



DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS

SLOVAK REPUBLIC: PHASE 2

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

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 9 November 2005.

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EXECUTIVE SUMMARY

The Phase 2 Report on Slovakia by the Working Group on Bribery evaluates Slovakia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Overall the Working Group finds that Slovakia has made efforts to implement the Convention. Nevertheless, some areas could be strengthened, as recommended by the Working Group, such as the liability of legal persons for bribery of foreign public officials.

The Phase 2 Report notes that, contrary to the Convention, Slovakia does not impose liability against legal persons for bribery of foreign public officials. Accordingly, the Group strongly recommends that Slovakia establish such liability without delay, and put in place sanctions that are effective, proportionate and dissuasive.

The Report also notes that Slovak tax legislation does not expressly deny deduction of bribe payments. The Group thus recommends that Slovakia introduce such an express denial. Concerning specific defences to the bribery of foreign public officials, the Group notes that Slovakia exonerates a briber who was solicited for a bribe and who reports the matter to the authorities without delay. The Group accordingly recommends that Slovakia amend its legislation so that it no longer does so in foreign bribery cases. In addition, Slovakia may provide immunity to offenders who co-operate with law enforcement authorities in a foreign bribery investigation. The Group therefore recommends that Slovakia ensure that the provision of such immunity is not an impediment to the enforcement of the foreign bribery offence. The Group will also monitor this issue as cases emerge in Slovakia.

The Report also highlights a number of positive aspects in Slovakia's fight against foreign bribery. From an institutional perspective, Slovakia has created the Special Court and the Special Prosecutor's Office which specialise in corruption cases. With exclusive jurisdiction over domestic and foreign bribery, these bodies could develop specialised skills and expertise in these types of cases. From a legislative perspective, Slovakia has recently enacted a significant body of legislation to improve its ability to fight bribery of foreign public officials. These include amending the offence to expressly cover bribes provided to third parties, and increasing the sanctions and lengthening the limitation period for the offence. Slovakia has also enacted new legislation in anti-money laundering, taxation and accounting and auditing. In 2006, new Penal and Penal Procedure Codes will come into force.

The Report, which details the findings of experts from Hungary and Turkey, was adopted by the OECD Working Group along with recommendations. Within one year of the Group's approval of the Phase 2 Report, Slovakia will report to the Working Group on the steps that it will have taken or plans to take to implement the Working Group's recommendations, with a further report in writing within two years. The Report is based on the laws, regulations and other materials supplied by Slovakia, and information obtained by the evaluation team during its on-site visit to Bratislava, Slovakia. During the five-day on-site visit in May 2005, the evaluation team met with representatives of several Slovak government agencies, the private sector and civil society. A list of these bodies is set out in Annex 1 to the Report.

A. INTRODUCTION

1. *The On-Site Visit*

1. From 23 to 27 May 2005, a team from the OECD Working Group on Bribery in International Business Transactions (Working Group) visited Bratislava, Slovakia as part of the Phase 2 self- and mutual evaluation of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) and the 1997 Revised Recommendation (Revised Recommendation). The purpose of the visit was to examine Slovakia's structures for enforcing the laws and rules implementing these OECD instruments, and to assess their application in practice.

2. The Slovak authorities have been co-operative during the entire examination process. Prior to the visit, Slovakia responded to the Phase 2 Questionnaire and a supplemental questionnaire. Slovakia also provided relevant legislation and case law. The examination team analysed these materials and conducted independent research to obtain additional points of view. During the visit, Slovakia provided the examination team with sufficient access to government representatives.¹ Following the visit, the Slovak authorities continued to provide additional information.

3. The examination team expresses its appreciation of the hard work and professionalism of the Slovak authorities throughout the examination process.

2. *General Observations*

(a) *Economic System*

4. At the end of 2004, Slovakia had a population of approximately 5.4 million. About 8% of the population live in Bratislava and its surrounding area, by far the wealthiest part of the country. The country borders Austria, the Czech Republic, Hungary, Poland and Ukraine.²

5. Slovakia's capitalist economy is small compared to other OECD countries. As of 2003, the size of Slovakia's economy and per capita gross domestic product (GDP) ranked 28th and 27th respectively among the 30 OECD countries.³ Since its economic transition in the 1990s, the share of heavy industry and agriculture in GDP has fallen, while that of services has steadily increased. Official estimates of GDP do not, however, account for a growing informal economy that may have reached 12% of GDP.⁴

6. In terms of international trade, Slovakia has maintained a sizeable trade deficit for several years. The volume of international trade is one of the lowest in absolute terms among OECD

¹ See the list of participants in Annex 1.

² Statistical Office of the Slovak Republic, www.statistics.sk; The Economist Intelligence Unit (2004), *Country Profile – Slovakia*, The Economist Intelligence Unit, London, p. 47; The Slovak Republic Government Office, <http://www.government.gov.sk/english/slovakia.html>.

³ In current prices and purchasing power parity (OECD (July 2004), *OECD in Figures*, OECD, Paris, pp. 12-13).

⁴ The Economist Intelligence Unit (2004), *Country Profile – Slovakia*, The Economist Intelligence Unit, London, p. 40.

countries, but one of the highest as a percentage of GDP. With the exception of Russia, most of Slovakia's major trading partners are within the 25-member European Union.⁵

7. The level of inward and outward foreign direct investment (FDI) involving Slovakia is increasing, but it is nevertheless very low when compared to other OECD countries. FDI inflows are much higher than outflows. Inward investment is mainly from Western Europe in manufacturing. Outward investments have mostly been in Central and Eastern Europe in manufacturing, financial activities, natural resources and energy.⁶

(b) *Political and Legal Systems*

8. Slovakia is a parliamentary republic. The legislative branch consists of a 150-seat unicameral National Council of the Slovak Republic (*Narodna Rada Slovenskej Republiky*) whose members are

⁵ In 2002, Slovakia imported USD 16.5 bn in goods and services (at current prices and exchange rates), ranking 27th out of 30 OECD countries. Imports amounted to 68.3% of GDP (second highest in the OECD). In 2003, the major import partners (as a percentage of total imports) were: (1) Germany (25.5%), (2) Czech Republic (14.3%), (3) Russia (10.7%), (4) Italy (6.2%), (5) Austria (4.4%), (6) France (4.2%), (7) Poland (3.5%), (8) Hungary (3.4%), (9) Spain (2.7%), (10) China (2.5%).

In 2002, Slovakia exported USD 14.4 bn in goods and services (at current prices and exchange rates), ranking 26th out of 30 OECD countries. Exports amounted to 59.5% of GDP, (third highest in the OECD). In 2003, the major export destinations (as a percentage of total exports) were: (1) Germany (30.8%), (2) Czech Republic (12.9%), (3) Italy (7.5%), (4) Austria (7.4%), (5) United States (5.3%), (6) Hungary (4.9%), (7) Poland (4.8%), (8) France (3.5%), (9) Netherlands (2.7%), (10) United Kingdom (2.1%) (OECD (January 2005), *Main Economic Indicators*, OECD, Paris, pp. 252-255; Statistical Office of the Slovak Republic (3 September 2004)).

⁶ In 2002, FDI outflow from Slovakia was valued at USD 11.2 m, ranking 29th out of 30 OECD countries. The top destinations were (USD): (1) Poland (24.7 m), (2) Austria (10.9 m), (3) Hungary (1.63), (4) Russia (918 000), (5) Ukraine (714 000). The main sectors were (USD): (1) metal and mechanical products (10.9 m), (2) textile and wood activities (10.7 m), (3) petroleum, chemical, rubber and plastic products (4.69 m), (4) real estate and business activities (4.18 m), (5) electricity, gas and water (646 000).

Slovakia's outward FDI position in 2002 was USD 485.6 m, which was the lowest among 27 OECD countries for which data are available. In 2001, the top destinations were (million USD): (1) Czech Republic (325), (2) United Kingdom (107), (3) Ukraine (70.0), (4) Poland (57.7), (5) Belgium-Luxembourg (53.5). The top sectors were (million USD): (1) manufacturing (330), (2) financial activities (171), (3) real estate and business activities (96.7), (4) mines and exploitation (89.9), (5) electricity, gas and water (53.2).

In 2002, Slovakia attracted USD 4.127 bn in FDI, ranking 21st out of 30 OECD countries. The top sources were (USD): (1) Germany (2.55 bn), (2) France (2.29 bn), (3) Austria (250 m), (4) United Kingdom (225 m), (5) United States (137 m). The top sectors were (USD): (1) electricity, gas and water (4.59 bn), (2) financial activities (764 m), (3) trade and repairs (364 m), (4) metal and mechanical products (179 m), (5) land, sea and air transport (118 m).

Slovakia's inward FDI position in 2002 was USD 8.53 bn, ranking 27th out of 28 OECD countries for which data are available. The top sources in 2001 were (USD): (1) Germany (2.12 bn), (2) Austria (1.74 bn), (3) Netherlands (1.50 bn), (4) Italy (896 m), (5) United Kingdom (647 m). The top sectors in 2001 were (USD): (1) manufacturing (3.21 bn), (2) financial activities (2.20 bn), (3) trade and repairs (1.89 bn), (4) transport and communication (1.29 bn), (5) real estate and business activities (622 m) (OECD (2004), *International Direct Investment Statistics Yearbook 1991-2002, 2003 Edition*, OECD, Paris, pp. 12, 17, 314-326. Data converted to USD based on the interbank exchange rate on 27 January 2005).

elected by proportional representation to four-year terms. The Council has exclusive jurisdiction to enact criminal laws. The chief of state is a President who is elected to five-year terms by direct popular vote. The head of the executive branch is the Prime Minister. The President usually appoints the leader of the majority party in the National Council (or the leader of a majority coalition) as Prime Minister. The President also appoints a cabinet on the recommendation of the Prime Minister.⁷

9. The general courts in Slovakia have criminal, civil and administrative jurisdiction and are divided into three levels: the Supreme Court, regional courts and district courts. There are also two specialised courts: the Constitutional Court and the Special Court, which has exclusive jurisdiction to prosecute corruption cases, including foreign bribery.⁸ The Special Court became operational only on 1 July 2005, even though its enabling statute was passed in 2004.⁹

10. Prosecutions are generally conducted by the Public Prosecution Office of the Slovak Republic, which is headed by the Prosecutor General. In 2004, Slovakia established the Office of the Special Prosecutor, which has exclusive competence to prosecute cases before the Special Court.¹⁰

(c) *Implementation of the Convention and the Revised Recommendation*

11. Slovakia implemented the Convention by enacting Section 161b of the Penal Code in 1999.¹¹ After the Phase 1 review in 2000, Slovakia amended this provision on the recommendation of the Working Group. The amendments included increasing the sanctions and limitation period for foreign bribery, and expressly covering bribes provided to third party beneficiaries.

12. Partly because of its accession to the European Union in 2004, Slovakia has recently enacted a significant volume of legislation, ranging from money laundering and taxation to accounting and auditing. In May 2005, the legislature enacted new Penal and Penal Procedure Codes. Both Codes come into force on 1 January 2006 and contain amendments that are relevant to the implementation of the Convention, e.g. the definition of a foreign public official will be amended to expressly include a head of state. Other amendments of significance will be noted later in the report.¹²

13. Unfortunately, Slovakia has yet to implement Article 2 of the Convention on the responsibility of legal persons. Twice in 2005, the government proposed, and the legislature rejected, legislation on this subject. This issue will be discussed in greater detail in Section C.3 at p. 39 of this Report.

⁷ Constitution of the Slovak Republic, Titles Five and Six.

⁸ Constitution of the Slovak Republic, Title Seven; Supreme Court of the Slovak Republic; Act 458/2003 Coll.; Code of Penal Procedure, section 15a; Response to Questionnaire, p. 7; Government of the Slovak Republic (2005), *Slovak Anti-Corruption Legislative*, Government of the Slovak Republic, Bratislava.

⁹ The Special Court will be discussed in greater detail in Section C.1(a)(ii) at p. 25 of this Report.

¹⁰ Constitution of the Slovak Republic, Title Eight; Act 153/2001 Coll. on the Public Prosecution Office, Section 55d; Code of Penal Procedure, section 158(1). The Office of the Special Prosecutor will be discussed further in Section C.1(a)(ii) at p. 25 of this Report.

¹¹ See Annex 2 for excerpts of relevant statutory provisions.

¹² The new Penal and Penal Procedure Codes were passed by the Slovak legislature during the week of the on-site visit and ratified by the Slovak President in late June. Slovakia provided translations of the new Codes to the examination team in mid-August.

(d) *Cases Involving the Bribery of Foreign Public Officials*

14. There have been no investigations or prosecutions of foreign bribery in Slovakia.

3. ***Outline of the Report***

15. This report is structured as follows. Part B examines prevention, detection and awareness of foreign bribery in Slovakia. Part C looks at the investigation, prosecution and sanctioning of foreign bribery and related offences. Part D sets out the recommendations of the Working Group and issues for follow-up.

B. PREVENTION, DETECTION AND AWARENESS OF FOREIGN BRIBERY

1. ***General Efforts to Raise Awareness***

(a) *Government Initiatives to Raise Awareness*

16. Slovakia has made commendable efforts to raise awareness of and to fight domestic corruption, but it has done less concerning foreign bribery and the Convention.

(i) The Department of Fight against Corruption

17. The Department of Fight against Corruption plays an important role in raising awareness of the Convention in Slovakia. Located at the Office of the Government, the Department is responsible for implementing anti-corruption policy at the state level, and advising the Deputy Prime Minister and the Minister of Justice on these matters. It is also responsible for raising awareness of corruption in all sectors. It works closely with the public, and the business and non-governmental sectors.¹³

18. Most of the Department's initiatives focus on domestic corruption.¹⁴ Foreign bribery is not yet a priority for the Department. The Department has not given the subject a great deal of attention since there have been no cases of foreign bribery in Slovakia. The Department, however, does refer to foreign bribery in its activities.

19. For instance, the Department has published a brochure that focuses on domestic corruption but devotes one chapter to foreign bribery. The brochure also provides information on where and how to report allegations of corruption. The Department distributed the brochure to the public and law enforcement authorities. It has also posted the brochure on its Web site.

¹³ "Slovak Anti-Corruption Legislative", appended to Response to Questionnaire.

¹⁴ The following activities focused on domestic corruption: the "Support of Fighting against Corruption" programme by the Ministry of Justice (MoJ), the Ministry of Interior, the Public Prosecution Office; an international seminar organised by the MoJ in cooperation with ABBA CEELI in December 2003; seven "international seminars concerning corruption" between 2001 and 2003; an anti-corruption programme for secondary school teachers organised by the Department of the Fight against Corruption, Transparency International Slovakia and the Slovak Pedagogical Institute; the FISH programme against corruption in 2000; the National Programme of the Fight against Corruption under Decree 461/2000; the establishment of the National Co-ordinative Centre for Fighting Delinquency in 2004.

20. Together with NGOs, the Department has also offered lectures, training and seminars on anti-corruption to students, the public administration and the general public. It is unclear what emphasis was placed on foreign bribery.¹⁵

21. According to the Department's representative at the on-site visit, the public's awareness of the dangers of corruption is increasing. Slovak citizens have recently sought advice from the Department on the legal consequences of reporting corruption. The establishment of specialised anti-corruption bodies has contributed to the positive trend.

(ii) The Slovak Investment and Trade Development Agency (SARIO)

22. The Slovak Investment and Trade Development Agency (SARIO) is a state agency that assists Slovak companies wishing to do business abroad and foreign companies wishing to do business in Slovakia.¹⁶ Because of its frequent contact with businesses that are internationally active, SARIO could play a key role in raising awareness of the Convention and foreign bribery.

23. Unfortunately, SARIO has not taken advantage of this opportunity. It has not engaged in any awareness-raising activities for its clients. It added the Convention (in English and Slovak) to its Web site only after the on-site visit. It has provided training to its affiliates but not on the Convention or foreign bribery.

(iii) Other Initiatives

24. Only some of the key Slovak ministries have made additional efforts to raise awareness. The Ministry of Justice (MoJ), the Ministry of Interior and the Public Prosecution Office refer to the Convention and the Revised Recommendation on their Web sites.¹⁷ The Ministry of Economy began to do so (in English and Slovak) after the on-site visit,¹⁸ while the Ministry of Foreign Affairs still does not.

25. All legislation and international treaties that have been ratified (including the Convention) are published in the publicly-available Official Journal.

26. The MoJ had intended to publish a manual on the Convention and "model situations of corruption in foreign business relations".¹⁹ It has put these plans on hold pending enactment of the new Penal Code and Code of Penal Procedure.

(b) *Private Sector Initiatives to Raise Awareness*

27. The Slovak private sector appears to have a low level of awareness of foreign bribery and the Convention. It has done little to raise the awareness of these matters. Relatively few companies and organisations participated in the on-site visit, although the lead examiners recognise that comparatively few Slovak companies may be active internationally.

¹⁵ Response to Questionnaire, p. 3.

¹⁶ See www.sario.sk.

¹⁷ Response to Questionnaire, p. 37.

¹⁸ See www.economy.gov.sk.

¹⁹ Response to Questionnaire, p. 14.

(i) Business and Labour Organisations

28. The Slovak Chamber of Commerce and Industry (SOPK) is aware of the Convention since it attended a workshop organised by the government. It has not, however, raised awareness of the Convention or foreign bribery among its members.

29. The only other business organisation at the on-site visit was ČESMAD Slovakia, an association of road transport operators. It had not been aware of the Convention before the on-site visit.

(ii) Major Slovak Enterprises

30. The situation with Slovak enterprises is similar. Slovak companies in energy, steel and automotive parts attended the on-site visit. All are active internationally, including in sensitive markets such as Russia and Africa. Unfortunately, none of them has raised the awareness of foreign bribery among their employees. Several companies have codes of conduct, but the codes do not discuss bribery. The only exceptions were one company whose parent is a major listed American company, and another company in the energy sector that has trained its employees on domestic and foreign bribery. None of the companies at the on-site visit received any information on this subject from the Slovak government.

(iii) Small and Medium-Sized Enterprises

31. The National Agency for the Development of Small and Medium Enterprises promotes the development and growth of existing and new small and medium-sized enterprises in Slovakia. The Agency has not received information on the Convention from the government, nor has it engaged in activities to raise awareness among Slovak SMEs.

(iv) Civil Society and Trade Unions

32. The situation is the same for Slovak civil society. Transparency International Slovakia and the Fair Play Alliance, the two NGOs that attended the on-site visit, focus on domestic issues such as political funding and systemic reforms to increase transparency and integrity in the Slovak society. They have not made any efforts to raise the awareness of the Convention in Slovakia. A Slovak academic added that information about the Convention was not sufficient.

33. Likewise, the two trade unions that attended the on-site visit have not undertaken any initiatives to raise awareness of the Convention among their members.

(c) *Conclusion on General Efforts to Raise Awareness*

34. The lead examiners are concerned at the low level of awareness of foreign bribery, the Convention and the Revised Recommendation within the Slovak private sector. Efforts to disseminate information on these instruments have not been adequate. The situation is particularly disconcerting since some Slovak businesses operate internationally in sensitive markets and sectors.

35. To this end, greater efforts must be made by the Slovak government, particularly the Department of Fight against Corruption, and the Ministries of Justice and Economy. Because of their contact with Slovak businesses, the Slovak Investment and Trade Development Agency (SARIO) and the National Agency for the Development of Small and Medium Enterprises should also be more

active in raising awareness of foreign bribery. Finally, Slovakia should consider involving civil society and business organisations in these awareness-raising initiatives.

