



SLOVENIA: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS ON THE APPLICATIONS OF THE CONVENTION AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 6 October 2009.

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SUMMARY AND CONCLUSIONS OF THE WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

Conclusions

1. In June 2009, Slovenia presented its written follow-up report about implementation of the Recommendations adopted by the Working Group on Bribery during Phase 2 examination in 2007. The discussion of this report took place during the examination of Slovenia in the context of its accession to the OECD; the level of implementation of the Phase 2 recommendations being one of the criteria for the accession assessment. During the discussion of the follow-up report, the Working Group also took note of the Tour de Table discussion about a foreign bribery case that involved Slovenia; a more thorough discussion of this issue took place during the OECD accession assessment of Slovenia.

2. The Working Group welcomed efforts made by Slovenia to implement the recommendations in several areas, but noted that many recommendations were implemented partially or not implemented. The Group recognised that these delays were in part related to the uncertainty about the future of the Commission for the Prevention of Corruption. The Group congratulated Slovenia with the recent decision to assure the future of the Commission and recognised progress achieved recently in a number of areas. Finally, the Group encouraged Slovenia to accelerate its efforts further. In total, five recommendations were considered fully implemented (1d, 2c, 2e, 4b and 6d); twelve recommendations were partially implemented (1a, 1b, 1c, 2a, 2b, 3a, 3c, 4a, 5a, 6a, 6b and 7); six were not implemented (2d, 3b, 3d, 3e, 5b and 6c) and one recommendation was considered obsolete (4c).

Summary

Recommendation 1: Prevention, awareness raising and training activities

3. The Working Group welcomed the decision of the Slovenian government to guarantee the continuance of the Commission for the Prevention of Corruption, to broaden its mandate and to increase its budget. The Working Group noted that the draft Public Sector Integrity Act, which is expected to be adopted by the end of 2009, would extend the mandate of the Commission to include tasks related to foreign bribery, such as monitoring of all foreign bribery cases. Responding to the recommendation to include measures to raise awareness about foreign bribery in the national anti-corruption strategy, the Commission began amending the Action Plan for the implementation of the Resolution on Prevention of Corruption (the anti-corruption strategy); it is expected that the Action Plan would be adopted in the third quarter of 2009. The Working Group agreed that Recommendation 1a was partially implemented.

4. With regards to the recommendations to raise awareness of the Convention, the Working Group welcomed important progress in several branches of public administration. The Commission together with the Ministry for Public Administration produced and disseminated the leaflet "International Corruption". The Tax Administration translated the OECD Bribery Handbook for Tax Examiners into Slovenian, included related instructions in the Methodological Handbook for Tax Examiners, and organised training seminars. The Ministry of Interior and Police organised more than ten trainings, and included OECD recommendations in their Action Plans. The Slovenian Export and Development Bank adopted a new

policy and delivered training to address foreign bribery issues. However, similar measures in other branches of public administration and for the private sector are only at a planning stage. For instance, Guidelines for Slovenian companies abroad on the threat of corruption in international business transactions are planned to be prepared. On this basis, the Working Group decided that Recommendations 1*b* and *c* were partially implemented, and Recommendation 1*d* was implemented fully.

Recommendation 2: Detection and reporting

5. Concerning the recommendation about obligation to report instances of foreign bribery by public officials, the Tax Administration issued relevant instructions for tax examiners and auditors and prepared a draft form for reporting, which will be published as a part of the Methodological Handbook. The Ministry of Economy is planning to provide relevant training to foreign missions. The Working Group welcomed progress achieved to date and noted that these efforts needed to be continued further to promote detection and reporting of foreign bribery in all branches of public administration. Recommendation 2*a* was considered partially implemented.

6. The draft Public Sector Integrity Act provides a special chapter on the protection of whistleblowers, which may also cover foreign bribery. When these new provisions are adopted, the Commission plans to carry out related awareness raising campaign. The new Criminal Code, which was adopted in 20 May 2008 and entered into force on 1 November 2008, includes Article 197 on Mobbing, which establishes responsibility for mistreatment of whistleblowers. The Government took a decision to appoint anti-mobbing counsellors in all public institutions, this measure is under implementation. The Working Group welcomed these steps, and noted that more time is required to assess the effectiveness of these new measures in practice. Recommendation 2*b* was considered partially implemented.

7. With regard to reporting requirement for external auditors, the Slovenian Institute of Auditors examined the recommendation at its Audit Council in December 2007 and confirmed that external auditors were obliged to report possible acts of foreign bribery to the company management. However, the Council decided that obligation to report to the competent law enforcement authorities was not feasible. The Working Group agreed that requirements established by the Slovenian Institute of Auditors were compliant with the international standards and practice, and that Recommendation 2*c* was fully implemented.

8. Regarding the recommendation to encourage companies to implement adequate internal company controls, to develop monitoring bodies and to make statements in annual reports about internal compliance programmes, the Working Group noted that little information was provided on specific measures to address these issues. The Recommendation 2*d* was not implemented.

9. In order to ensure identification and reporting of foreign bribery in money laundering transactions, the Office for the Prevention of Money Laundering provides regular trainings and issues daily guidelines to financial and credit institutions, and uses FATF and EGMONT recommendations and typologies. The Working Group agreed that Recommendation 2*e* was fully implemented.

Recommendation 3: Investigation and prosecution

10. Slovenian authorities have implemented several important measures to strengthen independence of police investigations. The key measure in this direction involved the adoption in May 2009 of the amendments to the Police Acts changing the procedure for appointment and removal of the Director General of the Police. According to the new procedure, appointment and removal of the Director General can be proposed by the Minister of Interior on the basis of the decision of a special commission, which includes the President of the Council of Officials, representative of the State Prosecutors Council, and an acknowledged independent expert appointed by the President of the Republic. In addition, in October

2008, the Minister of Interior issued a Mandatory Decree which regulates reporting of the police to the executive, and expressly states that matters related to preliminary criminal investigations and proceedings shall not be reported to the Minister. Finally, in February 2008, the Government issued a decision establishing a Working Group and a Project Council tasked with preparing and implementing actions necessary to establish a National Bureau Investigation. It is envisaged that the Bureau will become operational in January 2010, will gain stronger independence and will have sufficient resources, including authority to include all necessary experts in its investigations. The Working Group noted the measures which were recently implemented, and which are planned for the future, and agreed that recommendation 3a was partially implemented.

11. With regards to recommendations to clarify the roles of the police, prosecutors and investigative judges in criminal investigations and to simplify the process for obtaining the grant of a judicial investigation, the Working Group noted that Slovenia has launched the reform of its Criminal Procedure Code; however this reform is at an early stage of elaboration. Concerning the recommendation to ensure that sufficient resources and expertise are provided to police and prosecutors at pre-trial stage, a Draft Law on Changes and Amendments to the Criminal Procedure Code, which is currently reviewed by the Parliament, modifies roles of law-enforcement bodies, establishes the leading role of the prosecutor at the pre-trial procedure and the right of the prosecutor to create joint investigative teams involving experts from other agencies. The Working Group encouraged Slovenia to adopt and implement these provisions without delay; however, Recommendation 3a remained not implemented.

12. The Working Group noted that the recommendation to ensure that evidential burden to start judicial investigations is not excessive may be addressed by the overhaul of the Criminal Procedure Code, which is planned for the future. At the same time, concerning measures to reduce court delays, measures were introduced to implement project "Lukenda", including allocation of human and material resources, and progress was reported. Globally, Recommendation 2c was considered as partially implemented.

13. Concerning the recommendation to ensure sufficient resources and specialist expertise are provided to police and prosecutors, draft Law on Changes and Amendments to the Criminal Procedure Code and the establishment of the National Investigative Bureau will address this issue through joint investigative teams. The recommendation to consider extending time limits for the authorised use of special investigative techniques can be addressed through reform of the Criminal Procedure Code. Similarly, the Ministry of Justice is considering a possibility and a method of informing prosecutors and police of all incoming MLA requests to assess if a separate investigation should be initiated in Slovenia. With regards to recommendation to adopt clear criteria for lifting immunities, Slovenia reported that the guidelines were planned to be adopted in the in the third quarter of 2009. As all reported measures are only planned for the future, Recommendations 3d and e were not implemented.

