



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

October 2010

This Phase 3 Report on Finland by the OECD Working Group on Bribery evaluates and makes recommendations on Finland's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 15 October 2010.

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EXECUTIVE SUMMARY

The Phase 3 Report on Finland by the OECD Working Group on Bribery evaluates and makes recommendations on Finland's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. As well as focussing on key Group-wide (horizontal) issues, particularly enforcement, consideration is also given to country-specific (vertical) issues arising from progress made since Finland's Phase 2 evaluation in 2002, or issues raised, for instance, by changes in the domestic legislation or institutional framework of Finland.

Finland's efforts in enforcement of the foreign bribery offence since Phase 2 are promising, primarily as a result of experienced and well-resourced investigators. The Working Group commends Finland's proactive approach to international cooperation on asset recovery, and its bilateral anti-corruption work with China and the Russian Federation. However, the Working Group notes with serious concern a general lack of awareness and understanding of the foreign bribery offence in both the public and private sectors in Finland.

The Report highlights insufficient direct engagement by the public administration with the private sector for the purpose of raising awareness of the Convention and of important features of the foreign bribery offence, including liability for bribing through intermediaries. The Group therefore makes several recommendations concerning awareness-raising in both the public and private sector. The Working Group is also concerned with a more restrictive application of the foreign bribery offence in the Criminal Code than that required by Article 1 of the Convention. It accordingly recommends that Finland amend the definition of foreign public official to include a person holding a legislative office in a foreign country. The Group is also concerned that Finland's accounting and auditing offences do not apply to legal persons and recommends that legislative steps be taken to provide for such liability.

Concerning the detection and reporting of foreign bribery, the Working Group is concerned by the lack of reporting mechanisms within key government agencies, including FINNVERA, MFA and the Tax Administration. It recommends that Finland introduce appropriate measures to facilitate reporting by public officials to law enforcement authorities. Noting the absence of whistleblower protection, the Group further recommends that Finland introduce mechanisms to ensure that public and private sector employees who report in good faith and on reasonable grounds are protected from discriminatory or disciplinary action.

Since Phase 2, six cases of suspected foreign bribery have been under investigation in Finland, the first such cases since the coming into force of Finland's legislation implementing the Convention. Investigations have been well resourced and investigated by experienced investigators, supported by specialised economic crimes experts. Law enforcement authorities have taken a proactive approach in obtaining the cooperation of relevant foreign authorities in asset recovery.

The Report and its recommendations reflect findings of experts from the Czech Republic and Luxembourg and were adopted by the OECD Working Group on Bribery. Within one year of the Group's approval of the report, Finland will make an oral follow-up report on its implementation of certain recommendations. It will further submit a written report within two years. The Report is based on the laws, regulations and other materials supplied by Finland, and information obtained by the evaluation team during its three-day on-site visit to Helsinki on 7 to 9 June 2010, during which the team met representatives of Finland's public administration, private sector and civil society.

A. INTRODUCTION

1. The on-site visit

1. On 7 to 9 June 2010, a team from the OECD Working Group on Bribery in International Business Transactions (the Working Group on Bribery) visited Helsinki as part of the Phase 3 peer evaluation of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention), the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (the 2009 Recommendation) and the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (the 2009 Tax Recommendation). The purpose of the visit was to evaluate the implementation and enforcement by Finland of the Convention and the 2009 Recommendations.

2. The evaluation team was composed of lead examiners from the Czech Republic and Luxembourg as well as members of the OECD Secretariat.¹ Prior to the visit, Finland responded to the Phase 3 Questionnaire and supplementary questions. It also provided translations of relevant legislation, documents and case law, and the evaluation team also referred to reports on Finland by the Group of States against Corruption (GRECO) and the Financial Action Task Force (FATF). During the visit, the evaluation team met representatives of the Finnish public and private sectors and civil society.² The on-site visit was generally well-attended by Finnish officials, and the evaluation team was grateful for the time taken by the Minister of Justice and the Permanent Secretary of the Ministry of Justice (MOJ) to meet with the evaluators. However, the evaluation team was disappointed with the absence of invited participants from the Police Board, Customs and Ministry of Finance, who are members of Finland's inter-agency Anti-Corruption Cooperation Network (ACCN), as well as from public authorities responsible for oversight, policies and laws pertaining to accounting and auditing in Finland. The evaluation team was also disappointed with the low level of participation by the private sector and civil society and noted the absence of media representatives despite the efforts of Finland's authorities. The evaluation team nevertheless expresses its appreciation of Finland's cooperation throughout the evaluation process and notes that Finnish officials absented themselves from panels with the business sector, civil society, and lawyers and academics.³ The evaluation team is grateful to all the participants at the on-site visit for their cooperation and openness during the discussions.

¹ The Czech Republic was represented by: Tomáš Hudeček, Ministry of Justice; and Adam Bašný, Usti Regional Public Prosecutor's Office. Luxembourg was represented by: Laurent Thyès, Ministry of Justice; Christian Steichen, Police; and Fernand Muller, Central Tax Administration. The OECD Secretariat was represented by: Alex Conte, Senior Legal Analyst, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs; and Leah Ambler, Legal Analyst, Anti-Corruption Division.

² See Annex 2 for a list of participants.

³ See paragraph 26 of the [Phase 3 Procedure](#), which provides that an evaluated country may attend, but should not intervene, during the course of non-government panels.

2. Outline of the report

3. This report is structured as follows: Part B examines Finland's efforts to implement and enforce the Convention and the 2009 Recommendations having regard to Group-wide (horizontal) issues for evaluation in Phase 3, with particular attention on enforcement efforts and results, as well as country specific (vertical) issues arising from progress made by Finland on weaknesses identified in Phase 2, or issues raised by changes in the domestic legislation or institutional framework of Finland; and Part C sets out the Working Group's recommendations and issues for follow-up.

3. Cases involving the bribery of foreign public officials

4. Exports of goods and services by Finnish businesses are equivalent to 36.1% of Finland's GDP, of which the main exports are electric and electronic industry products (20.6% of total exports) forest industry products (19.3% of total exports) and chemical industry products (17.3% of total exports).⁴ Imports of goods and services are equal to 33.4% of the GDP, of which chemical industry products represent the main imports. Finland's major trading partners for 2007-2010 have been Germany, Sweden, and the Russian Federation, with growing trade links with Australia, China, Indonesia, and Pakistan. For 2008, the highest volumes of outward foreign direct investment (FDI) were with the United States, Belgium, Germany and the Russian Federation.⁵ Finnish investments to the Russian Federation have grown over recent years to reach USD 3.4 billion of FDI stocks at the end of 2008 when investment flows almost tripled. China, Indonesia, Pakistan and the Russian Federation are countries with low Corruption Perception Indices (CPI).⁶ The public and private sectors in Finland, and civil society, acknowledge that Finnish businesses face high risks of bribe solicitation in Russia and China, as well as in Estonia, Latvia and Lithuania.⁷

5. During the Phase 2 on-site visit, prosecutors explained that two cases involving foreign bribery (one in the early 1990's and the other in 1998) were handled as tax frauds, and had been revealed by reports of tax inspectors. Since 2002, six cases of suspected foreign bribery have been under investigation in Finland. These are the first such cases since the coming into force of Finland's legislation implementing the Convention. All cases of foreign bribery have been investigated in Finland by the National Bureau of Investigation (NBI – see Part B(5)(a) below).

⁴ Figures for 2009, as available from Statistics Finland, updated 5 May 2010, URL: http://www.stat.fi/tup/suoluk/suoluk_kotimaankauppa_en.html#imports.

⁵ OECD.StatExtracts, FDI Flows by Country. Historically, Sweden was the main FDI partner of Finland for both inward and outward investments. The stock of Swedish investments stood at USD 43 bn at end-2008 representing 22% of its GDP (stock of outward investment was USD20 bn. or 10% of its GDP). Foreign investment in Finland has shifted from manufacturing to services sector over time, similar to the development in other European countries. The stock of investment in Finland's services sector stood at USD 53 bn at end-2008 (or 27% of its GDP) of which USD 22 billion is in the financial sector, USD 10 bn in telecommunication and USD 8 billion in trade and repairs. Amongst manufacturing industries where the stock of investment in Finland stood at USD 22 billion at end-2008, the most significant foreign investment is in metal and mechanical products (stocks were USD 6.3 billion at end-2008).

⁶ Of 180 countries, China, Indonesia, Pakistan and Russia are ranked 79th, 111th, 139th and 146th in Transparency International's 2009 Corruption Perception Index.

⁷ These risks are also identified in: Ministry of Justice, *Corruption and the Prevention of Corruption in Finland* (2009), p. 8; and Aromaa and others, *Corruption on the Finnish – Russian Border. Experiences and observations of Finnish and Russian civil servants and businesspersons on corruption on the border between Finland and Russia* (European Institute for Crime Prevention and Control, 2009).

6. Of the six cases, one case initially led to an acquittal, based on a decision of the court of first instance concerning the date of the commission of the alleged offence, i.e. the District Court concluded that the offence was committed at the time that the contract in question was signed (May 1997), which preceded the criminalisation in Finland of the bribery of foreign public officials (the foreign bribery offence entered into force in Finland on 1 January 1999). This decision was appealed by the General Prosecutor's Office, based primarily on the contention that, of the approximately 3.1 million GBP of alleged bribery payments, only 900 000 GBP was paid before 1 January 1999 and that the alleged offence was therefore not completed until after Finland had an offence of foreign bribery. The appeal was successful and the case has been remitted to the District Court for retrial.

7. Three cases involve allegations against the same State-controlled enterprise (SOE), and its subsidiaries, operating in the defence industry. In June 2010, charges of accounting fraud (an accounting offence and aggravated accounting offence) and aggravated bribery of a foreign public official were brought against five individuals working for a subsidiary of the SOE, Patria Vammats Oy, in connection with a howitzer project in Egypt between 1999-2007.⁸ That case had also investigated the conduct of other persons, in respect of which: (i) insufficient evidence was found to exist for the bringing of formal charges against three persons; (ii) charges could not proceed in one case because the statute of limitations had expired (that individual had stopped working for the project in February 2000); and (iii) charges against two foreign individuals could not proceed because MLA was refused by Egypt. The case concerning the howitzer project in Egypt continues in respect of other suspects. Pre-trial investigations are also proceeding in the other two cases, with joint investigation teams having been established in respect of both investigations. Of the two cases which continue to be under investigation, one investigation concerns a contract in 2006 for the supply of 135 armoured personnel carriers to Slovenia.⁹ The formal pre-trial investigation into this case began in Finland in May 2008 (preceded by intelligence-gathering) and is expected to be concluded in October 2010. The other pre-trial investigation began in early 2010 and concerns allegations surrounding a contract in 2007 for the sale of 126 armoured personnel carriers to Croatia.¹⁰

8. The fifth case under pre-trial investigation in Finland involves allegations of bribery by Finnish consortium Medko Medical Instrumentarium of for a contract in 2001 for the supply of medical equipment.¹¹ The pre-trial investigation began in 2008 and it is hoped that the investigation will be concluded by early 2011. The sixth 'case' concerned allegations of bribes paid by a Finnish businessman to Norwegian welfare service employees between 1999-2001 for the award of contracts to provide language courses.¹² The pre-trial investigations into this matter did not reveal evidence of the payment of bribes, but the person concerned was successfully pursued in respect of aggravated tax fraud, dishonesty by a debtor and book-keeping offences.

⁸ 'Finnish defence firm in Egypt bribery case', 23 June 2010, URL: [http://www.business.maktoob.com/20090000483502/Finnish defence firm in Egypt bribery case/Article.htm](http://www.business.maktoob.com/20090000483502/Finnish%20defence%20firm%20in%20Egypt%20bribery%20case/Article.htm).

⁹ Defence Talk, 'Patria Starts Armoured Vehicle Deliveries to Slovenia', 22 June 2009, URL: <http://www.defencetalk.com/patria-starts-armoured-vehicle-deliveries-to-slovenia-19983/>.

¹⁰ Defence-aerospace.com, 'Finnish and Croatian Authorities Cooperate in Patria Probe', 17 June 2010, URL: <http://www.defense-aerospace.com/article-view/release/115757/finland,-croatia-launch-joint-probe-into-patria-amv-deal.html>.

¹¹ Ticotimes.net, 'Calderón Convicted', 9 October 2009, URL: http://www.ticotimes.net/topstoryarchive/2009_10/100909.htm.

¹² Økokrim (Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime), Annual Report 2008, p. 16.

9. In respect of all cases, the lead examiners were impressed by the information provided by representatives of the NBI and their willingness to discuss their investigations for the purpose of informing the lead examiners of the NBI's experiences, the challenges faced in the investigation of those cases, and the way in which those challenges were met (the description of cases in the preceding paragraphs are based solely on publicly available information). It appeared to the lead examiners that the pre-trial investigations were well resourced and directed by experienced NBI investigators, who were supported by specialised experts within the Economic Crimes Unit capable of undertaking analysis of complex financial records. The sources of allegations have included media exposure of allegations, information from foreign law enforcement agencies, and the detection of possible wrongdoing during the course of customs, fraud and money laundering investigations in Finland.

