



Implementing the OECD Anti-Bribery Convention



Phase 4 Report: Bulgaria



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This Phase 4 Report on Bulgaria by the OECD Working Group on Bribery evaluates and makes recommendations on Bulgaria's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the 44 members of the OECD Working Group on Bribery on 14 October 2021.

The report is part of the OECD Working Group on Bribery's fourth phase of monitoring, launched in 2016. Phase 4 looks at the evaluated country's particular challenges and positive achievements. It also explores issues such as detection, enforcement, corporate liability, and international co-operation, as well as covering unresolved issues from prior reports.

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Executive Summary

This Phase 4 report by the OECD Working Group on Bribery evaluates and makes recommendations on Bulgaria's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report tracks progress made by Bulgaria since the Phase 3 evaluation in 2011. It details Bulgaria's achievements and challenges, including on enforcement of its foreign bribery laws, corporate liability and detection of foreign bribery.

The Working Group welcomes the efforts made by Bulgaria in recent years towards the implementation of the Convention and related instruments. However, the Working Group is seriously concerned about the continued lack of detection, investigation and prosecution of foreign bribery cases in Bulgaria and general lack of awareness of foreign bribery risks among relevant public and private sector stakeholders. Since Phase 3, Bulgaria has commenced only one foreign bribery investigation, which is ongoing, and several allegations reported publicly or notified to the Bulgarian authorities by the Working Group have not been proactively investigated.

With regard to detection, the Working Group calls on Bulgaria to routinely assess allegations reported in the media, provide training and awareness-raising to the public and private sector, in particular the non-financial sector institutions regulated by the anti-money laundering legislation, and enact legislation on whistleblower reporting and protection. The Working Group also recommends that Bulgaria use proactive steps to gather information from diverse sources and allow anonymous notices to be considered as a potential basis for opening pre-trial investigations, thus increasing the source of detection of cases. The Working Group also notes that more active participation by Bulgarian authorities in its meetings could facilitate the dissemination of information at the national level to relevant authorities and stakeholders about implementation of the Convention and the work of the Working Group, and assist law enforcement officials in utilising informal means of international cooperation. The Working Group further notes that by assigning primary responsibility for foreign bribery cases to specialised prosecutors, Bulgaria could ensure that sufficient priority is given to enforcement, improving expertise and interagency co-ordination.

The Working Group remains seriously concerned that some deficiencies in Bulgaria's legislation on foreign bribery (e.g. bribery for acts outside the official's authorised competence) and on liability of legal persons remain unaddressed since Phase 3. Bulgaria still needs to make major improvements in its legal framework for holding legal persons liable for foreign bribery or related offences in order to render it effective, including by providing for an effective jurisdictional base to commence proceedings against legal persons, removing undue restrictions on proceedings to cases where the natural person perpetrator is prosecuted or convicted, and avoiding any impediments to the effective sanctioning of legal persons. In addition, the maximum available sanctions for natural persons under aggravated domestic bribery are still not available for foreign bribery, and the maximum available sanctions for legal persons are amongst the lowest in the Working Group.

The report also highlights positive achievements and good practices that have the potential to enhance Bulgaria's implementation of the Convention, including the adoption of new or amended legislation (updated provisions of the Criminal Code, LAOS and the adoption of the MAMLA), efforts in training and awareness-raising for law enforcement, interagency coordination, and the cooperation of the FIU with the financial sector.

The report and its recommendations reflect the findings of experts from Chile and Greece and were adopted by the Working Group on 14 October 2021. It is based on legislation, data and other materials provided by Bulgaria, as well as research conducted by the evaluation team. Information was also obtained during the virtual visit in May 2021, during which the evaluation team met virtually representatives of Bulgaria's public and private sectors, law enforcement, media, and civil society. The team regrets it did not have the opportunity to meet with members of the Bulgarian Parliament or of the National Anti-Corruption Policy Council, due to the dissolution of the Bulgarian Parliament during the week of the virtual visit. The Working Group invites Bulgaria to submit an oral report in one year on issues concerning liability of legal persons and on whistleblower protection, and a written report in two years on the implementation of all recommendations and its enforcement efforts.

Introduction

1. In October 2021, the Working Group on Bribery in International Business Transactions (Working Group or WGB) completed its fourth evaluation of Bulgaria's implementation of the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2009 Recommendation of Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation), and related anti-bribery instruments.

1. Previous evaluations of Bulgaria by the Working Group on Bribery

2. Monitoring implementation of the Convention, the 2009 Recommendation and related instruments is conducted through successive phases, according to agreed-upon principles and through a rigorous peer-review system. The monitoring process is compulsory for all Parties to the Convention, and on-site visits are mandatory in Phases 2, 3 and 4. However, due to the Covid-19 crisis, the Secretariat and lead examiners were not able to undertake an on-site visit, which involves meetings with the relevant law enforcement and government authorities, as well as civil society and the private sector. Under these special circumstances, Bulgaria and the Working Group exceptionally agreed that the on-site visit would be conducted virtually but include all the usual panels that an on-site visit would have convened.

3. The monitoring reports, which are systematically published on the OECD website, include recommendations to the evaluated country. These reports are adopted on a 'consensus minus one' basis, which means that the evaluated Party may voice its views and opinions but cannot block the adoption of the final report and recommendations.

4. The Phase 3 evaluation of Bulgaria took place in March 2011. By the time of the two-year written follow-up in 2013, Bulgaria had fully implemented 8 recommendations, partially implemented 8, and 12 were not implemented (Figure 1 and Annex 1). Due to the lack of implementation, the Working Group requested that Bulgaria report back in writing in one year on recommendations 1(a), 2(a), 2b, 2(c), 3(b) and 4(a). In March 2014, during the additional follow-up, Bulgaria reported that it had introduced two pieces of draft legislation to address outstanding Phase 3 recommendations on the foreign bribery offence and framework for sanctioning legal persons. The Working Group encouraged expedient adoption of the draft legislation but agreed, at the same time, with the analysis of the then lead examiners that their enactment will not ensure full implementation of the six recommendations selected for additional follow-up. It therefore concluded that the status of implementation of the Phase 3 recommendations selected for additional follow-up remained unchanged.

Box 1. Previous Working Group on Bribery Evaluations of Bulgaria

2014 Additional Follow-up to Phase 3 Report

2013 [Follow-up on Phase 3 Report](#)

2011 [Phase 3 Report](#)

2006 [Phase 2 Written Follow-up Report](#)

2003 [Phase 2 Report](#)

1999 [Phase 1 Report](#)

Figure 1. Bulgaria's Implementation of its Phase 3 recommendations



2. Phase 4 process and exceptional “virtual visit”

5. Phase 4 focuses on three cross-cutting themes – detection; enforcement of the evaluated Party's foreign bribery offence; and corporate liability for the offence (liability of legal persons). Additionally, it addresses the Party's progress on previously unimplemented Phase 3 recommendations, issues raised by changes to the Party's legal and institutional frameworks for combating foreign bribery, as well as any new issues that come to the Working Group's attention. Phase 4 considers each Party's unique situation, resulting in a report and recommendations that address the specific challenges and achievements of each Party in a more targeted manner than previous Phases. This result is largely achieved by focusing first and foremost on the recommendations from Phase 3 that were not fully implemented by the end of that cycle. This means that issues that were not problematic or were resolved by the end of Phase 3 may not be reflected in the Phase 4 Report, while wholly new issues that have arisen since that time may appear in this report for the first time.

6. The Phase 4 evaluation team for Bulgaria was composed of lead examiners from Chile and Greece, and members of the OECD Anti-Corruption Division.¹ Pursuant to the Phase 4 procedures,² after receiving Bulgaria's responses to the Phase 4 Questionnaire, which included supplementary country-specific questions, the evaluation team conducted its virtual visit from 10 to 17 May 2021 via videoconference. Sixteen panels were conducted to obtain a range of perspectives. In addition to opening and closing sessions with the Bulgarian authorities, panels were held with the main Bulgarian ministries and agencies responsible for implementing the Convention, including the Ministry of Justice (MOJ), Ministry of Foreign Affairs (MFA), Supreme Prosecutor's Office of Cassation (SPOC), Sofia City Prosecutor's Office and Specialised Prosecutor's Office, Commission for Combating Corruption and Confiscation of Illegally Acquired Property (Anti-Corruption Commission), Ministry of Interior (MOI), State Agency for National Security (SANS), Ministry of Finance and Ministry of Economy, Court of Appeal-Veliko Tarnovo, Supreme Court of Cassation and district courts, Financial Intelligence Directorate (FID-SANS). Panels were held with the following government agencies with frequent contact with the private sector: National Revenue Agency (NRA), Export Credit Agency (BAEZ) and Public Procurement Agency (PPA). Panels were also held with the following stakeholders from outside the Bulgarian administration: civil society, journalists, academia, the accounting and auditing profession, legal and compliance professions

¹Chile was represented by: **Alejandro Litman**, Senior Legal Advisor, Specialised Anticorruption Unit (UNAC), Fiscalía Nacional, Ministerio Público (Public Prosecutor's Office) and **Karina Fernanda Uribe Peña**, International Affairs Analyst, Financial Analysis Unit-FIU. Greece was represented by: **Dimosthenis Stigas**, Judge at the Court of Appeal, currently Justice Counsellor with the Greek Permanent Representation with the EU and **Miranta Papouli**, Senior Inspector-Auditor, Chief of Section, National Transparency Authority of Greece. The OECD Secretariat was represented by four colleagues from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs: **Elsa Gopala Krishnan**, Senior Legal Analyst; **Paul Whittaker**, Legal Analyst; **Apostolos Zampounidis**, Legal Analyst and **Dinara Afaunova**, Legal Analyst.

² The Phase 4 Procedures are provided in [OECD Anti-Bribery Convention: Phase 4 Monitoring Guide](#).

and a range of representatives from other areas of the private sector.³ Unfortunately, a panel with parliamentarians and the National Anti-Corruption Policy Council was unable to take place due to the fact that at the time of the on-site visit the Bulgarian Parliament was dissolved in view of the forthcoming parliamentary elections.

7. All the panels were coordinated by the MOJ. Government representatives were generally open and forthcoming about the challenges they face in implementing the Convention. The lead examiners credit Bulgaria with a well-organised virtual visit, however, they were disappointed by the relatively low level of participation of representatives from civil society, media and small and medium enterprises (SMEs). The evaluation team would nevertheless like to express its appreciation to all the participants for their contributions to the open and constructive discussions. The evaluation team is grateful to the Bulgarian authorities for their cooperation throughout the evaluation, including by complying promptly with the schedule, and the provision of additional information following the virtual visit.

3. Bulgaria's foreign bribery risk in light of its economic situation and trade profile

(a) *Economic background*

8. Bulgaria is a relatively small economy in the context of the Working Group, placing it as the 38th largest economy in terms of gross domestic product (GDP) among its 44 members.⁴ Bulgaria is the 74th largest economy in the world and the 20th largest economy in the European Union.⁵ In the past two decades, Bulgaria has made strong income gains through a series of reforms, the highly successful integration of Bulgarian manufacturing firms into world production chains, and sound macroeconomic management has led to growth rates above 3% since 2015, rapidly rising real wages, and historically low unemployment.

9. Over 2000-2019, Bulgaria's exports and imports of goods and services increased from 78% to 124% of GDP.⁶ It is a highly open economy that is dependent on exports.⁷ A large share of Bulgaria's exports relate to food products, agriculture, machinery and transport equipment, manufactured goods and chemical and related products.⁸ With regard to the export of goods, Bulgaria's major trading partners are European Union (EU) member states (in particular Germany, Italy and Romania), and outside of the EU, Turkey and China.⁹

10. Bulgaria's outward foreign direct investment (FDI) is considerably smaller than its inward flows. In 2019, the FDI outflows amounted to USD 332 million compared to USD 1.2 billion FDI inflows. The total stock of FDI stood at USD 52 billion at the end of 2019.¹⁰ The main investors are EU member states (particularly the Netherlands, Austria, Germany) and Switzerland. The largest investments were made in

³ Annex 3 for the List of Participants in the Phase 4 virtual visit.

⁴ World Bank

⁵ UNCTAD

⁶ OECD Economic Surveys: Bulgaria 2021, p. 39. A copy of the Survey can be provided upon request

⁷ OECD Economic Surveys: Bulgaria 2021, p.10

⁸ OECD Economic Surveys: Bulgaria 2021, p. 40

⁹ OECD Economic Surveys: Bulgaria 2021, p. 40

¹⁰ UNCTAD World Investment Report 2020

real estate, manufacturing and the financial and insurance activities sectors.¹¹ A large part of outward FDI comes from Bulgarian companies operating in manufacturing, followed by companies in professional, scientific and construction sectors.¹² According to Bulgaria, the top six countries in terms of outward FDI for 2020 were Luxembourg, United Arab Emirates, Czech Republic, Republic of Moldova, Republic of North Macedonia and Liechtenstein.¹³

11. Micro, small and medium-sized enterprises in the non-financial business economy account for 99.8% of all companies, translating to 343 129 of the total of 343 752 companies registered in Bulgaria.¹⁴ The majority of SMEs are active in wholesale and retail trade and manufacturing.¹⁵

(b) State-Owned Enterprises

12. Despite large-scale privatisations in the 1990s, state-owned enterprises (SOEs) still occupy a central place in the Bulgarian economy in terms of both their size and their dominance in strategic sectors like energy and transport.¹⁶ The overall SOE sector (including the sub-national level) is valued at approximately USD 12 billion and employs over 186 000 people (representing 6.6% of total employment). The revenues of SOEs equals 13% of GDP, but even that number underestimates their economic impact, because key sectors such as energy, railway transport and water supply are dominated precisely by such enterprises. Although on paper SOEs are not part of the state budget, their financial situation has serious impact on public finances. The total amount of subsidies and capital transfers from the state budget to public enterprises is 3.1% of GDP, and they have remained relatively stable around 3% of GDP in recent years.¹⁷

13. The most recent OECD Economic Survey of Bulgaria expressed concerns that the large number of SOEs in these competitive sectors could be hindering competition and slowing down economic recovery, recommending that Bulgaria widen the scope for privatisation.¹⁸

(c) The economic impact of the COVID-19 health crisis

14. Preliminary data suggest a significant economic impact from the pandemic. The Bulgarian economy contracted by 4.2 percent in 2020. Exports contracted by 11.3%, while investment went down by 5.1%. Consumption increased by 1.8% on the back of enhanced government spending and relatively resilient household consumption (+0.2%). Sluggish domestic and external demand was reflected in lower imports (by 6.6%).¹⁹

15. Travel, accommodation and food services suffered a large contraction. The manufacturing industry was largely export-oriented and suffered from initial high volume and lower prices. Bulgarian authorities

¹¹ Bank of Bulgaria Direct Investment

¹² Bank of Bulgaria, Direct Investment of Bulgaria Abroad (BPM6), DI flows by economic activity

¹³ Bank of Bulgaria, Direct Investment of Bulgaria Abroad (BPM6), DI flows by geographical region

¹⁴ Bulgaria – 2019 SBA Fact Sheet, Europa.eu

¹⁵ Bulgaria – 2019 SBA Fact Sheet, Europa.eu

¹⁶ OECD Corporate Governance of SOEs in Bulgaria, p. 18

¹⁷ OECD Guidelines on Corporate Governance of State-Owned Enterprises in Bulgaria

¹⁸ OECD Economic Surveys: Bulgaria 2021. Survey can be provided upon request as it is not available free of charge on the OECD website

¹⁹ IMF Covid-19 Policy Tracker

have adopted several stimulus packages to support economic recovery, with measures ranging from tax deferrals and exemptions to wage subsidies to deferral of bank loan payments.²⁰

(d) Bulgaria's exposure to foreign bribery risks

16. In the 2020 Corruption Perceptions Index (CPI) by Transparency International (TI), Bulgaria ranked 69th globally, and 28th in the EU along with two other countries. Since Phase 3 the CPI "score" for Bulgaria has increased by 3 points to 44 in 2020,²¹ although TI noted that the outcomes show that there is no significant progress in fighting corruption in comparison with positive developments in other EU countries.²² In addition, TI Bulgaria provided further information at the virtual visit, referring to the recent 'Exporting corruption report' and the TI progress reports on the enforcement of the OECD Convention, which highlighted the ongoing lack of enforcement by Bulgaria.²³

17. Eighty per cent of Bulgarian respondents to the latest Eurobarometer survey on corruption are of the opinion that corruption is widespread in their country (EU average: 71%),²⁴ while 85% of companies consider corruption to be widespread (EU average 63%). Similarly, 51% of businesses considered corruption to be a problem when doing business in the country. Twenty-eight per cent of respondents state that they feel personally affected by corruption in their daily lives (EU average 26%), while 63% do not think that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%). Finally, only 13% of companies responded that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).²⁵ As mentioned above, some Bulgarian companies operating abroad are in sectors recognised by the Working Group as prone to corruption (e.g. construction), and amongst the top six countries for outward FDI, some have perceived high levels of corruption.²⁶

18. In terms of financial flows and risks of money laundering, the financial sector has seen few money laundering cases, and Bulgaria is considered a low-risk country (ranked 138th least at risk of money laundering out of 141 countries in the 2020 Basel AML Index noting that Bulgaria has not yet been assessed with the fourth-round FATF methodology, limiting comparability).²⁷ Nevertheless, laundering the proceeds of corruption is one of the main risks identified in Bulgaria's national risk assessment (see below under Part B.3(d)).

(e) Allegations and cases of foreign bribery in Bulgaria

19. In Phase 3 (See Executive Summary and para. 5), the Working Group noted that Bulgaria had one conviction for foreign bribery and a second case under investigation, which was later discontinued when the alleged briber died. At that time, four other investigations had been discontinued at an early stage. Since Phase 3, Bulgaria has commenced only one foreign bribery investigation, which is ongoing. The evaluation team is aware of several publicly reported allegations of foreign bribery that have not been

²⁰ IMF Covid-19 Policy Tracker

²¹ Transparency International

²² Transparency International Bulgaria

²³ <https://www.transparency.org/en/publications/exporting-corruption-2020> and <https://www.transparency.org/en/search/filter?project=exporting-corruption&type=publication>

²⁴ Flash Eurobarometer 502 (2020), Corruption

²⁵ Flash Eurobarometer 482 (2019), Businesses' attitudes towards corruption in the EU

²⁶ OECD Bribery Report (2014); Transparency International Corruption Perceptions Index (2020)

²⁷ 2020 Basel AML Index

properly assessed and proactively investigated by Bulgarian authorities in order to commence pre-trial proceedings.

20. The case information contained in this report is based on Bulgaria's updates provided to the evaluation team in the Phase 4 questionnaire and both during and after the virtual visit.²⁸

(i) *New case*

21. Bulgaria, in its Phase 4 questionnaire, provided details of a new investigation (**EU Funds case**). This case was initiated after receiving a mutual legal assistance request from another Party to the Convention. Pre-trial proceedings were initiated in March 2017 by the Specialised Prosecutor's Office on allegations of participation in an organised criminal group which was established to commit crimes of active bribery of a foreign official and other offences in relation to the misappropriation of funds belonging to the EU. According to the allegations, the organised criminal group has been active from the beginning of 2008 on the territory of another Party to the Convention and in Bulgaria.

(ii) *Cases not investigated*

22. One of the cases, which was publicly reported but not investigated by Bulgaria (**Case A**), concerned a non-resident Bulgarian national who allegedly was involved in fraud and bribery in connection with bank loans to SOEs of a non-Party country. The Bulgarian national has reportedly pleaded guilty to related charges brought by another Party to the Convention but Bulgaria has not undertaken any preliminary enquiries or commenced pre-trial proceedings. Bulgaria states that there was no obligation for the competent authorities to initiate a second (parallel) proceeding as the Bulgarian national was investigated and subsequently pleaded guilty in another country. In addition, there was no information to suggest a crime was committed in Bulgaria. Bulgaria has also confirmed it has not received any mutual legal assistance requests from either the non-Party country or the other Party to the Convention.

