



ESTONIA: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

June 2016

This report, submitted by Estonia, provides information on the progress made by Estonia in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 28 September 2016.

The Phase 3 report evaluated Estonia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

TABLE OF CONTENTS

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY	4
PHASE 3 EVALUATION OF ESTONIA: WRITTEN FOLLOW-UP REPORT	7

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

1. In June 2016, Estonia presented its written follow-up report to the Working Group on Bribery, describing the efforts that it had made to address the recommendations and follow-up issues that the Working Group adopted in its June 2014 [Phase 3 report](#). The Working Group greatly appreciated the Estonian delegation's cooperation and transparency in sharing pertinent and late-breaking developments throughout the process. After reviewing Estonia's efforts to implement the 28 recommendations, the Working Group considered 7 recommendations fully implemented, 10 partially implemented and 10 not implemented. In light of Estonia's legislative reforms, the Working Group found that recommendation 1(b) was no longer relevant and decided to convert it to a follow-up item.

2. With regard to enforcement of the foreign bribery offence, the Working Group recalls its concern at the time of the Phase 3 evaluation with Estonia's lack of enforcement actions. Estonia still has not commenced a foreign bribery action, although it has provided mutual legal assistance to another Working Group member investigating allegations that an Estonian businessman bribed the head of a foreign state-owned company. The Working Group will continue to monitor Estonia's efforts to detect, investigate and prosecute alleged instances of foreign bribery.

3. The Working Group welcomes the progress that Estonia has made in strengthening its legislative framework by making a number of reforms requested in Phase 3. Notably, Estonia amended its Criminal Code to increase the sanctions for the offence of "arranging a bribe". In addition, the Code of Criminal Procedure (CCP) now specifically includes the offences of giving, arranging, and accepting a bribe in the list of offences for which surveillance activities may be used [*recommendation 1(a)*]. As these reforms apparently eliminate any practical distinction between the offences for "arranging a bribe" and for "aiding or abetting" the giving of a bribe, the Working Group considered it no longer necessary to clarify the relationship between the two offences. It will, however, continue to follow up on this issue in Phase 4 to ensure there is no other unintended impact [*recommendation 1(b)*]. Estonia also amended its legislation to narrow the grounds for refusing to provide mutual legal assistance when required by an international agreement, including the Anti-Bribery Convention [*recommendation 4*]. Finally, Estonia recently adopted legislation expressly offering a guarantee of confidentiality to whistleblowers in the private sector, although it has not yet had the opportunity to conduct the recommended awareness-raising efforts about the new law [*recommendation 10(b)*].

4. On the other hand, Estonia has not amended its legislation to toll the statute of limitations following a mutual legal assistance request [*recommendation 2(d)*] or to expand the scope of – and sanctions for – its false accounting offences [*recommendation 7(a)*]. At the time of Phase 3, the Working Group expressed concerns about proposed amendments to the CCP which could significantly undermine effective investigation and prosecution of the foreign bribery offence [*recommendation 2(e)*]. Although on-going revisions to the CCP have not resulted in such amendments, the WGB continues to be concerned since similar amendments have recently been reintroduced by a Member of Parliament.

5. Concerning the liability of legal persons, Estonia still needs to clarify its requirements for holding legal persons liable for foreign bribery. While the Working Group acknowledges that some jurisprudence had already developed before the Phase 3 evaluation, it recalls that participants in the on-site meetings expressed differing views on when and how a legal person could be prosecuted and held liable. For this reason, Estonia should take steps to ensure that the law in this area, including pertinent judicial interpretation, is clear to legal practitioners [*recommendations 3(a)* and *3(b)*]. On the other hand, the Working Group is encouraged by Estonia's expressed intention to use its on-going revision of the CCP to address potential loopholes in its corporate liability regime concerning delays in proceedings as well successor liability following a corporate reorganisation (e.g., a merger or

division). In this respect, the Working Group notes, with respect to delays, that the Estonian courts have apparently interpreted the existing CCP to minimise the negative impact on proceedings against legal persons [*recommendation 3(c)*].

6. Regarding detection and investigation, Estonia has taken steps to proactively gather information by encouraging Estonian agencies to exchange information among themselves and with foreign law enforcement agencies. It could, however, engage more effectively with stakeholders from the financial sector, the accounting and auditing professions, and the private sector [*recommendation 2(a)*]. Estonia has also engaged with diplomats and other officials involved with Estonian companies operating abroad to raise awareness about foreign bribery [*recommendation 9(a)*]. While Estonia has adequately trained the staff at KredEx, Estonia's export credit agency, on their reporting obligations [*recommendation 11(d)*], it has not provided sufficient training to ensure that all relevant public officials are aware of, and know how to comply with, the duty not to conceal suspected acts of foreign bribery [*recommendation 10(a)*]. Estonia has continued trainings for prosecutors and police on foreign bribery, although it has not expanded the level of available resources as a result of its current austerity policy [*recommendation 2(b)*]. Estonia has also organised trainings for the Estonian Financial Intelligence Unit and the entities that report to it [*recommendation 6(a)*]. On the other hand, no actions have been taken by Estonia's Tax Administration to provide clear guidance or other trainings to tax officials on how to detect and report foreign bribery [*recommendations 8(a)* and *8(b)*]. Estonia has also not increased resources for the analysis of suspicious transaction reports, though the Working Group takes note of the general austerity policy in Estonia [*recommendation 6(b)*].