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

10. This part of the report considers the approach of Finland in respect of key Group-wide (horizontal) issues. Where applicable, consideration is also given to country-specific (vertical) issues arising from progress made by Finland on weaknesses identified in Phase 2, or issues raised, for instance, by changes in the domestic legislation or institutional framework of Finland. Concerning weaknesses identified in Phase 2, the Phase 2 evaluation report of Finland was adopted by the Working Group in May 2002. The Phase 2 recommendations and issues for follow-up are set out as Annex 1 to this report. Finland's written follow-up report to Phase 2 was considered by the Working Group on Bribery in February 2006. The Group at that time concluded that Recommendations 1, 2, 4 and 9 had been implemented satisfactorily or dealt with in a satisfactory manner; that Recommendations 6, 7 and 8 had been partially implemented, requiring further clarification in relation to some issues; and that Recommendations 3 and 5 had not been implemented.¹³

1. Foreign bribery offence

11. Since its Phase 2 evaluation, Finland's Criminal Code was revised and the provisions implementing Article 1 of the Convention were amended and are now set out in § 16:13 and § 16:14 of the Criminal Code (Chapter 16, section 13 and Chapter 16, section 14).¹⁴ The offences under these new provisions are similar in their language to the text considered by the Working Group on Bribery in its Phase 1 evaluation of Finland. The Criminal Code distinguishes between aggravated and non-aggravated bribery, stemming from a complete reform of the Code which introduced distinctions between petty, standard and aggravated offences. Non-aggravated bribery, proscribed in § 16:13, is punishable by up to two years imprisonment, with a statute of limitations of five years. Aggravated bribery, under § 16:14, is punishable by up to four years, with a statute of limitations of ten years.

12. Following the on-site visit, the Finnish government introduced a Bill to further amend the Criminal Code to include offences of bribes to members of Parliament and commercial bribery. This work does not propose to amend provisions relevant to the offence of bribing a foreign public official.

¹³ When setting out the Recommendations in Phase 2, Annex 1 includes a notation of the conclusions of the Working Group following Finland's written follow-up report.

¹⁴ See Annex 4 for the text of § 16:13 and § 16:14 of the Criminal Code.

(a) Definition of foreign public official

13. An important difference between the text of the new and former Criminal Code provisions on active bribery is that the current text in § 16:13 refers to the bribery of “a public official”, whereas the previous text had specifically referred to “a foreign public official”. However, § 16:20(3) provides that “a person elected to a public office, an employee of a public corporation, a foreign public official, a person exercising public authority and a soldier referred to in chapter 40, section 11” is to be equated with a public servant.¹⁵ Chapter 40, section 11(4) in turn provides that:

“a *foreign public official* refers to a person who has been appointed or elected to an administrative or judicial office or position in a body or court of a foreign state or public international organisation, or who otherwise attends to a public function on behalf of a body or court of a foreign state or public international organisation”.

14. This definition fails to include a person holding a legislative office in a foreign country (the previous version of the definition – in § 16:20(3) (1998) – included persons appointed or elected to a legislative office) and is, to that extent, inconsistent with Article 1(4)(a) of the Convention’s definition of foreign public officials. Since the on-site visit, Finnish authorities have explained that bribery of a foreign official holding a legislative office can still be prosecuted in Finland, under the new offence of active bribery of a member of parliament (§ 16:14a of the Criminal Code) when combined with definitional provisions in § 16:20(4) and § 40:11(6). The Working Group considers that this lacks the level of clarity desired for Finnish businesses to know and be aware of the impermissibility of such bribery. More significantly, § 16:14a involves a restrictive application of the Convention offence. Article 1(1) concerns itself with conduct undertaken “in order to obtain or retain business or other improper advantage” and, as clarified by Article 1(4)(c), includes bribery for *any* use of the public official’s position, whether or not within the official’s authorised competence. Finland’s § 16:14a, however, is restricted to a bribe that would induce a member of parliament “so that a matter being considered or to be considered by Parliament would be decided in a certain way”.

(b) Bribery through intermediaries

15. Both the current and earlier forms of the active bribery offence in Finland do not expressly mention bribery through intermediaries. In Phase 2, prosecutors stated that they did not imagine that the absence of an express reference to bribery through an intermediary in the Criminal Code would be an impediment to prosecuting cases involving bribes through intermediaries, although they conceded that their job would be made easier by an explicit reference to this element in the offence. This view was repeated by a prosecutor during the Phase 3 on-site visit. A representative of the National Bureau of Investigation also stated that it would be “very helpful” if § 16:13 expressly referred bribery through an intermediary and defined the term. Authorities from the Ministry of Justice have explained that, even without this express reference, bribery through an intermediary is covered by virtue of application of § 5:5 (instigation) and 5:6 (abetting) of the Criminal Code.

16. At the time of Phase 2, there had been no cases of domestic bribery through intermediaries. This remains true, although two (possibly three) of the foreign bribery cases under investigation in Finland involve allegations of bribery through intermediaries.

17. When speaking with representatives from the business sector, the lead examiners were left with the impression that Finnish businesses, particularly SMEs, do not fully understand the foreign bribery offence, especially with regard to its extraterritorial effect and the relevance of intermediaries. This is

¹⁵ See Annex 4 for the text of § 16:20(3) of the Criminal Code.

perhaps not surprising given the relatively low level of direct engagement by the public sector with the private sector in awareness-raising activities in Finland (see Part B(10)(b) below). It is of particular concern that there appeared to be a lack of understanding by some representatives of the business sector that payments through local agents overseas could constitute acts of foreign bribery under Finland's Criminal Code, or at least that this poses risks of unlawful conduct. The lead examiners heard from representatives of civil society that this may be because § 16:13 does not expressly refer to bribery through intermediaries. This concern is heightened by the fact that Finnish businesses operate in countries with a low CPI, and acknowledgements by the public and private sectors that Finnish businesses face high risks of bribe solicitation in some countries in which they operate.

(c) *Aggravated bribery - bribes in relation to the foreign official's act*

18. One of the characteristics that will render an act of bribery to be aggravated is that the bribe was intended to make the official act contrary to his or her duties, with the result of a considerable benefit to the briber or third party or a considerable loss to another person (§ 16:14(1)). In Phase 1 and 2 it was noted that, because this requires proof that the bribe is intended to make the official "act in service contrary to his or her duties", a prosecution of aggravated foreign bribery (under this form of aggravated bribery) would require proof of the law of the foreign public official's country in order to establish that she or he acted in breach of duties. This is therefore a non-autonomous feature of the aggravated form of bribery under § 16:14(1). Two points should be raised about this non-autonomous element: first, regarding its relationship with Article 1(4)(c) of the Convention; and, secondly, concerning its reliance upon evidence from outside Finland.

19. On the first point, Article 1(4)(c) of the Convention requires that an offence of foreign bribery be established without regard to whether or not the foreign official's conduct was within the official's authorised competence, while § 16:14(1) of the Criminal Code refers to a gift or benefit intended to make the person act in service contrary to his or her duties. Finnish authorities explain, however, that Article 1(4)(c) is complied with because acting in contravention of one's duties is different from acting outside one's competence. While acting outside one's competence will always involve acting in contravention of one's duties, it is also possible to act in contravention of one's duties within one's competence.

20. Concerning the need to rely on evidence from outside Finland, a representative from the Ministry of Justice stated during the Phase 3 on-site visit that proof of law would not be required in a prosecution under § 16:14(1), but that it would be enough to have regard to the foreign public official's ostensible authority and deduce from that whether or not he or she acted contrary to his or her duties. However, when hearing from a Key Prosecutor¹⁶ responsible for the prosecution of economic crimes, including bribery, the evaluation team was told that a case under § 16:14(1) may need to involve legal assistance from the country of the foreign public official in order to obtain a certified copy of the law concerning the official's authorised competencies, or an administrative order to the same effect, or an official statement from the government of that country setting out the position in this regard. The Key Prosecutor explained that it would therefore be very problematic for a prosecution of this kind if legal assistance was refused.

(d) *Aggravated bribery - value of the bribe*

21. The second characteristic that will render an act of bribery aggravated is that the value of the bribe is "considerable" when assessed as a whole (§ 16:14(2)). In Phase 2, Finnish authorities were unable to provide any case law interpreting this concept, although they pointed to similar distinctions in the Criminal Code concerning theft, embezzlement, fraud, tax fraud, bankruptcy offences, forgery and assault.

¹⁶ A "Key Prosecutor" is a formal position in specialised areas (such as economic crimes) held by a prosecutor in the GPO for a renewable period of five years.

However, the Working Group considered in Phase 2 that it was evident during the Phase 2 on-site visit that these concepts were not interpreted uniformly by the police and prosecutors. The Phase 2 report therefore expressed the view that Finland should consider providing guidance to law enforcement agencies and prosecutors concerning the differentiation between aggravated and non-aggravated bribery (Recommendation 7 in Phase 2). The Phase 2 report identified that the Working Group would follow up decisions of relevant authorities, including the courts, in regard to the differentiation between aggravated and non-aggravated bribery (follow-up issue (a)).

22. Although Finland has not established guidelines concerning the differentiation between aggravated and non-aggravated bribery, representatives from the National Bureau of Investigation and the General Prosecutor's Office referred, during the Phase 3 on-site visit, to a common understanding by investigators and prosecutors that a bribe in the sum of € 10 000 to € 20 000 or more would be treated by them as sufficient to qualify as a bribe of a "considerable" nature. A representative from the Ministry of Justice suggested that a bribe of a lesser value that is offered or given to a high-ranking official and/or for a very significant benefit might also render the transaction aggravated "when assessed as a whole". Finnish authorities were not able to point to any case law addressing this point.

(e) *Small facilitation payments*

23. Although the active bribery offences under the Criminal Code do not allow for an exception of small facilitation payments, there is the possibility in Finland of waiving prosecution on grounds that the conduct was petty (see Part B(5)(b) below). There is also no upper limit on the value of gifts and entertainments that may be claimed for tax deductibility (see Part B(8)(c) below).

Commentary

The lead examiners are disappointed with Finland's decision to remove express reference to foreign public officials in the revised active bribery offences under the Criminal Code. They consider that this decision may be detrimental to the awareness of public authorities in Finland of the foreign bribery offence (discussed in Part B(10)(b) below). When combined with the lack of general reporting requirements or guidelines in Finland (see Part B(10)(c) below), the lead examiners consider that this could also be detrimental to the detection and reporting by the public sector of the foreign bribery offence committed by Finnish individuals and companies.

The lead examiners also note that the definition of a foreign public official in § 40:11(4) of the Criminal Code fails to include a person holding a legislative office in a foreign country (required by Article 1(4)(a) of the Convention). Although liability for the bribery of foreign officials holding a legislative office is technically possible (by combined application of (§ 16:14a, 16:20(4) and 40:11(6)), this approach involves a restrictive application of the foreign bribery offence which is inconsistent with Article 1(1) and 1(4)(c) of the Convention. The lead examiners are also concerned that this approach lacks the level of clarity desired for Finnish businesses to know and be aware of the impermissibility of bribing foreign officials holding legislative office. They recommend that the definition of foreign public officials in § 40:11(4) of the Criminal Code be amended to include persons appointed or elected to legislative office in a foreign country.

The bribery offences under Chapter 16 of the Criminal Code do not expressly refer to bribery through an intermediary. Although authorities do not see this as an impediment to prosecution, parts of the private sector in Finland appear not to understand the risks involved in payments through local agents overseas, nor the possibility that such payments may constitute

an act of foreign bribery. Finland's major trading partners include countries with low Corruption Perception Indices, and public and private sectors in Finland, and civil society, acknowledge that Finnish businesses face high risks of bribe solicitation in some countries. The lead examiners therefore recommend that Finland take concrete steps to raise awareness within both the public and private sectors that bribery through an intermediary, including through a related legal person, constitutes an offence under § 16:13-14 of the Criminal Code.

Aggravated bribery under § 16:14(1) of the Criminal Code involves a bribe that is intended to make the official "act in service contrary to his or her duties". The lead examiners consider that this represents a challenge to the capacity of Finnish authorities to investigate and prosecute foreign bribery cases under § 16:14(1) since refusal by the country of the foreign public official to respond to a request for legal assistance concerning this non-autonomous element of the offence would prevent a successful prosecution. This potential problem is heightened by the increased reliance in Finland on the aggravated form of the bribery offence, due to the short statute of limitation applicable to non-aggravated bribery (discussed in Part B(5)(d) below). Concerning both forms of aggravated bribery, involving bribes to induce unauthorized conduct (§ 16:14(1)) or involving "considerable" bribes (§ 16:14(2)), the lead examiners recommend that the Working Group continue to follow up on case law concerning the differentiation between aggravated and non-aggravated bribery.

2. Responsibility of legal persons

24. In the Phase 2 evaluation of Finland, the Working Group on Bribery expressed concerns that the corporate liability provisions under the then Chapter 9 of the Criminal Code lacked clarity in respect of certain key aspects of liability: prosecutorial discretion, the statute of limitations, and the applicability of criminal liability to SOEs. In its written follow-up report, Finland did not address these matters specifically, but noted that a new corporate liability provision in the Criminal Code had entered into force in January 2003. The provisions concerning implementation of Article 2 of the Convention are now set out in § 1:9, § 8:7 and Chapter 9 of the Criminal Code.¹⁷ Although the regime for corporate liability in Finland has not changed significantly, the current evaluation is the first opportunity that the Working Group has had to examine in detail the new provisions for corporate liability.

(a) Standard of liability

25. Concerning the scope of application of corporate criminal liability under the Criminal Code, the new provision in § 9:2(1) sets out the required nexus between the natural perpetrator and the legal person, namely that "a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein". At face value, it is unclear how these prerequisites for liability interact with other provisions in the same Chapter on the scope of application (§ 9:1) and the connection between the offender and the corporation (§ 9:3), which are much broader and require only that the perpetrator "belongs to [the company's] management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation". According to Finland's responses to the Phase 3 Questionnaire, corporate liability is determined by the conduct or omissions of persons acting on behalf of, or for the benefit of, the corporate body in question.¹⁸ Officials at the on-site visit also asserted that the acts of agents and lower-level employees would be sufficient to invoke corporate liability.

¹⁷ See Annex 4 for the text of § 1:9, § 8:7 and § 9:1-3 of the Criminal Code.

¹⁸ Finland: Responses to the Phase 3 Questionnaire and Supplementary Questions [DAF/INV/BR/WD(2010)12] para 124.

26. The provision in § 9:2(2) that a corporate fine may be imposed even if the offender cannot be identified or otherwise is not punished is in line with the 2009 Recommendation, specifically the guidance in Annex I, which recommends that corporate liability should not be restricted to cases where the natural perpetrator is prosecuted or convicted.