23. In another case that was not investigated (**Case B**), it was alleged that bribes were funnelled through Bulgarian "shell" companies. Another Party to the Convention is investigating the matter and sent a mutual legal assistance request to Bulgaria, which has been executed by the Sofia City Prosecutor's Office. Bulgaria has not undertaken any preliminary checks or commenced pre-trial proceedings because they state that there is no obligation for the competent authorities to initiate a second (parallel) proceeding due to prosecutorial discretion, and there was no evidence of an offence by a Bulgarian national in Bulgaria.

(iii) *Other relevant cases*

24. There are three cases which contain allegations of Bulgarian public officials (or their family members) being bribed. However, in two of these cases, the Bulgarian authorities have not undertaken any preliminary checks or commenced pre-trial proceedings as, according to Bulgaria, there is insufficient information to initiate investigations.

25. The third case (**Case C**) was reported in the media and involved a Bulgarian national that received money to lobby influential Europeans and to funnel money offshore. Bulgaria has undertaken preliminary enquiries in this case. The Prosecutor General provided the Sofia City Prosecutor's Office with the media reports and preliminary enquiries were undertaken. However, there was insufficient information to commence pre-trial proceedings. The National Revenue Agency also undertook an audit in relation to the

²⁸ Most of the allegations used in this evaluation come from the Matrix, a collection of foreign bribery allegations prepared by the OECD Secretariat using public sources, such as the media. The inclusion of allegations in the Matrix does not prejudice the issue of whether the allegations are, in fact, an offence under any applicable law. The Matrix is provided by the Working Group to the MOJ which in turn distributes it to the Supreme Prosecutor's Office of Cassation.

consultancy payments in this matter but did not find any irregularities and no further tax liabilities were charged.

26. There have been two instances where Bulgarian authorities have arrested nationals of Parties to the Convention pursuant to Interpol notices in connection with extradition requests related to foreign bribery allegations. In both cases, their extradition was requested by non-Party countries and declined by Bulgaria. In one case, the court declined to grant the extradition because of the expiration of limitation periods in the requesting non-Party country. In the other case, the requesting non-Party country failed to provide the necessary documentation in time and the individual was released from custody. Later, upon receipt of the documentation, the Bulgarian authorities sought to re-detain the individual but the individual had left the country.

Commentary

The lead examiners are seriously concerned about the continued lack of detection, investigation and prosecution of foreign bribery cases in Bulgaria, particularly where allegations are reported publicly or notified to the Bulgarian authorities by the Working Group. The lead examiners recommend that Bulgaria increase the use of proactive steps to gather information from diverse sources to increase detection. The lead examiners also recommend that Bulgaria ensure that all foreign bribery allegations are properly assessed by the competent authorities and, where appropriate, pre-trial proceedings are commenced.

Whilst the lead examiners acknowledge the priorities of Bulgaria in relation to organised crime and fraud on EU funds, Bulgaria must abide by its obligations under the Convention to fight foreign bribery and the lead examiners recommend that Bulgaria urgently take the necessary steps to raise awareness of foreign bribery risks.

A. Detection of foreign bribery

27. Since Phase 3, there has only been one allegation of foreign bribery detected by the Bulgarian authorities which was through an MLA request from another Party to the Convention (**EU Funds case**). In light of so few cases, detection of foreign bribery allegations in Bulgaria is severely lacking and the Bulgarian authorities need to increase their efforts in this regard across all detection sources.

28. In Phase 3 (para. 113), the Working Group noted a lack of awareness of the risks of foreign bribery among public officials and in the private sector, and that insufficient priority was given to prevention and detection of foreign bribery cases. This does not appear to have changed since Phase 3, although the Working Group acknowledges that Bulgaria's efforts have been focused on fighting domestic corruption and organised crime.

1. Bulgaria's capacity to detect foreign bribery through its anti-money laundering (AML) framework

29. In Phase 3, there were no recommendations or follow-up issues in relation to money laundering or the financial intelligence unit (FIU), however, an effective AML framework can assist in the detection of foreign bribery cases. The money laundering offence and other issues are discussed later in this report (see Part B.3(c) below).

30. As noted in Phase 3, any offence under the Criminal Code (CC), including foreign bribery, qualifies as a predicate offence to money laundering. Since Phase 3, Bulgaria has enacted a new law, the Measures against Money Laundering Act (MAMLA). The MAMLA provides for a wide range of measures for the prevention of the use of the financial system for the purposes of money laundering (article 1 MAMLA), for example customer due diligence, the assessment of money laundering risks, disclosure of suspicious transactions and exchange of information both domestically and internationally.

31. The MAMLA sets out a very wide range of entities (known as 'obliged entities') who are obliged to report suspicious transactions to the Bulgarian FIU (FID-SANS) (article 4 MAMLA). Originally, there were nearly 40 categories of obliged entities and these include payment service providers, financial institutions, currency exchange offices, insurers, statutory auditors, accountants, lawyers (in some circumstances), real estate agents and art dealers. The categories also included government agencies, for example the NRA and customs authorities. However, at the virtual visit it was confirmed that these latter obliged entities have been removed for a variety of reasons, including in light of the new National Risk Assessment and through amendments to the MAMLA, as they do not have "customers" to which most of the measures relate to, including customer due diligence. However, these entities are still obliged to report suspicious transactions.

32. Obligated entities under MAMLA have an obligation to implement the measures provided for in article 3 (e.g. customer due diligence and suspicious transaction reports (STRs)) and, under article 72, are required to notify immediately FID-SANS whenever there is a suspicion of money laundering and/or that the proceeds of criminal activity are involved. The FID-SANS has issued helpful guidelines on reporting matters to it under article 72 MAMLA.

33. Since 2017, the number of STRs filed with FID-SANS has increased by over 60% from 3 065 in 2017 to 4 944 in 2020. However, Bulgaria is unable to provide exact statistics on suspicious transaction reports for foreign bribery as the software that FID-SANS uses does not allow searches due to lack of functionality. Instead, Bulgaria states that an overview of suspicious transaction reports received shows that there are cases potentially related to corruption practices, including bribery in relation to public procurements.

34. During the virtual visit, obliged entities stated that they currently file STRs manually via email and there is no automated reporting system although FID-SANS stated at the virtual visit that they are looking to implement the United Nations Office on Drugs and Crime (UNODC) goAML software solution²⁹ to facilitate reporting by obliged entities. Once implemented and operational the software will replace the current regime for the submission of STRs.

35. In addition, obliged entities are obliged to notify the competent authorities according to the Criminal Procedure Code (CPC). Therefore, in case they become aware of involvement of funds obtained through bribery, they shall notify FID-SANS and law enforcement authorities. Other measures imposed on obliged entities under the MAMLA include enhanced customer due diligence (CDD) with regard to politically exposed persons (PEPs) and these also apply to the beneficial owners of legal persons or other legal entities (article 41 MAMLA).

36. MAMLA provides for enhanced and ongoing CDD for PEPs in Bulgaria, other countries and international organisations (articles 36(1) and 40 MAMLA). PEPs include heads of State, government ministers and members of parliament together with members of the administrative, management or supervisory bodies of SOEs and wholly State-owned commercial corporations (article 36(2) MAMLA). In order to enter into a business relationship with a PEP approval from a senior manager in an obliged entity is required. Obliged entities also need to verify the source of funds involved in the business relationship and the source of assets of the PEP (article 39 MAMLA).

37. Under article 59 MAMLA, any natural person who is the beneficial owner of a customer that is a legal person or other legal entity needs to be identified and various documents produced. Legal persons and other legal entities incorporated in Bulgaria need to maintain accurate and current information on the natural persons who are the beneficial owners (article 61 MAMLA). Furthermore, this information needs to be entered in the Commercial Register, the Register of Non-Profit Legal Persons and the BULSTAT Register.³⁰

38. Panellists at the virtual visit commented on the effectiveness of FID-SANS, although a non-financial institution representative commented that whilst FID-SANS has been effective in reaching out to the financial sector, they have been less so in relation to obliged entities in the non-financial sector. As the non-financial sector includes lawyers, accountants and real estate agents this is an unfortunate oversight. In addition, FID-SANS mentioned at the virtual visit that it meets annually with obliged entities to discuss issues including the quality of the STRs filed. Panellists from financial institutions also commented at the virtual visit that staff at the FID-SANS were generally available to discuss issues by telephone when required.

39. To date, no foreign bribery cases have been detected by FID-SANS. As stated at the virtual visit, FID-SANS is an administrative style FIU, and it is not their function to always identify what actual breach of the CC has occurred before reporting the matter to the competent authorities. The FID-SANS also

²⁹ [goAML \(Anti-Money-Laundering System\) \(unodc.org\)](https://www.unodc.org/goAML/)

³⁰ The BULSTAT Register is a unified national administrative register that is kept by the MOJ Registry Agency. Upon entry of a newly registered entity in the BULSTAT Register, a unique unified identification code (UIC) is generated, called BULSTAT Code, which is the only identifier of business subjects in Bulgaria. All legal subjects listed in the BULSTAT Register shall use and state the BULSTAT UIC in the documents they issue and use in their workflow.

indicated that it could be difficult for the obliged entity to identify the specific breach of the CC in the STR. The FID-SANS has issued guidance to obliged entities on the completion of STRs which is welcome. During the virtual visit, FID-SANS commented that they do not always receive feedback from the competent authorities on the dissemination of their analysis.

40. Since the MAMLA was enacted with what appear to be comprehensive reporting obligations, a wide definition of obliged entities and enhanced CDD for PEPs and beneficial owners,³¹ the Working Group is concerned that there have been no allegations of foreign bribery detected to date through Bulgaria's AML framework.

Commentary

The lead examiners are concerned that Bulgaria has yet to detect a foreign bribery case through the anti-money laundering framework that includes the new MAMLA. In addition, it appears that the FID-SANS has not received any STRs, which specifically identify foreign bribery as the predicate offence. Further, although the lead examiners acknowledge and welcome the good working relationship between the FID-SANS and the obliged entities in the financial sector, they are concerned that the FID-SANS has not raised awareness with significantly important obliged entities for foreign bribery, including accountants, lawyers and real estate agents.

The lead examiners therefore recommend that Bulgaria (a) urgently raise awareness with non-financial institutions on the risks of foreign bribery; (b) provide specific guidance and typologies on foreign bribery cases for all obliged entities; (c) maintain detailed statistics on STRs received to allow the FID-SANS to analyse the obliged entities that are reporting cases and also the underlying predicate offence; (d) implement the goAML (or similar) software to facilitate the reporting of STRs by obliged entities; and (e) ensure that the competent prosecution authorities that receive analysis reports from the FID-SANS, and as part of improved interagency cooperation, provide more regular and more detailed feedback on follow-up actions.

2. Detection by Ministry of Interior and State Agency for National Security

41. Following the virtual visit, Bulgaria noted that the MOI is responsible for detecting crimes in Bulgaria, together with the SANS. Under articles 8 and 9 of the Law of the Ministry of Interior, the MOI undertakes operative and investigative work through overt and covert actions to counter crime and national security threats and to maintain public order. Bulgaria was unable to provide any examples of where the MOI has detected any cases of foreign bribery.

3. Detection and reporting by public officials, including MFA officials

42. Public officials in Bulgaria are obliged to report administrative weaknesses, omissions and violations, which in their opinion are preconditions for corruption, fraud and irregularities (article 7(3) Code of Conduct of State Administration Employees). However, as noted in Phase 3, this obligation primarily concerns corruption of Bulgarian public officials and not foreign bribery. Moreover, public officials have the duty to report criminal offences, including foreign bribery under article 205(2) CPC, a duty that applies to all citizens in Bulgaria. Public officials have the additional duty to take all necessary measures to preserve the "general setup and data" of the offence (article 205(2) CPC). The CPC does not prescribe sanctions for those who do not report, delay or obstruct a report. As of Phase 4, there have been no cases of foreign bribery detected by Bulgarian public officials.

³¹ Noting that the MAMLA has not yet been assessed by MONEYVAL or the FATF.

43. The Working Group has recognised that foreign diplomatic missions have a strategic role to play in the detection and reporting of foreign bribery. Officials posted abroad are well positioned to identify and report foreign bribery, in particular because of their knowledge of the business opportunities in the host countries and their familiarity with the local environment, including local media. In Phase 3, the Working Group found that MFA officials had not received reports about solicitation of or active bribery by Bulgarian nationals abroad and were not aware of any reporting channels to receive such reports. The Working Group further noted with concern a general lack of proactive measures to raise awareness among public officials, included MFA officials, who could play a role in detecting and reporting foreign bribery. It therefore recommended that Bulgaria raise their awareness and this was considered fully implemented at the two-year written follow-up. Bulgaria reports that in 2016-2021, the MFA Diplomatic Institute provided training to 463 new MFA officials on anti-corruption measures, including Bulgaria's anti-corruption legal framework, practical cases, reports of corruption and inspections. However, the trainings did not cover specifically foreign bribery and did not touch upon the role that foreign diplomatic missions can play in the detection and reporting of foreign bribery. After the virtual visit, Bulgaria reported that in June 2021 the MFA circulated among foreign diplomatic missions an awareness-raising brochure on fighting foreign bribery, prepared by the OECD and translated in Bulgarian.

44. Allegations of corruption and foreign bribery can be reported through the dedicated MFA anti-corruption webpage and through drop boxes in the embassies abroad, to the MFA Inspectorate. The MFA Inspectorate does not have investigation powers but refers all allegations to the competent law enforcement authorities. To date, Bulgaria has received no allegations of corruption or foreign bribery through the MFA reporting channels.

Commentary

The lead examiners consider that awareness raising is an ongoing obligation and, although they acknowledge that some work has been done in this regard, they recommend that Bulgaria continue to raise awareness and provide regular training to public officials who could play a role in detecting and reporting foreign bribery, including MFA officials, about the offence and reporting obligations. The lead examiners further recommend that Bulgaria include specific modules on foreign bribery in the curricula of the MFA Diplomatic Institute training provided to new MFA officials on anti-corruption measures.

4. Reports by whistleblowers and adequacy of Bulgaria's whistleblower protection

45. To date, no foreign bribery case has been detected through whistleblower reports in Bulgaria. Protections for whistleblowers remain limited. In Phase 4, Bulgaria continues to rely on the minimal protections available under a number of sectoral laws (e.g. Labour Code, Law on Civil Servants, Law on Protection of Competition, and MAMLA). The newest addition is the 2018 Law on Combating Corruption and Confiscation of Illegally Acquired Property (LCCCIAP), whose Chapter 6 'Signals' applies to reports of domestic but not foreign bribery. As noted in Phase 3, none of Bulgaria's existing legislation meets the standards of the 2009 Recommendation to protect from discriminatory or disciplinary actions public and private sector employees who report suspected acts of foreign bribery.

46. Bulgaria has until 17 December 2021 to transpose the requirements of the EU Whistleblower Protection Directive. The MOJ coordinates the country's transposition efforts, and in 2020, it established a multi-stakeholder working group to analyse Bulgaria's existing legislation in the area. According to Bulgaria, this working group completed the analysis and accomplished its mandate. Considering that new dedicated legislation will be a more appropriate way for the transposition of the Directive, Bulgaria established a new working group in June 2021 in order to prepare the necessary legislative proposal to the Council of Ministers and the Parliament.

47. In the meantime, and in the absence of comprehensive measures to protect whistleblowers, civil society representatives at the virtual visit suggested that there is a low level of trust in the legal framework for whistleblowers and its implementation. The few Bulgarian companies that participated at the virtual visit stated that channels for reporting corruption exist mainly within larger companies, however, even in those cases available protections are limited.

Commentary

The lead examiners regret that Bulgaria has yet to enact legislation that fully meets the standards of the 2009 Recommendation with regard to whistleblower protection. However, in view of the transposition of the requirements of the EU Whistleblower Protection Directive in Bulgaria, they consider that Phase 3 recommendation 9 has become obsolete. The lead examiners therefore recommend that Bulgaria, in the context of forthcoming reforms, enact legislation that provides clear and comprehensive protections from retaliation for whistleblowers in the public and private sectors who report suspected acts of foreign bribery.

5. Media and investigative journalists

48. The Working Group has recognised media reporting as an essential source of detection in foreign bribery cases, as well as an important tool for public awareness raising on corruption.³²

49. Bulgaria notes that an Order issued by the Prosecutor General in 2015 (amended in 2019), approved the Rules for media communication in the Prosecutor's Office. The Order includes carrying out daily monitoring of media information relevant to the work of the respective prosecutor's office and promptly notifying the administrative head and the supervising prosecutor. In Bulgaria, under article 207 CPC, reporting by mass media is considered a "statutory occasion", one of the requirements for initiating pre-trial proceedings. To date, the media has been a source of at least one bribery allegation concerning the receipt of payments by a Bulgarian national (**Case C**). The matter was widely reported in the media and, following these reports, Bulgaria has confirmed that the Prosecutor General forwarded the media materials to the Sofia City Prosecutor's Office. During the inspection, including an audit by the NRA, not enough evidence was collected for a crime, which is why in 2018 a decision to not initiate pre-trial proceedings was issued. It was established that the funds had been received by the indicated person on the basis of a consultancy contract under which consultancy services had been provided.

50. However, several reports of allegations of foreign bribery in the media have not been investigated by the Bulgarian authorities, primarily from what appears to be a lack of sufficient information required under article 211 CPC (discussed further below). However, the lead examiners note that the Bulgarian authorities could be more proactive when an allegation is reported in the media and undertake open source research or preliminary checks to see whether pre-trial proceedings should be commenced.

51. During the virtual visit, only three representatives participated in the panel session for civil society and journalists. The relatively low attendance was explained by the political situation on the day of the meeting as the Bulgarian Parliament had been dissolved but also, of concern, by the lack of foreign bribery awareness in Bulgaria. The panellists pointed out that in Bulgaria stories about corruption "quickly die out" because "public authorities do not react on media questions and requests". Panellists also reported difficulties in accessing public information because of reluctance of the public authorities and poor cooperation with them.

³² [OECD \(2017\), The Detection of Foreign Bribery, Chapter 4](#)

52. According to Reporters Without Borders, Bulgaria has the lowest standards of press freedom in Europe and, in 2020, for a third consecutive year, was ranked 111th globally (out of 180 countries) in terms of press freedom.³³ In 2013, at the time of the two-year written follow-up, Bulgaria was ranked 87th globally.

53. Attacks on independent and investigative journalists exposing corruption cases are frequently reported. At the same time, judicial harassment of independent media continues to intensify. Particularly, in May 2020, Reporters Without Borders mentioned the trial of a publisher on charges of privatisation fraud. According to Reporters Without Borders this trial seems to be an example of "increasing political pressure on a major independent media group" by "politically controlled agencies" in "response to journalistic investigations that have uncovered the hard truths of corruption cases". The Panellists at the virtual visit confirmed these concerns, mentioning attacks on journalists reporting on corruption including "retaliatory investigations" and other methods of pressure.

Commentary

The lead examiners note the important role of investigative journalism in developing serious, vigorous and high profile reporting of foreign bribery issues. They are concerned that media in Bulgaria may not operate in an environment conducive to the reporting of potential foreign bribery allegations. Accordingly, the lead examiners recommend that Bulgaria ensure that laws relating to freedom of the press are fully applied in practice to ensure that allegations of foreign bribery can be reported without fear of reprisals.

The lead examiners nevertheless welcome the commencement of the investigation by the Bulgarian authorities following the reports in the media concerning the allegations in Case C and note the critical role that investigative journalists have played in the case. However, they are concerned about the insufficient proactivity by the Bulgarian authorities in foreign bribery cases generally that are reported in the media. The lead examiners therefore recommend that law enforcement authorities routinely and systematically assess foreign bribery allegations that are reported in domestic and foreign media.

6. Self-reporting by companies

54. The Working Group has recognised self-reporting (or voluntary disclosure) by companies as an invaluable source of detection of foreign bribery and notes that across the parties to the Convention, self-reporting by companies accounts for approximately a quarter of all foreign bribery cases detected since the entry into force of the Convention. However, Bulgaria's law does not contain specific provisions on self-reporting by legal persons and therefore has not been a source of detection. In a positive development, as of December 2021, rendering assistance for disclosing the offence may be taken into account by the courts in determining the amount of sanctions against a legal person and could be considered an incentive for self-reporting. This is discussed further under Part C.3(c) below.