Recommendation 4: Offence of foreign bribery

14. The Working Group noted that Article 261 "Acceptance of Bribes" and Article 262 "Giving Bribes" of the new Criminal Code maintain the language, which establish criminal responsibility for accepting of a bribe by or giving of a bribe for the public official to perform or omit to perform "official acts within the scope of his official duties", and add a new provision covering "other abuse of office" by the public official. This legislative change may be sufficient to implement the Recommendation 4a; however, taking into account that the Criminal Code has only been changed recently, it is important to study the legal practice further. The Recommendation was partially implemented.

15. Articles 261 and 262 of the Criminal Code establish criminal responsibility of the intermediary of the acts of bribery, but do not establish responsibility for accepting or giving bribes through an intermediary. To cover this gap, Article 20 "Perpetrator and Accomplice" establishes responsibility of "any

person, who commits it personally or by using and directing the actions of another person (indirect perpetrator)". The Working Group agreed that Recommendation 4*b* was fully implemented.

16. The new Criminal Code maintains the distinction between responsibility for bribery for "proper" and "improper" acts of public officials, despite the recommendation to consider abolishing it as it depends on the definition of the foreign public official's under foreign law. At the same time, Article 99 provides a broad interpretation of the definition of public official, including an autonomous foreign public official. Taking into account the general practice of the Working Group and in order to ensure equal treatment between all parties to the Convention, the Working Group decided that Recommendation 4*c* was obsolete.

Recommendation 5: Liability of legal persons

17. The Working Group welcomed measures to raise awareness about the Liability of Legal Persons for Criminal Offences Act, including seminars and trainings organised for prosecutors and judges that deal with economic crime and for the police, and related articles published in Judiciary Bulletin. It encouraged Slovenia to continue these activities, including development of guidelines and trainings for other prosecutors and for police. Recommendation 5*a* was partially implemented.

18. Concerning the requirement of the Act to establish a link between the natural person and the legal person, Slovenia reported that the Ministry of Justice together with the professional public reviewed the issue and considered that this provision did not provide an obstacle for enforcement. However, as no detail was provided about the factual basis for this conclusion, and taking into account low number of case law based on the Act, the Working Group agreed that Recommendation 5*b* was not implemented.

Recommendation 6: Sanctions for foreign bribery

19. To raise awareness regarding the application of sanctions for foreign bribery, the Ministry of Justice sent a notice to the Supreme Court and to the Office of the Prosecutor General, which informed judges and prosecutors about the OECD recommendation in this field. The Working Group welcomed this measure, and invited Slovenia to implement further measures to assist the prosecutor and judicial authorities to apply economic sanctions in practice. Recommendation 6*a* was partially implemented.

20. Concerning the waiver of punishment for foreign bribery for physical persons, the Working Group noted that the provision which established that the object of bribery would be returned to the perpetrator in case the punishment was waived has been removed in the new Criminal Code. However, Part 3 of Article 262 of the Criminal Code maintains that "if the perpetrator ... had declared such an offence before it was detected or he knew it had been detected, his punishment may be remitted", providing for the discretion of prosecutors and judges. In addition, Article 163 of the Criminal Procedure Code maintains that prosecutor shall not be obliged to start criminal prosecution or shall be entitled to abandon prosecution where the Criminal Code lays does that the court may or must grant remission of penalty of the criminal offender. Concerning the waiver of punishment for legal persons, no information was provided on measures to amend Paragraph 2 or Article 11 of the Liability of Legal Persons for Criminal Offences Act or to regulate this issue through prosecutorial guidelines, as suggested in the Recommendation.¹ The Working Group decided that Recommendation 6*b* was partially implemented, and Recommendation 6*c* was not implemented.

¹. After the June 2009 meeting of the Working Group, Slovenia informed the Secretariat that the Liability of Legal Persons for Criminal Offences Act was amended in November 2008. Article 11 of the Act limited the use of effective regret to cases where the lack of supervision by the management of the company provided the ground of responsibility of the legal person, and provided additional possibility for the use of

21. Slovenia amended the Liability of Legal Persons Act in November 2008. The amendments included two additional punishments for legal persons: prohibition to participate in public procurement and prohibition to trade with financial instruments at organised market. This provides a mechanism to exclude companies convicted of foreign bribery from performing ODA contacts, as recommended by the Working Group. At the same, it appears that public agencies which provide ODA have the possibility to do so without the tender procedures, which may leave an opportunity to companies with criminal record to participate in the ODA contacts; Slovenia could consider measure to deal with the outstanding issue. However, that the measures introduced to date go beyond the Phase 2 recommendations to consider an exclusion mechanism; the Working Group agreed that Recommendation 6b was fully implemented.

Recommendation 7: Offence of money laundering

22. Article 11 of the new Criminal Code stipulates that the Code is applicable for anyone who commits a criminal offence abroad and has to be prosecuted in all signatory countries of the international treaties regardless where the offence was committed. Further, Article 14 of the Criminal Code provides that any person can be prosecuted without the condition of dual criminality. But such a prosecution can only be started under certain conditions, inter alia if authorised by the Ministry of Justice; no objective criteria are established for granting or refusing this authorisation. The Working Group welcomed the possibility to prosecute any person, but noted that the issue of authorisation needs to be further examined. On this basis, it was agreed that Recommendation 7 is partially implemented.

effective regret in cases where the management voluntarily reported the perpetrator before the offence was discovered.

WRITTEN FOLLOW UP TO PHASE 2 REPORT - SLOVENIA

Name of country: Slovenia

Date of approval of Phase 2 Report: 21 June 2007

Date of information: June 2009

Note: For the ease of a reference, please note that Recommendation 1 of this report corresponds to Paragraph 1 on page 69 of the Phase 2 Report and so on.

Part I: Recommendations for Action

Text of recommendation 1(a):

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

(a) ensure that measures for the prevention, detection and raising awareness of foreign bribery are included in the national anti-corruption strategy, and encourage effective coordination and implementation of these measures by the Commission for the Prevention of Corruption, or any other appropriate, independent body charged with preventing foreign bribery in the future (Revised Recommendation, Section I);

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

- During Q1 of 2008, the Commission for the Prevention of Corruption (hereinafter: Commission) as the institution responsible for overall co-ordination of the implementation of the Resolution on Prevention of Corruption in Republic of Slovenia (hereinafter: ACR) and implementation of the Action Plan for the Implementation of the Resolution (hereinafter: AP) began with amendments of the AP. The amendments envisage all activities that are to be undertaken by various governmental and private entities with the aim to increase prevention, detection and to raise awareness on foreign bribery.

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

- The Commission in cooperation with the Ministry for Public Administration prepared a draft Public Sector Integrity Act, which reinstates the role of the Commission, widens its powers and

establishes new areas (lobbying, financing of political parties and elections,..) of responsibility (see draft Act in the attachment No 1). The draft has passed the phase of public scrutiny procedure on

27 April 2009, and in following weeks the final draft will be prepared for the adoption by the government in the cooperation of different experts from the Commission, the Ministry for Public Administration, Chamber of Commerce and civil society. In the draft Act, the Commission will be given new tasks concerning the problem of international bribery.

- In addition, the Commission will propose amendments to the National anti-corruption strategy and send them to the Parliament for the adoption. It is expected that ACR is amended at least by Q4 2009, together with the adoption of a new Public Sector Integrity Act.
- The parliamentary elections and establishment of the new government in late autumn 2008 as well as set up of new parliamentary and government bodies caused the delay to amend the AP as well as the ACR. After the formation of a new government, the Commission and the Ministry for Public Administration began with the analysis on how many measures from the ACR were implemented already in order to see how the ACR should be amended. The Ministry has prepared a detailed report on the implementation of measures on 11 March, 2009. Now, the analyses of other public bodies are underway.

