



ARGENTINA: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 3 September 2010.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) *Summary of Findings*

1. In June 2010, Argentina presented its Written Follow-Up Report, outlining its responses to the recommendations and follow-up issues identified by the Working Group on Bribery at the time of Argentina's Phase 2 examination in June 2008. Since Phase 2, Argentina has neither prosecuted nor adjudicated any case of bribery of a foreign public official, therefore the follow-up issues remain open.

2. The Working Group welcomed the information provided by the Argentine authorities in the course of this follow-up evaluation and recognised Argentina's efforts to implement the Phase 2 recommendations. As concerns the Phase 2 examination, the Working Group considers that Argentina has satisfactorily implemented 9 out of the 29 recommendations, while 6 recommendations have been partially implemented, 12 recommendations have not been implemented and 2 recommendations were converted to follow-up issues for consideration once Argentina has relevant case law.

3. With respect to raising awareness of the foreign bribery offence, the Working Group acknowledged efforts by Argentina to continue public and private sector awareness raising activities already in place in Phase 2, but noted that additional efforts were required in the public sector, specifically in relation to trade promotion personnel and tax inspectors; and in the private sector in relation to the accounting, auditing and legal professions (*Recommendation 1*). The Working Group noted the strong measures taken by the Argentine Ministry of Foreign Affairs, International Trade and Worship which maintains ongoing awareness raising and training activities, including a yearly seminar at the Foreign Service Institute with content on the OECD Anti-Bribery Convention and annual updated reminders to Argentina's overseas missions on foreign bribery reporting obligations.

4. In relation to the detection and reporting of foreign bribery, Argentina has not adopted specific measures to protect public and private sector whistleblowers (*Recommendation 2(b)*). With regard to its export credit agencies (*Recommendation 1(d)*), the Working Group heard that as Argentina's export credit agencies are undergoing serious structural change, Argentina has not adopted anti-bribery policies with regard to export credit operations and did not consider adhering to the 2006 OECD Recommendation on Bribery and Officially Supported Export Credits. The Working Group therefore requested Argentina to report back within one year on the status of its export credit agencies.

5. The Working Group welcomed amendments to the Federal Criminal Procedure Code outlined by Argentina in its Written Follow-Up Report. These amendments serve to address the Working Group's concerns about procedural delays and inefficiencies in investigation and prosecution that could adversely affect cases of bribery of foreign public officials (*Recommendation 3(a), (b), (e)*). In relation to the Working Group's concerns about the limitation period applicable to the foreign bribery offence (*Recommendation 7*), the Working Group considered that the above measures to reduce procedural delays and inefficiencies served to address these concerns. These recommendations may need to be reconsidered once Argentina successfully prosecutes an individual or entity for the foreign bribery offence, along with the issue of ensuring Article 5 factors do not influence investigations and prosecutions (*Recommendation 3(d)*). The Working Group also welcomed Argentina's efforts to put in place a national register of

companies (*Recommendation 3(f)*), which should be a useful resource in future investigations and prosecutions involving corporate entities.

6. Argentina has also taken regulatory and practical steps to enhance the capacity of the Office of the Prosecutor General (*Recommendation 3(c)*) with a recent directive establishing an Office of Coordination for Crimes against the Public Administration (OCDAP) (foreign bribery is included in the category of crimes against the public administration). However, as this initiative was relatively recent it could not be considered to completely address the issue of ensuring adequate resources for investigation and prosecution of foreign bribery cases.

7. During Argentina's Phase 2 review, the Working Group on Bribery expressed concerns about the scope and content of the foreign bribery offence contained in the Argentine Criminal Code. These included the need for an autonomous definition of a foreign public official (*Recommendation 4*), provisions for liability of legal persons (*Recommendation 5*) and nationality jurisdiction in foreign bribery cases (*Recommendation 6*). The Working Group also made recommendations in relation to ensuring that legal persons are subject to effective, proportional and dissuasive sanctions for foreign bribery, including monetary sanctions and extending grounds for debarment (*Recommendations 9(a), (d)*). The Working Group welcomed reports from Argentina of the recent introduction to Congress, on 11 May 2010, of a series of draft bills proposing amendments to the Criminal Code which could serve to address these recommendations. However, the Working Group noted that at this point Argentina has still not effectively implemented these recommendations, and requested Argentina to report back to the Group within one year on the progress of this legislation. The Working Group did, however, consider that Argentina had satisfactorily implemented its recommendation to ensure that seizure and confiscation measures could be applied to legal persons, in light of information provided about a case where these measures had been used effectively (*Recommendation 9(b)*).

8. As concerns accounting, auditing and internal controls, Argentina updated the Working Group that the International Financial Reporting Standards were being applied in stages, starting in 2010, and would be wholly implemented by 2012. The Working Group welcomed this positive step but noted that the issue should be revisited in Argentina's Phase 3 evaluation. There was no update on consideration of whether requirements to submit to external audit were adequate (*Recommendation 10(b)*), nor was there any action taken to ensure that auditors and *síndicos* are required to report all suspicions of foreign bribery (*Recommendation 10(c)*).

9. With regard to the non-tax deductibility of bribes, the Working Group noted that at the same time that its Phase 2 evaluation was considered by the Working Group in 2008, Argentina published an External Note which referred in general to Argentina's adherence to the OECD Anti-Bribery Convention and related instruments on non-tax deductibility of bribes to foreign public officials. At that time, it was unclear whether the Note was legally binding, and there were concerns that its content did not explicitly prohibit the deductibility of bribes paid by Argentine citizens or companies to foreign public officials, for example, by referring to the foreign bribery offence contained in the Criminal Code (*Recommendation 11*). The Working Group welcomed clarification from Argentina in the course of discussions about the Written Follow-Up Report that the External Note is legally binding. However, the Working Group remains concerned that the content of the External Note does not explicitly prohibit the deductibility of bribes paid by Argentina citizens or companies to foreign public officials.

10. In the area of anti-money laundering (AML), Argentina is yet to extend AML reporting obligations to the legal and accounting professions (*Recommendation 12(b)*) and expand the money laundering offence to include self-laundering (*Recommendation 12(c)*). There have, however, been positive developments. A draft bill to amend the AML legislation was presented to the presidential legal advisor's office on 14 May 2010, but is yet to pass Congress. The Working Group also welcomed the progress

accomplished by Argentina by way of communications issued in 2008 and 2009 by the Argentine Central Bank to financial and foreign exchange institutions broadening reporting requirements in relation to politically exposed persons that were previously limited to only public officials (*Recommendation 12(a)*).

11. The Working Group noted that it was not possible to ascertain whether certain recommendations in Argentina's Phase 2 report had been implemented in the absence of concluded cases involving the offence of bribery of foreign public officials. The Working Group therefore decided that recommendations relating to ensuring that mutual legal assistance requests can be granted in cases where legal persons are subject to civil or administrative liability (*Recommendation 8*) and that sanctions imposed by the courts are effective, proportionate and dissuasive (*Recommendation 9(c)*) should be converted to issues for follow-up as cases emerge.

b) Conclusions

12. Based on the findings of the Working Group on Bribery with respect to Argentina's implementation of its Phase 2 recommendations, the Working Group concluded that Argentina has satisfactorily implemented Recommendations 3(a), 3(b), 3(d), 3(e), 3(f), 3(g), 7, 9(b) and 12(a); that Argentina has partially implemented Recommendations 1(a), 1(b), 1(c), 2(a), 3(c) and 11; and that Argentina has not implemented Recommendations 1(d), 2(b), 4, 5, 6, 9(a), 9(d), 10(a), 10(b), 10(c), 12(b) and 12(c). Recommendations 8 and 9(c) were converted to follow-up issues for consideration once Argentina had concluded relevant cases.

13. The Working Group invites Argentina to report orally on the implementation of Recommendations 1(d), 4, 5, 6, 9(a) and 9(d) within one year of the review of the written follow-up report (*i.e.* in June 2011).

WRITTEN FOLLOW UP TO PHASE 2 REPORT - ARGENTINA

Name of country: Argentina

Date of approval of Phase 2 Report: 20 June 2008

Date of information: 26 May 2010

Part I: Written Follow-Up to Phase 2 Report

Part I (a): Recommendations for Action in Phase 2

Note: For ease of reference, recommendation 1 of this report corresponds to Paragraph 1 on page 64 of the Phase 2 Report and so on.

