the case, A agreed to pay USD 21.4 million in criminal penalties and USD 48.6 million in disgorgement and prejudgment interest in connection with this case and related cases of bribery of foreign public officials in other countries. No pre-criminal investigation into the actions of B has taken place in Slovenia, and no MLA requests have been sent to any countries with ties to this case. Following the on-site visit, Slovenia indicated that they were unaware of this case and did not receive any notification that the Slovenian company allegedly engaged in foreign bribery. Slovenian authorities are currently awaiting information from the State Party to the Convention which also had jurisdiction over the case. The lead examiners note that information on this case which could have triggered an investigation is freely available on the internet and in the media.

(c) On-Going Foreign Bribery Cases

14. *Case #3 – Construction Case:* In 2009, a Slovenian company sought export credit support from the Slovenian export credit bank for certain investments in another State Party to the Convention. The bank received information that the last tranche of the loan may have been used for bribing a public official of the foreign country, and reported the case to the CPC, which brought the case to the attention of the police. Neither the CPC nor the Police brought the foreign bribery part of the case involving company X to the attention of the prosecutors who only became aware of it during the Phase 3 evaluation. The information alleged that the foreign public official responsible for issuing permits had solicited an expensive car from the company as a bribe payment, which the company provided through a disguised casino lottery scheme. The CPC found that the company had already been brought to the attention of Slovenian authorities in 2007 for separate corruption-related allegations concerning the purchase of non EU-compliant vehicles from another State Party to the Convention. It is unclear whether the two allegations are linked. Slovenia also only provided information about this case during the on-site visit after the case was mentioned to the lead examiners by the Slovenian Export Credit Bank, and had not previously reported it to the WGB. Following the on-site visit, Slovenia stated that it experienced “good and prompt” judicial cooperation with the other State Party to the Convention involved. However, it decided to prosecute for the offence abuse of authority in trust or business. Slovenia has stated that the police investigation into foreign bribery is ongoing and that priority in this case was given to prosecution of abuse of position or trust in business. Prosecutors have thus far not received a criminal report regarding the foreign bribery element. It is unclear whether charges for foreign bribery will also be brought.

¹⁷ Slovenia Phase 2 Report, para. 16.

15. *Case #4 – Public Works Case:* A foreign country issued a permit for certain public infrastructure installations to a newly-created subsidiary (registered in the foreign country) of a Slovenian parent company in 2009. Media reports pointed to various irregularities in the awarding of the permit, including the fact that the subsidiary – founded with minimal share capital and only 1 employee – had been created a few months before it won the contract, and had no prior experience in the particular line of business. Foreign media reported that the owner of the Slovenian parent company was a close friend with the Minister in the foreign country responsible for issuing the permit. In 2010, the Slovenian police was informed that the foreign subsidiary of the Slovenian company had won the permit through an irregular process, and a bribe was paid to the Minister responsible for the permit. An investigation into possible wrongdoing had been launched in the foreign country against the responsible Minister and certain other public officials in 2010 and 2012, leading to an indictment of in 2013. The appellate court in the foreign country quashed the indictments in 2013 and asked the lower court to review the indictment and the evidence used to obtain it. The investigation in Slovenia is at a preliminary stage, and Slovenia states that all possible criminal violations, including money laundering and foreign bribery are being considered. No MLA request has been sent to Slovenia.

Commentary

The lead examiners are seriously concerned about the lack of foreign bribery enforcement in Slovenia. Only four foreign bribery allegations have surfaced since Slovenia became a party to the Convention in 1999. This figure is very low, given Slovenia's strong economic links to countries with high risks of corruption. Moreover, of the four allegations, one case has been terminated, one allegation of foreign bribery, which came to light in 2011, has yet to be investigated and two cases have not advanced beyond the preliminary stages. While Slovenia has placed heightened emphasis on domestic corruption cases, it must now urgently focus its attention and resources on the enforcement and application of its foreign bribery legislation.

B. IMPLEMENTATION AND APPLICATION BY SLOVENIA OF THE CONVENTION AND THE 2009 RECOMMENDATIONS

16. This part of the report considers Slovenia's approach to key horizontal (Group-wide) issues identified by the Working Group for all Phase 3 evaluations. Consideration is also given to vertical (country-specific) issues arising from Slovenia's progress on weaknesses identified in Phase 2, or from changes to Slovenia's domestic legislative or institutional framework.

1. Foreign Bribery Offence

17. Since Phase 2, Slovenia has adopted a new Criminal Code,¹⁸ which entered into force on 1 November 2008. The Criminal Code was further amended in 2009¹⁹ and 2011.²⁰ The definitions of foreign public officials and international public officials are now provided in Article 99 of the new Criminal Code. The offence of active foreign bribery is covered by Article 262 ("Giving Bribes") of the Criminal Code, which also covers active domestic bribery. This report will focus on issues with the offence that were identified in Phase 2 (including Recommendations 4(a) and 4(b)), and new issues raised by the revisions to the offence. As Recommendation 4(c) was considered by the Working Group to be obsolete in the Phase 2 Written Follow-Up, it is no longer relevant.

18. As in Phase 2, Slovenia's foreign bribery offence does not allow an exception for small facilitation payments. During the on-site visit, representatives from the business sector were aware that such payments were illegal under Slovenian law. However, they stated that they do not expect prosecution for such payments, given the low priority afforded to the enforcement of foreign bribery in Slovenia.

(a) Definition of Foreign Public Official

19. The definition of foreign public official, which appears in Article 99 (sub-paragraphs 6, 7 and 8 of paragraph 1) of the Criminal Code, has been revised since Phase 2. Among the changes to this provision (formerly Article 126 of the Criminal Code) is the new express reference in Article 99(1)(2) to: "a Constitutional Court judge, a judge, a lay judge, state prosecutor, or state defender". Since the definition of a foreign public official in Article 99(1)(6) refers to the substantive criteria under Article 99(1)(2), specifying these judicial and legislative functions adds greater clarity to the substantive criteria that have to be met. However, since such officials would have already been covered under former Article 126(2) of the old Criminal Code, which captured "any person carrying out official duties in the state bodies or exercising a public function," the addition in Article 99(1)(2) is not a significant change since Phase 2.

20. An important change is the revised language in Article 99(1)(3) (formerly Article 126(3)), which now includes the following language (emphasis added): "a person carrying out official duties or exercising a public function *with management powers and responsibilities* within a state authority *or an authority of a self-governing local community or any other entity governed by public law*". Slovenian authorities confirmed at the on-site that the italicised language only applies to persons carrying out "public functions" and not to persons carrying out "official duties". However, by requiring that the person carrying out public

¹⁸ Criminal Code, KZ-1, Official Gazette of the Republic of Slovenia, no. 55/08 and 66/08 – corr., 39/09 and 91/11 ("Criminal Code").

¹⁹ Act Amending the Criminal Code, KZ-1A, Official Gazette of the Republic of Slovenia, no. 39/09. Slovenia stated that this amendment changed "only one provision regarding liability of juveniles", and hence, a translation was not provided.

²⁰ Act Amending the Criminal Code, KZ-1B, Official Gazette of the Republic of Slovenia, no. 91/11.

functions must *also* have “management powers and responsibilities”, the definition of foreign public official is narrower than Article 1 of the Convention.²¹ None of the panellists at the on-site visit found that the revised language could exclude any public official. Slovenian authorities further assert that Article 99 is meant to cover all the possibilities addressed in the Convention. However, in the absence of case law, the language remains a significant – and problematic – departure from Phase 2, as it could exclude bribes to lower level foreign public officials.

21. Another change since Phase 2 is that Article 99(1)(3) now expressly refers to officials in “a self-governing local community” or “other entity governed by public law”. Concerns had been raised in Phase 2 that the definition possibly excluded officials of non-internationally recognized countries, autonomous territories and separate customs territories, contrary to Commentary 18 to the Convention (Follow-Up Issue 8(a) (ii)).²² Despite the broader functional reference in Article 99(1)(3), Article 99(1)(6) of the Criminal Code (i.e., the core provision) still only refers to officials from a “foreign country”. At the on-site visit, as in Phase 2, there was no consensus among lawyers, judges or the Ministry of Justice as to whether the revised definition was broad enough to satisfy Commentary 18.

Commentary

The lead examiners recommend that Slovenia take all measures to ensure that the offence of foreign bribery covers bribery of officials of autonomous territories and separate customs territories. They further recommend that Slovenia take all measures to ensure that the offence covers bribery of any person exercising a public function for a foreign country, regardless of whether that person has management powers and responsibilities.

(b) Bribery for Acts outside the Official’s Authorised Competence

22. Phase 2 Recommendation 4(a) asked Slovenia to “ensure that all bribes to a foreign public official to obtain any use of the official’s position – whether or not within the official’s authorised competence and whether or not for the purpose of obtaining an “official” act – constitute the basis for a foreign bribery offence”. The recommendation stemmed from Slovenia’s then-existing Article 268 of the Criminal Code, which only covered bribery for obtaining the performance of acts or omissions by the official “within the scope of his/her official authority,”²³ and did not meet the broader scope of Article 1 of the Convention, which cover acts or omissions “in relation to the performance of official duties”.

23. In its Phase 2 Written Follow-Up, the Working Group noted that Article 262 of the new Criminal Code maintains language establishing criminal responsibility for the giving of a bribe for the public official to perform or omit to perform “official acts within the scope of his official duties”, but also includes a new provision which covers “other abuse of office” by the public official. While the Working Group considered the revision regarding “other abuse of office” may be sufficient to implement recommendation 4(a), since the Criminal Code had only recently been changed, and in order to study evolving practice, the

²¹ Article 1 of the Convention defines a foreign public official to include “any person exercising a public function for a foreign country, including for a public agency or public enterprise”. See also Commentary 12.

²² See [Slovenia Phase 2 Report](#), at p. 141.

²³ See [Slovenia Phase 2 Report](#), para. 144. See also [Slovenia Phase 1 Report](#), pp. 10-11.

Recommendation was considered partially implemented.²⁴ Slovenia states that the courts have yet to interpret this provision.²⁵

Commentary

The lead examiners recommend that the Working Group continue to follow-up the application of article 262 to ensure that all bribes to a foreign public official to obtain any use of the official's position – regardless of whether or not it falls within the official's authorised competence – constitute the basis for a foreign bribery offence.

(c) *Bribery through Intermediaries*

24. Phase 2 Recommendation 4(b) required Slovenia to “ensure that bribery through an intermediary constitutes the basis for a foreign bribery offence”. In Slovenia’s Phase 2 Written Follow-Up, the Working Group noted that Article 20 of the new Criminal Code establishes responsibility of “any person, who commits it personally or by using and directing the actions of another person (indirect perpetrator)”, and therefore considered this recommendation to be fully implemented. No practical application of Article 20 of the Criminal Code exists in relation to use of intermediaries in foreign bribery. The *Public Works Case*, currently under investigation, does however involve the alleged use of a foreign subsidiary to make an illegal payment to a foreign public official.

(d) *Employees of Foreign Public Enterprises*

25. In Phase 2, Slovenian authorities had indicated that a person exercising a public function for a foreign public enterprise would be covered by the definition of foreign public official “only when this enterprise has been delegated as a public authority by foreign law, and when the act of that person (provided in return of the bribe) is based on an explicit authorisation or obligation of foreign law.”²⁶ This interpretation was viewed by the lead examiners as inconsistent with Commentary 14 to the Convention.²⁷ The Working Group therefore sought to follow-up whether bribery of foreign public officials covered bribery of employees of foreign public enterprises regardless of their legal form, including those under the indirect control of a foreign government (Follow-Up Issue 8(a)(i)).

26. In its Phase 2 Written Follow-Up report, Slovenia took the position that based on the definition of “civil servant”, article 262 criminalizes bribery of a person “working in the public sector”, regardless of the legal form through which the public sector entity carries out its tasks.²⁸ In its responses to the Phase 3 Questionnaire, Slovenia stated that article 242 (Unauthorised Giving of Gifts) would apply to the bribery of an employee of a foreign SOE. However, during the onsite visit, the lead examiners were told that article 262 would apply. Following the onsite visit, the Slovenian authorities confirmed that the bribery of

²⁴ See [Slovenia Phase 2 Written Follow-Up](#), para. 14.

²⁵ The domestic bribery offence under Article 261 contains a similar provision regarding “other abuse of position”; however, the courts have not yet interpreted this provision either.

²⁶ [Slovenia Phase 2 Report](#) at para. 141.

²⁷ Commentary 14 of the Convention states that “a “public enterprise” is any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence. This is deemed to be the case, *inter alia*, when the government or governments hold the majority of enterprise’s subscribed capital, control the majority of votes attaching to shares issued by the enterprise or can appoint a majority of the members of the enterprise’s administrative or managerial body or supervisory board.

²⁸ [Slovenia Phase 2 Written Follow-Up](#), at p. 30.

an employee of a foreign SOE “would be prosecuted under article 242”. This caused confusion. The level of sanctions under article 242 is equivalent to article 262, except that the minimum penalty is 6 months’ imprisonment (compared to 1 year). In the absence of case law, however, the validity of this interpretation could not be confirmed.

Commentary

The lead examiners are concerned by the lack of clarity and confusion surrounding the application of the foreign bribery offence to the bribery of employees of a foreign SOE. They therefore recommend that Slovenia clarify (whether by an amendment of its Criminal Code or by other appropriate means, such as an interpretation or guideline) that the bribery of employees of foreign SOEs is equally criminalised.

The lead examiners further recommend that the Working Group follow-up on the application of article 242 (in the case of employees of foreign SOEs) to ensure that all bribes to a foreign public official to obtain any use of the official’s position – regardless of whether or not it falls within the official’s authorised competence – constitute the basis for a foreign bribery offence.

(e) Waiver of Punishment (Defence of Effective Regret)

27. In Phase 2, the Working Group made 2 recommendations (6(b) and 6(c)) relating to waiver of punishment (effective regret). With regards to natural persons, recommendation 6(b) asked Slovenia to “either amend the waiver of punishment provision for cases where the briber reports solicitation by the official before the offence is discovered (i.e., for effective regret) in paragraph 3 of Article 268 of the Criminal Code [now Article 262] to ensure it does not contravene the Convention, or in some other appropriate way ensure that the law does not contravene the Convention, e.g. through issuing prosecutorial guidelines”. In its Phase 2 Written Follow-Up, the Working Group considered the Recommendation partially implemented, namely because (i) Article 262(3) of the Criminal Code still retained language which could allow discretion on prosecutors and judges on remitting the punishment, and (ii) Article 163 of the CPA still maintained that a prosecutor was not obliged to start criminal proceedings or may abandon prosecution if the Criminal Code lays down that a court may or must grant remission of penalty to a criminal offender.²⁹

28. In Phase 3, Slovenia has retained a slightly revised version of the waiver of punishment provision under Article 262(3) of the revised Criminal Code, which is applicable to natural persons. Slovenia states that the provisions have been retained to encourage whistleblowers to cooperate with the police and state prosecutor’s office, and to improve the prosecution of criminal offences. Slovenia takes the position that there is no obligation to enforce the waiver, and “clear preconditions and safeguards” are in place which restrict the application of the waiver, and prevent abuse. For example, Slovenia stated that under Article 262(3) of the Criminal Code, the person who may benefit from the provision must have declared the criminal offence before it was detected, or before he or she knew it had been detected. However, this restriction already existed during Phase 2, so does not reflect a new development. Second, and unlike the situation in Phase 2, under Article 262(3) of the Criminal Code, the waiver can now only be enforced “provided this is not in contravention of the rules of international law.”³⁰ During and after the on-site, the Ministry of Justice strongly asserted that the reference to international law would likely cover the Convention. They further indicated that reference to the Working Group’s recommendation in this regard was expressly mentioned in the *travaux préparatoires* to the Act amending the Criminal Code. One judge

²⁹ See [Slovenia Phase 2 Written Follow-Up](#), at para. 20.

³⁰ Slovenia states that this new language was implemented with the amendments of Criminal Code (KZ-1B) in force from May 2012.

stated on-site that he would consider Slovenia's obligation under Article 3 of the Convention to apply effective, proportionate and dissuasive sanctions in interpreting the provision; however, other judges disagreed. Slovenia has also not issued any prosecutorial guidelines regarding Article 262(3) of the Criminal Code, which was alternatively suggested by the Working Group. The Working Group's concerns about the discretion on prosecutors in Article 163 of the CPA also remains open, as the provision remains unchanged in Phase 3.

29. With regards to legal persons, Recommendation 6(c) asked Slovenia to "either amend the waiver of punishment provision in Article 11(2) of the Liability of Legal Persons for Criminal Offences Act (LLPCO) to exclude its application to the offence of foreign bribery, or in some other appropriate way ensure that the law does not contravene the Convention, e.g. through issuing prosecutorial guidelines)". In its Phase 2 Written Follow-Up, this Recommendation was considered not implemented. In Phase 3, Slovenia notes that revisions adopted to Article 11(1) of the LLPCO in 2008 include an additional safeguard that the waiver can be enforced only if the criminal offence was reported by the legal person's management or supervisory board *before it was detected*. While this clarification is an improvement from the prior legislation, Slovenia has not made any legislative amendments to Article 11(2) of the LLPCO to exclude its application to foreign bribery, or issued any prosecutorial guidelines to this effect, as recommended by the Working Group. The multiple concerns expressed by the lead examiners in Phase 2 remain unchanged.³¹

30. In Phase 2, the Working Group also sought to follow-up on "the number of instances where the sanction against a legal person was reduced as a result of a report by the management or supervisory body pursuant to Article 11.1 of the LLPCO (reducing a sentence against a legal person where the management or supervisory body reports the perpetrator)" (Follow-Up Item 8(d)). Slovenia states that there have been no instances of such reductions to date.

Commentary

The lead examiners urge Slovenia to clarify by all appropriate means that the defence of "effective regret" in Article 262(3) of the Criminal Code and Article 11(2) of the LLPCO does not apply to foreign bribery. The lead examiners further recommend that the Working Group continue to follow-up the application of the conditions laid down in Article 11(1) of the LLPCO.

2. Responsibility of Legal Persons

31. The criminal liability of legal persons is set out under Article 4 of the LLPCO.³² According to Slovenia, the law on the liability of legal persons has not changed since Phase 2, with the exception of some minor amendments. The lead examiners were not provided with translations of these amendments at the time of this report.

³¹ See [Slovenia Phase 2 Report](#), at para. 174 and commentary on p. 63.

³² Article 4 of LLPCO provides that a legal person shall be liable for a criminal offence committed by the perpetrator in the name of, on behalf of or in favour of the legal person in the following cases: 1. if the committed criminal offence means carrying out an illegal resolution, order or endorsement of its management or supervisory bodies; 2. if its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence; 3. if it obtains by a criminal offence an illegally property gain or objects gained through a criminal offence; and 4. if its management or supervisory bodies have omitted obligatory supervision of the legality of the actions of employees subordinate to them.

(a) *Link between Natural Person who Perpetrated Offence and Legal Persons*

32. In Phase 2, the Working Group recommended that, due to the low number of convictions for offences involving legal persons since the enactment of the LLPCO in 1999, Slovenia undertake a review of the Act to ensure that the elements required to prove a link between the natural person that perpetrated the crime and the liability of the legal person are not obstacles to the enforcement of the Act (Recommendation 5 (b)). In its Phase 2 Written Follow-up, Slovenia reported that the Ministry of Justice, in cooperation with experts, reviewed the law and did not consider it an obstacle to enforcement. However, as the Working Group was not provided with any details about the factual basis for this conclusion, and given the absence of foreign bribery cases under the LLPCO, Recommendation 5(b) was considered not implemented.

33. In its Phase 3 questionnaire responses, Slovenia stated that based on available data, there have been no cases since Phase 2 where an investigation into a legal person was terminated or indictments withdrawn because the natural person was not sanctioned. This statement was not further substantiated. Proceedings against legal persons could be commenced in the absence of criminal charges against a natural person.³³ Yet despite there being no perceived obstacle to prosecutions, the low number of convictions of legal persons for most other intentional economic crimes suggests continued challenges with enforcement. For instance, after the on-site, Slovenia stated that between 2009 and 2012, an average of 7.25 legal persons were convicted annually for “criminal offences against the economy,” even though an average of 61.75 legal persons were indicted per year for the offence during the same period. There has, however, been a slow increase in conviction rates of certain economic crimes (such as fraud and business fraud) in recent years, as described below.

(b) *“Insignificant” Level of Participation of the Legal Person*

34. A concern expressed in Phase 2 was in relation to the possibility for the prosecutor to decide to not request the initiation of criminal proceedings against the legal person because, *inter alia*, the legal person’s participation in the criminal offence was “insignificant” (Article 28 of the LLPCO). In particular, the Working Group was of the opinion that the term “insignificant” was vague and therefore could potentially unduly restrict the liability of legal persons. As a result, during Phase 2, the Working Group decided to follow up on this issue (Follow-up issue 8 (b)). In its Phase 2 Written Follow-Up, Slovenia stated that the scope of discretion of prosecutors is “severely restricted”, and was unlikely to restrict the liability of legal persons. In Phase 3, Slovenia stated that since Phase 2, Article 28 has never been used by prosecutors. Still, given the absence of actual cases and the Working Group’s prior interest in the topic, the issue should continue to be reviewed by the Working Group.

(c) *Offenders likely to trigger the liability of the legal person*

35. Article 4 of the LLPCO imposes liability on legal persons for offences committed by several categories of principal offenders. The concepts of “management or supervisory bodies” are general concepts and are intentionally not defined in the Act, with the view to encompassing a broad range of internal arrangements within various company structures. In most cases the terms will include directors, managers and supervisory boards that have the capacity of managing and supervising the activities of the legal person. The Slovenian authorities indicated that these terms could also cover persons to whom governing executive authority has been delegated (i.e. persons empowered to act on behalf of the legal person). In the absence of case law, the implementation of Article 4 has not been tested in the context of foreign bribery. The lead examiners believe that its application in practice should be an issue for the Working Group to review in future evaluations.

33 . Article 27(3) and Article 5(1) of the LLPCO

Commentary

The lead examiners remain concerned by the absence of any convictions of legal persons for foreign bribery and the low number of convictions of legal persons for most other intentional economic crimes. The lead examiners therefore urge Slovenia to review its approach to corporate liability as previously recommended in Phase 2 since it appears that there are features of the LLPCO that are not necessarily clear, and could unduly restrict the liability of legal persons. Particular attention should be given to the following aspects of the LLPCO: i) proof of the link between the natural person that perpetrated the crime and the liability of the legal person and ii) exemption from prosecution of the legal person because of its “insignificant” level of participation in the commission of the criminal offence.

The lead examiners also recommend that Slovenia ensure by all appropriate means that its regime of liability of legal persons adopts one of the approaches described in Annex 1 B) b. of the 2009 Recommendation concerning the level of managerial authority and the type of act that may cause that liability to be incurred. .

(c) *Liability of Parent Companies for Actions of Foreign Subsidiaries*

36. An important issue in the enforcement of the liability of legal persons for transnational bribery is the liability of a parent company for acts of bribery by its foreign subsidiaries. As set out in Annex I to the 2009 Recommendation, “a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf.”