Text of recommendation 1(b) and (c):

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

(b) take measures to raise the level of awareness of the Convention and the foreign bribery offence within the public administration, including more specialised information on foreign bribery in training programmes for police, state prosecutors, judges, the tax administration and agencies that interact with Slovenian companies active in foreign markets (diplomatic representations, and trade promotion, export credit and development aid agencies) (Revised Recommendation, Section I, II and IV; 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials);

(c) take active measures to raise awareness among Slovenian business associations and companies, including SMEs, about the Convention, the offence of foreign public officials and the government's intention to enforce it, and the liability of legal persons; and work with the accounting, auditing and legal professions to raise awareness of the foreign bribery offence and encourage these professions to develop specific training (Revised Recommendation, Sections I, II.iii and V);

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

- With the aim of awareness-raising of all professionals involved in combating and prevention of economic crime and corruption, the 1st and 2nd phase OECD WG Reports and Convention are

published on the Commission's web site².

- In cooperation with the Ministry of Public Administration (hereinafter: MPA) the Commission issued leaflet "International Corruption"³ in both Slovenian and English languages. The content of the leaflet includes topics regarding combating of foreign public officials bribery (OECD Convention overview, Slovenian legal framework, reporting on cases, witnesses protection).
- Copies of the leaflet have been delivered to Slovenian Embassies, Diplomatic Missions and Consulates General via the Ministry on Foreign Affairs and the Ministry of the Economy, in addition to the Public Agency of the Republic of Slovenia for Entrepreneurship and Foreign Investments (hereinafter: JAPTI) and Police. Furthermore, copies of the leaflet have been sent to the Slovenian business entities abroad, to the public officials involved in chain of combating and preventing crime and private entities in the country. The leaflet is also published on various websites (Commission, MFA, the Ministry of the Economy, Tax Administration, JAPTI⁴) with the aim to ensure wider access to the information on foreign bribery.
- The Ministry of the Economy is organising training for the economic consultants in Slovenian Embassies during which the topic of foreign bribery will be discussed among other topics. It was envisaged that training would take place in December 2008 during regular annual meetings of the representatives of the Ministry for the Economy and economic consultants. Unfortunately the event has been postponed to June 2009. Agenda of the training includes also anti-corruption issues beside other subjects.
- The Ministry of the Economy continuously educates new economic consultants on the foreign bribery before leaving to work abroad.
- JAPTI organises trainings for Slovenian business entities four times per year in order to ensure unified standards and high level of services in this area. During seminars the topics of identifying foreign bribery and reporting of such cases are discussed.
- The Tax Administration of the Republic of Slovenia published the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on their website and on the intranet.
- In regard to raising awareness on the Convention and foreign bribery offence within the public administration, the Tax Administration Office of the Republic of Slovenia includes the topics on the Convention and obligations of the tax examiners in their regular internal instruction system organised on monthly basis. Purpose of such instructions is to inform the tax examiners on the ongoing procedures and to exchange the information related to their daily work.
- In addition, the OECD Bribery Handbook for Tax Examiners has been translated. The

² <http://www.kpk-rs.si/index.php?id=25>

³ Due to the new provisions of the CC-1 the text is under revision. New version of the leaflet will be issued by the end of June 2009.

⁴ http://www.izvoznookno.si/svetujemo/publikacije/util/bin_pub.php?id=2008111914290656

Handbook has been amended with the regulations regarding relevant domestic legislation and it was published on the Tax Administration intranet in mid May 2008.

- With the aim to promote the OECD Bribery Handbook for Tax Examiners and amendments regarding domestic legislation, the meeting of the Tax Examiners Departments' heads was held on 23 April 2008. The presentation of the handbook as well as instructions regarding further promotion was given at the meeting.
- The Tax Administration amended the Methodological Handbook for Tax Examiners (MP-DIN version 3.0 as of 7.9.2007) with the instructions and obligations of the tax examiners regarding measures that have to be taken in case bribery (including foreign bribery) is detected during tax examination. Mentioned instructions are included in chapter 12. "Cooperation with other governmental and non-governmental institutions and foreign countries", sub-chapter 12.4.6 "Prevention of Corruption". During the internal trainings and meetings, tax examiners as well as tax auditors were informed about the above mentioned instructions and obligations.
- In addition, the Tax Administration organised a two-day seminar where the Convention and problems of the prevention and combating corruption – domestic and foreign bribery- by the tax examiners and tax auditors were presented. The seminar took place on 8-9 September 2008.
- Similar seminars or workshops for the tax administration staff are planned to be organised on yearly basis and during annual "Tax Administration's Days".
- During April 2009, the Tax Administration organised two⁵ one-day seminars on "Recognition of Criminal Offences during Tax Inspection". Content of the seminar included beside other issues the presentation of the tax auditor regarding the reporting of the criminal acts, presentation of the OECD Convention and presentation of the liability of legal persons for criminal offences. Participants' were also informed on the content of the OECD Bribery Handbook for Tax Examiners.
- All training materials and all other relevant information are published on Tax Administration's intranet with intent to be at disposal to all employees.
- The Centre for the Judiciary Education at the Ministry of Justice included topics regarding the Convention and foreign bribery offences within the public administration in their training programs. The frequency of awareness raising seminars is based according to the analyses of training needs as well as court case statistics.
- The Slovenian Institute of Auditors is planning to include topics of corruption, money laundering and terrorism financing in the training programs for the external auditors. Training program will cover risky business relationships as well as corruption indicators.
- The Ministry on Foreign Affairs incorporated foreign bribery topic in regular training plan for the diplomats.

⁵ The first seminar took place in Ljubljana on 16 April 2009. The second seminar took place in Maribor on 17 April 2009.

- According to the guidelines and mandatory instructions issued on 11th of November 2007 by the Minister of Interior, the Police had to include the OECD WG recommendations in their action plan for years 2008 and 2009.
- General Police Directorate, Criminal Police Directorate (CPD) organised ten (10) trainings devoted to the investigation of corruption, including foreign bribery.⁶
- Additional two-day seminar took place in Gotenica between 6 and 7 October 2008. The topic of the seminar was 'Detecting and Investigation of the Corruption Offences in Cooperation with other Relevant State Authorities'.
- In 1Q 2009 the CPD launched web-reporting portal and anonymous reporting phone. Now, citizens can report on corruption and other offences anonymously either via web-reporting portal or via anonymous phone. Officials that work daily with these reporting systems were trained on its application.
- Based on CPD training schedule, three additional trainings dedicated to the investigation of corruption as well as foreign bribery will take place. It is planned that the first training is organized on 20 May 2009.
- All trainings'/seminars' materials, case studies and other relevant information are published on Police intranet with intends to be at disposal to all criminal investigators.
- Commission for the Prevention of Corruption gave presentations on foreign bribery to members of banking institutions (organised by Bank of Slovenia on 24 October 2008) and in two occasions to internal and external auditors (on 11 December 2008 and on 28 January 2009).
- In April 2009 the Commission for the Prevention of Corruption issued training curriculums on various topics, e.g. Prevention of Corruption in the Republic of Slovenia; Strategic Modelling, Managing and Exercising, International Standards in Fighting against Corruption, Prevention and Investigation of Foreign Bribery, Public Officials' Integrity, Transparency of Political Parties' Financing and Transparency of Lobbying. Mentioned seminar topics are developed for public officials, professional associations' members as well as for the private sector employees. It is envisaged that seminars will become operational on a regular basis by the end of year 2009. Seminar modules are published on the Ministry of Public Administration website.