Text of recommendation 1(a):

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Argentina:

- a) provide further training to raise the level of awareness of the foreign bribery offence within the public administration and among those agencies that can play an important role preventing and detecting foreign bribery by Argentine companies active in foreign markets, including trade promotion and diplomatic personnel and tax inspectors (Revised Recommendation, Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

Shortly after the Phase 2 examination of Argentina on June 2008, all government areas dealing with different aspects of transnational bribery were informed of the results of the Phase 2 examination and recommendations of the OECD Working Group. The recommendations of the OECD Working Group were translated into Spanish in order to facilitate future outreach activities aimed to both public and private sectors.

Exchanges of views on the recommendations among the relevant government areas started in an informal way after the release of the Phase 2 report. Formal communications were sent by the Foreign Ministry to the Ministry for Justice and the Federal Tax Administration (AFIP) to address particular aspects of the recommendations.

Towards the preparation of this Post Phase 2 oral report and this written up date on the implementation of the Phase 2 recommendations, several initial meetings were held with the participation of senior officials of the Ministry of Justice, the Anticorruption Office (OA) and the Ministry of Foreign Affairs. After those preliminary meetings, an informal inter-institutional task force was established, composed of representatives from relevant areas such as the Office of the Legal Adviser and the Division

of Legal Affairs of the Ministry of Foreign Affairs, International Trade and Worship, the Anticorruption Office, the Coordination for International Affairs of the Ministry of Justice, the Central Bank of Argentina, the “Inspección General de Justicia” (IGJ), the National Representation to FATF-GAFI, GAFISUD, LAVEX-CICAD-OAS, the Under-Secretariat for Criminal Policy of the Ministry of Justice, the Witness Protection Program of the Ministry of Justice, the Division for Mutual Legal Assistance of the Ministry of Justice, and the Financial Information Unit (UIF).

The Coordination for International Affairs of the Ministry of Justice acted as an informal secretariat of the said task force. Thanks to a previous analysis made by the Anticorruption Office, responsibilities belonging to the relevant institutions and steps taken to be informed by each institution were determined. The task force helped to establish a flexible and speedy communication channel among all parties concerned. Each member of the task force shared with the other members the relevant information produced by the corresponding institution that was needed to prepare the present report. Once established, communications between all this government areas continued, so as to permit a permanent up date of relevant news or legislation concerning the Convention and fulfillment of its goals within our legal system.

The document prepared for the Post Phase 2 oral follow up report gave us the preliminary structure to prepare the present, more detailed, written report. Earlier this year the Anticorruption Office started to update the report, requesting new developments and information to the institutions involved in the 2009 informal task force. Later on, and in order to support the actions being taken by the Anticorruption Office and with the purpose of having an updated report in due course, a letter was sent from the Ministry of Foreign Affairs to the Head of Cabinet Office for further distribution to all areas involved. The letter referred to the recommendations made by the working group as part of the Phase 2 evaluation and to the obligations Argentina has to fulfill as a State Party to the OECD anti bribery Convention.

Additionally, during April-May 2009, a seminar on diplomatic privileges and immunities and on different aspects of transnational crime was organized at the Foreign Service Institute (that is the academy where Argentina’s future diplomats are trained). The seminar’s program included a lecture dedicated to the OECD anti bribery Convention. As in the previous edition of this seminar (2008), the objective was to raise awareness and provide information on the relevant provisions of the Convention and on the duties and responsibilities of Argentine diplomats regarding the fight against foreign bribery. It is envisaged that a new edition of this seminar will take place during the second semester of 2010.

In order to achieve a better efficiency in the investigation of cases of transnational bribery the Attorney General has instructed the specific areas (Fiscalía General de Capacitación y Estudios Superiores) to include training in transnational bribe, in the trainee topics of the national prosecutors attorneys and other qualified personnel. The courses are planned to be realized in the second semester of 2010 or in the first semester of 2011.

If no action has been taken to implement recommendation 1(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(b):

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Argentina:

- b) provide support for private sector initiatives such as seminars, conferences and technical assistance targeted at the business sector on foreign bribery issues, and, in cooperation with business and other relevant organisations, assist companies in engaging in preventive efforts (Revised Recommendation, Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

a) The Ministry of Foreign Affairs has included the information on the OECD Convention on combating bribery in international business transactions in its official trade website “Argentina Trade Net”. This site also offers several links to other official agencies.

The booklet with information on the OECD Convention on combating bribery in international business transactions is also included in the website of “Fundación Exportar”.

Both sites are a useful tool for diplomatic, consular and trade offices abroad as well as to Argentine companies that take part in trade missions and other promotional activities coordinated and organized by the Ministry all year long.

It is envisaged that the information included in those sites will be updated, as necessary, on the light of the new version of the “Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions” adopted by the Council of the OECD on 26 November 2009.

b) It is scheduled for next June 10/11th 2010, an informal seminar organized by the Follow up Coordination of the Interamerican Convention Against Corruption, which has similar provisions on foreign bribery, aimed to discuss foreign bribery and its relation with transnational enterprises, on a legislative basis and also related with Argentine cases such as *IBM*, *Siemens* and *Skanska*. It is expected that members of the Judiciary, prosecutors, together with Ministry of Justice officials as well as senior officials from the private sectors companies and NGO’s with expertise on the matter, will take part in an exchange of opinions in a set of different panels. The idea is to conclude the meeting with a document were different opinions are included as well as consensus obtained on the different issues raised during discussions.

If no action has been taken to implement recommendation 1(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(c):

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Argentina:

- c) work with the accounting, auditing and legal professions to raise awareness of the foreign bribery offence and its status as a predicate offence for money laundering, and encourage those professions to develop specific training on foreign bribery in the framework of their professional education and training systems (Revised Recommendation, Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

a) In order to promote the content of the Convention, The Federal Tax Administration (*Administración Federal de Ingresos Públicos –AFIP-*), has published on the website of the AFIP a document that describes:

- the criminalization of international bribery,
- the importance of fostering transparency in international business,
- a description of the OECD and the Convention,
- the regulatory framework in the Criminal Code of the Republic of Argentina,
- reflection in the tax rules,
- penalties established,
- responsible persons that must comply with the convention.

Moreover, the Directorate of Services to Taxpayers and Customs Users has produced a brochure related to international bribery, the contents of which are similar to those of the web site.

Finally, it is due to inform that the Training Directorate of this Federal Administration has included the topics relating to the Convention in its regular activities for mass and systematic dissemination. Particularly, these issues are instructed in:

- Workshops on Ethics.
- Introductory courses for entrants to the body.
- Joint Program for the Prevention of Money Laundering and Terrorism Financing (in which the issue of Bribery has been included).

b) On March 19th, 2010 the *Federación Argentina de Consejos Profesionales de Ciencias Económicas* (the national professional accounting body in Argentina) issued an exposure draft proposing to adopt the International Financial Reporting Standards (IFRS) for SMEs as an option for all entities not required to use full IFRSs. The SME exposure draft proposes that those private entities should also be permitted to use accounting standards that the Federation has issued or may issue in the future. Full IFRSs will be required in Argentina for all companies that publicly offer equity or debt securities starting in 2012, with an option to use IFRSs in 2011 or, in some cases, 2010. (See <http://www.iasb.org/NR/rdonlyres/8A878738-A9DB-420F-85C3-8F0EAD3B55F8/0/sme042010pdf.pdf>)

If no action has been taken to implement recommendation 1(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(d):

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Argentina:

- d) require BICE to adopt, and ensure CASCE adopts, anti-bribery policies with regard to export credit operations; and seriously consider adhering to the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits (Revised Recommendation, Paragraph I).

Actions taken as of the date of the follow-up report to implement this recommendation:

Initial contacts with BICE authorities have been started, so as to explore and eventually adopt this specific OECD recommendation. Further information concerning the adoption of the recommendation hopefully will be obtained in the course of Phase 3 Evaluation Process concerning United States of America, were Argentine experts are included. In the course of those meetings, we will obtain more details on how the U.S export credit agency, the Export-Import Bank or the United States (Ex-Im), works, so as to learn from its best practices and gain from their experience in order to adopt this mechanism to our legal system.