37. During the on-site, the evaluation team questioned whether the Slovenian authorities could establish jurisdiction over Slovenian parent companies for acts of foreign bribery committed by their foreign subsidiaries. Law enforcement officials and judges indicated that Slovenia could prosecute the Slovenian parent company if it can be proven that it knew about the illegal acts of the subsidiary, or if its management or supervisory bodies influenced the subsidiary or enabled it to commit the offence, or if it benefitted from the bribe given by the subsidiary as described in Article 4.3 of LLPCO. Article 4 of the LLPCO also requires that for liability to be imposed, the acts must have been committed “in the name of, on behalf of or in favour of the legal person”. Panellists from the legal profession also agreed with the position taken by Slovenian authorities. However, at the time of this report, no case law was available to support the application of this principle in practice.

Commentary

While the lead examiners are satisfied that a Slovenian parent company which uses a foreign subsidiary to commit an act of foreign bribery can be prosecuted under Slovenian law, in the absence of case law, they recommend that the Working Group follow-up the issue of liability of parent companies which use foreign subsidiaries to commit acts of foreign bribery.

(d) *Application of Corporate Liability in Practice*

38. Phase 2 Recommendation 5(a) recommended that Slovenia take further steps to raise awareness of police and prosecutors about the LLPCO to ensure that possible contraventions of the law by legal persons are actively investigated and prosecuted. In the Phase 2 Written Follow-Up, the recommendation was considered partially implemented. Since the entry into force of the Convention, there have been no prosecutions of legal persons for foreign bribery in Slovenia. There has been a slow but steady increase in the prosecution of legal persons generally over the past three years as a result of – as explained at the on-site – greater attention paid by law enforcement authorities to economic crimes. For instance, ten legal persons were convicted for criminal offences against the economy in 2012, compared to 4 in 2009. The

2012 Policy Guidelines of the State Prosecutor General³⁴ list commercial crime and corruption among its top priorities, which is expected to increase the trend towards greater corporate liability. For instance, from 1 January 2009 to 31 December 2012, there were 160 indictments; 158 for business fraud and 2 for money laundering. During the same period, with regard to all crimes committed by legal persons, Slovenia indicates that there were 434 indictments and 54 convictions.

39. While there have been an increased number of proceedings against legal persons for intentional economic crimes, surprisingly, there have not been any prosecutions of legal persons for domestic bribery. Prosecutors explained that it is often difficult to find a legal person to prosecute in domestic bribery cases. The legal persons involved are often shell companies that are dissolved prior to trial, or after the criminal act has been committed. If it is a legitimate operating company, it may have already commenced bankruptcy proceedings prior to trial. Representatives from the legal profession also agreed with this assessment. Members of the legal profession also stated that under-enforcement of corporate liability is also likely because enforcement may be perceived by prosecutors as being cumbersome, lengthy, and fraught with uncertainties. The evaluation team questioned whether this situation may be connected to considerations prohibited under Article 5 of the Convention, such as potential economic impact on innocent third parties. However, Slovenian authorities rejected this possibility as impermissible under Slovenian law (see also discussion on Article 5 under section 5 below).

40. The police explained that it has now become standard practice in Slovenia to investigate legal persons and that they have been provided guidance on how to investigate such entities. However, no specific guidelines have been developed for prosecutors. A representative of the CPC agreed with the statement made by the police, indicating that he could not recall a single case where an involved legal person was not investigated. He further commented that the explanation for the low number of prosecutions has arisen from the low priority given until very recently to the prosecution of legal persons, with an emphasis on domestic corruption.

Commentary

The lead examiners note that while there is a growing trend towards investigating and prosecuting legal persons for criminal offences in Slovenia, the number of prosecutions and convictions remain low. The lead examiners recommend that Slovenia issue further specific guidance and training to both police and prosecutors on investigating and prosecuting legal persons, especially with regards to foreign bribery and other intentional economic crimes. They also recommend that Slovenia take further steps to prioritize the prosecution of legal persons involved in foreign bribery.

3. Sanctions

41. In Phase 2, the Working Group recommended that Slovenia “take measures to draw to the attention of prosecutorial and judicial authorities on the importance of applying sanctions which are sufficiently effective, proportionate and dissuasive on natural and legal persons convicted for foreign bribery offences, in particular emphasising the importance of adequate economic sanctions” (Recommendation 6(a)).³⁵ In its Phase 2 Written Follow-Up, this recommendation was considered partially implemented. No information on implementation of this recommendation was provided in the responses to

³⁴ Number: Tu-39/12-7, Date: 27 June 2012.

³⁵ The other sanctions-related recommendations 6(b) and 6(c) are discussed in section B.1.(d) of this report, while recommendation 6(d) is discussed in section B.11.(b).

the Phase 3 questionnaire. At the on-site, Slovenia referred to a 2012 Prosecution Policy,³⁶ which states generally, that “where possible, and suitable under the circumstances”, state prosecutors should insist on “more fines” instead of suspended sentences. However, no specific reference is made to foreign bribery. Slovenia also referred to training on corruption offences generally by the Judicial Training Centre, which did not specifically address foreign bribery.

42. In Phase 2, the Working Group also sought to follow-up on both “the criminal and administrative sanctions, in particular fines and confiscation, imposed on natural and legal persons for foreign bribery (Follow-Up Item 8(c)). As discussed below, there have been no sanctions imposed for foreign bribery to date.

(a) Sanctions against Natural Persons for Foreign Bribery

43. The maximum prison term which can be imposed on natural persons for the active bribery of both domestic and foreign officials remains unchanged from Phase 2³⁷ (i) imprisonment between one and five years as well as a fine for an “improper” act or omission of the public official (Article 262(1) of the Criminal Code), and (ii) imprisonment between six months and three years in cases of a “proper” act/omission (Article 262(2) of the Criminal Code).

44. As in Phase 2, mandatory fines are prescribed for offences falling under Article 262(1) of the Criminal Code on “improper” acts/omissions, while there is no mandatory fine under Article 262(2) of the Criminal Code for “proper” acts or omissions. However, fines could still be applied under Article 262(2) if the criminal act had been committed “out of greed” pursuant to Article 45(2) of the Criminal Code. The maximum fine which may be imposed on natural persons has changed since Phase 2 due to a revised method for calculating fines (Article 47 of the Criminal Code), which leads to higher fines in Phase 3. The maximum fine is EUR 360 000 for an “improper” act or omission of the public official (Article 262(1) of the Criminal Code) and EUR 1 500 000 if the criminal act had been committed “out of greed”. Fines imposed are set out in the judgment as “daily instalments” (i.e., day-fines), which may amount to a minimum of ten (increased from a minimum of five in Phase 2), and a maximum of three hundred and sixty. If the criminal offence was committed for one’s “own benefit,” a maximum sanction of one thousand five hundred daily instalments may be imposed. Courts fix the daily instalment amount by taking into account the perpetrator’s entire financial situation, but it may not exceed EUR 1 000. In fixing the amount, the court bases its decision on recent economic data. If such data is unavailable or could cause disproportionate difficulties or delay, or if a punitive order is issued, the daily amount is fixed using recent economic data and the perpetrator’s pecuniary circumstances.

45. In Phase 2, concerns regarding the day fine system included the following: (i) courts rarely used the possibility of imposing high fines on offences committed to obtain a material advantage (“one’s own benefit” or “personal interest”, under some translations), (ii) monetary sanctions were underused in practice in fighting financial and corruption crimes, (iii) the day fine system was not yet working in practice as it was misunderstood; the heavy caseload of judges negatively impacted their ability to impose effective, proportionate and dissuasive sanctions in complex economic crimes, and (iv) that the importance of sanctioning financial crimes and corruption was not understood widely and that fines were applied inconsistently.³⁸ The lead examiners explored these issues during the on-site visit with prosecutors, lawyers, and judges, especially in light of the extremely low level of fines imposed on natural persons for

³⁶ Prosecution Policy, Office of the State Prosecutor General of the Republic of Slovenia, Number Tu-39/12-7, 27 June 2012.

³⁷ See [Slovenia Phase 2 Report](#), at para. 164.

³⁸ Slovenia Phase 2 Report, at para. 167.

domestic bribery cases in practice, as described below. There did not appear to be any confusion as to the day fine system or the importance of economic sanctions, and experts agreed that the level of fines imposed on natural persons in practice are not sufficiently effective, proportionate and dissuasive. Certain additional sanctions may also be imposed on natural persons, including (i) barring the perpetrator temporarily from professional occupations and (ii) preventing such persons from being board members or managers. Slovenia states that these provisions have not changed since Phase 2.³⁹

46. In the absence of foreign bribery cases, the practice of imposing sanctions in domestic active and passive bribery cases was examined. Slovenia provided recent information on sanctions imposed between 2009-2012 on natural persons by selected courts⁴⁰ around the country for both active and passive bribery, and related corruption offences. A total of 16 natural persons have been convicted between 2009-2012, resulting in 8 prison sentences, 12 suspended sentences and 15 fines. The maximum prison sentences imposed in all cases was less than 2 years (ranging from 6 months to 19 months), while the maximum probation period was 3 years. The average fine imposed in all cases was approximately EUR 2 333, while the maximum fine was only EUR 6 634.⁴¹ The full range of sanctions used in domestic bribery cases suggests that these mechanisms could also be effectively used in foreign bribery cases. However, as already noted, and consistent with the concerns already expressed in Phase 2, the level of fines imposed (if at all) in most cases was very low, even when such offences were quite likely committed for “one’s own benefit”. While prosecutors stated they were open to seeking higher monetary fines, they perceived Slovenian courts as being reluctant to impose high monetary fines, a perspective also shared by private sector lawyers. Neither the prosecutors, nor judges or private sector lawyers thought that the fines imposed in practice on natural persons for domestic bribery and corruption offences were sufficiently effective, proportionate or deterrent.

47. Slovenia stated that plea bargaining became available in its law in May 2012 and has been used in 166 instances in 2012. Immediately before the discussion of this report by the Working Group, Slovenia stated that there have been two domestic bribery cases in which plea bargaining has been used.. Slovenia has used deferred prosecution in one case, where a monetary sanction was imposed similar to what would have been imposed in a court proceeding. No trends can be determined from such limited practice, but it suggests that both plea bargaining and deferred prosecution could be available in future foreign bribery cases.

(b) Sanctions against Legal Persons for Foreign Bribery

(i) Applicable Sanctions

48. Since Phase 2, the amount of fines that may be imposed on legal persons has increased. Articles 25 and 26 of the LLPCO refer to corresponding maximum prison sentences on natural persons in the Criminal Code, when determining the method of calculation of fines on legal persons. Accordingly, the maximum fine on legal persons convicted under Article 262(1) – which provides for prison sentences on natural persons between one and five years – would be at least EUR 50 000, or up to a maximum of 200 times the amount of damage caused or unlawful benefit obtained through the criminal offence. For legal persons convicted under Article 262(2) – which provides for prison sentences on natural persons between six months and three years – the maximum fine would be EUR 500 000 or up to 100 times the amount of

³⁹ Slovenia Phase 2 Report, at para. 168.

⁴⁰ These include: (i) District Court of Ljubljana; (ii) District Court of Maribor; (iii) District Court of Krško; (iv) Circuit court of Brežice; (v) District court in Murska Sobota; (vi) District court of Novo mesto; (vii) District court of Kranj; (viii) District court of Koper; and (ix) Circuit Court of Škofja Loka.

⁴¹ See Slovenia Phase 3 Questionnaire Response, p. 56-57.

damage caused or property benefit obtained through the criminal offence. Additionally, pursuant to Article 13(1) of the LLPCO, the maximum fine for any criminal offence to which a legal person may be subject is EUR 1 000 000, subject to an exception. Pursuant to Article 13(2) of LLPCO, if the legal person's criminal offence has caused damage to another's property, or if the legal person unlawfully obtained a property benefit, the highest fine may be 200 times the amount of such damage or benefit, which *can* exceed EUR 1 000 000 and has no upper limit. This is of particular relevance for foreign bribery, as Article 26(1)(1) and Article 26(1)(2) of the LLPCO provide for such maximum fines of up to 100 times and 200 times the property damage caused or illegal property benefit obtained. Judges and lawyers at the on-site visit agreed that while the maximum amount of fines have shown an improvement since Phase 2, the low sanctions imposed on legal persons for intentional economic crimes are insufficiently effective, proportionate or dissuasive.

49. To date, no legal person has been sanctioned for foreign bribery. Surprisingly, no legal person has been convicted or sanctioned for bribery of domestic officials either. The lead examiners therefore reviewed information relating to sanctions imposed on legal persons for other intentional economic crimes between 2009-2012, including fines and any other applicable sanctions. A total of 41 legal persons have been sanctioned during this period, although a significantly higher number of cases have been investigated without resulting in prosecution. The sanctioned offences include tax evasion, business fraud, forgery or destruction of business documents, abuse of position in business activity, and misappropriation. The maximum sanction imposed to date was a case involving forgery or destruction of business documents, resulting in a fine of EUR 115 500. Fines were not imposed on all cases where a conviction was obtained, although other sanctions (such as winding up, publication of judgment, or a probationary period of up to 3 years) were also imposed in many cases. In only 8 cases were fines equal to or more than EUR 50 000 imposed, while relatively small fines (i.e., at or under EUR 5 000) were imposed in 12 cases.

50. As with the low levels of monetary sanctions against natural persons, the low levels of sanctions imposed in practice on legal persons for economic crimes appear to be insufficiently effective, proportionate or dissuasive. Several onsite participants also expressed the perception that Slovenian courts were reluctant to impose large fines in general, even where the law expressly allows for such penalties, as discussed in section B.2.(c).

(c) *Administrative Sanctions*

51. In addition to the sanctions listed above, Slovenian law provides for other administrative sanctions, as noted in Phase 2. These include exclusion from public procurement contracts and other forms of public advantages, including export credits and overseas development assistance. These issues are discussed in further detail under section B.11 of this report.

Commentary

In the absence of any convictions for foreign bribery and convictions of only natural persons for domestic bribery, the lead examiners are deeply concerned by the low levels of monetary sanctions imposed in practice on natural persons for domestic bribery and both legal and natural persons for other intentional economic offences. They find that the low levels of monetary sanctions imposed in practice are not effective, proportionate or dissuasive. They therefore recommend that Slovenia ensure that sanctions imposed for foreign bribery are effective, proportionate and dissuasive, as required by the Convention.

The lead examiners further re-iterate Phase 2 Recommendation 6(a) that Slovenia continue to take measures to draw the attention of prosecutorial and judicial authorities on the importance of applying sanctions which are sufficiently effective, proportionate and dissuasive on natural

and legal persons convicted for foreign bribery offences, in particular, emphasising the importance of adequate economic sanctions. In that respect, the lead examiners recommend that Slovenia clarify that suitable fines are also available for “proper” acts or omissions in Article 262(2) CC as a useful additional deterrent.

4. Confiscation of the Bribe and of the Proceeds of Bribery

52. In Phase 2, the lead examiners considered Slovenia’s regime for seizure and confiscation of the bribe and proceeds of bribery to be “comprehensive”, and noted on-going efforts to implement improvements.⁴² In Phase 2, the lead examiners recommended that the Working Group follow up: “on the sanctions imposed on natural and legal persons for foreign bribery, in particular fines and the confiscation of the proceeds of bribery, with a view to assess...(ii) whether the legislative measures taken to enhance the efficiency of the seizure and confiscation regime will have the intended effect on the sanctions imposed in complex economic crimes cases, including foreign bribery” (Follow-Up Issue 8(c)).⁴³ Since Phase 2, Slovenia has introduced a new civil confiscation regime, which is discussed below.

53. In Phase 3, Slovenia noted that an average of 1.3 investigations involving domestic bribery each year between 2010 and 2012 resulted in pre-trial seizure, but there was no freezing of assets in these cases. Three cases of pre-trial seizure relating to money laundering investigations was reported for 2012, of which assets were frozen in one case; there was no seizure or freezing of assets relating to money laundering investigations between 2010-2011.

(a) Civil Confiscation

54. Slovenia’s new Forfeiture of Assets of Illegal Origins Act (FAIOA)⁴⁴ entered into force on 30 May 2012, and regulates the civil confiscation of illegal assets, based on the financial investigation of the State Prosecutor’s Office. The confiscation order is ultimately performed by a civil court.⁴⁵ Procedurally, financial investigations can be led by any district state prosecutor in Slovenia, but only prosecutors from the Specialised State Prosecution Office (SSPO) are authorised to bring civil suits. The SSPO pointed to several positive aspects of this new law: The FAOIA has a low threshold, and financial investigations can be carried out even if there are grounds for suspicion in pre-trial or trial proceedings that a person has assets of illegal origin in his possession with a total value exceeding EUR 50 000. Both public authorities and financial institutions are able to provide information quickly and without charge to competent authorities, and the FAOIA allows for financial investigation teams which allow cooperation between, *inter alia*, tax authorities, the CPC the Court of Audit, OMLP, and Customs.⁴⁶

55. During the onsite visit, the SSPO also identified several areas for improvement in the new civil confiscation system. First, the SSPO noted its own lack of sufficient expertise in the complex body of civil law, which poses a challenge in its ability to effectively bring civil lawsuits, although its civil law expertise is growing with practice. Second, the FAOIA requires a civil lawsuit to be submitted within 1 month after

⁴² See [Slovenia Phase 2 Report](#), at para. 175.

⁴³ See [Slovenia Phase 2 Report](#), at p. 62.

⁴⁴ Forfeiture of Assets of Illegal Origins Act, Official Gazette of the Republic of Slovenia, no. 91/11.

⁴⁵ The Act regulates, *inter alia*, preconditions, procedures, responsible authorities for financial investigations, temporary insurance of assets that are the object of confiscation, secure storage of the assets, final confiscation of assets of illegal origin, responsibilities of the State, and international cooperation. The procedure can also be initiated if there is reasonable suspicion that a corruption or corruption-related offence has been committed including foreign bribery.

⁴⁶ See Article 8 of the Forfeiture of Assets of Illegal Origin Act.

the conclusion of the financial investigation, which is too short a period for prosecutors who may not be fully familiar with the prior financial investigation. Third, the defendant has a low burden of proof to challenge the presumption about the illegal origin of the assets concerned, merely by establishing that “it is likely” that the assets were not of illegal origin.⁴⁷ Fourth, Article 34 of the FAOIA currently does not allow the court to grant a judgment to recover assets of illegal origin that have already been spent, by issuing an order of payment. Fifth, Article 15(2) of the FAOIA does not allow evidence and other materials obtained during the financial investigation under the FAOIA to be used in pre-trial or trial proceedings for a criminal offence. Finally, the resources available to state prosecutors at the Expert Information Centre – the entity responsible for providing expert assistance, foreign cooperation and a central registry on fiscal, financial, accounting and related matters to state prosecutors – is extremely limited: one person for four hours a day.

56. Following the on-site visit, Slovenia indicated that an amending act to the FAOIA entered into force in April 2014, which addresses a number of the above-mentioned issues. The provisions include measures to increase cooperation to develop the expertise of the SSPO and the ability to submit the civil lawsuit within the prescribed timeframe; raising the burden of proof of the defendant to challenge the presumption about the illegal origin of the assets concerned; the ability to order a payment to recover assets of illegal origin that have already been spent, and; allowing evidence and other materials obtained in the process of financial investigation to be used in pre-trial or criminal proceedings. With regard to the resources available at the Expert Information Centre, Slovenia states that an amending act to the State Prosecutor Act is about to be prepared which is expected to address this issue.

57. As civil confiscation was only recently introduced in Slovenia, no practice on concluded cases of civil confiscation is available. As of November 2013, there were 11 on-going financial investigations, involving 55 natural persons and 75 legal persons. A total of 3 civil suits had been filed in court, involving 5 natural persons and 2 legal persons, representing a total value of EUR 3.719 million, but there has been no verdict as yet. 6 freezing orders are currently in effect pursuant to the FAOIA with a value of frozen assets of EUR 7.17 million. Pursuant to the CPA, there are also temporary freezing orders in 107 criminal cases involving 208 natural and legal persons in the amount of EUR 418 163,142.24. In none of these cases was the underlying criminal offence corruption or bribery.

(b) Criminal Confiscation

58. Slovenia’s regime on criminal confiscation was amended in 2011.⁴⁸ Criminal confiscation is regulated by Articles 74 – 77 of Criminal Code,⁴⁹ as well as Articles 498 – 507 of the CPA. As under civil confiscation, it includes the possibility of temporary insurance of assets and other proceeds which could become the object of confiscation, during the course of the criminal procedure. With regards to legal persons, Article 41 of the Act on LLPCO expressly allows search and seizure (as securing of confiscation of illegally gained property or pecuniary claims) in criminal proceedings against a legal person by applying *mutatis mutandis* the relevant provisions of the CPA. Search and seizure of bank records and subpoenaing of witnesses is not specifically regulated in the LLPCO, which are regulated by the CPA. Given the absence of foreign bribery cases, it is noteworthy that criminal confiscation has been applied to natural

⁴⁷ See Article 27(3) of the Forfeiture of Assets of Illegal Origin Act (ZOPNI). See also Articles 5(2) and 6 of the Forfeiture of Assets of Illegal Origin Act.

⁴⁸ The amendment was made to Articles 77(a)-(c) of the Criminal Code. The Slovenian authorities explained that the act was amended to encompass confiscation of the property gained by criminals functioning in the frame of the criminal association and confiscation of property fictitiously owned by third parties.

⁴⁹ Article 74 of the Criminal Code provides: “(1) Nobody shall retain the property gained through or owing to the committing of a criminal offence. (2) The property shall be confiscated according to the judgement passed on the criminal offence under conditions laid down in this Penal Code.”

persons in only 3 domestic bribery cases pursuant to the CPA. Slovenian authorities stated during the on-site visit that confiscation has not been applied to legal persons in a domestic bribery case, as no legal person has been convicted of domestic bribery.

Commentary

The lead examiners welcome the introduction of civil confiscation in Slovenia, as well as the prompt adoption of amending legislation to the FAIOA addressing the suggested area for improvement made by the SSPO. They also welcome developments to amend the State Prosecutor Act to increase the resources available within the Expert Information Centre and recommend that Slovenia promptly proceed with such plans.

The lead examiners recommend the Working Group to follow up the application in practice of freezing and confiscation measures in on-going and future foreign bribery cases, including for legal persons.

5. Investigation and Prosecution of the Foreign Bribery Offence

(a) Principles of Investigation and Prosecution

(i) Enforcement Agencies and Coordination

- Establishment of the National Bureau of Investigation (NBI) and the Special State Prosecutor's Office (SSPO)

59. At the time of Slovenia's Phase 2 evaluation, the investigation of foreign bribery involved various units of the police at either the regional or national level. The Working Group found that there was a lack of clear supervision and direction of the police forces, which ultimately led to poor quality investigations.⁵⁰ It therefore recommended that Slovenia "introduce the necessary legislative measures in order to clarify the roles and duties of the police, prosecutors and investigative judges in the conduct of criminal investigations" and "require prosecutors to more actively initiate, direct and supervise criminal investigations" (Recommendation 3(b)). At the time of Slovenia's Written Follow-Up Report, the Working Group found that Slovenia had not implemented this recommendation.