7. Concerning enforcement, sanctions and other collateral consequences of foreign bribery offences, Estonian agencies have required taking international debarment lists into account for development assistance and provided training on how to do so in the context of public procurement [*recommendation 11(b)*]. It has adopted tools to check the conviction registry during procurement procedures, but not for export credit support applications by KredEx [*recommendation 11(a)*]. Estonia has not provided written guidance on the denial of benefits for export credits, in connection with foreign bribery offences, although it has carried out awareness-raising activities of the issue for KredEx staff and overseas development assistance project partners [*recommendation 11(c)*]. While Estonia has not provided either guidance or training on confiscation, the Working Group encourages Estonia to proceed promptly with its expressed intention to conduct such training once it amends its legislation to implement a European Union directive [*recommendation 5(a)*]. Furthermore, even though Estonia does not maintain comprehensive statistics on sanctions and confiscation imposed for foreign bribery, it can nonetheless extract pertinent information as needed [*recommendation 5(b)*]. Finally, Estonia has not developed any guidance on settlement agreements, notably on factors to be taken into account when considering whether to enter into settlement agreements and the degree to which sanctions should be mitigated [*recommendation 2(c)*].

8. Regarding awareness-raising in the private sector, Estonia has cooperated with business organisations to raise awareness of foreign bribery [*recommendation 9(b)*]. The Working Group recommends that Estonia continue its engagement to specifically encourage companies to adopt adequate internal controls as well as ethics and compliance measures to prevent and detect foreign bribery [*recommendation 7(c)*]. Estonia has also taken steps to train auditors and provide guidance on foreign bribery, though greater efforts are necessary to raise awareness of accountants and auditors in the private sector concerned with potential detection of foreign bribery [*recommendation 7(b)*].

Conclusions of the Working Group on Bribery:

9. In light of the findings above, Working Group considers that Estonia has fully implemented recommendations 1(a), 4, 6(a), 9(a), 9(b), 11(b) and 11(d); partially implemented recommendations 2(a), 2(b), 3(c), 5(b), 7(b), 7(c), 10(a), 10(b), 11(a) and 11(c); and not implemented recommendations 2(c), 2(d), 2(e), 3(a), 3(b), 5(a), 6(b), 7(a), 8(a) and 8(b). The Working Group converted recommendation 1(b) to a follow-up item, after finding it to be no longer relevant. The Working

Group will therefore continue to monitor all recommendations that have not been fully implemented as well as follow-up items 12(a)-(m). The Working Group invites Estonia to report back in writing in one year (i.e. in June 2017) regarding the steps it has taken to address recommendation 2(c) on guidance for settlement agreements, recommendation 2(e) on envisaged amendments to the Code of Criminal Procedure, recommendations 3(a), 3(b) and 3(c) on the liability of legal persons, as well as its enforcement of the foreign bribery offence.

PHASE 3 EVALUATION OF ESTONIA: WRITTEN FOLLOW-UP REPORT

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 3 Evaluation Procedure](#) [paragraphs 55–67].

Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Name of country: Estonia

Date of approval of Phase 3 evaluation report: 5 June 2014

Date of Information: 11 May 2016, supplemented with additional information on 23 May 2016.

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation:

1. Regarding the offence of bribing a foreign public official, the Working Group recommends that Estonia:

- a) Proceed with the adoption of legislation strengthening the offence of arranging a bribe or gratuity by increasing the applicable sanctions and allowing the use of special investigative techniques [Convention, Article 1];

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

Estonia considers the recommendation to be implemented. On 1 January 2015 an amendment of the Penal Code (PC) and other legal acts entered into force pursuant to which the offence of arranging bribe (§ 296 PC) is punishable by a pecuniary punishment or up to five years' imprisonment. This sanction is identical with the punishment foreseen for the unaggravated offences of accepting of bribe (§ 294(1)) and giving of bribe (§ 298(1)). The separate offences of arranging, accepting and granting of gratuities have been abolished and the corpus delicti formerly covered under those offences has been included in the offences of arranging, accepting and giving of bribe. According to section 126-2 (2) of the Code of Criminal Procedure (CCP) all three offences are included in the list of offences in relation to which the surveillance measures may be used. Thus, there is no difference whether a specific act is construed as arranging of bribe or aiding or abetting of accepting or giving of bribe.

The relevant provisions in English:

§ 294. Accepting of bribe

(1) Consent by an official to a promise of property or other advantages to him or her or third persons or acceptance thereof in exchange for using of his or her official position is punishable by a pecuniary punishment or up to five years' imprisonment.

(2) The same act, if committed:

- 1) at least twice;
- 2) by requesting a bribe;
- 3) by a group; or
- 4) on a large-scale basis;

is punishable by one to ten years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

(4) For the criminal offence provided for in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 832 of this Code.

[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 296. Arranging of bribe

(1) Arranging of a bribe is punishable by a pecuniary punishment or up to five years' imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 298. Giving of bribe

(1) Giving or promising of a bribe is punishable by a pecuniary punishment or up to five years' imprisonment.

(2) The same act, if committed:

- 1) at least twice;
- 2) by a group; or
- 3) on a large-scale basis;

is punishable by one to ten years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

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

Text of recommendation:

1. Regarding the offence of bribing a foreign public official, the Working Group recommends that Estonia:

- b) Provide appropriate guidance to the relevant authorities, once the new legislation has been passed, on the difference between arranging a bribe or gratuity and aiding and abetting, in particular when one offence should be applied over the other [Convention, Article 1].

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

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

No regulatory steps have been taken to clarify the difference between arranging a bribe and aiding and abetting to the offences of accepting or giving a bribe. In the legal practice addressing domestic corruption the offence of arranging bribe has continued to be registered (in 2015 60; the number of registered accepted bribes and bribes given has been correspondingly 110 and 105 in 2015).

The sections of the Penal Code on aiding and abetting have remained unchanged since the entry into force of the Penal Code on 2002, and remain as follows:

§ 20. Offender

Offenders are principal offenders and accomplices.