If no action has been taken to implement recommendation 1(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(a):

2. With respect to the detection and reporting of suspected foreign bribery to the competent authorities, the Working Group recommends that Argentina:

- a) remind public officials, including diplomatic missions, trade promotion, and export credit and tax administration personnel, of their obligation under art. 177(1) CPC and art. 2 of the Reporting Decree to report alleged offences of foreign bribery directly to competent law enforcement officials; ensure that administrative reporting duties laid down in other instruments reflect and are compatible with the CPC and Reporting Decree; and consider whether sanctions for non-reporting of alleged foreign bribery are appropriate and effective (Revised Recommendation Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

The Ministry of Foreign Affairs has included information on the OECD Convention on combating bribery in international business transactions in its official trade website “Argentina Trade Net”. This site also offers several links to other official agencies.

The booklet with information on the OECD Convention is also included in the website of “Fundación Exportar”.

Both sites are a useful tool for diplomatic, consular and trade offices abroad as well as to Argentine companies that take part in trade missions and other promotional activities coordinated and organized by the Ministry of Foreign Affairs all year long.

Additionally, in May 2010 the Ministry of Foreign Affairs sent to its internal departments and to all embassies, consulates and trade offices around the world an annual reminder of their duty to give advice, assistance and information to Argentine companies seeking businesses abroad about the fight against foreign bribery. They are also reminded of their obligation to report alleged offences of foreign bribery to competent authorities.

If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(b):

2. With respect to the detection and reporting of suspected foreign bribery to the competent authorities, the Working Group recommends that Argentina:

- b) adopt comprehensive measures to protect public and private sector whistleblowers in order to encourage employees to report suspected cases of foreign bribery without fear of retaliation. (Revised Recommendation Paragraph I).

Actions taken as of the date of the follow-up report to implement this recommendation:

Concerning whistleblower protection, it is necessary to point out the fact that whenever any person gives notice of a crime related to organized crime, such as foreign bribery (see, art. 8.2 Convention against Organized Transnational Crime), he/she can be given protection under the Witness Protection Program of the Ministry of Justice, Human Rights and Security (law 25.764). Even though this Program is organized under the Ministry of Justice supervision, it can be carried out by an express petition submitted by a judiciary authority. It has demonstrated flexibility in order to grant protection against retaliation in different criminal cases.

The Program has no limitation in handling its resources in order to permit or include any witness to be given protection and resources, such as relocation, assistance to obtain new jobs, new identity and other possibilities in order to avoid retaliations (such as giving support to relatives and family), even in

corruption related offences, like it happened in a recent high profile case, involving many senators in a bribery scheme concerning a labor law reform back in year 2000.

During 2008, the Program has obtained better facilities, personnel, technical equipment, mobility and communication in order to carry out its duties, especially in a vast country such as Argentina, when relocation of witnesses is necessary, so as to ensure that no harm can be made to people under protection of the Program. Improvements in communication technology has also been a priority, as it is a very valuable contribution, so as to permit a permanent contact with any person under the Program supervision in order to provide them with an instant response if an emergency of any kind requires it.

If a foreign bribery case comes along, there is an adequate legal frame to grant protection to any witness who gives notice of this crime but, more important, there exists technical and material facilities in order to achieve this task with a better chance to avoid any harm or difficulties to a person involved in such a case.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(a):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Argentina:

- a) continue and accelerate its efforts to address systemic deficiencies in enforcement with regard to serious economic crime such as foreign bribery (Convention, Article 5; Revised Recommendation Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

In relation to systemic deficiencies in enforcement with regard to serious economic crime, and existing applicable rules concerning resolution of complex cases on their merits, there has been some recent legal amendments to the Federal Criminal Procedure Code aimed in that direction.

This includes legal reform concerning the creation of a new Cassation Chamber in the City of Buenos Aires, new rules concerning the appointment of surrogate judges, petitions to decline magistrate's jurisdiction on a case and amendments on the appeals procedure, oriented to avoid usual delays due to unnecessary technicalities.

The relatively short period of time this legislation has been in force does not permit yet to make a clear assessment on how it has helped to reduce delays in complex criminal cases. However, there is a clear compromise of the Argentine Government to address the implications on this issue. To that end, a more comprehensive reform process of the federal criminal procedure code is underway.

Within the Ministry of Justice, Human Rights and Security, the National Direction of International Cooperation and Judiciary Systems is handling different initiatives in order to address issues concerning

investigation and prosecution of complex criminal cases.

- a) There is a proposed agreement within Mercosur in order to establish joint investigative teams in complex crimes (including corruption), submitted to the Plenary of Ministers of Justice in Porto Alegre, Brazil, in November 2008 and has been signed last Plenary Meeting that took place on May 7th 2010.
- b) In November 2006 the Argentine Delegation negotiated an agreement concerning distribution of illicit confiscated gains between State members of Mercosur, which includes, among others, corruption related offences.
- c) Within the Iberoamerican Minister of Justice's Conference, significant progress has been achieved in the harmonization of good practices and common tools and mutual legal assistance concerning transnational organized crime, which includes corruption, aiming specifically to joint investigation teams and simplified extradition systems.
- d) There is significant work in progress concerning reception of new technologies in order to facilitate videoconference as a way to facilitate mutual legal assistance in a way to facilitate these devices for complex criminal investigation allowing, for example, to hear witnesses or defendants which would otherwise demand expensive delays.

If no action has been taken to implement recommendation 3(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(b):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Argentina:

- b) take all necessary measures to ensure that foreign bribery allegations are promptly detected, investigated and prosecuted as appropriate (Convention, Article 5, Revised Recommendation Paragraphs I and II);

Actions taken as of the date of the follow-up report to implement this recommendation:

a.) In relation to the case of an Argentine company involved in a possible foreign bribery case in a South East Asia country, press articles in the said country reported in the late months of 2008 that the local authorities have apparently closed the investigation in the case. The Argentine Government has requested mutual legal assistance on this case. It has also requested official information several times about the case through diplomatic channels during 2009 and 2010. No substantial answer has been received yet from the local authorities.

In relation to the mutual legal assistance requested to an European country on this case, the answer received has indicated that despite of the complementary information sent by the Argentine Judge, it was not possible to proceed with the said request.

b.) In relation to the Argentine chapter of the Siemens case, there is a criminal investigation under way in Argentina.

As part of a mutual legal assistance request sent to the German authorities, a judicial team visited Munich in June 2009 to get in contact and receive information from the Prosecutor that follows the case in that city.

c.) There is also a new investigation going on about a possible new case of foreign bribery involving Argentine companies making business in Bolivia.

During the first months of 2009, it was reported that the Bolivian authorities have freeze payments to two Argentine companies in relation to an investigation concerning an apparent bribe payment to former officials from the state owned oil company in Bolivia (YPFB). An article on this issue also appeared in the Argentine press in March 2009.

Apparently those two Argentine companies were sub-contractors of an Argentine-Bolivian joint venture that was formed for the construction of a natural gas plant near Santa Cruz de la Sierra. The joint venture is under investigation in Bolivia in relation to some contracts signed by a former chair of YPFB who was accused of several crimes, removed from his position and detained in the framework of criminal proceedings for fraud against the State. The press also reported that the Bolivian government have expressed that they will make a decision on the contract with the joint venture once the investigation has concluded. The joint venture had other sub-contractors in addition to the Argentine companies.

The Argentine Foreign Ministry sent the said information to the Attorney General Department in June 2009 for evaluation and decision about the merits to open an investigation. The Attorney General sent the information to the competent Prosecutor, who in time promoted the proceedings before the Criminal and Correctional Federal Tribunal Nro. 8. The said Tribunal requested information to the Bolivian authorities, through the Ministry of Foreign Affairs, about the investigation going on in Bolivia related to several Argentine companies. A response from the Bolivian authorities is still waited.

If no action has been taken to implement recommendation 3(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(c):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Argentina:

- c) ensure that adequate resources, including specialised and experienced investigative judges, are made available for foreign bribery investigations and prosecutions; and take measures to provide increased continuity of investigative personnel for particular cases, including judges and prosecutors, to the greatest degree possible (Convention, Article 5; Revised Recommendation Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

On July 17, 2009, the Attorney General of Argentina created the Office of Coordination for Crimes against the Public Administration (Oficina de Coordinación y Seguimiento en materia de Delitos contra la Administración Pública -OCDAP) to collaborate with the prosecutors or district attorneys in investigations of corruption. Among its aims are the following: 1) To realize a follow-up of the investigations of corruption. 2) To propose strategies of efficient pursuit, 3) To elaborate protocols to the prosecutors for investigation of corruption, 4. To realize reports on the conditions of these investigations in the different places of the country, 5. To propose to the General Attorney some actions to improve these investigations.