Commentary

The lead examiners recommend that Slovakia take further action to raise the level of awareness of the foreign bribery offence in the private sector. They also recommend that the Slovak Ministry of Justice publish the manual on the Convention at the earliest possible date.

2. Reporting, Whistleblowing and Witness Protection

(a) Duty to Report Crimes

36. In 2003, Slovakia amended Section 168(1) of the Penal Code, which required all individuals to report certain crimes listed in the provision, including domestic and foreign bribery. Any person who gains “any reliable information” regarding such crimes must report immediately to “a prosecutor, investigator or a police body”. Failure to report is punishable by imprisonment of up to three years. Under the new Penal Code, a person need not report if he/she is bound by a non-disclosure obligation laid down by law.²⁰

37. Section 8 of the Code of Penal Procedure also requires civil servants to “inform without delay the prosecutors or the police bodies of the facts indicating the commission of a criminal offence”.

38. These requirements on the private sector and public officials to report foreign bribery are positive. Nevertheless, the lead examiners remain concerned about the application and enforcement of these duties to report. As seen below, they heard conflicting evidence about the duty to report foreign bribery from private auditors and officials in export credits, the tax administration and foreign diplomatic representations. This raises concern that there is inadequate awareness of the duty to report foreign bribery within the private sector and among public officials.

Commentary

The lead examiners recommend that Slovakia raise the awareness within the private sector and among public officials of the legal obligation under the Slovak Penal Code to report foreign bribery to law enforcement authorities.

(b) Whistleblowing and Whistleblower Protection

39. Section 13 of the Labour Code came into force in July 2003. The provision states that, “In the workplace, nobody may be persecuted or otherwise sanctioned in the performance of labour law relations for submitting a complaint, charge or proposal for the beginning of criminal prosecution against another employee or the employer.” Aggrieved whistleblowers may seek protection from a court.

40. Despite this provision and the duty to report crimes, the prevalence of whistleblowing in Slovakia seems low. The Slovak authorities stated that they have raised awareness of this provision among Slovak citizens (e.g. through the Internet, written publications, bulletins etc.). Furthermore, at

²⁰ New Penal Code, Act 300/2005 Coll., Section 340(3)(b).

least some trade unions have organised training activities to raise awareness. Yet, Slovakia was not able to provide any examples in which a bribery case was detected due to whistleblowing. Nor was it able to provide an example of a whistleblower who has relied on the Labour Code for protection. However, the lead examiners recognise that this provision was enacted recently.

Commentary

The lead examiners recommend that Slovakia (a) continue its efforts to make Section 13 of the Labour Code more widely known among companies and the general public, and (b) maintain statistics as to the number and sources of allegations of bribery.

(c) Witness Protection

41. Witness protection, which is managed by a special department within the police forces, is available in foreign bribery cases.²¹

3. Officially Supported Export Credits

42. Export credit agencies deal with companies that participate in the international market and thus could play an important role in raising awareness of the Convention and in detecting foreign bribery cases. In Slovakia, officially supported export credits are administered by the Export-Import Bank of the Slovak Republic (EXIMBANKA SR), a state-funded, incorporated legal entity. EXIMBANKA SR provides a wide range of services, including export financing, insurance and guarantees of transactions of various durations. It also provides special financing to small and medium-sized enterprises.²²

(a) Awareness Raising Efforts

43. EXIMBANKA SR has made some efforts to raise awareness of the Convention among its clients. It refers to the Convention on its Web site. At the time of the on-visit, in the application form for support, all applicants must declare that they are aware that EXIMBANKA SR will not support transactions that were connected with foreign bribery.²³ The standard contract for support states that EXIMBANKA SR may deny coverage if the insured or his/her representative commits foreign bribery

²¹ Act 256/1998 Coll. on the Protection of the Witness and on the Modification and Amendment of Certain Laws.

²² Act 80/1997 Coll. on the Export-Import Bank of the Slovak Republic; Web site of EXIMBANKA SR, www.eximbanka.sk.

²³ At the time of the on-site visit, the following declaration was found in the application form:

We are aware, that the insurance of export credit risk with the state support cannot be provided for exports, preparation of which was connected from side of the applicant for insurance with bribery in international trade directly or by means of the third persons in accordance with § 160 and following §§ of the Criminal Code. At the same time we are aware, that the insurer has right to refuse an indemnification or to request to refund already paid indemnification, if it was proved, that the data concerning bribery in international trade stated by policy holder in his application were not complete or not true.

(OECD Working Party on Export Credits and Credit Guarantees (21 January 2005), *Responses to the 2004 Revised Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – Situation as of 21 January 2005*, OECD, Paris, TD/ECG(2005)4, p. 12).

As noted below, EXIMBANKA SR amended this declaration after the on-site visit.

in connection to the export contract.²⁴ (See also Section C.6 on Sanctions for Foreign Bribery at p. 44 of this Report.) After the on-site visit, EXIMBANKA SR amended the declaration to cover acts of bribery which occur before and after the contract is signed. .

44. Despite these measures, the lead examiners believe that EXIMBANKA SR could do more to raise awareness of foreign bribery among its clients, *e.g.* by sending information to clients and potential clients.

(b) Detection of Foreign Bribery

45. Beyond providing a copy of the OECD Best Practices to Deter and Combat Bribery in Officially Supported Export Credits,²⁵ EXIMBANKA SR has not trained its staff on how to detect suspicions of bribery. Its staff does not usually check for outstanding investigations or convictions against a client before or after approving support, though it may do so on a case-by-case basis.²⁶ At the on-site visit, EXIMBANKA SR stated that it does not have the ability to check clients to determine whether funds obtained from the agency have been used for a bribe. It changed its position after the on-site visit, stating that it is required to check clients, counterparties and transactions to determine whether funds have been used for their specified purpose.²⁷ EXIMBANKA SR believed that the statement at the on-site visit was made in error.

Commentary

The lead examiners recommend that EXIMBANKA SR (1) make further efforts to raise awareness of foreign bribery among its staff, clients and potential clients, and (2) require a client to disclose sufficient information, such as details on agents' commissions, which would enable EXIMBANKA SR to verify whether the client has engaged in foreign bribery.

²⁴ The contract contains the following standard term:

III. Basic Conditions

9. The Insurer has right to refuse insurance in accordance with these Insurance Conditions when the commercial bank, exporter or the person acting on his behalf breached, on the basis of the court decision, the provisions of the specific law¹ in connection to the export contract which shall be financed through the export buyer's credit.

¹ Par. 160 and subs. Law 140/1961 Coll. Criminal Code and par. 49 Law 513/1991 Coll. Commercial Code

²⁵ Working Party on Export Credits and Credit Guarantees (14 October 2004), *Bribery and Officially Supported Export Credits: Best Practices to Deter and Combat Bribery in Officially Supported Export Credits*, OECD, Paris, TD/ECG(2004)14.

²⁶ A Slovak prosecutor stated that there are no legal obstacles which prevent EXIMBANKA SR from asking law enforcement authorities about the existence of an outstanding investigation against a client or prospective client.

²⁷ According to EXIMBANKA SR, it has a legal obligation to check clients, counterparties and transactions which arises from rules on liquidity and prudent operations specified by the National Bank of Slovakia with the agreement of the Ministry of Finance.

(c) *Duty to Report Foreign Bribery*

46. EXIMBANKA SR provided slightly different explanations of its duties to report foreign bribery. At the on-site visit, it stated that an employee who suspects that a transaction involves bribery must report the matter to his/her superior. The case may be further reported to law enforcement authorities, depending on whether support has been provided to the client. After providing support, Eximbanka SR will alert law enforcement if it suspects that bribery was involved. Prior to providing support, Eximbanka SR will refer a case to law enforcement only if there is a legal judgment that confirms that the subject transaction involved bribery; a suspicion of bribery will not suffice. After the on-site visit, however, EXIMBANKA SR stated that it will report any “reasonable suspicions” of foreign bribery to law enforcement authorities regardless of whether support has been provided.²⁸

4. *Official Development Assistance*

47. Agencies that administer official development assistance (ODA) also come into contact with companies that deal with foreign officials of the country receiving assistance. ODA agencies thus play an important role in raising awareness of the Convention and in detecting foreign bribery. Slovakia is not a major donor of ODA, but it intends to become more active in this area.²⁹ The Ministry of Foreign Affairs (MoFA) oversees the ODA programme.

48. The administration of the ODA programme involves a number of individuals and bodies. An Authorised Representative for ODA implements the national programme. For specific projects, implementation agencies, and administrative and contractual units oversee the tendering and contracting process. Project officers monitor the execution of a project by a chosen contractor. The Supreme Audit Office of the Slovak Republic audits each implementation agency annually and at the conclusion of a project.³⁰ All individuals involved are located in Slovakia.

49. The MoFA has made few efforts to raise awareness of foreign bribery among the actors in the ODA programme. It also has not sent information on foreign bribery to its staff and contractors

²⁸ EXIMBANKA SR states that the information in a recent OECD survey is incorrect (OECD Working Party on Export Credits and Credit Guarantees (21 January 2005), *Responses to the 2004 Revised Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – Situation as of 21 January 2005*, OECD, Paris, TD/ECG(2005)4, pp. 40 and 50). According to the Survey, before the decision to provide support has been made, EXIMBANKA SR may report suspicions of foreign bribery to investigative authorities, but there is no requirement or practice of doing so. According to the Survey, EXIMBANKA SR cannot inform investigative authorities if suspicions arise after providing support. EXIMBANKA SR believes that this discrepancy arose because it did not respond to the Survey correctly.

²⁹ In 2003, Slovakia’s ODA disbursements totalled just over USD 15 million, representing 0.05% of gross national income (GNI). Bilateral aid accounted for about USD 9 million or 56% of total ODA. In its Annual Programme for 2004, the government approved USD 1.7 million for new specific projects in Serbia and Montenegro. It also approved USD 2.7 million in bilateral aid to the following countries: Afganistan, Albania, Bosnia and Herzegovina, Kazakhstan, Republic of Kenya, Kirghizia, Macedonia, Mongolia, Mozambique, Sudan, Tadjikistan, Uzbekistan. The Slovak government expects to substantially increase ODA to USD 30.2 million in 2006 (0.098% of GNI) and 0.125% of GNI by 2010 (OECD (2005), *Development Co-Operation Report – Volume 6*, OECD, Paris, pp. 108 and 221; *The National Programme of the Official Development Aid (ODA) for the 2004 Year*, Government of the Slovak Republic).

³⁰ See Directive for Providing Official Development Assistance of the Slovak Ministry of Foreign Affairs.

who participate in the ODA programme. It has not provided training to its staff specifically on foreign bribery, but only on general project management. The MoFA's directive on ODA touches upon the general supervisory functions of the individuals involved in the programme, but there are no direct references to foreign bribery or corruption.

50. The lead examiners acknowledge that Slovakia's ODA programme is relatively new and small. Nevertheless, there are well-known risks of corruption both in ODA programmes generally and in the countries that Slovakia has targeted for assistance. It may therefore be prudent for Slovakia to make greater efforts to raise awareness of foreign bribery in the context of its ODA programme.

Commentary

The lead examiners recommend that Slovakia raise the awareness of foreign bribery among (1) officials who are involved in administering official development assistance (ODA), and (2) companies and individuals who are involved in projects funded by ODA.

5. Foreign Diplomatic Representations

51. By reason of their location, Slovak overseas diplomatic representations could receive information on foreign bribery committed by Slovak individuals and companies abroad. Since they often come into contact with Slovak individuals and companies that operate internationally, they can also raise the awareness of foreign bribery among these entities. Staff in Slovak embassies and overseas representations fall into two categories: diplomats from the Ministry of Foreign Affairs (MoFA) and trade representatives from the Ministry of Economy (MoE).

(a) Awareness Raising Efforts

52. Slovak efforts to raise awareness of foreign bribery among the staff at its embassies and overseas representations appear unclear. The MoFA trains and examines its diplomats twice per year. Recent training activities have referred to the Convention and foreign bribery, but the extent of such references is unclear. The MoE trains staff on corruption and bribery before dispatching them overseas, but it could not provide any information on whether the training involved foreign bribery.

53. Neither the MoFA nor the MoE has engaged in any initiatives to raise the awareness of foreign bribery among Slovak companies and individuals that operate internationally. The Convention is not on their Web sites. It is unclear whether Slovak companies have sought assistance from Slovak embassies and diplomatic posts on such matters.

(b) Duty to Report Foreign Bribery

54. The MoFA has issued general guidelines to its diplomatic staff on reporting crimes committed overseas by Slovak individuals and companies. As with all Slovak officials, diplomatic staff must report all crimes (including foreign bribery) to Slovak law enforcement authorities. In addition, diplomatic staff must verify the allegation with local authorities, and further report the matter to the MoFA, the Ministry of Interior and the Slovak prosecutor's office.

55. Reporting procedures for trade representatives seem less defined. At the on-site visit, the MoE stated that it is the responsibility of a staff member who has information about a crime to proceed with the matter. The member will "most likely" report the matter to the responsible consul in the MoE. It is unclear what the consul would then do with the case. The MoE had not issued guidelines on this

subject. It was also unclear whether this procedure conforms with the general duty to report foreign bribery under the Penal Code.

56. The MoE took steps to remedy this situation after the on-site visit. The Director of its International Business Department issued instructions to its employees abroad. These instructions ordered employees “to apply the Convention principles in practice, to publish the Slovak and English versions of the Convention on the Web site of the workplaces of the MoE abroad (if any), and to follow sections 167 and 168 of the Penal Code [which concern reporting] in corruption cases or in case of a suspicion of corruption.”

(c) *Conclusion*

57. Although the MoFA and the MoE have made some efforts in the fight against foreign bribery, they could do more. Specifically, embassy staff may benefit from more training and awareness-raising activities. Furthermore, both Ministries could also be more active in raising awareness of foreign bribery among Slovak companies that operate internationally

Commentary

The lead examiners recommend that the Ministries of Economy and Foreign Affairs undertake further efforts to raise awareness of foreign bribery among (1) staff in overseas diplomatic representations, and (2) Slovak companies that operate internationally.

6. Tax Authorities

(a) *Non-Deductibility of Bribes*

58. Slovakia has overhauled its tax legislation since the Phase 1 review. The present legislation contains a list of deductible items and a list of non-deductible items (which includes, among other things, entertainment expenses). Bribes do not appear on either list. The onus is on the taxpayer to prove deductibility with sufficient documentation.³¹

59. That bribe payments are not tax deductible in Slovakia seems clear, despite an absence of an express prohibition in the statute. At the on-site visit, government officials, business representatives, and legal and accounting professionals were unanimously of this view. Nevertheless, there remain categories of deductible expenses that could conceivably be used to hide bribe payments. For instance, a tax official at the on-site visit confirmed that fees for an offshore agent are deductible.

60. The lead examiners recognise that Slovak law does not allow tax deduction of bribes. Commensurate with previous Phase 2 examinations, they nevertheless believe that an express denial of deductibility in Slovak tax law may strengthen the mechanisms for detecting and deterring bribery. After the on-site visit, Slovakia indicated that it has prepared a draft amendment to section 21 of Act 595/2003 Coll. on Income Tax. The draft revised provision expressly denies deduction of bribes and other undue advantages given to another person or a third party.

Commentary

The lead examiners recommend that Slovakia introduce an express denial of tax deductibility of bribe payments to foreign public officials.

³¹ Act 595/2003 Coll. on Income Tax, Sections 19 and 21.

(b) *Awareness, Training and Detection*

61. Slovak tax authorities have not raised the awareness of foreign bribery and the Revised Recommendation among their tax examiners. They have not trained their examiners on these matters. Their training programme on tax audits does not refer to bribery. They have not distributed the OECD Bribery Awareness Handbook for Tax Examiners to its employees, but they plan to do so.

62. Slovak tax officials cited two reasons for the lack of training and awareness-raising. First, they believe that it is unlikely that tax examiners will uncover bribe payments during a tax audit. Bribes are generally paid in cash and are hence very difficult to detect during audits. Second, the primary focus of a tax examiner is tax evasion. If an examiner discovers that the documents in support of a deduction are false, tax evasion is established. The examiner need not and will not go further to ascertain whether the deduction was a bribe.

63. Given these beliefs, Slovak tax examiners predictably have never encountered an attempt to deduct a bribe, even though roughly 5% of tax returns in Slovakia are audited.³²

64. That bribes have never been discovered during a tax audit is not due to a lack of investigative powers and tools. For example, when investigating tax evasion or money laundering involving “damage” that is “substantial” or “of a large scope”,³³ the police may enter any business premises to search and seize documents. Prior judicial or prosecutorial authorisation is not required. It may also request information subject to secrecy from banks and foreign bank branches.³⁴

65. The lead examiners are concerned over the lack of awareness and training on foreign bribery among Slovak tax examiners. Mere verification of whether documents in support of a deduction are fictitious is insufficient to detect deductions of bribes. To remedy the situation, the Slovak tax authorities could consider addressing foreign bribery and methods of detecting bribes in training seminars for tax officials. It could also develop guidelines for tax examiners on how to detect bribe payments. Slovakia should further consider translating the entire OECD Bribery Awareness Handbook for Tax Examiners into Slovak and disseminating it to all tax examiners.

Commentary

The lead examiners recommend that Slovakia (1) raise the awareness of foreign bribery among tax officials, (2) provide guidelines, instructions and training to tax examiners on detecting foreign bribery during tax audits.

(c) *Sharing of Information and Duty to Report Foreign Bribery*

66. Slovak tax officials are subject to the general duty to report crimes. Upon discovery of a crime, a tax examiner generally reports to his/her tax audit authority, who will in turn report to Slovak law enforcement. An examiner may also report to law enforcement directly.

67. There are no legislative impediments for the Slovak tax authorities to fully discharge these reporting duties. Tax officials are generally required to maintain confidentiality of information

³² According to statistics provided by the Slovak tax authorities.

³³ Damage is “substantial” if it is greater than 20 times the statutory minimum monthly wage, *i.e.* SKK 130 000 (approx. EUR 3 400) (Penal Code, Section 89(13)).

³⁴ Act 171/1993 Coll. on the Police Force, Section 29a.

gathered in the course of their duties. However, the duty of confidentiality does not apply when information is communicated to Slovak courts, prosecutors and police.³⁵ Tax officials may provide such information voluntarily or upon demand.

68. Slovak tax authorities may also share information with foreign authorities. The duty of confidentiality does not apply to information that is given to foreign tax authorities pursuant to international treaties and special domestic legislation. Slovak tax authorities, however, cannot provide information directly to foreign law enforcement agencies. Nevertheless, foreign tax authorities can forward information that they receive from their Slovak counterpart to law enforcement agencies in their country.

69. In the future, Slovak tax authorities may be able to provide information directly to some foreign law enforcement agencies. The OECD recently amended the Commentary on Article 26 of its Model Tax Convention. Paragraph 12.3 of the Commentary now permits contracting states “to allow the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption...)”. This sharing of information is available if “such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.” Slovakia intends to amend the tax treaties to which it is a party to reflect this amendment, and adopt the amendment in the tax treaties that it signs in the future.

7. *Accountants and Auditors*

(a) *Accounting and Auditing of the Private Sector*

(i) Awareness and Training

70. Accountants and auditors may also detect foreign bribery during the course of their work. Their awareness of and training on the offence of foreign bribery and the Convention are thus crucial.