7. Tax authorities

55. While the NRA provides the bulk of notifications leading to pre-trial proceedings being opened by the Prosecutor's Office, to date, no cases of suspected foreign bribery have been referred by the NRA to law enforcement authorities. Related tax issues are further discussed in Part D.1 below.

³³ [Reporters Without Borders, 2021 World Press Freedom Index](#)

8. ODA agency

56. The MFA International Development Co-operation Department, United Nations and Development Co-operation Directorate administers ODA in Bulgaria. No instance of foreign bribery in ODA has ever been reported to law enforcement authorities. Mechanisms developed to prevent, detect and report foreign bribery in ODA, and more generally implement the 2016 Recommendation for Development Co-operation Actors on Managing Risks of Corruption, are reviewed under Part D.2(c) below.

9. Anti-Corruption Commission

57. Since Phase 3 Bulgaria has established the Anti-Corruption Commission, which consolidated the existing state structures, carrying out the activities on the confiscation of illegally acquired property, conflict of interest, prevention and combatting corruption, in accordance with the LCCCIAP in 2018. The Anti-Corruption Commission is a standing independent specialised collective body implementing the state policy in the field of countering corruption and forfeiture of illegally acquired property. The Anti-Corruption Commission works on the following main areas: prevention of corruption, public register, conflict of interests, combating corruption, confiscation of illegally acquired property and management of the secured property. The Anti-Corruption Commission is responsible for the collection and analysis of asset declarations by domestic senior public officials designated under the LCCCIAP.

58. According to the LCCCIAP, the Anti-Corruption Commission can initiate an investigation for corruption offences related to the domestic senior public officials designated above upon request by the Prosecutor's Office under the Judiciary System Act (JSA) and in case of alert under article 47(1) and (2) LCCCIAP. According to article 47(2) LCCCIAP, a publication in the mass media is regarded as an alert or signal. The Anti-Corruption Commission also receives information in implementation of international agreements to which Bulgaria is a party. Under the CPC, when any person is charged with bribery offences, including foreign bribery, the Anti-Corruption Commission initiates proceedings for forfeiture of assets. According to information provided during the virtual visit, the Anti-Corruption Commission has not identified or detected any foreign bribery cases to date for referral to the Prosecutor's Office.

10. Accountants and auditors

59. In 2016, Bulgaria enacted the Independent Financial Audit Act (IFAA), which provides the main framework for external auditing in Bulgaria and incorporates the International Standards on Auditing (ISA).

60. External auditors who perform financial audits of public interest entities (e.g. credit and financial institutions, insurance, pension and investment companies, and some SOEs) are required to report suspected irregularities, including acts of foreign bribery, to the entity's management (article 69(1) IFAA). IFAA does not impose, in principle, an obligation on the entity's management to respond actively and effectively to such reports, and due to the lack of information provided by Bulgaria, the Working Group cannot assess whether Bulgaria encourages public interest entities to do this in practice. However, where the audited public interest entity fails to investigate a report of suspected irregularity by an external auditor or undertake appropriate remedial measures, the external auditor has the duty to refer the report to the competent authority supervising the entity (article 69(2) IFAA). A breach of the duty to report by an external auditor may lead to the imposition of a fine by the Commission for Public Oversight over Registered Auditors (Commission) (article 110 IFAA). For external auditors who perform financial audits of other companies i.e. not public interest entities, Bulgaria provides that the general duty to report criminal offences under article 205(1) CPC would apply. Bulgaria further states that the duty under article 205(1) CPC would override the external auditor's obligation to keep a professional secret under article 11 IFAA. To date, no

information is available as to whether an external auditor in Bulgaria has reported allegations of foreign bribery to competent authorities.

61. In Phase 3, the Working Group recommended that Bulgaria intensify training and awareness raising on foreign bribery that targets the accounting and auditing profession (second part of recommendation 6(a)). The two-year written follow-up report found that Bulgaria had taken insufficient measures to address the recommendation. In Phase 4, Bulgaria indicated that it organised “related” trainings covering ethics, identification of fraud in the accounting system and financial statements, and building control systems in accordance with the new auditing standards. However, none of these trainings addressed foreign bribery or corruption. Indeed, discussions at the virtual visit revealed that external auditors in Bulgaria lack the expertise to identify red flags of foreign bribery and that further awareness raising and training on foreign bribery is necessary. Following the virtual visit, Bulgaria indicated that the Commission, which has oversight over the continuing professional development of registered auditors (article 71(1.3) IFAA), gave instructions for the organisation of annual trainings on foreign bribery, including on methods and signals to detect foreign bribery. One such training has been organised in 2021, and three more are foreseen for 2022.

62. The independence of external auditors permits them to provide an objective assessment of company accounts, financial statements and internal controls. Article 54 IFAA stipulates that external auditors must be independent from the audited company, and prohibits auditors who hold financial instruments of the audited company or of a company related to the audited company to participate in its external audit. The provision further describes situations that may generate or perceive to generate conflicts of interest. In 2018-2021, Bulgaria organised three trainings on ethics, including on independence requirements for auditors. During the virtual visit, some external auditors expressed concerns that the standards for auditors’ independence may not be enforced in practice. In 2011-2021, the Commission sanctioned four external auditors for non-fulfilment of the requirements of independence and absence of conflict of interest, and since the virtual visit, Bulgaria indicated that two additional enforcement actions are ongoing.

Commentary

The lead examiners are concerned by the lack of awareness and expertise among external auditors in Bulgaria to detect foreign bribery but welcome the initiative of the Commission to commence trainings on the topic following the virtual visit. However, they consider that the Phase 3 recommendation relating to training and awareness raising (second part of recommendation 6(a)) remains not implemented and recommend that Bulgaria urgently proceed with raising awareness and providing training to external auditors on the foreign bribery offence, including methods and red flags to detect foreign bribery. The lead examiners further recommend that Bulgaria undertake more efforts to raise awareness of the independence standards among external auditors in order to improve compliance with IFAA.

B. Enforcement of the foreign bribery offence

1. The foreign bribery offence

63. Bulgaria's foreign bribery offence is contained in article 304 CC. While the provision largely meets the requirements of the Convention, certain elements require further follow-up.

(a) Third party beneficiaries

64. In Phase 3, the Working Group found that unlike Article 1(1) of the Convention, Bulgaria's active foreign bribery offence did not expressly cover an advantage given to a foreign public official for a third party and therefore recommended that Bulgaria amend its foreign bribery offence to expressly cover bribes given to third party beneficiaries (second part of recommendation 1(a)). In 2015, Bulgaria amended its CC (State Gazette (SG) 74/2015) to introduce a new article 304(c) to cover explicitly third party beneficiaries. According to the new provision, foreign bribery is punishable even "when the gift or benefit was proposed, promised or given to another person". While the corresponding Phase 3 recommendation on this issue should be considered fully implemented, the provision's new language refers to the 'consent of the official', which may raise issues in terms of proving the offence and introduce an additional requirement not found in the Convention. No case law was provided at the virtual visit on this point though the view was expressed during the panel with judges that officials would indeed need to consent to the gift or benefit proposed, promised or given to another person under the provisions of article 304(c).

(b) Act or refrain from acting in relation to the performance of official duties

65. Article 1(4)(c) of the Convention requires coverage of the giving, offering or promise of a bribe "in order that the official act or refrain from acting in relation to the performance of official duties". This phrase "includes any use of the public official's position, whether or not within the official's authorised competence". In Phase 3, Bulgaria's foreign bribery offence did not appear to meet this requirement of the Convention because article 304(1) CC only covered at that time bribery in order that an official "perform or not to perform an act within the framework of their service, or because they have performed or have not performed such an act". The Working Group recommended that Bulgaria close this loophole and amend its foreign bribery offence to cover all cases of bribery in order that an official act outside their authorised competence is covered (first part of recommendation 1(a)). However, Bulgaria's foreign bribery offence has not been amended to take this into account and article 304(1) CC still only covers bribery in order that an official "perform or not to perform an act within the framework of their service, or because he has performed or has not performed such an act".

Commentary

The lead examiners note that the Phase 3 recommendation related to third party beneficiaries has been implemented but are concerned by the inclusion of the additional requirement for 'the consent

of the official' and recommend that this element of the offence be withdrawn unless further clarified by case law.

The lead examiners also note that Bulgaria has not implemented Phase 3 recommendation 1 related to the performance of official duties. They reiterate the recommendation and recommend that Bulgaria amend its foreign bribery offence to cover any use of the public official's position, whether or not within the official's authorised competence.

2. Sanctions against natural persons for foreign bribery

(a) Criminal sanctions under Bulgarian law

66. In Phase 4, foreign bribery continues to be punishable for natural persons by six years' imprisonment and a fine of BGN 5 000 (approx. EUR 2 540). The same maximum sanctions apply to domestic bribery, as required by Article 3(1) Convention. However, increased maximum penalties are available for aggravated domestic but not foreign bribery. Bribing a Bulgarian official in order that they violate their official duties is punishable by eight years' imprisonment and a BGN 7 000 (approximately EUR 3 640) fine. The maximum penalty further increases to ten years' imprisonment and a BGN 15 000 (approximately EUR 7 800) fine if the official is one "in a responsible position, including that of a judge, juror, prosecutor, or investigator, or of a police body or of an investigating police officer" (articles 304(2) and 304a CC). These penalties are not available for foreign bribery. The Working Group recommended in Phase 3 that Bulgaria enact a provision to sanction aggravated foreign bribery to the same extent as aggravated domestic bribery (recommendation 3(b)) but the two-year written follow-up report found that Bulgaria had not implemented the recommendation and this is still the case under Phase 4.

(b) Sanctions imposed in practice

67. In Phase 3, the Working Group noted that while the sanctions for foreign bribery appeared adequate on paper, the punishment imposed in practice did not. Incarceration remained an unlikely sanction in corruption offences according to statistics provided by Bulgaria, at the time, and most convictions resulted in conditional (i.e. suspended) prison sentences and probation. There was no information available for fines imposed in corruption cases. The Working Group therefore recommended that Bulgaria ensure that sanctions against natural persons imposed in practice are effective, proportionate and dissuasive in all foreign bribery cases (Phase 3 recommendation 3(a)). The two-year written follow-up report welcomed the statistics provided by the Bulgarian authorities on domestic bribery cases, which, at the time, indicated a positive tendency in imposing of effective, proportionate and dissuasive sanctions in practice. However, in the absence of foreign bribery convictions, the Working Group concluded that Bulgaria had partially implemented the recommendation.

68. As mentioned in Phase 3, Bulgaria has only convicted one natural person for foreign bribery and it is not possible to assess whether sanctions against natural persons for foreign bribery offences are effective, proportionate and dissuasive in practice.³⁴ However, in 2011-2020, Bulgaria convicted 961 natural persons for active domestic bribery. Imprisonment was ordered in 957 of the cases. Out of these, the vast majority concerned conditional prison sentences (604) and probation (255), while in only 98 cases the court imposed actual prison sentences. Bulgaria provides no information about the duration of the prison sentences. Bulgaria further indicates that in 2011-2020, it imposed fines in 781 active domestic

³⁴ The case concerned a Bulgarian truck driver who offered a bribe of EUR 20 to a Slovenian border guard truck when they were stopped because their truck was in poor condition. The court convicted truck driver of foreign bribery and fined him BGN 200 (approximately EUR 102).

bribery cases, which were imposed together with the prison sentences, totalling BGN 376 410 (approx. EUR 192 000). These appear too low to be effective, proportionate and dissuasive.

(c) Confiscation

69. Confiscation of the ‘object of the crime’ or value thereof is foreseen by articles 53 and 307a CC. Additional provisions were adopted in furtherance of Phase 3 Recommendation 4(a) to extend confiscation to instrumentalities and indirect proceeds of bribery and property in the hands of third parties from natural persons. No further information was provided at the virtual visit on the implementation of this provision but during the panel held with judges, the view was expressed that sanctions for foreign bribery were adequate and dissuasive. While it was noted by Bulgaria that prosecutors seek confiscation as part of their indictments and courts are required to consider confiscation, either through a principal judgment or additional hearing, no further information was provided on the implementation of Phase 3 Recommendation 4(b) to take steps to ensure that prosecutors routinely seek confiscation of the bribe, and the direct and indirect proceeds of bribery obtained by a briber.

Commentary

Concerning the increased maximum penalties available for aggravated domestic bribery, the lead examiners recommend that these should also be applicable to foreign bribery and reiterate Phase 3 recommendation 3(b) in this regard.

In the absence of more concluded foreign bribery cases, the lead examiners cannot assess whether sanctions imposed in practice against natural persons for foreign bribery are effective, proportionate and dissuasive. The lead examiners, however, recommend that Bulgaria (a) take all necessary steps, including through guidance and training to the judiciary, to ensure that sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive in practice, and (b) take steps to ensure that in foreign bribery cases prosecutors routinely seek confiscation of the bribe, and the direct and indirect proceeds of bribery obtained by a briber, or monetary sanctions of comparable effect.

3. Related offences of false accounting and money laundering

(a) False accounting offence

70. In Phase 3, Bulgaria’s administrative false accounting offence for bribery was found in article 46(1) Law on Accountancy. Bulgaria’s CC also contained a number of criminal provisions dealing with false accounting in relation to other offences, however, these provisions contained, according to the Phase 3 report (para. 81), extra elements not found in Article 8 of the Convention. In 2016, Bulgaria enacted a new Law on Accountancy whose article 9 prohibits accounting:

- (a) for business transactions outside accounting books or records;
- (b) of fictitious or insufficiently identified transactions, non-existent expenses and liabilities of inaccurately identified subject, carried out for the purpose of bribing officials or concealing a bribe.

71. Bulgaria provides that article 9 was drafted to meet “the requirements for the effective combating of false accounting, according to Article 8 of the Convention”. The auditors who were present at virtual visit seemed to be well aware of the new provision. The CC provisions dealing with false accounting in relation to other offences continue, however, to remain in force.

(b) Sanctions for false accounting

72. Of special concern for the Working Group in Phase 3 was the inadequacy of sanctions for the false accounting offence, which, at the time, was punishable by a maximum monetary sanction of BGN 500 (approx. EUR 255). The Working Group therefore recommended that Bulgaria introduce effective, proportionate and dissuasive sanctions for false accounting (first part of recommendation 6(a)). The two-year written follow-up report found that Bulgaria had not implemented the recommendation. Article 68(1) Law on Accountancy increased the available sanctions for the false accounting offence to BGN 500 to BGN 5 000 (approx. EUR 2 550) for natural persons and BGN 2 000 (approx. EUR 1 022) – BGN 10 000 (approx. EUR 5 100) for legal persons. In the event of repeated violation, the sanction doubles. While this increase is welcome, the available sanctions for the false accounting offence still look very low to be effective, proportionate and dissuasive.

Commentary

The lead examiners welcome the enactment of article 9 Law on Accountancy for the purpose of bribing public officials or of hiding such bribery. They recommend that Bulgaria raise awareness of the new administrative offence among relevant practitioners. However, the lead examiners consider that the new article 9 does still not meet the requirements of Article 8(2) of the Convention concerning effectiveness, proportionality and dissuasiveness of the sanctions and reiterate Phase 3 recommendation in this regard (first part of recommendation 6(a)) that Bulgaria introduce adequate sanctions for the false accounting offence for the purpose of bribing foreign public officials or of hiding such bribery.

(c) Money laundering offence and prevention measures

73. As mentioned in Part A above, there were no recommendations or follow-up issues in relation to money laundering or the FIU in Phase 3. Bulgaria is currently undergoing an evaluation by MONEYVAL with an on-site visit held in September 2021, and a detailed assessment of its AML framework is not within the scope of this report.

74. Any offence under the CC, including foreign bribery, qualifies as a predicate offence to money laundering (articles 253 and 253a CC). The penalty can be up to 15 years' imprisonment for the most serious cases (article 253(5) CC).

75. Since Phase 3, there have been slight amendments to the money laundering offence (articles 253 and 253a CC), mainly to implement EU directive 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law. The amendment introduced a new aggravating circumstance for money laundering when the offence was committed by an obliged person under article 4 MAMLA.

76. As outlined in Part A.1 above, Bulgaria has enacted a new law, the MAMLA. The MAMLA provides for a wide range of measures for the prevention of the use of the financial system for the purposes of money laundering (article 1 MAMLA), for example customer due diligence, the assessment of money laundering risks, disclosure of suspicious transactions and exchange of information both domestically and internationally. The MAMLA also sets out a very wide range of obliged entities who are required to comply with the measures.

(d) The financial intelligence unit (FID-SANS)

77. During the virtual visit, it was explained that the FID-SANS is structured with a Head and Deputy Head and has three departments. FID-SANS undertakes the preliminary analysis of STRs and classifies the STR as for information-analytical purposes or for operative-analytical purposes. The latter are subject to further analysis and can be disseminated to a foreign FIU and/or Bulgarian competent authorities,

including the relevant prosecutor's office, law enforcement agencies, the Anti-Corruption Commission and also specialised directorates within the SANS. During the virtual visit, the FID-SANS commented that they do not always receive feedback from the competent authorities on the follow-up actions taken upon dissemination of the analysis.

78. One department of the FID-SANS supervises the obliged entities' compliance with the AML measures, which is shared with the National Bank of Bulgaria, the Financial Supervision Commission and the NRA. FID-SANS deals with the exchange of information both domestically and internationally.

79. Bulgaria could not provide data in relation to the resources of the FID-SANS noting that this information is confidential. However, information that was provided at the virtual visit indicated that resourcing was stable with a slight increase of six or seven positions in 2020. The FID-SANS organises its own training of staff through internal working meetings but also through the Institute of Public Administration and staff have, on occasions, attended international conferences and trainings. In addition, the FID-SANS mentioned at the virtual visit that it meets annually with obliged entities to discuss issues including the quality of the STRs filed. Panellists from financial institutions also commented at the virtual visit that staff at the FID-SANS were generally available to discuss issues by telephone when required.

80. In January 2020, Bulgaria announced the completion of its first ML/TF holistic national risk assessment analysing the internal and external money laundering and terrorist financing risks that the country faces.³⁵ One of the main risks identified in the national risk assessment was laundering of proceeds from corruption (including property related to embezzlement/procurement fraud with EU funds) through complex domestic and foreign-based money-laundering layering schemes with assistance of money-laundering professionals for subsequent integration into financial instruments abroad and commercial entities and real estate domestically.

4. Investigating and prosecuting the foreign bribery offence

(a) Investigations and prosecutions

81. In Phase 3 (para. 5), the Working Group noted that Bulgaria had limited experience with investigations and prosecutions of foreign bribery and this has not changed in Phase 4. More significantly, since Phase 3, there has only been one investigation opened being conducted by the Specialised Prosecutor's Office, as it involves organised crime groups (*EU Funds case*).

(b) Overview of authorities responsible for investigation and prosecution of foreign bribery

82. As in Phase 3, there are still several institutions that could investigate and prosecute allegations of foreign bribery. Generally, investigations and prosecutions of foreign bribery will be conducted by either the Sofia City Prosecutor's Office or the relevant District Prosecutor's Office. As mentioned above, in some limited circumstances, the Specialised Prosecutor's Office will conduct a foreign bribery investigation if it also involves organised crime. Although Bulgaria does not have any prosecutors specialised in foreign bribery matters, special supervision over pre-trial proceedings (including corruption cases) is carried out by a unit within the "Specialised" department of SPOC (see below).

³⁵ NRA available here: <http://www.dans.bg/en/msjp-091209-menu-en/results-from-national-risk-assessment>

(i) Sofia City Prosecutor's Office

83. The Sofia City Prosecutor's Office has responsibility for cases that fall within the jurisdiction of the Sofia City Court, including where the crime was committed within the Sofia City Court area or by a foreign national or a foreign national was an accessory to the crime.

84. The Judiciary System Act (JSA) outlines the relevant investigating authorities in Bulgaria (article 148 JSA) and the Sofia City Prosecutor's Office has an investigation department that enjoys the same status as a District Investigation Department (article 148(2) JSA). Investigations are undertaken by investigating magistrates. There are five prosecution departments and "Department 01 Economic" is divided into three sectors, with the General Economic Crime sector responsible for foreign bribery cases.