60. Since Phase 2, a number of institutional and procedural changes have taken place with regard to the competence and coordination of law enforcement authorities over the foreign bribery offence. These include the creation of the National Bureau of Investigation (NBI) as a specialised criminal investigation unit of Slovenia's police; the establishment of the Specialised State Prosecutor's Office (SSPO), which has exclusive jurisdiction over the prosecution of acts of active bribery, including foreign bribery,⁵¹ and; the establishment of specialised departments at the district court level.

61. The NBI was established in January 2010 as a criminal investigation unit working within the Criminal Police Directorate of the General Police Directorate in Ljubljana. The functions of the NBI are set out under the Police Act.⁵² The NBI is responsible for, *inter alia*, the detection and investigation of "complex criminal acts" including foreign bribery. However, it remains unclear whether the NBI has exclusive jurisdiction over the investigation of foreign bribery. During the on-site visit, Slovenia indicated

⁵⁰ Slovenia Phase 2 Report, paras. 113 - 118.

⁵¹ Article 192, State Prosecutor's Office Act.

⁵² Section 6, Police Act.

that local police may also conduct foreign bribery investigations. However, Slovenia further indicated that there are coordination guidelines in place in which the NBI would be informed of a local level foreign bribery investigation, and in which case the NBI would “most probably” take over the case. The criteria used by the NBI to determine which criminal offences will be investigated are set out in express Instructions, and includes, *inter alia*, “demanding and complex forms of criminal offences in the field of economic crime and corruption, the detection and investigation of which require international and inter-agency cooperation, specific skills and coordinated and targeted work of investigators.”⁵³

62. The SSPO has exclusive jurisdiction over the prosecution of cases of active bribery, which Slovenia confirms includes foreign bribery cases. The State Prosecutor’s Office Act, which provides for the establishment of the SSPO under Article 192, states that it “shall have exclusive competence for directing the investigation.” Slovenia highlights that in order to ensure that all foreign bribery reports are made to the SSPO, Article 198(2) of the Act stipulates that “the head of the district state prosecutor’s office... and/or head of the competent administration and/or Police unit shall immediately inform the head of the SSPO on matters in the competence of the SSPO.”

63. As noted above, the Act makes provision for prosecutor-led investigations. This is coupled with Article 160a of the CPA, which defines cooperation during the pre-trial procedure as including, *inter alia*, the prosecutor’s ability to exercise his/her authority to set guidelines for police work, work of the joint investigation teams and work with other competent authorities, and to supervise by giving instructions, expert opinions and proposals for information-gathering. To further facilitate inter-agency law enforcement cooperation, Slovenia indicates that a new Decree on the procedure, time-limits, and manner of cooperation between the state prosecutor’s office, the police and other competent national authorities and institutions and on the functioning of specialised and joint investigations was also adopted in 2010. However, in at least in one case (*Case #2*) the CPC transmitted the allegations of foreign bribery to the Police, who started an investigation on abuse of position. During discussions immediately prior to consideration of this report by the Working Group, the lead examiners found out that the prosecutors were not informed about the foreign bribery elements of the case until before the onsite visit. This raises questions about the flow of information between the Police and the Prosecutors and the way in which the Decree has been implemented.

64. Slovenian authorities have described the establishment of the SSPO as a step “in the right direction”. In particular, they highlight that the SSPO has been “very active” in forming specialised investigation teams and joint investigation teams. 8 specialised investigation teams have been formed; 5 in 2012, 2 in 2013 and 1 currently underway in 2014. 3 joint investigation teams have been formed; 1 in 2008, 1 in 2012 and 1 in 2014. However, as Slovenia has no formal foreign bribery cases open, the effectiveness of the SSPO remains to be seen with regard to the foreign bribery offence.

- The Commission for the Prevention of Corruption (CPC)

65. As discussed in detail in its Phase 2 report, Slovenia also established the CPC as an independent, anti-corruption watchdog in 2004.⁵⁴ The CPC has no formal law enforcement powers, but has certain statutory investigative and information-gathering powers.⁵⁵ The CPC is also responsible for handling

⁵³ See Instructions on the Type of Criminal Offences to be Investigated by the National Bureau of Investigation, Pursuant to Article 22 of the Police Organisation and Work Act (Official Gazette RS, no. 15/2013).

⁵⁴ Slovenia Phase 2 Report, paras. 17-19.

⁵⁵ The CPC has “broad legal powers to access and subpoena financial and other documents (notwithstanding the confidentiality level), question public servants and officials, conduct administrative investigations and proceedings and instruct different law enforcement bodies (e.g. Anti-money laundering Office, Tax

whistleblower reports and for transmitting such corruption allegation reports to law enforcement authorities, including the NBI and SSPO. In 2009, the CPC received 1027 reports; 1191 in 2010; 1422 in 2011; 1841 in 2012, and; 1931 in 2013. The corresponding numbers of notifications to law enforcement authorities are 273 in 2009, 201 in 2010, 237 in 2011, 246 in 2012, and 288 in 2013. The preventive role of the CPC is discussed in further detail under section 10 of this Report on Awareness-Raising.

Commentary

The lead examiners welcome the institutional and procedural changes undertaken in Slovenia to develop more specialised and dedicated investigation and prosecution authorities. However, the lead examiners remain seriously concerned that despite the establishment of these bodies in 2010, detection levels of foreign bribery remain low in Slovenia. The lead examiners therefore recommend that, as a matter of priority, Slovenia take concrete steps to ensure that the NBI and SSPO proactively investigate all allegations of foreign bribery based on clear channels of communication.

(ii) Initiating and Terminating Cases

66. As noted in Phase 2, the investigation of a criminal offence can proceed through either a judicial investigation, forming the first part of judicial criminal proceedings,⁵⁶ or a police investigation within a “pre-trial procedure”. The preliminary investigation (or “pre-trial” stage) falls primarily within the authority of the police, which operates under the responsibility of the Ministry of Interior and the direction of state prosecutors. After a preliminary investigation is undertaken, the state prosecutor has three options: (i) to determine whether there exists a well-grounded suspicion (a standard similar to probable cause) that calls for a formal investigation conducted by an investigative judge; (ii) file a direct indictment (without a judicial investigation phase); or (iii) drop the case. As noted above, since Phase 2, Slovenia has implemented a system of prosecutor-led investigations in corruption cases. While the preliminary investigation is conducted by the police at which time most of the evidence-gathering is undertaken, a state prosecutor is also involved and directs their work, including on the use of investigative measures. An investigation can be opened on the basis of an incoming MLA request, whistleblower reports and media allegations.

67. Slovenia applies the principle of mandatory prosecution. However, as noted in Phase 2, there are circumstances available under the CPA enabling a state prosecutor to terminate the prosecution’s case at any stage of the pre-trial procedure. In particular, a state prosecutor can dismiss a criminal report submitted by the police at the pre-trial investigation stage if he or she is satisfied that no offence was committed, or if no reasonable suspicion exists against the suspect.

68. In Phase 2, the Working Group noted prosecutors’ concerns that the standard of proof applied by investigative judges for a judicial investigation was too high. Law enforcement authorities indicated at the time that judges often applied a higher standard of proof than the required “well-grounded suspicion” standard. As a result, it was difficult to assemble the evidence necessary to satisfy the investigative judge, particularly in cases of complex economic crimes. The Working Group therefore recommended Slovenia to “ensure that the evidential burden placed on law enforcement authorities for the grant of a judicial

Administration, ...) to gather additional information and evidence within the limits of their authority. The CPC can also issue fines for different violations under its jurisdiction to natural and legal persons in public and private sector”. See Integrity and Corruption Prevention Act – The Commission for the Prevention of Corruption – An Overview.

⁵⁶ The judicial investigation is carried out by an investigating judge who acts as the lead litigator, although the state prosecutor is also party to the proceedings.

investigation is not excessive” (Recommendation 3(c)). In its Phase 2 Written Follow-Up Report, Slovenia reported on planned amendments to the CPA providing for the establishment of joint investigative teams, which would increase the quality of an application for the grant of a judicial investigation. The Working Group deemed Recommendation 3(c) as only partially implemented. At the on-site visit, police and prosecutors indicated that the situation has since improved in Slovenia and it is now easier to access an investigative judge and reach the stage of a judicial investigation.

69. As noted throughout this report, there have been no prosecutions for foreign bribery to date in Slovenia. On-going investigations remain at a very preliminary stage, in which Slovenia has yet to confirm the involvement of foreign bribery.

Commentary

The lead examiners recommend that Slovenia assess all credible allegations of foreign bribery and seriously investigate complaints of this crime. They also strongly encourage Slovenia to generate foreign bribery cases through more proactive means of detection. Proactive means of detection should include enhancing working relations with foreign law enforcement authorities and using information from diverse sources at the pre-investigative stage.

(iii) Investigative Techniques

70. A wide variety of special investigative measures are available to Slovenian law enforcement authorities, subject to the constitutional principle of proportionality.⁵⁷ Since Phase 2, amendments to the CPA in 2009, 2011 and 2013 have expanded the powers of law enforcement authorities to use special investigative techniques, including covert access to, and monitoring of, financial data and transactions, and powers of identification and seizure of proceeds of crime.

71. In Phase 2, the Working Group raised concerns on procedural aspects related to the use of investigative techniques, which were subject to time limitations of 6 months for the use of special measures and 3 months for the use of more intrusive measures. The Working Group recommended that Slovenia consider extending the maximum time limitations for the authorised use of these techniques in criminal investigations (Recommendation 3(d)). In its Phase 2 Written Follow-Up Report, the Working Group found that Slovenia had not implemented this recommendation.

72. Since Phase 2, Slovenia has taken no steps to implement this recommendation and increase the time limitations for the use of investigative measures. Slovenia asserts that the current time limitations do not pose any practical difficulties, and serve as necessary safeguards against abuse of a suspect’s rights and freedoms. However, during the on-site visit, mixed views were expressed on this issue. One investigative judge indicated that the time limitations were sufficient. However, a number of prosecutors and police stated that in more complex cases, the 3-month or 6-month time limits for some special investigative measures could pose difficulties and they would welcome the ability to prolong the time limits where necessary. One panellist further indicated that the standard of proof required for requesting the use of special investigative tools, which is the “beyond a reasonable doubt” standard, is too high and poses another obstacle. However, Slovenian authorities later clarified that the standard applied – while dependant on what technique used – is “grounded reasons for suspicion” and never the “beyond a reasonable doubt” standard. Given the complex nature and, in turn, the duration of foreign bribery investigations, the evaluation team remains concerned that the current time limitations imposed on the use of special investigative measures in Slovenia could pose significant obstacles to the effective investigation and prosecution of foreign bribery.

⁵⁷ Slovenia Phase 2 Report, paras. 106 – 107.

Commentary

Given the complex nature of foreign bribery investigations, and the lack of implementation of Phase 2 Recommendation 3(d), the lead examiners recommend that Slovenia review the system of maximum 3-month or 6-month time limits for the authorised use of special investigative techniques in foreign bribery investigations. They further recommend that Slovenia make full use of the special investigative measures at its disposal in foreign bribery investigations.

(iv) Article 5 of the Convention

73. In Phase 2, the Working Group noted that several participants, including members of the legal profession, academia, media and civil society, stated that police investigations are sometimes exposed to pressure and potential influence of powerful interests, including members of the government, Parliament, business and the media.⁵⁸ The Working Group expressed concern that police investigations of the foreign bribery offence could be influenced by considerations prohibited by Article 5 of the Convention.⁵⁹ As a result, the Working Group recommended that Slovenia “take further steps to ensure that police investigations of the foreign bribery offence cannot be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the persons involved” (Recommendation 3(a)).

74. In its Phase 2 Written Follow-Up Report, Slovenia indicated that measures aimed at strengthening the independence of the police vis-à-vis the Ministry of Interior had been undertaken. This included a Mandatory Decree issued in 2008, which expressly states that matters related to preliminary criminal investigations and proceedings shall not be reported to the Minister of Interior. Slovenia further indicated that steps taken to ensure the independence of the then-planned NBI had also been undertaken. Given that the latter measure was only at planning stages at the time, the Working Group concluded that Recommendation 3(a) had only been partially implemented. Slovenia has since adopted additional procedures for ensuring the professional independence of the NBI Director, who has the exclusive responsibility to accept cases to be investigated.⁶⁰

75. Slovenia further indicates that the considerations prohibited by Article 5 of the Convention are also illegal factors to consider in the prosecution of a foreign bribery offence, and that the independence of law enforcement authorities’ decision-making is protected under the State Prosecutor Act and the Act on Police Organisation and Work.⁶¹ During the on-site visit, representatives from the NBI stated that they have not confronted any external pressure on the conduct of their investigations and that prosecutors are “very independent.” However, Slovenia’s responses to the Phase 3 Questionnaire point to contradictory information. Therein, Slovenia states that, in practice, the risk of interference in investigations and

⁵⁸ Slovenia Phase 2 Report, para. 87.

⁵⁹ Article 5 of the Convention states that the “investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.”

⁶⁰ Slovenia states that political considerations are excluded from the decision-making process regarding the selection and appointment of the NBI Director. The Director is appointed by the Director General of the Police, taking into account the opinion of an external professional commission composed of the State Prosecutor’s Council, a representative of Slovenia’s Financial Intelligence Unit and a recognised expert in the field of criminal or law enforcement appointed by the Minister of Interior. His or her dismissal is not possible without the approval of the professional commission.

⁶¹ Articles 2 and 4, respectively.

prosecutions is high where the natural persons involved hold prominent positions, such as “important businessmen/women and politicians.”⁶² Slovenia explains that the reason for this is the small size of its country and that “the Constitutional rule of equality before the law is still not fully internalised.” While Slovenia further states that recent cases against prominent businessmen and politicians demonstrates an improvement in this area, prosecutors still need more confidence and support to go after such persons.

76. There is also the perception that prosecutors may refrain from prosecuting legal persons for economic reasons. Some civil society representatives and private lawyers at the on-site visit expressed the perception that prosecutors may hesitate to prosecute or seek fines against legal persons (especially small and medium-sized companies) if it could result in bankruptcy or winding-down, and thereby cause hardship to innocent third parties, such as employees or shareholders. This raises additional Article 5-related concerns that economic interests may be taken into account by law enforcement authorities. However, during the on-site visit, prosecutors, the CPC and members of the judiciary insisted that prosecutors are bound by the principle of legality and may not take into account the economic impact on third parties when deciding to initiate criminal proceedings against legal persons.

77. The recent high-level resignations at the CPC, discussed above, also raise questions on possible political interference in the CPC’s work. The press release announcing the resignations of the Chief Commissioner and two Deputy Chief Commissioners in November 2013 states that “our resignation is [...] not a result of pressures, intimidations and personal attacks, as we proved in the past that we can handle those.”⁶³ The statement thus suggests that the CPC has confronted political pressure in its work in the past.

78. The more recent controversy regarding the appointment of the new leadership team of the CPC further illustrates possible political interference in the operation of the Commission. In March 2014, the newly appointed deputy heads of the CPC resigned citing lack of transparency in the appointment procedures of the March CPC Senate as their reason for resignation.⁶⁴ While not a law enforcement body, the CPC is responsible for receiving reports of corruption allegations and transmitting such reports to law enforcement authorities. They therefore play a crucial role in the detection and, in turn, the investigation of foreign bribery, which should not be subject to political considerations or pressures, as stipulated by Article 5. In May 2014, the new CPC Senate was formed. The prolonged public debate in the selection process of the new Senate showed the high standards people have come to expect of the CPC and moreover it underlines the need to guarantee the effective functioning of the CPC.

Commentary

The lead examiners welcome the steps taken by Slovenia to further secure the independence of the NBI. However, they also note that as a small country, the identities of the natural or legal persons involved could be interfering in the effective and independent investigation and prosecution of foreign bribery – an issue that Slovenia has also highlighted itself.

The high level resignations at the CPC in November 2013 and the statements included in the accompanying Press Release raised concerns that although CPC has proven to be valuable, it was confronted with obstacles and political attempts aimed at hindering efficient implementation of its mandate. These concerns were further substantiated by more recent

⁶² Slovenia Responses to the Phase 3 Questionnaire at p. 46.

⁶³ Press Release of the Commission for the Prevention of Corruption, “Resignation of the Chief Commissioner of the CPC and his Two Deputies”, 29 November 2013.

⁶⁴ See e.g. [“Both new anti-corruption deputies of the CPC President Boris Štefanec resigned”](#) (11 March 2014).

developments regarding the appointment process of the leadership team of the CPC in March 2014. The working group strongly urges Slovenia to promptly address these concerns and ensure CPC can carry out its work without any political pressure or interference.

There are further concerns that national economic interests may be considered in determining the prosecution of legal persons. The lead examiners therefore urge Slovenia to strengthen safeguards and take any other steps to ensure that law enforcement authorities and the CPC are not subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention in deciding whether to pursue an investigation or prosecution, or transmit corruption allegation reports to law enforcement authorities.

(v) *Immunity from Prosecution*

79. In Phase 2, the Working Group considered that the scope of immunities available in Slovenia were too wide. The Working Group recommended that Slovenia consider measures to ensure that immunity for office holders does not impede the effective investigation and prosecution of foreign bribery. The Working Group suggested that these measures could include the adoption of guidelines establishing clear criteria for lifting immunity (Recommendation 3(e)). In its Phase 2 Written Follow-Up Report, the Working Group welcomed Slovenia's introduction of a new law that restricted immunity within some bodies, but noted that no measures had been taken to establish clear criteria for lifting the immunity of members of the National Assembly or the National Council. It therefore concluded that Recommendation 3(e) was only partially implemented.

80. In 2009, the CPC drafted guidelines for cases in which the National Assembly may decide on lifting immunity for office-holders. Slovenia states that the draft guidelines called for a strict interpretation and narrow application of the immunity principle. The guidelines were debated by a special commission within the National Assembly, which concluded that they did not differ from the established decision-making practice on the lifting of immunity.

81. Recent practice in Slovenia demonstrates that in most cases of bribery, immunity has not been granted. According to GRECO's latest report on Slovenia,⁶⁵ since 2011 one MP of the National Assembly was criminally indicted for a corruption-related offence. Immunity was not requested, nor granted to him. During the previous legislature of the National Assembly (2008-2011), there were 16 cases of MPs involved in criminal proceedings, of which approximately 25 per cent related to corruption-related offences. One MP requested immunity, which was not granted. In another case, an MP was convicted. With regard to members of the National Council, as of 2004, immunity was granted twice out of 12 cases.

(b) *Priority, Expertise and Resources*

(i) *Prioritisation of the Foreign Bribery Offence*

82. The prioritisation of the investigation and prosecution of corruption offences are set out under the Police Act and the Slovenia Prosecution Policy. Article 6(a) of the Police Act states that "the decision as to which suspected criminal offences are to be investigated by the NBI shall fall within the competence of the NBI Director... In reaching a decision, the NBI Director is required to give particular thought to the following considerations: [...] the cross-border dimension of the investigation." Section 4 of Slovenia's Prosecution Policy further states that "the prosecution of commercial crime and corruption are priorities in determining the objectives of the state prosecution's work and the prosecution policy... State prosecutors must provide priority treatment of such actions and creatively use all process options stipulated by law, and

⁶⁵ GRECO 4th Evaluation Round, [Evaluation Report Slovenia](#) (May 2013), p. 24.

enforce them in the implementation of criminal prosecutions in cooperation the police, other supervisory institutions and the courts.”

83. At the on-site, several panellists held the view that Slovenia needs to tackle its domestic corruption problems first before focusing on foreign bribery, because the latter involves foreign public officials and should therefore be the focus of other jurisdictions. The political will to fight corruption generally in Slovenia also appears to be declining, based on recent Anti-Corruption Report of the European Commission.⁶⁶ The investigation and prosecution of foreign bribery has therefore not been a priority for Slovenian law enforcement authorities in practice – a view also held by a cross-section of panellists from the legal profession and civil society at the on-site visit. There are no specific guidelines or conviction rate targets in place with regard to the foreign bribery offence. As mentioned throughout this Report, Slovenia has yet to bring an enforcement action for foreign bribery. While there are currently two possible cases involving Slovenian natural and/or legal persons implicated in foreign bribery allegations, they have yet to be formally treated as foreign bribery investigations. One representative from the legal profession stated that Slovenian companies are committing the offence, but as they are aware that law enforcement does not prioritise the offence, they remain undeterred. Several panellists further stated that priority in Slovenia has been focused on domestic corruption offences, as evidenced by the *Patria* case. Slovenia’s commitment to fight corruption more generally has been seriously questioned recently. As already noted, while this Report was being drafted, the heads of the CPC resigned from their positions in protest, citing a lack of political support in Parliament to increase its authority and strengthen anti-corruption laws aimed at toughening rules for public officials.⁶⁷ Following the on-site visit, the CPC asserted its – and the government’s – commitment to fight corruption by highlighting recent developments, including the government’s adoption of the CPC 15-point agenda into its action plan, newly enacted anti-corruption-related legislation, including the Slovene Sovereign Holdings Act, and the allocation of additional resources to the CPC.

Commentary

The lead examiners are seriously concerned by the absence of foreign bribery enforcement actions in Slovenia, despite the fact that a number of its companies are operating in high-risk geographic areas. While the lead examiners note the recent statements made by the CPC on its commitment to combat corruption, they find that Slovenia has afforded little to no priority to the combating of foreign bribery. They therefore recommend that Slovenia seriously step up its enforcement of the foreign bribery offence and take concrete and meaningful steps to ensure that foreign bribery is an area of priority for law enforcement authorities.

(ii) *Training and Expertise*

84. The low level of priority given to fight against foreign bribery in Slovenia can also be illustrated by the lack of any specific foreign bribery training given to investigators or prosecutors. In Phase 2, noting the insufficient level of education and training, the Working Group recommended that Slovenia put in place practical training for those actively involved in enforcing the foreign bribery offence, in particular for police, state prosecutors and judges (Recommendation 1(b)). In its Phase 2 Written Follow-Up report, the Working Group noted that the training provided to law enforcement authorities had not specifically focused on the foreign bribery offence. The Working Group therefore considered that Recommendation 1(b) had only been partially implemented.

⁶⁶ Press Release of the European Commission, “[Summaries of the National Chapters from the European Anti-Corruption Report](#)”, 3 February 2014.

⁶⁷ See, for example: “[Slovenian Anti-Graft Body Resigns: Cites Lack of Political Support](#)”, *The Star*, 29 November 2013.

85. In Phase 3, Slovenia has still not provided adequate education and training to law enforcement authorities on foreign bribery, which again raises serious questions on its commitment to fight this crime. Prosecutors' training on the foreign bribery offence has not been formalised in any way. Slovenia indicates that, although no special course has been organised specifically on foreign bribery, training has been provided to prosecutors on the investigation and prosecution of corruption in general. Prosecutors have also not received any training or guidelines with regard to the liability of legal persons. Furthermore, since Phase 2, neither the Ministry of Interior nor the General Police Directorate has undertaken any foreign bribery-specific investigative guidance or awareness-raising measures for the police, including the NBI. Transparency International (TI), in its 2013 Enforcement Report on the Convention, also states that there are too few well-trained investigators, prosecutors and judges in Slovenia.