(b) *Liability of Finnish companies for the acts of foreign subsidiaries*

27. The issue of the liability of companies for the acts of foreign subsidiaries is one that arises in the context of Annex 1 to the 2009 Recommendation, which recommends that countries ensure “that a legal person cannot avoid responsibility by using intermediaries, *including related legal persons*, to offer, promise or give a bribe to a foreign public official on its behalf” (emphasis added – concerning intermediaries, see also Part B(1)(b) above). In Finland, jurisdiction over legal persons is set out in the new § 1:9 of the Criminal Code, which provides that if Finnish law applies to the offence, it also applies to the determination of corporate criminal liability. On the basis of this provision alone, it is unclear what would be required to invoke liability of Finnish companies for the activities of their subsidiaries operating abroad. It is also unclear whether a foreign subsidiary owned or controlled by a Finnish corporation would come within the definition of a “corporation, foundation or other legal entity”, as set out in § 9:1. During the Phase 3 on-site, a representative of the Ministry of Justice assumed that prosecutors would try to demonstrate that the factual control remained with the Finnish parent company.

(c) *Liability of State-owned and State-controlled corporations (SOEs)*

28. Finland’s Phase 2 report outlined the significant role played by SOEs in the Finnish economy and expressed concerns about the applicability of corporate criminal liability to SOEs in light of this. Finland was encouraged to consider providing guidance to law enforcement agencies and prosecutors in respect to the application of corporate criminal liability to SOEs (Recommendation 7 in Phase 2). This aspect of Recommendation 7 was not specifically addressed in Finland’s written follow-up report to Phase 2.

29. Since then, in early 2008, Finland enacted the State Shareholdings and Ownership Steering Act with the aim of ensuring that “companies wholly or partially owned by the State shall abide by the same norms as Finnish companies with a different ownership base”.¹⁹ A State Ownership Steering Department has been established in the Prime Minister’s Office, and the 2009 Annual Report of the Department states that the dividend yield generated by the companies listed in the State’s portfolio is greater than the average achieved by companies trading on the main list of Helsinki OMX. At present there are a total of 61 companies over which organs of the Finnish State exercise control. Should the allegations of bribery of foreign public officials by Patria (a company of which 73.2% is owned by the Finnish State) reach the trial phase (see Part A(3) above), this will be the first time the Finnish courts have had to consider liability of SOEs for the foreign bribery offence.

30. Finland’s Phase 1 report noted the exception for corporate criminal liability in § 9:1(2) – with respect to offences committed in the exercise of public authority. Finland clarified that this applies regardless of whether the company is private or State-owned. The Working Group welcomes this clarification, but considers that more could be done to raise awareness among relevant government authorities and SOEs of the application of corporate criminal liability to the conduct of SOEs in international business.

¹⁹ 2009 Annual Report of the Ownership Steering Department in the Prime Minister’s Office (<http://www.vnk.fi/julkaisukansio/2010/o0110-vuosikertomus-2009-rsberaettelse-annual-report/pdf/en.pdf>), p. 10.

Commentary

Recent amendments to the Criminal Code provisions on prerequisites for corporate criminal liability may, when applied in practice, create confusion with other provisions in the Code on the scope of application of the Code to legal persons and the connection between the individual offender and the corporation, even when read together. While the lead examiners consider that the nexus is sufficiently broad to satisfy the standards set out in Annex 1 of the 2009 Recommendation, they reiterate Recommendation 7 in Phase 2 that the NBI and Public Prosecutor's Office issue internal guidelines in order to clarify the correct scope of application. They recommend that this information also be provided to companies.

The issue of liability of Finnish companies for the actions of their foreign subsidiaries also requires clarification. This is particularly important in light of the common practice of companies establishing (or often being required to establish) local joint ventures or subsidiaries when doing business abroad.

The issue of corporate criminal liability for SOEs is particularly important in the context of the significant role that SOEs play in Finland's economy and the fact that the majority of Finland's SOEs are involved in international business transactions. The new State Ownership Steering Department should also be actively engaged in efforts to raise awareness among SOEs and their auditors (see below B(7)(b)) of the application of the foreign bribery offence to SOEs.

3. Sanctions

(a) Natural persons

31. There have been no changes since Phase 2 to the sanctions applicable to natural persons for the foreign bribery offence, nor have there been any decided cases on that issue.

32. In Phase 2, Recommendation 8 (assessed as partially implemented during Finland's written follow-up report) called on Finland to provide statistical information to the Working Group about the application of sanctions under the legislation implementing the Convention, including in relation to accounting and money laundering offences, in order to assess whether they are effective, proportionate and dissuasive. As outlined in Part A(3) above, the lead examiners were impressed by the information provided by the Finnish authorities during the on-site visit, as well as publicly available statistics, and consider Recommendation 8 to be satisfactorily implemented. The Working Group encourages Finland to maintain this level of data collection and disclosure as cases emerge in future.

(b) Legal persons

33. This evaluation is the first opportunity that the Working Group has had to examine in detail the new provisions in Chapter 9 of the Criminal Code concerning sanctions applicable to corporations convicted of foreign bribery.²⁰ The penalty range, imposed as a lump sum, is from 850 to 850 000 Euros (§ 9:5). Given the often significant bribes, contracts and profits involved in transnational bribery, this low threshold for pecuniary penalties may not – on its own – meet the required standard of effective, dissuasive and proportionate sanctions. During the on-site visit, a Key Prosecutor stated that, in the case of large corporations, the maximum fine of 850 000 Euros was not a deterrent. It is therefore critical that Finland

²⁰ Chapter 9 includes the following: sections 5 (corporate fine); section 6 (basis for calculation of the corporate fine); and section 8 (joint corporate fine).

has an effective regime to also confiscate the bribe or its proceeds (see Part B(4) below) and an adequate framework for additional civil or administrative sanctions (see below at part (d)).

34. Finland has provided information on two cases in which corporate fines were sought. The corporate fine sought in the first case was 400,000 euros in relation to charges that a 1 million euro bribe was paid to a Swedish individual. The court did not accept the charges in this case and the company was acquitted. The corporate fine sought in the second case was 500,000 euros in relation to charges of aggravated bribery involving the payment of 3.4 million euros to a foreign public official. The District Court found the charges in this case not proved. The prosecutor successfully appealed the findings at first instance in the second case and the case has been remitted for retrial in the District Court.

(c) Lapse of sanctions

35. In Phase 2, the Working Group expressed concern that provisions in Chapter 8 of the Criminal Code (relating to time-barring of certain sanctions) could prove an obstacle to the application of effective, proportionate and dissuasive sanctions.²¹ This issue was not addressed in the Phase 2 written follow-up report and is not covered in Finland's responses to the Phase 3 Questionnaire. As there have been no sanctions imposed in relation to the foreign bribery offence, the Working Group remains unable to assess whether these provisions are an impediment to effective implementation of the Convention.

(d) Administrative sanctions

36. A conviction of aggravated or non-aggravated bribery (which would include a conviction of bribing a foreign public official) is included in the mandatory criteria for excluding an applicant from tendering for public procurement contracts (see Part B(11)(c) below). There are, however, no provisions in the Public Contracts Act relating to the suspension or termination of a public procurement contract in the event of the discovery that information provided by the applicant was false (including the applicant's self-disclosed convictions), or by reason of the contractor subsequently engaging in bribery during the course of the contract.

37. An alternative form of administrative sanction exists under the Business Prohibition Act. The Act authorises the court to impose and enforce bans on natural persons from engaging in commercial activities within Finland, at the request of the prosecution. Bans of this type may be imposed as a temporary pre-trial measure for a maximum period of six months and up to twice in the pre-trial period. In addition, during the criminal trial the public prosecutor may request a ban for a period between three and seven years if a person: (i) has neglected to meet his/her statutory obligations in business; or (ii) has committed a criminal act in business of a type that cannot be deemed minor and, when assessed as a whole, where the conduct is harmful to creditors, contract partners, public finance or healthy and functional economic competition. Violation of a business prohibition is punishable by a fine or imprisonment for a maximum of two years. A person who acts as an intermediary for another person in circumventing a business prohibition may be sanctioned for its violation. To date there have been no bans imposed in relation to foreign bribery cases

Commentary

The lead examiners welcome Finland's progress in compiling and disclosing data relevant to the investigation and prosecution of foreign bribery offences and, to this extent, consider Recommendation 8 in Phase 2 to be satisfactorily implemented. However, consistent with the Working Group's treatment of sanctions as a horizontal issue, the lead examiners consider

²¹ Finland Phase 2 report, p. 24. See the Criminal Code of Finland, Chapter 8, section 9 (time-barring of the imposition of forfeiture) and section 10 (lapse of an imposed sentence of imprisonment).

that it is not possible to properly assess whether Finland's sanctions regime is effective, proportionate and dissuasive in the absence of actual cases. The lead examiners therefore recommend that the Working Group monitor the application of sanctions as foreign bribery cases are dealt with in Finland, in particular concerning: (i) the lapse of sanctions; (ii) the use of provisions on exclusion from competition for public procurement; and (iii) bans on engaging in commercial activities.

4. Confiscation of the bribe and the proceeds of bribery

38. In Phase 2, the Working Group expressed concern about the regime for confiscation, specifically in relation to the inability of Finland to confiscate the bribe and its proceeds from third parties, and in cases where there is a victim with a right to compensation. The issue was noted for follow up. Since Phase 2, the Criminal Code was revised and the provisions concerning implementation of Article 3(3) of the Convention are now set out in Chapter 10 of the Criminal Code.²²

39. The possibility of confiscation applies to legal persons and a corporation may be subject to a forfeiture order, even if the individual committing the offence cannot be identified (§ 10:1(2)(3)). The forfeiture provisions allow for the confiscation of both the instrument (or its equivalent) and proceeds of foreign bribery (§ 10:2-5; 10:8 and 40:14), or an estimate of the proceeds (§ 10:2(2)). However, of concern is the reference in Finland's responses to the Phase 3 Questionnaire to Finnish jurisprudence that a bribe may be confiscated only from its recipient.²³ This adds to the already complicated process of seizing and confiscating the bribe or its proceeds that are located abroad, particularly in the context of non-cooperative jurisdictions. There is a possibility that one of the foreign bribery cases currently under investigation could test the issue of confiscation in foreign bribery cases for the first time.

40. Concerning pre-trial seizure and confiscation, there are currently no examples of pre-trial seizure and confiscation in relation to foreign bribery cases, although the Finnish authorities explained that this would be possible if the police or prosecution sought an injunction to this effect. In foreign bribery cases, the success of such steps would depend largely on cooperation by foreign authorities, since a bribe can be confiscated only from its recipient(s).

41. Concerning asset recovery, the lead examiners heard during the on-site visit that, in its current investigations relating to foreign bribery offences, Finland has had mixed experiences in cooperating with foreign authorities in the tracing of assets and eventual asset recovery. Authorities explained that tracing bribes and the assets generated by the commission of the foreign bribery offence calls for extensive pre-trial investigations. One challenge experienced has been that the legislation of foreign States with which Finland has liaised has only allowed the tracing of proceeds of crime held by the suspect of the crime. On the subject of the recovery of the proceeds of crime, Finnish authorities said that foreign States have seldom been willing to proceed with the enforcement of forfeiture orders. The Working Group commends Finland's proactive approach to obtain the cooperation of relevant foreign authorities, including by using the Working Group on Bribery as a forum to pursue its requests.

Commentary

In the absence of actual cases on the subject, the lead examiners do not consider it possible to properly assess Finland's framework for confiscation and asset recovery. They recommend

²² See Annex 4 for the text of § 10:1-5 of the Criminal Code.

²³ Finland: Responses to the Phase 3 Questionnaire and Supplementary Questions [DAF/INV/BR/WD(2010)12] para 134.

that the Working Group monitor this issue, in the broader context of the use of sanctions, as foreign bribery and related cases emerge in Finland.

5. Investigation and prosecution of the foreign bribery offence

(a) Resources and principles of investigation and prosecution

42. The principles of investigation and prosecution in Finland have not changed since Phase 2, although there have been some very recent structural changes within the Ministry of Interior and the Police. Finland has established a Police Board, with the aim of allowing the three responsible bodies to have more distinct roles.²⁴ The National Bureau of Investigation (NBI) continues to be responsible for the investigation of complex organised and international crimes, including economic crimes and, more specifically, including the foreign bribery offence. Structural changes have also occurred within the NBI, distinguishing between intelligence and investigative roles, and incorporating the Financial Intelligence Unit within the NBI's intelligence work. These changes appear to enhance the operational capacity to detect and investigate foreign bribery and do not appear to create challenges to the independence of the police.

43. The need for broadened investigative powers for law enforcement authorities was identified as a matter of concern in Phase 2.²⁵ Following that evaluation, in 2003, a major reform of the Coercive Measures Act was enacted. The Act applies to the pre-trial investigation work of the police and contains provisions on travel restrictions, seizure as security, confiscation, wiretapping, electronic surveillance, technical surveillance and technical tracing. In 2009, the Coercive Measures Act was further amended to include the ability to record electronic communications in the investigation of economic offences, including aggravated bribery under § 16:14 of the Criminal Code. The lead examiners heard representatives of the NBI state that the investigative tools available to them are very good, with applicable thresholds allowing good use of those tools. This includes the ability to access bank information without the need for a court order.

44. Pre-trial investigations continue to be the responsibility of the police. The lead examiners heard of good levels of cooperation within the police (as between intelligence and investigative officers, and as between the NBI and local police), as well as cooperation between the police and prosecutors by means that safeguard the independence of the police (as provided for under the Pre-Trial Investigation Act). Upon the commencement of a pre-trial investigation into a serious case (i.e. an aggravated form of offending), the General Prosecutor's Office (GPO) is notified of this fact and an individual prosecutor (from the GPO or a local prosecution office, depending on the case) is assigned to follow the progress of the investigation and assist investigators if required. In foreign bribery cases, this notification has been by the NBI to the Prosecutor General's Office, with a Key Prosecutor from the GPO assigned. At the conclusion of the pre-trial investigation, a report is provided to the assigned prosecutor, who has the ability to require the police to undertake further investigations if necessary, and who will then determine whether criminal charges should be presented to the court. In complex cases, police and prosecutors are reasonably interactive during the investigative process, as has been the case in foreign bribery investigations.