If no action has been taken to implement recommendation 1(b) and (c), please specify in the space below the measures you intend to take to comply with the recommendation and the

⁶ On 18 February 2008 in Novo Mesto, 22 March 2008 in Postojna, on 19 June 2008 in Tacen, on 12, 17, 18, 20, and 24 November 2008 in Kranj, on 16 December 2008 in Murska Sobota and 12 March 2009 in Krško.

timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(d):

With respect to prevention, awareness raising and training activities to promote implementation of the Convention and the Revised Recommendation, the Working Group recommends that Slovenia:

(d) in relation to official export credit support, ensure that SID Bank's anti-bribery declarations and policies expressly refer to bribery of foreign public officials, and consider adherence with the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits (Revised Recommendation, Section I and II).

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

- Following the implementation of the Phase 2 recommendations, the Slovenian Export and Development Bank (SID Bank) revised the anti-bribery policy and adopted new Regulations of the procedures and measures on prevention of corruption. New Rules and revised anti-bribery policy entered into force on 1 April 2008.
- Revised anti-bribery policy took into account full scope of the recommendations and envisages an express reference to the foreign bribery offence, definition of bribery as it is given in the Criminal Code. Applicable criminal sanctions for the offences of (foreign) bribery are mentioned in the application form for official export credit support. Revised policy has been adjusted in all areas of the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credit.
- The anti-bribery policy is published on SID Bank website together with anti-corruption leaflet⁷.
- SID Bank reviewed their education and training curriculum for new employees. Results show that all new employees participate in basic trainings and are acquainted with the anti-bribery policy and with new Regulations of the procedures and measures on prevention of corruption.
- In general, SID Bank's activities refer especially to international economic business. However, SID Bank as a financial institution follows the same rules and procedures also during other actions, typical for the financial institution. In this respect SID Bank applies all regulations concerning prevention of money laundering and terrorism financing.
- SID Bank adopted internal rules dealing with liability of employees regarding money laundering and terrorism financing. Indicators of suspicious transactions are included in

⁷<http://www.sid.si/sidslo.nsf/f1?OpenFrameSet&Frame=main&Src=/sidslo.nsf/0/769E9DB2BCFD03D2C12571A20026D383?OpenDocument>

mentioned rules.

- With regard to suppression of corruption, money laundering and terrorism financing special training and additional workshop were organised. Events covered prevention methods, international standards and best practises in the field of credits and insurances.
- Representatives of the SID Bank were actively involved in meetings of “Market Openness on Officially Supported Export Credits” OECD evaluation regarding to the process of the Accession Candidate Country Performance against Agreed Performance Benchmarks.

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

Text of recommendation 2(a) and (b):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Slovenia:

(a) remind public officials of their obligation to report instances of bribery of foreign public officials, and issue clear instructions to be followed by employees of export credit, trade promotion and development aid agencies and diplomatic representations on how to recognise indications of foreign bribery and on the concrete steps to take if suspicions or indications of foreign bribery should arise, including reporting the matter as appropriate to the Slovenian law enforcement authorities (Revised Recommendation, Sections I, II and VI.iii);

(b) take measures for enhancing and promoting whistleblower protection mechanisms for public and private sector employees who report suspicious facts that may indicate foreign bribery, in order to encourage them to report such facts without fear of retaliation (Convention, Article 5; Commentary 27; Revised Recommendation, Sections I and V.C.iv);

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

- In addition to the activities mentioned under the recommendation 1 b) and c) the following actions have been taken:
- Tax Administration issued instructions and obligations for tax examiners and tax auditors in order to recognize where a high level of risk of foreign bribery is present. Furthermore, the instructions on risky areas for the bribery of foreign public officials as well best practices are under preparation. Mentioned instructions are added as part of the translated OECD Bribery Handbook for Tax Examiners (mentioned under paragraph 1, b), bullet 4) that has been issued and published in May 2008.
- Tax inspectors and tax auditors are familiar with procedures in cases where suspicion on

corruption offences is registered during tax auditing. They were informed about the draft form for reporting. Procedures and draft form was presented to the tax inspectors and tax auditors during seminars on 16 and 17 April 2009.

- Mentioned instructions will be published as part of the Methodological Handbook for Tax Examiners (MP-DIN version 3.0 as of 7.9.2007). Currently, the Tax Administration is finalising the reporting form that will be available no later than mid May 2009.
- Regarding whistleblower protection mechanisms, Legal Office of the Tax Administration issued the instructions "Protection of the tax examiner in a case of a threat" on 23 April 2008. Mentioned document has been distributed to all tax examiners and auditors.
- Legal Office of the Tax Administration issued Guidelines on procedures in cases of threats to Tax Administrations' employees. Mentioned document is at disposal to all employees and its content was presented to tax inspectors and tax auditors during seminars that took place on 17 and 19 March 2009 in Ljubljana and Maribor.

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

In the draft Public Sector Integrity Act, mentioned under Recommendation 1a, there is a special chapter (III) on the protection of whistleblowers in general, which will also serve for the protection of whistleblowers in the area of foreign bribery (see the attachment No 1). It is planned that after the adoption of the law, presumably in Q4 of 2009, the Commission will organise large awareness-raising campaign on all novelties of the law, including whistleblowing.

Text of recommendation 2(c):

2. With respect to the *detection and reporting* of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Slovenia:

(c) introduce a clear requirement for external auditors to report all indications of possible acts of foreign bribery to company management and, as appropriate, to corporate monitoring bodies; consider requiring external auditors, in the face of inaction after appropriate disclosure within the company, to report such suspicions to the competent law enforcement authorities; and consider whether the criteria requiring certain Slovenian companies to submit to an external audit are adequate in that they ensure that all significant Slovenian companies conducting business internationally with public sector partners submit to such an audit (Revised Recommendation, Sections I, II.iii and V.B);

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

- Slovenian Institute of Auditors (hereinafter: SIA) debated the OECD recommendations during its Auditing Council meeting on 13th November 2007. The Council agreed that auditors are obliged to report fraud and breach of the law to the company management in accordance with international auditing standard No.240 – The Auditor’s Responsibility to Consider Fraud in the Audit of Financial Statements and No.250, The Auditor’s Responsibilities Relating to Laws and Regulations in an Audit of Financial Statements respectively.
- On 5 December 2007, SIA informed all auditing societies on OECD recommendations, especially, on continuous reporting of all indications of possible acts of foreign bribery to companies’ management and, as appropriate, to corporate monitoring bodies. If after appropriate disclosure within the company there is no action, the auditing societies should consider all possibilities for reporting the matter to the competent authorities.
- In autumn 2008, SIA began to cooperate with Association of Supervisory Board Members with the purpose to raise knowledge of supervisory board members and members of audit committees among others on duties of auditors in the field of examining and reporting of fraud and criminal offences in companies, as well as to promote mutual cooperation between all parties in this field.
- On 29 January 2009, SIA organised a seminar on “*Internal Auditing and Prevention of Fraud*”. A representative of the Commission delivered the presentation on prevention of corruption, including foreign bribery
- On 19 May 2009, SIA scheduled additional seminar for external auditors, tax inspectors and tax auditors on “*Methods for Detection of Corruption and Money Laundering*”. The presentations will be delivered by the representatives of the Tax Administration, the Commission for the Prevention of Corruption and the Office for the Prevention of Money Laundering.
- The Ministry of Justice is considering the possibility of inclusion of mandatory reporting by external auditors for certain criminal acts.

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

Text of recommendation 2(d):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Slovenia:

(d) take additional measures to encourage Slovenian businesses active in foreign markets (i) to implement adequate internal company controls and standards of conduct, with a particular focus on the control of foreign operations and on compliance with the law criminalising foreign bribery; (ii) to develop monitoring bodies (such as audit committees) that are effective and independent from management; and (iii) to make statements in their annual reports about their internal compliance programs for the prevention and detection of foreign bribery (Revised Recommendation, Sections I, II.iii and V.C);

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

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

- In addition to the activities mentioned under the recommendations 1 b) and c), guidelines for Slovenian companies abroad on the threat of corruption in international business transactions are planned to be prepared.
- Guidelines will be presented during the seminar planned to be held during Q3 of 2009 organised by the Chamber of Commerce in cooperation with the Commission for the Prevention of Corruption.