86. Given the complex nature of foreign bribery, which can involve various actors and intermediaries, multiple jurisdictions and the use of offshore accounts, specific training is crucial for the effective detection, investigation and prosecution of the offence. In the absence of such training, it is not surprising that foreign bribery detection levels are so low in Slovenia.

Commentary

The lead examiners recommend that Slovenia promptly provide in depth training specifically on the foreign bribery offence to investigators and prosecutors.

(iii) Law Enforcement Resources

87. In Phase 2, the Working Group recommended Slovenia to ensure that sufficient resources and specialised financial and accounting expertise are provided to police and prosecutors and that they are used at an early stage of the pre-trial procedure to enable the more effective detection, investigation and prosecution of foreign bribery cases (Recommendation 3(d)). In its Phase 2 Written Follow-Up Report, the Working Group found this recommendation unimplemented.

88. As discussed above, since Phase 2, Slovenia has put in place specialised anti-corruption law enforcement authorities through the establishment of the NBI and the SSPO. As of early 2013, NBI staff comprised of approximately 62 investigators. According to Slovenia, all NBI investigators possess specialised skills (e.g. corruption prevention, tax, accounting, banking, securities and customs). In-house training is provided on a regular basis; however, as indicated above, such training has thus far not focused on the foreign bribery offence. Slovenia further indicates that outside experts from other state institutions can also be contracted by the NBI for a limited period depending on the case.

89. However, discussions during the on-site visit point to continued problems with regard to investigative resources. The NBI stated that the current level of resources is insufficient, citing a lack of funds for vehicles, computers and translation services. There is only one forensic accountant on staff. The NBI further stated that they would be able to take on more complex and high profile cases if they had more investigators. They also pointed to recent budgetary cuts as reflective of a lack of political commitment to combat corruption. Since 2010, the annual budget for the NBI is approximately EUR 3 million. With regard to the prosecution authorities, the slated annual budget for all Prosecution Offices for 2013 and 2014 is EUR 17 175 811 and 17 929 500, respectively, of which between EUR 2 million and EUR 2.4 million is allocated to the SSPO. During the on-site visit, prosecutors indicated that the SSPO also lacked financial and human resources and due to budget cuts, the number of prosecutors provided in practice (14) does not correlate to the number provided for under the law (at least 10 permanent prosecutors and 11 seconded prosecutors).

90. While technically not a law enforcement authority, it is nevertheless worth highlighting the resources available to the CPC, as it is an important source of detection and reporting. Since 2011, the annual budget of the CPC averages at approximately EUR 1.73 million. Despite being granted more powers and duties as a result of the adoption of Integrity and Prevention of Corruption Act (IPCA) in 2010, the CPC indicated during the on-site visit that its human and financial resources have not increased. They further indicated that to be fully efficient, it needs approximately 10 – 20 additional new staff members. As described above, the context surrounding the recent high-level resignations within the CPC in November 2013 raised serious questions on the level of political commitment and support for its work and the fight against corruption, more generally. In April 2014, Slovenia stated that additional resources have been allocated to the prosecutor's office,⁶⁸ the police and the CPC.

Commentary

The lead examiners are encouraged by Slovenia's establishment of specialised anti-corruption law enforcement authorities through the NBI and the SSPO. Nevertheless, the lead examiners remain concerned by the discussions during the on-site visit that the current level of human and financial resources available to the NBI, SSPO and CPC are insufficient. They therefore welcome Slovenia's recent statements indicating that resources will be increased and recommend that the Working Group closely monitor and follow-up on the level of resources available to these bodies to support the effective prevention, detection, investigation and prosecution of foreign bribery.

(iv) Judicial Reforms

91. With regard to the judiciary, Slovenia made amendments to the Court Act 2009, 2011 and 2013 to establish a specialised department within four district courts, including the district court of Ljubljana, which is charged with serious cases regarding of economic crime, corruption and other similar offences. Slovenia asserts that these new departments are expected to increase the specialisation of judges in corruption-related cases.

92. In Phase 2, the Working Group noted that the speed of judicial proceedings was a problem in Slovenia. In this regard, it recommended that Slovenia determine whether increased resources are required or if there are any legal obstacles that could be remedied to address the court delays (Recommendation 3(c)). In its Phase 2 Written Follow-Up Report, while noting that Slovenia had introduced measures to reduce court delays, the Working Group considered Recommendation 3(c) as only partially implemented. Since Phase 2, Slovenia has undertaken further efforts to increase the effectiveness and efficiency of its court system. As reported in Phase 2 and the Phase 2 Written Follow-Up Report, Slovenia launched a programme in 2006 aimed at improving the speed of justice and avoiding case backlogs. The programme, which was extended by the Government to 31 December 2012, has been viewed as having boosted the efficiency of the judiciary, reducing court backlogs and lowering the average processing time from 14.1 months to 4.3 months (7.9 months for criminal cases). In parallel, the Ministry of Justice has sought to hire additional staff, and improve IT tools.⁶⁹ The Slovenian government has also provided a written commitment to the judiciary that despite austerity measures underway, its budget would not be significantly reduced. However, following the on-site visit, the Slovenian Supreme Court indicated that in

⁶⁸ According to the Slovenian authorities, the Prosecution service has been allocated additional funds with the aim of combatting economic crime, corruption and organized crime. Five additional appointed prosecutors and ten additional seconded prosecutors will start in September 2014.

⁶⁹ There are now electronic tools for case management and tracking of cases in 100% of courts. See: Council of Europe Report, [The functioning of judicial systems and the situation of the economy in the European Union Member States \(2013\)](#) p. 141.

2014, the judiciary has in fact been faced with budgetary constraints that have impacted the number of employees.

Commentary

In light of the new information received after the on-site visit, the lead examiners recommend that the Working Group follow up on the impact of the recent budgetary constraints confronting the Slovenian judiciary on the speed of judicial proceedings.

(c) Jurisdiction

93. In the absence of case law, the Working Group decided in Phase 2 to follow up on the application of territorial and nationality jurisdiction concerning offences committed in whole or in part abroad, in particular in cases of proceedings against legal persons (Follow-Up Issue 8(e)).

94. Slovenia's legal framework on jurisdiction has not changed since Phase 2. With regard to territorial jurisdiction, Article 3(1) of the Criminal Code states that Slovenian and foreign legal persons are liable for criminal offences committed in Slovenia. Pursuant to Article 3(3), Slovenian and foreign legal persons can also be found liable if an offence is committed against a foreign state, foreign citizen or foreign legal person. As noted in Phase 2, the provisions do not expressly state whether the rules for establishing territorial jurisdiction also cover offences only partly committed in Slovenia. In Phase 3, Slovenia confirms that there have been no cases where jurisdiction has been established over legal persons for offences partly or wholly committed abroad. Slovenia further indicates that there have been no cases where a parent company in Slovenia was sanctioned for the actions of its subsidiaries abroad. However, as mentioned in section A.4 above, Slovenia may soon gain experience in this area depending on how it approaches the Slovenian parent company for the alleged bribery undertaken by its subsidiary in the *Public Works Case*.

95. With regard to nationality jurisdiction, the Criminal Code requires dual criminality for the establishment of nationality jurisdiction. In both Phases 1 and 2, Slovenia asserted that technical differences in criminalising the conduct would not be an obstacle to establishing nationality jurisdiction over bribery offences. Slovenia further asserted that it would be able to establish jurisdiction in cases where a bribe is given by a Slovenian national to a public official of country A in country B, where country B does not criminalise foreign bribery, provided the bribery of domestic officials is punishable in country B. There is no established case law to confirm this interpretation of Slovenian law and application of nationality jurisdiction.

Commentary

In the absence of case law, questions still remain on whether the application of territorial and nationality jurisdiction for foreign bribery is sufficiently broad in Slovenia. The lead examiners therefore recommend that the Working Group continue to closely monitor this area as case law develops, especially with regard to legal persons and the ability for Slovenia to exercise jurisdiction over parent companies for acts of foreign bribery committed abroad by its subsidiaries.

(d) Statute of Limitations

96. As noted in Phase 2, Slovenia applies two time limits to the offence of foreign bribery: (i) a statute of limitations (SOL) and (ii) an investigation time limit where an investigative judge performs an investigation. In Phase 2, the SOL for foreign bribery was 5 years, running from when the crime was committed. The investigation time limit for the investigative judge was six months. By the end of the 6-

month period, the investigation had to be closed, unless the investigative judge was granted additional time to complete the investigation by the President of the Court. In Phase 2, the lead examiners found that the latter time limit may be too short, especially for complex cases such as foreign bribery.

97. Since Phase 2, Slovenia has increased the SOL for active bribery (including foreign bribery) to ten years from the day the crime is committed. The revised SOL applies to investigations relating to both natural and legal persons. In contrast, the investigation time limit for investigative judges has not changed since Phase 2. However, during the on-site visit, prosecutors, investigative judges and court judges stated that the current investigation time limit poses no difficulties because additional time for the investigative judge to complete the investigation is always granted by the Court President. They further explained that the 6-month time limit is instructive in nature and merely intended to serve as a guide to the investigative judge in the conduct of his/her work.

98. Following the on-site visit, Slovenia indicated that in April 2014, Slovenia's political coalition government proposed a set of changes to the Criminal Procedure Act that envisage obligatory, preclusive (fixed) time limitations for both prosecutors and investigative judges. The CPC raised the issue of whether the proposed changes are in line with the Working Group's recommendations and enquired whether they could impede the effective investigation and prosecution of foreign bribery.⁷⁰

Commentary

The lead examiners welcome the changes Slovenia has made to increase the statute of limitations. While changes were not made to increase the time limitations for judicial investigations, the lead examiners note the comments conveyed on-site that such time limits do not pose difficulties in practice and can be easily extended. However, they also note that the coalition government has proposed a set of changes, which could undermine the flexibility of the current statute of limitations regime. They therefore recommend that the Working Group monitor the time limitations imposed on prosecutors and investigative judges (and extensions thereof) in practice to ensure that they do not impede the effective investigation and prosecution of foreign bribery.

6. Money Laundering

99. This section considers post-Phase 2 changes to Slovenia's money laundering legislation, enforcement and reporting, as well as the implementation of outstanding Phase 2 recommendations (2e and 7) and follow-up item 8(f).

100. Since Phase 2, Slovenia has modernized its money laundering legislation with the introduction of the Act on the Prevention of Money Laundering and Terrorism Financing (APMLTF), which was designed to meet standards of the EU and the Financial Action Task Force (FATF).⁷¹ The APMLTF entered into force on 21 July 2007, and has undergone subsequent amendments.⁷² Amendments in 2010 clarified, *inter alia*, procedures for determining if a customer is a Politically Exposed Person (PEP), defined duties of reporting entities for treating unusual transactions, and additional customer due diligence requirements.

⁷⁰ At the time of discussing this report it was unclear whether this project would be progressed after a new government is elected.

⁷¹ See Slovenia Phase 2 Report at para. 75. See also [MONEYVAL 2010 Report](#) at p. 22.

⁷² These include: Changes and amendments to the APMLTF (Official Gazette of the Republic of Slovenia No. 19/10 of 3 March 2010, valid since 18 March 2010) and Changes and amendments to the APMLTF (Official Gazette of the Republic of Slovenia No. 77/11 of 20 September 2011, valid since 5 October 2011).

The 2011 amendments revised, *inter alia*, reporting obligations in Article 38 of the APMLTF, and added a new provision (Article 70.a) regarding submissions to the Office of Money Laundering Prevention (OMLP), Slovenia's financial intelligence unit (FIU).⁷³

(a) The Money Laundering Offence

101. As noted in Phase 2, Slovenia uses an “all-crimes” approach to money laundering, which includes foreign bribery as a predicate offence. The offence of money laundering is reflected in Article 245 of the Criminal Code (formerly Article 252), and is nearly identical to the provision in Phase 2. The offence carries a maximum sanction of 5 years imprisonment (Article 245(1)), which is identical for self-laundering (Article 245(2)). Imprisonment of up to 8 or 10 years and fines may also be applied depending on the aggravating factors surrounding the offence (Article 245(3) and 245(4)).

102. Phase 2 Recommendation 7 asked Slovenia to “take measures for ensuring that [the offence money laundering] can be enforced in cases where the predicate offence is foreign bribery, regardless of the place where the bribery occurred”. At the on-site visit, Slovenian prosecutors confirmed there has now been one case in 2013 where the predicate offence had taken place abroad, but a conviction was obtained at first instance in Slovenia. In its Phase 2 Written Follow-Up, Slovenia stated that Article 11 of the new Criminal Code stipulates that the Code applies to anyone who commits a criminal offence abroad and has to be prosecuted in all signatory countries of ... international treaties regardless of where the offence was committed. It further noted that Article 14 of the Criminal Code provided that “any person can be prosecuted without the condition of dual criminality.” However, such prosecutions can only be started under specified conditions, including, *inter alia*, if authorised by the Ministry of Justice, and no objective criteria had been set for granting or refusing authorisation. The Working Group noted that the issue of authorisation had to be further examined, and considered Recommendation 7 partially implemented. At the on-site visit, prosecutors agreed that there was no impediment to enforcing Article 245 of the Criminal Code, even if foreign bribery was not an offence in the jurisdiction where it occurred. The 2010 MONEYVAL Report also noted that it would be theoretically possible to enforce Article 245 even when foreign bribery is not an offence in the country where the act occurred.⁷⁴ However, absent case law, this issue should be followed-up.

103. In Phase 2, the Working Group also sought to follow up whether the money laundering offence can effectively be prosecuted (i) in the absence of a prior conviction for the predicate offence and (ii) where the perpetrator does not know from which specific offence the proceeds were derived (Follow-Up Issue 8(f)). At the on-site visit, Slovenian prosecutors confirmed that there have been two money laundering convictions (in 2013) without proof of specific predicate criminality, and four cases without prior conviction of the predicate offence. After the on-site visit, Slovenia reaffirmed, on the basis of case law, that a conviction for the predicate offence is not a necessary precondition for a conviction for money laundering. Slovenia also states that under Article 9(6) of COE Convention No. 198, which it has ratified, “a conviction for money laundering is possible where it is proved that the property (the object of the money laundering) originated from a predicate offence, without it being necessary to establish precisely which offence.”⁷⁵ The MONEYVAL Plenary also noted in April 2013 that Slovenia “had reached a number of convictions for money laundering, including autonomous convictions.”

⁷³ See [Slovenia Phase 2 Report](#) at para. 76. See also <http://www.uppd.gov.si/en>.

⁷⁴ See [MONEYVAL 2010 Report](#) at p. 27 at paras. 51-52.

⁷⁵ Slovenia Phase 2 Written Follow-Up Report, p. 34.

104. According to the OMLP,⁷⁶ between 2009 and 2013, 240 money laundering cases were initiated. As of the end 2013, 111 cases were before the courts; 101 cases were still pending; and 25 convictions had been obtained. Detailed information on the range of penalties imposed was not available, though Slovenia indicates that imprisonment sentences average 18 months. No cases of foreign bribery as the predicate offence have been identified to date. Following the on-site, the OMLP stated it was analysing 4 cases involving PEPs due to suspected money laundering in which the predicate offence could potentially be foreign bribery.

Commentary

The lead examiners are encouraged to learn of convictions for the money laundering offence without proof of specific criminality, without prior conviction of the predicate offence, and where the predicate offence took place abroad. However, without specific application to the foreign bribery offence in a jurisdiction where the offence is not criminalised, the lead examiners recommend that the Working Group follow-up as to whether the money laundering offence can be effectively enforced where the predicate offence is foreign bribery, regardless of where the bribery occurred.

(b) Money Laundering Reporting

105. Article 38 of the APMMLFT sets out the main reporting obligations of entities subject to the law; Article 49 of the APMMLFT also imposes reporting obligations on lawyers, law firms and notaries to report suspected money laundering in client transactions. In Phase 2, the Working Group recommended that with regard to money laundering and foreign bribery, Slovenia “ensure that the institutions and professions required to report suspicious transactions, their supervisory authorities, as well as the OMLP itself, receive appropriate directives and training (including typologies) on the identification and reporting of information that could be linked to active bribery of foreign public officials” (Recommendation 2(e)). In its Phase 2 written follow-up, the Working Group considered recommendation 2(e) to be fully implemented. However, as the OMLP has not analysed any confirmed money laundering case involving alleged foreign bribery, the adequacy of training and guidelines on identifying and reporting suspected foreign bribery is questionable. Further, although Slovenia has also issued 9 AML-related guidelines since Slovenia’s Phase 2 Written Follow-Up, none of them have specifically included directives on foreign bribery.

106. No confirmed foreign bribery-related reports have been received to date. Between 2009 and 2012, the OMLP has received an average of 329.5 STRs per year. The number of STRs has steadily increased in recent years, with 559 STRs received in 2012, of which 85% were reported by banks. A key problem identified by the lead examiners was the low numbers of STRs generated by accountants, auditors, notaries and lawyers. The OMLP has attempted to address this underreporting by issuing guidelines and meeting with professional services organisations, but the number of reports remains low. The OMLP expects a national risk assessment study to be completed in 2014 to better understand the underreporting and address this issue.

107. To increase the number of reports, the OMLP has been attempting to educate designated non-financial businesses and professions (DNFBPs) with regard to their possible exposure to money laundering. Six guidelines for DNFBPs have been adopted, but none of them deal specifically with foreign bribery. Pursuant to Article 70(a) of the APMMLFT, the OMLP now also has the possibility to gather more information from reporting institution, and undertake strategic analysis for easier detection of possible exposure of particular groups of obliged entities, transactions or products to the money laundering and to

⁷⁶ Under Article 75 of the APMMLFT, the OMLP receives information from the police, prosecutors and courts regarding money laundering enforcement.

take proper measures. At the on-site, Slovenia stated that the strategic analysis of the gathered information will be implemented following adoption of a comprehensive national risk assessment in 2014, as required under FATF standards.

108. Penalties on entities which fail to comply with reporting obligations are set out in Chapter IX of the APMLFT. Sanctions vary (from EUR 10 000 to EUR 120 000) based on the seriousness of the offence, and whether committed by a legal or natural person.⁷⁷ Articles 94-99 of the APMLFT set out various other fines up to a maximum of EUR 120 000 for non-compliance with monitoring, due diligence and reporting obligations by a range of actors, including lawyers, law firms, accounting firms, employees of reporting institutions, etc. The OMLP also expressed concerns during the on-site that the level of fines for legal persons may not be sufficient. Plans were under consideration to increase the sanctions up to EUR 5 million, based on EU directives.

(c) Authorities and Expertise to Combat Money Laundering

109. As noted above, the OMLP is Slovenia's FIU. During the on-site visit, the lead examiners queried into the OMLP's resources, frequency of training, and awareness-raising measures on foreign bribery. According to the MONEYVAL 2010 Report, the OMLP had 18 employees, and that available resources were sufficient to carry out its work.⁷⁸ It also considered the entity to be "well-structured and professional."⁷⁹ Immediately after the on-site visit, Slovenia stated that its staff was reduced to 16 employees, and that its 2013 budget was EUR 526 133, a significant decline from its 2010 budget (EUR 673 252). However, the OMLP later provided updated information that, in 2014, it was granted additional financial and human resources. The OMLP is now staffed by 20 employees and its current overall annual budget is EUR 626 133. As mentioned above, training, typologies or other types of awareness-raising specifically on foreign bribery as a predicate offence to money laundering, either within OMLP itself or for reporting entities, have not been developed. This could explain why, in part, there have not been money laundering cases predicated on foreign bribery in Slovenia.

Commentary

The lead examiners recommend that Slovenia raise awareness of foreign bribery as a predicate offence to money laundering and develop foreign bribery-related anti-money laundering measures, such as typologies and training on the laundering of bribes and the proceeds of bribery, for OMLP officials, as well as for reporting entities and relevant professionals. They further recommend that the Working Group follow up on the adequacy of resources available to the OMLP to ensure that it can effectively detect money laundering cases predicated on foreign bribery.

⁷⁷ See Articles 91-99 of APMLFT.

⁷⁸ MONEYVAL 2010 Report, at p. 42.

⁷⁹ MONEYVAL 2010 Report at para. 191.

7. Accounting Requirements, External Audit, and Corporate Compliance and Ethics Programmes

(a) Accounting Requirements and False Accounting

(i) Accounting Standards

110. In Phase 2, the Working Group made no recommendations to Slovenia with regard to its accounting regime, and there have been no changes made to the regime since Phase 2. The Companies Act 2006 (CA) requires companies to keep books of account and make year-end accounts in accordance with Slovenian Accounting Standards or the International Financial Reporting Standards (IFRS). Listed companies must mandatorily compile consolidated financial statements in accordance with the IFRS. Reporting must be based on the concept of true and fair representation.⁸⁰ Some state owned enterprises are required to disclose information on financial transactions in a new on-line application (“Supervisor”), including the award of contracts.

(ii) The False Accounting Offence and Enforcement

111. Slovenia’s false accounting offence is now provided under Article 235 of the revised Criminal Code (Article 240 of the former Criminal Code). Under the law, the “forgery or destruction of business documents” is punishable by a maximum sanction of up to two years for natural persons. By operation of Article 26(1) of the LLPCO, a legal person convicted under Article 230 of the Criminal Code would be subject to a maximum fine of EUR 500 000 or up to 100 times the amount of the damage caused or property obtained through the offence; in the latter case, there is no cap on the fine (see also section B.3 on Sanctions). Additional fines may also be imposed as an accessory sentence pursuant to Article 45(2) of the Criminal Code provided the criminal offence was committed “out of greed.”⁸¹

112. In Phase 2, the Working Group decided to follow-up on the sanctions imposed on natural and legal persons for accounting offences (Follow-Up Issue 8(c)). In Phase 3, Slovenia confirms that there have been no enforcement actions against natural or legal persons involving the concealment of foreign or domestic bribery. Statistics provided by Slovenia from January 2009 to May 2013 indicate that five legal persons have been convicted for the false accounting offence. The fines imposed range from EUR 1 000 to EUR 115 500. Four out of the five cases included suspended sentences and/or probationary periods. With regard to natural persons, there have been eleven convictions for the false accounting offence. The sanctions imposed included imprisonment sentences ranging from two months to two years. However, all but one case included suspended sentences and probationary periods. Such sanctions, if applied to natural and/or legal persons convicted of concealing foreign bribery, may not be considered sufficiently effective, proportionate and dissuasive.

⁸⁰ For further background, see: Slovenia Phase 2 Report, paras. 57-58.

⁸¹ In Phase 1, Slovenia confirmed that the “out of greed” element would always be fulfilled in a case of hiding bribery of a foreign public official in the context of international business; Slovenia Phase 2 Report, para. 192.

Commentary

The lead examiners recommend that Slovenia ensure that false accounting cases involving the concealment of foreign bribery are vigorously investigated and effectively prosecuted, where appropriate, and that sanctions imposed in practice are effective, proportionate and dissuasive.