45. Prosecutors do not require permission to commence a foreign bribery prosecution. Nor are they subject to instructions on how to conduct individual cases or how to conduct prosecution work in general. During the on-site visit, the lead examiners heard of an instance where, approximately five years ago, a

²⁴ Namely: the Ministry of Interior responsible for policy; the Police Board responsible for the development of operational objectives for the implementation of policies and the allocation of resources to meet those objectives; and the Police responsible for performance of operational objectives

²⁵ Finland Phase 2 Report, pp. 14-15.

Minister criticised the conduct of a case before the courts. The Minister was very heavily condemned by the media for doing so.

46. Although regular training within the police and prosecution service is undertaken, this does not include specific training on the investigation and prosecution of corruption or bribery cases. A representative from the NBI stated that there was a lack of political will to prioritise such training within the police. Within the prosecution service, Key Prosecutors take a reactive approach, i.e. waiting for requests for assistance within their area of expertise, rather than establishing technical guidance manuals or the like.

(b) *Plea bargaining and waiver of prosecution*

47. During the on-site visit, the lead examiners were told that consideration is being given to the possibility of introducing in Finland a system of plea bargaining. They were told that this concept is strange to the way in which the administration of justice has worked in Finland, but that there are continuing concerns in Finland about the overloading of the judicial system, including criticisms and adverse decisions by the European Court of Human Rights about delays in the conduct of judicial proceedings. The Ministry of Justice is actively considering and consulting on the question of the overloading of the judicial system in Finland.

48. Under the Criminal Procedure Act (CPA), there is the possibility in Finland of waiving prosecution on grounds that either (i) the conduct was petty (§ 1:7(1)), or that (ii) it would be unreasonable to charge the offender with an offence (§ 1:8(1)).

1. The first ground of waiver is explained in the Public Prosecutor's Guidelines on Preparation and Content of a Decision on Non-Prosecution (VKS:2007:4) to mean that a prosecutor may waive prosecution "if no penalty more severe than a fine is to be anticipated for the offence and the offence is deemed of little significance in view of its detrimental effects and the degree of culpability of the offender" (emphasis added).
2. The second ground contemplates waiver of prosecution "where the trial and punishment are deemed unreasonable or pointless in view of the settlement reached by the offender and the complainant, the other action of the offender to prevent or remove the effects of the offence, the personal circumstances of the offender, the other consequences of the offence to the offender, the welfare or health care measures undertaken and the other circumstances, or other factors" call for waiver "unless an important public or private interest otherwise requires" (emphasis added).²⁶

49. The possibility of waiver is reinforced in the case of the liability of legal persons, in respect of which § 9:7(1) of the Criminal Code provides that a prosecutor may waive the bringing of charges against a corporation if the act in question was "of minor significance" or if "only minor damage or danger has been caused" and if "the corporation has voluntarily taken the necessary measures to prevent new offences".²⁷

50. From statements made by representatives of the Public Prosecutor's Office, the lead examiners were left with the impression that waiver would not likely be contemplated in foreign bribery cases because, using the language in the CPA, this offence is not considered an offence "of little significance" (§ 1:7(1)) and because the investigation and prosecution of the foreign bribery offence is seen as "an

²⁶ Public Prosecutor's Guidelines on Preparation and Content of a Decision on Non-Prosecution (VKS:2007:4).

²⁷ See Annex 4 for the text of § 9:7(1) of the Criminal Code.

important public... interest” in favour of prosecution (§ 1:8(1)). However, in its answers to the Phase 3 Questionnaire, Finland stated that both grounds of waiver “could in principle be applied in cases where the amount of the bribe was insignificant”.²⁸

(c) *Jurisdiction*

51. At the time of its Phase 2 examination, Finland required dual criminality in order to establish nationality jurisdiction over Finnish nationals and companies for offences committed abroad. In 2004, amendments were introduced to the Criminal Code so that dual criminality is no longer a requirement for the application of Finnish law to the active bribery offences in the Criminal Code (§1:11(2)(4)).

(d) *Statute of limitations*

52. Since Finland’s Phase 2 evaluation, the Criminal Code was revised and the provisions on statutes of limitations (SoL) are now set out in Chapter 8 of the Criminal Code. As it concerns the SoL pertaining to the investigation and prosecution of the foreign bribery offence, the *right to bring charges* is time-barred if charges have not been brought within five years (in the case of non-aggravated bribery) or within ten years (in the case of aggravated bribery) – § 8:1(2); from the day of the commission of the offence – § 8:2; until the defendant has been given lawful notice of the summons – § 8:3. The SoL applicable to the pre-trial investigative stage can be extended once by one year if the investigation requires special time-consuming investigative measures, or the accused person is evading apprehension in order to avoid being served with a notice of summons or the case has come to pre-trial investigation at an exceptionally late stage, and if “a very important public interest demands continuation of the period of limitation” – § 8:4. Finland’s Criminal Code does not provide for the possibility of suspension of the SoL, i.e. whereby the SoL is ‘paused’ during the conduct of certain investigative steps, such as obtaining legal assistance. This means that, from the date of the commission of the *non-aggravated* offence of foreign bribery, authorities have a maximum possible period of six years (including an extension of one year, if granted) to lay an indictment (on the basis of probable cause) and issue a notice of summons.

53. Article 6 of the Convention requires that statutes of limitation must be “adequate” for the effective investigation and prosecution of the foreign bribery offence. The Working Group on Bribery has thus far not defined what amounts to an “adequate” SoL, although this has been identified as a horizontal issue for Parties to the Convention.

54. In the context of Finland’s investigations into allegations of foreign bribery, and despite the involvement in those cases of well-resourced and experienced investigators with good investigative tools at their disposal, the Working Group is unsure whether the SoL of five years from the date of the offence for the bringing of non-aggravated bribery charges is sufficient for the purpose of foreign bribery investigations. Given the secretive nature of corruption offences and the difficulty to detect such offences, the complexity of such cases, and the frequent need to rely on legal assistance, it is unclear whether limiting the ability to bring charges to just five years after the commission of the offence will obstruct the effective enforcement of such cases, despite the possibility of extending the statute of limitations once for a period of one year. However, in the absence of concluded foreign bribery cases in Finland, the Working Group was unable to reach a conclusion on the adequacy of the SoL applicable to the non-aggravated bribery offence.

²⁸ Finland: Responses to the Phase 3 Questionnaire and Supplementary Questions [DAF/INV/BR/WD(2010)12] para 109.

Commentary

Structural changes within the police in Finland, and particularly within the National Bureau of Investigation, appear to enhance the operational capacity of investigative authorities to detect and investigate allegations of foreign bribery, and do not appear to create challenges to the independence of the police. Since Phase 2, new investigative tools have been made available to the police, with applicable thresholds allowing for good use of those tools. Good levels of cooperation exist within the police, and also as between the police and prosecutors. The lead examiners are disappointed, however, with the lack of specialised training and standardised guidance on the investigation and prosecution of corruption and bribery cases.

The lead examiners note that Finland is in the early stages of discussions on the possibility of introducing a system of plea bargaining. They recommend that the Working Group follow-up on this and the way in which such a system might impact on the investigation and prosecution of the foreign bribery offence in Finland.

The lead examiners were pleased to learn of amendments to the Criminal Code to remove the dual criminality requirement for the application of Finnish law to the active bribery offences in the Criminal Code, which now means that dual criminality is no longer a pre-requisite to nationality jurisdiction over Finnish nationals and companies who commit the foreign bribery offence abroad.

Concerning the five year statute of limitations applicable to the non-aggravated offence of active bribery, and despite the involvement in foreign bribery cases of well-resourced and experienced investigators with good investigative tools at their disposal, the lead examiners are unsure whether this limitation period is adequate for the effective investigation of foreign bribery cases. Although unable to reach a conclusion on the adequacy of the SoL applicable to the non-aggravated bribery offence, the lead examiners recommend that Finland ensure that the overall limitation period applicable to the foreign bribery offence, especially in its non-aggravated form, is sufficient to ensure adequate investigation and prosecution, including that mechanisms for extension of the limitation period are sufficient and reasonably available. They also recommend that the issue of the adequacy of statutes of limitations should be reviewed by the Working Group, on a priority basis, as a horizontal issue.

6. Money laundering

55. Finland should be commended on the steps taken by it to reform aspects of its anti-money laundering laws and practice.²⁹ Since Phase 2, Finland has established specific money laundering offences, instead of having to rely on receiving offences (§ 32:6 to 32:10 of the Criminal Code); its law expressly covers attempted money laundering, conspiracy to launder money and negligent money laundering (§ 32:6(2), 32:8 and 32:9); predicate offences include any offence under the criminal code, including offences committed abroad (§ 32:6(1)(2)); double criminality is no longer applicable to predicate offences; there is now an express suspicious transaction reporting (STR) obligation to the Money Laundering Clearing House (MLCH – see the Act on Preventing and Clearing Money Laundering and Terrorist Financing); and real estate agents are expressly covered in the supervision activities of the Regional State Administrative Authority of Southern Finland.

²⁹ See: Financial Action Task Force Third Mutual Evaluation Report, 12 October 2007 (Annex 2 to Finland's responses to the Phase 3 Questionnaire); and Financial Action Task Force Third Mutual Evaluation Report, Follow-Up Report Submitted by Finland (Annex 3 to Finland's responses to the Phase 3 Questionnaire).

56. In Phase 2, the Working Group had recommended that Finland ensure that in practice the absence of an express obligation in the law requiring that money exchange bureaux report suspicious transactions to the MLCH did not decrease the effective implementation of money laundering legislation, and undertake a consistent and effective approach to monitoring the compliance of real estate agencies with their reporting obligations to the MLCH (Recommendation 6 in Phase 2). Recommendation 6 was assessed as partially implemented at the time of Finland's written follow-up report to Phase 2. As a result of the reforms mentioned in the preceding paragraph, the Working Group concludes that this Recommendation has now been fully implemented by Finland. It is noted, however, that there have been no money laundering investigations or convictions in Finland based on a predicate offence of bribery (domestic or foreign).

Commentary

The lead examiners commend Finland on the positive steps taken by it to reform various aspects of its anti-money laundering laws and practice. However, in view of the lack of investigations and prosecutions of money laundering based on a predicate offence of bribery, they recommend that the Working Group follow-up the application of the money laundering offence in such cases.

7. Accounting requirements, external audit, and company compliance and ethics programmes

(a) Accounting requirements

57. The lack of liability for legal persons in relation to accounting offences under the Criminal Code and the Accounting Act was a key concern in Finland's Phase 2 report. This was also considered detrimental to the effective implementation of Finland's anti-money laundering obligations. In Phase 2, the Working Group also expressed concerns that there was no obligation on persons responsible for keeping account records for companies to report suspicious transactions to competent authorities. At the time of its written follow-up report to Phase 2, Finland was considered to have satisfactorily implemented the consequent recommendation that it evaluate whether such an obligation would improve the prevention and detection of foreign bribery cases (Recommendation 4 in Phase 2).

58. Since Phase 2, the provisions on accounting and auditing offences were reformed through amendment of Chapter 30 of the Criminal Code (§ 30:9, 30:9a, 30:10 and 30:10a). Corresponding sanctions were increased. A new aggravated accounting offence was established under § 30:9a, and the scope of application of the basic offence was widened. In addition, § 30:13 was added to extend corporate liability in respect of a range of offences categorised as 'business offences', although this specifically excludes reference to the accounting and auditing offences just mentioned. In its responses to the Phase 3 Questionnaire, Finland acknowledged that the Criminal Code should expressly provide for corporate criminal liability for accounting offences.³⁰ Finland suggested that the administrative sanctions referred to in Part B(3)(d) above serve to remedy this deficiency. It is unclear, however, how bans on engaging in business and debarment from public procurement serve as an effective substitute for criminal liability for false accounting offences.

(b) External auditing requirements

59. In Phase 2, the Working Group recommended that Finland require auditors to report indications of possible foreign bribery to management and, where appropriate, to corporate monitoring bodies, and consider requiring that such a body in turn have a duty to report to the investigative authorities

³⁰ Finland: Responses to the Phase 3 Questionnaire and Supplementary Questions [DAF/INV/BR/WD(2010)12] para 233.

(Recommendation 5). This recommendation was considered not to have been implemented based on information provided during Finland's written follow up report. The main legal obstacle was identified in § 5:25 of the Auditing Act, which forbids an auditor from revealing information about an audited company to an 'outsider' unless there is a statutory obligation to do so. For the reasons outlined below, the Working Group concludes that Recommendation 5 in Phase 2 continues to remain not implemented.

60. Since Phase 2, Finland's Auditing Act was revised to bring it in line with international auditing standards. The threshold requirements to submit to an external audit have been increased and are contained in § 2:4 of the Act.³¹ Auditing professionals at the on-site visit indicated that, as a result of this increased threshold, 53 000 limited liability companies have been released from the *obligation* to carry out an external audit, although many continued to voluntarily submit to external audit. The lead examiners heard from representatives of the business sector that, of the 236 000 Finnish enterprises in existence, almost half are one-person enterprises and 99% are microenterprises.

61. The requirements for audit reports are set out in § 3:15 and 3:16 of the Act and largely reflect the provisions in place at the time of Finland's Phase 2 evaluation. Audit reports must contain remarks if the company's management is guilty of an act of negligence which may result in liability for the company, or if management has violated a law applicable to the company. Auditors have the discretion to make remarks to management, in the audit memorandum, in relation to matters not covered in the audit report. There is no explicit obligation to report suspected foreign bribery, although there is an obligation to report suspicious transactions in the context of money laundering.