Text of recommendation 2(e):

2. With respect to the detection and reporting of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Slovenia:

(e) with regard to money laundering and foreign bribery, ensure that the institutions and professions required to report suspicious transactions, their supervisory authorities, as well as the OMLP itself, receive appropriate directives and training (including typologies) on the identification and reporting of information that could be linked to active bribery of foreign public officials (Convention, Article 7; Revised Recommendation, Sections I and II.iv).

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

- The Office for the Prevention of Money Laundering (hereinafter: OPML) includes the foreign public official bribery topic in their regular training program. Moreover, the OPML implements in their daily work the Financial Action Task Force (FATF) recommendations, findings and typology regarding the prevention of money laundering related to bribery. The OPML follows the EGMONT recommendations concerning the prevention and combating of

corruption, especially of politically exposed persons (PEPs). In accordance with the Law, the OPML issues daily guidelines to financial and credit institutions.

- On October 2007, the OPML representatives attended the international round table discussion on "Prevention of Corruption in Europe".
- From August 2007 till May 2009 the OPML organised sixteen seminars for obligors under the Law on Prevention of Money Laundering and Terrorism Financing. The topics of seminars included recommendations and guidelines for obligors when dealing with PEPs, especially those from countries with high level risk of corruption.
- In addition, representatives of the Commission for the Prevention of Corruption and the Office for the Prevention of Money Laundering (hereinafter: OPML) attended as lecturers a two-day seminar organised by the Slovenian Bank Association in October 2008. The content of the seminar also included the procedures of the identification of the PEPs. According to the PEPs problematic, the Bank of Slovenia issued instructions for the implementation of the Law on Money Laundering and Terrorism Financing as well as the methods for identification of PEPs, who represent greater risk for money laundering, especially if they are from countries with high level risk for corruption. An expert from the United Kingdom actively participated at the seminar. Besides the money laundering issue, the aspect of corruption, especially the foreign bribery, was discussed at the seminar.
- From October 2008 till May 2009 representatives of the OPML were actively involved in preparation of the Guidelines for the Prevention of Money Laundering and Terrorism Financing for dealers with real-estate and precious materials. Currently, the draft of the Guidelines is under reconciliation with particular obligors.
- All known typologies of money laundering and terrorism financing are included in various trainings done by OPML on a regular basis. Trainings are modified for each obligor depending on types of services for costumers.

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

- Changes and amendments of the Law on Money Laundering and Terrorism Financing with the aim to increase effectiveness of actions taken for the prevention of money laundering and terrorism financing are under preparation. It is foreseen that amendments will be adopted by the end of year 2009.

Text of recommendation 3(a):

3. With respect to the investigation and prosecution of foreign bribery and related offences, the

Working Group recommends that Slovenia:

(a) take further steps to ensure that police investigations of the foreign bribery offence cannot be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved (Convention, Article 5; Commentary 27; Revised Recommendation, Section I);

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

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

- According to the Commission's and Police's action plans, in Q3 of 2009 a seminar for the law enforcement will be organised and guidelines will be issued.
- In December 2008 Slovenian Ministry of the Interior and the Police started with a project on the establishment of a specialised police office for investigation of economic crime offences and corruption. The office will gain stronger independence, it will have enough resources and it will be authorised to include all necessary experts in the investigation of economic crime offences and corruption. The first draft solution was presented by the Police on 3 April 2009 and endorsed by the government immediately after. Multidisciplinary Working Group represented by all agencies in the field (i.e. Commission, OPML, Court of Audit, Tax Administration Office,..) has been formed and it is expected that the new office will become operational until the end of 2009. The most important characteristic of the new office will be to operate strictly according to the requirements of the criminal legislation in Slovenia without taking into consideration any undue influence.

Text of recommendation 3(b), (c) and (d):

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

(b) introduce the necessary legislative measures in order to clarify the roles and duties of the police, prosecutors and investigative judges in the conduct of criminal investigations; require prosecutors to more actively initiate, direct and supervise criminal investigations; simplify and streamline the process for obtaining the grant of a judicial investigation and reduce, to the extent possible, the duplication of effort and procedures between the pre-trial and trial phase (Revised Recommendation, Section I; Annex to the Revised Recommendation, Paragraph 6);

(c) ensure that the evidential burden placed on law enforcement authorities for the grant of a judicial investigation is not excessive; and with regard to court delays, determine whether

increased resources are required or if there are any legal obstacles that could be remedied, without removing important institutional guarantees that ensure the independence of the judiciary (Convention, Articles 5 and 6; Commentary 27; Revised Recommendation, Section I; Annex to the Revised Recommendation, Paragraph 6);

(d) ensure that sufficient resources and specialist financial and accounting expertise are provided to police and prosecutors and ensure that they are used at an early stage in the pre-trial procedure in order to enable them to more effectively detect, investigate and prosecute complex economic crimes cases, including foreign bribery offences; seriously consider extending the maximum time limits for the authorised use of special investigative techniques in criminal investigations; and adapt the existing processes for handling MLA requests to ensure that police or state prosecutors are able to scrutinise incoming MLA requests so as to assess and determine whether a separate investigation should be initiated in Slovenia (Convention, Articles 5 and 6; Commentary 27; Revised Recommendation, Section I and VII; Annex to the Revised Recommendation, Paragraph 6);

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

- The Draft Criminal Procedure Code (CPC-1) that is under the preparation, at the very beginning envisages changes of current pre-investigation procedure as well as the role and duties of the law enforcement agencies. Namely, under the very first draft, the Public Prosecutor is to lead the investigation. The draft Code abolishes the judicial investigation as well as the institute of an investigative judge. Instead of the pre-investigation procedure and judicial investigation the draft Code foresees only one phase of investigation – investigation procedure conducted only by the Public Prosecutor or in cooperation with the Police. According to the draft Code, the Public Prosecutor and Police during the investigation procedure shall collect all evidence for the trial, including perpetrators', witnesses' or expert witnesses' interrogation. Under the draft Code, the Court shall only undertake judicial investigation procedure for acts that infringe constitutional human rights and fundamental freedom, and only exceptionally undertake judicial investigation to take evidence for making the judgement.
- Based on the text above, the draft CPC foresees the decrease of the evidential burden for the grant of a judicial investigation placed on the law enforcement.
- After the formation of a new government the draft of the CPC-1 was withdrawn from the interdepartmental reconciliation. The new working group was nominated by the government, which is editing the previous draft of the CPC-1.
- Nevertheless, it is important to stress that the Draft Law on Changes and Amendments of the Criminal Procedure Code (hereinafter: Draft CPC-J) was sent to the governmental procedure. Beside others, Draft CPC-J also deals with the role of the competent authorities during the pre-trial procedure. Namely, the Article 160a that defines cooperation during the pre-trial procedure especially in a case of organised and economic crime has been modified in way as

follows:

“Proposed text of the new Article 160a

(1) The public prosecutor may in exercising his authority under this Act set guidelines for police work, work of the joint investigation teams (Article 160.b) and work of other competent authorities dealing with tax, customs, financial transactions, securities, competition protection, prevention of money laundering, prevention of corruption, illegal drugs and inspection supervision by giving directions, expert opinions and proposals for the information gathering and execution of other measures coming within the competence of the police, with a view to detecting a criminal offence and its perpetrator or gathering information necessary for his decision.

(2) In the case of serious criminal offences, especially dealing with economic crime, corruption and organised crime that are subject to pre-trial procedure and require longer and are directed by various competent authorities pursuant to previous paragraph, the head of the competent public prosecution office may *ex officio* or by the police written request establish joint special investigation team.

(3) Joint special investigation team is directed by the competent public prosecutor, the heads of the competent authorities pursuant to previous paragraph nominates members of the joint special investigation team.