(b) External Audit Requirements

(i) Auditing Standards

113. Under the Companies Act 2006 (CA), all large and medium-sized companies,⁸² whether listed or unlisted, and all listed small companies must have their annual reports externally audited by a registered auditor. Publication of the audit report is required simultaneously with release of the company's annual report. All SOEs are also subject to the same external audit requirements.

114. In Phase 2, the Working Group noted that in practice, less than 3 per cent of Slovenian companies were required to undergo an external audit. The Working Group therefore recommended that Slovenia consider whether the criteria requiring Slovenian companies to submit to external audit ensure that all significant companies conducting business internationally submit to such an audit (Recommendation 2(c)). In its 2009 Written Follow-Up Report, the Working Group found that Slovenia had fully implemented this recommendation, although the report did not address this specific issue. Accordingly, the evaluation team decided to re-visit this issue during the Phase 3 on-site visit.

115. Representatives of the accounting and auditing profession were of the view that for a small country, the thresholds for external audit are already very high. They further indicated that changes brought about by recent EU Directives would further increase the threshold in the future.⁸³ As small, unlisted Slovenian companies operating abroad may still confront foreign bribery risks, Slovenia should consider including such companies within the ambit of mandatory external auditing requirements, or at least takes steps to encourage such companies to voluntarily submit to external audits.

Commentary

The lead examiners note that the threshold for Slovenian companies to submit to external audit will be further increasing in the future. Nevertheless, the lead examiners recommend that Slovenia consider whether the external auditing requirements on companies which escape the threshold and which export or have operations abroad are adequate.

(ii) Independence

116. Since Phase 2, there have been developments with regard to auditor independence in Slovenia with the entry into force of a new Audit Act in 2008. According to Slovenia, the Act contains provisions aimed at enhancing the independence of the auditor from the client company.⁸⁴ Slovenia further indicates that the Act prohibits the dismissal of an audit company on the grounds of differing opinions regarding

⁸² As noted in Slovenia's Phase 2 Report at para. 64, under Article 55 of the 2006 Companies Act, small firms are defined as firms with the three following characteristics: an average number of employees in a financial year not exceeding 50; net sales income that does not exceed EUR 7.3 million, and; value of assets that does not exceed EUR 3.65 million. If for two consecutive business years one of these criteria is not met, the company is considered as being medium or large.

⁸³ EU Directive 2013/34/EU

⁸⁴ Articles 45(1) and 46 of the Audit Act.

accounting treatment or auditing procedures, and that reasons for a dismissal must be provided in writing. During the on-site visit, however, representatives of the accounting and auditing profession voiced their concerns over the new act and its implications for auditor independence. One auditor stated that the law has done nothing to enhance independence, describing it as a “step backwards” because of a new provision that requires companies to appoint auditors on the basis of a one-year renewable term. He further indicated that the requirement has left the profession feeling vulnerable that if they uncover and report a discrepancy in their audit that the company is unhappy with, they would be fired within one year or have their term non-renewed. This raises further concerns with regard to the level protection afforded to auditors for reporting suspicions of unlawful acts, including foreign bribery, from retaliatory action. Slovenian authorities state that they have not come across a case where a contract was not renewed due to filing a notice of irregularities.

Commentary

The lead examiners note the opposing views expressed by the Slovenian government and the auditing profession on the new provisions of the Audit Act concerning auditor independence. The lead examiners recommend that the Working Group closely follow-up on the impact of the Audit Act on auditor independence, and whether it has been supported or compromised in practice.

(c) Detection of Foreign Bribery by External Auditors

117. The International Standards on Auditing (ISA) are part of good audit practices in Slovenia. Auditors thus apply ISA 240 to detect material misstatements in financial statements due to fraud. As foreign bribery could also involve fraud, risk indicators of foreign bribery are thus also indicative of fraud. During the on-site visit, auditors stated that foreign bribery could also result in material misstatements in financial statements due to non-compliance with laws and regulations under ISA 250. To date, foreign bribery cases have been detected in Slovenia through external auditing.

118. In Phase 2, the Working Group recommended that Slovenia work with the accounting and auditing profession to raise awareness of the foreign bribery offence and encourage the profession to develop specific training (Recommendation 1(c)). In its Written Follow-Up to Phase 2, the Working Group found that Slovenia had only partially implemented this recommendation because such measures were only planned. Since Phase 2, two seminars were held for auditors in 2009 dealing primarily with fraud, but in which bribery was discussed as an illegal act. Neither the Ministry of Finance nor the Slovenian Institute of Auditors (SIA) has undertaken foreign bribery-specific guidance or awareness-raising measures for the accounting and auditing professions. During the on-site visit, representatives of the profession confirmed that the large accounting and auditing firms provide their own in-house foreign bribery training, but that the government or professional associations have provided no such training. During the on-site visit, representatives of the profession stated that it was important to have specific seminars on foreign bribery and that they would welcome more guidance from the authorities on foreign bribery indicators.

(d) Reporting of Foreign Bribery by External Auditors

119. Slovenia was recommended by the Working Group in Phase 2 to introduce a clear requirement for external auditors to report all indications of possible acts of foreign bribery to company management and, as appropriate, to corporate monitoring bodies, as well as to consider requiring external auditors, in the face of inaction after appropriate disclosure within the company, to report such suspicions to competent law enforcement authorities (Recommendation 2(c)). In its Phase 2 Written Follow-Up Report, the Working Group found that Slovenia had fully implemented this recommendation following information provided that it complies with international standards on auditor reporting.

120. Slovenia applies ISA 240 and ISA 250. ISA 240 requires an external auditor to report illegality to the audited company. ISA 240 (40)-(42) require fraud or suspicion of fraud that results in material misstatements of financial statements to be reported to those charged with the company's governance on a timely basis. ISA 250(22)-(24) require material misstatements resulting from non-compliance with laws to be communicated to those charged with governance unless the matters are "clearly inconsequential". If the non-compliance is intentional and material, the auditor shall report the matter "as soon as practicable." Materiality is determined on quantitative and qualitative bases. Slovenia states that in cases of insufficient management action upon receipt of such a report, the external auditor would be under an obligation to report to a company monitoring body, independent of management.⁸⁵

121. As noted above, the introduction of the one-year renewable appointment term of auditors may undermine reporting or irregularities for fear of dismissal. Slovenia confirms that auditors who report suspicions of foreign bribery would be afforded protection as whistleblowers under Chapter III of the IPCA. Slovenia should therefore ensure that auditors are made aware of these protection provisions to encourage reporting and ensure that auditors are not deterred from reporting such suspicions.

122. There is no obligation for auditors to report suspicions of foreign bribery externally to law enforcement authorities. In this regard, Slovenia indicates that auditors are bound by Article 38 of the Auditing Act, which requires the protection of confidentiality of all data, facts and circumstances obtained in the course of the audit. The duty of confidentiality, however, does not apply in cases where the information gives rise to reasonable suspicion that a criminal act has been committed. While this exception may allow auditors to report suspected acts of foreign bribery to competent law enforcement authorities, they still remain under no obligation to do so, as auditors are not considered public officials and are therefore not bound by the reporting obligations under CPA.

Commentary

They lead examiners emphasise the crucial role auditors can play in the detection of foreign bribery – something that has been lacking in Slovenia. They therefore recommend that Slovenia take steps to raise awareness specifically on the foreign bribery offence among auditors, and ensure that the profession benefits from regular training, including specific methods for detecting and reporting foreign bribery.

The lead examiners further recommend that Slovenia take steps to ensure that auditors who report reasonably and in good faith suspicions of foreign bribery are protected from legal or other retaliatory actions, and that they are made aware that such protections exist.

(e) Internal Controls, Ethics and Compliance Measures

123. In Phase 2, the Working Group noted that internal company controls remained a weak area in Slovenia.⁸⁶ It further noted that a challenge to overcome in this regard is the predominantly small size of Slovenian companies. The Working Group recommended that Slovenia take measures to encourage its companies active in foreign markets to implement adequate internal company controls and standards of conduct, with a particular focus on the control of foreign operations and on compliance with the foreign bribery law; develop monitoring bodies (such as audit committees) that are effective and independent from management; and make statements in their annual report about their internal compliance programs for the

⁸⁵ Article 4, APMLFT. Article 4 lists inter alia auditing companies and independent auditors as those who are required to implement measures against money laundering and the financing of terrorism.

⁸⁶ See: Slovenia Phase 2 Report, paras. 29, 59-62.

prevention and detection of foreign bribery (Recommendation 2(d)). In its Phase 2 Written Follow-Up Report, the Working Group found that Slovenia had not implemented this recommendation.

124. Since Phase 2, the government has taken some steps to implement this recommendation. According to Slovenia, listed companies must now include a description of their internal controls systems and procedures to control risks in their annual reports, although there is no requirement to put in place foreign bribery internal controls. In April 2014, the Slovene Sovereign Holding Act entered into force, which requires SOEs to adopt corruption prevention measures, including whistleblowing mechanisms. Given the prominent role SOEs play in the Slovenian economy and their exposure to foreign bribery risks, the enactment of this law is welcome. During the on-site visit, representatives from the large accounting and auditing firms indicated that they would look at a company's internal controls, ethics and compliance measures in the course of an audit, but noted that most of their clients were multinational companies and that smaller, Slovenian companies generally do not have such measures in place.

125. Slovenian business and industry associations have largely driven the encouragement of the adoption of internal controls, ethics and compliance measures, independent of the government. For example, the Chamber of Commerce and Industries of Slovenia (CCIS) has partnered with the Faculty of Economic Studies of the University of Ljubljana to develop practical guidance for Slovenian companies on the basis of the OECD's Good Practice Guidance on Internal Controls, Ethics and Compliance. During the on-site visit, a cross-section of panellists from the private sector and legal profession indicated that such measures are not a priority for Slovenian companies because without enforcement, there is little incentive to adopt compliance programmes or comply with the law. They stated that once enforcement increases, companies would become more aware of the risks and need for compliance measures. The majority of companies participating in the on-site visit had no internal controls, ethics or compliance measures in place.

Commentary

The lead examiners note that Slovenia has very recently taken its first significant steps since Phase 2 to encourage companies to adopt internal control, ethics and compliance measures to detect and prevent foreign bribery in their business transactions, particularly with regard to SOEs through the adoption of the Slovene Sovereign Holding Act. However, they also note that the majority of the work undertaken in this area has been largely driven by Slovenian business and industry associations. The lead examiners recommend that the Slovenian government raise awareness of internal controls, ethics and compliance measures to specifically prevent foreign bribery, including among state-owned enterprises. This should include promoting the OECD Good Practice Guidance on Internal Control, Ethics and Compliance in Annex II of the 2009 Anti-Bribery Recommendation. Furthermore, in view of the predominantly small size of Slovenian companies, particular efforts should be made to raise awareness among SMEs, which is a horizontal issue among Parties to the Convention.

8. Tax Measures to Combat Bribery

(a) Non-deductibility of Bribes

126. Article 30 of the Corporate Income Tax Act (CITA) explicitly prohibits the deduction of bribes as business expenses in tax returns. The law applies to all legal persons, as well as natural persons conducting economic activities pursuant to article 48(2) of the Personal Income Tax Act (PITA).⁸⁷ In Phase 2, the Working Group decided to follow up whether the provisions can be applied comprehensively to all

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For further background, see: Slovenia Phase 2 Report, para. 52.

bribes under Article 1 of the Convention (Follow-Up Issue 8(h)). In its Phase 2 Written Follow-Up Report, Slovenia confirmed that all bribes are non-deductible expenses for the purposes of determining an income tax base either for a legal entity or natural person, and that the provisions under both Acts can be applied comprehensively to all bribes given to foreign public officials. Slovenia noted at the time that it had no experience to confirm the application of these provisions, and the Working Group decided to continue to follow-up the issue. During the Phase 3 on-site visit, tax administration officials were aware of the non-tax deductibility of bribe payments. They further confirmed that as there is no small facilitation payments exception under Slovenian law, such payments cannot be tax deductible and would be treated as bribes.

127. Since Phase 2, the Slovenian tax administration (Tax Directorate, Ministry of Finance) has uncovered two cases of expense claims related to domestic bribe payments but has yet to detect any bribe payments made to foreign public officials. In both cases, the information was transmitted to the CPC. According to Slovenian tax authorities, one case could involve foreign bribery because the transaction involved the sale of transport vehicles to a foreign company. However, there is no information available as to whether the foreign purchasing company involved is a state-owned enterprise. After the on-site visit, Slovenia stated that the case is not being treated at the moment as foreign bribery but as the abuse of authority or trust in business.

128. If a taxpayer has been convicted of foreign bribery, Slovenian tax authorities may re-open a filed tax return to determine whether bribes had been deducted. Re-examination is limited to five years but can be interrupted by any official act of the tax authorities. Whether and how tax returns are re-examined in practice is unclear. The tax administration states that it monitors case law and the judgments of the criminal courts but that there is no system in place where it can directly acquire judgments in corruption cases, which it states would be useful for tax purposes. It therefore does not independently track bribery convictions and routinely re-examines the tax returns of the legal or natural persons involved. Law enforcement authorities also do not routinely share information on corruption convictions to the tax administration.

(b) *Detection and Awareness-Raising*

129. In Phase 2, the Working Group recommended that Slovenia take measures to raise the level of awareness of the Convention and the foreign bribery offence within the tax administration (Recommendation 1(c)). In its Phase 2 Written Follow-Up Report, Slovenia indicated that tax authorities had undertaken training efforts and that the OECD Bribery Awareness Handbook for Tax Examiners (Handbook) was translated into Slovenian and made available to tax examiners. The Working Group welcomed progress in this area but noted that such efforts needed to be continued. It therefore concluded that the recommendation was only partially implemented.

130. Since Phase 2, the Slovenian tax administration has not undertaken any significant steps to raise awareness specifically on foreign bribery risks among tax examiners. Awareness-raising measures have been limited to the posting of the Handbook on the tax administration's website. While there has been no training or guidance developed on the Handbook, the monitoring of suspected bribe payments is discussed during regular meetings. Guidance has not been developed for taxpayers setting out the types of expenses deemed to constitute bribes to foreign public officials.

131. During the on-site visit, the tax administration indicated that the training provided is "never enough" but that they are generally satisfied. However, when asked by the evaluation team why they have not detected suspicions of foreign bribery in the course of their audits, one representative indicated that they encounter difficulties determining whether the amount deducted was a foreign bribe payment. This is indicative that training on foreign bribery red flags has been insufficient. Tax officials further stated that the Tax Directorate is lacking in staff qualified to undertake tax audits; there are currently 40 tax auditors

working within the Directorate. In April 2014, the tax administration provided an update that an investigation division was established within the General Tax Office, which has increased the level of human resources available. One of the division's areas of work is to cooperate with the CPC and law enforcement authorities with regard to corruption-related tax offences. It further indicated that the most recent Bribery Awareness Handbook was again brought to the attention of employees and that there were plans to organise training sessions in the field of corruption.

(c) ***Reporting and the Sharing of Information***

(i) *With Domestic Law Enforcement Authorities*

132. The regime for sharing tax information with Slovenia's law enforcement bodies has not changed since Phase 2. Under Slovenian law, tax authorities are obliged to disclose confidential information to law enforcement authorities (police or state prosecutors) upon request if suspicions of criminal activity are identified. In addition, if information detected during a tax audit gives rise to suspicion of a criminal offence, including foreign bribery, tax officials are bound by Article 145 of the CPA to file a report with the state prosecutor.

133. In practice, the reporting and sharing of information with law enforcement authorities appears to be functioning well. According to the latest data available provided by Slovenia, in 2010, the tax administration filed 231 reports with the district public prosecutor's offices related to suspicions of fraud, forgery or destruction of business records. In addition, the tax administration submitted 369 reports to the police on suspicions of other criminal offences.⁸⁸ However, as noted above, no irregularities relating to foreign bribery have yet been detected and reported by the tax administration.

(ii) *With Other Countries*

134. During the on-site visit, Slovenian tax officials stated that one of the difficulties they face in detecting foreign bribery is obtaining tax information from countries with which they do not have tax information exchange relationship. The Tax Directorate may exchange tax information under its mutual conventions, its double taxation agreements (DTAs) and its tax information exchange agreements (TIEAs). Under such agreements, information can be exchanged for the purposes of carrying out the provisions of the agreement or for the enforcement of domestic laws concerning taxation. Slovenia has signed DTAs with 57 countries and TIEAs with 2 countries⁸⁹ Slovenia is also Party to the amended Convention on Mutual Administrative Assistance Tax Matters, which has been signed by 63 countries (as of 31 December 2013).⁹⁰ 13 jurisdictions are also covered through territorial extension.⁹¹ Article 22.4 of the Convention allows information received by a Party to be used for non-tax purposes, including corruption-related investigations, when certain conditions are met.

135. The 2009 Tax Recommendation includes, *inter alia*, considerations for adding optional language (of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention) in bilateral tax treaties. The optional language allows the sharing of information received for tax purposes with other law enforcement agencies and judicial authorities on certain serious matters, including corruption, and allows

⁸⁸ See: Tax Administration of the Republic of Slovenia, [Tax Administration Annual Report for 2010](#), p. 30.

⁸⁹ See under Slovenia at <http://eoi-tax.org/#default>

⁹⁰ http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf

⁹¹ For example: Aruba, Curaçao and Sint Maarten as well as Jersey and Isle of Man (Crown Dependencies) and Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat, and Turks & Caicos (UK Overseas Territories).

that information to be used to counteract financial crimes. Article 26 of the OECD Model Tax Convention was revised in July 2012 and the optional language is now included in Article 26 itself. The revised commentary now expressly states that when the receiving State wishes to use the information for any non-tax purpose (such as foreign bribery investigations), it should (i) specify to the supplying State the non-tax purpose (such as foreign bribery investigations) for which it wishes to use the information and (ii) confirm that the receiving State can use the information for such non-tax purposes under its own laws.

136. Most Slovenian bilateral tax agreements do not include the language of Article 26 allowing the sharing of information received for tax purposes with other law enforcement agencies and judicial authorities. Slovenia states that its policy is to include this language when negotiating new DTAs and re-negotiating existing ones. The DTAs with Austria, Germany, Norway and Switzerland have, to date, been revised accordingly.

Commentary

The lead examiners are encouraged by the system put in place in Slovenia for the reporting of suspicions of foreign bribery and the sharing of information with law enforcement authorities. They also welcome Slovenia's intention to include the language of the 2012 update of Article 26 of the OECD Model Tax Convention in all future bilateral tax treaties with countries. They believe that this will assist in the detection of foreign bribery. However, to further facilitate the detection and reporting of foreign bribery, they recommend that Slovenia promptly train tax officials on issues related specifically to the detection of foreign bribery.

The lead examiners further recommend that the Working Group follow-up on the application of the non-tax deductibility of bribes in practice, particularly on whether Slovenian law enforcement authorities promptly inform the Tax Directorate of convictions related to foreign bribery and whether tax returns are re-examined to determine whether bribes have been deducted.

9. International Cooperation

(a) Mutual Legal Assistance

137. In Slovenia, mutual legal assistance (MLA) is governed by the CPA, the Act on Cooperation in Criminal Matters with Member States of the European Union, as well as by bilateral and multilateral treaties. The CPA states that MLA is to be administered pursuant to the provisions of the Act unless provided otherwise by an international agreement. The CPA is therefore used in cases when a treaty cannot be applied directly. Since Phase 2, recent amendments to the CPA, which entered into force in May 2012, have enhanced Slovenia's MLA framework. The amendments, *inter alia*, expressly disallow dual criminality as grounds for refusal; broaden the scope of competent authorities for the execution of MLA requests, including prosecutors' offices and investigative judges; and allow for temporary surrender and the spontaneous exchange of information.

138. The Ministry of Justice is the Central Authority for incoming and outgoing MLA requests. However, Slovenia is also a party to international agreements allowing for the direct transmission of MLA requests between competent judicial authorities that do not involve the Ministry of Justice as the Central Authority. Since its Phase 2 Written Follow-Up Report, Slovenia has further expanded its international and bilateral MLA treaty network.⁹² It recently ratified the Second Additional Protocol to the 1959 European Convention on Mutual Legal Assistance in Criminal Matters, which allows the direct transmission of assistance requests from one law enforcement authority to its counterpart within the EU. Since 2010,

⁹² For further background, see: Slovenia Phase 2 Report, para. 120.

Slovenia is also bound by the MLA agreement between the EU and Japan, and has signed a bilateral MLA treaty with Serbia.

(i) *Incoming and Outgoing MLA Requests*

139. In Phase 2, the Working Group recommended that Slovenia adapt its MLA processes to ensure that police or state prosecutors are able to scrutinise incoming MLA requests in order to assess whether a separate foreign bribery investigation should be initiated in Slovenia (Recommendation 3(d)). In its Phase 2 Written Follow-Up Report, the Working Group found this recommendation unimplemented. In Phase 3, Slovenia asserts that, in practice, such scrutiny is in fact exercised through the spontaneous exchange of information. Given the absence of any foreign bribery prosecutions and the low level of detection in Slovenia, the Working Group should continue to closely monitor this issue as practice develops to ensure that Slovenia effectively responds to incoming MLA requests, which could, in turn, trigger foreign bribery investigations in Slovenia.

140. Slovenia states that it has not received any incoming MLA requests concerning the bribery of foreign public officials. However, the accuracy of this information cannot be independently verified because Slovenia does not maintain statistics on incoming and outgoing MLA requests, whether in foreign bribery or other cases. During the on-site visit, Slovenia confirmed that there is no centralised way to monitor MLA requests or response times. They explained that there is no central supervision mechanism tracking all incoming and outgoing requests because not all MLA requests go through the Ministry of Justice and can also be executed via direct transmission between competent judicial authorities.⁹³ Following the on-site visit, Slovenia further argued against maintaining a centralised mechanism to track MLA requests, stating that it would have a “negative effect regarding the principle of expediency and effectiveness” and that the costs of tracking such requests would “far outweigh the benefits.” The evaluation team disagrees and finds that some form of mechanism to retain basic information on requesting/requested countries and timeframes is critical in ensuring an effective and expedient MLA regime.

141. Of particular concern is Slovenia’s lack of proactive use of MLA in its possible foreign bribery investigations. Slovenia has not made any outgoing MLA requests in these cases. This raises concerns that law enforcement authorities have not been making adequate use of international cooperation mechanisms in foreign bribery cases, and again raises questions on the level of priority and proactivity afforded to foreign bribery cases in Slovenia.

(ii) *Informal Cooperation*

142. Slovenia may provide and seek assistance through informal channels, such as through direct communication between law enforcement authorities in other jurisdictions. During the on-site visit, Slovenian authorities described this form of cooperation as working well in practice. Informal channels have been used by Slovenia in its on-going foreign bribery investigations.

⁹³ Article 515 of the CPA allows certain emergency MLA requests linked to money laundering to be sent directly to the OMLP, bypassing judicial authorities. However, since Phase 2, the OMLP has not received or sent any MLA requests in relation to cases of money laundering where the predicate offence was foreign bribery. Articles 64 – 69 of the APMLTF also provide for international cooperation between the OMLTF and foreign FIUs. Between 2009 and 2012, the OMLP has sent an average of 175 requests per year to FIUs of other countries, and received an average of 125 requests per year from FIUs of other countries.