(ii) District Prosecutor's Offices

85. Under article 35 CPC, district courts would hear foreign bribery cases in the first instance (except where the Sofia City Court has jurisdiction mentioned above) and the relevant District Prosecutor's Office will have conduct of the matter. Each District Prosecutor's Office has an investigation department staffed by investigating magistrates. The District Prosecutor's Offices investigate and prosecute foreign bribery cases against natural persons where the crime is committed within their jurisdiction.

(iii) Specialised Prosecutor's Office

86. In 2012, shortly after Phase 3, Bulgaria established a Specialised Prosecutor's Office to combat organised crime on a national basis. Accordingly, where a case involves organised crime and foreign bribery then the Specialised Prosecutor's Office would be responsible to investigate, as demonstrated in the **EU funds case** discussed elsewhere in this report (see paragraph 21).

(iv) Supreme Prosecutor's Office of Cassation

87. Although it does not conduct investigations or prosecutions, SPOC provides an oversight role of the other prosecution offices. It can review the decision of other prosecutors to terminate investigations and can also provide expert guidance on cases.

Commentary

As there have been no pre-trial proceedings or prosecutions of foreign bribery cases since Phase 3, the lead examiners are unable to fully assess the adequacy of resources within the various Prosecutor's Offices. Accordingly, the Working Group should follow up on this as new cases arise.

The lead examiners recommend that Bulgaria assign primary responsibility for foreign bribery cases to specialised prosecutors in such a way that sufficient priority is given to the enforcement of this crime. It would improve expertise and interagency co-ordination, and facilitate a dedicated point of contact for reporting foreign bribery allegations by the public and government agencies. Prosecutors handling foreign bribery cases should also be expressly given jurisdiction over related criminal offences (e.g. money laundering and false accounting) in the same case except where it involves organised crime.

(c) Conducting a foreign bribery investigation and prosecution*(i) Initiation of an investigation*

88. The CPC provides for the conduct of criminal proceedings with a view to ensuring the detection of crimes, denouncement of culpable persons and proper application of the law (article 1 CPC). The CPC covers pre-trial proceedings, which need to be carried out in all publicly actionable criminal cases (article

191 CPC), and comprise the investigation and action taken by the prosecutor following completion of the investigation (article 192 CPC).

89. Chapter 17 CPC governs the institution of pre-trial proceedings and the conduct of investigations. As mentioned above, pre-trial proceedings must be initiated when there is a *statutory occasion* and *sufficient information* about the perpetration of a crime (article 207 CPC). Statutory occasions for the commencement of an investigation include a notice sent to the pre-trial authorities of the perpetration of a criminal offence,³⁶ information about a criminal offence distributed by the mass media or the direct discovery by pre-trial authorities of signs of a crime (article 208 CPC). Sufficient information exists where a reasonable assumption can be made that a crime has been committed (article 211 CPC). As mentioned above Bulgaria undertook preliminary enquiries in one bribery case that was reported in the media.

90. There have been no significant changes in the conduct of investigations and the commencement of pre-trial proceedings since Phase 3 (paras. 62-65). It should be noted at the outset that investigations, although conducted by investigative bodies,³⁷ are closely supervised by prosecutors and conducted within the relevant prosecution office.

91. In Phase 3, the Working Group was concerned about the time taken to undertake preliminary enquiries and decided to follow up on this issue. Since the two-year written follow-up, Bulgaria has amended the JSA, which came in to force in August 2016, which provides that preliminary checks must be carried out within two months, only being extendable once for one month by the administrative head of the relevant prosecutor's office. In addition, in 2016, the Prosecutor's Office underwent a reorganisation of its work to ensure uniform and accurate application of article 145 JSA for reporting the deadlines for the checks. After the virtual visit Bulgaria provided information that shows in nearly 97% of cases the preliminary checks are completed as required.

92. Despite reporting in mass media qualifying as a statutory occasion, and the Order of the Prosecutor General in relation to media communications mentioned above obliging daily monitoring of media information relevant to the work of the respective prosecutor's office, none of the prosecutors' offices mentioned above systematically monitors the media for reports of foreign bribery cases. In addition, Bulgaria states that the Working Group Matrix does not contain sufficient information to initiate pre-trial proceedings. As noted in Phase 3, under article 209(1) CPC, anonymous notices are not considered a statutory occasion but are nevertheless analysed and sent to the administrative head of the relevant prosecutor's office for a decision as to whether to take action.

93. Further, in relation to statutory occasions, the prosecutors' offices rely very much on notices sent to them about the perpetration of a criminal offence. As mentioned above, the competence for detecting crimes belongs to the MOI and the SANS. Accordingly, it is imperative that there is good communication between the agencies which might discover a crime, and the relevant prosecutor's office.

94. During the pre-trial proceedings, the observing prosecutor supervises and directs the work of the investigators, which ensures close coordination. Once the investigation is complete, the file is forwarded to the prosecutor for a decision on the next steps (discussed below).

95. As mentioned above, with the lack of foreign bribery cases the Working Group is not able to assess whether the coordination is effective in these cases and this should be followed up as new foreign bribery cases commence.

Commentary

³⁶ Anonymous notices are not considered a statutory occasion for the commencement of an investigation (article 209 CPC).

³⁷ Under article 52 CPC, the term investigative bodies is used and these include investigators and MOI officers appointed as "investigating police officers"

The lead examiners welcome the measures taken by Bulgaria since Phase 3 in relation to reducing the time taken to undertake preliminary checks.

The lead examiners are of the view that there were no valid reasons provided for maintaining that anonymous notices are not considered a statutory occasion. Accordingly, they recommend that article 209(1) CPC be amended to allow anonymous notices to be considered as a statutory occasion, thus potentially increasing the source of detection of cases. As a safeguard there would still need to be sufficient information in order for pre-trial proceedings to be commenced.

The lead examiners also recommend that the Working Group follow up on (i) the monitoring of media reporting pursuant to the Order of the Prosecutor General; and (ii) the coordination between investigators and prosecutors as new foreign bribery cases commence.

(ii) Investigative techniques

96. The usual investigative techniques are available in foreign bribery pre-trial proceedings and there is also provision for the use of special intelligence means under the CPC (articles 172-177) and the Special Intelligence Means Act (SIMA). In Phase 3, the Working Group found that the concerns raised in Phase 2 on the use of special intelligence means had been addressed and there have been no changes to the use and regulation of special intelligence means since then.

97. According to article 172 CPC and article 3(1) SIMA, special intelligence means may be used when this is necessary, including in the investigation of serious intentional crimes under Chapter VIII (namely article 304 CC, bribery), if the relevant circumstances may not be established in any other way or their establishment is associated with exceptional difficulties. A written request to the court, filed by the supervising prosecutor, is required for the use of special intelligence means. The types of special investigative means available include, among others, observation and undercover officers. The SIMA regulates the terms, procedure and control over the use of special intelligence means and the results obtained. As there has only been one case of foreign bribery since Phase 3, it is not possible to assess fully the actual use of special investigative means in foreign bribery cases.

98. It appears the Credit Institutions Act (CIA) allows for the disclosure of information constituting bank secrecy in all cases of investigation of bribery of a foreign public official in both national proceedings and in the execution of an MLA request (article 61 CIA).

(iii) Statute of limitations

99. There have been no changes to the statute of limitations (articles 80 and 81 CC) since Phase 3, which is ten years and appears adequate. According to Bulgaria there have been no cases related to foreign or domestic bribery terminated due to the statute of limitations since Phase 3. In relation to domestic bribery, the Supreme Court of Cassation considered 238 cases, none of which were terminated due to the statute of limitations.

(iv) Initiation of a prosecution

100. After receiving the case, the prosecutor has various options, including to terminate, suspend, make an exemption from criminal liability with the imposition of an administrative sanction or a proposal for agreement to dispose of the case, or press charges with an indictment (article 242 CPC). The prosecutor is required to do this within the shortest possible time and no later than one month from receiving the file, although this can be extended in cases which are factually or legally complex (article 242(4) and (5) CPC).

101. In Phase 2, the Working Group expressed concerns that the courts returned a significant number of cases to the pre-trial authorities because of procedural violations. In Phase 3, the judges at the on-site visit stated that cases continued to be returned for procedural reasons and not the quality of the indictments (Phase 3 report, para. 60). However, during Phase 3, the prosecutors provided statistics showing that

some cases were returned because of the quality of indictments. In 2007-2010, the number of cases returned halved, from nearly 10% to 5% of all cases. In Phase 3, the Working Group decided to follow up on the number of and reasons for cases being returned by the courts to the pre-trial authorities (follow-up 13(a)).

102. After Phase 3, Bulgaria amended the CPC, which provides for an operative hearing after the indictment is filed with the court (article 248 CPC). During the new operative hearing, a number of specified issues are discussed, including whether in the course of pre-trial proceedings the investigative authorities committed a remediable substantial violation of procedural rules, which led to restriction of the procedural rights of the accused, the victim or their heirs, requiring the return of the case for their removal. However, no violations relating to the admissibility, collection, examination and assessment of evidence and objective forms of evidence shall be discussed at the operative hearing (article 248(4) CPC).

103. The operative hearing should be held within two months (three months for cases of factual or legal complexity) where the case falls within the jurisdiction of the court. After the operative hearing, the court either terminates the court proceedings, terminates or suspends the criminal proceedings or schedules the case for hearing (article 248(5) CPC).

104. Further, in 2018, the Prosecutor General approved Guidelines on the improvement of the work on criminal-judicial supervision, in which criteria were set out, through which the reasons for returning the cases were reported and analysed. However, although Bulgaria has not provided the data in relation to the reasons, the number of cases returned has continued to drop from 4.7% of cases in 2017 to 3% in 2020.

105. As there have been no prosecutions of foreign bribery or related offences since Phase 3, the Working Group is unable to assess the prosecution challenges that Bulgaria faces in foreign bribery cases.

Commentary

The lead examiners welcome the efforts by Bulgaria to address the issue of returned cases that appear to have resulted in a further drop since Phase 3. However, the lead examiners have been unable to fully understand the reasons for the cases that are still returned as Bulgaria has not provided the information. They therefore recommend that the Working Group continue to follow up on the issue.

(v) Judicial awareness and specialisation

106. During the virtual visit, the judges present stated that they had no experience of foreign bribery cases, only domestic bribery. In the first instance it is the relevant District Court where the offending took place that would hear a foreign bribery case (articles 35 and 36 CPC) unless it was committed by a foreign national, or with a foreign national as an accessory, in which case it would be the Sofia City Court (article 37 CPC).

107. In assigning primary responsibility for foreign bribery cases to specialised prosecutors, then the relevant Court would hear these cases and develop its own expertise.

(vi) Independence

108. As in Phase 3, the Bulgarian authorities are of the view that the Constitution and statutes adequately guarantee the independence of judges and prosecutors. In particular, as the prosecutors are part of the judicial system, Bulgaria maintains it prevents undue influence and the MOJ cannot interfere.

109. Since 2016, the prosecution service has undergone a series of reforms, which aimed to restructure the service, for example prosecutors became subordinate to the administrative heads of their prosecution

office, and not directly to the Prosecutor General (article 136(3) and (4) JSA).³⁸ Despite this progress, the Prosecutor General, according to the law, still exerts considerable influence, as the Prosecutor General may annul or amend any decision taken by any prosecutor, which has not been reviewed by a judge (article 139(2) JSA and article 243 CPC).³⁹ Furthermore, the Prosecutor General may second prosecutors without their consent, for a period of 3 months within a calendar year, and issue written instructions to them, including in individual cases. According to the Rule of Law Report, all prosecutors and investigators are de facto subordinate to the Prosecutor General.⁴⁰

110. During the virtual visit, panellists generally agreed that judges and prosecutors were independent although one panellist did raise an issue with proposed changes to legislation, which if enacted, could lead to political appointments to the body that sanctions magistrates and pose a longer-term problem on the independence of prosecutor's office. In a follow-up with Bulgaria seeking clarification of this issue, Bulgaria stated that they were not aware of any such proposed changes.

Commentary

Whilst the lead examiners welcome the reforms made by Bulgaria they recommend that the Working Group follow up to ensure that prosecutors who conduct foreign bribery cases are not subjected to potential political or other undue interference through the Prosecutor General.

(vii) Resources

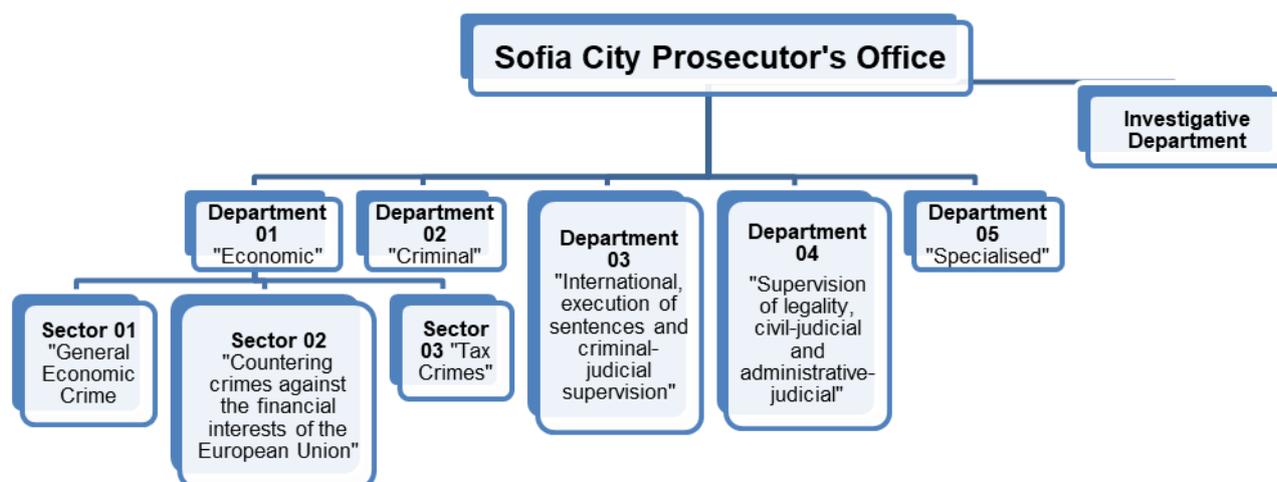
111. In Phase 3, the Working Group recommended that Bulgaria allocate adequate human and financial resources to investigations and prosecutions of foreign bribery against natural and legal persons including the availability of expertise in forensic accounting and information technology (Phase 3 recommendation 5(a)).

112. At that time, there were 31 prosecutors in the then newly created department on “economic crimes of particular legal and factual complexity” in the Sofia City Prosecutor’s Office (Phase 3 report, para. 65). At the two-year written follow-up, this recommendation was deemed partially implemented due to a reorganisation undertaken but required demonstration of improvements in the quality of actual foreign bribery investigations and prosecutions. The Sofia City Prosecutor’s Office has an investigation department with 53 investigators. There are five prosecution departments with one department (Department 01 Economic) responsible for foreign bribery cases. This Department is divided into three sectors, with the General Economic Crime sector responsible for foreign bribery cases. Within this Economic Department there are 39 prosecutors (so an increase of 8 since Phase 3) although only 17 work in the General Economic Crime sector, which would be responsible for foreign bribery cases.

³⁸ [bg_rol_country_chapter.pdf \(europa.eu\)](#)

³⁹ After the virtual visit Bulgaria advised that, in January 2021, the Prosecutor General approved a new instruction (Internal Guidelines) on the implementation of the instance and ex officio control within the Prosecutor’s Office, according to which the control is exercised by the immediate superior prosecutor's office. Therefore, the control of the Prosecutor General is limited only to the decisions taken by the prosecutors of the SPOC and the Supreme Administrative Prosecutors’ Office. According to the instruction, the Prosecutor General cannot annul or amend an act of a prosecutor, for example, at the district or appeals level, since the Prosecutor General is not their immediate superior.

⁴⁰ [bg_rol_country_chapter.pdf \(europa.eu\)](#)



113. According to the information provided by Bulgaria after the virtual visit, there are 28 district prosecutor's offices (plus a specialised prosecutor's office and 3 military district prosecutor's offices). As of August 2021, there were 332 prosecutors and 323 investigators in the district prosecutor's offices and 49 investigators in the NIS, noting that none of these are specialised in foreign bribery.

Commentary

As there have been no new concluded foreign bribery cases since Phase 3, Bulgaria cannot demonstrate improvements in the quality of actual investigations and prosecutions and the lead examiners consider that Phase 3 recommendation 5(a) is still only partially implemented. The lead examiners therefore reiterate this recommendation.

(viii) Training

114. In Phase 3, the Working Group recommended that additional training be provided on the offence of bribery of foreign public officials, corporate liability for such an offence, the investigation of natural and legal persons for such offences and sanctions for foreign bribery, including confiscation (recommendation 5(b)). At the two-year written follow-up, this recommendation was deemed fully implemented. However, the lead examiners note that training is an ongoing requirement and Bulgaria has stated that training activities related to the investigation of corruption crimes are held annually within the National Institute of Justice (NIJ), part of the internal training calendar or training provided by international training institutions. They also note training is conducted regarding money laundering and cybercrime. In addition, the NIJ compulsory initial training for junior judges, prosecutors and investigators, and continuous training for magistrates, includes the topic "Bribery of Foreign Public Officials".

115. From the point of view of the effectiveness and the provision of adequate expertise in the courts, Bulgaria states that the NIJ follows a horizontal approach integrating the subject of "Bribery of Foreign Public Officials" into the agendas of various criminal law trainings. The topic is also incorporated in the trainings on international cooperation in criminal matters, the protection of the financial interests of the EU, money laundering, fraud, organised crime, common economic and tax crimes, document crimes, implementation of the European Investigation Order (EIO) and the European Arrest Warrant (EAW). In addition, the "Bribery of Foreign Public Officials" topic is part of the training agendas of the trainings dedicated to the different approaches and methods of proof in the criminal proceedings. Further, Bulgaria states that the trainings on these topics are conducted in mixed groups with the participation of judges, prosecutors, investigators and officers with investigative functions of the Ministry of Interior. As part of the initial qualification of newly appointed prosecutors in district prosecutors' offices, the topic "Bribery of

Foreign Public Officials” was incorporated in 4 trainings in 2011-2020, with the participation of 82 prosecutors.

116. Bulgaria provides the following statistics, in the period 2011-2020, in the framework of the continuous training of magistrates, 1 080 judges took part in 93 face-to-face and online trainings, in which the topic “Bribery of Foreign Public Officials” was brought up. In these trainings 877 prosecutors, 239 investigators, 179 employees of the Ministry of Interior and 16 employees of the State Agency for National Security were trained.

117. Bulgaria has not attended many of the Working Group Informal Meetings of law enforcement officials in the last few years. When this meeting was raised with investigators and prosecutors at the virtual visit there was little to no awareness of it but investigators commented that it was something they would like to attend.

118. In terms of awareness-raising, Phase 3 Recommendation 8(a) to explicitly address combating of bribery of foreign public officials in international business transactions in its anti-corruption policy has been implemented. The National Anti-Corruption Strategy 2021-2027 references the Anti-Bribery Convention and contains a specific Priority 7 entitled ‘Timely response to the necessity of updating the anti-corruption measures included in the National Strategy for Preventing and Countering Corruption, including in response to recommendations made by international institutions’ and foresees periodic updating of the Strategy to take such recommendations into account.

Commentary

The lead examiners commend Bulgaria on the ongoing training provided to law enforcement officials since Phase 3. However, without actual foreign bribery investigations and prosecutions, it is not possible to fully assess whether this training is effective.

Regarding systematic follow-up to monitor and promote the full implementation of the Convention, the lead examiners welcome the willingness expressed by investigators at the virtual visit to engage more closely with the Working Group and in particular the Law Enforcement Officials meeting. The lead examiners therefore recommend that Bulgaria take an active part in the different meetings of the Working Group and disseminate information at the national level to relevant authorities and stakeholders about implementation of the Convention and the work of the Working Group. The lead examiners take note of the National Anti-Corruption Strategy 2021-2027 and recommend that Bulgaria, through the National Anti-Corruption Policy Council, urgently prioritise implementation of the Working Group’s recommendations.