(4) The head of the competent public prosecution office decides on establishment of the joint special investigation team, its composition, tasks and activities with a written request after agreeing with the heads of the competent authorities pursuant to the second paragraph of this Article. The investigation leader and his tasks are also determined in this written request. A copy of this written request is immediately delivered to the State Prosecutor General by the head of the competent public prosecution office.

(5) The procedure, instances, terms and manner of the directing and informing referred to in the first paragraph of this Article shall be prescribed by the Government of the Republic of Slovenia.”

- Regarding court backlogs, the Ministry for Justice is implementing the project “Lukenda” in order to eliminate them by 2010. Project envisages to ensure proper premises, adequate number of human resources and professional staff engaged on temporarily bases as well as to ensure stimulation of judges and court administrative staff for their work.
- Regular annual trainings for the public prosecutors are organised by the Centre for the Judiciary Education within the Ministry of Justice. Trainings deal with general as well as specific topics related to their work. In year 2007, 250 public prosecutors attended various trainings and seminars. The training for judges that work on economic crime cases is organised once per year. The topics related to the economic crime and corruption will be included in future trainings.
- According to the Convention on Mutual Legal Assistance on Criminal Matters between

European Countries issued in accordance with European Union Treaty, the requests are sent directly to the competent judiciary authorities. Requests sent by the International Criminal Court to the Ministry of Justice are forwarded to the Supreme Court, General Prosecution Office and General Police Directorate. The requests on mutual legal assistance of the non-EU member states are sent to the competent District Court.

- Based on the above mentioned, the Ministry of Justice is taking under the consideration a possibility and a method of informing Public prosecutors and Police on all mutual legal assistance requests.

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

- It is envisaged that the Centre for the Judiciary Education within the Ministry of Justice in cooperation with the Commission for the Prevention of Corruption will amend and review education and training curriculum for judges and prosecutors. It is planned that issues of the investigation of serious crime, economic crime, financial investigation and corruption are part of the training on regularly basis. New curriculum will get in to the force in January 2010.
- See also answer to the recommendation 3(a) on the future establishment of the new police office.

Text of recommendation 3(e):

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

(e) take measures, within the constitutional principles of the state, in order to ensure that immunity from criminal proceedings available to certain designated office holders does not impede the effective investigation, prosecution and adjudication of foreign bribery cases and related offences. These measures could include the adoption of guidelines establishing clear criteria for lifting the immunity of office holders, especially in relation to non-professional immunity (Convention, Article 5; Commentary 27; Revised Recommendation, Paragraphs I, II).

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

If no action has been taken to implement recommendation 3(e), please specify in the space

below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

- According to the Action plan, the Commission and the Legislative and Legal Service of the Parliament will prepare guidelines for lifting the immunity of office holders. After their adoption, the guidelines will be published. Since there were parliamentary elections in autumn 2008, it is envisaged that working group for preparation of guidelines will start to work after the National Assembly holidays, in Q3 2009.

Text of recommendation 4(a), (b) and (c):

4. With respect to the offence of foreign bribery, the Working Group recommends that Slovenia:

(a) ensure that all bribes to a foreign public official to obtain any use of the official's position – whether or not within the official's authorised competence and whether or not for the purpose of obtaining an “official” act – constitute the basis for a foreign bribery offence (Convention, Article 1);

(b) ensure that bribery through an intermediary constitutes the basis for a foreign bribery offence (Convention, Article 1);

(c) ensure that a reference to foreign law is not needed for defining the foreign public official's duty to exercise judgment or discretion impartially, and accordingly – for the purpose of the foreign bribery offence – consider abolishing the distinction between bribery for obtaining a “proper” and an “improper” act/omission by the foreign public official, as this distinction depends on the definition of the foreign public official's duty and level of discretion as provided under foreign law, and on the strength of the impartiality requirements and safeguards defined therein (Convention, Articles 1 and 3; Commentary 3)

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

- On 20 of May 2008, a new Criminal Code (KZ-1, hereinafter: CC-1) has been adopted by the Parliament. The new CC-1 entered into the force on 1 November 2008. During the preparation of the CC-1 the legislator considered the OECD WG recommendations. The most important articles of the CC-1 are the following ones:

*“Meaning of Terms of the Penal Code
Article 99*

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

1) a member of the National Assembly, a member of the National Council, and a member of a local or regional representative body;

- 2) a Constitutional Court judge, a judge, a lay judge, state prosecutor, or state defender;
- 3) a person carrying out official duties or exercising a public function with management powers and responsibilities within a state authority;
- 4) any other person exercising official duties by authorisation of the law, of by-law or of the contract on arbitration concluded on the basis of the law;
- 5) military person designated as a such with special regulations in instances, when the act is not already criminalised as a criminal offence against military duty;
- 6) a person in a foreign country carrying out legislative, executive or judicial function, or any other official duty at any level, providing that he/she meets the substantive criteria under points 1, 2, or 3 of this paragraph;
- 7) a person recognised as an official within a public international organisation providing that he/she meets the substantive criteria under points 1, 2, or 3 of this paragraph;
- 8) a person carrying out judicial, prosecutorial or other official function or duty with the international court or tribunal.
- (2) For the purpose of this Penal Code the term member of the military shall mean: a private, an officer, a junior officer and person performing military service as a profession, a soldier in voluntary or involuntary military service, and a reservist of a mandatory or contract reserve on military duty.
- (3) Elections, ballots and voting shall mean elections of the president of the republic, members of the National Assembly, members of the National Council, members of the European Parliament, municipal or provincial elections, and legislative referenda and other referenda prescribed by the Constitution.
- (4) Extra-marital community according to this Penal Code shall mean a regular long-term living community of man and woman who are not married.
- (5) A document shall denote any writing, data carrier or other object appropriate and intended to produce evidence on any fact relevant to legal relations.
- (6) Movable property shall mean any form of energy generated or accumulated for the purposes of lighting, heating, radiation, drive, locomotion or transmission of voice, picture or text across distances. Unlawful handling of the objects pursuant to this provision or immovable property or parts of this property shall not count as criminal offences if the result was negligible pecuniary loss.
- (7) Duress shall also mean the use of hypnosis, intoxicating drugs or other special means for this purpose in order to lead a person against his will into a state of unconsciousness or to break down his resistance.
- (8) A motor vehicle shall mean any machine-driven vehicle operating on land, water or in the air.
- (9) Property benefit, damages or value shall mean the amount during the commitment of a criminal offence which
- 1) does not exceed 500 Euros relating to small property benefit, damages or value;
 - 2) does not exceed 5000 Euros relating to substantial property benefit, damages or value;
 - 3) does not exceed 50,000 Euros relating to large property benefit, damages or value.”

*“Acceptance of Bribes
Article 261*

(1) An official or a public officer who requests or agrees to accept for himself or any third person an award, gift or other property benefit, or a promise or offer for such benefit, in order

to perform an official act within the scope of his official duties which should not be performed, or not to perform an official act which should or could be performed, or make other abuse of his position, or whoever serves as an agent for the purpose of bribing an official, shall be sentenced to imprisonment for not less than one and not more than eight years and punished by a fine.

(2) An official or a public officer who requests or agrees to accept for himself or any third person an award, gift or other property benefit, or a promise or offer for such benefit, in order to perform an official act within the scope of his official duties which should or could be performed, or not to perform an official act which should not be performed, or make other use of his position, or whoever intermediates in such a bribery of the official, shall be sentenced to imprisonment for not less than one and not more than five years.

(3) An official or a public officer who requests or accepts an award, gift or other favour with respect to the performance of the official act under preceding paragraphs after the official act is actually performed or omitted, shall be punished by a fine or sentenced to imprisonment for not more than three years.

(4) The accepted award, gift and other benefit shall be seized.”

*“Giving Bribes
Article 262*

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

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

(3) If the perpetrator under the preceding paragraphs who gave the award, gift or other benefit on request of an official or public officer, had declared such an offence before it was detected or he knew it had been detected, his punishment may be remitted.”