(b) Extradition

143. In Phase 2, the Working Group was concerned by a rule which stipulated that extradition from Slovenia could only occur under circumstances provided in international treaties binding on Slovenia. The Working Group decided to follow up on whether the Convention, in conjunction with this provision (Article 521(20) of the CPA), provides an adequate basis for extradition in the absence of an extradition treaty with another Party to the Convention (Follow-Up Issue 8(g)).

144. As noted above, since Phase 2, the provisions of the CPA have been amended, including amendments to Slovenia's extradition procedure. Consequently, treaty-based extradition has been abolished. Slovenia states that the CPA now allows extradition even in the absence of a treaty with another Party to the Convention. The provisions of the CPA dealing with the extradition of Slovenian nationals have also been amended. Accordingly, where Slovenia declines a request for extradition on the basis of nationality, there is now an express obligation for the Ministry of Justice to transmit the extradition documentation to the competent prosecutor's office for the purpose of initiating proceedings domestically (Article 527 CPA). Article 551 of the CPA also provides that in cases where the wanted notice (red notice or international arrest warrant) is issued against a Slovenian citizen by a foreign authority, the police must submit the notice and all available documents to the competent state prosecutor for further decision, including initiation of criminal proceedings or submission of the proposal for the execution of the sanction to the competent court." Slovenia has not sought or granted extradition in foreign bribery cases. It was not able to provide statistics on incoming and outgoing extradition requests.

Commentary

The lead examiners are concerned that Slovenia has not been sufficiently proactive in seeking MLA in its foreign bribery investigations. They recommend that Slovenia take steps to ensure that its authorities are more proactive in seeking MLA or other forms of international cooperation, as appropriate, in possible foreign bribery cases.

The lead examiners are also concerned by the lack of coordination or supervision of MLA requests. Therefore, to allow for a proper evaluation of Slovenia's framework for international cooperation, the lead examiners recommend that Slovenia maintain statistics on incoming and outgoing MLA and extradition requests, including on the types of offence involved and the time required to execute requests.

Finally, as foreign bribery detection levels are very low in Slovenia, the lead examiners recommend that the Working Group closely monitor Slovenia's treatment of incoming MLA requests and in particular, if such requests trigger the opening of foreign bribery investigations in Slovenia.

10. Public Awareness and the Reporting of Foreign Bribery

145. This section deals with awareness-raising efforts both in the public and private sectors, reporting of foreign bribery and whistleblower protection, including efforts to implement outstanding Phase 2 Recommendations. Efforts in these areas relating to tax, accounting and auditing and public advantages are described in sections B.8, B.7, and B.11.

(a) Awareness of the Convention and the Foreign Bribery Offence

146. In Phase 2, the Working Group recommended that Slovenia ensure that measures for the prevention, detection and raising awareness of foreign bribery are included in its national anti-corruption strategy and encourage effective coordination and implementation of these measures by the CPC

(Recommendation 1 (a)). In the Phase 2 Written Follow-Up, the Working Group considered Recommendation 1(a) to be partially implemented. Since then, Slovenia passed in 2010 the Integrity and Prevention of Corruption Act (IPCA), which expands the CPC's mandate and functions.⁹⁴ In 2011, the National Plan on the Prevention of Corruption in the Republic of Slovenia (for 2012-2016) was adopted by the National Assembly. In 2012, the Strategy for Combating Economic Crime was adopted.⁹⁵ However, foreign bribery is not expressly mentioned in the two strategic documents. Efforts to raise-awareness on foreign bribery have thus not been a priority.

147. Despite the CPC's broadened mandate, its emphasis is decidedly domestic. According to civil society representatives at the on-site, the nearly exclusive focus on domestic corruption in Slovenia, coupled with no enforcement and low prioritisation of the foreign bribery offence, helps explain the low levels of awareness of the offence. Media attention has only focused on high-profile cases involving bribery of Slovenian public officials (e.g., the *Patria* case). While private sector representatives at the on-site praised the CPC's efforts to raise awareness about domestic corruption, they also considered the CPC a "lonely island", almost like an "independent NGO", thwarted in its efforts to raise awareness of both domestic and foreign bribery by its lack of enforcement powers and frequent opposition from the government. This perception was strengthened after the entire top leadership of the CPC resigned in a public act of protest against insufficient political support for their work.⁹⁶ While the CPC is not a law enforcement entity, its activities undoubtedly contribute to the detection, reporting, investigation and prosecution of foreign bribery.

148. In Phase 2, the Working Group recommended that Slovenia take measures to raise the level of awareness of the Convention and the foreign bribery offence within, *inter alia*, the public administration (Recommendation 1 (b)). In the Phase 2 Written Follow-Up, the Working Group concluded that the Recommendation was partially implemented. Since then, while Slovenia has continued to raise awareness of domestic corruption in the public sector, including with the MFA, Ministry of Interior (MI), the Police and NBI, it has not taken advantage of these occasions to also raise awareness of foreign bribery. In 2013, the Judicial Training Center organized a seminar on financial crimes for judges and prosecutors featuring a simulation case which included a foreign bribery component. Finally, employees of SOEs are not considered public officials in Slovenia, and are therefore excluded from training. This is of particular concern given Slovenia's large SOE sector, and the foreign bribery risks faced by such entities doing business in the Balkans and former Soviet-bloc countries. The recently enacted Slovene Sovereign Holdings Act, which requires SOEs to adopt integrity and corruption prevention measures, is therefore a welcome development in this regard.

149. In Phase 2, the Working Group recommended that Slovenia take "active measures" to raise awareness among Slovenian business associations and companies, including SMEs about the Convention, the offence of foreign [bribery] and the government's intention to enforce it, and the liability of legal persons (Recommendation 1 (c)). The Recommendation was considered partially implemented at time of the Phase 2 Written Follow-Up. In Phase 3, Slovenian public authorities have made limited efforts to increase awareness of foreign bribery among companies. These efforts to date include: a 2009 leaflet by the CPC entitled "Corruption in International Business: How to Recognise it and What to Do? Guidelines

⁹⁴ The Act and 2011 amendments have expanded the CPC's mandate, functions and powers (including investigative and sanctioning powers), as discussed in section B.5.

⁹⁵ The strategy for the prevention and detection of economic crimes aims at the prevention of economic crime through detection, crime analysis and standardised investigation measures, special training of law enforcement personnel and enhanced co-operation with other agencies, including co-operation with foreign law enforcement bodies.

⁹⁶ Reuters UK (29 November 2013), "[Slovenian Anti-Graft Body Resigns, Cites Lack of Political Support](#)"; PlanetSiol.Net (29 November 2013), "[Vodstvo KPK nepreklicno odstopilo](#)".

for Slovene Companies Abroad”; the CPC’s involvement in an anti-corruption task force established within the Slovenian Chapter of the UN Global Compact; and limited efforts by Slovenia’s trade missions and foreign representations to support Slovenian companies by informing them of Slovenia’s foreign bribery legislation.

150. However, none of the companies at the on-site visit were aware of the CPC leaflet, and it does not appear to have been widely distributed. At the on-site visit, private sector representatives noted that they while they were familiar with the foreign bribery offence, they had not received any specific training or guidance from the government other than publicly available reports from the CPC. Several private-sector led anti-corruption initiatives – mostly without government funding or involvement – to raise awareness of foreign bribery also exist, most notably the anti-corruption task force within the Slovenian Chapter of the UN Global Compact. In 2011, the task force adopted a “Declaration on Fair Business,” which was initially adhered to by 38 companies. It requires signatories to conduct transparent and fair business, include an anti-corruption clause in contracts exceeding EUR 10 000, and to mutually inform other signatories about potential violations of the Declaration. It also provides guidelines for creating and improving compliance programmes. Information exchange and participation in joint events with the Chamber of Industry and Commerce, professional bodies and the CPC have since then taken place with the view to raising awareness of the Declaration.

Commentary

While Slovenia’s efforts to raise awareness on domestic corruption is welcome, the lead examiners are concerned by the lack of priority afforded to raising awareness of foreign bribery in both the public and private sectors. The lead examiners are also seriously concerned by the recent resignations of the top leadership of the Commission for the Prevention of Corruption (CPC) due to lack of political support, which, among other things, undermines the CPC’s ability to effectively raise awareness of foreign bribery.

The lead examiners therefore recommend that Slovenia ensure that measures for the prevention, detection and awareness-raising of foreign bribery are included in all national anti-corruption strategies, and that the CPC is provided with sufficient resources and political support to effectively prioritize, coordinate and implement these measures.

The lead examiners further recommend that Slovenia (i) take measures to raise awareness of the Convention and the foreign bribery offence within the public administration, judiciary and other law enforcement authorities; and (ii) urge relevant public agencies that interact with Slovenian companies operating abroad, including the Ministry of Foreign Affairs, to provide guidance about risks of and measures to prevent foreign bribery to Slovenian companies operating abroad.

The lead examiners welcome the enactment of the Slovene Sovereign Holdings Act, but note that private sector foreign bribery awareness-raising measures undertaken by the government remain limited since Phase 2. Accordingly, despite some private sector-led initiatives, Phase 2 recommendation 1c remains only partially implemented. The lead examiners therefore recommend that Slovenia take more active measures to raise awareness specifically on the foreign bribery offence among Slovenian business associations and companies, including SMEs and SOEs.

(b) Reporting Suspected Acts of Foreign Bribery

151. In Phase 2, Slovenian criminal procedure⁹⁷ already imposed a general reporting obligation (with criminal sanctions for non-compliance) on all state agencies and organisations having public authority, to report criminal offences of which they have been informed or which have been brought to their notice. Yet given the absence of reports, the Working Group recommended that Slovenia remind public officials of their obligation to report instances of bribery of foreign public officials and issue clear instructions to relevant authorities on how to recognise indications of foreign bribery and on the reporting channels (Recommendation 2 a)). At the time of the Phase 2 Written Follow-Up, the Working Group concluded that the recommendation was partially implemented. In Phase 3, Slovenia stated that it had taken “no significant steps” since Phase 2 to remind public officials of their obligation to report instances of foreign bribery.

152. Since Slovenia’s Phase 2 Written Follow-Up, a right to report any instances of corruption to the CPC or any other competent body, supplementing the general duty to report criminal offences, has been introduced in Article 23(1) of the IPCA. The right to signal irregularities in relation to corruption applies to all public officials and public sector entities (all state bodies, self-governing local communities, public agencies, public institutes, public funds, etc.). Yet, as noted by Slovenia itself, no special actions have been taken in order to promote reporting of suspected foreign bribery. Slovenia states that to date, while the CPC receives an average of 15-25 reports per week, none have involved allegations of foreign bribery. Slovenia should take steps to correct this situation as part of the CPC’s awareness-raising activities. In particular, measures should include explicit instructions on both the duty and the right to report cross-border corruption.

Commentary

The lead examiners welcome the introduction of Article 23(1) of the Integrity and Prevention of Corruption Act, which introduced a right to report corruption, including foreign bribery. However, they remain concerned by the lack of foreign bribery reporting, and Slovenia’s admission that it has not taken any significant steps since Phase 2 to remind public officials of their duty to report. They therefore reiterate Phase 2 Recommendation 2(a) and urge Slovenia to remind public officials of their obligation to report instances of foreign bribery, and issue clear instructions to be followed on how to recognise indications of foreign bribery and on the concrete steps to be taken if suspicions or indications of foreign bribery should arise, including reporting the matter as appropriate to Slovenian law enforcement authorities.

(c) Whistleblowing and Whistleblower Protection

153. In Phase 2, the Working Group recommended that Slovenia take measures to enhance and promote whistleblower protection mechanisms for public and private sector employees who report suspicions of foreign bribery, in order to encourage reporting without fear of retaliation (Recommendation 2b.). In its Phase 2 Written Follow-Up Report, the Working Group found that Slovenia had only partially implemented this recommendation. The Working Group noted the adoption of whistleblower protection provisions within the then-draft IPCA, as well as the adoption of provisions within the Criminal Code on “mobbing”⁹⁸ and the establishment of responsibility for the mistreatment of whistleblowers. However, the Working Group found that more time was required to assess the effectiveness of such measures in practice.

⁹⁷ See Article 145 of the Criminal Procedure Act.

⁹⁸ Article 197 of the Criminal Code.

154. Since Phase 2, Slovenia has undertaken significant legislative steps to improve its framework for the protection of whistleblowers who report suspicions of corruption. While Slovenia has no specialised whistleblower protection law, the IPCA dedicates a chapter (Chapter III) on the protection of public and private sector employees who, reasonably and in good faith, report suspicions of any “form of illegal or unethical behaviour,”⁹⁹ which would include foreign bribery. The CPC is responsible for the implementation of the law. The law contains a number of internationally-recognised best practices¹⁰⁰ on whistleblower protection, including confidentiality; internal and external disclosure channels; a range of remedies for retaliation; fines for those who retaliate or disclose the identity of the whistleblower; and, independent assistance from the CPC.¹⁰¹ Additional protections for public sector employees are found in the Civil Servants Act and a Code of Ethics, both of which prohibit retaliation against civil servants for reporting wrongdoing.¹⁰² The recently enacted Slovene Sovereign Holdings Act also requires SOEs to establish whistleblowing mechanisms and protection measures. This is a welcome development not only because of the importance of SOEs in the Slovenian economy, but also – as noted by civil society and media participants at the on-site – because SOEs operating in high-risk markets abroad (e.g., Western Balkans and Russia) face significant exposure to foreign bribery risks.

155. During the on-site visit, a cross-section of panellists from the public sector and civil society positively commented on Slovenia’s legal framework for the protection of whistleblowers under the IPCA, citing it as “among the best in Europe”. Transparency International echoed this position in a recent report, which rated Slovenia’s anti-corruption whistleblower framework as “advanced”, finding it to be one of the few in Europe to comprehensively include procedures for whistleblowers in both the public and private sectors.¹⁰³ However, while Slovenia’s legal framework may be sound on paper, there are concerns that its implementation in practice is ineffective. While the CPC has undertaken general training and awareness-raising measures on whistleblowing, reporting in practice remains limited. There have been no foreign bribery whistleblower reports made to date. One prosecutor commented on how the small size of the Slovenian population and its inter-connectedness has undermined reporting, and that more training and education is required. This view was also shared by a civil society representative, who stated that there is a low level of awareness of Slovenia’s whistleblower protection regime. A representative from the CPC also indicated that there is a lack of trust in the system and perceptions that it is too slow. Greater awareness-raising measures on the law and its application to foreign bribery whistleblower reports, as well as the provision of additional resources to the CPC, may therefore be needed to encourage foreign bribery whistleblowers to come forward and ensure protection from retaliation is afforded expeditiously.

Commentary

The lead examiners commend Slovenia for adopting comprehensive whistleblower protections for those who report suspicions of foreign bribery. However, as detection of foreign bribery has been very weak in Slovenia, including in state-owned enterprises, the lead examiners recommend that Slovenia raise awareness within both the public and private sectors of the protections afforded under the law, including the recently enacted Slovene Sovereign Holdings Act, for those who report specifically on foreign bribery.

⁹⁹ Article 24, IPCA.

¹⁰⁰ As noted in the OECD-G20 Study on Best Practices and Guiding Principles for Whistleblower Protection Legislation, available at: <http://www.oecd.org/general/48972967.pdf>; See also: “[Whistleblowing in Europe](#)”, Transparency International, November 2013.

¹⁰² *Ibid.*, at p. 77.

¹⁰³ *Ibid.*, at p. 8.

The lead examiners are also concerned that reduced trust in the system due to perceptions of lengthy procedures and delays may undermine foreign bribery whistleblowers from coming forward. They therefore recommend that Slovenia take concrete steps to ensure that reports of suspected acts of foreign bribery made in good faith and on reasonable grounds are, in practice, handled efficiently and afforded the protections guaranteed by the law.

11. Public Advantages

156. This section considers several post-Phase 2 developments involving public procurement, official development assistance and export credits. It also deals with several outstanding Phase 2 Recommendations concerning awareness-raising, exclusion from contracts and reporting.

(a) Public Procurement

157. Slovenia's public procurement legislation provides that all public contracting authorities must exclude from public procurement all natural and legal persons finally convicted of certain offences, including foreign bribery. While this exclusion was already in place in Phase 2, in 2012, the criteria for exclusion were broadened.¹⁰⁴ Exclusion is now provided in all three acts governing public procurement in Slovenia: the Public Procurement Act (PPA), the Public Procurement in Water Management, Energy, Transport and Postal Services Area Act, and the Public Procurement for Defence and Security Act.¹⁰⁵

158. The Phase 2 Report expressed concerns¹⁰⁶ that a company could circumvent the exclusion under Article 42 of the PPA through corporate transformations (i.e., mergers and acquisitions), although Article 41(3) of the LLPCO could possibly prevent this, as it allows courts to prohibit corporate status changes resulting in removal of a convicted legal person from a court register.¹⁰⁷ Slovenia was unable to confirm whether any courts have prevented such corporate transformations to date.

159. Under the law, public contracting authorities may ask tenderers to supply a statement that they have not been convicted of the offences which constitute a basis for exclusion. Tenderers not established in Slovenia are required to supply evidence of non-conviction of such offences. Contracting authorities must verify conviction information received or obtain official information themselves by contacting competent authorities both within and outside Slovenia, if the contract value is above EU thresholds. For contracts below EU thresholds, the contracting authority may entrust the statement without verifying it and obtaining evidence from official records.

160. In practice, exclusion is carried out by individual contracting authorities, upon verification of domestic and foreign judicial records. Contracting authorities are not required to check the debarment lists of the international financial institutions. Under EU and national law, tenderers are excluded from public procurement if they are convicted by a final judgment. Access to EU-wide conviction records of Slovenian legal and natural persons is now available from the Ministry of Justice. Slovenia considers the verification of criminal convictions to be "quite effective," since contracting authorities "regularly verify" judicial records. However, verification of non-EU conviction records remains a challenge. It does not appear that Slovenia provides specific guidance to its contracting authorities to ensure that exclusion rules are applied effectively in practice, or ways to verify non-EU conviction records. It is not known how many such exclusions have taken place as a result of such verifications, as no centralized evidence of exclusions

¹⁰⁴ See Public Procurement Act, Official Gazette, no. 12/13 – official consolidated version.

¹⁰⁵ Articles 42, 47 and 32, respectively.

¹⁰⁶ [Slovenia Phase 2 Report](#), at paras. 180-182.

¹⁰⁷ [Slovenia Phase 2 Report](#), at footnote 105.

currently exist. No bidder was known to have been excluded at the time of Phase 2. Slovenia's inability to provide statistical data on how many candidates or tenderers were in fact excluded from public procurement on the grounds of conviction for criminal offences, such as foreign bribery, makes it difficult to evaluate the effectiveness of this exclusion mechanism. A company's internal controls, ethics and anti-corruption compliance measures are not considered when authorities perform due diligence on companies.

161. Additionally, all three public procurement acts prescribe the sanction of exclusion from public procurement for a period of 3-5 years for natural and legal persons who have supplied false or misleading information during the procurement process.¹⁰⁸ Such false and misleading information would include, for example, non-disclosure of a conviction for foreign bribery, as required under public procurement procedures. Exclusion from public procurement can be imposed by a court when it establishes that the minor offence was committed. The list of tenderers excluded from public procurement for submitting false or misleading information is published on the website of the Ministry of Finance.¹⁰⁹ However, despite the existence of the list, the effectiveness of this mechanism is questionable, as the list is currently empty.

162. Slovenia now also incorporates a number of features to increase transparency in public procurement.¹¹⁰ Slovenia is also a Party to the WTO Agreement on Government Procurement and also publishes relevant public procurement information in the Official Journal of the EU. An on-line application ("Supervisor") has also been developed which provides information on the business transactions of public sector bodies, including the award of contracts. Despite these safeguards and high degree of transparency in its public procurement process, Slovenia states that public procurement remains "one of the areas with high corruption risk".

Commentary

The lead examiners recommend that Slovenia maintain centralized statistics on the number of candidates and tenderers excluded from public procurement based on prior criminal convictions, including for foreign bribery. They further recommend that Slovenia issue guidance to its contracting authorities to ensure that rules on exclusion from public procurement due to foreign bribery is effectively implemented in practice or ways to verify non-EU conviction records.

(b) Official Development Assistance (ODA)

163. Slovenia's ODA disbursements in 2011 were USD 62.77 million (EUR 46.35 million) and USD 57.53 in 2012 (EUR 42.48 million), representing approximately 0.13% of GNI.¹¹¹ While Slovenia had

¹⁰⁸ Article 25(a) of the Minor Offences Act 2011 sanctions the submitting of false or misleading statement, certificate or evidence during the procurement procedures, as regulated by the acts governing public procurement.

¹⁰⁹ The list is available online at: <http://www.djn.mf.gov.si/narocniki/seznam-ponudnikov-z-negativnimi-referencami>.

¹¹⁰ These include, *inter alia*, (i) inclusion of an anti-corruption clause in contracts above EUR 10 000 pursuant to Article 14 of the IPCA; (ii) low national thresholds for publication of notices regarding public procurement, (iii) mandatory public opening of bids; (iv) mandatory publication of *ex ante* contract award notice in negotiated procedures without publication of a contract notice; (v) special rules for last round of negotiations; (vi) conflict of interest rules, etc. It is to be noted however that the anti-corruption clause under Article 14 of the IPCA targets to offers, promises or giving of undue advantages to representatives or agents of a "public sector body or organisation", which only applies to Slovenian public entities, and is thus not directly relevant to foreign public officials.

¹¹¹ OECD.Stat, Total Flows by Donor.

targeted increasing its ODA to 0.33% of GNI by 2015, growth in ODA has slowed during the economic crisis.¹¹² Bilateral development aid cooperation is focused mostly on Western Balkan countries, including Bosnia and Herzegovina, Serbia, Montenegro, Macedonia, Albania and Kosovo. Other priority regions include targeted projects in selected countries in Eastern Europe, the Caucuses and Central Asia and Africa.¹¹³

164. Several important changes in Slovenia's ODA infrastructure have taken place since Phase 2.¹¹⁴ International development cooperation coordination, planning and financing is regulated by the International Development Cooperation of Slovenia Act,¹¹⁵ which had not entered into force in Phase 2. The Ministry of Foreign Affairs is responsible for international development cooperation, which carries out the work through its Directorate for International Development Cooperation and Humanitarian Assistance (DIDCHA), established on 11 July 2011.¹¹⁶

165. Financial transactions related to ODA are regulated by the public procurement law and the Law on Public Financing,¹¹⁷ which was understood initially to contain anti-corruption provisions.¹¹⁸ A translation of the law is currently unavailable. In its follow-up responses to the Phase 3 Questionnaire, Slovenia notes that while this law is still relevant, "it does not contain any specific anti-bribery or anti-corruption provisions." Exclusion from public procurement, which applies to ODA contracts governed by procurement rules, is discussed above. In Phase 2, the Working Group had recommended that Slovenia "consider introducing a mechanism to exclude companies convicted of foreign bribery from performing ODA contracts" (Recommendation 6(d)). In its Phase 2 Written Follow-Up, Slovenia stated that amendments the LLPCO (Article 15.a)¹¹⁹ included, *inter alia*, a new prohibition on legal persons from participating in public procurement, which could be declared by the court decision in connection with bribery offences and economic crime offences.¹²⁰ The Working Group accordingly considered recommendation 6(d) to be fully implemented, but asked Slovenia to consider dealing with the issue of ODA contracts which fall outside of public tender processes, since this could "leave an opportunity to companies with criminal records to participate in the ODA contacts".¹²¹ No information was provided by Slovenia as to any efforts to address this issue in Phase 3. Article 15(a) of the LLPCO (which was never used in practice) has since been removed from the LLPCO, as Slovenia decided to cover the sanction of exclusion from public procurement through its public procurement and related legislation, discussed above. The IPCA may also be relevant for ODA-funded contracts. Article 14 requires all public sector bodies and

¹¹² [International Development Cooperation of Slovenia](#), Republic of Slovenia, Ministry of Foreign Affairs; OECD.Stat, Total Flows by Donor.