62. The confidentiality obligation that was a cause for concern in Phase 2 has been retained in the Act and appears in § 4:26. Auditing professionals at the on-site visit clarified that confidentiality was not absolute in the case of an active police investigation, in which case there would be scope for disclosure. However, neither the Finnish public sector nor the Auditing Board has undertaken bribery-specific guidance or awareness-raising with respect to the auditing professions.

(c) *Internal controls, ethics and compliance programmes*

63. In terms of its efforts to promote Annex 2 of the 2009 Recommendation, on Good Practice Guidance on Internal Controls, Ethics and Compliance, Finland issued a press release and published a one-page article on the Ministry of Justice website after the Annex was adopted in February 2010. At the time of the on-site visit, nothing had been done by Finnish missions abroad to promote the Good Practice Guidance among Finnish companies operating in host countries. The MOJ produced in autumn 2009 an English-language brochure entitled *Corruption and the Prevention of Corruption in Finland*, although this focuses more on domestic corruption. At the on-site visit, the Finnish authorities confirmed that this brochure had been provided to Finnish companies and other government authorities to assist, in part, with explaining why Finland constantly scores very well in the CPI, with low rates of perceived corruption.

64. Finland's Securities Market Association published a Corporate Governance Code for listed companies in 2008. The Code contains recommendations on internal control, risk management and internal audit, although these recommendations do not refer specifically to the need to prevent and detect foreign bribery. Compliance officers present at the on-site visit said that there is no government encouragement to adhere to this Code, but that the Securities Market Association has sufficient influence for it to be followed by all listed companies. The lead examiners were told of a separate corporate governance code addressed

³¹ There is no obligation to appoint an external auditor for a corporation unless one or more of the following conditions were met in both the most recent completed financial year and the financial year immediately preceding it: (i) the balance sheet total exceeds 100 000 Euros; (ii) net sales or comparable revenue exceed 200 000 Euros; or (iii) the average number of employees exceeds three.

to SMEs but it was unclear how strictly it is followed by SMEs. Some private sector representatives expressed concern at the prospect of government intervention in the operational aspects of their business, and expressed the view that companies should regulate this issue internally.

Commentary

Liability of legal persons for accounting and auditing offences was identified as a challenge for Finland in Phase 2 and continues to be an obstacle to effective implementation of the Convention and the new accounting and auditing standards contained in the 2009 Recommendation. While the lead examiners welcome the introduction of increased sanctions, they recommend that Finland further amend the Criminal Code and Accounting Act so that the accounting and auditing offences apply to legal persons.

The fact that changes to the Auditing Act do not serve to address the concerns outlined in Finland's Phase 2 evaluation, coupled with the increased threshold for submission to external audit resulting in 53 000 companies being released from external audit obligations, is a cause of significant concern for the lead examiners. This is in contrast to the expansive accounting and auditing provisions in the 2009 Recommendation. The position is aggravated by the absence of any mitigating measures such as guidance or awareness-raising in the auditing profession. The lead examiners therefore consider that Finland continues not to have implemented Recommendation 5 in Phase 2 and they urge Finland to do so as a matter of urgency.

In relation to auditing requirements for SOEs, the lead examiners recommend that Finland address this in the context of their earlier recommendation that the new State Ownership Steering Department be actively engaged in efforts to raise awareness of the foreign bribery offence and its implications among SOEs and their auditors (see the Commentary in Part B(2) above).

While the lead examiners recognise the difficulties faced by Finland when trying to encourage a part of the private sector that does not want to be burdened by government regulation, they encourage Finland to increase its efforts to promote the recently adopted Good Practice Guidance in Annex 2 to the 2009 Recommendation to all Finnish enterprises as a tool for effective compliance.

8. Tax measures for combating bribery

(a) Non-deductibility of bribes

65. According to the section 16 of the Business Tax Act, the amendment of which entered into force subsequent to Finland's Phase 2 evaluation, "bribes or benefits that are similar to bribes" are expressly not tax-deductible (section 16(8)). Previously, the non-tax-deductibility of such bribes and payments was based on the jurisprudence of the Supreme Administrative Court. Section 16(8) does not expressly refer to bribes to foreign public officials, although it is arguable that the reference to "bribes" is sufficient for the purpose of Recommendation I(i) of the 2009 Tax Recommendation (and Recommendation VIII(i) of the 2009 Recommendation) because foreign bribery is an offence under the general active bribery offences in Chapter 16 of the Criminal Code. However, the Working Group considers that raising awareness of tax officials that *foreign* bribery falls within the scope of section 16 of the Business Tax Act (as recommended by Recommendation I(i) of the 2009 Tax Recommendation) would encourage the detection by the Finnish Tax Administration of claimed "expenses" which constitute foreign bribery payments. This is particularly the case in light of an apparently low level of awareness of bribery and foreign bribery within the Tax

Administration, evidenced by a statement of one official during the on-site visit that “bribery is not something that comes to the mind of tax auditors”.

(b) *Detection and reporting of suspicions of foreign bribery*

66. Recommendations I(ii) and II of the 2009 Tax Recommendation (and Recommendation VIII(i) of the 2009 Recommendation) concern themselves with the effective detection and reporting by tax authorities of suspicions of foreign bribery. In this regard, section 18 of the Tax Administration Act gives the Tax Administration the *right* to report to the police suspicions of a “tax offence or other related offence”, although it does not *oblige* the Tax Administration to report suspicions to the police. It is unclear from the Act and the Guidelines on Cooperation between the Police and the Taxation Authorities what amounts to a “tax offence or other related offence” and, more specifically, whether suspicion of a foreign bribe would result in a right to report to law enforcement authorities. During the on-site visit, representatives from the Tax Administration acknowledged that this possibility had not been considered by them, and that no such reports had been made by them.

67. Since Phase 2, information concerning bribery allegations (domestic or foreign) has not been received from the Finnish Tax Administration, even though the lead examiners heard a representative of the NBI state that the Tax Administration represents a considerably valuable source of intelligence in the fight against bribery. It is noted, in this regard, that the two cases involving foreign bribery prior to the Phase 2 evaluation of Finland, which were handled as tax frauds, had been revealed by reports of tax inspectors. The lead examiners also heard that, although the NBI has not received any information from the Tax Administration on suspicions of bribery discovered during the course of their work, the Tax Administration responds well to requests for information initiated by the police.

68. The Working Group notes that consideration is being given by the Tax Administration to establish guidelines on how the investigation of money laundering should be taken into consideration in tax administration. The Tax Administration is considering whether issues related to the investigation of bribery and corruption can be integrated into the same guidelines, or a separate set of guidelines on the subject, although no timeframe has been identified for this. The lack of clarity and awareness in this area is of concern, especially having regard to Recommendation 3 in Phase 2 (assessed as not implemented following Finland’s written follow-up report) to establish clear guidelines to the effect that tax inspectors are obliged to report cases of suspected foreign bribery to investigative authorities. The Working Group therefore assesses that Recommendation 3 in Phase 2 continues not to be implemented by Finland.

(c) *Guidance to taxpayers*

69. Recommendation I(ii) of the 2009 Tax Recommendation recommends that Parties to the Convention should assess “whether adequate guidance is provided to taxpayers and tax authorities as to the type of expenses that are deemed to constitute bribes of foreign public officials”. The Tax Administration provides no guidance to taxpayers in this regard although Finnish authorities advised, following the on-site visit, that Tax Authorities will be issuing such guidelines. The Working Group notes that there is no maximum threshold for the amount of gifts and entertainments that can be claimed as deductible expenses, although it also notes that the Tax Administration has confidential risk profiles that are regularly reviewed and updated (including factors such as the size of the business and the value of the gifts or entertainments claimed) which may trigger closer investigation of claims by tax inspectors.

(d) *Bilateral tax treaties and the sharing of information by tax authorities*

70. Since revision of Article 26 of the OECD Model Tax Convention in 2005, the optional language in paragraph 12.3 of the Commentary (concerning the sharing of information by tax authorities if certain

conditions are met) has been included in new bilateral tax treaties entered into by Finland.³² Finland is also a party to the multilateral Convention on Mutual Administrative Assistance in Tax Matters which, in its Article 22(4), provides for the sharing of information by tax authorities. Finland is thereby in compliance with Recommendation I(iii) of the 2009 Tax Recommendation.

Commentary

For the purpose of raising awareness amongst tax auditors and for enhancing the effectiveness of mechanisms to detect and report suspicions of foreign bribery by tax authorities, the lead examiners recommend that Finland clarify, by way of internal guidelines to tax officials, the application of section 16 of the Business Tax Act to bribes to foreign public officials as a form of non-deductible expenses.

Reiterating Recommendation 3 in Phase 2, the lead examiners recommend that Finland establish clear guidelines to the effect that tax inspectors are obliged to report cases of suspected foreign bribery to investigative authorities. Finland should also provide adequate guidance to taxpayers as to the type of expenses that are deemed to constitute bribes to foreign public officials.

9. International cooperation

(a) Mutual legal assistance

71. The central authority for mutual legal assistance (MLA) in Finland is the Ministry of Justice, with decisions on MLA made by the Minister of Justice. The procedural and operational aspects of MLA, which have not changed since Phase 2, are dealt with by the authorities from and by whom assistance is requested or undertaken. In foreign bribery cases, MLA is therefore dealt with by the National Bureau of Investigation.

72. Finland's information system does not provide data on the origin or destination of MLA requests, nor on the offences in respect of which legal assistance requests are made or received. However, Finland's responses to the Phase 3 Questionnaire record that, in relation to the foreign bribery cases in Finland:

- Requests made of Parties to the Convention (Austria, Canada, Germany, Slovenia and the United Kingdom) were responded to within a reasonable period (one to three months);
- Requests made of other countries were made in reliance on the UN Convention against Corruption (UNCAC) and were in most cases responded to within a timeframe of one to five months (in the case of requests to Costa Rica, Cyprus, Liechtenstein and Panama), except in the case of requests to Thailand (with no response since January 2010) and Egypt (which refused to provide legal assistance on the basis of Article 46(21)(b) of UNCAC);³³
- In the case of one investigation, a Joint Investigation Team (JIT) was established with two Convention Parties, thereby removing the need for the mechanism of MLA between the three JIT countries;
- Two other cases concerning allegations of foreign bribery are at very early stages of investigation and have yet not involved the need for legal assistance.

³² The optional language has been included in amended protocols with Belgium and Switzerland.

³³ That is, on the basis of sovereignty, security, *ordre public* or other essential interests.

73. The Working Group was unable to assess Finland's own practice of providing assistance. This was due not only to the lack of available information in Finland, but also due to the lack of a mechanism by which the evaluation team could obtain information from other Parties to the Convention on their experiences in cooperation by Finland in response to MLA requests. This is a cross-cutting issue requiring further consideration by the Working Group.

74. Finland has not had direct experience of cooperation with competent authorities in other countries concerning the identification, freezing, seizure, confiscation or recovery of bribes, and the proceeds of bribes, to foreign public officials. However, as mentioned in Part B(4) above, Finland has had varied responses to requests for cooperation made to foreign authorities in relation to the tracing of assets and eventual asset recovery in foreign bribery cases.

(b) Outreach

75. The Finnish government has undertaken significant bilateral work over the last four years with the Russian authorities in the context of combating corruption and plans to increase government-to-government cooperation in the future.³⁴ Finland is also seeking to expand its bilateral anti-corruption work with China. The Finnish authorities were concerned that given the risks involved in investing in China, and the increasing number of Finnish companies that were looking to the Chinese market, it was not unlikely that related cases of foreign bribery might arise in the future. The Working Group commends Finland for its proactive approach to working with both Russia and China, which has been undertaken in collaboration with the Finnish Chamber of Commerce.

Commentary

Finland's experience in receiving legal assistance during the course of foreign bribery investigations has been reasonably positive, except in the case of one investigation where assistance was refused, on apparently dubious grounds, by a country not party to the Convention. The lead examiners were unable to assess Finland's own practice of providing legal assistance, due to: (i) the lack of available information in Finland on the origin of MLA requests and the offences in respect of which legal assistance requests have been made; and (ii) the lack of a mechanism by which the lead examiners could obtain information from other Parties to the Convention on their experiences in cooperation by Finland in response to MLA requests. The lead examiners recommend that Finland adapt its information system to allow it to collect data on the origin of MLA requests and the offences in respect of which legal assistance requests are made. They further consider that the question of how to assess the practice of Parties in responding to MLA requests is a cross-cutting issue that should be examined by the Working Group.

Finland has not had experience of cooperation with competent authorities in other countries concerning the identification, freezing, seizure, confiscation or recovery of bribes, and the proceeds of bribes, to foreign public officials. The lead examiners recommend that the Working Group follow up on experiences in this area as practice develops.

The lead examiners commend Finland for its extensive bilateral work with potential key partners, Russia and China, in the fight against the bribery of foreign public officials. They

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In its responses to the Phase 3 Questionnaire, Finland referred to a seminar in Helsinki in October 2009, co-organised with Russian anti-corruption authorities; an anti-corruption research and training project with Russia; and the publication of a joint report entitled *Corruption on the Finnish-Russian Border* (note 5 above).

remind Finland of the importance of also focussing on its own companies operating in these jurisdictions and beyond, to alert them to the scope, content and consequences of the foreign bribery offence, as well as the available tools to combat it, including the Good Practice Guidance on Internal Controls, Ethics and Compliance.

10. Public awareness and the reporting of foreign bribery

(a) Anti-Corruption Cooperation Network (ACCN)

76. Finland's Phase 2 report recommended that the Finnish government clarify the responsibility of State authorities for the implementation of the Convention (Recommendation 2). The ACCN was subsequently established in 2002 by a decision of the Minister of Justice. Finland's assessment was an independent agency would not work well within the Finnish structure and that it would be better to bring the key authorities together by way of a cooperative network. During consideration of Finland's written follow-up report to Phase 2, the Working Group reviewed the mandate and activities of the inter-agency network then in place and concluded that Finland had satisfactorily implemented Recommendation 2 in Phase 2.