<http://www.mpf.gov.ar/Accesos/Dcap/Resoluciones/PGN-0086-2009-001.pdf>

The Attorney General's Office signed on September 17, 2009 an agreement of technical cooperation with the NGO Center of Investigation and Prevention of Economic Criminality (Centro de Investigación y Prevención de la Criminalidad Económica -CIPCE) in order to develop programs and joint activities to improve performance levels in the investigation and prosecution of crimes related to corruption and economic criminality, specially for the strengthening of the capacities of crime's financial investigation and asset recovery of illicit origin. http://www.mpf.gov.ar/Accesos/Dcap/Convenios/Convenios_CIPCE-ASIJ/PGN-0119-2009-001.pdf

Also an agreement of cooperation was signed by the Civil Association for Equality and Justice (Asociación Civil para la Igualdad y la Justicia –ACIJ), a civil association whose purpose is to propose initiatives to promote the implementation of best standards and institutional practices in investigation of corruption, according to the constitutional and international commitments of The Argentine Republic.

http://www.mpf.gov.ar/Accesos/Dcap/Convenios/Convenios_CIPCE-ASIJ/PGN-0120-2009-001.pdf

The Attorney General ordered the prosecutors that, in the investigations of corruption, drug trafficking, money laundering, human traffic, tributary evasion and other economic crimes, they must to realize a patrimonial investigation of each one of the involved persons. In addition, he arranged that the OCDAP elaborates a protocol of patrimonial investigation (Res. PGN 134/09).

<http://www.mpf.gov.ar/Accesos/Dcap/Resoluciones/PGN-0134-2009-0012.pdf>

The Attorney General Office, represented by the OCDAP prosecutor, has recently informed the Criminal Legislative Commission of the Deputy Chamber about several legislative initiatives oriented to modernize criminal legislation concerning bribery and other related offences.

http://www.mpf.gov.ar/accesos/dcap/informacion_de_interes/proyecto_dictamen.pdf
http://www.mpf.gov.ar/accesos/dcap/informacion_de_interes/nucleos_centrales.pdf
http://www.mpf.gov.ar/accesos/dcap/informacion_de_interes/cuadro_comparativo_definitivo.doc

Last, in Argentine proceedings concerning bribery in a computer and software sale by International Business Machines Corp. to Argentina's National Bank (Banco de la Nación Argentina), former public officials and top management of the IBM Corp. subsidiary pleaded guilty on counts of fraud and bribery in the case so as to avoid trial, accepting a suspended sentence ranging between two and three year imprisonment sanctions and also giving back money already freezed to the Argentine State. Federal Trial Court n° 3 has confirmed sanctions last May 12th, 2010.

If no action has been taken to implement recommendation 3(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(d):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Argentina:

- d) ensure that factors listed in Article 5 of the Convention do not influence investigation or prosecution in foreign bribery cases; and consider further measures to limit the disclosure of confidential information about individual cases to government agencies or officials not involved in the investigation (Convention, Article 5; Revised Recommendation Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

Legality principle, as opposed to prosecution discretion, is the rule concerning enforcement of all criminal conducts related with complex economic crime, including foreign bribery. No special consent of any other authority, or considerations of public interest are required to start, continue or close investigations. Factor listed in Article 5 of the Convention do not influence investigation or prosecution in foreign bribery cases.

If no action has been taken to implement recommendation 3(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(e):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Argentina:

- e) review applicable rules to ensure that *incidentes* and appeals can be efficiently resolved in complex foreign bribery cases, and provide adequate training to judges and prosecutors concerning the management of such cases (Convention, Article 5; Revised Recommendation Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

By law 26.371 (Official Gazette May 30th, 2008) a new criminal court has been established, the *Cámara Nacional de Casación en lo Criminal y Correccional de la Capital Federal* (Cassation Chamber of the City of Buenos Aires), which will be divided into three different courts, and whose members are still in selection process in the Magistrate's Council. This new court will have jurisdiction in relation to appeals in ordinary criminal cases in Buenos Aires whenever there is no federal interest involved, allowing the existing Federal Cassation Chamber to judge and sentence cases with a federal substance –such as foreign

bribery- in a more diligent manner.

By law 26.372, new rules have been established in order to appoint surrogate judges, so as no delays on this issue could avoid a prompt judging in complex cases when they are on the trial stage.

By law 26.373 an amendment has been made to the Federal Procedure Code (section 353) establishing that pending appeals to Federal and National Cassation Chambers and the Supreme Court, will not enable a case to be submitted to a trial court. This amendment is aimed to avoid usual delay maneuvers on technicalities by defendant's lawyers trying to make complex cases be kept in the investigative phase of our criminal proceedings (*instrucción*) where usually statute of limitation time limits are overpassed.

Also, law 26.374 has amended different aspects of the appeals proceedings at a federal level (sections 439, 453, 454, 455, 464, 465 CPC) in order to accelerate cases in the different Federal Criminal Courts of Appeals and in Cassation Courts. An unnecessary stage of proceedings has been eliminated, the summoning ("*emplazamiento*") which required a decision by the investigative judge, and afterwards an express petition by the defendant, reaffirming his desire to appeal the decision before the Court of Appeals. (section 451 has been abrogated).

Also, the aim is to concentrate in one hearing all appeals (section 454 CPC), having arguments of the accusing parties (Prosecutor, Civil Party, accusing private party) together with all defendants involved, and reducing times for the court to deliver an opinion on the case (five days in complex cases, section 465 CPC), thus permitting the investigative stage of the proceedings not to be extended by delays on the appeals.

As a consequence of these new rules on appeals, procedural aspects of the handling of petitions made to judges to decline their jurisdiction in federal criminal cases have been introduced (section 60 CPC), allowing only to be submitted in the early stages of the criminal proceedings in the investigative stage, when summoned by trial court to produce evidence, and in the first chance in the appeals procedure.

If no action has been taken to implement recommendation 3(e), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(f):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Argentina:

- f) accelerate efforts to create an effective national register of information relating to all Argentine companies (Revised Recommendation Paragraphs I, II);

Actions taken as of the date of the follow-up report to implement this recommendation:

Concerning the establishing of a National Registry of Corporations created by law 26.047, important advances has been done within the General Inspection of Legal Persons ("*Inspección General de Justicia*" IGJ).

As Argentina is a federal state, a special law from every province is needed in order to deliver information to be incorporated in this Registry. Notwithstanding, the IGJ is in permanent contact with authorities from Provincial registries, in order to implement the National Registry in the different jurisdictions involved. Also, seminars and debates are organized in some provinces in order to facilitate this task.

The implementation of the National Registry has been given priority within the Ministry of Justice. By decree 1755/2008 (Official Gazette, October 28th, 2008), there is a new Directorate involved in the organization of this National Registry in the IGJ, so as to implement and fulfill the objective of law 26.047.

The AFIP pledged a multi-year initiative in its Management Plan, which works in coordination with the IGJ.

First, it was designed and established a system that records data for new business associations, including an own design program and application interfaces with the systems of the IGJ. By means of a joint resolution between those agencies, it was implemented the *Registro Nacional de Sociedades Anónimas* (National Register of Inc.Co.) and established procedures for the incorporation and modification of data.

Afterwards, resources from AFIP were relocated to the IGJ. Additionally, software modules for the operation of the Register were installed in the latter's headquarters.

After a survey conducted by the IGJ, a first support scheme for the jurisdictions was elaborated by such agency and the AFIP. It is currently pursuing actions for the development of the systems and the institutional communication that aim at accelerating the completion of the National Register of Inc.Co. For that purpose, in a recent modification of the organizational chart - Disposition No. 157/09 (AFIP) – it was established a unit with rank of Directorate that, among other functions, is responsible for the follow-up of the execution of this issue and has been instructed about the priority of the development project of said Register, in order to renew the impetus for its implementation and development.

Latest events on this issue include a meeting organized by AFIP and Mendoza province registration entity that took place in Mendoza City last April 22nd. This event included a presentation by AFIP's Federal Administrator, together with other registration officials from the other provinces, in order to continue and accelerate efforts to include other provinces in the National Registry.

The National Registry, whose establishment relies mainly on the AFIP and the IGJ, with cooperation from provincial registries, will be a valuable tool to address issues such as double or identical denomination, fraudulent bankruptcies, tax evasion, money laundering, illegal transferring of jurisdiction against creditors, and other complex economic crimes abusing corporate vehicles, which is often the case in corruption related offences like foreign bribery.