71. The awareness of these matters within the Slovak accounting and auditing professions appears low. The professional regulatory bodies have done nothing to raise awareness, nor have they included foreign bribery as a component of their training activities.

72. As with tax officials, this lack of initiative may be the result of a belief that accounting and auditing are not effective means of detecting bribes. According to representatives of the Slovak accounting profession at the on-site visit, accounting and auditing may reveal crimes such as embezzlement but not bribery. A prosecutor added that 99% of bribes in Slovakia are made in cash and hence do not appear in a company’s accounts.

Commentary

The lead examiners recommend that Slovakia take measures to raise awareness of the foreign bribery offence among the accounting and auditing professions, and to ensure that accounting and auditing issues related to bribery are regularly examined in the context of the mandatory training requirements for auditors.

³⁵ Act 511/1992 Coll. on Administration of Taxes and Fees and Changes to the System of Local Financial Authorities Act, Articles 23(5)(e) and (g).

(ii) Accounting and Auditing Standards

73. The Department for Accounting at the Ministry of Finance is responsible for setting accounting standards. According to the Ministry, Slovak accounting standards are not fully compatible with International Accounting Standards (IAS). Since 1 January 2005, certain companies are required to prepare consolidated financial statements according to IAS. After 1 January 2006, additional entities are required to provide financial reporting in compliance with IAS.³⁶ The introduction of IAS for small and medium enterprises will be synchronised with other EU member states.

74. The Slovak Auditor's Chamber, which sets auditing standards in Slovakia, states that Slovak auditing standards are compatible with International Standards for Auditing. The independence of auditors is enhanced through a Code of Ethics and statute.³⁷ The Chamber is also responsible for regulation and discipline of its members. The limitation period in the law for instituting disciplinary proceedings is three years. The Chamber has only ever disciplined one member.

(iii) External Auditing

75. Since Phase 1, Slovakia has enlarged the group of entities that must be externally audited. All joint-stock companies, banks and companies in the financial sector are now obliged to do so. In addition, an enterprise must also be externally audited if it meets two of the following three criteria in the year preceding the relevant accounting period: (1) total assets exceeding SKK 20 million (approx. EUR 520 000),³⁸ (2) net turnover exceeding SKK 40 million (approx. EUR 1.04 million), and (3) the average number of employees exceeding 20.³⁹

76. The Slovak authorities were unable to provide statistics on the percentage of Slovak enterprises that are subject to external auditing.

(iv) Duty to Report Foreign Bribery

77. In Phase 1, the Working Group noted (at p. 24) that Slovak auditors were only obliged to report suspicions of money laundering to a prosecution or police authority. Auditors have no duty to report other crimes. The Working Group therefore invited the Slovak authorities to consider requiring auditors to report crimes to the management of the audited entity or other internal corporate monitoring bodies.

78. Slovakia has partly implemented this recommendation. Slovak auditors are generally obliged to keep confidential all information that they acquire while performing their duties. If an auditor discovers corruption, an economic crime or "facts having principally adverse impact" on the economic

³⁶ These entities include, among others, companies listed on the stock exchange, banks, the Export-Import Bank of the Slovak Republic and commercial companies which meet at least two of the following criteria during two consecutive accounting periods:

- (a) gross assets of more than SKK 5 billion,
- (b) net turnover was more than SKK 5 billion, and
- (c) average number of employees during the accounting period was more than 20.

³⁷ For instance Act 466/2002 Coll. on Auditors and Slovak Chamber of Auditors, Article 15.

³⁸ Throughout this Report, figures in the Slovak currency (SKK) are converted to euros (EUR) based on the interbank exchange rate on 27 January 2005.

³⁹ Act 431/2002 Coll. on Accounting, Section 19.

operations of an audited entity, he/she must report the matter to the statutory and supervisory boards of the audited entity without delay.⁴⁰ An auditor cannot further report such matters to internal corporate monitoring bodies or law enforcement because of the duty of confidentiality. This was the position of the accountants and auditors at the on-site visit, notwithstanding Section 168 of the Penal Code (which obliges all individuals in Slovakia to report bribery to law enforcement) and Article 16(3) of Act 466/2002 Coll. on Auditors and Slovak Chamber of Auditors (which states that an auditor's duty of confidentiality "shall not apply to cases where the law prescribes reporting or thwarting a criminal offence."). It should also be noted that the new Penal Code states that a person need not report if he/she is bound by a non-disclosure obligation laid down by law.⁴¹

Commentary

The lead examiners recommend that Slovakia (1) require external auditors to report indications of a possible illegal act of bribery to internal corporate monitoring bodies as appropriate, and (2) consider requiring external auditors to report such indications to competent authorities.

(b) Accounting and Auditing of the Public Sector

79. In many jurisdictions, the auditor of the public sector plays an important role in fighting foreign bribery since he/she audits not only the government but also state-owned and state-controlled enterprises.

80. In Slovakia, the Supreme Audit Office of the Slovak Republic (SAO) is an independent body which audits all bodies of the central government and all institutions with budgets that have been approved by the legislature or the government. It also audits all bodies that are funded by the central government, including "legal persons in which statutory institutions have a capital participation" and "legal persons with state capital participation". Under a law adopted in September 2005, the SAO will audit all the funds of municipal bodies.⁴²

81. Like its private sector counterpart, the SAO doubts its ability to detect foreign bribery through auditing. Its audits are based only on documentation. Since bribery is unlikely to generate documents such as receipts or invoices, the SAO believes that its audits are unlikely to uncover such crimes. For this reason, the SAO prefers to place more emphasis on detecting corruption within the Slovak government.

82. Given this focus, the SAO has made limited efforts to raise awareness of foreign bribery among its staff. In 2001, it organised a set of seminars concerning the detection of corruption in the public sector. Participants were informed about the Convention and the obligations of the public sector and the public administration.⁴³ Training courses in 2004 focused on international auditing standards in the public sector and did not touch upon foreign bribery.

83. The SAO has a duty to report crimes. Auditors of the SAO are required to report suspicions of crime to the public prosecutor's office and the authority that is responsible for the audited entity. It

⁴⁰ Act 466/2002 Coll. on Auditors and Slovak Chamber of Auditors, Article 16.

⁴¹ New Penal Code, Act 300/2005 Coll., Section 340(3)(b).

⁴² Constitution of the Slovak Republic, Article 60; Act 39/1993 Coll. on the Supreme Audit Office of the Slovak Republic, Articles 2 and 4.

⁴³ Response to Questionnaire, p. 37.

has issued a detailed brochure describing the reporting procedure to its employees. Recently, the SAO entered into an agreement with the Public Prosecution Office under which the SAO will seek a preliminary consultation with a prosecutor when it discovers a crime. The purpose of the consultation is to seek the prosecutor's view on the evidence that the SAO should gather to further the investigation.

84. The lead examiners are pleased with the sharing of information and co-operation between the SAO and the prosecutor's office. Nonetheless, they are concerned that the staff of the SAO are not aware of their potential importance in the fight against foreign bribery.

Commentary

The lead examiners recommend that the Supreme Audit Office of the Slovak Republic (SAO) raise the level of awareness of foreign bribery among its staff. They also recommend that the SAO train its staff on how to detect foreign bribery.

8. Money Laundering Reporting

(a) Suspicious Transaction Reporting

85. An effective system to counter money laundering may lead to detection of the underlying predicate offences, such as bribery. Slovakia has implemented a regime of anti-money laundering measures through Act 367/2000.

86. The Act defines money laundering as the "use or disposal with income or other property acquired or reasonably suspicious of being acquired from illegal activity or participation in an illegal activity carried out" in or outside of Slovakia. "Use" includes ownership and possession. "Disposal" is a transfer of ownership, possession or use of the property with intent to hide the origin of the property or its owner.⁴⁴

87. The Act creates a system for reporting suspicious transactions. It requires banks and various financial institutions, among others, to report "unusual business operations" to the Financial Intelligence Unit within the Bureau of Organised Crime of the Presidium of the Police (FIU) without delay. An "unusual business operation" is defined as an action that "may enable" money laundering or terrorist financing. Each reporting entity must create a compliance department to implement its reporting duties. It must also maintain certain records relating to the transaction and the client for a certain period of time, and produce those records to the FIU upon demand.⁴⁵ In 2004, the FIU received 818 suspicious transaction reports. As of 7 June 2005, 102 of them have been forwarded to law enforcement authorities. The FIU was unable to advise whether any of these cases involved bribery.

88. Reporting entities receive some feedback on their suspicious transaction reports. The National Bank of Slovakia (NBS), Slovakia's central bank and main banking regulator, states that it meets the FIU two or three times per year to discuss the operation of the reporting system. The NBS also regularly meets the internal auditors and compliance officers of reporting entities for the same purpose. Likewise, the FIU meets the Slovak Bank Association to provide feedback and statistics on

⁴⁴ Act 367/2000 Coll. on Protection against Legalisation of Incomes from Illegal Activities and on Amendment of Some Acts, Section 2.

⁴⁵ Act 367/2000 Coll. on Protection against Legalisation of Incomes from Illegal Activities and on Amendment of Some Acts, Sections 3, 4 and 6.

suspicious transaction reports. Reporting entities, however, do not receive any feedback from law enforcement or the courts. The Bank Association also expressed interest in receiving more specific information on investigations arising from suspicious transaction reports.

(b) Sanctions for Failure to Report

89. Act 367/2000 vests the FIU with enforcement of the reporting system. Upon discovery of a violation, the FIU may impose a penalty of up to SKK 2 million (approx. EUR 52 000). The maximum penalty is doubled for entities who offend repeatedly within three years. In 2004, the FIU imposed almost SKK 2.6 million (approx. EUR 68 000) in fines against 22 entities.

90. Failure to report a suspicious transaction may also attract criminal sanctions. Failure to inform or report an unusual business operation or a crime of money laundering as defined in the Penal Code is punishable by a fine, a ban on professional activity or imprisonment of two to eight years.⁴⁶ There have been no criminal proceedings under this provision since at least 2000.

(c) Typologies and Guidelines

91. The lead examiners are unsure whether the regulatory authorities provide sufficient guidance to reporting entities. Act 367/2000 does not define what amounts to an “unusual business operation” with any precision. Nor have the regulatory authorities issued any guidelines to elucidate this concept. Even more troubling is the lack of typologies on money laundering.

92. The regulatory authorities have also done little on the issue of politically exposed persons (PEPs), which is closely related to corruption and bribery.⁴⁷ The National Bank has only issued “soft legislation” on this matter. It “tells the banks that it supervises to be careful when dealing with PEPs”, but actual implementation is largely left to the banks themselves. One bank stated at the on-site visit that it conducts periodic inspections of the highest level of PEPs only. The representatives of the eight other banks at the on-site visit could not provide any information on their treatment of PEPs. Stronger customer due diligence measures for PEPs could assist Slovakia’s fight against foreign bribery.⁴⁸

93. The National Bank of Slovakia also plays a supervisory role over the banks’ reporting systems. The National Bank provides “methodological guidelines” to assist banks in complying with Act 367/2000. It inspects banks (including their anti-money laundering systems) regularly over a “two-year supervisory cycle”.

Commentary

The lead examiners recommend that Slovakia provide better guidance to entities which are required to report suspicious transactions, for instance, by providing typologies on money laundering where the predicate offence is bribery.

⁴⁶ Penal Code, Section 252a.

⁴⁷ Politically exposed persons (PEPs) are individuals who are or have been entrusted with prominent public functions in a foreign country, e.g. heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials. For more information, see the Glossary of *The Forty Recommendations (2003)*, Financial Action Task Force, Paris.

⁴⁸ See Recommendation 6 of *The Forty Recommendations (2003)*, Financial Action Task Force, Paris.

C. INVESTIGATION, PROSECUTION AND SANCTIONING OF FOREIGN BRIBERY AND RELATED OFFENCES

1. *Investigation and Prosecution of Foreign Bribery*

(a) *Law Enforcement Authorities*

(i) Police and Investigators

94. Criminal investigations in Slovakia involve prosecutors, investigators and the police corps. Under the Code of Penal Procedure, prosecutors and investigators are responsible for most investigative acts or decisions, while the police corps is responsible for mainly “operational activities”.⁴⁹ However, the police corps is responsible for conducting summary investigations into less serious offences (which does not include foreign bribery).⁵⁰ Investigators collect evidence and present their findings to prosecutors. Investigators also propose whether a charge should be laid or whether a case should be closed, *e.g.* because no crime has been identified.

95. Until 31 December 2003, all investigators were part of the Judicial Police while the police corps was from the Presidium of the Police. Both were under the Ministry of Interior but were separate bodies.⁵¹

96. On 1 January 2004, the Presidium was re-organised and four new Bureaus were created: the Bureau of the Fight against Corruption, the Judicial and Criminal Police Bureau, the Organised Crime Bureau, and the Border and Alien Police Bureau. The Judicial Police was dissolved and its investigators were merged with the four new Bureaus. Thus, each Bureau consists of both investigators and police officers who continue to perform their duties as assigned by the Code of Penal Procedure.⁵²

⁴⁹ For example, only police officers can execute arrest warrants, only investigators and prosecutors can stay a prosecution in some circumstances, and both police officers and investigators can execute search warrants (Code of Penal Procedure, Sections 69, 83a and 172).

⁵⁰ Less serious offences are those punishable by imprisonment of three years or less (Code of Penal Procedure, Section 168(1)). As of 2006, summary investigations will be extended to offences punishable by imprisonment of five years or less.

⁵¹ In the Communist era, the Slovak investigators were the real fulcrum of the investigation service. Leading up to Slovakia’s accession to the European Union (EU), the EU observed overlap among different Slovak law enforcement agencies involved in the fight against corruption and financial crimes. Preliminary investigations consist of three sub-levels: (1) the police, who gathered evidence that would be used in the investigation, (2) the investigator, and (3) the public prosecutor. This system resulted in extra costs: useless and expensive overlaps (in time and money) among the bodies, confusion of roles, a high degree of irresponsibility of the bodies involved and, above all, extreme delays in the entire judicial system. In 2002, a new investigative institution, the Judicial Police, was established to investigate serious crimes (*i.e.* those punishable by more than 3 years imprisonment). However, as noted below, in January 2004, the Judicial Police was merged with the specialised Bureaus within the Police Presidium.

⁵² See Annex 5 for an organisational chart of the Presidium of the Police.

(ii) Bureau of the Fight against Corruption

97. The Bureau of the Fight against Corruption (the Bureau) is responsible for investigating bribery (including foreign bribery) and serious economic offences.⁵³ It is divided into two central departments and four regional units, each covering a regional district. It has 162 staff, including police officers and investigators.

(iii) Awareness and Training

98. The Slovak Police Academy provides training to police officers and new recruits. The Academy has dealt with foreign bribery in its lectures and examinations. It has published textbooks on “Corruption and Specialties of its Detection” and the “Methodology of Investigation of Corruption”. The latter refers to the Convention and other international instruments that deal with corruption.

99. In 2004, Slovakia provided training on the Convention and economic crimes to members of the Bureau of the Fight against Corruption, but not other police officers and investigators. It also held an international training course with American prosecutors, which covered foreign bribery.

Commentary

The lead examiners recommend that the Slovak Police Academy continue to train police officers and recruits (including those who are not members of the Bureau of the Fight against Corruption) on investigating foreign bribery, including the practical aspects of bribery investigations.

(b) *Prosecutors and the Judiciary*

(i) General Structure of the Courts and the Prosecution Office

100. The general Slovak courts consist of the Supreme Court, 8 regional courts and 45 district courts, all of which have criminal, civil and administrative jurisdiction. In addition, the Constitutional Court is responsible for, among other things, ensuring that national laws are consistent with the constitution.⁵⁴

101. The Public Prosecution Office (PPO), which is responsible for prosecutions, follows the same organisation. It is divided into one General Prosecution Office, 8 regional offices and 45 district offices. Both district and regional prosecutors may receive reports of a crime and start an investigation.⁵⁵

102. The PPO is an independent authority with a budget separate from that of the government. It is headed by the Prosecutor General, who is appointed by the President on the recommendation of the legislature to a seven-year term and a maximum of two consecutive terms. The government may

⁵³ The Bureau is competent to investigate crimes over which the Special Court has jurisdiction (Act 171/1993 Coll. on the Police Force, Section 4(3)). For a description of the jurisdiction of the Special Court, see Section C.1(a)(ii) at p. 25 of this Report.

⁵⁴ Constitution of the Slovak Republic, Articles 125 and 142-143; Act 757/2004 Coll. on Courts.

⁵⁵ Act 153/2001 Coll. on the Public Prosecution Office, Articles 38-44.

recommend but cannot order the Prosecutor General to perform a particular task. The Prosecutor General appoints all other prosecutors.⁵⁶

103. The PPO has a hierarchical structure. A superior prosecutor may instruct a subordinate prosecutor on how to proceed with a case and how to perform a task. A junior prosecutor may refuse to accept those instructions only if they are illegal or contrary to the junior prosecutor's legal opinion. A superior prosecutor may also take over a case from a subordinate or reassign it to another prosecutor.⁵⁷ Conflicts in jurisdiction between two prosecution offices are resolved by the first common superior prosecutor of the two offices.⁵⁸

104. In performing their duties, prosecutors must abide by the Slovak Constitution, Slovak law and "international treaties declared in the manner prescribed by law and other generally binding regulations".⁵⁹

(ii) The Special Court and the Special Prosecutor

105. In May 2004, Slovakia created the Special Court with exclusive jurisdiction to hear corruption cases, including domestic and foreign bribery. The Court is also responsible for cases involving organised crime, serious economic crimes and crimes committed by certain officials.⁶⁰ If a case involves multiple offences, some of which are outside the jurisdiction of the Special Court, the Court will try all of the charges.⁶¹ The Supreme Court is responsible for resolving conflicts of competence between the Special Court and regional courts.⁶²

106. The Special Court became operational only on 1 July 2005 because of difficulties in appointing judges. According to its enabling statute, the Special Court should consist of 12 judges in Pezinok. As of May 2005, only six judges have been appointed, five of which were on a temporary basis. Until 1 July 2005, seven judges of the Regional Court in Banská Bystrica have performed the functions of the Special Court.⁶³

107. Slovakia has also created the Office of the Special Prosecutor (SPO) to prosecute all cases before the Special Court. The SPO is part of the Office of the Prosecutor General. The legislature elects the Head of the SPO by secret vote to a five-year term. The Head is responsible for managing

⁵⁶ Web site of the Public Prosecution Office, <http://www1.genpro.gov.sk/en/index.php3>; Act 153/2001 Coll. on the Public Prosecution Office, Articles 2, 7 and 9.

⁵⁷ Web site of the Public Prosecution Office, www1.genpro.gov.sk/en/index.php3; Act on the Public Prosecution Office, Articles 2, 6 and 10.

⁵⁸ Act on the Public Prosecution Office, Articles 50 and 54.

⁵⁹ Act 153/2001 Coll. on the Public Prosecution Office, Article 5.

⁶⁰ Code of Penal Procedure, Section 15a.

⁶¹ Code of Penal Procedure, Section 20(4). An exception is if the accused faces multiple charges, only one of which is within the jurisdiction of the Special Court, in which case the Special Court will hold joint proceedings with a regional court (Code of Penal Procedure, Section 21(1)).

⁶² Code of Penal Procedure, Section 24.