§ 21. Principal offender

(1) Principal offender is a person who commits an offence unaided or by taking advantage of another person.

(2) If at least two persons agree to commit an offence jointly, each of them shall be held liable as a principal offender (joint principal offenders). An offence is deemed to be a joint offence also if an act committed by several persons jointly and in agreement comprises the necessary elements of an offence.

§ 22. Accomplice

(1) Accomplices are abettors and aiders.

(2) An abettor is a person who intentionally induces another person to commit an intentional unlawful act.

(3) An aider is a person who intentionally provides physical, material or moral assistance to an intentional unlawful act of another person.

(4) Unless otherwise provided for in § 24 of this Code, a punishment shall be imposed on an accomplice pursuant to the same provision of law which prescribes the liability of the principal offender.

(5) In the case of an aider, the court may apply the provisions of § 60 of this Code.

Text of recommendation:

2. Regarding the investigation and prosecution of foreign bribery, taking into account the increasing risk of foreign bribery by Estonian companies, the Working Group recommends that Estonia:

- a) Take steps to more proactively gather information at the pre-investigation stage to increase the sources of allegations and enhance investigations by considering all available sources and engaging with stakeholders involved in anti-money laundering, accounting and auditing, tax, as well as in private business [Convention, Article 5; 2009 Recommendations III, IX and X];

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

The law enforcement agencies have enhanced the exchange of information with other law enforcement agencies like the Internal Security Service (ISS), but also other agencies, including National Audit Office and Enterprise Estonia Foundation (agency granting benefits for entrepreneurs), and also internal auditors of these and other agencies. In addition the Police has provided trainings for such agencies. Annually, approximately 25 trainings are organised by the Anti-Corruption Bureau of the Central Criminal Police, though not all of them are relevant for foreign bribery offence. Current information is provided via the webpage of the Bureau. Every week, several hints are provided to the anti-corruption hotline e-mail.

The Bureau is also participating in the secure Sienna information exchange channel, administered by Europol. The information may include data on foreign bribery. The ISS is also cooperating with foreign agencies and exchanging information and case-related data.

The Bureau also screens the media to find data that could allude to cases. If the data is sufficient, it could be used for initiating criminal procedure, or to prevent criminal behaviour.

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

Text of recommendation:

2. Regarding the investigation and prosecution of foreign bribery, taking into account the increasing risk of foreign bribery by Estonian companies, the Working Group recommends that Estonia:

- b) Ensure that the level of resources, training and expertise among law enforcement authorities is sufficient to allow for effective investigation and prosecution of foreign bribery cases [Convention, Article 5];

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

The representatives of the Prosecutor's Office and the Anti-Corruption Bureau of the Central Criminal Police have participated in trainings focused on foreign bribery. The participants have composed reports of the events which are accessible to their colleagues. The training budget is limited, though the Bureau considers that until now the resources have been sufficient. The Bureau acknowledges that the lack of practice may limit the technical awareness of the foreign bribery offence, but expects that the experience with new cases would also enhance development. In general, the Bureau considers the awareness to be sufficient.

Due to austerity regime of the Government, the increase of the personnel of the Bureau is not expected, thus it is not reasonable to believe that the Bureau would have 50 specialists in 2017.

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

Text of recommendation:

2. Regarding the investigation and prosecution of foreign bribery, taking into account the increasing risk of foreign bribery by Estonian companies, the Working Group recommends that Estonia:

- c) Provide appropriate guidance on, inter alia, factors to be taken into account when considering whether to enter into settlement agreements and the degree of mitigation of sanctions, to ensure that plea-bargaining does not impede the effective enforcement of foreign bribery [Convention, Article 5];

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(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:

No additional formal guidance has been provided for the prosecutors. The existing guidance of the Prosecutor General is under review and thus it is not improbable that the issue of foreign bribery would be included; however, the question is under discretion of the Prosecutor General. At the same time the Prosecutor's Office does not see any serious problem with the lack of specific guidance because foreign bribery offences, as other offences including international element, are proceeded and prosecuted by the Office of the Prosecutor General, not by regional prosecutors, and there is no risk that unreasonable leniency would be exercised while applying plea bargaining in foreign bribery cases.

Text of recommendation:

2. Regarding the investigation and prosecution of foreign bribery, taking into account the increasing risk of foreign bribery by Estonian companies, the Working Group recommends that Estonia:

- d) Amend its legislation to allow MLA requests to toll the statute of limitations in foreign bribery cases [Phase 2 recommendation 10; Convention, Articles 5, 6 and 9];

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:

No legislative steps have been taken in order to amend the statute of limitation for foreign bribery offences in order to diminish the risk that MLA requests might bar the criminal procedure relating to the offence. The statute of limitation applicable for unaggravated giving of bribe is five years but the limitation period is interrupted by the application of a preventive measure with regard to the suspect or accused, or seizure of his or her property, or property which is the object of money laundering, similarly by the prosecution of the accused, by adjournment of the hearing of a matter in the case the accused fails to appear, by the interrogation of the accused in the court hearing, and by ordering of expert assessment or additional evidence in the court hearing. If the limitation period of a criminal offence is interrupted, the limitation period shall commence again with the performance of the procedural act mentioned. A person shall however not be convicted if the period between the completion of the criminal offence and the entry into force of the corresponding court judgment is ten years. If the giving of bribe would be aggravated, the statute of limitation is ten years, and in the case of interruption the applicable time limit is fifteen years. In addition, the limitation period of offence is interrupted, if the suspect or accused absconds from the proceedings or court, until the person is detained or appears before the body conducting the proceedings. In such a case the limitation period shall not be resumed if more than fifteen years have passed from the completion of the criminal offence.