If no action has been taken to implement recommendation 3(f), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3(g):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Argentina:

- g) ensure tax information continues to be promptly provided to judges in appropriate cases (Revised Recommendation Paragraphs I, II).

Actions taken as of the date of the follow-up report to implement this recommendation:

As mentioned in Phase 2 report and in the oral report in 2009 mutual collaboration between Argentine Tax Agency (AFIP) and prosecution authorities continues being fluid and collaborative in criminal investigations.

During 2009 the head of the prosecutors (*Procuración General de la Nación*) issued a new directive with specific instructions for federal prosecutors involved in criminal investigations related with the use of false invoices. This directive, contains a number of criminal schemes, evidence issues and investigative lines to follow in such cases (see Resolution PGN 149/09 <http://www.mpf.gov.ar/resoluciones/PGN/2009/PGN-0149-2009-001.pdf>).

This directive, together with internal AFIP resolution 794/2007 (see Phase 2 report, par. 61), adopting OECD Bribery Awareness Handbook for Tax Examiners, reveals a mutual understanding and permanent collaboration between prosecutors and tax authorities concerning eradication of complex economic crimes.

If no action has been taken to implement recommendation 3(g), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4:

4. With respect to the offence of foreign bribery, the Working Group recommends that Argentina (a) introduce an autonomous definition of foreign public officials; (b) ensure that this definition covers, in a manner consistent with the Convention, officials of foreign public enterprises and public officials of organised foreign areas or entities that do not qualify or are not recognised as States; and (c) ensure that vagueness with regard to the requirement that the advantage supplied by the bribery be “undue” is eliminated. (Convention, Article 1).

Actions taken as of the date of the follow-up report to implement this recommendation:

With respect to this recommendation a draft bill introducing an amendment to section 77 of the Criminal Code has been proposed, containing a definition of a foreign public official, that will complement the already amended section 258 bis of the Criminal Code.

Therefore, the intention is to include in a concrete and autonomous paragraph of the Argentine Criminal Code, a definition of foreign public officials, as clear and self sufficient as possible, so as to avoid

any interpretative loophole when enforcing section 258 bis PC.

In essence, the aim of this new definition is basically focused on making a compact and self-sufficient explanation of what “foreign public official” means, covering different ranks or functions, such as the ones carried on by officials of a public enterprise and covering territorial entities not recognized as States as mentioned in Commentary 18 of the Commentaries on the Convention adopted by the Negotiating Conference on 21 November 1997.

As a conclusion, the section introduced reads as follows:

“It will be understood by foreign public official, or from any territorial entity recognized by Argentina; any person appointed or elected to accomplish a public duty, at any level or territorial division of the government, including all type of organisation, agency or public enterprise in which the State exercises any direct or indirect influence”.

The amendment has been submitted to Congress last May 11th and is available at <http://www1.hcdn.gov.ar/dependencias/dsecretaria/Periodo2010/PDF2010/TP2010/0013-PE-10.pdf>

In Recommendation 4 c), the Working Group asks for some kind of clarification in section 258 bis PC in order to ensure that vagueness with regard to the requirement that the advantage supplied by the bribery be “undue” is eliminated.

We shall bear in mind that any amendment to national criminal laws has to be considered taking into account the country’s general legislative principles (see commentary 1).

Under these circumstances, section 258 bis has been introduced according to the wording already established concerning bribery of Argentine officials (sections 256, 257 and 258 Criminal Code) thus, when drafting foreign bribery, the new crime was drafted in accordance with the structure of our criminal legislation in similar provisions. This did not enable adding certain specific provisions in order to clearly fulfill Phase 1 observations covering third parties beneficiaries, officials of an international public organization, and pointing out that money is an advantage covered by this offence, but not changing significantly the structure of the section.

The aim of this recommendation would demand introducing differences between proper or improper acts or omissions of the public official duties involved and specifying that the advantage offered, promised or given be un due. However, it has to be stressed that any advantage given to an Argentine public official, independently of being linked to a certain act or omission by this official is already a crime in accordance with the Argentine legislation (see section 259, Criminal Code).

We believe that a new amendment to section 258 bis, in line with this recommendation, would be very difficult to be considered by Congress due to a systemic alteration of our criminal legislation concerning bribery, either from a local or international perspective. It is also worth to mention that in our legal history domestic bribery has never been challenged as unfair due to the uncertainty or confusion that the advantage given could be considered a legitimate payment.

In our view, this recommendation of the Working Group could also be understood as a follow up matter, in the way this issue will be addressed by prosecuting authorities and members of the Judiciary, bearing in mind the entirely legitimate concern of the Groups recommendation.

If no action has been taken to implement recommendation 4, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5:

5. With respect to the liability of legal persons for foreign bribery, the Working Group recommends that Argentina adopt legislation on a priority basis to ensure that legal persons can be held liable for foreign bribery. (Convention, Articles 2 and 3).

Actions taken as of the date of the follow-up report to implement this recommendation:

With respect to the liability of legal entities for foreign bribery, a radical amendment to the Argentine Criminal Code has been proposed to Congress, which will demand a new approach in criminal liability, whereas this specific liability has been historically limited to certain specific offences in different economic regulatory regimes. The idea is to incorporate this specific liability as part of the Criminal Code core sections, rather than introducing a special law, so as to cover other offences, usually coming from legal entities involvement in economic/commercial/financial activities.

In that context, the proposal was a hard task to accomplish, taking into account that our legal tradition has not always felt comfortable with this new approach, and also considering the different ways to address the issue in comparative law (either liability of the person who acts in benefit of a third one, a vicarial approach, the necessity to determine the existence of a natural person involvement, a defective organization, and so on).

As mentioned above, Argentina legislation already considers legal entities to be liable of criminal sanctions, but limited to certain regulatory regimes, such as Currency Exchange Criminal Regime (Law N° 19.359), Antitrust Law (Law N° 25.156), Internal Supply (Law N°20.680), Laundering of Proceeds of Crime (Law N°25.246), Tax Criminal Regime (Law N° 24.769), Retirement and Pension Regime (Law N° 24.241), Customs Code (Law N° 22.415), Misdemeanour Regime of Buenos Aires City (Law N° 1.472). These pieces of legislation have been taken into account so as to introduce a general liability in the core part of the Penal Code (sections 1 to 77).

The draft bill focuses on amendments to section 35, adding sections 35 *bis* and 35 *ter*, where different aspects of criminal liability of legal entities are introduced, and section 76 *quinquies*, establishing sanctions to a legal person.

Special attention is paid to the collective entities involved, including usual legal persons, such as enterprises and associations, as well as any other entity or corporation, where corporate decisions differ from its members will. Section 35 *ter* was drafted with wide criteria regarding natural persons whose behaviour directly compromise enterprise liability: corporate monitoring bodies, management, agents or authorized employees and even not qualified representatives which somehow criminally jeopardize the enterprise responsibility.

In addition, section 35 *ter* foresees an accumulated sanction in order to punish both the natural person involved and the enterprise from their acts or omissions which could resort in an advantage or benefit of the entity. It is also covers cases were the crime was committed infringing the legal person's management

or supervision duties legally preserved.

As mentioned above, it is not an easy task, and surely new regulation would be needed to establish a new corporate culture, and ensure adequate duties to different kind of legal entities, in order to address this new panorama of our criminal legislation.

Section 76 *quinquies* of the proposed amendment includes the following sanctions:

- a) Fine, whose amount will be fixed according to the damage caused and the wealth of the entity, with a maximum of thirty three percent (33%) of net income of the enterprise;
- b) Cancellation of the enterprise legal authorization;
- c) Total or partial suspension of the activities, which cannot exceed more than three (3) years;
- d) Total or partial closure of the establishment or headquarters, which cannot exceed three (3) years;
- e) Loss or suspension of Government benefits;
- f) Publication of the sanction at its expense;
- g) Mandatory services related to damage;
- h) Periodic auditing;
- i) Patent and trade mark suspension for a period up to three (3) years;
- j) Suspension up to three (3) years in the State Supplier Registry;
- k) Definite prohibition to perform future activities, commercial transactions or negotiations related with the crime prosecuted.

This amendment has been sent to Congress last May 11th and is available at <http://www1.hcdn.gov.ar/dependencias/dsecretaria/Periodo2010/PDF2010/TP2010/0011-PE-10.pdf>

If no action has been taken to implement recommendation 5, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6:

6. With respect to jurisdiction, the Working Group recommends that Argentina adopt nationality jurisdiction in foreign bribery cases in order to strengthen enforcement of the offence. (Convention, Article 4).