⁶³ By May 2005, the Banská Bystrica Regional Court has acted as the Special Court in 25 cases and three trials.

the activities of the SPO. He/she is accountable to the Prosecutor General, but the Prosecutor General cannot direct the SPO to commence or terminate proceedings or to perform specific procedural acts.⁶⁴

(iii) Awareness and Training

The Judiciary

108. According to the President of the Association of Judges, Slovak judges are “very well-informed on the Convention”. For instance, in 1999, the judiciary, Transparency International and the American Bar Association held a seminar on international conventions, which covered the OECD Convention. A round-table session on the same topic was held in 2000.

109. Formal training on foreign bribery has been more limited. Prior to 2004, the Institute for Education of the Ministry of Justice, the Association of Judges, and the regional courts organised occasional seminars. However, none of the activities dealt exclusively with foreign bribery.

110. Since its establishment in 2004, the Slovak Judicial Academy has provided training to both judges and prosecutors. It has organised 30 training courses since its inception. The Academy now has 4 full-time lecturers and offers 85 lectures on a part-time basis, none of which deals with foreign bribery. It plans to offer its first seminar on foreign bribery in 2006. One Slovak judge told the lead examiners that any training activities on foreign bribery from abroad would be “welcome”.

111. The Ministry of Justice provides Slovak judges and prosecutors with access to all legislation and international treaties through its Web site. All new legislation and treaties are also published in the Official Journal, which is available to the public.

The Public Prosecution Office

112. There have been some efforts to train prosecutors on foreign bribery. Although it has never been the sole topic of a course or seminar, foreign bribery is a “constituent part” of all training courses on corruption. Various training events have covered details of the Convention, including basic information, the obligations contained therein and how to discharge these obligations. Prosecutors who attend the training courses are required to prepare a report, which is distributed internally to other prosecutors in the same office. The Office of the Prosecutor General plans to organise a seminar on the OECD Convention and foreign bribery.

113. In addition, a prosecutor from the Office of the Prosecutor General attends meetings of the Working Group and provides summaries of the meetings to all prosecutors.

Conclusion on Awareness and Training of Prosecutors and Judges

114. The lead examiners are pleased that Slovak judges and prosecutors are aware of the Convention and the offence of foreign bribery. Furthermore, by giving the Special Court and the SPO exclusive jurisdiction to deal with domestic and foreign corruption cases, these bodies could develop specialised skills and expertise in these cases. To this end, further training courses specifically on foreign bribery would be beneficial.

⁶⁴ Act 153/2001 Coll. on the Public Prosecution Office, Sections 46 and 55d.

Commentary

The lead examiners recommend that the Slovak Judicial Academy organise training programmes on foreign bribery for the Special Judges and Special Prosecutors, including new recruits.

(c) The Conduct of Investigations

(i) The Commencement of Proceedings

115. Slovak prosecutors are bound by the principle of mandatory prosecution, *i.e.* they are obliged to commence an investigation if they receive notice of a crime.⁶⁵ The principle of mandatory prosecution is tempered by the definition of a crime. Prosecution is mandatory only for an act that amounts to a crime, which is defined as an act that is “dangerous to society”. Hence, an act that poses negligible danger to society is not considered a criminal offence. Whether an act is dangerous to society “shall be determined in particular by the significance of the protected interest affected by such act, the manner in which the act is committed and its circumstances under which the act is committed, the person of the offender and the degree of his culpability and motives”.⁶⁶ The Slovak authorities consider the offence of foreign bribery to be “dangerous to the society”.⁶⁷

116. Because of the principle of mandatory prosecution, the Public Prosecution Office and the Office of the Special Prosecutor have not set priorities for prosecuting certain types of crime. All crimes are given equal priority.

117. The Bureau may also commence an investigation upon receiving information about a crime. It must, however, notify a prosecutor within 48 hours of commencing the investigation.

(ii) Co-ordination among Law Enforcement Agencies

118. As noted above, the Office of the Special Prosecutor (SPO) and the Bureau of the Fight against Corruption have conduct over foreign bribery investigations. The SPO is responsible for overseeing a foreign bribery investigation and ensuring that the investigation complies with the law.⁶⁸ According to a Special Prosecutor at the on-site visit, the co-ordination between the SPO and the Bureau has been “excellent”. Special Prosecutors are in constant contact with the Bureau, supervising investigations and providing investigators with guidance.

119. Foreign bribery cases often involve additional offences (*e.g.* false accounting). If the additional offences fall outside the competence of the SPO and Bureau, then conflicts of competence

⁶⁵ Act 153/2001 Coll. on the Public Prosecution Office, Article 3.

⁶⁶ Penal Code, Section 3(4). In R 13/1973, the Supreme Court of Czechoslovakia added that a court must consider not only the circumstances which constitute the elements of the offence for which the accused was convicted. It must also consider other circumstances which characterise the crime or its perpetrator, or which pose a danger to society. The extent of damage due to an economic offence is an important aspect for evaluating the danger of the offence to society. In assessing the amount of damage, it is necessary to consider the real damage, *i.e.* the diminished value of the property.

⁶⁷ The new Penal Code defines a crime as an act that “meets the elements set out in this Act...” There is no reference to “danger to society” (Act 300/2005 Coll., Section 8).

⁶⁸ Act 153/2001 Coll. on the Public Prosecution Office, Articles 4 and 17; Code of Penal Procedure, Section 174.

with another prosecutor and police body may arise. The Prosecutor General is responsible for resolving conflicts of competence between the SPO and other prosecutors. The Police Commissioner performs the same function for conflicts between the Bureau and other police units. Generally, the body that has competence over the most serious offence will take carriage of the case. As well, if prosecutors, investigators and police officers outside the SPO or Bureau receive information concerning foreign bribery, they must forward the information to the SPO or the Bureau without delay.⁶⁹

120. Slovakia also has a centralised computer database system to record all on-going investigations. All police and investigators have access to the system. Prosecutors use a separate database. These databases should help prevent concurrent investigations into the same case.

121. Co-ordination and co-operation between law enforcement agencies and the Financial Intelligence Unit (FIU) appear less extensive. During the on-site visit, some representatives of law enforcement stated that they had difficulty obtaining information from the FIU in some corruption investigations. On the other hand, the Bureau has not experienced any problems in obtaining information from the FIU in corruption cases.

122. The examiners believe that the establishment of the SPO and the Bureau assists in co-ordinating the various law enforcement bodies and streamlines the investigative process. They are hopeful that these measures will reduce the duplication of roles among the various law enforcement agencies. In turn, this may speed up investigations and trials and thus guarantee an adequate response to the fight against foreign bribery. Further strengthening of co-operation among the relevant bodies, particularly between the FIU and other law enforcement agencies, will be beneficial.

Commentary

The lead examiners recommend that Slovakia further enhance the co-operation among law enforcement agencies that are involved in combating foreign bribery.

(d) Resources

123. The prosecution service in Slovakia appears to have adequate material resources. According to a Special Prosecutor at the on-site visit, material resources for Slovak prosecutors are satisfactory and constantly improving.⁷⁰

124. There are greater concerns over human resources. The Office of the Special Prosecutor (SPO) is to be staffed with 25 prosecutors, but only 9 prosecutors have been appointed so far. The SPO is divided into 2 departments and 3 divisions, one of which is designated for corruption cases. Prosecutors who are appointed to the SPO also become prosecutors of the Office of the Prosecutor General.⁷¹

125. There were mixed opinions on the adequacy of resources for the police. A share of the budget of the Ministry of Interior is allocated to the Bureau, although officials at the on-site visit could

⁶⁹ Code of Penal Procedure, Section 158(1).

⁷⁰ Because of the establishment of the Office of the Special Prosecutor, the financial resources allocated by the government to the Public Prosecution Office increased from SKK 40 million (approx. EUR 1.04 million) in 2003 to SKK 119 million (approx. EUR 3.10 million) in 2004.

⁷¹ Response to Questionnaire, p. 47; Act 153/2001 Coll. on the Public Prosecution Office, Section 55f.

not indicate the amount or portion that was allocated. At the on-site visit, some officials stated that the Bureau is one of the best-equipped units within the police force and that its human and financial resources were “sufficient”. On the other hand, one police officer stated that police divisions were “understaffed”.

Commentary

The lead examiners recommend that Slovakia ensure that the Special Court and the Office of the Special Prosecutor are effective in the fight against foreign bribery. In particular, they recommend that Slovakia ensure that these institutions are adequately staffed with prosecutors and judges.

(e) Investigative Techniques and Bank Secrecy

126. The Code of Penal Procedure provides a wide range of investigative techniques for foreign bribery cases. These include interception and recording of private communications, undercover operations and the use of *agents provocateurs*.⁷² The Slovak authorities have successfully used these techniques to gather evidence in domestic corruption investigations.

127. During an investigation, the Bureau may obtain secret bank information with the authorisation of a prosecutor.⁷³ If a foreign bribery case also involves tax evasion or money laundering, the Financial Police and the Criminal Police may obtain such information without a prosecutor’s authorisation.⁷⁴

(f) Mutual Legal Assistance and Extradition

(i) Mutual Legal Assistance

128. Slovakia can render and request mutual legal assistance (MLA) to and from its major trade and investment partners on the basis of a treaty or reciprocity. It is party to numerous multilateral and bilateral treaties on MLA.⁷⁵ In the absence of a treaty, requests for MLA are executed according to the provisions of the Code of Penal Procedure that deal with international co-operation.⁷⁶

129. The Slovak authorities stated that they can provide MLA where the target of a foreign investigation is a legal person, even though Slovakia does not impose criminal liability of legal persons. In such cases, the requesting state must provide sufficient information about the case and the request must be “concrete” (e.g. the taking of evidence from a witness etc.). “Fishing expeditions” are not allowed.

130. Slovakia has not made or received any requests for MLA involving foreign bribery.

⁷² Code of Penal Procedure, Sections 78 – 88e.

⁷³ Code of Penal Procedure, Section 8.

⁷⁴ See Act 171/1993 Coll. on the Police Force, Section 29a; see also Sections B.6(b) and C.4(b) at pp. 17 and 41 of this Report respectively.

⁷⁵ See Annex 4 for a complete list of treaties.

⁷⁶ Code of Penal Procedure, Sections 424-444.

(ii) Extradition

131. Slovakia also co-operates in the field of extradition on the basis of a treaty or reciprocity. It is a party to many bilateral and multilateral treaties on extradition, including several recent agreements with neighbour countries.⁷⁷

132. The Code of Penal Procedure⁷⁸ sets out the procedure for the extradition of persons who are not Slovak nationals. Unless a treaty provides otherwise, reciprocity and dual criminality are required. There are no time limits on the execution of extradition requests. According to Slovak authorities, a request is usually executed within four months. More detailed statistics were not available. The Code also provides a simplified procedure if the person sought consents to extradition.

133. Slovak nationals may be extradited only pursuant to a European Arrest Warrant, other obligation arising out of an international treaty or a decision of an international organisation which is binding on Slovakia. The procedure for executing a European Arrest Warrant is governed by separate legislation.⁷⁹

134. The Ministry of Justice and Regional Courts regularly trains Slovak judges on MLA and extradition. The Ministry has produced and distributed the text of the relevant provisions of the Code of Penal Procedure along with a detailed explanatory report. It also produced and distributed a handbook containing a list of all applicable treaties to all Slovak judges.

2. *The Offence of Foreign Bribery*

(a) *Elements of the Offence*

(i) Bribery of Members of International Parliamentary Assemblies, Judicial Institutions and International Organisations

135. The Convention defines a foreign public official as, among other things, “any official or agent of a public international organisation.” A “public international organisation” includes “any international organisation formed by states, governments, or other public international organisations, whatever the form of organisation and scope of competence, including, for example, a regional economic integration organisation such as the European Communities.”⁸⁰ This broad definition encompasses elected and appointed officials of supervisory bodies, governing bodies and parliamentary assemblies of public international and supranational organisations.⁸¹

136. The general foreign bribery offence in Section 161b of the Slovak Penal Code broadly covers the categories of officials of public international organisations as defined in the Convention. This provision prohibits the bribery of a “foreign public official”, which is defined in Section 89(10)

⁷⁷ See Annex 4 for a complete list of treaties.

⁷⁸ Code of Penal Procedure, Sections 373-423.

⁷⁹ Act No. 403/2004 Coll.; Code of Penal Procedure, Section 394.

⁸⁰ Convention, Article 1(4)(a) and Commentary 17.

⁸¹ See OECD (2005), *Sweden: Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, OECD, Paris, Section C.3(a).

as, among other things, “any person holding the function ... in an ... international organisation established by the states or other subjects of the public international law, if the power to manage the public affairs is connected with this function and the criminal offence has been committed in connection with this power.”

137. In addition to this general offence, the Penal Code prescribes an additional offence of bribery of officials of international bodies. Section 161c expressly prohibits the bribery of:

- (a) a member of an international parliamentary assembly,
- (b) a judge or an official of an international judicial institution accepted by the Slovak Republic,
- (c) a representative or employee of an international, over-national, inter-governmental organisation or institution of which the Slovak Republic is a member or with which the Slovak Republic has a “conventional relationship”, and
- (d) a person performing a similar function.

138. During the Phase 1 review (at p. 5), the Working Group was concerned that Section 161c is narrower than the definition of foreign public officials in the Convention. Unlike Section 161c, the Convention applies to “any public official, irrespective of the relationship between a foreign court or an international organisation on the one hand, and a party to the Convention on the other hand.”

139. In Phase 1, Slovakia responded that “section 161c is ‘*lex specialis*’ in relation to section 161b. In case that Section 161c does not apply, the Slovak authorities can revert to Section 161b. There is therefore no loophole concerning the coverage of members of a foreign public assembly, etc.” Put differently, bribery of officials of international assemblies, courts and organisations in Section 161c is subsumed in the general foreign bribery offence in Section 161b. At the on-site visit, Slovakia maintained this position but did not provide case law in support.

140. Slovakia elaborated at the on-site visit that the purpose of the Sections 161b and 161c are slightly different. The former implements (and hence tracks the language of) the OECD Convention, while the latter implements European Union instruments. The two provisions prescribed different sanctions when they were first enacted in 1999. Furthermore, unlike Section 161b, Section 161c is not limited to bribery in international business transactions.

141. The lead examiners believe that Slovakia’s position has merit, but the courts have yet to confirm this position. A court could conceivably find that, by expressly criminalising bribery of officials from international bodies recognised by Slovakia, the legislature impliedly intended to exclude bribery of unrecognised bodies from the Penal Code. For these reasons, the lead examiners believe that it would be prudent to further monitor this issue.

Commentary

The lead examiners recommend that the Working Group monitor whether the Slovak Penal Code covers the bribery of (1) a judge or an official of an international judicial institution that is not accepted by the Slovak Republic, and (2) an official or agent of a public international organisation of which Slovakia is not a member and with which Slovakia does not have a “conventional relationship”.

(ii) In Relation to the Performance of Official Duties

142. The Convention covers a bribe paid to an official in order that the official act or refrain from acting “in relation to the performance of official duties”.⁸² At the time of the Phase 1 review, the general foreign bribery offence in Section 161b of the Slovak Penal Code used identical wording.

143. On the other hand, the offence of bribery of members of international parliamentary assemblies, courts and organisations in Section 161c of the Penal Code employed different wording. That provision expressly covered only officials who acts or refrains from acting “in performing its function”. Hence, the Working Group (at p. 6) expressed some concern that Section 161c is narrower than Article 1(1) of the Convention. Slovakia responded that the phrase “performing its function” encompassed the concept of “in relation to the performance of official duties”.

144. During Phase 2, Slovakia clarified that the translation of Sections 161b and 161c that had been provided in Phase 1 was not entirely accurate. The two sections in Slovak use identical wording. The correct translation of both sections should have used the expression “in connection with official duties of the foreign public official”. This explanation should alleviate the earlier concerns of the Working Group.

(iii) For that Official or for a Third Party

145. At the time of the Phase 1 review, Sections 161b and 161c of the Penal Code did not expressly cover a bribe that is offered, promised or given to a foreign public official “for a third party”. Slovakia has since added these words to both sections, thus eliminating the earlier concerns.

(b) *Jurisdiction*

(i) Territorial Jurisdiction

146. Article 4(1) of the Convention requires a party to “establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.” Under Slovak law, territorial jurisdiction applies whenever an offender performs a prohibited action on Slovak territory, even if the action violates or threatens an interest that is found, in whole or in part, outside Slovakia. Territorial jurisdiction also arises *vice versa*, *i.e.* if an offender performs a prohibited action outside Slovakia, and the action violates or threatens an interest that is, in whole or in part, inside Slovakia.⁸³

147. The Slovak authorities assert that the breadth of these provisions is clear. For instance, as noted in the Phase 1 Review (at p. 13), a telephone call, a fax, or an e-mail originating from Slovakia would be sufficient to establish territorial jurisdiction.

⁸² Convention, Article 1(1).

⁸³ Penal Code, Section 17. In the decision R/24/1971, the Supreme Court of Czechoslovakia stated that an act that began and was accomplished abroad is punishable under Slovak law if it violates or threatens an interest in the territory of Slovakia protected under the Penal Code, even if eventually the act is not regarded as a crime under the legal system of the place where it occurred.

(ii) Nationality and Extraterritorial Jurisdiction

148. Article 4(2) of the Convention require parties that have jurisdiction to prosecute their nationals for offences committed abroad to establish the same jurisdiction for foreign bribery according to the same principles.

149. Slovakia has jurisdiction to prosecute offences committed abroad by Slovak nationals, or foreign nationals or stateless persons with permanent residence in Slovakia. It may also prosecute a foreign national or a stateless person who is not permanently resident in Slovakia for offences committed abroad if (1) the conduct in question is criminal in the place where it occurred, and (2) the offender was apprehended in and not extradited from Slovakia.⁸⁴ These rules apply to all criminal offences.

(c) *Defences*

(i) Defence of “Effective Regret”

150. Section 163 of the Penal Code defines the defence of “effective regret”. A person who bribes a foreign public official cannot be prosecuted if (1) the official solicited the bribe, and (2) the briber reported the matter “voluntarily without delay to the prosecutor, investigator or police”.

151. In Phase 1 (at p. 3), Slovakia justified the defence as follows:

[T]he purpose of Section 163 is to make the fight against corruption more effective. For nearly forty years, it has been helping the Slovak authorities to detect cases of corruption of public officials. Without this provision, people would worry about criminal prosecution under Section 161 of the Penal Code. The Slovak authorities are not aware of a possible abuse for false defence.

Slovakia added (at p. 22) that “the conditions for invoking Section 163 are narrowly defined.”

152. In response, the Working Group noted (at pp. 22-23) that, “Although the Convention does not exclude the application of general defences as general provisions of the Criminal Codes of the parties, the general feeling of the Working Group was that the defence of ‘effective regret’ presents a potential for misuse.” Notwithstanding the assurances of Slovakia, the Working Group “remained concerned that this defence may go beyond the general defences mentioned above, and that its application may lead to a loophole in the implementation of the Convention. ... It agreed to revert to it in Phase 2 in order to examine the practical effects of such a provision.”

153. In Phase 2, the Slovak authorities reiterated that there are strong policy reasons for this defence. The crime of bribery is secretive in nature and hence difficult to detect. Exonerating a briber is often the only means of detecting an offence. It is thus a price that must be paid to uncover the crime. However, to their knowledge, the defence has only been invoked once in the last five years. As well, the defence remains in the recently revised Penal Code.