Having analysed the subject matter of the recommendation the amendment has been seen as unjustified from the viewpoint of procedural fairness and without further case based necessity. If there would be suspicion that foreign bribery has been given, at least some preventive measure with regard to the suspect, accused or his/her property would be applied and therefore the limitation period would be interrupted for further five years. The same applies, if charges are brought against the accused person. Even if the accused person has caused either the adjournment of court proceedings or the interruption of the limitation period by absconding, the maximum limitation period would not extend over fifteen years. The belated implementation of the MLA request by a third country should not be more detrimental for the rights of the accused than his/her own behaviour causing the interruption of limitation period.

Text of recommendation:

2. Regarding the investigation and prosecution of foreign bribery, taking into account the increasing risk of foreign bribery by Estonian companies, the Working Group recommends that Estonia:

- e) Ensure that any amendments envisaged to the Code of Criminal Procedure do not affect the effective investigation and prosecution of the foreign bribery offence, in particular as concerns (1) the availability of special investigative techniques for all foreign bribery offences; (2) the time limit set on investigation periods; and (3) the possibility for prosecutors to appeal court decisions on grounds of misvaluation of evidence [Convention, Article 5].

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

Estonia considers the recommendation to be implemented. The draft amendments to the CCP that have been under discussion during the phase III evaluation have not been adopted by the Parliament and the

draft law has been abandoned due to the new composition of the Parliament taking mandate in March of 2015. The availability of special investigative techniques and surveillance measures applicable for foreign bribery offence has remained unaffected, there are no statutory time limits applicable for pre-trial proceedings, and the prosecutorial right to appeal has not been changed.¹

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:

Text of recommendation:

3. Regarding the liability of legal persons, the Working Group recommends that Estonia:

- a) Take steps, including by clarifying existing procedure and legislation as necessary, to ensure that in practice, proceedings against a natural person are not a prerequisite to proceedings against a legal person involved in a foreign bribery scheme [Convention, Article 2; Annex I to the 2009 Anti-Bribery Recommendation];

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

Estonia considers the recommendation to be implemented. The legal practice does not require that the natural person who actually and directly committed the offence in the interests of the legal person should be punished, prosecuted, or even identified. The supreme National Court has explained on 2014 (case No 3-1-1-90-14, judgment of 18.12.2014): 'A legal person may be punished also in the case when the act has been committed by an ordinary employee on the basis of the order of a senior official or a body of the legal person, or at least with his/her approval. In such a case, the member of the body of the legal person, the senior official, or its competent representative has to be indicated [in the indictment], on the basis of whose order or with whom approval, in the interests of the legal person, the [criminal, unlawful and guiltful] act has been committed. An act committed on the order the basis of a member of the body, or a senior official, is imputable to the legal person even if the ordinary employee (or another member of a body, senior official, or a competent representative) taking the order has not been identified, or acted without required intent or negligence, or lacks guilt. It is sufficient, in order to punish the legal person, if the one giving the order has committed the act described in penal law, acting unlawfully and guiltfully.' In practice, it is not required that the proceedings take place against the natural person (the one giving the order, but not acting himself/herself directly) even if he/she needs to be indicated in the charges. The National Court has accepted (case No 3-1-1-84-13, judgment of 25.10.2013) that the natural person involved is not subjected to the proceedings, e.g., in financial supervision cases where a bank or similar company has not met the requirements and has been punished for that; even if no bank manager or other natural person has not been charged or punished.

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:

¹ However, Estonia notes that during the follow-up procedure another draft amendment to the CCP has been initiated by an MP of the opposition in the Parliament, which would require attention. In addition, the Ministry of Justice has initiated a review of the CCP primarily focused on resystematising the rules of evidence, procedural restrictions for suspects and accused persons (such as arrest, bail etc.), the use of digital evidence and procedural documents, and economising the procedure.

Text of recommendation:

3. Regarding the liability of legal persons, the Working Group recommends that Estonia:

- b) Take all necessary steps to clarify the terminology on “competent representatives” and “in the interest of the legal person”, whether by issuing an interpretive note to the draft amendment or through other means as appropriate under Estonian law, with a view to ensuring that interpretation of these provisions is harmonized and in conformity with the Convention and 2009 Anti-Bribery Recommendation [Convention, Article 2; Annex I to the 2009 Anti-Bribery Recommendation];

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

Estonia has analysed the issue addressed in the recommendation. The concepts of “competent representative” and “in the interest of the legal person” have been introduced by law and it is not possible under Estonian law to issue an interpretative note concerning the concepts already enacted; the legal acts wherewith the concepts have been introduced have been accompanied by explanatory notes addressing also the concepts. An additional amendment could give the opportunity to address the issue and provide additional explanation of the terms, but according to the analysis, a further definition in law would not be reasonable nor beneficial, as the concepts have been interpreted in a broad sense in the practice. The amendment, possibly providing a definition, could restrict the meaning of the concepts and thus also restrict the applicability of corporate liability.

The legal practice has substantially and broadly interpreted the latter concept: the National Court (No 3-1-1-67-09, judgment of 24.09.2009) has explained that through the concept of the interest of the legal person, it is excluded to impute to the legal person acts committed in the solely private interests of the employee, or outside the area of activity of the legal person. In another case (No 3-1-1-9-05, judgment of 23.03.2005) the court has stated that the interests of the legal person may be broader than just the gaining of pecuniary profits, and may include activities outside the principal area of activities of the said person.

The same can not be said about the concept of “competent representative” which only rarely occurs in the practice of the National Court. However, it has been used in the practice of lower courts and, in misdemeanour proceedings, of extrajudicial authorities. Although an introduction of a definition of the competent representative in law is not totally excluded, it is important to take into account the practice evolved in order not to restrict detrimentally the possible meanings of the concept and therefore a further analysis should be planned. Instead, exchange of practices and its harmonisation by the Prosecutor's Office and the law enforcement agencies has been suggested and recommended.