¹¹³ [International Development Cooperation of Slovenia](#), Republic of Slovenia, Ministry of Foreign Affairs.

¹¹⁴ See Slovenia Phase 2 Report, paras. 43-44.

¹¹⁵ [Official Gazette of the Republic of Slovenia No. 70/06](#).

¹¹⁶ This Directorate has replaced the Department for International Cooperation and Humanitarian Assistance mentioned in para. 44 of the Phase 2 Report.

¹¹⁷ Internal Note: Slovenia has been asked to confirm that this law is still relevant to ODA, as was noted in P2, and to provide a consolidated copy of the law. We need to understand what "anti-corruption provisions" exist under the Law on Public Financing.

¹¹⁸ See [Slovenia Phase 2 Report](#), at para. 48.

¹¹⁹ Amendments published in the Official Gazette No. 65/08, included in Article 15(a) of the LLPCOA, which entered into force on 1 November 2008.

¹²⁰ [Slovenia Phase 2 Follow-Up Report](#), at p. 28.

¹²¹ [Slovenia Phase 2 Written Follow-Up Report](#), at para. 21.

organisations entering into contracts that exceed EUR 10 000 to expressly incorporate an anti-corruption clause in the contract. Failure to do so can result in a fine.

166. Phase 2 Recommendation 2(a) required Slovenia to remind public officials of their duty to report foreign bribery, and issue clear instructions to employees of, *inter alia*, development aid agencies, on recognising indications of foreign bribery, and what concrete steps should be taken if suspicions or indications of foreign bribery arise. The recommendation was considered partially implemented in the Phase 2 Written Follow-Up. Since Phase 2, no specialized training on the foreign bribery offence or reporting procedures has been provided to employees and officials at the DIDCHA. No actions were therefore taken in furtherance of Phase 2 Recommendation 1(b) - also discussed elsewhere in this report - which required, *inter alia*, that Slovenia raise awareness of foreign bribery through specialised training programmes among development aid agencies. No clear procedures regarding reporting or contract suspension or cancellation appear to exist within the MFA, in the event of suspected foreign bribery. The MFA has not suspected foreign bribery in any ODA contracts to date, but as no training or awareness-raising has been provided, this does not necessarily mean that it has not taken place.

Commentary

The lead examiners remain concerned by the lack of detection and reporting of foreign bribery in the ODA process. They therefore reiterate Phase 2 recommendation 2(a) and recommend that Slovenia remind public officials involved with overseas development aid, including MFA staff, of their duty to report foreign bribery, and issue clear instructions as to what concrete steps should be taken if suspicions or indications of foreign bribery should arise.

(c) Officially Supported Export Credits

167. The Slovenian export credit agency, Slovene Export and Development Bank (SIDB), is a new member of the OECD Working Party on Export Credits and Credit Guarantees. In an important development since Phase 2, Slovenia now adheres to the 2006 Recommendation on Bribery and Officially Supported Export Credits (2006 Recommendation), which has been implemented by internal regulations since April 2008.¹²² Phase 2 Recommendation 1(d) recommended that Slovenia ensure SIDB's anti-bribery declarations and policies explicitly refer to foreign bribery, and to consider adherence with the 2006 Recommendations. The recommendation was considered fully implemented in Slovenia's Phase 2 Written Follow-Up.

168. The OECD considers that Slovenia "generally fulfils" the requirements of the 2006 Recommendation.¹²³ SIDB expressly informs exporters and applicants requesting official export credit support about the legal consequences of foreign bribery in its application forms, as well as in special conditions in its insurance policy, and if applicable, in recourse agreements. Slovenia states that exporters and applicants are also required to make declarations that (i) no foreign bribery has been committed by partners participating in the implementation of credit; (ii) that they are aware of the obligation to develop a supervision system to prevent bribery and (iii) no executive, employees or intermediaries are subject to court proceedings or have been charged with bribery of a foreign public official in any country in the last five years. SIDB is entitled to terminate the insurance relationship if in the course of final court or other proceedings, it is determined that bribery of a foreign public official was committed; any indemnity payments already made would also need to be refunded. SIDB encourages exporters and applicants to

¹²² Responses to Phase 3 questionnaire, p. 92.

¹²³ See Working Party on Export Credits and Credit Guarantees, "Export Credit and Bribery: 2012 Review of Members' Responses to the 2006 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits" (September 2013) [TAD/ECG\(2013\)5/FINAL](#).

develop, apply and document appropriate management control systems that combat bribery, and require such applicants to provide an undertaking/declaration that neither they, nor anyone acting on their behalf, have been engaged or will engage in bribery in the transaction. As the absence of internal controls and compliance systems implies higher credit risk, SIDB raises the interest rates applicable to such clients.

169. Due diligence measures prescribed by the 2006 Recommendation are undertaken, including verifying whether exporters and applicants are listed on the publicly available debarment lists of the international financial institutions/multilateral development banks. If agents are used, details on agents and their commissions must also be provided. Enhanced due diligence is undertaken if: the exporter or applicant is listed on any international debarment lists; is currently under charge in a national court for foreign bribery; has been convicted of foreign bribery within a five year period. If before credit, cover or other support is granted, there is credible evidence that bribery was involved in the award of the export contract for the transaction, law enforcement authorities are informed and support is not provided pending the outcome of enhanced due diligence. If after credit, cover or other support has been approved, there is reason to believe bribery may be involved in the transaction, law enforcement authorities are informed and enhanced due diligence is undertaken. During the on-site visit, SIDB stated that it follows foreign news articles regarding an entity both before and after a contract is signed as a means of detecting wrongdoing that could allow SIDB to deny coverage.

170. In its Phase 3 questionnaire responses, Slovenia stated there had not been any foreign bribery allegations in connection with transactions supported by SIDB. At the on-site, however, a SIDB representative described a transaction (*Construction Case*), which they had reason to believe might have involved foreign bribery and which was subject to enhanced due diligence and was reported to the CPC, the police and prosecutors. Following the on-site, Slovenia confirmed that the allegation did not result in a foreign bribery investigation and that prosecutors decided to prosecute for the offence of abuse of authority or trust in business.

171. Phase 2 Recommendation 1(b) required Slovenia to take measures to raise the level of awareness of the Convention and the foreign bribery offence among, *inter alia*, export credit agencies. In its Phase 2 Written Follow-Up, this recommendation was considered only partially fulfilled due to other deficiencies, but the Working Group noted that SIDB had adopted a new policy and delivered training to address foreign bribery issues. In Phase 3, Slovenia stated that while SIDB provides internal and external training on corruption and fraud in general, it does not provide targeted foreign bribery training. SIDB representatives expressed the opinion that it was easier for them to prevent and detect domestic corruption risks (e.g. the bribery of SIDB officials by exporters or applicants) than foreign bribery. They therefore did not prioritize mitigating this risk.

Commentary

The lead examiners welcome Slovenia's joining the OECD Working Party on Export Credits and Credit Guarantees, and its adherence to the 2006 Recommendation on Bribery and Officially Supported Export Credits. The lead examiners recommend that SIDB officials promptly provide foreign bribery-specific training to its staff so they can better detect, report and mitigate the risk of foreign bribery.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

The Working Group on Bribery is encouraged by Slovenia's recent efforts to implement the Convention. However, the Working Group is seriously concerned with Slovenia's lack of enforcement of its foreign bribery offence. Only four foreign bribery allegations have surfaced since Slovenia became a party to the Convention in 1999. Of the four allegations, one case has been terminated, one case was unknown to Slovenian authorities and two cases have not advanced beyond preliminary stages. The low number of foreign bribery allegations raises further concerns on the levels of awareness, detection and reporting. While Slovenia has placed significant emphasis on combating domestic corruption, there remain serious concerns that the investigation and prosecution of foreign bribery has been afforded little to no priority. In addition, there are concerns that investigations and prosecutions may be obstructed by political and economic considerations.

The Phase 2 evaluation report on Slovenia adopted in June 2007 included recommendations and issues for follow-up (as set out in Annex 1). Of the recommendations that had not been fully implemented at the time of Slovenia's October 2009 written follow-up report, the Working Group concludes that: recommendation 3e has been implemented, recommendations 2d, 3b and 3d have been partially implemented, recommendations 1a, 1b, 1c, 2a, 2b, 5a, and 6b remain partially implemented, recommendation 3a and 6a are now considered not implemented, and 5b, and 6c remain not implemented. The issues raised in Phase 2 recommendations 3c, 4a and 7 are now to be followed up by the Working Group as practice develops.

In conclusion, based on the findings in this report on Slovenia's implementation of the Convention, the 2009 Recommendation and related instruments, the Working Group: (1) makes the following recommendations to enhance implementation of these instruments in Part 1; and (2) will follow-up the issues identified in Part 2. The Working Group invites Slovenia to report in writing on the implementation of recommendations 4a and 4c within six months of this report (i.e. in December 2014). The Working Group also invites Slovenia to report in writing on its implementation of recommendations 1c, 2a, 3c, 4a, 4c and 5(i) in one year (i.e. by June 2015). It finally invites Slovenia to submit a written follow-up report on its implementation of all recommendations and follow-up issues within two years (i.e. by June 2016). Slovenia is further invited to provide detailed information in writing on its foreign bribery-related enforcement actions when it submits each of these reports.

1. Recommendations of the Working Group

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

1. Regarding the foreign bribery offence, the Working Group:
 - a) Recommends that Slovenia (i) take all measures to ensure that the foreign bribery offence covers bribery of any person exercising a public function for a foreign country, regardless of whether that person has management powers and responsibilities and (ii) clarify its Criminal Code to ensure that the offence of foreign bribery covers bribery of officials of autonomous territories and separate customs territories; [Convention Article 1; Commentary 18; 2009 Recommendation III.ii and V]
 - b) Recommends that Slovenia clarify that bribery of employees of foreign SOEs is equally criminalised; [Convention Article 1; Commentary 14; 2009 Recommendation III.ii and V]

- c) Urges Slovenia to clarify by all appropriate means that the defence of “effective regret” in Article 262(3) of the Criminal Code and Article 11(2) of the LLPCO does not apply to foreign bribery. [Convention Articles 1 and 3; 2009 Recommendation III.ii and V; 2009 Recommendation Annex I.A]
2. Regarding the liability of legal persons, the Working Group recommends that Slovenia:
- a) Urgently review its approach to corporate liability, in particular to ensure (i) that the elements required to prove a link between the natural person that perpetrated the crime and the liability of the legal person under the Act are not obstacles to effective enforcement of the Act; (ii) a legal person cannot be exempted from prosecution because of its “insignificant” level of participation in the commission of the criminal offence; and (iii) the regime of liability of legal persons adopts one of the approaches described in Annex 1 B) b. of the 2009 Recommendation concerning the level of managerial authority and the type of act that may cause that liability to be incurred; [Convention Article 2; 2009 Recommendation III.ii, V., Annex I.B.]
 - b) Issue further specific guidance and training to both police and prosecutors on investigating and prosecuting legal persons, especially with regards to foreign bribery and other intentional economic crimes, and take further steps to prioritise the prosecution of legal persons involved in foreign bribery. [Convention Article 2; 2009 Recommendation III.ii and V, Annex I B]
3. Regarding sanctions and confiscation, the Working Group recommends that Slovenia:
- a) Clarify that suitable fines are also available for “proper” acts or omissions in Article 262(2) CC as a useful additional deterrent; [Convention Article 3]
 - b) Ensure that sanctions imposed in practice for foreign bribery are effective, proportionate and dissuasive; [Convention Article 3; 2009 Recommendation III.ii and V]
 - c) Continue to take measures to draw the attention of prosecutorial and judicial authorities on the importance of applying sanctions which are sufficiently effective, proportionate and dissuasive on natural and legal persons convicted for foreign bribery offences, in particular, emphasising the importance of adequate economic sanctions. [Convention Article 3; 2009 Recommendation III.ii and V]
4. Regarding the investigation and prosecution of foreign bribery, the Working Group:
- a) Recommends that Slovenia (i) seriously step up its enforcement of the foreign bribery offence and take concrete and meaningful steps to ensure that foreign bribery is an area of priority for law enforcement authorities; (ii) take concrete steps to ensure that the National Bureau of Investigation and the Special State Prosecutor’s Office proactively investigate all allegations of foreign bribery; (iii) assess all credible allegations of foreign bribery and seriously investigate complaints of this crime; (iv) generate foreign bribery cases through more proactive means of detection, including through enhancing working relations with foreign law enforcement authorities and using information from diverse sources at the pre-investigative stage; [Convention Article 5; Commentary 27; 2009 Recommendation XIII and Annex I D]
 - b) Recommends that Slovenia review the system of maximum 3-month or 6-month time limits imposed on the authorised use of some special investigative techniques in foreign bribery investigations and make full use of such measures at its disposal in foreign bribery cases; [Convention Article 5; 2009 Recommendation XIII and Annex I D]

- c) Recommends that Slovenia, as a matter of urgency, strengthen safeguards and take any other steps to ensure that law enforcement authorities and the CPC are not subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention in deciding whether to pursue an investigation or prosecution, or transmit corruption allegation reports to law enforcement authorities; [Convention Article 5]
- d) Recommends that Slovenia promptly provide in depth training specifically on the foreign bribery offence to investigators and prosecutors. [Convention Article 5]

5. With respect to mutual legal assistance (MLA), the Working Group recommends that Slovenia ensure: (i) its authorities are more proactive in seeking MLA or other forms of international cooperation, as appropriate, in foreign bribery cases; and (ii) maintain statistics on incoming and outgoing MLA and extradition requests, including on the types of offence involved and the time required to execute requests. [Convention Article 9]

Recommendations for ensuring effective prevention, detection and reporting of foreign bribery

6. Regarding money laundering, the Working Group recommends that Slovenia raise awareness of foreign bribery as a predicate offence to money laundering and develop foreign bribery-related anti-money laundering measures, such as typologies and training on the laundering of bribes and the proceeds of bribery, for OMLP officials, as well as for reporting entities and relevant professionals. [Convention Article 7 and 2009 Recommendation, III.i.]

7. Regarding accounting and auditing, corporate compliance, internal controls and ethics, the Working Group recommends that Slovenia:

- a) Ensure that false accounting cases are vigorously investigated and effectively prosecuted, where appropriate, and that sanctions imposed in practice for false accounting offences are effective, proportionate and dissuasive; [Convention Article 8]
- b) Consider whether the external auditing requirements on companies which escape the threshold and which export or have operations abroad are adequate; [Convention Article 8; 2009 Recommendation III.v. and X.B.i.]
- c) Take appropriate steps to raise awareness specifically on the foreign bribery offence among auditors, and ensure that the profession benefits from regular training, including specific methods for detecting foreign bribery; [Convention Article 8; 2009 Recommendation III.i.]
- d) Take steps to ensure that auditors who report reasonably and in good faith suspicions of foreign bribery are protected from legal or other retaliatory action, and that they are made aware that such protections exist; [2009 Recommendation III.iv. and X.B.v.]
- e) Raise awareness of internal controls, ethics and compliance measures to specifically prevent foreign bribery, including among small and medium-sized enterprises and state-owned enterprises. This should include promoting the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance in Annex II of the 2009 Anti-Bribery Recommendation. [2009 Recommendation Annex II]

8. Regarding tax measures to combat bribery of foreign public officials, the Working Group recommends that Slovenia promptly train tax officials on issues related specifically to the detection of foreign bribery. [2009 Tax Recommendation]

9. Regarding awareness-raising, the Working Group recommends that Slovenia:
- a) Ensure that measures for the prevention, detection and awareness-raising of foreign bribery are included in all national anti-corruption strategies, and that the CPC is provided with sufficient resources and political support to effectively prioritize, coordinate and implement these measures; [2009 Recommendation III.i, Annex I.A and D]
 - b) Take measures to raise awareness of the Convention and the foreign bribery offence within the public administration, judiciary and other law enforcement authorities; [2009 Recommendation III.i and Annex I.A]
 - c) Urge relevant public agencies that interact with Slovenian companies operating abroad, including the Ministry of Foreign Affairs, to provide guidance about risks of and measures to prevent foreign bribery to Slovenian companies operating abroad; [2009 Recommendation III.i and Annex I.A]
 - d) Take more active measures to raise awareness specifically on the foreign bribery offence among Slovenian business associations and companies, including small and medium-sized enterprises and state-owned enterprises. [2009 Recommendation III.i, III.v., X.C and Annex II]
10. With respect to the reporting of foreign bribery, the Working Group:
- a) Urge Slovenia to remind public officials, including those working with overseas development aid and within the Ministry of Foreign Affairs, of their obligation to report instances of foreign bribery, and issue clear instructions to be followed on how to recognise indications of foreign bribery and on the concrete steps to be taken if suspicions or indications of foreign bribery should arise, including reporting the matter as appropriate to Slovenian law enforcement authorities; [2009 Recommendation XI.i. and XI.ii]
 - b) Recommends that Slovenia raise awareness within both the public and private sectors of the whistleblower protections afforded under the Integrity and Prevention of Corruption Act and the Slovene Sovereign Holdings Act, for those who report suspicions of foreign bribery; [2009 Recommendation IX]
 - c) Recommends that Slovenia take concrete steps to ensure that reports of suspected acts of foreign bribery made in good faith and on reasonable grounds are, in practice, handled efficiently and afforded the protections guaranteed by the law. [2009 Recommendation IX.iii.]
11. Regarding public advantages, the Working Group recommends that:
- a) Slovenia (i) maintain centralised statistics on the number of candidates and tenderers excluded from public procurement based on prior criminal convictions, including for foreign bribery; and (ii) issue guidance to its contracting authorities to ensure that rules on exclusion from public procurement due to foreign bribery is effectively implemented in practice or ways to verify non-EU conviction records; [2009 Recommendation XI]
 - b) The Slovene Export Development Bank promptly provide foreign bribery-specific training to its staff to better detect, report and mitigate the risk of foreign bribery. [2009 Recommendation XII; 2006 Export Credit Recommendation]

2. Follow-up by the Working Group

12. The Working Group will follow up the issues below as case law and practice develops:

- a) The application of article 262 of the Criminal Code (and article 242 in the case of employees of foreign SOEs) to ensure that all bribes to a foreign public official to obtain any use of the official's position – regardless of whether or not it falls within the official's authorised competence – constitute the basis for a foreign bribery offence;
- b) The application of the conditions laid down under Article 11(1) of the Liability of Legal Persons for Criminal Offences Act;
- c) The liability of parent companies which use foreign subsidiaries to commit acts of foreign bribery;
- d) The application in practice of freezing and confiscation measures in on-going and future foreign bribery cases, including for legal persons;
- e) The level of resources available to National Bureau of Investigation, the Special State Prosecutor's Office and the CPC, to support the effective prevention, detection, investigation and prosecution of foreign bribery;
- f) The impact of the recent budgetary constraints confronting the Slovenian judiciary on the speed of judicial proceedings;
- g) The application of territorial and nationality jurisdiction for foreign bribery, especially with regard to legal persons and the ability for Slovenia to exercise jurisdiction over parent companies for acts of foreign bribery committed abroad by its subsidiaries;
- h) The time limitations imposed on prosecutors and investigative judges (and extensions thereof) to ensure that they do not impede the effective investigation and prosecution of foreign bribery;
- i) Whether the money laundering offence can be effectively enforced where the predicate offence is foreign bribery, regardless of where the bribery occurred;
- j) The adequacy of resources available to the Office of Money Laundering Prevention to ensure it can effectively detect money laundering cases predicated on foreign bribery;
- k) The impact of the Audit Act on auditor independence, and whether independence has been supported or compromised in practice;
- l) The application of the non-tax deductibility of bribes, particularly whether Slovenian law enforcement authorities promptly inform the Tax Directorate of convictions related to foreign bribery and whether tax returns are re-examined to determine whether bribes have been deducted;
- m) The treatment of incoming MLA requests and in particular, if such requests trigger the opening of foreign bribery investigations in Slovenia.