(d) Concluding a foreign bribery case

119. After receiving the completed case file the prosecutor can decide to terminate or suspend the criminal proceedings. The grounds for termination include that the alleged act has not been committed or it is not an offence, or the expiration of a statutory limitation period. Where the matter is terminated, the prosecutor is required to notify the accused party and victim or prejudiced legal person and they have seven days to appeal the decision to the first instance court (article 243(4) CPC). The court is required to hear the matter within one month and can confirm the decision, modify or revoke it. The prosecutor can appeal this decision.

120. A prosecutor must suspend proceedings in certain circumstances, for example the defendant suffers a severe ailment, trying the case in the absence of the defendant would impede discovering the objective truth or where the perpetrator of the crime has not been discovered (article 244 CPC). Again, where this is the case the prosecutor must notify the parties and this can be appealed to the court. Suspended proceedings can be reopened once the reason for the suspension has been eliminated. Since Phase 3 no foreign bribery cases have been terminated.

Commentary

The lead examiners recommend that the Working Group follow up as relevant on the reasons for the termination of foreign bribery cases as practice develops.

5. Mutual legal assistance and extradition in foreign bribery cases

121. In Bulgaria, the Convention is considered as a "sectoral" international act, which provides a basis for mutual legal assistance (MLA) and extradition for cases falling under the scope of the Convention. In accordance with article 5(4) of Bulgaria's Constitution, the Convention is part of the national legislation and Bulgaria directly applies Article 10 of the Convention. Bulgaria is party to the European Convention on Mutual Assistance in Criminal Matters and the Additional and Second Protocol under the Convention, Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, UN Convention against Corruption (UNCAC), and UN Convention against Transnational Organized Crime, and has concluded several bilateral extradition and MLA treaties.⁴¹

122. In its previous evaluations of Bulgaria, the Working Group was unable to assess the enforcement of international co-operation obligations under the Convention in practice in the absence of MLA requests relating to foreign bribery cases (Phase 3 report para. 97). The Working Group therefore recommended that Bulgaria be more proactive when seeking MLA (recommendation 5(c)) but Bulgaria has not provided any further information, which could demonstrate the implementation of this recommendation in Phase 4.

(a) Mutual legal assistance (MLA)

(i) Institutional arrangements and legislative framework

123. Bulgaria's legal and institutional MLA framework has not changed since Phase 3. The central authority for MLA in Bulgaria is the MOJ. MLA is carried out under Chapter 36 CPC, on the basis of treaties or, in the absence of a treaty, on the basis of reciprocity. Dual criminality is not required for MLA.

124. The role of the MOJ as central authority was reported at the virtual visit to be fairly limited, namely checking incoming and outgoing requests for compliance with the relevant treaty or practice and providing methodological assistance to requesting authorities but not checking the content of the request.

125. The SPOC International Department has functional competence over MLA requests from and to non-EU countries. For incoming requests, the SPOC receives the request from the MOJ and then assigns its execution to the competent prosecutor's office providing instructions on the execution, or executes the request itself. The executed request is then sent to the requesting state by the SPOC through the MOJ. The inverse process is followed for outgoing requests, namely the competent prosecutor's office sends the draft request to the SPOC International Department, which then checks the content and finalises the request before this is sent to the non-EU country through the MOJ. A more streamlined process is followed for MLA requests from and to EU countries for which the competent prosecutor's offices may execute and request MLA directly and independently, including in relation to requests falling within the scope of the Convention. The SPOC and MOJ do not need to be notified in these cases and there is direct communication between the judicial authorities of requesting and executing EU Member States.

126.

⁴¹ The latest reported is an MLA treaty with Kazakhstan concluded in 2015.

(ii) MLA in non-criminal proceedings against legal persons

127. Bulgaria reported that it is able to comply with requests for legal assistance under the Convention (or other multilateral treaties it is a Party to) to foreign authorities for use in administrative or non-criminal matters and dual criminality is not a requirement. For example, this could be requests for information on bank account transactions and written evidence of ownership, distribution of representative power and legal form of companies or other legal entities. However, no MLA requests concerning legal persons have been received by Bulgaria since Phase 3.

(iii) Detection of foreign bribery cases through MLA

128. Bulgaria noted that incoming MLA requests and EIOs can also be used as sources of information for law enforcement authorities. The same is true with respect to data and information obtained in connection with international institutional interaction and co-operation in criminal matters. Joint investigative teams may be established together with competent judicial authorities from other countries through Eurojust. Since Phase 3 Bulgaria has detected one case through an MLA request, the **EU Funds case** mentioned above.

(iv) Incoming and outgoing requests in foreign bribery cases

129. According to the Registry of the SPOC International Department in 2013-2020, there were no registered incoming or outgoing requests for mutual legal assistance based on the Convention. In addition, there were no requests for legal assistance from or to countries that are not Parties to the Convention in connection with the investigation of bribery of a foreign official. The SPOC provided an overview of nine registered requests based on the UNCAC but these did not concern foreign bribery.

(v) MLA in practice

130. In Phase 4, the Working Group members were consulted on their international co-operation experience in relation to foreign bribery with Bulgaria. The Secretariat received information from 4 of the 44 Working Group members and the limited extent of information provided does not enable a thorough assessment of Bulgaria's practice.

131. In terms of the time periods for execution of MLA requests, the MOJ reported that it had an internal deadline of seven days for processing, with shorter times in case of priority. According to statistics provided by the MOJ on the requests that were based on the UNCAC, most requests were related to investigative actions and on average took two months to execute for those requesting questioning of witnesses and collection of information. A few requests had taken four to five months to execute when involving numerous investigative actions such identification of property as well as seizure or confiscation measures.

(b) Extradition*(i) Legislative framework for extradition*

132. Bulgaria may provide extradition in the absence of a treaty, on the basis of reciprocity. Extradition is governed by the Law on Extradition and European Arrest Warrant (EEAWA), which requires dual criminality and that the underlying conduct be punishable by at least one year's imprisonment (article 5(1) EEAWA).

(ii) Extradition of nationals

133. Article 10(3) of the Convention requires Parties to ensure that they can either extradite their nationals or prosecute them for the bribery of a foreign public official, and where a Party declines extradition because a person is its national, it must submit the case to its prosecutorial authorities.

134. Bulgaria does not extradite its citizens to non-EU countries unless explicitly provided for otherwise (article 6(1) EAWA). Bulgaria notes that in any case, it would provide for a criminal investigation and prosecution of its citizens when there is evidence that they have bribed a foreign official.

(iii) Extradition in practice

135. Since Phase 3, there have been two instances where Bulgarian authorities have arrested nationals of Parties to the Convention pursuant to Interpol notices in connection with extradition requests related to foreign bribery allegations. In both cases, their extradition was requested by non-Party countries and declined by Bulgaria (discussed in paragraph 26 above).

136. In terms of the time periods for execution of extradition requests, the MOJ reported that these are checked and forwarded in same day or latest within 24 hours.

137. A recent Court of Justice of the European Union (CJEU) decision⁴² decided that EAWs issued by Bulgarian prosecutors violate protections afforded to defendants because Bulgarian law does not require EAWs to be reviewed by a court before they are executed. Wanted persons are therefore unable to mount a defence before a court against any allegations until they have been extradited back to Bulgaria. During the virtual visit, Bulgaria reported that it has set up a working group with participants from academia, the legal profession, SPOC, MOJ, Ministry of Interior and the courts, in order to assess whether national legislation needs to be amended in light of this CJEU decision.

(c) Case management system for MLA and extradition requests

138. All MLA and extradition requests are tracked through the Registry of the SPOC International Department and the Prosecutor's Office Unified Information System (UIS). In 2019, the MOJ developed a new case management system to facilitate the tracking of MLA and extradition requests, permit the exchange of electronic correspondence and speed up the exchange of information. The system arranges data according to the type of requests (MLA, extradition etc.), by country and which Bulgarian authority is seeking assistance. In the case of requests from countries outside the EU, data can include the legal basis for requests (e.g. international conventions). However, the system cannot be searched for a specific type of offence. Bulgaria reported extensive discussions on how to expand the functionalities of this system, bearing in mind the need to strike a balance between what information was required and what could be retrieved quickly. It was also noted that for requests under the EU mutual recognition framework, there was an obligation to collect more information.

Commentary

The lead examiners welcome efforts since Phase 3 to develop case management systems for international co-operation requests. However, they remain concerned about the lack of detailed statistics on international co-operation and consider that Phase 3 recommendation 5(c) remains not implemented. The lead examiners therefore reiterate this recommendation and also recommend that Bulgaria (a) maintain detailed statistics on international co-operation requests on foreign bribery, including the underlying offence, time required for execution, and nature of assistance sought; and (b) utilise actively informal means of international co-operation in foreign

⁴² [CURIA - Documents \(europa.eu\); Global Investigations Review - EU court invalidates Bulgarian EAWs](#)

bribery cases, including by engaging with the Law Enforcement Officials meeting.

The lead examiners also recommend that the Working Group follow up on the impact of the CJEU decision on Bulgaria's extradition framework.

C. Responsibility of legal persons

1. Scope of corporate liability for foreign bribery and related offences

139. Both criminal (article 35(1) CC) and administrative (article 24(1) LAOS) liability in Bulgaria are personal in nature. Legal persons are sanctioned because they “have enriched or would enrich themselves” from an offence,⁴³ including foreign bribery committed by a natural person (article 83a(1) LAOS). The application of sanctions is therefore tied to the requirement that a natural person is alleged to have committed an offence. Chapter 4 LAOS (articles 83 and 83a-83g) provides the main legal framework for sanctioning legal persons in Bulgaria. For any issues not covered under Chapter 4, article 83g LAOS provides that they shall be treated in accordance with the CPC.

140. In Phase 3, the Working Group recommended that Bulgaria amend substantially LAOS to eliminate many legislative deficiencies, including with regard to autonomous liability of legal persons, jurisdiction to commence proceedings against legal persons, availability of investigative tools in proceedings against legal persons, and court proceedings against legal persons. LAOS has been subject to amendments since Phase 3, with the most important for the purposes of this evaluation being implemented by amendment published in SG 81/2015.

141. As detailed below, most of the concerns expressed by the Working Group in Phase 3 remain valid also in Phase 4. There is still a lot of uncertainty among Bulgarian authorities on how to enforce the legal framework for sanctioning legal persons and considerable procedural obstacles may unduly restrict Bulgaria’s ability to commence and hold proceedings against legal persons. Bulgaria’s change in position on two issues discussed below since Phase 3 reinforces the idea that the legal framework for sanctioning legal persons merits urgent clarification.

Commentary

The lead examiners consider that Bulgaria does not have an effective legal framework for holding legal persons liable for foreign bribery or related offences. As discussed below, it does not provide for an effective jurisdictional base to commence proceedings against legal persons, unduly restricts proceedings to cases where the natural person perpetrator is prosecuted or convicted, and poses serious impediments to the effective sanctioning of legal persons for foreign bribery. The lead examiners therefore recommend that Bulgaria reform its legal framework to establish liability and sanctioning of legal persons for foreign bribery in line with Article 2 of the Convention and Annex IB of the 2009 Anti-Bribery Recommendation.

⁴³ The report will use, where appropriate, the term “liability of legal persons” and related terms to conform to the terminology of the Convention and the Phase 4 Monitoring Guide.

(a) Elements of liability of legal persons requiring follow-up*(i) Standard for liability for sanctioning*

142. The standard of liability has not changed since Phase 3. According to article 83a(1) LAOS, a legal person may be sanctioned when foreign bribery is committed by an:

- (a) individual authorised to formulate the will of the legal person;
- (b) individual representing the legal person;
- (c) individual elected to a control or supervisory body of the legal person; or
- (d) employee to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of such a task.

143. In Phase 4, Bulgaria stated that legal persons have been sanctioned for economic offences, but not foreign bribery, committed by individuals referred to in categories (a) to (c).

Commentary

In the absence of concluded foreign bribery cases against legal persons, the lead examiners cannot assess how the standard for liability of legal persons is applied in practice and recommend that the Working Group follow up on whether the standard is adequately broad to cover the wide variety of decision-making systems in legal persons.

(ii) Successor liability for sanctioning

144. The Working Group has noted in previous evaluations that successor liability can prevent companies from evading responsibility through a corporate reorganisation. Bulgaria recently introduced articles 83(3) and (4) LAOS that allow Bulgarian authorities, in cases of a legal succession (merger, acquisition or split), to continue the proceedings against the successor legal person(s). A sanction imposed against a legal person can also be enforced against the successor(s). The amendments will become effective in December 2021. Article 83d(1.2) LAOS further provides for the termination of proceedings following the dissolution of a legal person due to liquidation or insolvency, however, it is unclear whether the proceedings will also be terminated if the legal person is dissolved for other reasons (e.g. the directors voluntarily dissolve the company). Bulgaria also indicated that the prosecution cannot prevent the dissolution of the legal person, if sanction proceedings are pending.

Commentary

The lead examiners commend Bulgaria on the introduction of articles 83(3) and (4) LAOS on successor liability and recommend that the Working Group follow up on their application in practice.

(b) Proceedings against legal persons

145. Proceedings against legal persons in Bulgaria may commence upon the submission of a “substantiated proposal” by the prosecutor to the competent court following an indictment against a natural person (article 83b(1.1) LAOS) or, in the absence of an indictment, in enumerated exceptional cases (e.g. amnesty, death, mental disorder) (article 83b(1.2) LAOS). The substantiated proposal must include, among other requirements, a description of the offence, the personal details of the natural person(s) *accused or convicted* for the offence, the presence of a causal link between the offence and the benefit for the legal person, the type and amount of the benefit for the legal person (article 83b(2) LAOS).

(i) *Jurisdiction to commence proceedings against legal persons*

146. In Phase 3, Bulgaria stated that article 4 LAOS provided the jurisdictional basis to commence proceedings against legal persons. Article 4 LAOS requires that the administrative violation be committed in Bulgarian territory or by a Bulgarian national, and the violation be punishable under Bulgarian national law and affects the interests of the Bulgarian state. On this basis, the Working Group expressed concerns that foreign bribery arguably might not affect “the interests of the Bulgarian state” given that it is a foreign – not Bulgarian – official taking bribes. It was also concerned that Bulgaria would have no jurisdiction to commence proceedings against a Bulgarian legal person if one of its non-Bulgarian employees bribed a foreign public official abroad. Moreover, it found that there were no safeguards in place to ensure that proceedings against legal persons would not be influenced by the prohibited Article 5 of the Convention considerations and might be disregarded when assessing “the interests of the Bulgarian state” under this provision. Accordingly, it concluded that article 4 LAOS did not provide for an effective jurisdictional basis to commence proceedings against legal persons and recommended that Bulgaria amend article 4 LAOS accordingly (recommendations 2(a) and 2(b)(first part)). The two-year written follow-up report found that Bulgaria had not implemented the recommendations.

147. However, in Phase 4, Bulgaria changed its position from Phase 3. It stated that article 4 LAOS does not apply to legal persons but rather provides the jurisdictional basis to commence *administrative proceedings against natural persons*. A legal academic at the virtual visit agreed and explained that LAOS was originally enacted to regulate the liability of natural persons for administrative offences, and only later, in 2005 after Phase 2 concerns over the absence of corporate liability in the country, Bulgaria added Chapter 4 for legal persons. The question is then which legal framework provides the jurisdictional basis to commence proceedings against legal persons.

148. SPOC representatives at the virtual visit argued that it would be the Criminal Code and due to the subsidiary nature of proceedings against legal persons, Bulgaria may use articles 3-6 CC that define its nationality and territorial jurisdiction over natural persons. However, based on this argument, where Bulgaria is not able to exercise such jurisdiction over the natural person, it will also not be able to proceed against the legal person involved either. It is also questionable whether under these provisions Bulgaria can proceed against a Bulgarian legal person that uses non-nationals to bribe on its behalf abroad. The Working Group also notes that in **Case B** (referred to in paragraph 23 above), Bulgaria has not undertaken an investigation as there was no evidence of an offence by a Bulgarian national despite the allegations of Bulgarian companies being involved.

Commentary

In view of the clarifications provided by Bulgaria in Phase 4, the lead examiners consider that the Phase 3 concerns regarding Article 5 of the Convention and legal persons no longer applies.

However, the lead examiners remain seriously concerned that Bulgaria’s legal framework is not clear with regard to the issue of jurisdiction in proceedings against legal persons. They consider that the existing framework does not seem to provide for an effective jurisdictional basis to commence such proceedings for foreign bribery in the absence of jurisdiction over a natural person. They therefore recommend that Bulgaria amend its legislation to provide jurisdiction over Bulgarian legal persons for foreign bribery, including where the legal person uses non-nationals to bribe on its behalf abroad.

(ii) *Independence of proceedings against legal persons*

149. In Phase 3, the Working Group found that proceedings against legal persons are restricted to cases where the natural person who perpetrated the offence is prosecuted or convicted. As explained above, proceedings against legal persons can commence upon the submission of a substantiated proposal by the prosecutor to the competent court following an indictment and in enumerated exceptional cases in

the absence of an indictment. The Working Group expressed concerns that article 83b(1.2) LAOS listed just four of those exceptional cases and recommended that Bulgaria ensure that its framework did not unduly preclude proceedings against legal persons (recommendation 2(c)(second part)). The two-year written follow-up report found that Bulgaria had not implemented the recommendation. In 2015, Bulgaria amended article 83b(1.2) LAOS to introduce additional exceptional cases. While this amendment is welcome, the provision does still not cover comprehensively all cases where the prosecution cannot indict a natural person or otherwise decides to suspend or terminate the criminal proceedings (e.g., the natural person is prosecuted or has been convicted abroad).

150. Moreover, as discussed above, in order to submit a substantiated proposal to commence proceedings against a legal person, prosecutors must identify one or more natural persons accused or convicted for the offence and establish a causal link between the offence and the benefit for the legal person. In other words, a prior or concurrent prosecution of a natural person is required in practice. This may prove very difficult for the prosecutors when investigating complex and decentralised corporate structures with diffused decision-making processes. More importantly, these requirements would contravene the 2009 Recommendation Annex IB, which specifically stipulates that member countries' systems for the liability of legal persons should not be restricted to cases where the natural person who perpetrated the offence is prosecuted or convicted.

151. Several court decisions provide that proceedings against legal persons are *subsidiary* in nature without, however, clarifying whether these can commence in the absence of criminal proceedings against natural persons.⁴⁴ Discussion with panellists at the virtual visit did not shed light on the topic either. SPOC representatives were of the view that this is, in principle, possible. MOJ and Sofia City Prosecutor's Office representatives noted that, in practice, it would be at least necessary for the prosecutors to identify a natural person perpetrator. However, none of the representatives could provide examples of cases where sanctions have been imposed in practice against legal persons in the absence of a prior prosecution or conviction of a natural person.

Commentary

The lead examiners are concerned that the requirement that the prosecution prove all elements under article 83b(2) LAOS, before it can commence proceedings against a legal person, may pose a serious impediment to the effective sanctioning of legal persons for foreign bribery. They therefore consider that Bulgaria is still non-compliant with the 2009 Recommendation Annex IB and that Phase 3 recommendation 2(c)(second part) remains not implemented. The lead examiners recommend that Bulgaria urgently amend existing procedure and legislation, as necessary, to ensure that proceedings against a legal person are not restricted to cases where the natural person who perpetrated the offence is prosecuted or convicted.

(iii) Separate but subsidiary proceedings

152. Unlike the practice of some other Working Group members with non-criminal corporate liability, where sanctions against legal persons are imposed in the course of the criminal proceedings against natural persons,⁴⁵ LAOS contemplates separate proceedings for natural and legal persons. As noted in Phase 3, different prosecutors may be in charge of the two proceedings in the same case, depending on the workloads of the prosecutor who has conduct of the criminal proceedings and other available prosecutors. The sanctions against legal persons will also be determined in separate court proceedings and, according to MOJ and SPOC representatives at the virtual visit, there is no possibility of combining the two proceedings. The judges defended this separation because, inter alia, court proceedings against

⁴⁴ Decision No. 96 of 13 June 2019 of BAS; Decision No. 146 of 30 August 2019 of BAS

⁴⁵ Germany Phase 4 report, para. 220; Italy Phase 3 report, para. 46; Sweden Phase 3 report, para. 41.

legal persons tend to be faster and more flexible, and may continue independently in cases where the natural person is later acquitted.