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

Text of recommendation:

3. Regarding the liability of legal persons, the Working Group recommends that Estonia:

- c) Address as a matter of urgency the potential loopholes in Estonia's corporate liability framework through which a company might delay court proceedings and avoid liability [Convention, Article 2].

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

Estonia considers the recommendation to be partially implemented. An analysis has been carried through by the Ministry of Justice to address the recommendation. Possible solutions, including a temporary ban of mergers and divisions for legal persons subjected to proceedings, has been offered as possible solution in order to prevent legal person from avoiding liability through dividing the company

or merging with another entity. What comes to delaying proceedings by replacing the designating company representative in court, then the National Court (No 3-1-1-86-14, judgement of 02.12.2014) has stated that in aforementioned situation the criminal matter may be heard in the absence of the accused as an exception using the analogy to CCP § 269 (2) 2. The relevant amendments would take place as part of the ongoing revision of CCP. Following the discussions in the WGB in June 2016, Estonia announced that it anticipates that the first amendments should enter into force in January 2018.

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

Text of recommendation:

4. Regarding the provision of mutual legal assistance in cases of transnational bribery, the Working Group recommends that Estonia proceed with its expressed intention to amend its legislation to clarify that international cooperation shall not be denied based on considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal person involved [Convention, Articles 5 and 9].

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

Estonia considers the recommendation to be implemented. On 1 January 2015 the following provision of the CCP entered into force:

“§ 436 Prohibition on international cooperation in criminal procedure
[...]

(1-3) The Republic of Estonia may not refuse international cooperation on the basis of national economic interests, foreign policy interests or other considerations, if this is contrary to an international agreement binding on Estonia.”

The OECD Anti-Bribery Convention is seen as one of the international agreements precluding refusal of international cooperation on the basis of national economic interests, foreign policy interests or other considerations. This ground has also been given in the explanatory note of the amendment.

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

Text of recommendation:

5. Regarding sanctions and confiscation in cases of transnational bribery, the Working Group recommends that Estonia :

- a) Take the necessary steps, such as through providing guidance and training, to ensure that its law enforcement authorities routinely consider confiscation in foreign bribery cases [Convention, Article 3];

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

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:

There have not been foreign bribery cases in Estonia. However, the general practice of penal enforcement indicates that confiscation is routinely applied in corruption cases and generally. It is

important to recall that confiscation of criminal proceeds is mandatory under Estonian law:

“§ 83-1 Confiscation of assets acquired through offence

(1) A court shall confiscate the assets acquired through an offence if these belong to the offender at the time of the making of the judgment or ruling.”

As an amendment of the provisions concerning confiscation, due to implementation of a directive of the EU, is underway, trainings for law enforcement, prosecutorial and judicial authorities will follow. During the trainings, issues addressed in the recommendation, are going to be included.

Text of recommendation:

5. Regarding sanctions and confiscation in cases of transnational bribery, the Working Group recommends that Estonia :

- b) Maintain comprehensive statistics on the application of sanctions and confiscation measures imposed against natural and legal persons in cases of foreign bribery and false accounting offences [Convention, Articles 3 and 8].

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

Estonia considers the recommendation to be partially implemented. Although most of the criminal procedure has been brought into a digital form (“E-File”, information systems for courts and the police, IS on surveillance measures and persons convicted for offences, one being specially designed for prosecutors is being developed, etc.), there is not yet a special database on confiscations. However, using existing databases it is possible to gather relevant data on sanctions and confiscations. Due to the fact that there are no foreign bribery cases yet in Estonia, relevant statistics is not available.

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

Text of recommendation:

6. Regarding money laundering, the Working Group recommends that Estonia:

- a) Increase awareness and training among the Financial Intelligence Unit and reporting entities on mechanisms to detect transactions that could potentially involve the laundering of proceeds of foreign bribery [Convention, Article 7; 2009 Recommendation III.(i)];

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

During the last couple of years the employees of Estonian FIU have participated in several international trainings and seminars where corruption and related cross border money laundering have been the core topics. During the last years Estonian FIU has actively participated in a project bringing together a network of FIUs, which primary purpose was to analyse, trace, withhold and return the funds stemming from corruption and embezzlement by the top politicians of a recent regime in a foreign country. Estonian FIU has daily co-operation with counterpart FIUs to prevent, detect and investigate cross-border money laundering cases also stemming from corruption and bribery. In multiple cases the foreign LEAs have already initiated criminal investigations in relation to corruption. The typologies and trends, which were synthesized based on international training and case by case practical co-operation and were also related to foreign corruption and bribery have been included as part of the trainings and seminars offered by Estonian FIU to reporting entities. Estonian FIU has introduced to the credit institutions the possibilities (in addition to public sources and World Check) to identify PEPs from Ukraine, which is due to economic and political turmoil one of the possible sources of funds related to foreign corruption.

If no action has been taken to implement recommendation 6(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. Regarding money laundering, the Working Group recommends that Estonia:

- b) Increase resources dedicated to the analysis of STRs to more effectively make use of collected information [Convention, Article 7; 2009 Recommendations III.(iv) and IX.(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 6(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:

As compared to 2014, human resources dedicated to analysis of STRs have stayed on the same level. Due to austerity policy of the Government there are no serious expectations of the increasing resources.

Text of recommendation:

7. Regarding accounting requirements, external audit and internal controls, ethics and compliance, the Working Group recommends that Estonia:

- a) Amend its Penal Code to ensure (i) that the false accounting offences cover all of the activities described in Article 8(1) of the Convention; and (ii) that sanctions for false accounting are effective, proportionate and dissuasive [Phase 2 recommendation 12; Convention, Article 8];

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

If no action has been taken to implement recommendation 7(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:

No further actions have been taken to address the recommendation. According to the analysis carried through during phase II implementation period and related to the revision of the Penal Code (taking effect in 2015) the offences related to false accounting or lack of required accounting, have been found to be sufficient to guarantee that financial records are coherently kept.