*“Accepting Benefits for Illegal Intermediation
Article 263*

(1) Whoever accepts an award, gift or any other favour or promise or offer for such a favour for himself or any third person, in order to use his rank or real or presumptive influence to intervene so that a certain official act be or not be performed, shall be sentenced to imprisonment for not more than three years.

(2) Whoever uses his rank or his real or presumptive influence to intervene either for the performance of a certain official act which should not be performed or for the non-performance of an official act which should or could be performed, shall be punished to the same extent.

(3) If the perpetrator, prior to or after the intervention, accepts any award, gift or other favour

for himself or any third person in exchange for his intervention referred to in the preceding paragraph, he shall be sentenced to imprisonment for not less than one and not more than five years.

(4) The accepted award, gift and other benefit shall be seized.”

*“Giving of Gifts for Illegal Intervention
Article 264*

(1) Whoever promises, offers or gives an award, gift or any other favour to another person for himself or any third person, in order to use his rank or real or presumptive influence to intervene so that a certain official act be or not be performed, shall be sentenced to imprisonment for not more than three years.

(2) Whoever promises, offers or gives an award, gift or any other favour to other person for himself or any third person, in order to use his rank or real or presumptive influence to intervene either for the performance of a certain official act which should not be performed or for the non-performance of an official act which should or could be performed, shall be sentenced to imprisonment for not less than one and not more than five years.

(3) If the perpetrator under the preceding paragraphs who gave the award, gift or other benefit on request of the illegal intermediary, had declared such an offence before it was detected or he knew it had been detected, his punishment may be remitted.”

- In addition to bribery through an intermediary, Slovenian criminal legislation uses the institute of participation in a criminal offence – in case that offender is not criminal liable, the assistant or abettor shall be punished as offenders. However, the Ministry of Justice continues to examine possible needs for further clarification.

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

Text of recommendation 5(a):

5. With respect to the liability of legal persons, the Working Group recommends that Slovenia, in relation to the Liability of Legal Persons for Criminal Offences Act:

(a) take further steps to raise awareness of police and prosecutors (e.g. through guidelines and training) about the Act to ensure that possible contraventions of the law by legal persons are actively investigated and prosecuted (Convention, Article 2; Revised Recommendation, Section I; Annex to the Revised Recommendation, Paragraph 6);

(b) undertake a review of the Act to ensure that the elements required to prove a link between the natural person that perpetrated the crime and the liability of the legal person under the Act are not obstacles to effective enforcement of the Act (Convention, Articles 2 and 3; Revised Recommendation, Section I).

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

- In accordance with the recommendation b), the Ministry of Justice in cooperation with professional public reviewed the law in the light of its effective enforcement. The findings show that required elements to prove a link between natural person and the liability of a legal person are not obstacles. Nevertheless, the low number of convictions is the result of a low awareness, and a low priority of investigation and criminal prosecution of legal persons.
- For all these reasons, seminars and trainings on “liability of legal persons” were organised for prosecutors and judges that deal with economic crime as well as for the Police. Furthermore, specific articles on liability of legal persons (e.g. criminal offences regarding tax and finance evasion, official duties and public powers) are published in Judiciary bulletin, and will continue to be discussed during future trainings.
- The issue of investigation and criminal prosecution of the offences regarding legal persons will continue to be discussed during future trainings courses. See also answers under recommendation 1. b).

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

Text of recommendation 6(a), (b) and (c):

6. With respect to sanctions for foreign bribery, the Working Group recommends that Slovenia:

(a) take measures to draw to the attention of prosecutorial and judicial authorities on the importance of applying sanctions which are sufficiently effective, proportionate and dissuasive on natural and legal persons convicted for foreign bribery offences, in particular emphasising the importance of adequate economic sanctions (Convention, Article 3; Revised Recommendation, Section I);

(b) either amend the waiver of punishment provision for cases where the briber reports solicitation by the official before the offence is discovered (i.e. for effective regret) in paragraph 3 of article 268 of the Criminal Code to ensure it does not contravene the Convention, or in some other appropriate way ensure that the law does not contravene the Convention, e.g. through issuing prosecutorial guidelines (Convention, Articles 1 and 3; Revised Recommendation, Section I);

(c) either amend the waiver of punishment provision in paragraph 2 of article 11 of the Liability of Legal Persons for Criminal Offences Act to exclude its application to the offence of foreign bribery, or in some other appropriate way ensure that the law does not contravene the Convention, e.g. through issuing prosecutorial guidelines (Convention, Articles 1, 2 and 3; Revised Recommendation, Section I);

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

- The Ministry of Justice sent the official notice to the Supreme Court and the Office of the State Prosecutor General with the aim to raise awareness regarding the importance of applying sanctions for foreign bribery. Mentioned issue will be also discussed during future trainings.
- Regarding the waiver of punishment provision for cases where a briber reports solicitation by the official before the offence is discovered Paragraph 3 of Article 262 of the new CC-1 defines that "If the perpetrator under the preceding paragraphs who gave the award, gift or other benefit on request of the illegal intermediary, had declared such an offence before it was detected or he knew it had been detected, his punishment may be remitted." The same provision is also applied in Paragraph 3 of Article 264 - Giving of Gifts for Illegal Intervention. Please, see also answers under 4(a), (b) and (c).
- The Office of the Prosecutor General is considering the possibility and needs to issue unified prosecutorial guidelines on the subject of the waiver of punishment (the provision anticipated in Paragraph 3 of articles 262 and 264 of the CC-1 and Paragraph 2 of Article 11 of the Liability of Legal Persons for Criminal Offences Act).

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

Text of recommendation 6(d):

6. With respect to sanctions for foreign bribery, the Working Group recommends that Slovenia:

(d) consider introducing a mechanism to exclude companies convicted of foreign bribery from performing ODA contracts (Convention, Article 3 Paragraph 4; Revised Recommendation, Section VI.iii).

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

- Slovenia amended the Liability of Legal Persons for Criminal Offences Act and amendments were published in Official Gazette No 65/08. Amendments include two additional punishments for legal persons. Prohibition of public procurement participation and Prohibition of trading with financial instruments at organized market are new sanctions for legal persons, which can be declared by the court decision in connection with bribery offences and economic crime offences. Changes entered into force on 1 November 2008.
- In cooperation with other governmental institutions the Ministry of Justice is examining

additional possible mechanisms in this area.

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

Text of recommendation 7:

7. With respect to the offence of money laundering, the Working Group recommends that Slovenia take measures for ensuring that it can effectively be enforced in cases where the predicate offence is foreign bribery regardless of the place where the bribery occurred; (Convention, Article 7; Commentary 28).

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

- Among other provisions, Article 11 of the new CC-1 stipulates that Criminal Code of the Republic of Slovenia is applicable for anyone who commits a criminal offence abroad and has to be prosecuted in all signatory countries of the international treaties regardless where the offence was committed.
- However, the Ministry of Justice is examining possible additional needs for further clarification of dual criminality.

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

Part II: Issues for Follow-up by the Working Group

Text of issue for follow-up 8(a):

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:

(a) whether bribery of foreign public officials covers (i) bribery of employees of foreign public enterprises regardless of their legal form, including those under the indirect control of a foreign government(s), and (ii) bribery of persons exercising a public function for any organised foreign area or entity, such as an autonomous territory (Convention, Article 1; Commentaries 14 and 18);

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

The criminal offence of bribery, which also includes bribery of foreign public officials in the new Criminal Code of Slovenia (Official Gazette of RS, no. 55/08 and 66/08-popr., hereinafter: CC-1) is defined in Article 262 entitled Giving bribes. The criminal offence under this Article exists if a person bribes a public official or a civil servant. Compared with the previous Criminal Code, the CC-1 that entered into force in November 2009, defines in the criminal offence besides "public official" also "civil servant", making the zone of the criminal offense quite extensive.