153. Despite the subsidiary nature of proceedings against legal persons, evidence gathered in the criminal proceedings against natural persons may, however, be used in the proceedings against legal persons (article 83b (2.6) LAOS). Bulgaria submitted court decisions, which confirm that the “evidentiary activity of the court deciding on the proposal to impose a sanction on the legal person cannot be isolated from the evidence in the criminal proceedings against natural persons”.⁴⁶ In Phase 3, Bulgaria further provided that the facts found by the court in the criminal proceedings against natural persons are binding on the court that hears the proceedings against legal persons under LAOS.

Commentary

The lead examiners recommend that, where appropriate, Bulgaria consider combining proceedings against natural and legal persons in the same case following the practice of some other Working Group members with non-criminal corporate liability.

(iv) Availability of investigative tools in proceedings against legal persons

154. In Phase 3, the Working Group found that the range of investigative tools in proceedings against legal persons was limited. At the time, Bulgaria indicated that article 84 LAOS allowed for enumerated tools, including “constraint and seizure of effects”, and summoning of witnesses, while special intelligence means could only be used against natural persons. The Working Group recommended that Bulgaria ensure that the full range of investigative tools in the CPC become available in proceedings against legal persons (recommendation 2(b)(second part)) but the two-year written follow-up report found that Bulgaria had not implemented the recommendation.

155. In Phase 4, Bulgaria reversed its Phase 3 position. It stated that article 84 LAOS does not apply to legal persons because it is placed under Chapter 5, and not Chapter 4 LAOS, which is relevant to legal persons. Instead, Bulgaria argued that LAOS is silent with regard to the investigative tools that are available in proceedings against legal persons and that the issue would be regulated by the CPC by virtue of article 83g LAOS. For instance, the prosecution could execute a search warrant on the legal person’s premises according to articles 160(1) and 162(4) CPC, and intercept phones registered to the legal person according to articles 159a(2) and 172(2) CPC, even though, as discussed below, special intelligence means do not seem to be available in proceedings against legal person. Bulgaria did not provide examples of cases where CPC investigative tools were used in proceedings against legal persons. As discussed above, the evidence gathered in the criminal proceedings against natural persons may also be used in the proceedings against legal persons and this should alleviate some of the Working Group’s concerns.

156. During the visit, MOJ and Sofia City Prosecutor’s Office representatives added that even though the CPC investigative tools are available in proceedings against legal persons, special intelligence means are not. The reasons for this difference in treatment are not understood.

Commentary

The lead examiners welcome Bulgaria’s clarifications regarding the availability of investigative tools in proceedings against legal persons but remain concerned that the full range of investigative tools in the CPC may not be available in proceedings against legal persons. They consider that the Phase 3 recommendation 2(b)(second part) remains not implemented and recommend that Bulgaria take steps to ensure that the full range of investigative tools in the CPC, including special intelligence means, become directly available in proceedings against legal persons.

⁴⁶ Decision No. 96 of 13 June 2019 of BAS; Decision No. 146 of 30 August 2019 of BAS.

(v) Court proceedings against legal persons

157. In 2020, Bulgaria amended article 83b(1) LAOS to clarify that the competent court to hear proceedings against legal persons is the district court that has jurisdiction over the territory where the offence was committed. In cases where the legal person does not have its office registered in Bulgaria and the offence was committed in the territory of Bulgaria, the competent court to hear the case will be the Sofia City Court. In this way, Bulgaria addresses Phase 3 recommendation 2(c)(first part) to ensure that there is a clear procedural framework that identifies the court with competence to hear proceedings against legal persons. Bulgarian authorities at the virtual visit further added that it would be the criminal division of the district court that hears the case. However, as discussed above, separate court proceedings for natural and legal persons occur in the same case.

158. Court proceedings against a legal person can commence only after the legal person is duly summonsed. According to Bulgaria, service of summonses on a legal person are effected against signature of the official charged with the reception of papers (article 180(5) CPC) or, since June 2021, by electronic service of documents with the summons being duly executed upon downloading of those documents (article 180(8) CPC). However, if the documents are not downloaded within seven days then service shall be carried out in accordance with the general procedure. Where the legal person has been duly summonsed, the failure of a representative thereof to appear shall not prevent the hearing of the case (article 83d(4) LAOS). However, according to Sofia City Prosecutor's Office representatives, there has been at least one case where the sole owner and representative of a legal person fled abroad presumably to prevent the reception of summons and obstruct the proceedings. This may present a significant loophole in Bulgaria's framework.

Commentary

The lead examiners welcome the amendment to article 83b(1) LAOS to identify the court with competence to hear proceedings against legal persons and consider that Phase 3 recommendation 2(c)(first part) is implemented. The lead examiners, however, express concern about the limited circumstances in which a legal person's representative be duly summonsed before court proceedings can commence and recommend that Bulgaria ensure that these limited circumstances are not an obstacle to duly summonsing legal persons.

2. Enforcement of corporate liability for foreign bribery and related offences

159. To date, Bulgaria has never sanctioned a legal person for foreign or domestic bribery. In Phase 3, the Working Group had expressed serious concerns that Bulgaria had devoted little attention and resources to sanctioning legal persons for intentional crimes, including foreign bribery. At the time, no legal persons had been sanctioned for any crime, including foreign or domestic bribery, despite 563 convictions of natural persons for domestic bribery in 2005-2010. In Phase 4, enforcement against legal persons continues to lag significantly. No legal persons have been sanctioned for foreign or domestic bribery and there are no open investigations or prosecutions of legal persons for these offences either. In comparison, Bulgaria has convicted 1 805 natural persons for active domestic bribery since Phase 3.

160. In 2013-2020, Bulgaria sanctioned in total 130 legal persons for all types of criminal offences. Out of these, the majority of sanctions concern tax offences under article 255 CC (74 legal persons) followed by intellectual property offences under article 172b CC (41 legal persons). Bulgaria states that it has sanctioned a number of legal persons for false accounting since Phase 3 and indicates that these were linked to tax offences. Absent any statistics, the Working Group cannot assess the level of enforcement of the false accounting offences against legal persons. Bulgaria further indicates that it has never sanctioned a legal person for money laundering predicated on foreign bribery or any other offence.

Commentary

The lead examiners are concerned that no legal persons have ever been sanctioned for foreign bribery and related offences. This is especially troubling in an economic environment where there has been a considerable growth in export activity since Phase 3, including in areas recognised as having high risk of foreign bribery. They therefore recommend that Bulgaria urgently draw the attention of prosecutors to the importance of taking proceedings for the sanctioning of legal persons for foreign bribery, including by strengthening training programmes on proceedings against legal persons. The lead examiners further recommend that the Working Group follow up, as case law and practice develop, to ensure that prosecutors proactively pursue proceedings against legal persons for foreign bribery and related offences.

3. Sanctions available for legal persons for foreign bribery

(a) Monetary sanctions

161. In Phase 3, monetary sanctions against legal persons for foreign bribery in Bulgaria depended on the nature of the benefit that the legal person had or would obtain as a result of the offence. If the benefit was in the nature of “property”, then the legal person was punishable by a sanction of up to BGN 1 million (approx. EUR 510 000) but not less than the value of the benefit. If, on the other hand, the benefit was not in the nature of “property” or if the value of the benefit could not be ascertained, then the legal person was punishable by a sanction of BGN 5 000 to 100 000 (approx. EUR 2 550 to 51 000). The Working Group found that the maximum available sanctions for this second category were not effective, proportionate and dissuasive and recommended that Bulgaria increase them accordingly (recommendation 3(c)).

162. In 2015, Bulgaria amended article 83a(1) LAOS to increase the maximum available sanctions for legal persons to BGN 1 million also in cases where the benefit is not “property”, or if the value of the advantage cannot be ascertained. While this increase is welcome, Bulgaria’s maximum available sanctions against legal persons remain among the lowest, if not the lowest, among Working Group members.⁴⁷ The fact that the monetary sanction cannot be less than the value of the benefit may alleviate some of the Working Group concerns, however, this safeguard applies only in cases where the benefit was in the nature of “property”, and in any case, the sanction is capped at BGN 1 million even if the benefit is more than BGN 1 million.

163. Moreover, in the absence of a concluded foreign bribery case against a legal person, the Working Group cannot assess whether Bulgaria imposes effective, proportionate and dissuasive sanctions against legal persons in practice. Sanctions imposed against legal persons for other offences are too low although of limited value for the purposes of this evaluation because Bulgaria provides no information about the gravity of the offences, and the benefit obtained or sought by the legal person.

Commentary

The lead examiners note that in the absence of concluded foreign bribery cases and related proceedings against legal persons, it is not possible to assess whether Bulgaria imposes in practice effective, proportionate and dissuasive sanctions against legal persons. The lead examiners, however, note that Bulgaria’s maximum available sanctions against legal persons remain among the lowest, if not the lowest, among Working Group members and are too low to meet the standards of the Convention. They therefore recommend that Bulgaria increase the maximum available sanctions to a level that is effective, proportionate and dissuasive as required

⁴⁷ For comparison, the Working Group considered that the maximum available sanctions against legal persons in Austria (EUR 1.3 million – Phase 3 report, para. 55); Chile (EUR 740 000 – Phase 3 report, para. 72); Finland (EUR 850 000 – Phase 3 report, para. 33); Portugal (EUR 1.8 million – Phase 2 report, para. 180) are too low to meet the standards of the Convention.

by Article 3 of the Convention. They also recommend that the Working Group follow up on sanctions imposed against legal persons as case law develops.

(b) Additional sanctions

164. In 2016, Bulgaria enacted a new Public Procurement Act and article 54(1) provides for the mandatory exclusion of natural persons who were criminally convicted for certain crimes, including foreign bribery, from public procurement contracting. Bulgaria states that the debarment would apply indirectly to legal persons through the debarment of the natural persons representing the legal person. However, if the natural person were later dismissed, the legal person would still be eligible to bid for a public contract. This position does not address the Working Group's concerns, which in Phase 3 recommended that Bulgaria introduce a legal provision to allow for the debarment of legal persons (recommendation 12).

Commentary

The lead examiners consider that Phase 3 recommendation 12 remains not implemented and recommend that Bulgaria, as a matter of priority, amend its legislation to allow for the suspension or debarment of legal persons to an appropriate degree.

(c) Calculation of sanctions

165. In 2020, Bulgaria introduced article 83a(5) LAOS (SG 109/2020, effective in December 2021) to articulate for the first time specific factors that the courts should take into account in determining the amount of sanctions against a legal person. These include: (i) gravity of the offence, (ii) financial position of the legal person, (iii) assistance rendered for disclosing the offence and for compensating the damages of the offence, (iv) amount of the benefit, and (v) other circumstances. Bulgaria states that the existence of internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery could be considered "other circumstances" and be taken into account in determining the amount of sanctions against legal persons.

Commentary

The lead examiners welcome the introduction of article 83a(5) LAOS, which could support Bulgarian courts in determining the amount of sanctions against a legal person. They recommend that the Working Group follow up on its application in practice.

(d) Confiscation

166. In Phase 3, the Working Group expressed concerns that article 83a(4) LAOS relevant to confiscation against legal persons does not allow for the confiscation of the bribe or the indirect proceeds of the crime. It recommended that Bulgaria rectify these deficiencies. Bulgaria amended LAOS in 2015 and 2020 (SG 109/2020, effective in December 2021) to introduce a new article 83a(6). According to the new provision "the direct or indirect benefit obtained by the legal person from the crime under paragraph 1 shall be confiscated in favour of the state [...] Where the effects or property that were the object of the crime are missing or have been expropriated, their BGN equivalent shall be adjudged."

167. Article 83a(6) LAOS addresses recommendation 4(a) as follows. First, it covers the confiscation of the indirect proceeds of bribery. Second, it introduces the concept of value confiscation (i.e. the confiscation of property the value of which corresponds to that of the "object of the crime", or for monetary sanctions of comparable effect) in Bulgaria's regime. However, as clarified by Bulgaria, the term "object of the crime" does not encompass the proceeds of crime, which is essential for value confiscation to be effective. Article 83a(6) LAOS does still not address confiscation of the bribe from legal persons. Bulgaria provides that the bribe would be confiscated in the course of criminal proceedings against the natural

person. However, as already stated in Phase 3 (para. 52), this would not be possible if the proceedings against the natural person cannot be commenced or have been terminated.

Commentary

The lead examiners welcome the introduction of article 83a(6) LAOS, which will partially implement recommendation 4(a) by covering the confiscation of the indirect proceeds of bribery and introducing the concept of value confiscation in Bulgaria's regime. The lead examiners reiterate that LAOS does not still allow for the confiscation of the bribe from legal persons, and recommend that Bulgaria rectify this deficiency.

4. Engagement with the private sector and anti-corruption controls

(a) Awareness raising

168. The level of awareness of foreign bribery among the private sector in Bulgaria remains limited. In Phase 3, the Working Group recommended that Bulgaria raise awareness among the private sector on the offence, in co-operation with the Bulgarian SME Promotion Agency and business associations (recommendation 8(c)). The two-year written follow-up report found that Bulgaria had partially implemented the recommendation. Bulgaria reports no new measures since then to raise the awareness of the private sector on foreign bribery. In the absence of any initiative by Bulgarian authorities, the private sector remains little to not concerned about its exposure to foreign bribery risks or the threat of prosecution. Efforts by other stakeholders in Bulgaria remain also limited. In 2020, the American Chamber of Commerce and the German-Bulgarian Chamber of Industry and Commerce organised a webinar for their members on the US Foreign Corrupt Practices Act (FCPA). Discussion with other business associations at the virtual visit revealed that corruption and foreign bribery remain low on their agenda.

(b) Corporate governance and compliance

169. Bulgarian companies do not appear to have implemented anti-corruption compliance programmes, which reinforces the idea that the risk of corruption and foreign bribery in the private sector is still perceived as low. The few Bulgarian companies that participated at the virtual visit noted that they do not have specific rules and procedures for anti-corruption, with the exception of a subsidiary of a multinational enterprise operating in Bulgaria that presented a rather robust programme implemented as part of the global compliance standards of its parent company. Business organisation representatives noted that anti-corruption compliance programmes remain more relevant for larger companies rather than SMEs, an opinion shared also by the representatives of the accounting and auditing profession. Against this background, Phase 3 recommendation 6(b) that Bulgaria encourage companies to introduce codes of conduct and compliance programmes, as well as to promote the implementation of the Good Practice Guidance and clearly allocate responsibility for such promotion remains not implemented.

Commentary

The lead examiners are seriously concerned by the apparent lack of awareness of foreign bribery risks among the private sector and the lack of government-led initiatives to promote the adoption and implementation of internal controls, ethics and compliance programmes. They therefore recommend that Bulgaria, as a matter of priority, (a) take measures to raise awareness on the foreign bribery offence among business associations and companies, including SMEs and SOEs, targeting those that conduct business in high risk corruption countries and sectors abroad, and (b) promote the development and implementation of anti-corruption internal controls, ethics and compliance programmes by the private sector, including through the Good Practice Guidance.

D. Other issues

1. Tax measures for combating foreign bribery

170. The National Revenue Agency (NRA) is responsible for the implementation of the Tax Code, the Corporate Income Tax Act (CITA) and the Tax Insurance Procedures Code. At the time of Phase 3, Bulgaria received two tax-related recommendations, concerning the tax deductibility of bribes (recommendation 7(a)) and guidelines and training to tax inspectors (recommendation 7(b)).

(a) *Non-tax deductibility of bribes and enforcement*

171. Following the Phase 3 recommendation 7(a) to expressly prohibit the tax deductibility of bribes, Bulgaria amended CITA in 2013 to explicitly prohibit the recognition of bribes as deductible expenses for tax purposes (article 26(12) CITA). Accordingly, at the time of the two-year written follow-up recommendation 7(a) was deemed fully implemented.

172. If a taxpayer is sanctioned in a foreign bribery case, the tax authorities should re-examine the tax returns for the relevant years to determine whether the bribes had been claimed as a tax deduction. However, according to information provided by the NRA at the virtual visit, there is no mechanism by which they are notified by the relevant courts of convictions or administrative sanctions under LAOS unless the court orders confiscation. In this case, the NRA would proceed with confiscation under the general procedure and hence indirectly be informed about convictions.

173. In addition, the NRA reported that there is no mechanism or policy in place to systematically re-examine tax returns in case of conviction or administrative sanctions but that in practice when the relevant department of the NRA receives information on convictions, the person in questions was selected for an ex post tax audit. In one case reported in this report (**Case C**), the NRA carried out a tax audit for the period 2012-2015 on the basis of a decree by the prosecutor in the case, which found no irregularities or additional tax liabilities.

174. The SPOC has noted many pre-trial money laundering proceedings in which the amount of property acquired through crime has been successfully established and which at this stage have ended with a conviction at last instance, including based on a predicate tax offence.⁴⁸

(b) *Detection and sharing of information*

175. To date, no cases of suspected foreign bribery have been referred by the NRA to law enforcement authorities. However, Bulgaria reported in its responses to the Phase 4 questionnaire that while the Prosecutor's Office of Bulgaria does not keep statistics on the sources of information on the basis of which pre-trial proceedings are initiated, the 2019 annual report of the Prosecutor's Office of Bulgaria shows that

⁴⁸ Public General Criminal Case (PGCC) No. 1180/2018 under the inventory of the Sofia City Court, for property acquired through a crime (tax crime) in the amount of BGN 552018.81

the most significant number of files opened by prosecutors is from notification by the NRA and the Customs Agency.

176. According to information provided by the NRA at the virtual visit, the Handbook on Detection of Corrupt Practices adopted in 2013 (see below under awareness-raising and training) contains several indicators for tax auditors to follow in their inspections such as payments made to reduce tax base or detecting employees or accounting ledgers, registers and behaviours. Tax auditors report irregularities with regard to the tax code to the prosecutors' office, not foreign bribery or other offences which are out of their remit.

(c) Reporting to domestic law enforcement authorities and cooperation

177. According to article 34(2) of the Tax Insurance Procedures Code, if during their investigations tax inspectors obtain information about significant crime, they are obliged to send the materials to the respective prosecutor. As mentioned in Phase 3 (para. 91), in 2006, the Minister of Finance and the Prosecutor General issued an instruction, which provides mechanisms for the exchange of information and co-operation between the NRA and the prosecution service in the investigation of tax crimes, fraud and corruption, including the provision of NRA expertise to the pre-trial bodies on an as needed basis.⁴⁹

178. During the virtual visit, the NRA reported that based on an updated instruction on interagency cooperation between the NRA and the prosecutors, coordination centres had been set up at the local level between local tax administration offices and prosecutors' offices to hold case discussions. This aims to improve cooperation and communication through working meetings and, according to panellists, is working well. The NRA confirmed that the prosecutors inform them about cases when information provided in the referral was not sufficient and the opening of pre-trial investigations was rejected, as well as about charges which were laid in initiated proceedings.

179. The NRA, as the competent authority for disposing of confiscated assets, has not received any requests for disposition of property confiscated in accordance with the requirements of the Convention. In addition, the NRA and the Anti-Corruption Commission cooperate on the basis of a similar instruction, namely through performing checks and providing information in relation to Commission proceedings.

(d) Awareness raising and training

180. In Phase 3, the Working Group recommended that Bulgaria provide guidelines and training to tax inspectors as to the types of expenses that constitute bribes to foreign public officials using the OECD Bribery Awareness Handbook for Tax Examiners (recommendation 7(b)). At the two-year written follow-up this recommendation was deemed partially implemented pending the organisation of planned trainings.