Text of recommendation:

7. Regarding accounting requirements, external audit and internal controls, ethics and compliance, the Working Group recommends that Estonia:

- b) Engage with the accounting and auditing profession to raise awareness of the foreign bribery offence, and encourage the profession to develop specific training [Phase 2 recommendation 2(a); Convention, Article 8];

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

The trainings for auditing professionals have continued. There have been practical anti-fraud trainings organised by the Board of Auditors in November and December 2014, a general awareness raising events in October 2014 and January 2016, and an information event on methodology in May 2015.

The topic of foreign bribery has been included in the programme among other fraud related topics. Following discussions in the WGB in June 2016, Estonia announced that a new training schedule is being prepared, thus it is possible to discuss the special training on the topic. However, thus far it has been preferred to include the topic into the general training curriculum.

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

Text of recommendation:

7. Regarding accounting requirements, external audit and internal controls, ethics and compliance, the Working Group recommends that Estonia:

- c) Promote among Estonian companies active in foreign markets, including SMEs, the adoption of effective internal controls, ethics and compliance measures designed to prevent and detect foreign bribery, for instance by disseminating the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance [2009 Recommendation X.C. and Annex II].

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

In cooperation with business umbrella organisation there have been altogether four trainings and seminars for entrepreneurs, mainly SMEs, how to recognise corruption, how to prevent it also abroad, etc. Also there have been targeted articles in media in regard of these topics. In particular, an article by a leading prosecutor should be mentioned (Postimees 12.04.2016).

In cooperation with Responsible Business Forum in Estonia the anti-corruption measures of companies have been assessed, with the aim of promoting ethical and transparent business environment among Estonian entrepreneurs.

If no action has been taken to implement recommendation 7(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:

8. With respect to tax-related measures, the Working Group recommends that Estonia:

- a) Increase awareness and training of tax officials on detection and reporting of foreign bribery [2009 Recommendation VIII.(i); 2009 Tax Recommendation I.(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 8(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 Tax and Customs Board sees detection and proceeding of tax frauds as its primary task. This activity may involve detection of corruption, and if detected, relevant information is forwarded to the law enforcement units or internal control. There have been no specific trainings on detection of foreign bribery; however, the tax auditors are aware of the essence of corruption and they are able to recognise corruption risks.

Text of recommendation:

8. With respect to tax-related measures, the Working Group recommends that Estonia:

- b) Provide clear guidance to tax officials on the reporting of foreign bribery suspicions to law enforcement authorities, and disseminate the 2013 OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors [2009 Recommendation VIII.(i); 2009 Tax Recommendation I.(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 8(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:

The Tax and Customs Board has not taken initiative to translate the Handbook.

Text of recommendation:

9. Regarding awareness-raising, the Working Group recommends that Estonia:

- a) Raise the awareness of and provide training on foreign bribery within the public sector agencies involved with Estonian companies operating abroad, including overseas diplomatic representations, as well as the Ministries of Justice, Internal Affairs, Finance and Economic Affairs and Communications [Phase 2 recommendations 1(a) and 1(b); 2009 Recommendation III.(i)];

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

There have been occasional anti-corruption trainings in the Police and Ministries where the foreign bribery topic has been addressed among others. The Prosecutor's Office has organised round tables on anti-corruption prosecutors where the foreign bribery topic has been explained and discussed. The Ministry of Foreign Affairs periodically trains staff from overseas representations, and a presentation on the awareness of foreign bribery has been included in the training schedule. In the conference (February 2016, please see the recommendation 9b) also several state agencies (Prosecutor's Office, Police, Ministries) have been represented.

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

The Ministry of Justice intends to use the e-learning environment for officials, created by the Ministry of Finance, to provide elementary trainings on foreign bribery.

Text of recommendation:

9. Regarding awareness-raising, the Working Group recommends that Estonia:

- b) Actively and promptly raise awareness within the private sector, in particular SMEs, on foreign bribery risks in international business transactions, in coordination with business organisations as appropriate [Phase 2 recommendations 2(a) and 2(b); 2009 Recommendation III.(i)].

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

In cooperation with business umbrella organisation there have been trainings and seminars (2015 and 2016) for entrepreneurs where among other things foreign bribery topic was discussed.

Estonian Ministry of Justice was leading the project Reducing corruption: Focusing on Private Sector Corruption (PrivaCor). The general aim of the project was to tackle corruption crimes, focusing specifically on private sector corruption. The first objective of the project was to obtain information about the extent and forms of private corruption through sociological study based on reliable methodology. The study was carried out among Estonian and Danish entrepreneurs and managers. The results of the study were discussed with the entrepreneurs in regional seminars where also policy-recommendations were developed. The project also involved visits to OLAF and to law enforcement agencies in Denmark and Spain.

In February 2016 there was an international private sector corruption conference “Is corruption dangerous to your business?” where also the topic of foreign bribery was discussed. The conference was mainly targeted to the business sector, especially Estonian entrepreneurs who are in general SMEs, but the target group of the project were also anti-corruption practitioners, law enforcement officials, judges, businessmen, students and social scientists. With regard to the conference there were articles in media.

As a result of the conference and study trips, investigation and analysis capacity improved and international anti-corruption networks were formed. The project was funded by the European Commission under the Prevention of and Fight against Crime programme (ISEC). There were 7 national and 4 international partners.