154. The Slovak authorities add that a person who “effectively regrets” will generally not be proceeded against and hence will not appear in court. The briber usually expresses his/her regret to a police investigator, who may determine that the briber has “effectively regretted” and that prosecution will not result. The investigator’s decision is confirmed by a prosecutor. The only instance in which

⁸⁴ Penal Code, Sections 18 and 20.

the briber would appear in court is when the investigator or prosecutor rejects the briber's offer of regret. The briber would then be prosecuted and appear in court, at which time the briber may raise the defence again before a judge.

155. The Slovak authorities also believe that a briber who "effectively regrets" may be deprived of the proceeds of bribery. Confiscation under the Penal Code is usually not available because the briber generally does not appear in court. However, the briber may be deprived of the proceeds of bribery under the Civil Code because he/she was unjustly enriched. The lead examiners note, however, that there is no case law to support this position. In any event, the Slovak authorities believe that confiscation is not necessary. Because a briber who "effectively regrets" must report the case without delay to law enforcement authorities, there is not enough time for the briber to acquire any proceeds from the crime.

156. There is however one instance under the Penal Code in which the proceeds of bribery may be confiscated from a person who "effectively regrets". As noted above, when a police investigator or prosecutor rejects a briber's offer of regret, the briber is prosecuted and brought to court. If the briber raises the defence again and the court accepts the defence, the court may then apply Section 73(1)(d) of the Penal Code, which Slovakia believes is sufficiently broad to allow the confiscation of proceeds of bribery against a person who "effectively regrets".⁸⁵

157. In addition, the Slovak authorities point out that the decision to allow the defence of "effective regret" is made in the course of criminal proceedings. During pre-trial proceedings, a prosecutor is responsible for the decision. During a trial, a judge makes this decision, which may be reviewed on appeal. The Slovak authorities also note that a similar defence is available to several other serious criminal offences under Slovak law. In their view, the defence is consistent with Article 5 of the Convention.

158. Despite these assurances, the lead examiners remain concerned that this defence is a potential loophole. A person who has given or promised a bribe to a foreign public official (and hence has completed the offence within the meaning of Article 1 of the Convention) could in some cases remain unpunished if he/she makes a sufficiently early confession. The Convention does not contemplate liability to be imposed on such qualified terms.⁸⁶

159. The lead examiners also doubt the usefulness of the defence in detecting bribery offences. More than 40 years after its enactment, the defence has led to the discovery of an unknown number of bribery cases.

160. Finally, the lead examiners question the policy underpinnings of the defence in foreign bribery cases.⁸⁷ Because foreign and domestic bribery are different offences, the utility of the defence

⁸⁵ Section 73(1)(d) mandates confiscation of a thing "if it is necessary with regard to the security of the people or property or to other similar general interest, in particular if the circumstances of the case give rise to suppose that the thing was obtained by the offence."

⁸⁶ See OECD (2005), *Greece: Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, OECD, Paris, para. 136.

⁸⁷ See a similar argument raised by Italy and rejected by the Working Group concerning the defence of *concussione* (OECD (2004), *Italy: Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997*

may also be different. When the defence is raised in a domestic bribery case, Slovakia can (and likely will) prosecute its official who has accepted a bribe. In a foreign bribery case, there is no guarantee that the foreign official who has taken a bribe will be prosecuted. The foreign state may refuse to do so, or the conduct of the official may be legal in the foreign country. If this occurs, the defence serves no useful purpose: the crime may come to light, but the offenders remain unpunished and the ends of justice remain unserved.

161. The offences of domestic and foreign bribery also differ in their objectives. The offence of domestic bribery is aimed primarily at preserving the integrity of a country's own public administration. In a domestic bribery case, the defence of "effective regret" may assist in attaining these goals, insofar that it may uncover corrupt officials in one's country. On the other hand, the foreign bribery offence in the Convention aims primarily at preserving good governance and economic development, and preventing distortion of international competitive conditions.⁸⁸ By exculpating the briber, the defence of "effective regret" arguably undermines some of these values, rather than promote them.⁸⁹

Commentary

The lead examiners recommend that Slovakia amend its legislation to exclude the defence of "effective regret" from the offence of foreign bribery.

(ii) Immunity from Prosecution for Co-operating Offenders

162. In 2003, Slovakia enacted a comprehensive legislative regime to deal with offenders who co-operate with the state in the prosecution of other criminals. For some offences (including foreign bribery), an offender may receive complete immunity from prosecution in exchange for his/her co-operation. Slovakia believes that these measures are consistent with a recent trend found in other international legal instruments.⁹⁰

163. The Code of Penal Procedure spells out a two-step procedure for dealing with a co-operating offender. First, an investigator (with a prosecutor's consent) or a court (without a prosecutor's consent) may suspend criminal proceedings against a person who (1) "significantly contributes to clarifying" a corruption case or to "identifying or convicting the perpetrator" of the offence, and (2) is not "the organiser or instigator" of the offence.⁹¹

164. Second, a prosecutor or a court may stay proceedings against a person (1) whose proceedings have been suspended as described above, or (2) who meets the criteria for the suspension of proceedings noted above. Proceedings may be stayed only "where the interest of society in clarifying

Recommendation on Combating Bribery in International Business Transactions, OECD, Paris, para. 139).

⁸⁸ OECD Convention, preamble; *ibid.*

⁸⁹ See footnote 87.

⁹⁰ Other international conventions adopted by the Council of Europe, the United Nations and the European Union.

⁹¹ Code of Penal Procedure, Sections 173(2), 186(c) and 224(3). In addition, an investigator (with the consent of a prosecutor) may temporarily suspend the filing of an indictment in order to avoid significant prejudice to the clarification of a corruption case. The suspension ends when the reasons for doing so no longer exist (Code of Penal Procedure, Section 162a).

that criminal offence is stronger than the interest in criminal prosecution against that person or that accused”.⁹² A court’s decision to stay proceedings may be appealed. Under the new Code of Penal Procedure, a prosecutor or a court may also conditionally stay proceedings and place the offender on probation for two to ten years.⁹³

165. Slovakia states that confiscation may be imposed against a co-operating offender. As with the defence of “effective regret”, Slovakia believes that Section 73(1)(d) of the Penal Code is sufficiently broad to cover a co-operating offender.⁹⁴ There is no case law to support this position. The new Penal Code, however, clarifies this situation by expressly stating that confiscation is available against an offender whose prosecution has been stayed or conditionally stayed.⁹⁵

166. Immunity from prosecution for co-operating offenders is obviously separate and distinct from the defence of “effective regret”. Different statutory provisions govern the two concepts. Both are available to a person who commits foreign bribery, but the conditions for invoking the two processes are entirely different. For instance, a briber may obtain immunity even if he/she does not voluntarily provide his/her assistance “without delay”, or if the bribed official does not solicit the bribe.

167. Immunity for co-operating offenders is also separate from co-operation with the prosecution as a mitigating factor at sentencing, which is governed by a different statutory provision.⁹⁶ Under the new Penal Code, the statutory minimum sentence for a co-operating offender is reduced from two years to six months.⁹⁷

168. The lead examiners have concerns over the granting of immunity to co-operating offenders. First, the concerns over the defence of “effective regret” also apply here. The ability to confiscate proceeds of bribery from a co-operating offender has not been tested in the courts. If confiscation is not available, a person who has bribed a foreign public official could escape punishment by co-operating with the authorities. The Convention does not contemplate liability to be imposed on such qualified terms. Moreover, the lead examiners have similar doubts over the policy underpinnings of providing immunity because of the differences between the domestic and foreign bribery offences noted above.

169. Second, a decision to suspend or to stay proceedings could conceivably be influenced by the factors enumerated in Article 5 of the Convention.⁹⁸ The tests for suspensions and stays are vague. The statute provides no guidance on the meaning of “significant contribution” to clarifying a corruption case. It is also silent on “the interest of society in clarifying that criminal offence” and “the interest in criminal prosecution”. The government has not issued guidelines to explain these concepts. Nor are

⁹² Code of Penal Procedure, Sections 172(3), 186(c), 188(2), 224, 314c(1)(b).

⁹³ Act 300/2005 Coll., Sections 218 and 282.

⁹⁴ See the previous section of this Report.

⁹⁵ New Penal Code, Act 300/2005 Coll., Section 83(1)(b).

⁹⁶ Penal Code, Section 33(j).

⁹⁷ New Penal Code, Act 300/2005 Coll., Section 39.

⁹⁸ Article 5 of the Convention reads, “Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.”

there commentaries or *travaux préparatoires* (preparatory works of the legislature) that could assist.⁹⁹ There is no case law on the issue. Not surprisingly, the legal academics and practitioners at the on-site visit stated that they have “no idea how courts would interpret” these provisions. Consequently, these vague provisions would likely confer much discretion on prosecutors and judges. More importantly, nothing precludes a judge or a prosecutor from considering the factors enumerated in Article 5 of the Convention.

170. On the other hand, several members of the Working Group point out that the offer of immunity also has some advantages. In several countries, judicious use of immunity has proved a useful tool in solving bribery cases. The tool may be particularly helpful in bringing those in the upper echelons of a criminal organisation to justice. It should also be noted that the offer of immunity is part of Slovakia’s general legal landscape since it is available for offences other than foreign bribery. It may therefore be prudent to keep this tool available in foreign bribery cases in Slovakia, so long as it does not impede the effective enforcement of the foreign bribery offence.

Commentary

The lead examiners recommend that Slovakia ensure the provision of immunity to co-operating offenders is not an impediment to the effective enforcement of the foreign bribery offence. They also recommend that the Working Group monitor the application of the provision of immunity to co-operating offenders in foreign bribery cases.

(iii) Defence of Socially Acceptable Gifts

171. Commentary 7 of the Convention states that, “It is also an offence irrespective of, *inter alia*, the value of the advantage, ... perceptions of local custom, [and] the tolerance of such payments by local authorities.”

172. During Phase 1, Slovakia stated (at p. 4) that a “socially acceptable gift” is not considered a bribe. According to the Supreme Court of Czechoslovakia, a socially acceptable gift is a “very small gift, or gift of very small value”.¹⁰⁰ Hence, gifts such as a bunch of flowers or a pen offered during business negotiations are not considered bribes. Furthermore, Slovak authorities believed that “gifts of very small value” are meant to cover facilitation payments as defined in Commentary 9 of the Convention.¹⁰¹

173. The Slovak authorities further pointed out that the social context in which the act has been committed is important. Gifts to state bodies, municipalities, the school system, health and insurance system, or the area of work relations can never be “socially acceptable”.

⁹⁹ Slovakia stated that the explanatory report to the amendment of the Penal Code defines some of the terms in the provision. However, it is not clear whether or how the report explains the terms “the interest of society in clarifying the criminal offence” and “the interest in criminal prosecution”. Slovakia added that the courts are entitled to interpret laws.

¹⁰⁰ See Opinion No. 17/1978 relating to the offences of bribery and corruption.

¹⁰¹ According to Commentary 9 of the Convention, “Such payments, which, in some countries, are made to induce public officials to perform their functions, such as issuing licenses or permits, are generally illegal in the foreign country concerned. Other countries can and should address this corrosive phenomenon by such means as support for programmes of good governance. However, criminalisation by other countries does not seem a practical or effective complementary action.”

174. In its response to the Phase 2 questionnaire (at pp. 39-40), Slovakia resiled from this position and stated that the case law no longer applies. The value of a “bribe” and the practices in a foreign country are irrelevant *per se*. The value of a “bribe”, however, remains relevant to determining whether an accused intends to bribe:

“Gifts of very small value” are exclusively the gifts given in the framework of business negotiations. However, the gift is not given with the intention to oblige the beneficiary to do something or omit something, and its value is minimal. It means that it is a thing available in low price but its origin or other evident marks (logo of a firm, country of origin, etc.) clearly determine who is donor and the importance of the gift for the beneficiary is only symbolic.

175. Slovakia referred to two domestic bribery cases on the size of a gift. In one case, an official was convicted for receiving a monetary bribe of SKK 200 (approximately EUR 5). The case is under appeal. In a second case, a police officer was convicted for accepting a monetary bribe of SKK 400 (approximately EUR 10). The lead examiners, however, note that these cases involve monetary bribes, which could be viewed differently than non-monetary gifts.

176. The lead examiners have some concerns over the defence of socially acceptable gifts. Slovakia’s multiple formulations of the defence cast some uncertainty over the scope of the defence. As well, no matter how the defence is formulated, the size of a bribe remains a relevant (albeit not determinative) factor in deciding whether a crime has been committed.

177. The role of customs and practices in the foreign country also raises concern. The size of a gift is relative. A gift that is considered small in Slovakia may not be small in the recipient’s country where local customs and economic conditions may be different, and *vice versa*. The Slovak authorities believe that foreign customs and practices will not be considered in foreign bribery cases, but Slovak courts have yet to confirm this position.¹⁰²

Commentary

The lead examiners recommend that the Working Group monitor the application of the defence of socially acceptable gifts in foreign bribery cases.

(d) Limitation Periods and Delays in Proceedings

178. At the time of the Phase 1 Review, the limitation period for foreign bribery was three to five years, depending on the severity of the penalty imposed. The Working Group (at p. 23) was concerned that the limitation period was relatively short and recommended that Slovakia consider an extension.

179. Slovakia has since amended the Penal Code in this regard. The limitation periods for non-aggravated and aggravated foreign bribery are now five and ten years respectively. The period is suspended if the accused is abroad or cannot be tried because of a legal impediment. Time does not run if proceedings against an accused have been suspended because he/she has become a co-operating offender. These amendments should adequately address the concerns of the Working Group.

¹⁰² Slovakia referred to one case in which a non-Slovak person allegedly gave a USD 20 bribe to a Slovak policeman. The value of the bribe was significant by the standards of the briber’s country, but not by those of Slovakia. The briber was nonetheless prosecuted, but it is not clear whether he was convicted. In any event, the case deals with domestic and not foreign bribery.

180. Slovakia has also provided statistics on the length of proceedings. In 371 proceedings for various types of domestic corruption (including active and passive bribery) from 2000 to 2004, the average length of a proceeding was under seven months.¹⁰³

3. *Liability of Legal Persons*

181. The Convention requires all party states to “take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.” Sanctions against legal persons for foreign bribery do not have to be criminal in nature, but they must be effective, proportionate and dissuasive.¹⁰⁴

182. During Phase 1, the Working Group found (at p. 23) that Slovakia “does not know the concept of criminal responsibility of legal persons. There is also no possibility to impose fines on legal persons for their criminal behaviour. There is only a liability under civil law relating to unfair competition.” The Working Group concluded that this situation fell short of the requirement of the Convention. Slovakia replied that it planned to introduce criminal liability of legal persons by 1 January 2002.

(a) *Criminal Liability of Legal Persons*

183. Unfortunately, Slovakia’s plans have not materialised. In early 2005, the government drafted a new Penal Code which provided for criminal liability of legal persons. After submitting the draft to the legislature for approval, the government withdrew the draft because the legislature suggested numerous amendments. In May 2005, the government submitted another draft to Parliament. Parliament adopted this draft after removing the provisions on liability of legal persons from the bill.

184. Most of the legislators, legal practitioners, representatives of bar associations and academics in criminal law at the on-site visit opposed the government’s proposal of creating criminal liability of legal persons. Most believed that the concept contradicts a basic principle of Slovak criminal law, namely that criminal liability derives from the fault of an individual, not a legal person. Some felt the concept offends the principle of *ne bis in idem* (double jeopardy) because it punishes both natural and legal persons for the same delict. Others thought that the proposed sanctions, such as the dissolution of a company, would have been too draconian. Several participants feared that the police could abuse the law. One academic added that liability against legal persons is not necessary in a jurisdiction like Slovakia where there are sufficient sanctions against natural persons. Another academic opined that the draft bill did not adequately protect the interests of third parties (*e.g.* shareholders and employees of the legal person).

(b) *Administrative Liability of Legal Persons*

185. During Phase 1, Slovakia stated (at p. 8) that its “legal system contains more than 120 administrative acts that allow imposing administrative sanctions on legal persons. In administrative law there exists the so-called ‘administrative offence’ - which shall be sanctioned by a fine from SKK 1 000 to SKK 50 000 000.” During the on-site visit, however, Slovak judges categorically stated that none of these administrative sanctions apply to a legal person for foreign bribery.

¹⁰³ See Annex 3 for detailed statistics on the prosecution of domestic corruption cases in Slovakia.

¹⁰⁴ Convention Articles 2, 3(1) and 3(2).

(c) *Future Initiatives*

186. The Slovak Minister of Justice outlined his future initiatives in this area to the examination team. The Minister now hopes to introduce liability of legal persons through a stand-alone law rather than through changes to the Penal Code. Another draft law on criminal liability of legal persons was submitted to Parliament in September 2005. The Ministry has also signed a *communiqué* with its counterpart in Austria to conduct a joint-study of the issue.

(d) *Conclusion on Liability of Legal Persons*

187. The lead examiners are deeply concerned over Slovakia's continuing failure to establish liability of legal persons as required by the Convention. The concerns of the Working Group, which were expressed in 2000, remain unaddressed. The reasons of the legislators, legal academics and practitioners for rejecting the draft bill are unconvincing. The present situation appears even more dire because it is now clear that no administrative sanctions are available against legal persons for foreign bribery.

188. The lead examiners are also concerned at the pace of legislative development in Slovakia. Five years elapsed after the Phase 1 Review before the Slovak legislature considered the first draft bill on this subject. They welcome the proposal of the Minister of Justice to introduce a new, stand-alone law. It is imperative that Slovakia proceed with this initiative with utmost priority and dispatch.

Commentary

The lead examiners strongly recommend that Slovakia establish liability of legal persons for bribery of foreign public officials without delay, and put in place sanctions that are effective, proportionate and dissuasive.

4. ***The Offence of Money Laundering***

189. Article 7 of the Convention states that a party "which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred."

(a) *Scope of the Money Laundering Offence*

190. Money laundering is criminalised in Slovakia under Section 252 of the Penal Code. Any crime may be a predicate offence; domestic and foreign bribery are thus treated on the same terms. The offence cannot be committed negligently. According to Slovak prosecutors, the offence applies even if the predicate offence was committed abroad.

191. In Phase 1, the Working Group noted (at pp. 16 and 24) that money laundering is punishable only if the laundered money exceeds a "minor value". Slovakia has since eliminated this requirement.

(b) *Enforcement of the Money Laundering Offence*

192. The police has broad powers to enforce and investigate money laundering. For instance, during an investigation, it may obtain secret bank information without a prosecutor's authorisation.¹⁰⁵

193. Slovakia has provided statistics on money laundering prosecutions. Between 2000 and 2004, there were 46 proceedings and 43 convictions for money laundering. It is not clear how many of these proceedings were "stand-alone" prosecutions (*i.e.* not part of prosecutions for predicate offences). Corruption was not the predicate offence in any of these cases.

194. The lead examiners are concerned that Slovakia may not be adequately enforcing its money laundering offence, particularly in bribery cases. The number of convictions for money laundering seems disproportionately low compared to that for corruption. From 2000 to 2004, there were 242 convictions for domestic corruption but only 43 for money laundering. The Slovak authorities explain that in many cases, the authorities seize the bribe at the crime scene before the offender has a chance to launder it. In cases involving the use of a police agent, the money is returned to police. In some cases, bribes were offered but not actually given.