Actions taken as of the date of the follow-up report to implement this recommendation:

With respect to jurisdiction, an amendment to section 1 of the Penal Code has been proposed to Congress in order to extend Argentine criminal jurisdiction so as to permit prosecution of its own nationals, either citizens or any person with permanent residence in the Argentine territory, for cases of foreign bribery, as established in section 258 bis of the Criminal Code.

With that purpose, the proposed draft bill extends the application of the Argentine criminal jurisdiction to all alleged foreign bribery cases in which the offer or the deliverance of money or advantages to a foreign public official or to an officer of an international public organisation, is made by Argentine nationals or residents outside the Argentine territory, in order that this official acts or refrain from acting in relation to the performance of official duties.

This draft legislation has been sent to Congress last May 11th and is available at:

<http://www1.hcdn.gov.ar/dependencias/dsecretaria/Periodo2010/PDF2010/TP2010/0012-PE-10.pdf>

Modified version of section 1, subsection 3 of the Criminal Code will read as follows:

“This Code shall be applicable:

[...] 3. For crime of infringement of section 258 bis of this Code, perpetrated abroad by Argentine citizens or by persons with residence in Argentina territory, as long as the defendant has not been acquitted or condemned abroad, and in this last case, not having fulfilled the sanction imposed.”

If no action has been taken to implement recommendation 6, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7:

7. With respect to the limitations period for prosecuting foreign bribery, the Working Group recommends that Argentina ensure that the statute of limitations applicable to the foreign bribery offence and possibilities for interruption and suspension allow for an adequate period of time for the investigation of the offence. (Convention, Article 6).

Actions taken as of the date of the follow-up report to implement this recommendation:

As ruled by Section 67, paragraph four, of Argentine Penal Code interruption of limitation period may occur if another offence is committed or “due to the results of the ruling” (“secuela de juicio”). Since the Argentine Penal Code was sanctioned (1921) there has been a great jurisprudential and academic debate concerning the extent and kind of acts in the proceeding which may have this interrupting effect. Given this uncertainty, Congress passed on a law which limited interruption to certain acts in proceedings (law 25.990, Official Gazzete 11-1-05). Now, according to reformed version of art. 67 PC, statute of limitation time can only be interrupted if another offence is committed, after first summoning to any person in regard to a specific offence (*declaración indagatoria*), prosecutor’s indictment for trial according to procedural

law (*requerimiento de elevación a juicio*), summoning to trial (*citación a juicio*), and condemnation after trial, even if there are still pending appeals.

Concerning foreign bribery, as six years remains the maximum sentence to be imposed, this means that in a period that's no longer than six years any person suspected of this offence must be summoned by a magistrate before limitation period expires. After this act has taken place another six years can follow before indictment for trial takes place. Then a similar period can go on before summoning for trial, and the same time before condemnation by a criminal court. The aim of the reformed law is to emphasize that only relevant procedural acts have an impact concerning limitation periods already running. This should have no impact on the extent of limitation to investigate and to submit to trial foreign bribery cases as, for instance, in the first six years of investigation there should be enough time to gather evidence, including obtaining MLA from abroad in order to permit summoning of any suspect, whereas limitation period already ran is interrupted as mentioned before. Then, if other evidence is necessary, there would be a new six year time for this evidence to be obtained or to listen to other suspects.

After the law 25.990, the General Attorney passed judgment on some process where he remarked that the interpretation about the above-mentioned law did not have to be applied retrospectively. The previous facts were the consequence of General Instruction n° 24/07 (3/23/07). The Instruction establishes that all prosecutors that belong to the "*Ministerio Publico Fiscal de la Nación*", faced with a diversity of opinions generated by the application of the law 25.990, must stand for the retroactive application, even when a new statute of limitation could be more favorable to the accused. According to this understanding, the new-rule principle is not valid to temporary and exceptional laws if the reprobation of the crime committed remains unchanged during its term (ultractivity principle).

If no action has been taken to implement recommendation 7, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8:

8. With respect to mutual legal assistance, the Working Group recommends that Argentina (a) ensure it can grant all MLA requests submitted in the context of criminal proceedings within the scope of the Convention and brought by a Party against a legal person; and (b) consider steps that would allow it to grant MLA requests for coercive measures in the context of non-criminal proceedings within the scope of the Convention and brought by a Party against a legal person. (Convention, Article 9).

Actions taken as of the date of the follow-up report to implement this recommendation:

Argentina has no legal restrictions to provide mutual legal assistance (MLA) within criminal investigations against legal persons. In fact, Argentina has received and processed that kind of MLA requests.

Despite of the fact that Argentina has not established yet the criminal liability of legal persons, it could nonetheless provide MLA on the basis of the principles established by the Law on International Cooperation in Criminal Matters (Law 24.767, LICCM).

The LICCM requires dual criminality if the requests involves coercive measures such as search and

seizure, surveillance, wire tapping, etc.

But the inclusion of this requirement for those specific cases opens the possibility that requests for MLA can be made in the framework of a criminal investigation against legal persons. The LICCM focuses on whether the act constitutes an offence in Argentina, not on whether the person being investigated would be liable to punishment according to Argentine law.

Consequently, Argentina could provide MLA within a criminal investigation against a legal person. In addition, draft legislation is being considered that includes a new approach in criminal liability for legal persons.

In relation to part b. of the recommendation, the requests for MLA are generally made in relation to a criminal investigation. Nonetheless, other alternatives are being evaluated in order to include coercive measures in the context of non criminal proceedings against a legal person.

If no action has been taken to implement recommendation 8, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(a):

9. With respect to sanctions for foreign bribery, the Working Group recommends that Argentina:
- a) amend the law to provide that legal persons shall be subject to effective, proportional and dissuasive sanctions for foreign bribery, including fines or monetary sanctions (Convention, Articles 2, 3);

Actions taken as of the date of the follow-up report to implement this recommendation:

See answer provided in recommendation 5.

If no action has been taken to implement recommendation 9(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(b):

9. With respect to sanctions for foreign bribery, the Working Group recommends that Argentina:
- b) take all necessary measures to ensure that seizure and confiscation can be effectively applied against the active briber, including against all legal persons that benefit from foreign bribery (Convention, Article 3);

Actions taken as of the date of the follow-up report to implement this recommendation:

In a recent high profile case, where a foreign construction firm was involved in an alleged fraudulent contract with an Argentine public official, a seizure order of nearly four million American dollars has been delivered by Federal Judge n° 7 of Buenos Aires against the firm, by referring to section 23 of the National Criminal Code, which allows preliminary seizures to be imposed to any firm that may have benefited from a crime, as a way to ensure future confiscatory orders by a trial court.

This judicial decision comes as a result of the request filed by the Anticorruption Office, quoting sections 26 and 31 of the United Nations Convention against Corruption, and consistent with other judicial decisions ordering seizures to natural persons already accused in the case. The court decision, after reaffirming the obligation to fulfill international mandatory provisions on the matter, also establishes a clear difference between perpetrators and beneficiaries, and is oriented to avoid any benefit coming from criminal activities when corporations are involved, even when there is no express provision in the Criminal Code establishing criminal liability of a legal person.

It is also necessary to highlight that last August 11th and 13th 2009, the Anticorruption Office together with United Nations Organization on Drugs and Crime, with United Nations Development Programme and World Bank support, organized in Buenos Aires a regional conference: “Asset Recovery in Latin America and the Caribbean: structuring a regional cooperation agenda”, organized by StAR (Stolen Asset Recovery). All members from GAFISUD attended, as well as from World Bank, Interamerican Development Bank, Europol and Ibered. During the meeting, a parallel joint session of the UNODOC took place, along with member of the Interamerican Commission for Drug Abuse (CICAD) and GAFISUD, concerning the establishment of a Latin American network for asset recovery.

The General Attorney instructed the OCDAP in order to realize a systematic analysis of the information sent by the prosecutors of the corruption and economic criminality investigations, in order to improve these investigations and remove the obstacles that take to a low index of sentences and of recovery of assets product of these facts, adapting the action of the Attorney General's office to the requirements of the international legislation.