77. The Ministry of Justice is the lead agency in the ACCN, which is mandated on a two-year basis by a decision of the Minister of Justice and membership of which is established by informal agreement between the undersecretaries of the participating government agencies. The network membership includes relevant government authorities, the Chamber of Commerce and the local branch of Transparency International and meets every two to three months. One of the main tasks of the ACCN is to facilitate implementation of Finland's international legal obligations arising from multilateral anti-corruption treaties, however Finnish government representatives said that the main focus of the ACCN has been on domestic issues, such as campaign financing and the so-called 'old boys' network'. The lead examiners commend Finland on the creation of the ACCN, a useful platform for coordinating a whole-of-government response to the challenges of combating corruption. However, the lead examiners consider that the ACCN is underutilised in certain areas and could do much more to raise awareness among officials in relevant Finnish government agencies, in the private sector and in the general public, of the framework in Finland for combating bribery of foreign public officials.

(b) Awareness of the Convention and the offence of foreign bribery

78. It was noted in Phase 2 that Finland's policy on implementing the Convention appeared to be largely based on Finland's excellent record of a low level of corruption in government, rather than "a realistic assessment of the opportunities and pressures on companies to bribe in order to do business in certain foreign countries".³⁵ During the consideration of Finland's written follow-up report to Phase 2, the Working Group reached an overall conclusion that the consequent Recommendation 1 in Phase 2 had been satisfactorily implemented, although it noted that some of Finland's companies continued to operate in markets where the opportunities and pressures faced by them with regard to foreign bribery are much higher, "requiring further on-going efforts to promote awareness of the OECD Convention".³⁶

79. Since Phase 2 the national perception, in both the public and private sectors, of the relevance of foreign bribery to the Finnish context has not changed significantly, despite extensive media coverage of high-profile cases involving allegations of bribery of foreign public officials by Finnish companies (see Part A(3) above). Although Finnish authorities state that there is awareness in Finland of the risks of foreign bribery, representatives of the private sector commented that the government did not play an active

³⁵ Finland Phase 2 Report, p. 3.

³⁶ Finland Phase 2 Written Follow-up Report, para 4.

role in raising awareness of the issue of bribery in international business and that initiatives in this area were instead coming from public discussions of corporate social responsibility. Others commented, in line with views expressed by Finnish authorities, that it was not a matter for the government to intervene in the operational aspects of business but instead a matter for the companies to regulate themselves. An adverse consequence of this approach was highlighted when a representative from the public administration stated that Finnish companies know that, when they deal with developing countries, tenders have to include a budget for bribes.

80. While some efforts have been made to raise awareness, notably in cooperation with the Finnish chapter of Transparency International, these have been minimal (for example, two seminars in 2009 on anti-corruption conventions and whistleblowing) and vital work with specific sectors, such as the legal and accounting and auditing professions, has been overlooked. In relation to SMEs, Finpro (Finland's SME member organisation), highlighted its role in screening and warning partners of the risks involved in entering certain markets but noted a lack of attention to the specific needs of SMEs in the context of the government's anti-bribery policies.

81. It is clear that there is a need for direct engagement with the private sector on the issue of bribery of foreign public officials. However, even from the information received from the Finnish authorities, there appears to have been minimal private sector awareness-raising activities undertaken since Phase 2 by the Finnish government about Finland's framework for combating foreign bribery. Companies remain unaware and uninformed of the scope, content and consequences of bribery of foreign public officials in international business, as well as mechanisms for reporting allegations. Equally, officials in key agencies such as FINNVERA, MFA (including staff at overseas missions) and the tax administration are not themselves informed of how this framework applies to their portfolio and their responsibilities in its implementation including, for example, the need to raise awareness amongst taxpayers and Finnish individuals and enterprises doing business abroad. The Working Group therefore concludes that raising awareness of the foreign bribery offence has not been a priority in Finland.

(c) *Duty to report suspicions of foreign bribery*

82. Reports of suspected offences may be made freely to the police in Finland, either in person, by telephone or over the internet. All members of the police in Finland have a general duty to report suspicions of offending. However, except in the case of very serious offences such as homicide, there are no specific obligations or instructions requiring or calling on public officials in relevant agencies in Finland to report suspicions of offending, including suspicions of foreign bribery. The lead examiners heard, for example, that tax authorities have no such instructions, despite Recommendation 3 in Phase 2 (see Part B(8)(b) above). While some agencies, such as Finnish missions abroad, can and do agree on an annual basis about their "reporting profile", the lack of established reporting obligations and procedures for relaying allegations of foreign bribery to capital is of considerable concern, especially in light of the Recommendation IX(ii) of the 2009 Recommendation on the subject of facilitating reporting by public officials, particularly those posted abroad.

(d) *Whistleblower protection*

83. There is no specific whistleblower protection system in Finland to protect from discriminatory or disciplinary action public or private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities. Finnish authorities rely on the existence of some limited levels of witness protection, and the ability of employees who are dismissed without cause from employment to bring action against employers under labour laws in Finland and as a result of the strong union movement in Finland. Authorities further stated that corporate codes of conduct usually contain some form of accommodation for whistleblowers. The lead examiners also heard from civil society

representatives that there is not a strong culture of blowing the whistle in Finland, and that there is instead a preference for the internal resolution of issues.

84. Despite these explanations, the Working Group is again concerned that Finland's position is out-of-step with that of other Parties. The 2009 Recommendation, which reflects the development of standards by the Parties in this regard, calls on Parties to ensure that appropriate measures are in place to protect from discriminatory or disciplinary action public or private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions (Recommendation IX(iii)). Witness protection provides limited protection in the context of judicial proceedings only. Labour laws only protected against dismissal and do not cover other forms of discrimination that may follow a whistleblower report. Civil society representatives referred, in this regard, to a high-profile case in which a company sought to sue an employee who leaked classified information which related to foreign bribery allegations. Corporate codes of conduct may assist, but this involves a deferral of responsibility by Finnish authorities which cannot guarantee a uniform and adequate level of protection. Furthermore, corporate codes of conduct do not cover the protection of public sector whistleblowers. Given the difficulties in detecting foreign bribery cases, the Working Group considers this to be a significant deficiency in Finland's fight against foreign bribery.

Commentary

The lead examiners are seriously concerned that the national perception identified in the Phase 2 evaluation of Finland – i.e., that the issue of foreign bribery is not relevant to the Finnish context – remains unchanged. Finland appears to rely on its long-held reputation as a transparent and non-corrupt society, rather than proactively raising awareness (in both the public and private sector) of the offence of foreign bribery and the responsibility to report it. The need for direct engagement with the private sector, legal and accounting and auditing professions on the risks and consequences of foreign bribery is evidenced by the strong involvement of Finnish businesses in markets and countries that present a high risk of bribe solicitation and/or in which corruption is endemic. There appears to be an insufficient appreciation by the public sector that, whereas business within Finland is conducted with transparency and high levels of integrity – a fact that the Finnish public and private sectors are correctly proud of, and even associate as part of the national identity – the challenges faced by Finnish businesses abroad, and their reaction to those challenges, pose real risks of involvement in foreign bribery and impact on a range of government portfolios. The ongoing investigations in Finland into foreign bribery allegations, as well as studies on business at the Finnish-Russian border, for example, suggest that Finnish businesses are indeed involved in such conduct, even if without the realisation that their conduct is unlawful (as in the case of the use of local agents, for example).

In order to successfully implement the framework to combat foreign bribery, a major shift in approach by the Finnish public and private sectors is required. Awareness-raising has been lacking in Finland, despite this having been identified as a horizontal issue for Working Group members, as well as being a key aspect of the 2009 Recommendation (Recommendation III(i)). The lead examiners urge Finland to take concrete steps to raise awareness in key government agencies (e.g. FINNVERA, MFA, and the Tax Administration), high risk sectors (especially the defence industry), SOEs, SMEs and the legal and accounting and auditing professions.

A contributing factor to the low level of general awareness in Finland is the absence of obligations or instructions requiring or calling on public officials in relevant agencies in Finland to report suspicions of foreign bribery. The lead examiners recommend that Finland

introduce appropriate measures to facilitate reporting by public officials to law enforcement authorities of suspected acts of foreign bribery detected in the course of their work.

Finland also lacks whistleblower protection mechanisms. The lead examiners therefore recommend that Finland introduce mechanisms that are capable of ensuring that public or private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary action. Once established, Finland should take steps to raise awareness of such mechanisms.

The lead examiners commend Finland on the creation of the ACCN as a platform for coordinating responses to the challenges of combating corruption. However, the lead examiners consider that the ACCN has been underutilised in the fight against foreign bribery and recommend that the ACCN play an increased role in coordinating guidance and awareness-raising activities on Finland's framework for combating the bribery of foreign public officials..

11. Public advantages

(a) Official development assistance

85. Official Development Assistance (ODA) is administered by the Ministry of Foreign Affairs (MFA). The civil society unit of the MFA, VIRKE (the Project for the Developments of Inter-Authority Cooperation), checks information provided by applicants. ODA contracts include a provision to the effect that the contractor or agency “shall ensure that no illegal or corrupt practices relate to the use of the Finnish contribution”. During the on-site visit, in response to concerns raised by the lead examiners that this provision does not specify a prohibition against engaging in foreign bribery, a representative of the MFA stated that “we trust that our companies should know”. Finnish authorities maintain that it has been a consistent guiding principle of the Ministry of Foreign Affairs to urge Finnish companies not to engage in bribery. However, given the relatively low level of direct engagement by the public sector with the private sector in awareness-raising activities in Finland (see Part B(10)(b) above), the Working Group considers that ODA contracts should more expressly refer to the prohibition against engaging in foreign bribery.

86. The Group is also concerned by the fact that there is no provision expressly requiring sub-contractors or contracted local agents to be bound by the same obligation, especially in light of the apparent lack of understanding by some representatives of the business sector in Finland that payments through local agents overseas could constitute acts of foreign bribery, or at least that this poses risks of unlawful conduct (see part B(1)(b) above). This is somewhat offset by clause IX(17) of Finland's model consultant contract, which means that corrupt practice by a contractor or subcontractor can allow the MFA to cancel the contract. The same provision would render the contractor liable to compensate the MFA for any damage or loss caused to the Ministry.

87. The Working Group is also concerned that agents and contractors are not required to declare that they have not been convicted of corruption offences and that the MFA does not carry out due diligence concerning the criminal record of applicants prior to the granting of an ODA contract.

(b) Officially supported export credits

88. Since 2006, the export credit agency in Finland (FINNVERA) complies with the 2006 Recommendation on Bribery and Officially Supported Export Credits. FINNVERA requires exporters and lenders to sign an anti-bribery declaration for guaranteed transactions, thereby implementing

Recommendations 1(a), (b), (d) and (e).³⁷ While FINNVERA also takes note of whether existing and potential clients are blacklisted (Recommendation 1(c)), it does not have formal guidelines concerning due diligence or enhanced due diligence (Recommendations 1(f), (g) and (j)). Nor has it established formal procedures to disclose to law enforcement authorities instances of credible evidence of bribery (Recommendations 1(h) and (i)). On these points, a representative from FINNVERA said that, because it only deals with about 200 companies (representing Finland's largest exporters) and undertakes a limited number of transactions (about 150 per year), the agency knows its clients and what they have done and that, should credible evidence of bribery come to its attention, FINNVERA would report to law enforcement authorities. FINNVERA subsequently clarified that although it does not have its own guidelines, staff have been trained to be alert to indications of bribery when screening and processing applications. FINNVERA's website also requires export credit agencies to inform law enforcement authorities if there is "credible evidence" of bribery. These explanations are consistent with information provided annually by FINNVERA to the OECD Working Party on Export Credits and Credit Guarantees in response to its 2006 survey. FINNVERA has no guidelines on the consequences of a client or applicant being the subject of allegations or convictions of bribery, either before or after approving support (Recommendations 1(j) and (k)).

89. In relation to actual cases, FINNVERA representatives outlined their involvement in a case involving alleged foreign bribery by a Finnish company receiving export credit insurance, in which they discussed with the company involved policies to put in place to ensure that bribery does not occur in the future. The lead examiners sought further information from FINNVERA in relation to a further specific complaint made in 2006 to Finland's National Contact Point for the OECD Guidelines for Multinational Enterprises (MNE Guidelines). The case included allegations of bribery of foreign public officials by a Finnish company. FINNVERA representatives at the on-site visit were not aware of having looked into these allegations. However, after the on-site visit, authorities clarified that the matter was referred to the NBI (after the allegations appeared in the media, and then in the WGB matrix of cases) which followed up with representatives in the country concerned. The country responded that there was no investigation underway and because no subsequent information emerged, no investigation was launched.

(c) Public procurement

90. A system known as HILMA established and maintained by the Ministry of Employment and Economy (MEE), provides a cost-free electronic channel through which procurement units in Finland must give notice of their public tenders for all procurements that exceed the national and EU threshold value. Companies, in turn, obtain real-time information on current tenders as well as advance information on future procurements. While this system enhances transparency, the evaluation team noted that it does not cover tenders below thresholds of 30 000 Euro for supplies and services, and 150 000 Euro in the case of construction projects. A representative from the MEE explained that this is the case due to complaints that tenders through the HILMA system were too complicated for SMEs.