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

Text of recommendation:

10. With respect to the reporting of foreign bribery and whistleblower protection, the Working Group recommends that Estonia:

- a) Ensure that (i) all public officials who could play a role in detecting acts of foreign bribery, including in overseas representations, are made aware of their duty not to conceal suspected acts of foreign bribery involving Estonian individuals or companies, and encourage them to report such acts; and, (ii) easily accessible channels are in place for the reporting to law enforcement authorities of suspected acts of foreign bribery [2009 Recommendation IX.(iii)];

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

Every year the Ministry of Foreign Affairs is organizing a training for the rotating diplomats as well as economic and consular diplomats in the capital are given a lecture on foreign bribery, and are informed of the reporting obligations within the routine reporting in case of any attempt or case of foreign bribery. . These lectures are carried out with the expert support from the Ministry of Justice and with the Diplomatic Security Department of the MFA.

The Ministry of Finance is organising trainings for procuring agencies (600 trainees annually) due to the new Public Procurement Act which is going to be adopted (currently in the Parliament). The trainings planned will include also information on the reporting channels. Debarment from procurement due to convictions is one of the topics addressed. Similarly the use of international debarment lists, and steps to be taken when there is suspicion that corrupt practices, including foreign bribery, are used by the company. There is a link to the Police Anti-Corruption Hotline on the governmental website of public procurements (used by every agency for electronic tenders), including the e-mail and telephone number. (<https://riigihanked.riik.ee/lr1/web/guest/kontaktid>).

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

Text of recommendation:

10. With respect to the reporting of foreign bribery and whistleblower protection, the Working Group recommends that Estonia:

- b) (i) Amend its legislation or otherwise expressly clarify the application of whistleblower protection provisions to private sector employees with a view to ensuring that appropriate measures are in place to protect them from discriminatory or disciplinary action where they report suspicions of foreign bribery, and (ii) raise awareness of the public and private sector on the protection afforded to them under the law [2009 Recommendations III.(i) and IX.(iii)].

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

Estonia considers the recommendation to be implemented. As of 1 May 2016 the Anti-Corruption Act has been amended to stress the applicability of the whistleblower protection provision for all persons in public or private sector, and to all suspicions of corrupt activity, whether taken place in public or private sector, as follows:

§ 6. Notification of public or private sector incidents of corruption

(1) An official is not permitted to conceal violations of the prohibitions specified in subsection 3(1) of this Act or any other incidents of corruption known to the official.

(2) If agencies performing public duties, their officials, persons exercising supervision over agencies, persons controlling declarations or bodies conducting proceedings concerning an offence are notified of an incident of corruption, the confidentiality of the fact of notification shall be ensured. Information about the fact of notification may be disclosed only with the written consent of the notifier. If the notifier is involved as a witness in the proceedings concerning the offence, the provisions of proceedings concerning the offence apply to incidents of corruption without violating the confidentiality of the fact of notification.

(3) If the notifier knowingly communicates incorrect information, the confidentiality of the fact of notification shall not be ensured.

(4) Courts shall apply shared burden of proof for the protection of the person having notified of an incident of corruption. A person having recourse to a court shall state in his or her application the facts based on which it may be presumed that he or she has been subject to unequal treatment. If the person against whom the application was filed does not prove otherwise, it is presumed that unequal treatment was caused by notification of an incident of corruption.

(5) The principles provided for in subsections (2) to (4) of this section also apply in the case an official or another person has given notification of an incident of corruption in public or private sector.

[RT I, 24.03.2016, 2 - entry into force 01.05.2016]

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

Text of recommendation:

11. Regarding public advantages, the Working Group recommends that Estonia:

- a) Consider adopting more streamlined processes, including systematic checking of the Registry of Convictions in public procurement procedures and when considering applications for export credit support [2009 Recommendation XI.(i); 2006 Export Credit Recommendations 1(f) and 1(g)];

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

The ministry of Finance has provided the information that since 28 April 2016, in the electronic environment for public procurement, there is a direct link to the Registry of Convictions. Every agency carrying through the procurement procedure can thus easily use the tool in order to find whether the participating enterprise or person has been convicted for any offence.

AS KredEx Krediidikindlustus (hereinafter: KredEx) is not a contracting authority in the meaning of the public procurement regulations. Therefore the same tools that are in use of contracting authorities, are not available for KredEx. However, KredEx checks debarment lists of the major international financial institutions (published on the website of OECD) and asks confirmation of the applicant about non-involvement in bribery and also about awareness that the guarantee provided by KredEx may cease and any indemnification paid may have to be refunded if the export transaction turns out to have involved in bribery.

If no action has been taken to implement recommendation 11(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:

11. Regarding public advantages, the Working Group recommends that Estonia:

- b) Consider requiring the consultation of international financial institutions debarment lists in the granting of public advantages, including public procurement and ODA [2009 Recommendation XI.(i)];

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

Estonian Ministry of Foreign Affairs has well noted the recommendation on consultations of international financial institutions debarment lists. The Division of Development Cooperation and Humanitarian Aid has carefully looked into the recommendation XI (i) and has taken into account the availability of debarment lists of the major international financial institutions. So far, there hasn't been any Estonian companies listed. MFA is going to use the available debarment lists.

The Ministry of Finance has provided the information that the debarment lists can be inspected during the procurement procedure but in order to bar a company a document certifying the conviction in another country is needed. Also, a check is carried through for successful offerors even if they are not in the debarment lists. The issue of checking strategy is being discussed in the trainings organised by the Ministry of Finance; however it is not seen fit to make the consultation of the debarment lists mandatory.