A "civil servant" under the first paragraph of the Article 1 of the Law on Civil Servants (Official Gazette of RS, no. ZJU 63/07-UPB3, 65/08, 69/08-ZTFI-A, 69/08-ZZavar-E) is any person who concludes an employment relationship in the public sector. On the basis of the second paragraph of the same Article, public sector consists of state bodies and local self-government bodies, public agencies, public funds, public institutions and public economic institutions and other public entities, if indirect users of the national budget or the budget of the local community.

Based on the above mentioned, it is clear that criminalization of acts according to Article 262 CC-1 includes bribery of a person working "in the public sector", irrespective of the legal form through which public sector carries out its tasks, and whether it performs duties for an internationally recognized country or another entity.

However, if the act was committed against a person employed in a private sector, which would for example country dominate by the virtue of its shareholding, this would be an offence defined in Article 242 of the CC-1, namely illegal giving of gifts.

Text of issue for follow-up 8(b):

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:

b) whether interpretations of the term “insignificant” in article 28 of the Liability of Legal Persons for Criminal Offences Act (giving prosecutors the discretion not to initiate criminal proceedings against a legal person) unduly restrict the liability of legal persons (Convention, Article 2);

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

Opportunity decision-making of state prosecutors based on Article 28 of the Law on the Liability of Legal Persons for Criminal Acts (Official Journal of RS, no. 98/04-UPB-1 and 65/08; ZOPOKD) is severely restricted. Therefore, in the opinion of the Ministry of Justice, the notion of “insignificant” in practice does not limit the liability of legal persons for criminal acts.

Text of issue for follow-up 8(c):

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:

c) the criminal and administrative sanctions, in particular fines and confiscation, imposed on natural and legal persons for (i) foreign bribery, and (ii) accounting offences (Convention, Articles 3 and 8);

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

Please see the Attachment No 2.

Text of issue for follow-up 8(d):

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:

d) the application of the conditions laid down in paragraph 1 of article 11 of the Liability of Legal Persons for Criminal Offences Act (reducing a sentence against a legal person where the management or supervisory body reports the perpetrator) (Convention, Articles 3 and 8);

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

Please see the Attachment No 2.

Text of issue for follow-up 8(e):

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:

e) the establishment of jurisdiction over legal persons when the offence takes place in part or wholly abroad (Convention, Article 4);

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

To the extent that the act was committed partly in the territory of the Republic of Slovenia, in any case we can use the CC-1. It is important to point out that, under the first paragraph of Article 19 of the CC-1 the offence took place where the offender was acting or should have been acting, as well as where the prohibited consequence occurred.

If the action of a legal entity occurred abroad Article 3 of the Rule of Law on the Liability of Legal Persons for Criminal Acts (Official Journal RS, št.98/04-UPB1 and 65/08; ZOPOKD) is applicable. In this part of the last novelty (Official Gazette of RS, no. 65/08; ZOPOKD-B) did not lead to innovations.

Article 3 of ZOPOKD reads:

"The territorial application of the law
Article 3

(1) According to this law, the domestic and foreign legal persons are responsible for crimes committed in the territory of the Republic of Slovenia.

(2) Domestic and foreign legal person under this Act are also responsible for a crime committed abroad if the legal person has its headquarters in the territory of the Republic of Slovenia, or it carries its business in the territory, the offense has been committed against the Republic of Slovenia, its citizens or domestic legal persons.

(3) Domestic legal person under this Act is also responsible for a crime committed abroad against a foreign country, foreign nationals or foreign legal entity, where the liability of legal persons does not depend on the conditions set out in the 12th and the second paragraph of the 13th Article of the Penal Code and special conditions for the prosecution of the offender from the 14th Article of the Penal Code, except for those in the third and fifth paragraph. "

Text of issue for follow-up 8(f):

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:

f) whether the money laundering offence can effectively be prosecuted (i) in the absence of a prior conviction for the predicate offence of bribery, and (ii) where the perpetrator does not know from which specific offence the proceeds were derived (Convention, Article 7);

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

For the existence of a criminal offence of money laundering (245. Art CC-1) the Slovenian legislation does not require prior conviction for a predicate criminal offence, nor it requires that the perpetrator knows criminal acts through which money or property that was the subject of money laundering was acquired—it requires only that the offender knows that the property was acquired by the criminal act. Courts in the existing cases were of the opinion that it is required for the offence of money laundering to be proven with certainty that the money or property, which was the subject of money laundering, are proceeds of crime.

According to the current low number of finalised cases dealt with by the courts in connection with the offence of money laundering and in respect to higher number of cases that are currently in the final phase of the trial, we expect that the evidentiary standards necessary for a

conviction for the offence of money laundering will clearly define the specific procedures and solve the problem of evidentiary standards in the following years.

The preparation of the Act on the Ratification of the Convention No. 198 of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism has been at the final stage. Namely, the aforementioned convention in its Paragraph 6, Article 9 stipulates, that each Party shall ensure that a conviction for money laundering is possible where it is proved that the property, the object of the supposed money laundering, originated from a predicate offence, without it being necessary to establish precisely which offence.

Text of issue for follow-up 8(g):

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:

g) whether the Convention in conjunction with the Code of Criminal Procedure will provide an adequate basis for extradition in the absence of an extradition treaty with another Party to the Convention (Convention, Article 10);

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

According to the Ministry of Justice, the Convention on Combating Bribery of Foreign Public Officials in International Business represents, in conjunction with the provisions of the Code of Criminal Procedure (Official Gazette of RS, no. 32/07-UPB4, 102/07-ZSKZDČEU, 21/08 Odl.US , 23/08-ZBPP-B, Odl.US 65/08, 68/08, 89/08 Odl.US; ZKP) a sufficient legal basis for extradition. The Convention in Article 10 provides that a Party which receives the request for extradition by other Party, considers this Convention as a legal basis for extradition. Therefore, this is an international treaty that obliges Republic of Slovenia and according to the second paragraph of Article 521 and indent 1 of the first paragraph of Article 522 of the CPC this is also defined as one of the conditions for extradition. In the case of a request for extradition Slovenia would assess it under the provisions of the CPC that deal with the procedure for handing over the defendants and convicts.

Text of issue for follow-up 8(h):

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:

h) whether the non-deductible expense provision in the Corporate Income Tax Act and Personal Income Tax Act can be applied comprehensively to all bribes contemplated under Article 1 of the Convention (1996 Recommendation, 1997 Revised Recommendation, section IV).

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

Point 10 of Paragraph 1 of Article 30 of the Corporate Income Tax Act (ZDDPo-2) determines that bribes and other forms of proceeds given to natural persons or legal entities in order to intervene either for the performance of a certain act which should not be performed or prevent a certain act which would otherwise not occur, for example that a certain act is conducted faster or more favourably or is omitted, are not recognised expenses for the purpose to determine an income tax base either for legal entities or natural persons, who are performing the activity, under no circumstances.

Point 2 of Paragraph 1 of Article 48 of the Personal Income Tax Act (ZDOH-2) determines that for the purposes of determining the tax base for the natural person, who is performing the activity, the rules on the taxation of legal entities are to be used.

Therefore, bribes are not deductible expenses for the purpose to determine an income tax base neither for a legal entity nor for a natural person, who is performing the activity.

The non-deductible expenses provision in the Corporate Income Tax Act and Personal Income Tax Act can be applied comprehensively to all bribes given to national or foreign public officials. Very detailed definition of the Public Official is written in the Penal Code, Article 99 (CC-1) and includes also foreign public officials.

Unfortunately, no statistics are available. Tax Administration has just put in use a Form for tax examiners to report bribes identified to their headquarters, which will be used for the statistical purposes as well.

Attachments⁸:

- draft Public Sector Integrity Act – No.1
- statistics – No.2

⁸ • The Attachments are available upon request to the Secretariat only [anti-corruption.contact@oecd.org]