ANNEX 1: TABLE OF PHASE 2 RECOMMENDATIONS

Phase 2 Recommendation	2009 Working Group Evaluation
<i>Recommendations for Ensuring Effective Prevention and Detection of the bribery of foreign public officials</i>	
1. With respect to <u>prevention, awareness raising and training</u> activities to promote implementation of the Convention and the Revised Recommendation, the Working Group recommends that Slovenia:	
a) ensure that measures for the prevention, detection and raising awareness of foreign bribery are included in the national anti-corruption strategy, and encourage effective coordination and implementation of these measures by the Commission for the Prevention of Corruption, or any other appropriate, independent body charged with preventing foreign bribery in the future (Revised Recommendation, Section I);	<i>Partially implemented</i>
b) take measures to raise the level of awareness of the Convention and the foreign bribery offence within the public administration, including more specialised information on foreign bribery in training programmes for police, state prosecutors, judges, the tax administration and agencies that interact with Slovenian companies active in foreign markets (diplomatic representations, and trade promotion, export credit and development aid agencies) (Revised Recommendation, Section I, II and IV; 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials);	<i>Partially implemented</i>
c) take active measures to raise awareness among Slovenian business associations and companies, including SMEs, about the Convention, the offence of foreign public officials and the government's intention to enforce it, and the liability of legal persons; and work with the accounting, auditing and legal professions to raise awareness of the foreign bribery offence and encourage these professions to develop specific training (Revised Recommendation, Sections I, II.iii and V);	<i>Partially implemented</i>
d) in relation to official export credit support, ensure that SID Bank's anti-bribery declarations and policies expressly refer to bribery of foreign public officials, and consider adherence with the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits (Revised Recommendation, Section I and II).	<i>Fully implemented</i>
2. With respect to the <u>detection and reporting</u> of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Slovenia:	
a) remind public officials of their obligation to report instances of bribery of foreign public officials, and issue clear instructions to be followed by employees of export credit, trade promotion and development aid agencies and diplomatic representations on how to recognise indications of foreign bribery and on the concrete steps to take if suspicions or indications of foreign bribery should arise, including reporting the matter as appropriate to the Slovenian law enforcement authorities (Revised Recommendation, Sections I, II and VI.iii);	<i>Partially implemented</i>
b) take measures for enhancing and promoting whistleblower protection mechanisms for public and private sector employees who report suspicious facts that may indicate foreign bribery, in order to encourage them to report such facts without fear of retaliation (Convention, Article 5; Commentary 27; Revised Recommendation, Sections I and V.C.iv);	<i>Partially implemented</i>
c) introduce a clear requirement for external auditors to report all indications of possible acts of foreign bribery to company management and, as appropriate, to corporate monitoring bodies; consider requiring external auditors, in the face of inaction after appropriate disclosure within the company, to report such suspicions to the competent law enforcement authorities; and consider whether the criteria requiring certain Slovenian companies to submit to an external audit are adequate in that they ensure that all significant Slovenian companies conducting business internationally with public sector partners submit to such an audit (Revised Recommendation, Sections I, II.iii and V.B);	<i>Fully implemented</i>

d) take additional measures to encourage Slovenian businesses active in foreign markets (i) to implement adequate internal company controls and standards of conduct, with a particular focus on the control of foreign operations and on compliance with the law criminalising foreign bribery; (ii) to develop monitoring bodies (such as audit committees) that are effective and independent from management; and (iii) to make statements in their annual reports about their internal compliance programs for the prevention and detection of foreign bribery (Revised Recommendation, Sections I, II.iii and V.C);	<i>Not implemented</i>
e) with regard to money laundering and foreign bribery, ensure that the institutions and professions required to report suspicious transactions, their supervisory authorities, as well as the OMLP itself, receive appropriate directives and training (including typologies) on the identification and reporting of information that could be linked to active bribery of foreign public officials (Convention, Article 7; Revised Recommendation, Sections I and II.iv).	<i>Fully implemented</i>
<i>Recommendations for Ensuring Effective Investigation, Prosecution and Sanctioning of Foreign Bribery and related Offences</i>	
3. With respect to the <u>investigation and prosecution of foreign bribery and related offences</u> , the Working Group recommends that Slovenia:	
a) take further steps to ensure that police investigations of the foreign bribery offence cannot be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved (Convention, Article 5; Commentary 27; Revised Recommendation, Section I);	<i>Partially implemented</i>
b) introduce the necessary legislative measures in order to clarify the roles and duties of the police, prosecutors and investigative judges in the conduct of criminal investigations; require prosecutors to more actively initiate, direct and supervise criminal investigations; simplify and streamline the process for obtaining the grant of a judicial investigation and reduce, to the extent possible, the duplication of effort and procedures between the pre-trial and trial phase (Revised Recommendation, Section I; Annex to the Revised Recommendation, Paragraph 6);	<i>Not implemented</i>
c) ensure that the evidential burden placed on law enforcement authorities for the grant of a judicial investigation is not excessive; and with regard to court delays, determine whether increased resources are required or if there are any legal obstacles that could be remedied, without removing important institutional guarantees that ensure the independence of the judiciary (Convention, Articles 5 and 6; Commentary 27; Revised Recommendation, Section I; Annex to the Revised Recommendation, Paragraph 6);	<i>Partially implemented</i>
d) ensure that sufficient resources and specialist financial and accounting expertise are provided to police and prosecutors and ensure that they are used at an early stage in the pre-trial procedure in order to enable them to more effectively detect, investigate and prosecute complex economic crimes cases, including foreign bribery offences; seriously consider extending the maximum time limits for the authorised use of special investigative techniques in criminal investigations; and adapt the existing processes for handling MLA requests to ensure that police or state prosecutors are able to scrutinise incoming MLA requests so as to assess and determine whether a separate investigation should be initiated in Slovenia (Convention, Articles 5 and 6; Commentary 27; Revised Recommendation, Section I and VII; Annex to the Revised Recommendation, Paragraph 6);	<i>Not implemented</i>
e) take measures, within the constitutional principles of the state, in order to ensure that immunity from criminal proceedings available to certain designated office holders does not impede the effective investigation, prosecution and adjudication of foreign bribery cases and related offences. These measures could include the adoption of guidelines establishing clear criteria for lifting the immunity of office holders, especially in relation to non-professional immunity (Convention, Article 5; Commentary 27; Revised Recommendation, Paragraphs I, II).	<i>Not implemented</i>
4. With respect to the <u>offence of foreign bribery</u> , the Working Group recommends that Slovenia:	
a) ensure that all bribes to a foreign public official to obtain any use of the official's position – whether or not within the official's authorised competence and whether or not for the purpose of obtaining an “official” act – constitute the basis for a foreign bribery offence (Convention, Article 1);	<i>Partially implemented</i>
b) ensure that bribery through an intermediary constitutes the basis for a foreign bribery offence (Convention, Article 1);	<i>Fully implemented</i>

c) ensure that a reference to foreign law is not needed for defining the foreign public official's duty to exercise judgement or discretion impartially, and accordingly – for the purpose of the foreign bribery offence – consider abolishing the distinction between bribery for obtaining a “proper” and an “improper” act/omission by the foreign public official, as this distinction depends on the definition of the foreign public official's duty and level of discretion as provided under foreign law, and on the strength of the impartiality requirements and safeguards defined therein (Convention, Articles 1 and 3; Commentary 3).	<i>Obsolete</i>
5. With respect to the <u>liability of legal persons</u> , the Working Group recommends that Slovenia, in relation to the Liability of Legal Persons for Criminal Offences Act:	
a) take further steps to raise awareness of police and prosecutors (e.g. through guidelines and training) about the Act to ensure that possible contraventions of the law by legal persons are actively investigated and prosecuted (Convention, Article 2; Revised Recommendation, Section I; Annex to the Revised Recommendation, Paragraph 6);	<i>Partially implemented</i>
b) undertake a review of the Act to ensure that the elements required to prove a link between the natural person that perpetrated the crime and the liability of the legal person under the Act are not obstacles to effective enforcement of the Act (Convention, Articles 2 and 3; Revised Recommendation, Section I).	<i>Not implemented</i>
6. With respect to <u>sanctions for foreign bribery</u> , the Working Group recommends that Slovenia:	
a) take measures to draw to the attention of prosecutorial and judicial authorities on the importance of applying sanctions which are sufficiently effective, proportionate and dissuasive on natural and legal persons convicted for foreign bribery offences, in particular emphasising the importance of adequate economic sanctions (Convention, Article 3; Revised Recommendation, Section I);	<i>Partially implemented</i>
b) either amend the waiver of punishment provision for cases where the briber reports solicitation by the official before the offence is discovered (i.e. for effective regret) in paragraph 3 of article 268 of the Criminal Code to ensure it does not contravene the Convention, or in some other appropriate way ensure that the law does not contravene the Convention, e.g. through issuing prosecutorial guidelines (Convention, Articles 1 and 3; Revised Recommendation, Section I);	<i>Partially implemented</i>
c) either amend the waiver of punishment provision in paragraph 2 of article 11 of the Liability of Legal Persons for Criminal Offences Act to exclude its application to the offence of foreign bribery, or in some other appropriate way ensure that the law does not contravene the Convention, e.g. through issuing prosecutorial guidelines (Convention, Articles 1, 2 and 3; Revised Recommendation, Section I);	<i>Not implemented</i>
d) consider introducing a mechanism to exclude companies convicted of foreign bribery from performing ODA contracts (Convention, Article 3 Paragraph 4; Revised Recommendation, Section VI.iii).	<i>Fully implemented</i>
7. With respect to the offence of <u>money laundering</u> , the Working Group recommends that Slovenia take measures for ensuring that it can effectively be enforced in cases where the predicate offence is foreign bribery regardless of the place where the bribery occurred; (Convention, Article 7; Commentary 28).	<i>Partially implemented</i>
<i>Follow-up by the Working Group</i>	
8. The Working Group will follow up on the issues below, as practice develops, in order to assess:	
a) whether bribery of foreign public officials covers (i) bribery of employees of foreign public enterprises regardless of their legal form, including those under the indirect control of a foreign government(s), and (ii) bribery of persons exercising a public function for any organised foreign area or entity, such as an autonomous territory (Convention, Article 1; Commentaries 14 and 18);	Continue to follow up
b) whether interpretations of the term “insignificant” in article 28 of the Liability of Legal Persons for Criminal Offences Act (giving prosecutors the discretion not to initiate criminal proceedings against a legal person) unduly restrict the liability of legal persons (Convention, Article 2);	Continue to follow up
c) the criminal and administrative sanctions, in particular fines and confiscation, imposed on natural and legal persons for (i) foreign bribery, and (ii) accounting offences (Convention, Articles 3 and 8);	Continue to follow up
d) the application of the conditions laid down in paragraph 1 of article 11 of the Liability of Legal Persons for Criminal Offences Act (reducing a sentence against a legal person where the management or supervisory body reports the perpetrator) (Convention, Articles 3 and 8);	Continue to follow up
e) the establishment of jurisdiction over legal persons when the offence takes place in part or wholly abroad (Convention, Article 4);	Continue to follow up

<p>f) whether the money laundering offence can effectively be prosecuted (i) in the absence of a prior conviction for the predicate offence of bribery, and (ii) where the perpetrator does not know from which specific offence the proceeds were derived (Convention, Article 7);</p>	<p>Continue to follow up</p>
<p>g) whether the Convention in conjunction with the Code of Criminal Procedure will provide an adequate basis for extradition in the absence of an extradition treaty with another Party to the Convention (Convention, Article 10);</p>	<p>Continue to follow up</p>
<p>h) whether the non-deductible expense provision in the Corporate Income Tax Act and Personal Income Tax Act can be applied comprehensively to all bribes contemplated under Article 1 of the Convention (1996 Recommendation, 1997 Revised Recommendation, section IV).</p>	<p>Continue to follow up</p>

ANNEX 2: LIST OF PARTICIPANTS

Public Sector

- Commission for the Prevention of Corruption
- District State Prosecutor's Office, Ljubljana
- District State Prosecutor's Office, Krško
- District State Prosecutor's Office, Celje
- District Court of Koper
- District Court of Ljubljana
- General Police Directorate, Sector for Economic Crime
- General Tax Directorate
- High Court of Ljubljana
- Local Court of Ljubljana
- Ministry of Economic Development and Technology
- Ministry of Finance
- Ministry of Foreign Affairs, including Directorate for International Development Cooperation and Humanitarian Assistance, and Directorate for Economic Diplomacy
- Ministry of Interior and Public Administration
- Ministry of Justice
- National Bureau of Investigation
- Office for Money Laundering Prevention
- Office of the State Prosecutor General
- SID (Export) Bank
- Supreme Court of the Republic of Slovenia

Private Sector

Private enterprises

- Brest d.o.o.
- Koin d.o.o.
- Krka d.d.
- RMG d.o.o.
- Salonit Anhovo d.d.
- Triglav d.d.

Business associations

- Chamber of Commerce and Industry of Slovenia
- Manager's Association of Slovenia

Legal profession

- Jadek Pensa Law Firm
- Jelenič Law Firm
- Kirm Perpar Law Firm Ltd.
- The Institute of Criminology at the Faculty of Law Ljubljana

Accounting and auditing profession

- ABC Revizija
- Deloitte
- PWC
- Slovenian Institute of Auditors
- UNIJA

Civil Society, Media and Trade Unions

- Association of Free Trade Unions of Slovenia (ZSSS)
- Confederation of Trade Unions of the Public Sector
- CNVOS
- Kultlab Celje
- Police Union of Slovenia
- Transparency International Slovenia (Integriteta Association)
- University of Maribor
- Večer newspaper

ANNEX 3: LIST OF ABBREVIATIONS

- **APMLTF** Act on the Prevention of Money Laundering and Terrorist Financing
- **CA** Companies Act 2006
- **CCIS** Chamber of Commerce and Industries of Slovenia
- **CITA** Corporate Income Tax Act
- **CPA** Criminal Procedure Act
- **CPC** Commission for the Prevention of Corruption
- **DIDCHA** Directorate for International Development and Humanitarian Assistance
- **DNFBP** Designated Non-Financial Business Professions
- **DTAs** Double Taxation Agreements
- **EU** European Union
- **EUR** Euro
- **FAIOA** Forfeiture of Assets of Illegal Origins Act
- **FATF** Financial Action Task Force
- **FDI** Foreign Direct Investment
- **FIU** Financial Intelligence Unit
- **GNI** Gross National Income
- **GRECO** Council of Europe's Group of States Against Corruption
- **IFRS** International Financial Reporting Standards
- **IPCA** Integrity and Prevention of Corruption Act
- **ISA** International Standards on Auditing
- **LLPCO** Liability of Legal Persons for Criminal Offences Act
- **MFA** Ministry of Foreign Affairs
- **MLA** Mutual Legal Assistance
- **MONEYVAL** Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism

- **MP** Member of Parliament
- **NBI** National Bureau of Investigation
- **ODA** Official Development Assistance
- **OECD** Organisation for Economic Cooperation and Development
- **OMLP** Office of Money Laundering Prevention
- **PITA** Personal Income Tax Act
- **PPA** Public Procurement Act
- **SIA** Slovenian Institute of Auditors
- **SIDB** Slovene Export and Development Bank
- **SME** Small and Medium-Sized Enterprise
- **SOE** State-Owned or State-Controlled Enterprises
- **SOL** Statute of Limitations
- **SSPO** Specialised State Prosecutor's Office
- **STR** Suspicious Transactions Reports
- **TIEAs** Tax Information Exchange Agreements
- **UN** United Nations
- **USD** United States Dollar
- **WTO** World Trade Organisation

ANNEX 4: RELEVANT LEGAL PROVISIONS

Criminal Code: Foreign Bribery Offence

Article 99 Meaning of Terms

(1) For the purpose of this Criminal Code the term public official shall mean:

- 1. a member of the National Assembly, a member of the National Council, and a member of a local or regional representative body;*
- 2. a Constitutional Court judge, a judge, a lay judge, state prosecutor, or state defender;*
- 3. a person carrying out official duties or exercising a public function with management powers and responsibilities within a state authority or an authority of a self-governing local community or any other entity governed by public law;*
- 4. any other person exercising official duties by authorisation of the law, of by-law (public authority) or of the contract on arbitration concluded on the basis of the law;*
- 5. military person designated as a such with special regulations in instances, when the act is not already criminalised as a criminal offence against military duty;*
- 6. a person in a foreign country carrying out legislative, executive or judicial function, or any other official duty at any level, providing that s/he meets the substantive criteria under points 1, 2, or 3 of this paragraph;*
- 7. a person recognised as an official within a public international organisation providing that s/he meets the substantive criteria under points 1, 2, or 3 of this paragraph;*
- 8. a person carrying out judicial, prosecutorial or other official function or duty with the international court or tribunal.*

Article 262 Giving of Bribes

(1) Whoever promises, offers or gives an award, gift or other benefit to an civil servant or a public employee for him or any third person in order for him either to perform an official act within the scope of his official duties which should not be performed, or not to perform an act which should or could be performed, or makes other abuse of his position, or whoever serves as an agent for the purpose of bribing an civil servant or a public employee, shall be sentenced to imprisonment for not less than one and not more than five years and punished by a fine.

(2) Whoever promises, offers or gives an award, gift or other benefit to an civil servant or a public employee for him or any third person in order for him either to perform an official act within the scope of his official duties which should or could be performed, or not to perform an act which should not be performed, or makes other use of his position, shall be sentenced to imprisonment for not less than six months and not more than three years.

(3) If the perpetrator under the preceding paragraphs who gave the award, gift or other benefit on request of an official or public officer, had declared such an offence before it was detected or he knew it had been detected, his punishment may be remitted, provided this is not in contravention of the rules of international law.

Criminal Code: Sanctions

Article 47 Fines

(1) A fine shall be imposed in such a manner that the number of daily instalments set in the judgment, which the perpetrator must pay, is multiplied by the daily instalment amount set by the court by taking the pecuniary circumstances of the perpetrator into account.

(2) The number of daily instalments may amount to a minimum of ten and a maximum of three hundred and sixty daily instalments, while for criminal offences committed out of greed, this may amount to a maximum of one thousand five hundred daily instalments. The court shall fix the daily amount in accordance with the general rules on sentencing, with the exception of circumstances referring to the pecuniary circumstances of the perpetrator.

(3) The court shall fix the daily amount by taking into account the perpetrator's pecuniary circumstances on the basis of data on his income, other revenues, property value, his average maintenance costs and his family expenditure. The daily amount may not exceed EUR 1,000.

(4) In fixing the daily amount, the court shall base its decision on data which is no older than one year from the time the sentence was imposed. If the court is not able to acquire data for fixing the daily amount, or their acquisition would cause disproportionate difficulties or delay, or in the event that a punitive order is issued, the daily amount shall be fixed on the basis of the data available and other pecuniary circumstances established with regard to the perpetrator.

(5) In the judgment, the court shall set the time limit for the payment of a fine, which may not be shorter than fifteen days and not longer than three months. Where justified, the court may allow the perpetrator to pay his fine by instalments, with the time limit for payment not exceeding two years. If the perpetrator fails to pay an instalment, the court may, by way of a decision, order immediate payment within a time limit not exceeding three months.

Criminal Code: False Accounting Offence

Article 235 Forgery or Destruction of Business Documents

(1) Whoever enters false information or fails to enter any relevant information into business books, documents or files which he is obliged to keep under the statute or regulations derived therefrom and which are essential to the operation of business with other legal or natural persons, or intended for making decisions concerning economic or financial activities, or whoever certifies such a book, document or file containing false information with his signature or renders possible the creation of such a book, document or file, shall be sentenced to imprisonment for not more than two years.

(2) Whoever uses a false business book, document or file as truthful, or whoever destroys or hides books, documents or files under the preceding paragraph or substantially damages or renders the same useless, shall be punished to the same extent.

(3) Any attempt to commit the offence under paragraphs 1 and 2 of this Article shall be punishable.

Liability of Legal Persons for Criminal Offences Act

Article 4 Grounds for the Liability of a Legal Person

A legal person shall be liable for a criminal offence committed by the perpetrator in the name of, on behalf of or in favour of the legal person:

- 1. If the committed criminal offence means carrying out an unlawful resolution, order or endorsement of its management or supervisory bodies;*
- 2. If its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence;*
- 3. If it has at its disposal unlawfully obtained property benefit or uses objects obtained through a criminal offence;*
- 4. If its management or supervisory bodies have omitted due supervision of the legality of the actions of employees subordinate to them.*

Article 11 General Reasons for Reducing a Punishment or Withdrawal of a Punishment

- 1. If after the committing of a criminal offence, for which there is grounds for the liability of the legal person pursuant to point four, article four of this law, the management or supervisory body voluntarily reports the perpetrator, before the offence was uncovered, the legal person may be given a reduced punishment.*
- 2. If after the committing of a criminal offence, for which there is grounds for the liability of the legal person pursuant to point four, article four of this law, the management or supervisory body voluntarily reports the perpetrator, before the offence was uncovered and immediately orders the restitution of unlawfully obtained property benefits or provides indemnification for damages caused through the offence or reports information on the grounds for liability for other legal persons, the legal person's punishment may be withdrawn.*

Article 13 Fines

- 1. The fine which may be prescribed may not be less than 10.000 EUR or more than 1,000.000 EUR.*
- 2. In the case of the legal person's criminal offence having caused damage to another's property, or the legal person having obtained unlawful property benefit, the highest limit of the fine imposed may be two hundred times the amount of such damage or benefit.*

Article 26 Punishments for Criminal Offences

- 1. For criminal offences in the preceding article, legal persons are punished:*
 - (1) for criminal offences for which a punishment of up to three years' imprisonment for the perpetrator is prescribed, with a fine of up to 500.000 EUR or up to one hundred times the amount of damage caused or property benefit obtained through the criminal offence;*
 - (2) for criminal offences for which a punishment of over three years' imprisonment for the perpetrator is prescribed, with a fine of at least 50.000 EUR or up to two hundred times the amount of damage caused or property benefit obtained through the criminal offence;*
- 2. For criminal offences for which a punishment of five years' imprisonment or harsher punishment is prescribed for the perpetrator, a punishment of confiscation of property may be imposed instead of a fine.*
- (3) For criminal offences under the first paragraph of this Article, a punishment of winding-up of the legal person may be applied instead of a fine if the conditions under Article 15 of this Act are met.*

State Prosecutor's Office Act

Article 192 Jurisdiction

(1) The most serious criminal acts whose prosecution calls for a special organisation and qualifications of state prosecutors and the highest level of performance shall be dealt with by the Specialised State Prosecutor's Office of the Republic of Slovenia (hereinafter: SOSP).

The SOSP shall be competent for prosecution of perpetrators of criminal acts:

- against the economic sector, subject to a punishment of five years of imprisonment or to a more severe punishment, except commercial fraud, issuing of a bad cheque and abuse of bank or credit card, use of counterfeit bank, credit or other card;*
- subject to a punishment of ten years of imprisonment or a more severe punishment if the act has been committed within a criminal association;*
- accepting a bribe, giving a bribe, accepting benefits for illegal intermediation, giving of gifts for illegal intermediation, unlawful acceptance of gifts, unlawful giving of gifts;*
- terrorism, financing terrorism, instigation and public glorification of terrorist acts, recruitment and training for terrorist acts;*
- establishing slavery relations and human trafficking.*

[...]

(3) The SOSP shall be competent for the prosecution of perpetrators of criminal acts associated with the criminal acts from the previous paragraph if the same evidence is presented (associated cases).

(4) The SOSP shall have exclusive competence for directing the investigation, filing and representing the motions for temporary securing and seizure of property of illegal origin pursuant to statutory law.

(5) In the event of doubt concerning the designation of a competent state prosecutor's office, the SOSP shall be deemed competent to pass the decision.

Article 198 Informing, Assignment and Transfer of Matters

(2) The head of the district state prosecutor's office with territorial jurisdiction and/or head of the competent administration and/or Police unit shall immediately inform the head of the SOSP on matters in the competence of the SOSP according to the second paragraph of Article 192, and shall submit to him the files of the matter including all collected evidence without delay.

Integrity and Prevention of Corruption Act

Article 23 Reporting of Corruption and Protection of Reporting Persons

(1) Any person may report instances of corruption in a State body, local community, by a holder of public authority or other legal persons governed by public or private law, or a practice by a natural person for which he believes that it contains elements of corruption, to the Commission or any other competent body. At the reporting person's request, the Commission and other competent authorities shall notify the reporting person of the measures or the course of action taken in this respect. This provision shall not encroach on the reporting person's right to inform the public of the corrupt practice in question...

Article 25 Measures to Protect the Reporting Person

(1) If the reporting persons have been subject to retaliatory measures as a consequence of filing the report referred to in Articles 23 and 24 of this Act, and this has had an adverse impact on them, they have the right to claim compensation from their employer for the unlawfully caused damage...

Auditing Act: Independence

Article 45 Prohibition on the Auditing of an Individual Legal Person

(1) An audit company shall be prohibited from auditing an individual legal person if:

- 1. it holds investments in that legal person;*
- 2. if that legal person holds investments in the audit company;*
- 3. if the persons related to the legal person are: close family members of the members of the management or supervisory board or the certified auditors of an audit company; joint indirect or direct holders of a qualifying holding in the audit company...*

Article 46 Assumption of a Management Function

A certified auditor or key audit partner that audits financial statements may not assume the function of member or consultant of a management body or head of an accounting and/or financial department at the legal person being audited until at least two years have passed following the cessation of audit work as a certified auditor or key audit partner.