181. The NRA adopted a Handbook on Detection of Corrupt Practices for its officers and published it on its internal home page in 2013. The Handbook reflects the OECD Bribery Awareness Handbook for Tax Examiners and the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors. All tax inspectors have access to the Handbook and can use it in their daily work. An English version of the Handbook was provided to the Secretariat at the time of Phase 3 and trainings were organised starting in 2013 on the basis of the new Handbook. According to information provided at the virtual visit on the implementation of Phase 3 recommendation 7(b), regular trainings have continued to be held since Phase 3. A representative of the NRA noted that tax auditors were trained to pay particular attention to international payments and transactions.

⁴⁹ See "Instruction on the organisation and the forms of interaction between the Ministry of Finance and the Chief Prosecutor's Office of the Republic of Bulgaria".

(e) Tax treatment of sanctions and confiscation imposed on legal persons

182. According to information provided by Bulgaria, sanctions and confiscated assets cannot be deducted from the tax base on which corporate taxes are calculated (i.e. the taxable income). Under article 26 of the CITA, sanctions, confiscated assets and expenditures for bribes are not eligible as expenses for taxation purposes. However, no cases have been referred to the NRA.

183. According to information provided at the virtual visit and subsequently, there is a mechanism for retrospective re-examination of tax returns- in case of a conviction of a taxpayer for bribery of a foreign official, the revenue authority may undertake tax and social security control measures in order to assess the taxpayer's tax liabilities arising from wrongful declaration of the bribe given to a foreign official as an expense, within a time limit of five years under the Tax and Social Security Procedure Code. However, the NRA may initiate tax assessment proceedings at the request of the public prosecutor, as early as the stage of initiating and carrying out criminal proceedings and such a process is not bound by the five year limit when criminal proceedings have been initiated. According to the information provided by the Supreme Court of Cassation, since Bulgaria's Phase 3 report, three criminal proceedings related to tax evasion as a result of use of accounting documents with incorrect content ("false accounting"), have been terminated with decisions of the Supreme Court of Cassation due to expiration of the statute of limitations.⁵⁰

(f) Cooperation between NRA and overseas authorities

184. According to information provided at the virtual visit, the NRA could notify authorities in other countries of issues based on their tax audits in case of suspicion that foreign bribery has been detected in those audits through the Prosecutor's Office.

Commentary

The lead examiners note that in the ongoing absence of case law, the NRA has not enforced post-conviction non-deductibility of bribes to foreign public officials. As in Phase 3, they therefore recommend that the Working Group follow up on this issue of post enforcement non-deductibility of bribes to foreign public officials as case law develops.

The lead examiners welcome Bulgaria's ongoing efforts to provide training to personnel of the NRA since 2013 in implementation of Phase 3 recommendation 7(b) and recommend the inclusion of specific modules on foreign bribery in the curricula.

The lead examiners welcome the strong cooperation between the NRA and prosecutors' offices through the coordination centres and note that this could be a good practice. They look forward to the use of these centres in future foreign bribery investigations. The lead examiners also recommend the prosecutors' offices to provide feedback and follow-up on cases where the NRA has notified irregularities.

2. Public advantages

(a) Export Credits

185. Bulgaria has not yet adhered to the 2019 Recommendation on Bribery and Officially Supported Export Credits (Export Credit Recommendation). Bulgaria is an Invitee to the OECD Working Party on

⁵⁰ Decision No. 199 of 07.05.2015 on criminal case No. 235/2015; Decision No. 15 of 27.02.2017 on criminal case No. 672/2016; Decision No. 137 of 15.08.2017 on criminal case No. 366/2017.

Export Credit and Credit Guarantees (ECG) and is regularly represented by officials from the Ministry of Economy.

186. BAEZ, a fully state-owned company, provides export credits in the form of credit insurance. Bulgaria finances BAEZ only when the credit insurance premiums are not sufficient to cover any damages payable. In Phase 4, Bulgaria reiterated that BAEZ never benefited from state financing in practice, and therefore did not implement Phase 3 recommendation 11(a) to adhere to the Export Credit Recommendation. Nevertheless, Bulgaria has implemented measures to prevent, detect and sanction foreign bribery in export credits, which at the time of Bulgaria's two-year written follow-up were considered by the Working Group adequate to implement Phase 3 recommendation 11(b). BAEZ representatives at the virtual visit indicated that these measures are still in place and that BAEZ continues to require anti-corruption declarations from clients, conduct due diligence in the award process, verify applicants against the debarment lists of international financial institutions, and provide for mechanisms to report suspicions of corruption and foreign bribery in export credit operations. BAEZ representatives were also aware of the foreign bribery offence and the risks associated with bribery.

187. In 2021, BAEZ adopted a new set of anti-corruption rules (Protocol No. 109/09.02.2021), which have introduced procedures and mechanisms for the "verification, monitoring and reporting of corruption" in export credit operations. These include, inter alia, a staff policy on gifts and entertainment, a third party risk management policy, and the conduct of an annual anti-corruption risk assessment. The new rules also establish mandatory reporting procedures for employees who suspect bribery. While not all of these rules relate directly to the provisions of the Export Credit Recommendation, they could arguably strengthen further BAEZ's capacity to prevent and detect bribery. BAEZ could explore consolidating these anti-corruption rules with the rules and procedures described above to ensure consistency and proper implementation.

Commentary

The lead examiners are encouraged by Bulgaria's measures to prevent, detect and sanction foreign bribery in export credit operations, and recommend that BAEZ consider consolidating its anti-corruption rules and procedures to ensure consistency and proper implementation. They further reiterate Phase 3 recommendation 11(a) and recommend that Bulgaria adhere to the 2019 Recommendation on Bribery and Officially Supported Export Credits, which should then be implemented by BAEZ.

(b) Public procurement

188. In Phase 3, the Working Group recommended that Bulgaria provide guidance to the procurement bodies on due diligence. Since then, Bulgaria's PPA organised one training for its staff, in early 2021, on preventing and countering corruption in public procurement contracting, however, it is unclear whether the training covered due diligence measures. In Phase 3, the Working Group further recommended that Bulgaria consider maintaining a record of natural and legal persons sanctioned for bribery to be consulted by contracting authorities. To date, the PPA does not maintain such a record but rather relies on the non-conviction declarations issued by Bulgaria's courts that applicants are required to provide when they apply for public procurement.

189. In Phase 4, Bulgaria clarified that the PPA is not the country's central purchasing authority but that contracting authorities are responsible for awarding public procurement contracts. As such, the PPA does not take into consideration applicants' internal controls, ethics and compliance programmes in the selection process nor does it verify publicly available debarment lists of international financial institutions. This may prove to be a serious deficiency in practice given that, for instance, the World Bank list of ineligible firms and Individuals includes five Bulgarian companies for prohibited conduct (fraud and corruption) under their

Procurement Guidelines.⁵¹ Bulgaria's standard public procurement contract also does not include anti-corruption clauses.

Commentary

The lead examiners note that Bulgaria has made limited progress to address Phase 3 recommendation 12, which is considered not implemented. The lead examiners therefore recommend that Bulgaria (a) continue to train the staff of PPA and contracting authorities on foreign bribery, including on how to carry out effectively due diligence in relation to public procurement contracting; (b) where appropriate, check the debarment lists of international financial institutions; (c) consider, as appropriate in the context of combatting foreign bribery, the existence of anti-corruption internal controls, ethics and compliance programmes of companies seeking procurement contracts; and (d) include anti-corruption clauses within public procurement contracts.

(c) Official development assistance

190. This Phase 4 evaluation is the first time Bulgaria's ODA system is reviewed in light of the 2016 Recommendation for Development Co-operation Actors on Managing the Risk of Corruption (2016 Recommendation), and in particular sections 6-8 and 10, which more directly relate to foreign bribery.

(i) Bulgaria's ODA profile

191. In 2019, Bulgaria provided a total of BGN 112.82 million (approx. EUR 57.6 million) in ODA, which represents 0.10% of the country's gross national income (GNI). The largest proportion of Bulgaria's ODA (86%) was provided as core contributions to multilateral organisations, while 14% was provided as bilateral aid. The top five recipient countries of bilateral aid were the Republic of North Macedonia, Serbia, Albania, Ukraine and Moldova.

192. The MFA's International Development Co-operation Department, United Nations and Development Co-operation Directorate leads and co-ordinates Bulgaria's development co-operation activities. It elaborates Bulgaria's ODA policy and annual action plans, negotiates agreements with partner countries, and administers project implementation and the provision of ODA. The Decree of the Council of Ministers 234/2011 on the Policy on Participation in International Development Co-operation, and the Mid-term Programme for Development Assistance and Humanitarian Aid (2020-2024) set the regulatory framework for Bulgaria's development co-operation activities. Bulgaria is set to develop and adopt a Law on Development Assistance and Humanitarian Aid by the end of 2021. The Working Group was not provided with a copy of the draft law and therefore cannot assess its content and impact on the issues discussed below.

(ii) Prevention, detection and reporting of corruption in ODA

193. In Phase 3, the Working Group found that Bulgaria's ODA policy and procedures were at an early stage of development, and recommended that Bulgaria, in the course of developing its ODA policies and procedures, adopt measures to prevent, detect and report foreign bribery in the award and execution of ODA contracts (recommendation 10). The two-year written follow-up report found that Bulgaria had not implemented the recommendation. Since then, Bulgaria has taken some measures to prevent, detect and report foreign bribery in the award and execution of ODA contracts, which are detailed below in light of the country's efforts to implement the 2016 Recommendation.

⁵¹ <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>

194. Bulgaria's standard ODA application form requires applicants to declare that there are no grounds for exclusion from the selection process, including, in the case of legal persons, that "no member of the[ir] management body was convicted by a final sentence for indictable offence" (article 23(4) of Decree 234/2011). There is no similar prohibition for natural person applicants who were convicted for an indictable offence, nor for legal persons that were sanctioned themselves for corruption or foreign bribery. Bulgaria indicates that a multi-stakeholder commission in the MFA headquarters evaluates all applications and verifies the information provided in the declarations. However, Bulgaria does not provide information as to whether the commission carries out due diligence prior to granting ODA contracts, including by considering applicants' corruption risk management systems, or verifies publicly available debarment lists of international financial institutions during the selection process.

195. Allegations of corruption and foreign bribery in ODA can be reported through the dedicated MFA anti-corruption webpage and through drop boxes in the embassies abroad, to the MFA Inspectorate. The MFA Inspectorate does not have investigation powers but refers all allegations to the competent law enforcement authorities. To date, Bulgaria has received no allegations of corruption or foreign bribery in ODA.

(iii) Sanctioning corruption in ODA

196. Bulgaria's standard ODA contract includes termination and reimbursement clauses in the event of discovery that the information provided by the implementing partner was false. The termination clause does not apply, however, if the implementing partner subsequently engaged in corruption during the course of the contract, as required by the 2016 Recommendation, Section 8(i). Bulgaria indicates that no ODA contracts were terminated in the recent year for false information. In cases where corruption is detected during the course of the contract, the MFA Inspectorate would make a proposal to the Minister for the case to be referred to the competent law enforcement authorities. However, Bulgaria clarifies that the Minister cannot block the referral.

Commentary

The lead examiners regret that Bulgaria has made limited progress to address Phase 3 recommendation 10, which is considered not implemented. Despite the fact that the largest proportion of Bulgaria's ODA is core contributions to multilateral organisations, the lead examiners consider that Bulgaria needs to take further steps in order to implement the 2016 Recommendation. They therefore recommend that Bulgaria (a) ensure that both natural and legal persons applying for ODA contracts be required to declare that they have not been convicted of corruption offences; (b) verify publicly available debarment lists of international financial institutions during the applicants' selection process; (c) undertake appropriate due diligence, including on the applicants' corruption risk management systems, prior to the granting of ODA contracts; and (d) include, within ODA contracts, termination, suspension or reimbursement clauses or other civil and criminal actions, where applicable, in the event of the discovery that the implementing partner subsequently engaged in corruption during the course of the contract. The lead examiners also recommend that the Working Group follow up on the enactment of the draft Law on Development Assistance and Humanitarian Aid.

Conclusion: Positive achievements, recommendations, and issues for follow-up

197. The Working Group welcomes the efforts made by Bulgaria in recent years towards the implementation of the Convention and related instruments. However, the Working Group is seriously concerned about the continued lack of detection, investigation and prosecution of foreign bribery cases in Bulgaria and general lack of awareness of foreign bribery risks. Since Phase 3, Bulgaria has commenced only one foreign bribery investigation, which is ongoing, and several allegations were reported publicly or notified to the Bulgarian authorities by the Working Group and have not been proactively investigated. The Working Group also considers that Bulgaria does not have an effective legal framework for holding legal persons liable for foreign bribery or related offences and that it needs urgent reform. In addition the maximum available sanctions for legal persons are amongst the lowest in the Working Group and need increasing.

198. The Phase 3 recommendations that the Working Group considered not or only partially implemented after the 2014 written follow-up report continue to be outstanding: 1(a) foreign bribery offence, 2(a) jurisdiction for liability of legal persons, 2(b)(second part) availability of investigative tools in proceedings for legal persons, 2(c)(second part) autonomy of proceedings for liability of legal persons, 3(a) and 3(b) effective, proportionate and dissuasive sanctions for natural persons, 4(a)(i) and 4(b) confiscation, 5(a) adequate resources for investigation and prosecution, 5(c) proactive MLA, 6(a) false accounting offence, 6(b) adoption of internal controls, ethics, and compliance programmes, 7(b) tax, 8(a) anti-corruption policy, 8(b) awareness raising, including for MFA, 8(c) awareness raising for private sector, 9 whistleblower protection, 10 ODA, 11(a) export credits, 12 public procurement. These partially and unimplemented Phase 3 recommendations are reflected below in the Phase 4 recommendations to Bulgaria. Phase 3 recommendations 5(a) adequate resources for investigation and prosecution, 5(b) training, and 7(a) tax, 10 ODA are also issues for follow-up by the Working Group.

199. The Working Group invites Bulgaria to submit an oral report in one year (i.e. in October 2022) on issues concerning liability of legal persons and on whistleblower protection and a written report on the implementation of Phase 4 recommendations and issues for follow-up in two years (i.e. in October 2023), including detailed information on its foreign-bribery enforcement actions.

Positive achievements and good practices

200. This report has identified some good practices and positive achievements by Bulgaria regarding implementation of the Convention and related instruments.

201. The Working Group commends Bulgaria for the legal reforms undertaken in recent years, including updated provisions of the Criminal Code, LAOS and the adoption of the new MAMLA. The Working Group also commends Bulgaria for its efforts in training and awareness raising and the cooperation of the FIU with the financial sector.

202. The Working Group welcomes the strong cooperation between the National Revenue Agency and prosecutors' offices through the coordination centres as a good practice and looks forward to the use of these centres in future foreign bribery investigations. The Working Group also welcomes the development of the BULSTAT register as a good practice.

Recommendations of the Working Group

Recommendations for ensuring effective prevention and detection of foreign bribery

1. Regarding **awareness raising**, the Working Group recommends that Bulgaria urgently take the necessary steps to raise awareness of foreign bribery risks among all relevant public and private sector stakeholders [2009 Recommendation III(i) and Annex I.A].
2. Regarding **implementation of the Convention** and the National Anti-Corruption Strategy 2021-2027, the Working Group recommends that Bulgaria, through the National Anti-Corruption Policy Council, urgently prioritise implementation of the Working Group's recommendations [Convention Article 5; 2009 Recommendation II and III(i), V and Annex I.D; Phase 3 recommendation 8(a)].
3. Regarding **detection of foreign bribery by public officials**, the Working Group recommends that Bulgaria:
 - (a) continue to raise awareness and provide regular training to public officials who could play a role in detecting and reporting foreign bribery, including MFA officials, about the offence and reporting obligations [2009 Recommendation III(i), and IX(ii); Annex I.A; Phase 3 recommendation 8(b)];
 - (b) include specific modules on foreign bribery in the curricula of the MFA Diplomatic Institute training provided to new MFA officials on anti-corruption measures [2009 Recommendation III(i) and Annex I.A].
4. Regarding **whistleblower protection**, the Working Group recommends that Bulgaria, in the context of forthcoming reforms, enact legislation that provides clear and comprehensive protections from retaliation to whistleblowers in the public and private sectors who report suspected acts of foreign bribery [2009 Recommendation III(iv) and IX(iii); Phase 3 recommendation 9].
5. Regarding **detection through media**, the Working Group recommends that Bulgaria:
 - (a) ensure that laws relating to freedom of the press are fully applied in practice to ensure that allegations of foreign bribery can be reported without fear of reprisals [Convention Article 5 and Commentary 27; 2009 Recommendation III(i), Annex I.D.];
 - (b) ensure that law enforcement authorities routinely and systematically assess foreign bribery allegations that are reported in domestic and foreign media [Convention Article 5 and Commentary 27; 2009 Recommendation III(i), Annex I.D].
6. Regarding **detection of foreign bribery by accountants and auditors**, the Working Group recommends that Bulgaria:
 - (a) urgently proceed with raising awareness and providing training to external auditors on the foreign bribery offence, including methods and red flags to detect foreign bribery [Convention Article 8; 2009 Recommendation III(i) and X.B(iii) and (v); Phase 3 recommendation 6(a)];

- (b) undertake more efforts to raise awareness of the independence standards among external auditors in order to improve compliance with IFAA [Convention Article 8; 2009 Recommendation III(i) and X.B(ii)].

Recommendations for ensuring effective enforcement of the foreign bribery and related offences

7. Regarding the **foreign bribery offence**, the Working Group recommends that Bulgaria:
 - (a) amend its foreign bribery offence to cover any use of the public official's position, whether or not within the official's authorised competence [Convention Article 1; Phase 3 recommendation 1(a)];
 - (b) withdraw unless further clarified by case law the requirement for 'the consent of the official' for bribes given to third party beneficiaries [Convention Article 1].
8. Regarding **sanctions**, the Working Group recommends that Bulgaria:
 - (a) enact a provision to sanction aggravated foreign bribery to the same extent as aggravated domestic bribery [Convention Article 3; Phase 3 recommendation 3(b)];
 - (b) take all necessary steps, including through guidance and training to the judiciary, to ensure that sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive in practice [Convention Articles 3 and 5; 2009 Recommendation III(i); Phase 3 Recommendation 3(a)];
 - (c) take steps to ensure that prosecutors in foreign bribery cases routinely seek confiscation of the bribe, and the direct and indirect proceeds of bribery obtained by a briber, or monetary sanctions of comparable effect [Convention Article 3, Phase 3 Recommendation 4(b)].
9. Regarding the **investigation and prosecution** of foreign bribery, the Working Group recommends that Bulgaria:
 - (a) take an active part in the different meetings of the Working Group, including the Law Enforcement Officials meetings, and disseminate information at the national level to relevant authorities and stakeholders about implementation of the Convention and the work of the Working Group [Convention Article 12; 2009 Recommendation XIV(iv) and XV];
 - (b) increase the use of proactive steps to gather information from diverse sources to increase detection [Convention Article 5 and Commentary 27; 2009 Recommendation III, V and Annex I].
 - (c) ensure that all foreign bribery allegations are properly assessed by the competent authorities and, where appropriate, pre-trial proceedings are commenced [Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D];
 - (d) amend article 209(1) CPC to allow anonymous notices to be considered as a statutory occasion, thus potentially increasing the source of detection of cases [Convention Article 5 and Commentary 27; 2009 Recommendation IX(i) and (ii), and Annex I.D];
 - (e) assign primary responsibility for foreign bribery cases to specialised prosecutors in such a way that sufficient priority is given to their enforcement, improve expertise and interagency co-ordination, facilitate a dedicated point of contact for reporting foreign bribery allegations by the public and government agencies, and give jurisdiction over related offences [Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D];

- (f) allocate adequate human and financial resources to investigations and prosecutions of foreign bribery against natural and legal persons, including the availability of expertise in forensic accounting and information technology (Convention Article and Commentary 27; 2009 Recommendation Annex I.D; Phase 3 recommendation 5(a));

10. Regarding **international cooperation**, the Working Group recommends the Bulgaria:

- (a) maintain detailed statistics on international co-operation requests on foreign bribery, including the underlying offence, time required for execution, and nature of assistance sought [Convention Article 9; 2009 Recommendations III(ix) and XIII];
- (b) actively utilise informal means of international co-operation in foreign bribery cases, including by engaging with the Law Enforcement Officials meeting (Convention Article 9; 2009 Recommendation XIII(i) and (iii); Phase 3 recommendation 5(c)).