91. In June 2007, and in response to EU directives, Finland amended Chapter 8, sections 53 and 54, of the Public Contracts Act to provide for the possibility of excluding an entrepreneur from public procurement tenders. Section 53 sets out mandatory grounds on which an applicant must be excluded, while section 54 provides discretionary grounds for the exclusion of an applicant from public tenders. However, there is no automatic consideration of international blacklists and, where blacklists are considered, exclusion from tendering is discretionary only, unless the blacklist is based on a disclosed conviction of an offence listed in section 53 of the Act. Finnish authorities explained that they take a reserved approach to blacklists due to concerns over the accuracy of such blacklists, as well as the

³⁷ The standard declaration is set out at para 204 of Finland's answers to the Phase 3 Questionnaire and supplementary questions.

procedures involved in listing and de-listing. Also, the application of sections 53 and 54 is based on information disclosed by applicants, without mechanisms in place to guarantee the accuracy of information provided by applicants, or for enhanced due diligence where appropriate. Furthermore, public procurement contracts do not include a termination or suspension clause in the event of the discovery by procurement units that information provided by the applicant was false, or by reason of the contractor subsequently engaging in bribery during the course of the contract. The lead examiners heard, however, that the provision of false information during the course of a public tender would constitute an offence under section 54 of the Public Contracts Act.

Commentary

Measures to prevent, detect and report foreign bribery by Finnish agencies involved in public advantages suffer from various deficiencies. Concerning official development assistance, the lead examiners recommend that persons applying for ODA contracts be required to declare that they have not been convicted of corruption offences and that due diligence be carried out prior to the granting of ODA contracts. ODA contracts should specifically prohibit contractors and partner agencies from engaging in foreign bribery and should bind sub-contractors and contracted local agents by the same prohibition.

Concerning officially supported export credits, the lead examiners recommend that FINNVERA establish formal guidelines concerning due diligence and enhanced due diligence; disclosure of credible evidence of bribery to law enforcement authorities; and the consequences of a client or applicant being the subject of allegations or convictions of bribery, either before or after approving support.

Concerning public procurement, the lead examiners note the enhanced transparency measures applied by procurement units in Finland under the HILMA information system, although they recommend that Finland consider whether the monetary thresholds that determine the application of this system to individual tenders are adequate. They also recommend that Finland issue guidelines to public procurement authorities to: (i) require consideration of international blacklists during the tender process; (ii) include such listing as a possible basis of exclusion from application for public tenders; (iii) establish mechanisms to verify the accuracy of information provided by applicants, along with enhanced due diligence where appropriate; and (iv) include, within public procurement contracts, termination and suspension clauses in the event of the discovery by procurement units that information provided by the applicant was false, or by reason of the contractor subsequently engaging in bribery during the course of the contract.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

92. Finland's efforts in enforcement of the foreign bribery offence since Phase 2 are promising, primarily as a result of experienced and well-resourced investigators. The Working Group commends Finland's proactive approach to international cooperation on asset recovery, and its bilateral anti-corruption work with China and the Russian Federation. However, the Working Group notes with serious concern a general lack of awareness and understanding of the foreign bribery offence in both the public and private sectors in Finland.

93. The Phase 2 evaluation report on Finland, adopted in May 2002, included recommendations and issues for follow-up (as set out in Annex 1 to this report). Of the recommendations considered to have been only partially implemented or not implemented at the time of Finland's written follow-up report in February 2006, the Working Group concludes that: Recommendations 6 and 8 have been satisfactorily implemented; Recommendation 7 remains partially implemented; and Recommendations 3 and 5 remain not implemented.³⁸

94. Against that background, and based on the other findings in this report regarding Finland's implementation of the Convention and 2009 Recommendations, the Working Group: (1) makes the following recommendations to Finland under Part 1; and (2) will follow up the issues in Part 2 when there is sufficient practice. The Working Group invites Finland to report orally on the implementation of Recommendations 2, 4 and 5(a) within one year of this report (i.e. in October 2011). It further invites Finland to submit a written follow-up report on all recommendations and follow-up issues within two years (i.e. in October 2012).

1. Recommendations of the Working Group

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

1. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Finland provide regular training and establish internal guidance for law enforcement authorities and prosecutors concerning the investigation and prosecution of the foreign bribery offence, including on: (i) the distinction between the non-aggravated and aggravated forms of the active bribery offences in the Criminal Code; and (ii) the scope of application of the active bribery offences to legal persons, including the factors that trigger corporate criminal liability (Phase 2 Evaluation, Recommendation 7; 2009 Recommendation II).

2. Regarding the offence of foreign bribery, the Working Group recommends that Finland amend the definition of foreign public official in § 40:11(4) of the Criminal Code to include a person holding a legislative office in a foreign country (Convention, Article 1(4)(a)).

3. Regarding the limitation period, the Working Group recommends that Finland take action to ensure that the overall limitation period applicable to the foreign bribery offence is sufficient to ensure adequate investigation and prosecution, including that mechanisms for extension of the limitation period are sufficient and reasonably available (Convention, Article 6).

4. Regarding false accounting, the Working Group recommends that Finland amend the Criminal Code to expressly provide for corporate liability in respect of the accounting and auditing offences in Chapter 30, as well as for the accounting offences in the Accounting Act (Convention, Article 8; 2009 Recommendation X.A).

Recommendations for ensuring effective prevention and detection of foreign bribery

5. Regarding awareness-raising, the Working Group recommends that Finland:

- a) Take urgent steps to raise awareness within the public and private sectors that the bribery offences under § 16:13 and § 16:14 of the Criminal Code include: (i) bribery of a foreign public official, including of a person holding a legislative office in a foreign country; and (ii)

³⁸

See Annex 1: Phase 2 Recommendations of the Working Group, and Issues for Follow-up.

bribery through an intermediary, including through a related legal person abroad (Convention, Article 1(1) and 1(4)(a); 2009 Recommendation III(i)).

- b) Take concrete steps to raise awareness of the Convention and the foreign bribery offence in key government agencies, including FINNVERA, MFA, and the Tax Administration (2009 Recommendation III(i)).
- c) Take concrete steps to raise awareness of Finland's framework for combating foreign bribery in the private sector, including within high risk sectors such as the defence industry and with SOEs, SMEs and the legal, accounting and auditing professions (2009 Recommendation III(i)).
- d) Take concrete steps to raise awareness of the responsibility of legal persons for the foreign bribery offence, including amongst SOEs and their auditors (Convention, Article 2; 2009 Recommendation III(i)).
- e) Promote the Good Practice Guidance in Annex 2 of the 2009 Recommendation to all Finnish enterprises, business organisations and professional associations, including through Finnish missions abroad (2009 Recommendation X.C).

6. Regarding the reporting of foreign bribery, the Working Group recommends that Finland introduce appropriate measures to facilitate reporting by public officials to law enforcement authorities of suspected acts of foreign bribery detected in the course of their work (2009 Recommendation III(iv) and IX(ii));

7. Regarding whistleblower protection, the Working Group recommends that Finland introduce mechanisms to ensure that public and private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary action, along with appropriate measures for raising awareness of these mechanisms (2009 Recommendation IX(iii)).

8. Regarding external auditing, the Working Group recommends that Finland:

- a) Take measures to ensure that the significant number of companies released from the obligation to carry out an external audit, following amendments to the Auditing Act, continue to voluntarily submit to an external audit and are aware of the foreign bribery offence and related accounting and auditing offences (Phase 2 Evaluation, Recommendation 5; 2009 Recommendation X.B(i));
- b) Amend the Auditing Act to require external auditors who discover indications of a suspected act of foreign bribery to report this discovery to management and, as appropriate, to corporate monitoring bodies (Phase 2 Evaluation, Recommendation 3; 2009 Recommendation X.B(iii));
- c) Consider requiring external auditors who discover indications of a suspected act of foreign bribery to report to competent authorities independent of the company (2009 Recommendation X.B(v)).

9. Regarding taxation, the Working Group recommends that Finland:

- a) Establish clear guidelines for tax inspectors, particularly concerning: (i) the coverage of bribes to foreign public officials as a form of non-deductible expense under section 16 of the

Business Tax Act; (ii) how active bribery investigations should be taken into consideration by the Tax Administration; and (iii) on the obligation of officials in the Tax Administration to report cases of suspected foreign bribery to investigative authorities (Phase 2 Evaluation, Recommendation 3; 2009 Recommendation VIII(i); 2009 Tax Recommendations I(i) and II).

- b) Provide guidance to taxpayers on the non-deductibility of bribes to foreign public officials, along with the type of expenses that are deemed to constitute bribes, including gifts and entertainment expenses (2009 Recommendation VIII(i); 2009 Tax Recommendation I(ii)).

10. Regarding official development assistance (ODA), the Working Group recommends that Finland take steps to ensure that: (i) persons applying for ODA contracts be required to declare that they have not been convicted of corruption offences; (ii) due diligence is carried out prior to the granting of ODA contracts; (iii) ODA contracts specifically prohibit contractors and partner agencies from engaging in foreign bribery; and (iv) sub-contractors and contracted local agents be bound by the same prohibition (2009 Recommendation XI).

11. Regarding officially supported export credits, the Working Group Recommends that Finland's export credit agency, FINNVERA, establish formal guidelines concerning: (i) due diligence and enhanced due diligence; (ii) disclosure of credible evidence of bribery to law enforcement authorities; and (iii) the consequences of a client or applicant being the subject of allegations or convictions of bribery, either before or after approving support (2006 Export Credit Recommendation I).

12. Regarding other forms of public advantages, the Working Group recommends that Finland issue guidelines to public procurement authorities to: (i) require consideration of international blacklists during the tender process; (ii) include such listing as a possible basis of exclusion from application for public tenders; (iii) establish mechanisms to verify the accuracy of information provided by applicants, along with enhanced due diligence where appropriate; and (iv) include, within public procurement contracts, termination and suspension clauses in the event of the discovery by procurement units that information provided by the applicant was false, or by reason of the contractor subsequently engaging in bribery during the course of the contract (2009 Recommendations II and XI).

2. Follow-up by the Working Group

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

- a) Case law concerning the differentiation between aggravated and non-aggravated bribery.
- b) The reliance by Finland on the aggravating feature in § 16:14(1) of the Criminal Code (bribes intended to make an official act in service contrary to his or her duties), in particular whether this non-autonomous element of the offence causes difficulties in the investigation and prosecution of the offence.
- c) The application of effective, proportionate and dissuasive sanctions against natural and legal persons, in particular concerning: (i) the lapse of sanctions; (ii) the use of provisions on exclusion from competition for public procurement; and (iii) bans on engaging in commercial activities under the Business Prohibition Act.
- d) The confiscation of the instrument of the bribe and its proceeds (or their equivalents), including pre-trial seizure and confiscation measures.

- e) Experience of cooperation with competent authorities in other countries concerning the identification, freezing, seizure, confiscation or recovery of bribes, and the proceeds of bribes, to foreign public officials.
- f) The proposal to introduce a system of plea bargaining in Finland, and any impact this system may have on the investigation and prosecution of foreign bribery cases.
- g) The application of money laundering offences in cases where foreign bribery is the predicate offence.
- h) The adequacy of the monetary thresholds that determine the application of the HILMA information system to public tenders.

**ANNEX 1 PHASE 2 RECOMMENDATIONS OF THE WORKING GROUP,
AND ISSUES FOR FOLLOW-UP**

Recommendations in Phase 2		<i>Written follow-up*</i>
<i>Recommendations for ensuring effective measures for preventing and detecting foreign bribery</i>		
The Working Group recommends that Finland:		
1.	Undertake effective public awareness activities for the purpose of educating and advising the public and private sectors about the Convention and consider involving interested business associations and other non-governmental bodies in the delivery of these initiatives. (Revised Recommendation, Article I).	<i>Satisfactorily implemented</i>
2.	Clarify internally the responsibilities of state authorities for the implementation of the Convention. (Convention, Article 5).	<i>Satisfactorily implemented</i>
With respect to the reporting of suspected bribery to the appropriate authorities, the Working Group recommends that Finland:		
3.	Establish clear guidelines to the effect that tax inspectors are obligated to report cases of suspected foreign bribery and tax fraud to the investigative authorities. [Revised Recommendation, Articles II (ii) and IV].	<i>Not implemented</i>
4.	Evaluate whether an obligation that persons responsible for keeping accounts report suspected bribery transactions would improve the prevention and detection of foreign bribery cases. (Revised Recommendation, Article V).	<i>Satisfactorily implemented</i>
5.	Require auditors to report indications of a possible foreign bribery offence to management and, where appropriate, corporate monitoring bodies, and consider requiring that such body in turn has a duty to report suspicions of bribery to the investigative authorities. [Revised Recommendation, Article V B, (iii) and (iv)].	<i>Not implemented</i>
6.	Ensure that in practice the absence of an express obligation in the law requiring that money exchange bureaux report suspicious transactions to the Money Laundering Clearing House (MLCH) does not decrease the effective implementation of money laundering legislation, and undertake a consistent and effective approach to monitoring the compliance of real estate agencies with their reporting obligations to the MLCH. (Convention, Article 7).	<i>Partially implemented</i>
<i>Recommendations for ensuring adequate mechanisms for the effective prosecution of foreign bribery offences and the related accounting and money laundering offences</i>		
The Working Group recommends that Finland:		
7.	Consider providing guidance to law enforcement agencies and prosecutors clarifying the application of the relevant Penal Code provisions to legal persons in	<i>Partially implemented</i>

* The right-hand column sets out the findings of the Working Group on Bribery on Finland's written follow-up report to Phase 2, considered by the Working Group in February 2006.

	respect of prosecutorial discretion, the statute of limitations and coverage of the law regarding state-owned/controlled companies. (Convention, Articles 2, 5 and 6).	
8.	Provide statistical information to the Working Group about the application of sanctions under the legislation implementing the Convention (i.e., the foreign bribery, accounting, and money laundering offences) to evaluate whether penalties are proportionate, dissuasive and effective in practice. (Convention, Article 3.1; Phase 1 Evaluation, section 4).	<i>Partially implemented</i>
9.	Inform accounting professionals of the practical consequences of the recent Supreme Court decision in which it was decided that anyone who exercises actual authority in respect of bookkeeping could be prosecuted for an accounting offence, to clarify responsibility and raise public awareness in this regard. (Convention, Article 8.2).	<i>Satisfactorily implemented</i>

Follow-up by the Working Group based on the development of litigation

The Working Group will follow up the issues below as litigation of the foreign bribery offences develops:

- a) Decisions of relevant authorities, including the courts, in regard to the differentiation between aggravated and non-aggravated bribery. (Convention, Article 1.1).
- b) Decisions of relevant authorities, including the courts, with regard to cases involving bribes to foreign public officials through intermediaries. (Convention, Article 1.1).
- c) The application of the foreign bribery offence to determine whether it is necessary to prove that, pursuant to the laws of the foreign public official's country, the foreign public official had the exact powers to provide the act or omission that the briber intended to obtain. (Convention, Article 1.1; Commentary 3).
- d) The application of sanctions under the legislation implementing the Convention (i.e. the foreign bribery, money laundering and accounting offences) and in the framework of this assessment the Working Group will also:
 - (i) review the application of confiscation due to the absence of the authority of the court to order monetary sanctions of a comparable effect and the seemingly low sanctions that have been applied to domestic bribery offences. (Convention, Article 3.3; Phase 1 Evaluation, section 2);
 - (ii) assess the impact of the Criminal Code provisions on the lapsing of sanctions (in respect of fines, confiscation and imprisonment) (Convention, Article 3.1).
- e) The consequences in practice of the non-applicability of the accounting offences to legal persons to determine whether Finland is able to effectively address accounting offences connected with the concealment of foreign bribery. (Convention, Article 8.2; Commentary 29; Phase 1 Evaluation, section 5).