Commentary

The lead examiners recommend that Slovakia take appropriate measures to enforce its money laundering offence more effectively, particularly in connection with bribery cases.

(c) *Sanctions for Money Laundering*

195. Money laundering is punishable by a fine of SKK 5 000 to 5 million (approx. USD 170 to 170 000 or EUR 130 to 130 000), prohibition of activity, confiscation or imprisonment of up to three years. The maximum jail term increases depending on the value of the laundered asset. Certain aggravating factors (*e.g.* where the offender is a public official) may also increase the punishment. For the most serious offences, the punishment is imprisonment between 5 and 12 years.

196. The new Penal Code increases the punishment for money laundering to imprisonment between two to five years. The presence of aggravating factors may increase the punishment to up to 20 years. The maximum fine will be SKK 10 million (approx. USD 340 000 or EUR 260 000). Prohibition of activity and confiscation remain available.¹⁰⁶

197. As noted earlier, there were 43 convictions for money laundering in Slovakia between 2000 and 2004. In 12 cases, the court imposed jail sentences, the average length of which was over 20 months. Fines were imposed in six cases. The court did not impose confiscation in any of these cases, thus raising concerns that confiscation may be underused as a sanction for money laundering. In August 2004, confiscation under Sections 55 and 73 became mandatory upon conviction.¹⁰⁷ The lead examiners hope that Slovak courts will now impose confiscation more frequently for money laundering.

¹⁰⁵ Act 171/1993 Coll. on the Police Force, Section 29a.

¹⁰⁶ New Penal Code, Act 300/2005 Coll., Section 233.

¹⁰⁷ Act 403/2004 Coll.

Commentary

The lead examiners recommend that the Working Group monitor the sanctions for money laundering in Slovakia as cases develop.

5. *The Offence of False Accounting*

(a) Scope of the False Accounting Offence

198. Article 8(1) of the Convention obliges Parties to prohibit the “making of off-the-books accounts or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, and the use of false documents for the purpose of bribing foreign public officials or of hiding such bribery.”

199. Act 431/2002 Coll. on Accounting deals with false accounting. The Act applies to all legal persons registered in Slovakia, as well as non-residents and natural persons who do business in Slovakia. The Act requires these entities to prepare financial statements that present a true and fair view of the entities’ financial situation in accordance with the applicable accounting principles. The accounts must be correct, complete, verifiable and comprehensive.¹⁰⁸ These provisions should cover the activities described in Article 8(1) of the Convention.

200. As noted in Phase 1, false accounting may also trigger criminal sanctions. Section 125 of the Penal Code prohibits the presentation of “false or grossly distorted data concerning important facts in the statement, reports, input data entered into the computer or other documents which serve for controlling financial operations”.

(b) Enforcement of the False Accounting Offence

201. The Public Prosecution Office is responsible for prosecuting false accounting under the Penal Code. Between 2000 and 2004, there were 56 prosecutions and 35 convictions. It is unclear whether any of these cases involve bribery.

202. The Slovak tax authorities, on the other hand, are responsible for enforcing the accounting standards prescribed in the Act on Accounting.¹⁰⁹ A taxpayer must attach financial statements to his/her tax return, which are then examined by a tax examiner. As noted earlier, the tax authorities have not discovered any bribery cases in the course of conducting tax audits. Slovakia was unable to provide statistics on the enforcement of these provisions.

203. The lead examiners have some concerns that Slovakia does not adequately enforce its false accounting laws, particularly in bribery cases. As with money laundering, the number of criminal convictions for false accounting seems low when compared to domestic bribery. In addition, the tax authorities are responsible for enforcing the Act on Accounting. But, as noted earlier,¹¹⁰ the tax authorities are primarily interested in collecting taxes and detecting tax evasion. They have little interest in determining whether other offences are involved in a particular case. Once they ascertain that there has been tax evasion, it is questionable whether they will pursue the matter further to determine whether there are other offences. It is troubling that there are no reported cases of sanctions

¹⁰⁸ Act 431/2002 Coll. on Accounting, Sections 1, 6, 7 and 8.

¹⁰⁹ Act 431/2002 Coll. on Accounting, Section 38.

¹¹⁰ See Section B.6(b) of this Report at p. 17.

being applied to accounting offences related to bribery, despite 242 convictions for domestic corruption from 2000 to 2004. In light of the numerous cases of corruption each year, the Slovak authorities should enforce accounting and auditing offences more effectively.

Commentary

The lead examiners recommend that Slovakia take appropriate measures to enforce accounting and auditing offences more effectively in connection with bribery cases.

(c) Sanctions for False Accounting

(i) Criminal Sanctions

204. False accounting under Section 125 of the Penal Code is punishable by a fine between SKK 5 000 and 5 million (approx. USD 170 to 170 000 or EUR 130 and 130 000), imprisonment of six months to three years and/or a ban on engaging in professional activities. The punishment increases to imprisonment for one to five years if the offence was committed with the intention to facilitate or cover up another criminal offence. The increased punishment also applies if the offender “violates a specific duty prescribed by law, or an important duty arising from his employment, profession, position or function, or one he has specifically pledged to fulfil.”

205. Statistics show that, of the 35 convictions for false accounting under Section 125 of the Penal Code between 2000 and 2004, jail sentences were imposed in only three cases. The average length of the sentences was 38 months. Suspended jail sentences and fines were imposed in 19 and 11 cases respectively. The average size of the fines was just over SKK 12 000 (approx. EUR 300).¹¹¹ Other penalties (e.g. ban on engaging in certain activities) were imposed in 12 cases. The court did not impose confiscation in any of these cases.

206. As of 1 January 2006, false accounting under the new Penal Code will be punishable by a fine between SKK 5 000 and 10 million (approx. USD 170 to 340 000 or EUR 130 and 260 000).¹¹²

(ii) Sanctions under the Act on Accounting

207. At the time of Phase 1 review, false accounting under the Act on Accounting was punishable by a fine of up to SKK 500 000. If the offence prevents the proper determination of the tax base, the fine may be increased to SKK 1 000 000 (approx. USD 34 000 or EUR 26 000). The Working Group found that these fines were “comparatively low”.

208. Slovakia has increased the penalty for these provisions. The offence is now punishable by a fine of up to 3% of the total amount of assets of the entity to which the accounts relate. The amount of assets is determined based on the entity’s financial statements for the relevant accounting period. If the tax authorities cannot ascertain the total value of assets, they will make an estimate and impose a fine of up to SKK 100 million (approx. USD 3.4 million or EUR 2.6 million). Slovakia was unable to provide statistics on the sanctions that have been imposed under the Act on Accounting.

¹¹¹ By way of comparison, the statutory minimum monthly wage in Slovakia is SKK 6 500 (approx. EUR 169).

¹¹² Act 300/2005 Coll., Section 259.

(iii) Conclusion on Sanctions for False Accounting

209. The lead examiners are encouraged that Slovakia has amended the Act on Accounting to address the concerns of the Working Group. The amendment may indeed increase the severity of the penalties for false accounting.

210. However, the lead examiners are somewhat concerned that the amendment to the Act on Accounting may create a loophole. Under the amended law, the penalty for false accounting is a function of the amount of assets held by the entity to which the accounts relate. It is not clear what penalty, if any, would be imposed against a shell company that has no assets. Thus, a shell company that is used to channel and dissimulate bribes to foreign public officials could conceivably keep false accounts with impunity.

211. Even more troubling is whether the sanctions that are applied in practice are effective, proportionate and dissuasive. Under the Penal Code, imprisonment is rarely imposed and fines are extremely small. The increased fines in the new Penal Code are unlikely to change this conclusion. Statistics on the sanctions under the Act on Accounting were not available.

Commentary

The lead examiners recommend that Slovakia (1) ensure that the penalties for false accounting in practice are effective, proportionate and dissuasive and (2) compile more detailed statistics on the criminal, civil and administrative sanctions that are imposed for false accounting, particularly those under the Act on Accounting. They also recommend that the Working Group monitor whether the sanctions for false accounting in Slovakia are effective, proportionate and dissuasive.

6. *Sanctions for Foreign Bribery*

(a) *General Criminal Sanctions*

212. At the time of the Phase 1 Review, foreign bribery was punishable in Slovakia by imprisonment of up to two years or a fine. If a briber obtains an advantage of more than SKK 2 000 000 (approx. USD 68 000 or EUR 52 000), the offence becomes aggravated and is punishable by imprisonment for one to five years or a fine.¹¹³ The Working Group expressed two concerns (at p. 23). First, the punishment for non-aggravated foreign bribery was lower than that for non-aggravated domestic bribery, which was punishable by up to three years imprisonment. Second, the sanctions for aggravated foreign bribery were “relatively low”.

213. In August 2001, Slovakia raised the punishment for non-aggravated foreign bribery to imprisonment for six months to three years and/or a fine between SKK 5 000 and 5 million (approx. USD 170 and 170 000 or EUR 130 and 130 000). The new Penal Code will further increase the punishment to imprisonment of two to five years and a fine of up to SKK 10 million (approx. USD 340 000 or EUR 260 000).¹¹⁴ This should address the first concern of the Working Group.

¹¹³ Foreign bribery becomes aggravated if the benefit accruing to the briber exceeds 500 times the statutory minimum monthly wage in Slovakia (Penal Code, Section 89(13)).

¹¹⁴ New Penal Code, Act 300/2005 Coll., Sections 56 and 334(1).

214. At the time of the on-site visit, the other concern of the Working Group remained since Slovakia had not amended the punishment for aggravated foreign bribery. As of 1 January 2006, however, the punishment for aggravated foreign bribery will be increased to imprisonment of 5 to 12 years.¹¹⁵ This should therefore address the second concern of the Working Group.

215. Since there have been no foreign bribery cases in Slovakia, the lead examiners are unable to conclusively determine whether sanctions for such cases are effective, proportionate and dissuasive. It is, however, noteworthy that the maximum sanctions for foreign bribery are lower than those for other economic offences.¹¹⁶

216. Statistics provided by Slovakia on domestic bribery cases provide further guidance.¹¹⁷ Between 2000 and 2004, there were 371 proceedings and 242 convictions for domestic corruption. The courts imposed jail sentences in 27 cases. The average length of the jail sentences was ten months. Suspended jail sentences and fines were imposed in 158 and 37 cases respectively. The size of the fines is unclear. The court also imposed bans on engaging in certain activities in four cases.

217. Finally, the new Penal Code will introduce two changes to the offence of aggravated foreign bribery.¹¹⁸ First, the monetary threshold for the offence to become aggravated will increase from SKK 3 250 000 (approx. EUR 85 000 or USD 110 000) to SKK 4 million (approx. EUR 104 000 or USD 136 000). Second, under the present Penal Code, foreign bribery becomes aggravated if the offender is a member of an organised group or if he/she receives a benefit greater than the monetary threshold. Under the new Penal Code, the offence becomes aggravated if the offender “commits the criminal offence ... at a large scale [*i.e.* beyond the monetary threshold]”. Since the word “receive” is no longer used, it is not clear whether the monetary threshold is applied to the bribe or the proceeds of bribery received by the briber. The president of the commission responsible for drafting the provision agreed that the provision is not very precise and that its application will depend on the practice.

(b) Confiscation

218. Confiscation is governed primarily by two provisions of the Penal Code. Under Section 55, a judge must confiscate a bribe or the proceeds of bribery upon conviction of an accused for domestic or foreign bribery. The court, however, may only confiscate a thing that belongs to the offender.

219. If a court does not order confiscation under Section 55 (*e.g.* because a briber was not convicted), Section 73 may apply. Under this provision, a court must confiscate a thing if (1) it belongs to an offender who cannot be prosecuted or sentenced, (2) it belongs to an offender to whom sanction was not imposed, or (3) it is necessary with regard to the security of the people or property or to other similar general interest, in particular if the circumstances of the case give rise to suppose that the thing was obtained by the offence. According to the Slovak authorities, Section 73 covers bribes and proceeds of bribery. The provision (in particular, Section 73(1)(d)) may also be used to confiscate property held by a third party in bad faith.

¹¹⁵ New Penal Code, Act 300/2005 Coll., Section 334(2).

¹¹⁶ The punishment for theft and embezzlement increases with the amount of damage caused by the offence. For the most aggravated offence, the punishment is imprisonment of up to twelve years, a fine between SKK 5 000 and 5 million (approx. EUR 130 and 130 000) and confiscation. The punishment for fraud is the same, but the court may also impose a ban on engaging in professional activity for up to ten years (Penal Code, Sections 247, 248 and 250).

¹¹⁷ See Annex 3 for detailed statistics.

¹¹⁸ New Penal Code, Act 300/2005 Coll., Section 334(2).

220. As noted earlier, in August 2004, confiscation under Sections 55 and 73 became mandatory upon conviction.¹¹⁹ A court must order confiscation whenever the requirements for doing so are met.

221. According to the Slovak authorities, Section 51 may also be applicable in some bribery cases. That provision applies upon conviction of an accused who acquired or tried to acquire property through a serious intentional offence (e.g. bribery). In such cases, the court may confiscate any property of the accused in addition to a sentence of “exceptional punishment” or “unconditional imprisonment”. However, under the new Penal Code, this provision is not available for foreign bribery.¹²⁰

222. In practice, it appears that the Slovak courts have not routinely ordered confiscation in domestic bribery cases. Between 2000 and 2004, of the 242 convictions for domestic bribery, confiscation under Sections 55 or 73 was ordered only 17 times. Section 51 was not used.¹²¹ The lead examiners hope that this statistic will improve since confiscation under Sections 55 and 73 is now mandatory upon conviction.

(c) *Administrative Sanctions*

223. In addition to criminal sanctions, the Convention contemplates civil and administrative sanctions for foreign bribery. These may include temporary or permanent exclusion from entitlement to public benefits (such as export credit support or official development assistance) and disqualification from participation in public procurement and privatisation.¹²²

(i) Officially Supported Export Credits

224. EXIMBANKA SR (Slovakia’s export credit agency) may impose sanctions for bribery. If EXIMBANKA SR suspects that a transaction involves bribery, it will suspend support or an application for support pending clarification. EXIMBANKA SR will decline an application for support if it has reasonable suspicions that a transaction involves bribery. If suspicions arise after support has been provided, EXIMBANKA SR will terminate the contract and seek recovery of any funds that it has paid.¹²³

¹¹⁹ Act 403/2004 Coll.

¹²⁰ New Penal Code, Act 300/2005 Coll., Section 58.

¹²¹ See Annex 3 for detailed statistics.

¹²² Article 3(4) and Commentary 24 of Convention; Revised Recommendation VI (ii).

¹²³ See footnote 24. In addition, the contract for support contains the following standard terms:

IX. Exclusion from Insurance

No title for indemnification shall arise on the basis of insurance concluded in accordance with these Insurance Conditions when a loss occurred as a consequence of the following events:

...

b) Payments of commissions exceeding in value and in comparison to the insured export credit value the amount common for the given type of goods and country;

...

d) Failure to observe the statutes and legal regulations in force in the SR or in the country of debtor or in the country of transfer, mainly those relating to formalities and licenses required for transfer or conversion of payments;

225. EXIMBANKA SR has not applied these sanctions to a bribery case. It recently suspended the performance of one contract because it suspected that the transaction involved insurance fraud. It could not provide additional details of the case because of an on-going criminal investigation.

(ii) Public Procurement

226. Since Phase 1, Slovakia has amended its legislation to allow bans on public procurement. A person is disqualified from public procurement if that person, his/her legal representative or a member of his/her representative body has been sentenced to a criminal offence “the merit of which relates to enterprise”.¹²⁴ Slovakia believes that this provision covers convictions for bribery, but it was unable to advise whether it has imposed bans because of bribery.

227. The onus is on a participant to prove that he/she has no previous conviction for bribery. A Slovak participant must present an extract from the Slovak Penal Registry which shows all valid convictions. A non-Slovak participant must provide an equivalent document from the jurisdiction in which it operates. A participant which is a company must produce extracts for all of its representatives (*i.e.* persons listed in the Commercial Register who have authority to act on behalf of the company).¹²⁵

228. The Public Procurement Office (PPO) oversees the public procurement process in Slovakia. However, it is the responsibility of each individual government body that conducts a tender to ensure that participants do not have convictions for bribery. The PPO becomes involved only when there is a complaint. The PPO assured the lead examiners that officials involved in public procurement in all government bodies have been trained on the applicable legal framework.

(iii) Official Development Assistance

229. As noted earlier, the Ministry of Foreign Affairs administers ODA in Slovakia. The Ministry stated that an applicant with a prior conviction for bribery is disqualified from projects funded by ODA. As with public procurement, an applicant must demonstrate that he/she has no such convictions by providing a certificate from the Slovak Penal Registry. The Ministry has never disqualified an applicant on this basis.

230. The Ministry has issued a directive which states that “inconsistencies” in a project may result in the withdrawal of payments, a request for the return of funds already paid, termination of a contract, exclusion from the ODA programme and/or initiation of criminal and administrative proceedings. The

e) Acceptance of the credit agreement terms substantially deviating from international or local standards and extraordinarily restricting the rights of the Insured in case of insurance claim from such as uncommon sanctions, unjustified possibility of contract frustration by the debtor etc.

EXIMBANKA SR added that the information in a recent OECD survey is incorrect (OECD Working Party on Export Credits and Credit Guarantees (21 January 2005), *Responses to the 2004 Revised Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – Situation as of 21 January 2005*, OECD, Paris, TD/ECG(2005)4, pp. 40 and 50).

¹²⁴ Act 523/2003 Coll. on Public Procurement, Article 29(1)(d).

¹²⁵ Act 523/2003 Coll. on Public Procurement, Articles 29(2)(a), 29(2)(d) and 31(1), amending Act 575/2001 Coll. According to the Slovak authorities, a certificate issued by the Slovak Penal Registry shows convictions in Slovakia within the previous 100 years. Older convictions are expunged from the record. The certificate may also show convictions of a Slovak citizen by a foreign court because the Slovak government receives information about such convictions from some foreign governments.

Ministry believes that the term “inconsistencies” includes foreign bribery.¹²⁶ The Ministry has never terminated a contract or initiated proceedings because of bribery.

(iv) Privatisation

231. According to Slovak officials, Slovakia has undergone extensive privatisation which was accomplished largely through direct sales after tender. Privatisation is expected to remain an important source of government revenue over the next few years and may include assets in energy and transportation. The Ministry of Economy manages the privatisation process.

232. The Ministry has undertaken to ban companies that have been convicted or are suspected of bribery from acquiring privatised assets. It is not, however, under any legal obligation to do so. The Ministry’s guidelines on evaluating tenders are silent on this issue. In addition, the Ministry stated that it will investigate any suspicion that a potential buyer has been involved in bribery. If the suspicion is confirmed, the Ministry will disqualify the potential buyer and refer the case to law enforcement. The Ministry has never banned or investigated an individual or a company for bribery.

(d) *Conclusion on Sanctions for Foreign Bribery*

233. The lead examiners welcome Slovakia’s decision to increase the criminal sanctions for non-aggravated bribery in the Penal Code. They are also encouraged that Slovakia may impose a range of administrative sanctions against companies and individuals who engage in foreign bribery.

234. Slovakia has also addressed the other concern of the Working Group, namely the “relatively low” sanctions for aggravated foreign bribery. At the same time, however, the new Penal Code will introduce some uncertainty into the criteria for determining whether an act of foreign bribery is aggravated.