<http://www.mpf.gov.ar/Accesos/Dcap/Resoluciones/PGN-0128-2009-001.pdf>

If no action has been taken to implement recommendation 9(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(c):

9. With respect to sanctions for foreign bribery, the Working Group recommends that Argentina:
- c) consider steps to ensure that the sanctions imposed by courts in foreign bribery cases are effective, proportionate and dissuasive (Convention, Article 3; Revised Recommendation Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

Sanctions established in section 258 bis of the Argentine Criminal Code are severe enough in its maximum scale. Nevertheless this recommendation will be carefully followed whenever a concrete case comes to a trial, so as to avoid lenient sanctions which will neither be proportionate or dissuasive.

If no action has been taken to implement recommendation 9(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(d):

9. With respect to sanctions for foreign bribery, the Working Group recommends that Argentina:
- d) extend the grounds for debarment from public tenders to cover all offences falling within the scope of Article 1 of the Convention, ensure the effectiveness of the exclusion mechanism and, in conjunction with reform of the liability of legal persons for bribery, extend the disqualification to legal persons engaged in foreign bribery where appropriate (Convention, Article 3; Revised Recommendation Paragraph VI).

Actions taken as of the date of the follow-up report to implement this recommendation:

Debarment and loss of Government benefits is a specific sanction established in section 76 *quinquies* of the proposed amendment concerning criminal liability of legal persons (see answer recommendation 5)

If no action has been taken to implement recommendation 9(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(a):

10. With respect to accounting, auditing and internal controls relating to the fight against foreign bribery, the Working Group recommends that Argentina:
- a) continue to strengthen accounting standards, take measures to enforce the accounting fraud offence and accounting requirements more effectively in bribery cases, and increase applicable sanctions where appropriate (Convention, Article 8; Revised Recommendation Paragraph V.A);

Actions taken as of the date of the follow-up report to implement this recommendation:

Even though there is no specific provision establishing an obligation to report foreign bribery

suspicious payments or operations in our legal system, there are adequate legal mechanisms able to fulfill these obligations.

The Financial Information Unit (UIF), and the private sector related to economic professional activities have undertaken efforts in order to establish rules concerning “know your customer” specifications and in establishing different suspicious activities that may uncover the existence of money laundering activities.

This work has been rendered in different administrative decisions, in this case, Resolution UIF 03/2004, Annex I and II, concerning economic sciences professionals, such as accountants and corporate internal comptrollers, among others.

But, unlike illicit substances or people trafficking, weapons trade, child pornography or other usually appointed predicate offences, when we come across to corruption related crimes, such as foreign bribery, the crime in itself usually demands the existence of the advantage given –money- circulating through financial channels, disguised as a licit operation or through inexistent operations with, for example, shell companies or false beneficiaries. In other words, what would be generally suspicious of a predicate offence below the surface, in bribery schemes, will generally become the offence itself and, once detected, it is mandatory to send the report (STR) to the UIF.

Generally, these kind of suspicious money transfers are clearly described in the resolutions mentioned above (see www.uif.gov.ar), but particularly the following are worth to mention:

- 3. Absence of a clear relationship between clients’ activities, funds transference, investments or professional services rendered.
- 10. Money payments for non specified services that sum up to 10% of payments made in that financial year.
- 31. Transfers made to foreign countries not related to corporation’s usual commercial operations, for amounts reaching 10% of annual income from sells.
- 33. Electronic funds transfer with no financial institution involvement, for amounts reaching 10% of annual income.

In all cases, the text of the UIF resolutions mentions that special consideration to politically exposed persons shall be considered whenever their actions do not fit their usual operations and their client profile.

Under these circumstances, there is a great probability that certain suspicious operations will be informed by accountants and internal controlling officials to the UIF, concerning suspicious money transfers. This also triggers investigations of a predicate offence, especially if it has taken place in Argentine territory.

In those cases, UIF public officials are obliged to make the necessary preliminary investigation, and later submitting the report to a specialized criminal prosecutor, who will have the opportunity to determine if foreign bribery is involved, as it is a predicate offence in our money laundering legislation.

These obligations have recently been reinforced by UIF in a recent resolution concerning a Fiscal Special Regime established by Congress (law 26.476)¹, reaffirming that under no circumstance the tax

¹ This special tax regime has had no objection from FATF in relation to money laundering standards (see http://www2.jus.gov.ar/prensa/prensa_leer.asp?ID=237);

facilitation program precludes private sector involvement in its reporting duties related to money laundering suspicious activities, underlying that obliged parties shall mitigate risks concerning illicit activities (Resolution UIF 137/2009, II. ap. 4, Official Gazette, May 19th 2009; see www.uif.gov.ar).

If no action has been taken to implement recommendation 10(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(b):

10. With respect to accounting, auditing and internal controls relating to the fight against foreign bribery, the Working Group recommends that Argentina:

- b) consider whether requirements to submit to external audit are adequate, in particular with regard to large companies; and continue efforts to improve audit quality standards, including with regard to certification, independence and quality control (Revised Recommendation Paragraph V.B);

Actions taken as of the date of the follow-up report to implement this recommendation:

As mentioned in response to recommendation 1 c), the accounting profession has taken the compromise to modernize professional standards in accordance to international consensus on the matter which includes adopting International Financial Reporting Standards (IFRS) for SMEs as an option for all entities not required to use full IFRSs. The SME exposure draft proposes that those private entities should also be permitted to use accounting standards that the Federation has issued or may issue in the future. Full IFRSs will be required in Argentina for all companies that publicly offer equity or debt securities starting in 2012, with an option to use IFRSs in 2011 or, in some cases, 2010. (See <http://www.iasb.org/NR/rdonlyres/8A878738-A9DB-420F-85C3-8F0EAD3B55F8/0/sme042010pdf.pdf>)

If no action has been taken to implement recommendation 10(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(c):

10. With respect to accounting, auditing and internal controls relating to the fight against foreign bribery, the Working Group recommends that Argentina:

- c) ensure that auditors and *síndicos* are required to report all suspicions of foreign bribery by employees or agents of the company to management and, as appropriate, to corporate monitoring bodies; and consider requiring auditors and *síndicos*, notably in the face of inaction after appropriate disclosure within the company, to promptly report suspicions to the competent authorities (Revised Recommendation Paragraph V.B).

<http://economia.infobaeprofesional.com/notas/79046-La-ley-de-blanqueo-de-capitales-obtuvo-el-visto-bueno-internacional.html?cookie>)

Actions taken as of the date of the follow-up report to implement this recommendation:

In the light of recommendation X, ap. B) of the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, concerning accounting requirements, external audit and internal controls, ethics and compliance, there are a number of alternatives whenever internal auditors or *síndicos* come up with a suspicious or unclear situation that may be considered foreign bribery. These alternatives include giving notice to management, corporate monitoring bodies, competent regulatory authorities and last, law enforcement agencies.

Having this in mind, further action and discussions will be taken, with competent authorities, civil society and the accounting professional organizations in order to handle this issue, which would allow our country to arrive a proper balance between professional discretion concerning corporate interest and the fulfilment of this recommendation.

In this respect, the Anticorruption Office is working with the Follow Up Coordination of the Interamerican Convention Against Corruption (“MESICIC”), which has a specific provision dealing with foreign bribery (section VIII). The body has a compromise in order to engage and promote private sector commitment with IACC standards and recommendations concerning private sector.

As mentioned above in relation to recommendation 1 b) it is scheduled for next June 10/11th 2010, an informal seminar organized by this Follow up Coordination of the IACC, aimed to discuss foreign bribery and its relation with transnational enterprises, on a legislative basis and also related with Argentine high profile cases. It is expected that members of the Judiciary, prosecutors, together with Ministry of Justice officials as well as senior officials from the private sectors companies and NGO’s with expertise on the matter, will take part in an exchange of opinions in a set of different panels. The idea is to conclude the meeting with a document were different opinions are included as well as consensus obtained on the different issues raised during discussions.

Also, the Anticorruption Office is about to start a United Nation Development Programme, in which one of its components deals with private sector, being its general aim to carry on a dialogue that stimulates cooperation between public and private sector concerning corruption eradication and transparency promotion, in relation to the different international conventions adopted by the Argentine Republic.

If no action has been taken to implement recommendation 10(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11:

11. With respect to related tax offences and obligations, the Working Group recommends that Argentina take appropriate measures to make explicit the prohibition on deducting foreign bribes from taxable revenue either in tax legislation or in another manner that is binding and publicly available. (Revised Recommendation Paragraphs I, II and IV).