ANNEX 2 LIST OF PARTICIPANTS IN THE ON-SITE VISIT

Government Ministries and Bodies

- District Prosecutor's Office
- Financial Intelligence Unit
- Financial Supervisory Authority
- General Prosecutor's Office
- Ministry of Economy, Trade and Industry
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Justice
- National Bureau of Investigation
- Regional State Administrative Authority of Southern Finland
- Tax Administration

Government-Funded Bodies

- FINPRO (trade promotion)
- FINNVERA (export credit agency)

Private Sector

Private enterprises

- Konsu
- Nokia Siemens (Finland)
- Metsä Botnia

Business associations

- Central Chamber of Commerce
- Confederation of Finnish Enterprises
- Federation of Finnish Financial Services

Legal profession and academics

- European Institute for Crime Prevention and Control
- Finnish Bar Association
- School of Law, Turku University
- School of Law, Helsinki University

Accounting and auditing profession

- Auditing Board of the Central Chamber of Commerce
- Finnish Institute of Authorised Public Accountants (KHT)
- KPMG, Finland
- Price Waterhouse Coopers Oy

Civil Society

- Central Organisation of Finnish Trade Unions
- Transparency International

ANNEX 3 LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

ACCN	Anti-Corruption Cooperation Network
CPA	Criminal Procedure Act
CPI	Corruption Perceptions Index
FINNVERA	(please define)
GDP	Gross Domestic Product
GPO	General Prosecutor's Office
HILMA	(please define)
JHTT	<i>Julkishallinnon ja talouden tilintarkastaja</i> (Chartered Public Finance Auditors)
JIT	Joint Investigation Team
MEE	Ministry of Employment and Economy
MFA	Ministry of Foreign Affairs
MLA	Mutual Legal Assistance
MLCH	Money Laundering Clearing House
MOJ	Ministry of Justice
MNE	Multinational Enterprise
NBI	National Bureau of Investigation
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
SME	Small and Medium Sized Enterprise
SOE	State-owned/controlled Enterprise
STR	Suspicious Transaction Reporting
UNCAC	UN Convention against Corruption

ANNEX 4 EXTRACTS FROM THE CRIMINAL CODE OF FINLAND

Chapter 1 - Scope of application of the criminal law of Finland

Section 9 - Corporate criminal liability

If, under this chapter, Finnish law applies to the offence, Finnish law applies also to the determination of corporate criminal liability.

Section 11 - Requirement of dual criminality

[...]

(2) Even if the offence is not punishable under the law of the place of commission, Finnish law applies to it if it has been committed by a Finnish citizen or a person referred to in section 6, subsection 3(1), and the penalty for it has been laid down in:

[...]

(4) sections 13, 14 and 14a of chapter 16 and even if the provisions are applied pursuant to section 20 of the same chapter, [...]

Chapter 8 - Statute of limitations

Section 7 – Time-barring of a request for a corporate fine

The period of limitation for the presentation of a request for a corporate fine is the same as for the bringing of charges for the offence that is the basis for the request. However, the minimum period of limitation is five years.

Section 9 – Time-barring of the imposition of forfeiture

A sanction involving forfeiture may not be imposed if no punishment may be imposed on the offence due to lapse of time. However, the minimum period of limitation for a request for forfeiture is five years. If the request for forfeiture concerns the instrument of crime referred to in chapter 10, section 4 or the other property referred to in section 5, however, the right to request forfeiture shall not lapse.

Section 10 – Lapse of an imposed sentence of imprisonment

(1) A sentence of life imprisonment and a fixed-term sentence of imprisonment imposed for genocide, a crime against humanity, an aggravated crime against humanity, a war crime or an aggravated war crime shall not lapse.

(2) A fixed-term sentence of imprisonment shall lapse if its enforcement has not been started within the periods below, counted from the date when the sentence became final:

(1) within twenty years, if the sentence is for a fixed period of over eight years,

(2) within fifteen years, if the sentence is over four years and at most eight years,

(3) within ten years, if the sentence is over one year and at most four years, and

(4) within five years, if the sentence is at most one year.

(3) A conversion sentence for unpaid fines shall lapse if its enforcement has not been started within three years of the date when the judgment became final.

Chapter 9 - Corporate criminal liability

Section 1 - Scope of application

- (1) A corporation, foundation or other legal entity¹ in whose operations an offence has been committed may on the request of the public prosecutor be sentenced to a corporate fine if such a sanction has been provided in this Code for the offence.
- (2) The provisions in this chapter do not apply to offences committed in the exercise of public authority.

Section 2 - Prerequisites for liability

- (1) A corporation may be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence have not been observed in the operations of the corporation.
- (2) A corporate fine may be imposed even if the offender cannot be identified or otherwise is not punished. However, no corporate fine shall be imposed for a complainant offence which is not reported by the injured party so as to have charges brought, unless there is a very important public interest for the bringing of charges.

Section 3 - Connection between offender and corporation

- (1) The offence is deemed to have been committed in the operations of a corporation if the perpetrator has acted on the behalf or for the benefit of the corporation, and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation.
- (2) The corporation does not have the right to compensation from the offender for a corporate fine that it has paid, unless such liability is based on statutes on corporations and foundations.

Section 7 – Waiving of the bringing of charges

- (1) The public prosecutor may waive the bringing of charges against a corporation, if:
 - (1) the corporate omission or participation of the management or of the person exercising actual decision-making power in the corporation, as referred to in section 2, subsection 1, has been of minor significance in the offence, or
 - (2) only minor damage or danger has been caused by the offence committed in the operations of the corporation
- and the corporation has voluntarily taken the necessary measures to prevent new offences.

Chapter 10 — Forfeiture

Section 1 — General prerequisites of forfeiture

- (1) A prerequisite for a forfeiture order is an act criminalised by law (*offence*).
- (2) A forfeiture order may be based on an act criminalised by law also
 - (1) where the perpetrator has not attained the age of fifteen years at the material time, or is without criminal capacity,
 - (2) where the perpetrator is exempt from criminal liability pursuant to chapter 4, section 2, section 4, subsection 22, section 5, subsection 2, section 6, subsection 3 or chapter 45, section 26b, subsection 2, or
 - (3) where a corporation may be sentenced to a punishment in accordance with chapter 9 even if the individual committing the offence cannot be identified or for some other reason cannot be sentenced to a punishment.

Section 2 — Forfeiture of the proceeds of crime

- (1) The proceeds of crime shall be ordered forfeit to the State. The forfeiture shall be ordered on the perpetrator, a participant or a person on whose behalf or to whose benefit the offence has been committed, where these have benefited from the offence.

(2) If no evidence can be presented as to the amount of the proceeds of crime, or if such evidence can be presented only with difficulty, the proceeds shall be estimated, taking into consideration the nature of the offence, the extent of the criminal activity and the other circumstances.

(3) Forfeiture of the proceeds of crime shall not be ordered in so far as they have been returned to the injured party, or in so far as they have been or will be ordered to be reimbursed to the injured party by way of compensation or restitution. If a claim for compensation or restitution has not been filed or if the claim has still not been decided when the request for forfeiture is being decided, the forfeiture shall be ordered.

Section 3 — Extended forfeiture of the proceeds of crime

(1) Full or partial forfeiture of property to the State may be ordered

(1) on a person who is found guilty of an offence which carries a possible penalty of imprisonment for at least four years, a punishable attempt of such an offence, or an offence referred to in chapter 32, sections 1 or 6, chapter 46, section 4, chapter 50, sections 1 or 4, of this Code, or in section 82 of the Alcohol Act, and

(2) on a participant in an offence referred to in paragraph (1) above and on a person on whose behalf or to whose benefit the said offence has been committed,

provided that the nature of the offence is such that it may result in considerable financial proceeds and that there is reason to believe that the property is fully or partially derived from criminal activity that is not to be considered insignificant.

(2) Moreover, full or partial forfeiture of property, referred to in subsection 1, to the State may be ordered

(1) on a person whose relationship to a person referred to in subsection 1 is one covered by section 3, subsection 1 of the Act on the Recovery of Assets to Bankruptcy Estates (*close person*) and

(2) on a private entrepreneur, a company, another corporation or foundation whose relationship to a person referred to in subsection 1 or a close person of his or hers is one covered by section 3, subsection 2, paragraphs (1) or (2) of the Act on the Recovery of Assets to Bankruptcy Estates,

if there is reason to believe that the property has been conveyed to the same in order to avoid forfeiture or liability.

(3) A forfeiture referred to in subsection 2 shall not be ordered if the property has been conveyed more than five years before the commission of the offence referred to in subsection 1.

(4) If the same forfeiture is ordered on two or more persons, their liability is joint and several.

Section 4 — Forfeiture of an instrument of crime

(1) The following instruments shall be ordered forfeit to the State, when used in the commission of an offence:

(1) a firearm, edged weapon or another similar lethal instrument, and

(2) any other object or property the possession of which is punishable.

(2) Also the following may be ordered forfeit to the State:

(1) an object or property that has been used in the commission of an intentional offence, and

(2) an object or property that is closely connected to an intentional offence for which the proceedings have been brought, when it has been obtained or prepared solely or mainly for the intentional offence or where its characteristics make it especially suitable as an instrument of an intentional offence.

(3) In the assessment of the need for forfeiture, special consideration shall be taken of the prevention of further offences.

Section 5 — Forfeiture of certain other property

(1) An object or property which has been produced, manufactured or brought about by way of an offence, or at which an offence has been directed, shall be ordered forfeit to the State if its possession is punishable.

(2) An object or property which has been produced, manufactured or brought about by way of an offence, or at which an offence has been directed, may be ordered fully or partially forfeit, if forfeiture is necessary:

- (1) due to the object or property being hazardous to health or the environment,
- (2) in order to prevent further offences, where the object or property is especially suitable as a target of an offence or as an instrument of crime,
- (3) in order to achieve the objective of provisions or orders pertaining to economic regulation, import or export, or
- (4) in order to achieve the objective of provisions or orders for the protection of nature and the environment.

(3) A container, packaging or other material used for the storage of an object or property that is to be ordered forfeit may likewise be ordered forfeit, if the forfeiture of the object or property cannot otherwise be enforced without undue inconvenience.

Section 8 — Forfeiture of value

(1) If an object or property referred to in section 4 or 5 cannot be ordered forfeit owing to a restriction referred to in section 6, subsection 1, or because the object or property has been hidden or is otherwise inaccessible, a full or partial forfeiture of the value of the object or property may be ordered on the offender, a participant or a person on whose behalf or with whose consent the offence has been committed, instead of forfeiture of the object or property itself. In addition, forfeiture of value may be ordered on a person to whom the object or property has been conveyed, if, when receiving it, he or she knew or had justifiable reason to suspect that the object or property was linked to an offence, or if he or she has received it as a gift or otherwise free of charge.

(2) However, forfeiture of value may not be ordered if the person referred to in subsection 1 shows that the object or property has probably been destroyed or consumed.

(3) If the forfeiture of the value of the same object or property is ordered on two or more persons, their liability is joint and several. However, a person on whom forfeiture of value has not been ordered in full is liable only to the amount mentioned in the judgment.

Chapter 16 – Offences against the public authorities

Section 13 – Giving of bribes

(1) A person who promises, offers or gives to a public official in exchange for his or her actions in service a gift or other benefit intended for him or her or for another, that influences or is intended to influence or is conducive to influencing the actions in service of the public official, shall be sentenced for the *giving of bribes* to a fine or to imprisonment for at most two years.

(2) Also a person who, in exchange for the actions in service of a public official, promises, offers or gives the gift or benefit referred to in subsection 1 shall be sentenced for bribery.

Section 14 – Aggravated giving of bribes

If in the giving of bribes

(1) the gift or benefit is intended to make the person act in service contrary to his or her duties with the result of considerable benefit to the briber or to another person or of considerable loss or detriment to another person, or

(2) the value of the gift or benefit is considerable and the bribery is aggravated also when assessed as whole, the offender shall be sentenced for *aggravated giving of bribes* to imprisonment for at least four months and at most four years.

Section 20 – Provisions on the scope of application

(3) In applying sections 13 and 14 of this chapter, a person elected to a public office, an employee of a public corporation, a foreign public official, a person exercising public authority and a soldier referred to in chapter 40, section 11 are equated with a public servant as the object of the criminal act.

Chapter 40 - Offences in office

Section 11 – Definitions

For the purposes of the present law:

[...]

(4) a foreign public official refers to a person who has been appointed or elected to an administrative or judicial office or position in a body or court of a foreign state or public international organisation, or who otherwise attends to a public function on behalf of a body or court of a foreign state or public international organisation

[...]