235. Finally, Slovakia has never imposed administrative sanctions for (domestic or foreign) bribery. Thus, the effectiveness of these sanctions and the readiness of the authorities to impose them remain to be seen. Detailed statistics on these and other punishments will be essential to determining whether the entire system of sanctions is effective, proportionate and dissuasive.

Commentary

The lead examiners recommend that Slovakia continue to compile statistics on the criminal, civil and administrative sanctions (including confiscation) for domestic and foreign bribery. They also recommend that the Working Group monitor the application of sanctions by the courts and the use of confiscation in foreign bribery cases to ensure they are effective, proportionate and dissuasive.

¹²⁶ According to Article 28 of the Directive for Providing Official Development Assistance of the Slovak Ministry of Foreign Affairs:

Inconsistencies are considered to be any breach of the provisions of this Directive, of binding international contracts, financial memoranda, and Slovak legislation related to the National Programme of ODA resulting from incorrect behaviour, negligence or from the unlawfully used, or incorrectly, wrongfully paid off funds within the scope of the National Programme of ODA.

This definition therefore does not expressly include foreign bribery or corruption.

D. RECOMMENDATIONS OF THE WORKING GROUP AND FOLLOW-UP

236. Based on its findings on Slovakia's implementation of the Convention and the Revised Recommendation, the Working Group (1) makes the following recommendations to Slovakia and (2) will follow up certain issues as cases emerge.

1. Recommendations

Recommendations Concerning Prevention, Detection and Awareness of Foreign Bribery

237. Concerning raising awareness of the Convention, the Revised Recommendation and the foreign bribery offence, the Working Group recommends that:

- (a) Slovakia take further action to raise awareness in the private sector, especially among (1) the private sector and the business community, and particularly those enterprises which operate internationally, (2) the accounting, auditing and legal professions, (3) clients and potential clients of EXIMBANKA SR, and (4) companies and individuals who are involved in projects funded by official development assistance;
- (b) Slovakia raise awareness of foreign bribery among public officials, particularly those of (1) EXIMBANKA SR, (2) the Ministry of Foreign Affairs involved in official development assistance, (3) the tax authority, (4) the Supreme Audit Office, and (5) foreign representations, including embassies; and
- (c) the Ministry of Justice publish the manual on the Convention at the earliest possible date (Revised Recommendation I).

238. Concerning the prevention and detection of foreign bribery through taxation, the Working Group recommends that Slovakia:

- (a) introduce an express denial of tax deductibility of bribe payments to foreign public officials (Revised Recommendation IV); and
- (b) provide guidelines, instructions and training to tax examiners on detecting foreign bribery during tax audits (Revised Recommendation I).

239. Concerning prevention and detection of foreign bribery through export credits, the Working Group recommends that EXIMBANKA SR require a client to disclose sufficient information, such as details on agents' commissions, which would enable EXIMBANKA SR to verify whether the client has engaged in foreign bribery (Revised Recommendation I).

240. Concerning prevention and detection of foreign bribery through accounting and auditing, the Working Group recommends that Slovakia:

- (a) ensure that accounting and auditing issues related to bribery are regularly examined in the context of the mandatory training requirements for auditors, including auditors of the Supreme Audit Office (Revised Recommendation I); and
- (b) require external auditors to report indications of a possible illegal act of bribery to internal corporate monitoring bodies as appropriate, and consider requiring external

auditors to report such indications to competent authorities (Revised Recommendations V.B.iii and V.B.iv).

241. Concerning prevention and detection of foreign bribery through anti-money laundering measures, the Working Group recommends that Slovakia provide better guidance to entities that are required to report suspicious transactions, for instance, by providing typologies on money laundering where the predicate offence is bribery (Convention, Article 7; Revised Recommendation I).

242. Concerning reporting of foreign bribery cases, the Working Group recommends that Slovakia:

- (a) raise the awareness within the private sector and among public officials of the legal obligation under the Slovak Penal Code to report foreign bribery to law enforcement authorities;
- (b) continue its efforts to make whistleblower protection under Section 13 of the Labour Code more widely known among companies and the general public; and
- (c) maintain statistics as to the number and sources of allegations of bribery (Revised Recommendation I).

Recommendations Pertaining to Investigation of Foreign Bribery

243. Concerning investigation of foreign bribery, the Working Group recommends that:

- (a) the Slovak Police Academy continue to train police officers and recruits (including those who are not members of the Bureau of the Fight against Corruption) on investigating foreign bribery, including the practical aspects of bribery investigations; and
- (b) Slovakia further enhance the co-operation among law enforcement agencies that are involved in combating foreign bribery (Revised Recommendation I).

Recommendations Pertaining to Prosecution and Sanctioning of Foreign Bribery and Related Offences

244. Concerning the offence of foreign bribery, the Working Group recommends that Slovakia (a) amend its legislation to exclude the defence of “effective regret” from the offence of foreign bribery, and (b) ensure the provision of immunity to co-operating offenders is not an impediment to the effective enforcement of the foreign bribery offence (Convention, Article 1).

245. Concerning prosecution of foreign bribery, the Working Group recommends that:

- (a) Slovakia ensure that the Special Court and the Office of the Special Prosecutor are effective in the fight against foreign bribery. In particular, they recommend that Slovakia ensure that these institutions are adequately staffed with prosecutors and judges; and
- (b) the Slovak Judicial Academy organise training programmes on foreign bribery for the Special Judges and Special Prosecutors, including new recruits (Revised Recommendation I).

246. Concerning the liability of legal persons for foreign bribery, the Working Group strongly recommends that Slovakia establish such liability without delay, and put in place sanctions that are effective, proportionate and dissuasive (Convention, Articles 2 and 3(2)).

247. Concerning the offence of money laundering, the Working Group recommends that Slovakia take appropriate measures to enforce its money laundering offence more effectively, particularly in connection with bribery cases (Convention, Article 7).

248. Concerning the offence of false accounting, the Working Group recommends that Slovakia:

- (a) take appropriate measures to enforce accounting and auditing offences more effectively in connection with bribery cases; and
- (b) ensure that the sanctions for false accounting in practice are effective, proportionate and dissuasive (Convention, Article 8).

249. Concerning sanctions, the Working Group recommends that Slovakia continue to compile statistics on the criminal, civil and administrative sanctions (including confiscation) for domestic and foreign bribery, money laundering and false accounting (particularly those under the Act on Accounting) (Convention, Articles 3, 7 and 8(2)).

2. Follow-up by the Working Group

250. The Working Group will follow up the issues below as cases and practice develop in Slovakia:

- (a) whether the Slovak Penal Code covers the bribery of (1) a judge or an official of an international judicial institution that is not accepted by the Slovak Republic, and (2) an official or agent of a public international organisation of which Slovakia is not a member and with which Slovakia does not have a “conventional relationship” (Convention, Article 1);
- (b) the application of the provision of immunity to co-operating offenders in foreign bribery cases (Convention, Article 1);
- (c) the application of the defence of socially acceptable gifts in foreign bribery cases (Convention, Article 1); and
- (d) the application of sanctions under the legislation implementing the Convention (*i.e.* the foreign bribery, money laundering and false accounting offences) (Convention, Articles 3, 7 and 8(2); Revised Recommendation V.A(iii)).

ANNEX 1
LIST OF PARTICIPANTS IN THE ON-SITE VISIT

Lead Examiners from the Hungary

- Dr. Balázs Dencső, Head of Legal Division, Central Harmonisation Unit for Public Internal Financial Control, Ministry of Finance
- Dr. Julianna Kökényes, Chief Prosecutor, Prosecutor Office of Nagykanizsa

Lead Examiners from Turkey

- Professor Dr. Feridun Yenisey, Director, Institute for Global Understanding of Rule of Law (IGUL), Bahçeşehir University
- Mr. Namık Kemal Uyanık, Head of Department, General Directorate of Revenues, Ministry of Finance
- Associate Professor Dr. Suleyman Aydın, Ministry of Internal Affairs
- Ms. Dursune Özkurt, Expert, Financial Crimes Investigation Board

OECD Secretariat

- Mr. Silvio Bonfigli, Principal Administrator, Anti-Corruption Division
- Mr. William Loo, Administrator, Anti-Corruption Division

Ministries and Bodies of the Government of the Slovak Republic

- Ministry of Justice, including:
 - The Minister of Justice
 - Branch Policy, Budget and Administration Division
 - Criminal Legislation and Prevention Criminality Division
 - Development, Economy and Administration Department
 - Development of the Branch Human Sources Division
 - Foreign Relations and Human Rights Division
 - Justice Cooperation in Criminal Matters Division
- Public prosecutors, including:
 - Office of the Special Prosecutor
 - Regional Prosecution Office in Bratislava
 - District Prosecution Office Bratislava V
- Presidium of the Police, including:
 - Bureau of the Fight against Corruption
 - Justice and Criminal Police Bureau
 - Organised Crime Bureau, including the Financial Investigation Subdivision
 - Department of Papers and Evidence
- Police Academy
- Ministry of Economy
- Supreme Audit Office
- Ministry of Foreign Affairs, including the Official Development Assistance Division
- Department of the Fight against Corruption, Government Office
- Tax Directorate of the Slovak Republic
- Customs Directorate of the Slovak Republic
- Ministry of Finance, including:
 - Direct Taxes and Price Regulation Division
 - Financial Market Department
 - Internal Audit of EU Sources Division
 - Legislation and Accounting Methodology Division
 - Tax Authority for Chosen Subject of Charge
 - Tax Headquarters, Control and Executions Division
- National Agency for Small and Medium Size Enterprises
- National Bank of Slovakia
- Public Defender of Rights Office
- Slovak Investment and Trade Development Agency (SARIO)
- EXIMBANKA SR
- Public Procurement Office

National Council of the Slovak Republic

- Constitutional Committee of the National Council of the Slovak Republic

Slovak Judiciary

- Supreme Court of the Slovak Republic
- The Special Court
- Regional Court in Banská Bystrica
- Association of Judges of Slovakia (ZSS)
- The Judicial Council
- Slovak Judicial Academy

Civil Society

- Fair-Play Alliance
- Transparency International Slovakia
- Confederation of Trade Unions (KOZ SR)
- Metal Workers Unions (OZ KOVO)

Private Sector

- The Bank Association
- Bratislava Stock Exchange
- Deloitte & Touche
- Istrobank
- KPMG
- Matador – Púchov
- NBS
- OTP Bank
- Sahesa
- Slovak Bar Association (SAK)
- Slovak Chamber of Auditors (SKAu)
- Slovak Chamber of Commerce and Industry (SOPK)
- Slovenske Elektrarne (Slovak Electricity Company)
- Slovak Gas Company (SPP)
- Slovak Oil Company (Slovnaft)
- Slovakia Association of Transporters (ČESMAD)
- Slovakia Bank
- Slovenská sporiteľňa,
- Tatrabank
- U.S. Steel Košice
- UniBanka
- Volksbank
- VÚB

ANNEX 2
EXCERPTS FROM RELEVANT LEGISLATION

(Unofficial Translation Provided by the Slovak Ministry of Justice)

1. Penal Code (In Force Before 1 January 2006)

Section 55 - Forfeiture of a Thing

- (1) The court shall impose a sentence of forfeiture of a thing which was
 - (a) used to commit the crime,
 - (b) determined to commit the crime
 - (c) obtained by the crime or as a remuneration for committing the crime or
 - (d) obtained by the offender in exchange for the thing stated in (c).
- (2) If the thing stated in paragraph 1 is not reachable or is not able to be identified or is mixed with the property of the offender or with the property of another person gained legally, the court may impose forfeiture of the value equitable to the value of the thing.
- (3) Not reachable thing is a thing destroyed, damaged, lost, dispossessed, made useless, consumed, hidden, transferred to another person or a thing removed in another way or saved costs.
- (4) Thing according to paragraphs 1 to 3 are understood also proceeds of a crime, profits, interests or other advantages of these incomes or things.
- (5) The court may impose the sentence of forfeiture of a thing only if the thing belongs to the offender.
- (6) The owner of the forfeited thing is the State unless the court decided else following an international instrument that is binding for the Slovak Republic.
- (7) If the sentence of forfeiture of a thing is imposed as a single sentence, the offender shall be regarded as never having been convicted.
- (8) The paragraph 1 shall not be used if:
 - (a) injured person has a right to indemnification which would be restrained by forfeiture of the thing,
 - (b) value of the thing is in apparent disproportion to the gravity of the crime, or
 - (c) the court waived the imposition of a sentence to the offender.

Section 73 - Attachment of a Thing

- (1) In case that the sanction of forfeiture of the thing mentioned in section 55 was not imposed, the court shall impose confiscation of such a thing
 - (a) if it belongs to the offender who cannot be prosecuted or sentenced,
 - (b) if it belongs to the offender to whom the sanction was not imposed or to the offender against whom the criminal prosecution was stayed from reasons stated in section 172 para. 2 Code of Penal Procedure, or to the offender against whom the criminal prosecution was stayed due to conciliation,
 - (c) if the circumstances of the case justified the presumption that the thing could be a source of funding of terrorism, or
 - (d) if it is necessary with regard to the security of the people or property or to other similar general interest, in particular if the circumstances of the case give rise to suppose that the thing was obtained by the offence.
- (2) The confiscated thing becomes the property of the State unless the court decides in another way following the international treaty which is binding for the Slovak Republic.

- (3) The provision of the paragraph 1 shall not be used, if:
- (a) injured person has a right to indemnification which would be restrained by forfeiture of the thing,
 - (b) value of the thing is in apparent disproportion to the gravity of the crime.

Section 89

- (10) Foreign public official means any person holding the function
- (a) in the legislative or judicial body or in the body of public administration of a foreign country, or
 - (b) in an enterprise in which a foreign country exercises a decisive influence or in an international organisation established by the states or other subjects of public international law,
- if the power to manage the public affairs is connected with this function and the criminal offence has been committed in connection with this power.

Section 125 - Distortion of data in financial and commercial records

- (1) Any person, who with the intention to obtain unjustified benefit for himself or other, presents false or grossly distorted data concerning important facts in the statement, reports, input data entered into the computer or other documents which serve for
- (a) controlling financial operations,
 - (b) statistic verification,
 - (c) controlling the use of subsidies or other State budget or municipal budget allocations, or allocations from the State funds,
 - (d) setting the value of property or securities rate being transferred or assigned to other persons
 - (e) bankruptcy and composition purposes
 - (f) employee records, or
 - (g) entry into commercial register or into register on the base of special law ,

shall be liable to a term of imprisonment of six months to three years, or to a sentence of the ban on professional activity or to a pecuniary penalty.

- (2) The same sentence shall be imposed on any person , who with the intention referred to in paragraph 1
- (a) interferes with computer hardware or software, or
 - (b) destroys, damages, conceals, renders unusable or fails to keep the records referred to in paragraph 1
- (3) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred to in paragraph 1
- (a) in the capacity of a member of an organised group, or
 - (b) with the intention to facilitate or cover up other criminal offence,
- (4) The sentence set out in paragraph 3 shall be imposed on the offender also if through the commission of the offence referred to in paragraphs 1 or 2
- (a) he causes a serious disturbance to the running of national economy or another exceptionally serious consequence, or
 - (b) he violates a specific duty prescribed by law, or an important duty arising from his employment, profession, position or function, or one he has specifically pledged to fulfil.

Section 161b

- (1) Any person who whether directly or through intermediary gives, offers or promises a bribe or an undue advantage to the foreign public official or to another person in connection with official duties of the foreign public official in order to receive or keep an undue advantage regarding the

realisation of international business, shall be liable to a term of imprisonment of six months to three years or to the financial punishment.

- (2) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred to paragraph 1 as a member of organised group or if he receives the extensive benefit

Section 161c

- (1) Any person who directly or through intermediary to the member of international parliamentary assembly, the judge or the official of international judicial institution accepted by the Slovak Republic, or the representative or employee of international, over-national, inter-governmental organisation or institution which the Slovak republic is a member or with which the Slovak Republic has conventional relationship, or as a person in similar function gives, offers or promises a bribe or another undue advantage in connection with his official duties or for this reason gives, offers or promises the bribe or another undue advantage to another person, shall be liable to term of imprisonment of six months to three years or to the financial punishment
- (2) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred in paragraph 1/ as member of an organised group or if he receives the extensive benefit.

Section 163 - Special Provision on Effective Regret

Punishability of bribery under sections 161, 161a, 161b and 161c and indirect corruption under section 162 para. 2 vanishes if the offender has given the bribe or other undue advantage or promised thereof only because he was requested to do so and he reported it without delay to the prosecutor, investigator or police; a soldier can instead of this report to his commander or chief.

Section 252 - Legalisation of Proceeds from a Crime

1. Whoever an income or another property from crime
 - (a) transfers to himself or to another person, hires, loans, disposes at bank account, imports, exports, moves, lends or otherwise, to himself or to another person acquires, or
 - (b) holds, hides, conceals, uses, consumers, destroys, alters or damages,with intent to hide existence this income or thing, conceal the origin of a crime, or, its intent or purpose there of for the commission for crime, or to frustrate its seizure for purpose of penal proceedings or forfeiture or confiscation shall be punished by imprisonment for a term of up to three years or by prohibition of activity or by confiscation or by pecuniary penalty.
2. The offender shall be punished by imprisonment for a term of one to five years if he by act defined in para. 1 acquires for himself or, for another person, the substantial profit.
3. The offender shall be punished by imprisonment for a term of two to eight years if he commits the act defined in paragraph 1 as a member of an organised group or if by such act he acquires for himself or, for another person, considerable profit.
4. The offender shall be punished by imprisonment for term of five to twelve years if he commits the act defined in paragraph 1
 - (a) as a public official or,
 - (b) as a member of an organised group which is operating in several states or with the junction with this group
5. The same punishment as in paragraph 4 shall be imposed if act defined in paragraph 1 he acquires for himself, or for another person, large extent profit.

2. ***Code of Penal Procedure (In Force before 1 January 2006)***

Section 172 – Stay of Criminal Prosecution

1. The investigator or a prosecutor in summary investigation shall stay criminal prosecution,
 - (a) if it is beyond any doubt that the act, on the grounds of which the criminal prosecution shall be instituted, did not occur,
 - (b) if this act is not a criminal offence and there are no grounds to transfer the case,
 - (c) if it is not proved that the act was committed by the accused,
 - (d) if criminal prosecution is inadmissible (Art. 11 para 1),
 - (e) if the accused bore no criminal liability for unsound mind while committing the act or
 - (f) the culpability of the act expired.
2. The investigator or a prosecutor in summary investigation may stay criminal prosecution:
 - (a) if the sentence in which the prosecution may result, is fully insignificant compared with the sentence for another act the accused has already been charged with or
 - (b) if the act committed by the accused has already been ruled by another body in a disciplinary, reprimand way or a foreign court or agency and this decision may be considered satisfactory.
3. The prosecutor may stay criminal prosecution against the person whose indictment has been suspended, or against the accused who has significantly contributed to clarifying a case of corruption, criminal offence of setting up, masterminding or supporting a criminal group or a terrorist group (Section 185a of the Penal Code) or a particularly serious deliberate criminal offence (Section 41 paragraph 2 of the Penal Code) committed by an organised group, a criminal group, or a terrorist group, or to identifying or convicting the perpetrator of such criminal offence, where the interest of society in clarifying that criminal offence is stronger than the interest in criminal prosecution against that person or that accused; criminal prosecution may not be stayed in respect of the organiser or instigator of the criminal offence he helped to clarify.