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

Text of recommendation:

11. Regarding public advantages, the Working Group recommends that Estonia:

- c) Provide training and information, including written guidelines and awareness-raising activities, on the modalities for the denial of benefits, as well as detection and reporting of suspicions of foreign bribery [Phase 2 recommendation 13(b), Convention, Article 3(4); 2009 Recommendation VI];

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

Once a year (in Oct-Nov) there is an orientation seminar for the ODA project partners in Estonia, which includes awareness raising on foreign bribery. This section is carried out with the expert support from the Ministry of Justice. The orientation seminars include training on the modalities for the denial of benefits and on reporting of suspicions of foreign bribery.

Estonia notes that it is a relatively small donor and does not have procurement agencies. Vast majority of Estonian development cooperation projects are technical assistance projects with no procurement tenders involved. As a provider of finances, Estonian Ministry of Foreign Affairs is in permanent direct contact with Estonian project partners, keeping a keen eye on their actions and consulting them regularly. On the spot, the Embassy monitors the situation and communicates any observations. The annual total budget for bilateral projects is approximately six million euros. There are some 150 projects every year funded, and the staff working with these is six persons (based in MFA). The average budget for a project is approximately 40,000 euros. For any purchase which costs more than 8,000 euros, three documented offers must be taken and the check orders are inspected by auditors (certified public accountants). For all projects with annual budget over 30,000 euros, regular financial auditing is required and carried out. All beneficiaries must sign the contract which involves the following claim:

- 1.1.1. Inform the Ministry, Estonian Central Criminal Police or Estonian Internal Security Service of any reasonable doubt of the project-related corruption case.

There is also a renewed information sheet on bribery available for the ODA partners in the MFA's homepage. <http://vm.ee/sites/default/files/content-editors/Korruptsioon.pdf>

Please see recommendation 10.a on the training being organised to the procuring agencies. Due to the big variety of procedures and procuring agencies no single written guidance has been prepared.

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

Text of recommendation:

11. Regarding public advantages, the Working Group recommends that Estonia:

- d) Raise awareness of the new policy on the reporting obligations of (i) KredEx staff to law enforcement authorities where they encounter suspicions of foreign bribery, and (ii) the management board to law enforcement authorities [Phase 2 recommendation 4(a); 2009 Recommendation XII.(ii); 2006 Export Credit Recommendation 1(h)].

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

Estonia considers the recommendation to be implemented. The internal rules with the policy on the reporting is routinely forwarded to all Kredex employees and members of management. All the individuals have to confirm that they have received the information. In addition information meetings

are organised for all employees (approximately 10) where the policy has been discussed. Kredex has also shown interest to organise additional trainings, together with other agencies under the Ministry of Economic Affairs and Communication.

If no action has been taken to implement recommendation 11(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:

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

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

- a) The status of draft legislation changing the language of Penal Code section 288(4) from “taking advantage of [...] official position” to “use of official position” and subsequent judicial interpretation of this phrase;

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:

There is no practice on the provision.

Text of issue for follow-up:

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

- b) The application of the foreign bribery offence in practice to ensure that reliance on foreign law is not the only element relied upon to establish the foreign public official’s position;

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:

There is no practice on the issue addressed.

Text of issue for follow-up:

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

- c) The application in practice of the liability of legal persons for acts committed by intermediaries, including related legal persons;

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:

Liability of legal persons for acts committed by intermediaries, including related legal persons, is possible in Estonian criminal law. There has been no new case law since the adoption of the report, but a legal person has been convicted of bribing in the interests of its subsidiary (case No 1-08-7474, judgement of 10.12.2010 by the Circuit Court of Tartu).

Text of issue for follow-up:

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

- d) The application of nationality jurisdiction over legal persons, particularly where (i) the legal person only offered or promised to bribe abroad, or (ii) where Estonia does not have jurisdiction over the natural person;

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 prosecutor's office has currently no doubts that section 7(2) clause 2 PC would cover the situations. However, there is no case practice to support the assumption.

Text of issue for follow-up:

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

- e) The exercise of jurisdiction over natural persons through the newly broadened universality principle;

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:

There are no new cases known where the section 8 PC, as amended, would have been applied.

Text of issue for follow-up:

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

- f) The flow of information to the relevant investigative authorities to ensure that foreign bribery allegations are effectively investigated, in particular in light of the recent reorganisation within the Police;

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:

There are no current data on the flow of relevant information because informal channels are mainly used.

Text of issue for follow-up:

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

- g) That investigations and prosecutions of foreign bribery cases are not influenced by the factors prohibited under Article 5 of the Convention, notably to assess whether recent amendments to the Prosecutor's Office Act are sufficient to ensure the independence of prosecutors;

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:

There is no practice on the issue addressed.

Text of issue for follow-up:

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

- h) The application of the “reasonable time” criteria, to ensure that it does not result in the premature termination of foreign bribery cases;

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:

There is no practice on the issue addressed.

Text of issue for follow-up:

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

- i) The application of section 205 of the CPC on co-operating offenders to ensure that its application does not prevent effective prosecution of an Estonian active briber who cooperated with foreign authorities;

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:

There is no practice on the issue addressed.

Text of issue for follow-up:

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

- j) The application of plea bargaining (“settlement agreements”) in foreign bribery cases;

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:

There is no practice on the issue addressed.

Text of issue for follow-up:

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

- k) The detection of foreign bribery allegations through money laundering cases;

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:

There is no practice on the issue addressed. No foreign or domestic bribery cases have been detected on the basis of ML reports. There are however cases of ML that have been detected in the course of domestic corruption cases.

Text of issue for follow-up:

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

- l) The application of the non-tax deductibility of bribes in practice, particularly whether tax authorities examine the tax returns of taxpayers convicted of foreign bribery; and,

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:

There is no practice on the issue addressed.

Text of issue for follow-up:

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

- m) The application of whistleblower protection in the public sector.

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:

There is no practice on the provision.