11. Regarding the **false accounting offence**, the Working Group recommends that Bulgaria:

- (a) raise awareness of the new administrative false accounting offence among relevant practitioners [Convention Article 8; 2009 Recommendation III(i) and X.B(iii) and (v)];
- (b) introduce adequate sanctions for the false accounting offence for the purpose of bribing foreign public officials or of hiding such bribery [Convention Article 8; 2009 Recommendation III(i) and X.A(iii)]; Phase 3 Recommendation 6(a)].

Recommendations regarding liability of, and engagement with, legal persons

12. Regarding **liability of legal persons**, the Working Group recommends that Bulgaria:

- (a) amend its legislation to provide jurisdiction over Bulgarian legal persons for foreign bribery, including where the legal person uses non-nationals to bribe on its behalf abroad [Convention Articles 2 and 4; Phase 3 recommendation 2(a)];
- (b) urgently amend existing procedure and legislation, as necessary, to ensure that proceedings against a legal person are not restricted to cases where the natural person who perpetrated the offence is prosecuted or convicted [Convention Article 2; 2009 Recommendation Annex I.B; Phase 3 recommendation 2(c)];
- (c) where appropriate, consider combining proceedings against natural and legal persons in the same case following the practice of some other Working Group members with non-criminal corporate liability [Convention Article 2; 2009 Recommendation Annex I.D];
- (d) take steps to ensure that the full range of investigative tools in the CPC, including special intelligence means, are available in proceedings against legal persons [Convention Articles 2 and 5; 2009 Recommendation Annex I.D; Phase 3 recommendation 2(b)];
- (e) take steps to ensure that the limited circumstances for duly summoning a legal person's representative do not prevent court proceedings against legal persons being commenced [Convention Article 2];
- (f) urgently draw the attention of prosecutors to the importance of taking proceedings for the sanctioning of legal persons for foreign bribery, including by strengthening training programmes on proceedings against legal persons [Convention Articles 2 and 3; 2009 Recommendation III(ii) and Annex I.B];
- (g) increase the maximum available sanctions for legal persons to a level that is effective, proportionate and dissuasive as required by Article 3 of the Convention [Convention Articles 2 and 3];

- (h) amend its legislation to allow for the suspension or debarment of legal persons to an appropriate degree [Convention Articles 2 and 3; 2009 Recommendation XI; Phase 3 recommendation 12];
- (i) amend its legislation to expressly cover the confiscation of the bribe from legal persons [Convention Articles 2 and 3; Phase 3 recommendation 4(a)].

13. Regarding **engagement with the private sector**, the Working Group recommends that Bulgaria:

- (a) as a matter of priority, take measures to raise awareness on the foreign bribery offence among business associations and companies, including SMEs and SOEs, targeting those that conduct business in countries and sectors with a high risk of corruption [2009 Recommendation III(i); Phase 3 recommendation 8(c)];
- (b) promote the development and implementation of anti-corruption internal controls, ethics and compliance programmes by the private sector, including through the Good Practice Guidance [2009 Recommendation III(i), X.C(i) and Annex II].

Recommendations regarding other measures affecting implementation of the Convention

14. Regarding **money laundering**, the Working Group recommends that Bulgaria:

- (a) urgently raise the awareness of non-financial institutions on the risks of foreign bribery [Convention Article 7; 2009 Recommendation III(i)];
- (b) provide specific guidance and typologies on foreign bribery cases for all obliged entities [Convention Article 7; 2009 Recommendation III(i)];
- (c) maintain detailed statistics on STRs received to allow the FID-SANS to analyse the obliged entities that are reporting cases and also the underlying predicate offence [Convention Article 7; 2009 Recommendation III(i)];
- (d) implement the goAML (or similar) software to facilitate the reporting of STRs by obliged entities [Convention Article 7; 2009 Recommendation IX(i)];
- (e) ensure that the competent prosecution authorities that receive analysis reports from the FID-SANS, and as part of improved interagency cooperation, provide more regular and more detailed feedback on follow-up actions [Convention Article 7; 2009 Recommendation IX(i)].

15. Regarding **taxation**, the Working Group recommends that Bulgaria:

- (a) include specific modules on foreign bribery in the curricula of training for NRA personnel [2009 Recommendation III(iii) and VIII(i)]; Phase 3 recommendation 7(b)];
- (b) provide feedback and follow-up on cases where the NRA has notified irregularities to prosecutors' offices [2009 Recommendation III(iii) and VIII(i)].

16. Regarding **officially supported export credits**, the Working Group recommends that Bulgaria:

- (a) adhere to the 2019 Recommendation on Bribery and Officially Supported Export Credits, which should then be implemented by BAEZ [2009 Recommendation XII(ii); Phase 3 recommendation 11(a)];
- (b) consider consolidating BAEZ's anti-corruption rules and procedures to ensure consistency and proper implementation [2009 Recommendation XII(ii); 2019 Export Credit Recommendation];

17. Regarding **public procurement**, the Working Group recommends that Bulgaria:

- (a) continue to train the staff of the Public Procurement Agency and contracting authorities on foreign bribery, including on how to carry out effectively due diligence in relation to public procurement contracting [2009 Recommendation III(i) and XI(iii); Phase 3 Recommendation 12];
- (b) where appropriate, check the debarment lists of international financial institutions [2009 Recommendation XI(iii)];
- (c) consider, as appropriate in the context of combatting foreign bribery, the existence of anti-corruption internal controls, ethics and compliance programmes of companies seeking procurement contracts [2009 Recommendation XI(iii)];
- (d) include anti-corruption clauses within public procurement contracts [2009 Recommendation XI(iii)].

18. Regarding **official development assistance** (ODA), the Working Group recommends that Bulgaria:

- (a) ensure that both natural and legal persons applying for ODA contracts be required to declare that they have not been convicted of corruption offences [2009 Recommendation XI(ii); 2016 Recommendation 6(ii)];
- (b) verify publicly available debarment lists of international financial institutions during the applicants' selection process [2009 Recommendation XI(ii); 2016 Recommendation 6(iv)];
- (c) undertake appropriate due diligence, including on the applicants' corruption risk management systems, prior to the granting of ODA contracts [2009 Recommendation XI(ii); 2016 Recommendation 6(iii)];
- (d) include, within ODA contracts, termination, suspension or reimbursement clauses or other civil and criminal actions, where applicable, in the event of the discovery that the implementing partner subsequently engaged in corruption during the course of the contract [2009 Recommendation XI(ii); 2016 Recommendation 8(i)].

Follow-up by the Working Group

19. The Working Group will follow up on the issues below as case law, practice and legislation develops:

- (a) human and financial resources available to the prosecutors' office to support the effective detection, investigation and prosecution of foreign bribery [Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D; Phase 3 recommendation 5(a)];
- (b) monitoring of media reporting pursuant to the Order of the Prosecutor General [Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D];
- (c) coordination between investigators and prosecutors [Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D];
- (d) number of and reasons for cases returned by the courts to the pre-trial authorities [Convention Article 5; 2009 Recommendation Annex I.D; Phase 3 follow-up issue 13(a)];
- (e) whether prosecutors who conduct foreign bribery cases are subjected to potential political or other undue interference through the Prosecutor General [Convention Article 5].
- (f) as relevant, the reasons for the termination of foreign bribery cases [Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D];

- (g) impact of the CJEU decision on Bulgaria's extradition framework [Convention Article 9];
- (h) whether Bulgaria's standard of liability is adequately broad to cover the wide variety of decision-making systems in legal persons [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B];
- (i) application of articles 83(3) and (4) LAOS on successor liability in practice [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B];
- (j) whether the prosecutors proactively pursue proceedings against legal persons for foreign bribery and related offences (2009 Recommendation III(i), IV and Annex I.A and D; Phase 3 recommendation 5(b));
- (k) whether sanctions imposed against legal persons are effective, proportionate and dissuasive [Convention Articles 2, 3 and 5];
- (l) application in practice of article 83a(5) LAOS regarding calculation of sanctions against legal persons [Convention Articles 2, 3 and 5; 2019 Recommendation Annex I.B];
- (m) post enforcement non-deductibility of bribes to foreign public officials for tax purposes [2009 Recommendation VIII(i); Phase 3 recommendation 7(a)];
- (n) enactment of the draft Law on Development Assistance and Humanitarian Aid [2009 Recommendation XI(ii); 2016 Recommendation; Phase 3 recommendation 10].

Annex 1: Phase 3 recommendations to Bulgaria and assessment of implementation by the Working Group on Bribery in 2013

Recommendations of the Working Group in Phase 3		<i>Written follow-up May 2013</i>
<i>Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery</i>		
1.	Regarding the <u>offence of bribing a foreign public official</u> , the Working Group recommends that Bulgaria:	
	a) amend its foreign bribery offence to cover all cases of bribery in order that an official act outside his/her authorised competence, and to expressly cover bribes given to third party beneficiaries (Convention Article 1)	<i>Not Implemented</i>
	b) take steps to ensure that judges, prosecutors and investigators are aware that the Penal Code bribery offences cover bribes of a non-material nature (Convention Article 1; 2009 Recommendation III(i))	<i>Implemented</i>
2.	Regarding the <u>liability of legal persons</u> , the Working Group recommends that Bulgaria substantially amend the regime in the Law on Administrative Offences and Sanctions (LAOS) to ensure that:	
	a) there is jurisdiction to prosecute Bulgarian companies when a non-Bulgarian national commits foreign bribery outside Bulgaria (Convention Articles 2 and 4)	<i>Not Implemented</i>
	b) investigations and prosecutions of legal persons for foreign bribery are not affected by the factors described in Article 5 of the Convention, and the full range of investigative tools in the Criminal Procedure Code is available in such cases (Convention Articles 2 and 5; 2009 Recommendation IV and Annex I(D))	<i>Not Implemented</i>
	c) there is a clear procedural framework that identifies the court with competence to hear proceedings against legal persons, and that does not preclude proceedings against legal persons when proceedings against a natural person	<i>Not Implemented</i>

	are terminated or not commenced due to specified grounds in the Criminal Procedural Code (Convention Article 2; 2009 Recommendation IV and Annex I(D))	
3.	Regarding <u>sanctions</u> , the Working Group recommends that Bulgaria:	
	a) ensure that sanctions against natural persons that are imposed in practice are effective, 14 proportionate and dissuasive in all foreign bribery cases (Convention Article 3)	<i>Partially Implemented</i>
	b) enact a provision to sanction aggravated foreign bribery to the same extent as aggravated domestic bribery (Convention Article 3)	<i>Not Implemented</i>
	c) increase the maximum penalty available against legal persons in cases where the advantage accruing to the legal person as a result of foreign bribery is not “property”, or if the value of the advantage cannot be ascertained (Convention Article 3)	<i>Not Implemented</i>
4.	Regarding <u>confiscation</u> , the Working Group recommends that Bulgaria:	
	a) streamline its legislation on confiscation, and amend the legislation to expressly cover the confiscation of (i) the bribe from legal persons; and (ii) the indirect proceeds of bribery gained by a briber, and property in the hands of third parties, from natural and legal persons (Convention Article 3)	<i>Not Implemented</i>
	b) take steps to ensure that prosecutors routinely seek confiscation of the bribe, and the direct and indirect proceeds of bribery obtained by a briber (Convention Article 3)	<i>Partially Implemented</i>
5.	Regarding <u>investigations and prosecutions</u> , the Working Group recommends that Bulgaria:	
	a) allocate adequate human and financial resources to investigations and prosecutions of foreign bribery against natural and legal persons, including the availability of expertise in forensic accounting and information technology (Convention Articles 2 and 3; 2009 Recommendation IV and Annex I(D))	<i>Partially Implemented</i>
	b) train judges, prosecutors and investigators on investigations and prosecutions of legal persons and complex financial cases, and take steps to ensure that such investigations are conducted whenever appropriate (2009 Recommendation III(i), IV and Annex I (A) and (D))	<i>Implemented</i>
	c) take steps to ensure that its authorities are more proactive when seeking mutual legal assistance (Convention Article 9; 2009 Recommendation XIII(i) and (iii))	<i>Partially Implemented</i>
	d) issue an official written procedure for assigning foreign bribery cases to the various prosecutorial and investigative bodies (Convention Article 5)	<i>Implemented</i>
	e) maintain statistics as to the number, sources and subsequent processing of foreign bribery allegations and consider ways of publicising information heard	<i>Implemented</i>

	by the courts, as described in Phase 2 Recommendation 4 (2009 Anti-Bribery Recommendation III)	
	f) put in place a centralised mechanism for the periodic review and evaluation of the enforcement approach and the effectiveness of the enforcement efforts of the different agencies involved in the fight against foreign bribery, as referred to in Phase 2 Recommendation 14 (Convention Articles 1 and 5; 2009 Anti-Bribery Recommendation V)	<i>Implemented</i>
Recommendations for ensuring effective prevention and detection of foreign bribery		
6.	Regarding <u>accounting and auditing, corporate compliance internal controls and ethics</u> , the Working Group recommends that Bulgaria:	
	a) introduce effective, proportionate and dissuasive sanctions for false accounting offence, and intensify training and awareness-raising in foreign bribery that targets the accounting and auditing profession (reiterates Recommendation 3 of Phase 2) (Convention Article 8; 2009 Recommendation III(i) and X(A(iii)))	<i>Not Implemented</i>
	b) encourage companies to introduce codes of conduct and compliance programmes, as well as to promote the implementation of measures recommended in the “Good Practice Guidance on Internal Controls, Ethics, and Compliance” and clearly allocate responsibility for such promotion (2009 Recommendation X(C) and Annex II)	<i>Partially Implemented</i>
7.	Regarding tax measures, the Working Group recommends that Bulgaria implement its declared intention to:	
	a) establish an express legislative provision to prohibit the tax deduction of bribes including those paid to foreign public officials and review its tax law with a view to identifying and removing potential loopholes for hiding foreign bribery as tax-deductable expenses (2009 Recommendation VIII(i))	<i>Implemented</i>
	b) provide guidelines and training to tax inspectors as to the types of expenses that constitute bribes to foreign public officials, using the OECD Bribery Awareness Handbook for Tax Examiners (2009 Recommendation VIII(i))	<i>Partially Implemented</i>
8.	Regarding <u>awareness-raising</u> , the Working Group recommends that Bulgaria	
	a) explicitly address combating bribery of foreign public officials in international business transactions in its anti-corruption policy (2009 Recommendation II and III(i))	<i>Not Implemented</i>
	b) raise awareness of the foreign bribery offence among the relevant ministries and provide regular training about the offence and reporting obligations to officials in government agencies that could play a role in detecting and reporting, including the officials of the Ministry of Foreign Affairs (2009 Recommendation III(i) and IX(ii))	<i>Implemented</i>

	c) raise awareness among the private sector of the offence, in co-operation with the Bulgarian SME Promotion Agency and business associations (2009 Recommendation III(i))	<i>Partially Implemented</i>
9.	Regarding whistleblower protection, the Working Group recommends that Bulgaria consider extending the recently established provision for the protection of whistleblowers who report instances of conflict of interests to cover foreign bribery, or establish another mechanism to ensure that public and private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary actions. The Working Group further recommends that Bulgaria implement measures to raise awareness about such mechanisms (2009 Recommendation IX(iii))	<i>Partially Implemented</i>
10.	Regarding official development assistance (ODA), the Working Group recommends that Bulgaria, in the course of developing its ODA policies and procedures, adopt measures to prevent, detect and report foreign bribery in the award and execution of ODA contracts (2009 Recommendation II, IX(i) and IX(ii)).	<i>Not Implemented</i>
11.	Regarding officially supported export credits, the Working Group recommends that the Bulgaria:	
	a) adhere to the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits (2009 Recommendation XII(i))	<i>Not Implemented</i>
	b) introduce measures to inform clients about the legal consequences of foreign bribery, require clients to provide anti-bribery declarations, conduct due diligence in the award process (including through the use of available debarment lists), and report suspicions of foreign bribery in export credit operations (2009 Recommendation XII(i))	<i>Implemented</i>
12.	Regarding public procurement, the Working Group recommends that Bulgaria introduce a legal provision to allow debarment of legal persons from public procurement, provide guidance to the procurement bodies on due diligence, and consider maintaining a record of natural and legal persons convicted of bribery which could be consulted by contracting authorities. (2009 Recommendation XI).	<i>Not Implemented</i>
Phase 3 Issues for follow up by the Working Group		
13.	The Working Group will <u>follow-up</u> the issues below as case law and practice develops:	
	a) The number of and reasons for cases returned by the courts to the pre-trial authorities (Convention Article 5 and 2009 Recommendation Annex I(D));	<i>Follow-up in Phase 4</i>
	b) Time taken to conduct preliminary checks when there is sufficient information to commence pre-trial proceedings (Convention Article 5 and 2009 Recommendation Annex I(D)).	<i>Follow-up in Phase 4</i>

Annex 2: List of participants in the virtual visit

Government Ministries and Agencies

- Ministry of Justice
- Ministry of Economy
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Interior
- State Agency “National Security”
- Institute for Public Administration
- Anti-Corruption Commission
- Bulgarian Small and Medium Enterprises Promotion Agency
- Bulgarian Export Insurance Agency
- Public Procurement Agency
- National Revenue Agency
- Customs Agency

Law enforcement

- Supreme Prosecutor’s Office of Cassation
- Specialised Prosecutor's Office
- Sofia City Prosecution Office

Judiciary

- Supreme Court of Cassation
- Court of Appeal Veliko Tarnovo
- District Court Varna
- District Court Plovdiv

Private Sector and Business Associations

Companies

- Bulgargaz
- Technomarket
- ZAGORKA

Business associations

- American Chamber of Commerce in Bulgaria
- Association of Bulgarian Employers' Organisations

Financial institutions

- UniCredit
- United Bulgarian Bank
- Central Cooperative Bank
- DSK
- Postbank

Legal profession and academics

- New Bulgarian University
- Sofia University
- University Of National and World Economy
- Djingov, Gouginski, Kyutchukov & Velichkov Law Firm

Accounting and auditing profession

- Institute of Certified Public Accountants

- Commission for Public Oversight of Statutory Auditors

- Deloitte
- KPMG

Civil society and media

- Transparency International Bulgaria
- Newspaper Dnevnik

Annex 3: List of abbreviations, terms and acronyms

AML	Anti-Money Laundering
BAEZ	Bulgarian Export Insurance Agency
BGN	Bulgarian Lev
CC	Criminal Code
CDD	Customer Due Diligence
CIA	Credit Institutions Act
CITA	Corporate Income Tax Code
CJEU	Court of Justice of the European Union
CPC	Criminal Procedure Code
EAW	European Arrest Warrant
ECG	OECD Working Party on Export Credit and Credit Guarantees
EEAWA	Law on Extradition and European Arrest Warrant
EIO	European Investigation Order
EU	European Union
EUR	Euro
FCPA	US Foreign Corrupt Practices Act
FDI	Foreign Direct Investment
FID-SANS	Financial Intelligence Directorate - State Agency for National Security
FIU	Financial Intelligence Unit
GDP	Gross Domestic Product
IFAA	Independent Financial Audit Act
ISA	International Standards on Auditing
JSA	Judiciary System Act
LAOS	Law on Administrative Offences and Sanctions
LCCCIAP	Law on Combating Corruption and Confiscation of Illegally Acquired Property
MAMLA	Measures against Money Laundering Act
MFA	Ministry of Foreign Affairs
MLA	Mutual Legal Assistance
MOI	Ministry of Interior

MOJ	Ministry of Justice
NIJ	National Institute of Justice
NRA	National Revenue Agency
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
PEPs	Politically Exposed Persons
SANS	State Agency for National Security
SIMA	Special Intelligence Means Act
SMEs	Small and Medium Enterprises
SOEs	State-Owned Enterprises
SPOC	Supreme Prosecutor's Office of Cassation
STR	Suspicious Transactions Report
TI	Transparency International
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
USD	United States Dollar
WGB	Working Group on Bribery in International Business Transactions

www.oecd.org/corruption