Section 173 – Suspension of Criminal Prosecution

1. The investigator or the police authority shall suspend criminal prosecution,
 - (a) if the case cannot be duly clarified for the absence of the accused or the injured party,
 - (b) if the accused cannot appear before a court for a severe disease,
 - (c) if the accused is unable to understand the meaning of the criminal prosecution due to his/her mental disease occurring after committing the act,
 - (d) if the accused is under extradition to a foreign country or expulsion.
 - (e) if the Constitutional Court suspends the effect of a legal regulation, part or provision thereof, whose application is decisive for the proceedings or for the decision on merits, or
 - (f) if the facts leading to starting of criminal investigation of the specific person could not be established.
2. The investigator may, with prior consent of the prosecutor, suspend criminal proceedings against the accused who has significantly contributed to clarifying a case of corruption, criminal offence of setting up, masterminding and supporting a criminal group or a terrorist group (Section 185a of the Penal Code) or of a particularly serious deliberate criminal offence (Section 41 paragraph 2 of the Penal code) committed by an organised group, a criminal group or a terrorist group, or to identifying or convicting the perpetrator of such criminal offence; criminal prosecution may not be suspended in respect of the organiser or instigator of the criminal offence he helped to clarify.

ANNEX 3
STATISTICS ON CORRUPTION PROSECUTIONS IN SLOVAKIA FROM 2000 TO 2004

(Provided by the Slovak Ministry of Justice)

Penal Code Section ¹	160	160a	160b	160c	161	161a	161b	161c	162	Total
Proceedings	83	39	0	1	159	82	0	0	7	371
Convicted	41	20	0	0	115	61	0	0	5	242
Imprisonment (average length in months)	6 (16.7)	5 (9.6)	0	0	8 (6.5)	8 (8.875)	0	0	0	27 (10)
Suspended imprisonment	27	13	0	0	73	40	0	0	5	158
Punishment dropped	0	0	0	0	0	0	0	0	0	0
Prohibition of activities	0	0	0	0	3	1	0	0	0	4
Pecuniary penalty	8	2	0	0	22	5	0	0	0	37
Confiscation of a property (s. 51)	0	0	0	0	0	0	0	0	0	0
Confiscation of a thing (s. 55)	0	0	0	0	9	7	0	0	0	16
Attachment of a thing (s. 73)	0	0	0	0	1	0	0	0	0	1
Average length of proceedings (months)	12	9.049	-	0	3.972	5.133	-	-	13.5	6.73

Note:

1. The sections of the Penal Code refer to the following offences:

- Sections 160 and 160a: domestic passive bribery
- Section 160b: foreign passive bribery
- Section 160c: foreign passive bribery involving international parliamentary assembly, court or organisation
- Sections 161 and 161a: domestic active bribery
- Section 161b: foreign active bribery
- Section 161c: foreign active bribery involving international parliamentary assembly, court or organisation
- Section 162: trading in influence

ANNEX 4
CONVENTIONS AND TREATIES ON EXTRADITION AND
MUTUAL LEGAL ASSISTANCE TO WHICH SLOVAKIA IS A PARTY

(Provided by the Slovak Republic)

1. *Multilateral Instruments*

1. European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 20 April 1959
2. Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 17 March 1978
3. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 8 November 2001
4. Convention on the Transfer of Sentenced Persons, Strasbourg, 21 March 1983
5. European Convention on the Transfer of Proceedings in Criminal Matters, Strasbourg, 15 May 1972
6. European Convention on the Supervision of Conditionally Sentenced or Conditional Released Offenders, Strasbourg, 30 October 1964
7. European Convention on Extradition, Paris, 13 December 1957
8. Additional Protocol to the European Convention on Extradition, Strasbourg, 15 October 1975
9. Second Additional Protocol to the European Convention on Extradition, Strasbourg , 17 March 1978
10. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg, 26 November 1987
11. European Convention on Suppression of Terrorism, Strasbourg, 27 January 1977; Protocol amending the European Convention on the Suppression of Terrorism, Strasbourg, 15 May 2005
12. UN Convention on Transfer of Sentenced Persons to Execute the Sentence in the State of which they Are Citizens (concluded in Berlin, 19 May 1978, decree no. 123/1980 Coll.)
13. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 8 November 1990
14. Criminal Law Convention on Corruption, Strasbourg, 27 January 1999
15. Additional Protocol to the Criminal Law Convention on Corruption, Strasbourg, 15 May 2003
16. Convention on international access to justice (concluded in Haag, 25 October 1980, no. 182/2003 Coll.)

2. *Bilateral Instruments*

1. Treaty between Czechoslovak Socialist Republic and Soviet Union on legal assistance and legal relations in civil, family and criminal matters, 12 August 1982
2. Treaty between Czechoslovak Socialist Republic and Republic of Cyprus on legal assistance in civil and criminal matters, 23 April 1982

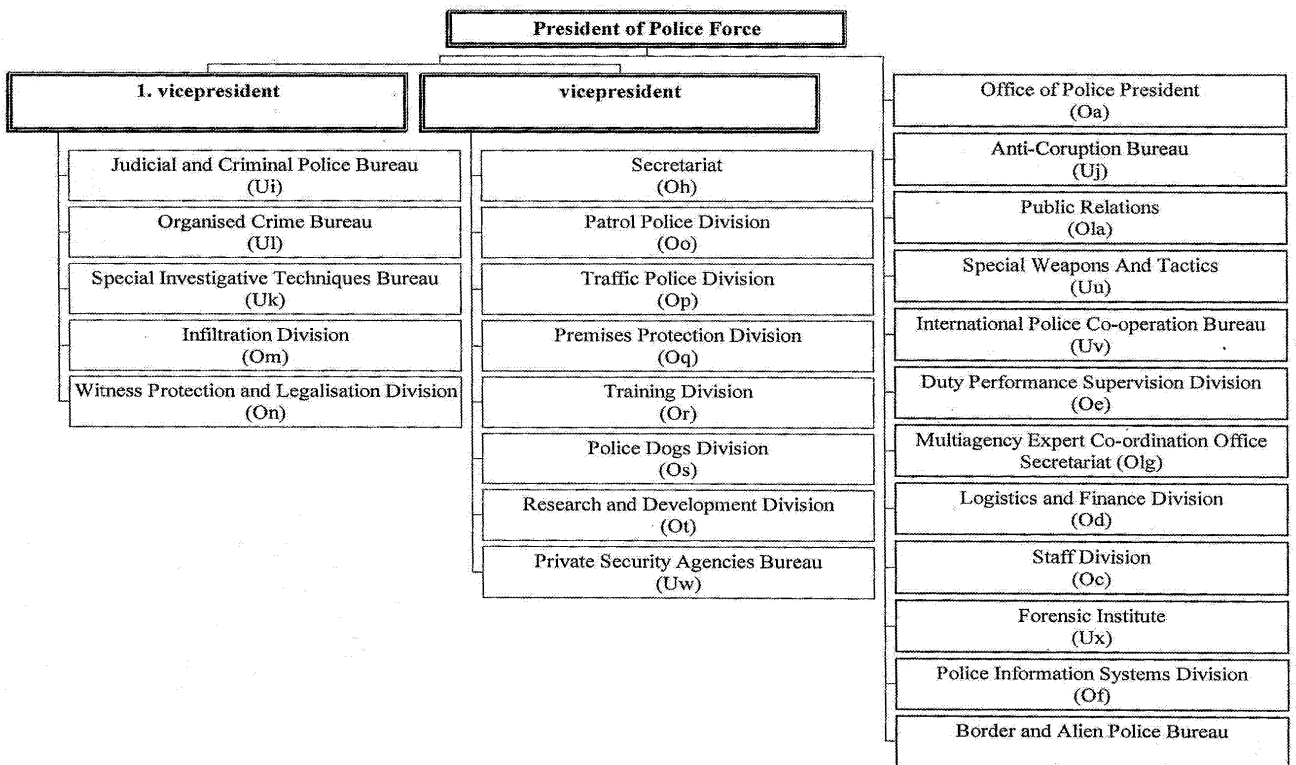
3. Treaty between Czechoslovak Socialist Republic and Republic of Greece on legal assistance in civil and criminal matters, 22 October 1980
4. Treaty between Czechoslovak Socialist Republic and the People's Republic of Hungary on legal assistance and legal relations in civil, family and criminal matters, 28 March 1989
5. Treaty between the Slovak Republic and Czech Republic on legal assistance provided by the judicial authorities and on arrangement of legal relations in civil and criminal matters, 29 October 1992
6. Treaty between Czechoslovak Socialist Republic and Socialist Federal Republic of Yugoslavia on arrangements of legal relations in civil, family, and criminal matters, 20 January 1964
7. Treaty between Czechoslovak Socialist Republic and Arabic Republic of Syria on legal assistance in civil, family and criminal matters, 18 April 1984
8. Treaty between Czechoslovak Socialist Republic and the People's Republic of Mongolia on providing of legal assistance and on legal relations in civil, family, and criminal matters, 15 October 1976
9. Treaty between Czechoslovak Socialist Republic and Republic of Cuba on mutual legal assistance in civil, family, and criminal matters, 18 April 1980
10. Treaty between Czechoslovak Socialist Republic and Republic of Italy on legal assistance in civil, and criminal matters, 6 December 1985
11. Treaty between Czechoslovak Socialist Republic and Public Democratic Republic of Yemen on legal assistance in civil and criminal matters, 19 January 1989
12. Treaty between Czechoslovak Socialist Republic and Public Republic of Bulgaria on legal assistance and arrangements of legal relations in civil, family, and criminal matters, 25 November 1976
13. Treaty between Czechoslovak Socialist Republic and Democratic Republic of Afghanistan on legal assistance in civil and criminal matters, 24 June 1981
14. Treaty between Czechoslovak Republic and Public Republic of Albania on legal assistance in civil, family, and criminal matters, 16 January 1959
15. Treaty between Czechoslovak Republic and Public Republic of Romania on legal assistance in civil, family, and criminal matters, 25 October 1958
16. Treaty between Czechoslovak Socialist Republic and Socialist Republic of Vietnam on legal assistance in civil and criminal matters, 12 October 1982
17. Treaty between Czechoslovak Socialist Republic and Democratic People's Republic of Korea on mutual legal assistance in civil, family and criminal matters, 11 September 1988
18. Treaty between Czechoslovak Socialist Republic and Democratic and Public Republic of Algeria on legal assistance in civil, family and criminal matters, 4 February 1981
19. Treaty between Czech and Slovak Federal Republic and Republic of Austria on mutual enforcement of judgments in criminal matters, 20 May 1990
20. Treaty between Czechoslovak Socialist Republic and Republic of Tunis on legal assistance in civil and criminal matters, on recognition and enforcement of judicial decisions and on extradition inclusive Additional Protocol, 12 April 1979
21. Treaty between Czechoslovak Socialist Republic and Federal Socialist Republic of Yugoslavia on mutual transfer of sentenced persons sentenced by the prison sentence, 23 May 1989

22. Treaty between the Government of the Slovak Republic and the Government of the Czech Republic on the exchange of data from information sources in criminal records, 26 June 1995

**ANNEX 5
ORGANISATION CHART OF THE SLOVAK PRESIDUM OF THE POLICE**

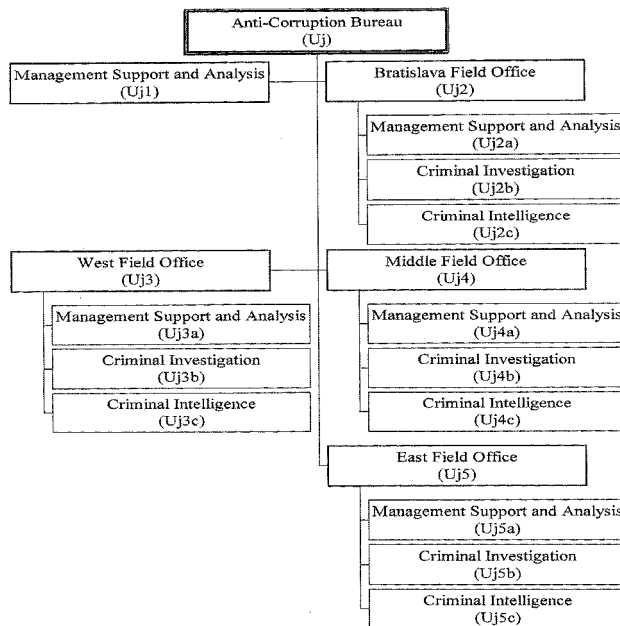
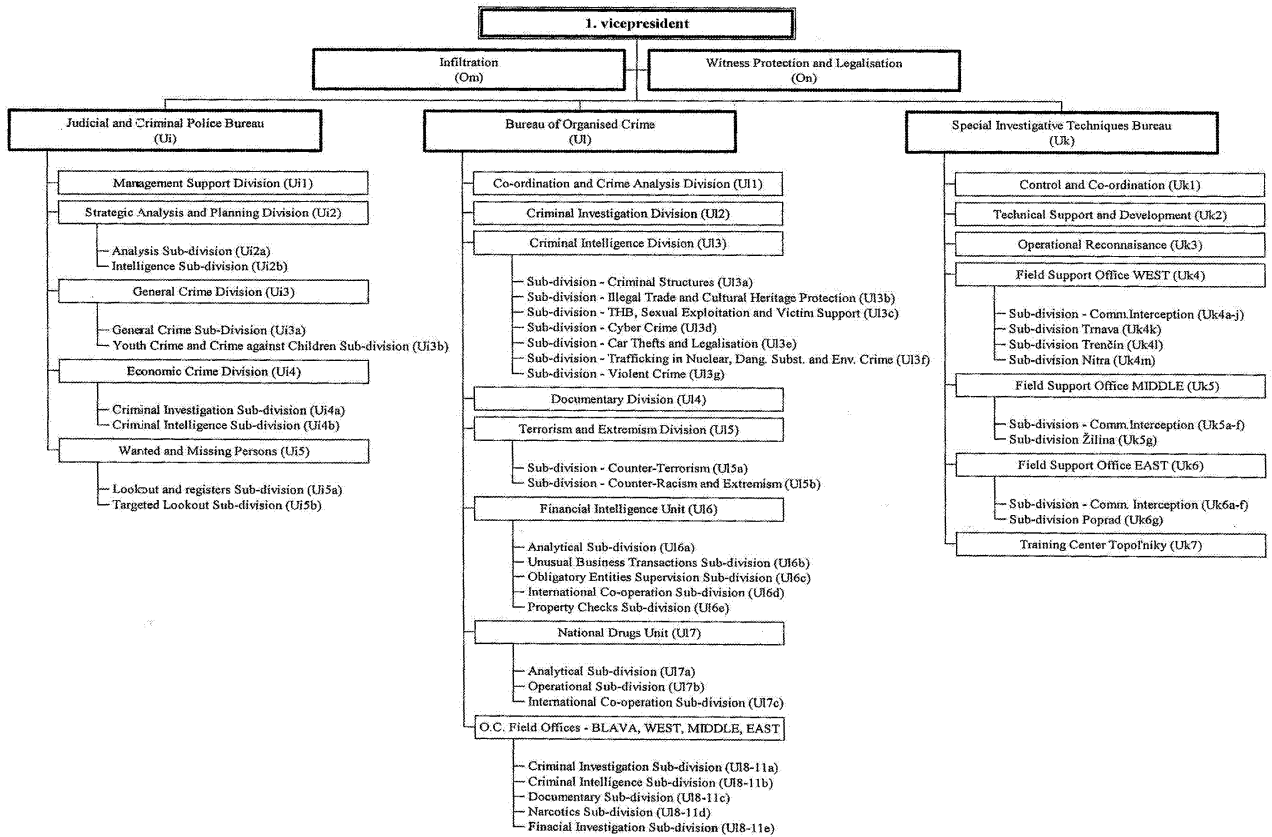
(Provided by the Slovak Republic)

**Presidium of Police Force
(as of 1st January 2004)**

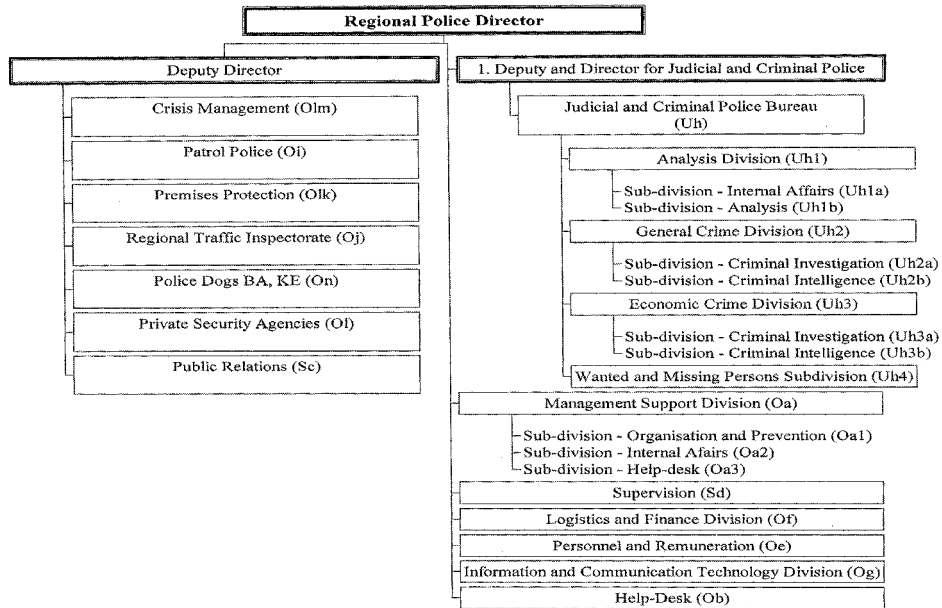


Border and Alien Police Director reports to President of Police Force

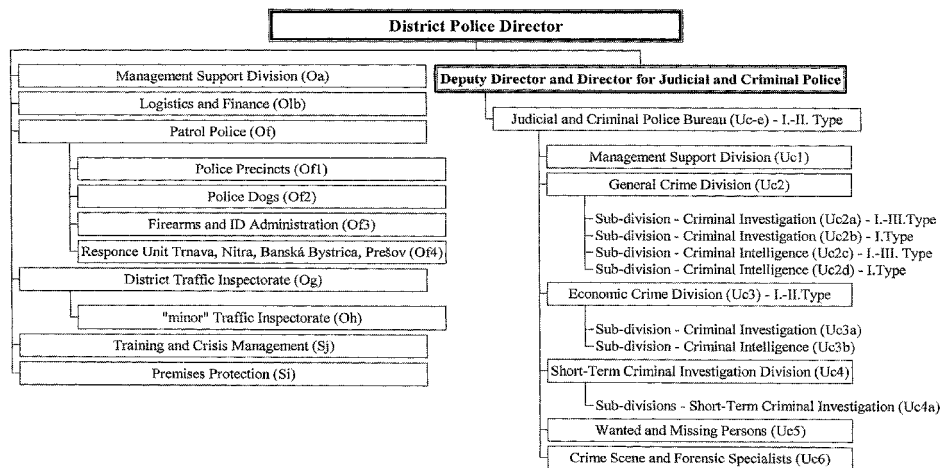
Presidium of Police Force (Continued)



Regional Directorate of Police Force



District Directorate of Police Force



Structure of Judicial and Criminal Police varies upon types of police districts.