Actions taken as of the date of the follow-up report to implement this recommendation:

During the visit of the examiners, it was put forward that bribes are not deductible under the current law on income tax. While this is not explicit, it was considered that such a deduction is objectionable from the standpoint of the economic reality principle expressed in Subsection 2 of law 11683 (Tax Procedure Act). Additionally, it was reported that, for the deduction to be accepted, it should be provided the adequate supporting documentation, and proof shall further be furnished to show that the expense is necessary in order to obtain, maintain and preserve the taxable profit.

In order to specify the special attention inspectors should give to the matter, it was issued by AFIP a General Instruction that adopts, according to the laws in force in Argentina, the working guidelines of the "Handbook for tax examiners". This is a tool designed by the Committee on Fiscal Affairs of the OECD, aimed at assisting tax inspectors to identify suspicious situations likely to protect or facilitate bribes. This tool was adapted to the Tax Procedure Act in force in Argentina, emerging, as a result, a guide that provides a framework of reference, practical advice, indicators of corruption, intervention techniques and examples of bribes identified in tax verifications made by tax administrations of member countries. This methodology is applicable to complex audits, contains instructions for the specific intervention of Research and Tax Auditing areas, and provides specific elements to be incorporated into the files of the examination.

Following the adoption of the guidelines mentioned in the preceding paragraph, the instruction was adapted in order to harmonize it with the terms used in the definition of international bribery in Article 258bis of the Criminal Code, which, in turn, can be understood from the definition of the Convention.

Considering that amendments to the Income Tax Law is not within the scope of powers of AFIP, this body issued External Note 2/2008 in order to increase the explicitness of the prohibition. In this regard, the Examiner Group considered that this was a positive instrument but it does not made an explicit reference to the argentine tax rules. In this regard, the issue of an explanatory note is under consideration.

It is important to add that specific reference is made to this Convention in the AFIP website, highlighting the information establishing that bribe deductions is not accepted in our tax legislation (see <http://www.afip.gov.ar/cohecho/>).

If no action has been taken to implement recommendation 11, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(a):

12. With respect to related anti-money laundering obligations, the Working Group recommends that Argentina maintain ongoing efforts for the improvement of the anti-money laundering regime, and, in this context:

- a) include foreign politically exposed persons, appropriately defined, in the definition of politically exposed persons in relevant rules and guidelines, and raise awareness about foreign bribery as a predicate offence to money laundering (Convention, Article 7; Revised Recommendation Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

Pursuant to the fulfilling of this recommendation, the Argentine Central Bank (BCRA) has issued Communications “A” 4835 (August 15th, 2008 and “A” 4895, January 9th, 2009) to financial and foreign exchange institutions introducing in its regulations concerning money laundering and other illicit activities, a “Politically Exposed Person” category, broadening requirements and obliging to reinforce supervision to other people other than the ones established under Communication “A” 4353, which limited the definition of public officials to the terminology used in law 25.188, aimed only to local public officials.

This new binding documents have taken into account Recommendation 6 made by FATF and its interpretative Note, GAFISUD documents on the matter, regulations in the European Union, Financial Crimes Enforcement Network, Basel Committee and the Wolfsberg Group.

The new communications consider PEP’s, all national, provincial, City of Buenos Aires and municipal public officials, foreign public officials, husband/wives or partners living in the same house and relatives in ascending and collateral relation of the different public officials concerned.

In relation to foreign public officials, these includes people who perform or have performed in the last two years public functions such as presidents, government chiefs, governors, majors, ministries, secretaries, undersecretaries or similar appointments. Also members of the parliament or other legislative bodies, judges of either inferior or superior courts or public officials of any administrative body of the judiciary, ambassadors and consulate authorities or high ranking members of permanent international delegations, high ranking officials of armed forces and security forces, and directorate or control members of a public enterprise and directors or high ranking officials of supervisory or regulatory bodies (see ap. 1.3.4.3, Communication “A” 4895).

The new regulatory provisions are broad enough to alert financial and foreign exchange institutions to make a stricter scrutiny of their PEP’s clients, allowing them to have a financial legal frame, according to modern standards, so as to avoid any possibility of using Argentine financial system to launder illicit gains, specially from corruption related offences.

If no action has been taken to implement recommendation 12(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(b):

12. With respect to related anti-money laundering obligations, the Working Group recommends that Argentina maintain ongoing efforts for the improvement of the anti-money laundering regime, and, in this context:

- b) extend money laundering reporting, due diligence and record keeping obligations to lawyers, *síndicos* and other legal professionals (subject to appropriate qualifications) (Convention, Article 7; Revised Recommendation Paragraph I);

Actions taken as of the date of the follow-up report to implement this recommendation:

There has been discussion in order to broaden the provisions of clause 20, law 25.246 in order to appoint other subjects to the already existing professionals and economic sectors, who are obliged to make suspicious report operations to the UIF. A draft bill is now in the Presidential legal advisors office since May 14th, 2010 which adds to the already existing list of persons and organizations obliged to report of any suspicious money laundering activity to the UIF, the following:

- National car, ships and plane registries.
- Customs advisors, as defined in section 36 of the National Customs Code.
- National Associative Institute, National Antitrust Tribunal.
- Agents involved in real state operations.
- Mutual and cooperative associations.
- Persons or entities involved in economic operations dealing with cars, trucks, motorcycles, busses, farming vehicles, yacht and other ships.
- Persons or entities involved in trusts, including trustees, accounts and other fiduciary agreements.
- Persons or entities involved in organization and regulation of professional sports.

If no action has been taken to implement recommendation 12(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(c):

12. With respect to related anti-money laundering obligations, the Working Group recommends that Argentina maintain ongoing efforts for the improvement of the anti-money laundering regime, and, in this context:

- c) consider expanding the money laundering offence to include self-laundering (Convention, Article 7).

Actions taken as of the date of the follow-up report to implement this recommendation:

The Anti Money Laundering Coordination Office in the Ministry of Justice produced a new draft bill establishing self laundering as an offence. The draft legislation has been processed during 2009 at the Executive Power level, taking also into consideration FATF's recommendations on the issue. A draft bill is now in the Presidential legal advisors office since May 14th, 2010 including such provisions.

During 2008 and 2009, diffusion, dissemination and outreach activities have been evaluated jointly by the Anticorruption Office and the Office of the Legal Adviser of the Ministry of Foreign Affairs related to foreign bribery, as a predicate offence in money laundering activities.

Finally, several government agencies have been involved in drafting a bill concerning special investigation techniques in order to introduce and/or reduce difficulties in the use of undercover operations, controlled delivery, among others, and also focusing on following the money trail of different predicate offences, taking into account the international experience in this field.

If no action has been taken to implement recommendation 12(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Part I (b): Issues for Follow-up by the Working Group in Phase 2

Concerning issues identified to be followed up by the Working Group, the items listed below rely upon the existence of cases. As there are only very few cases in Argentina, and those initiated are still in the investigative phase of our criminal proceedings, we cannot provide with more information rather than what has already been mentioned in preceding paragraphs. As cases develop, or new judiciary or institutional reforms appear, information will be provided to the Working Group, through *tour de table* rounds or specific documents on the different aspects involved. Special attention will be placed to these Follow-up issues, not only by agencies involved in this Post Phase 2 report, but also in awareness raising efforts concerning other governmental agencies or civil society initiatives, so as to continue sustained efforts in order to prevent, detect, prosecute and sanction foreign bribery in Argentina.

Text of issue for follow-up 13(a):

13. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- a) the application of sanctions against natural and legal persons in foreign bribery cases (Convention, Article 3)

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 13(b):

13. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- b) the application of territorial jurisdiction in foreign bribery cases (Convention, Article 4)

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 13(c):

13. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- c) whether the solicitation or “illicit demand” of an undue payment or other advantage by a foreign public official can exclude the liability of the active briber (Convention, Article 1)

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 13 (d):

13. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- d) the application in practice of art. 258 bis PC, including its application to cases where a bribe is paid for an act/omission outside of the official’s authorised competence (Convention, Article 1)

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 13(e):

13. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- e) whether foreign bribery is always a predicate offence to money laundering, without regard to the place where the bribery occurred (Convention, Article 7)

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 13(f):

13. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- f) whether Argentine authorities consider the factors listed in Article 5 of the Convention when denying extradition or MLA in a foreign bribery case (Convention, Articles 5, 9)

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 13(g):

13. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- g) the time needed to reach a final decision in extradition procedures related to corruption cases (Convention, Article 10)

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 13(h):

13. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- h) the functioning of the modified Judicial Council with regard to any disciplinary proceedings arising out of foreign bribery cases (Convention, Article 5).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate: