



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

January 2013

This report, submitted by Finland, provides information on the progress made by Finland in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 25 January 2013.

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

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of Findings

1. In October 2012, Finland presented its Written Follow-Up Report, outlining its responses to the recommendations and follow-up issues identified by the Working Group on Bribery at the time of Finland's Phase 3 examination in October 2010. Of the five foreign bribery prosecutions identified in Finland's Phase 3 Report, four are still ongoing against natural persons. The fifth case resulted in suspended prison sentences with no monetary sanctions for four individuals for accounting offences and the acquittal of a related legal person on all counts. All individuals were acquitted of the charge of aggravated bribery of foreign public officials in this case. The prosecution has appealed the acquittal of the legal person, as well as the acquittal of the individuals on the aggravated foreign bribery charges.

2. The Working Group welcomed the information provided by the Finnish authorities in the course of this exercise. While recognising Finland's efforts to implement certain Phase 3 recommendations, the Working Group expressed disappointment over the high number of recommendations not implemented by Finland and the lack of action over the two years since Finland's Phase 3 evaluation. The Working Group considers that Finland has satisfactorily implemented 5 out of the 19 Phase 3 recommendations, while 2 recommendations have been partially implemented, and 12 recommendations have not been implemented.

3. Finland has undertaken several initiatives to raise awareness in the public and private sectors of the Convention and the Criminal Code foreign bribery offences, and efforts in this area should be maintained (*Recommendations 5(a) and (b)*). In particular, the Finnish National Bureau of Investigation has developed specific training for law enforcement officials on the application of the foreign bribery offences, although more attention should be focused on the distinction between non-aggravated and aggravated forms of the foreign bribery offence and on corporate liability (*Recommendation 1*). Nevertheless, more could be done to raise awareness of Finland's framework for combating foreign bribery and its corporate liability regime in high risk sectors such as the defence industry, and among state-owned enterprises, SMEs and the legal, accounting and auditing professions (*Recommendation 5(c)*). In future awareness raising efforts, Finland should in particular promote use of the Good Practice Guidance on Internal Controls, Ethics and Compliance contained in Annex 2 of the 2009 Recommendation (*Recommendation 5(e)*). It noted,

4. Of particular concern is the lack of action by Finland to make the necessary legislative amendments to address deficiencies in the definition of foreign public officials in the Criminal Code (*Recommendation 2*), and to expressly provide for corporate liability for accounting and auditing offences in the Accounting Act (*Recommendation 4*). Nor has progress been made towards ensuring a sufficient limitation period for enforcement of the foreign bribery offence (*Recommendation 3*).

5. With respects to improving the possibilities for reporting of foreign bribery, Finland has not taken any steps to protect public and private sector employees who report suspected foreign bribery in good faith and on reasonable grounds (*Recommendation 7*), or to promote reporting by public officials to law enforcement authorities (*Recommendation 6*). In the area of auditing, Finland has not considered requiring external auditors who discover suspected foreign bribery to report this discovery to management, corporate monitoring bodies or competent authorities independent of the company (*Recommendations 8(b) and (c)*). In fact such reforms have been excluded from a proposal to amend Finland's auditing legislation by the Finnish Ministry of Employment and the Economy. In addition, Finland has not taken any measures to ensure that companies excluded from the external auditing obligation continue to voluntarily submit to

such audits, or to raise awareness of the foreign bribery offence and related accounting and auditing offences (*Recommendation 8(a)*).

6. In relation to taxation, Finland published a Guideline to tax officials on 16 June 2011 clarifying the non-deductibility of bribes, and another Guideline on 21 September 2012 concerning the obligation to report suspected criminal offences, including foreign bribery, to law enforcement authorities (*Recommendation 9(a)*). These Guidelines are publicly available on the tax administration website and therefore also serve as guidance to taxpayers (*Recommendation 9(b)*).

7. With respect to export credits, FINNVERA has published formal guidelines on due diligence and enhanced due diligence in the award and carrying out of export credit contracts, as well as on disclosure of credible evidence of bribery by FINNVERA officials to law enforcement authorities (*Recommendation 11*). On the other hand, similar initiatives have yet to be adopted by Finnish authorities responsible for the award of official development assistance contracts (*Recommendation 10*) and public advantages (*Recommendation 12*).

Conclusions of the Working Group

8. Based on the findings of the Working Group on Bribery with respect to Finland's implementation of its Phase 3 recommendations, the Working Group concluded that Finland has satisfactorily implemented Recommendations 5(a), (b), 9(a), (b) and 11; that Finland has partially implemented Recommendations 1 and 5(c); and that Finland has not implemented Recommendations 2, 3, 4, 5(d), (e), 6, 7, 8(a), (b), (c), 10 and 12.

9. In light of the overall unsatisfactory implementation of its Phase 3 Recommendation by Finland, the Working Group decided to express its concern in a letter from the Chair to the Prime Minister of Finland, including in an annex a list of the non-implemented Phase 3 recommendations. The Working Group further invited Finland to provide a written follow-up report in one year (i.e. by October 2013) on progress made in respect of the non-implemented recommendations, as well as on enforcement actions in Finland.

WRITTEN FOLLOW-UP REPORT TO PHASE 3 REPORT: FINLAND

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 3 Evaluation Procedure [DAF/INV/BR(2008)25/FINAL, paragraphs 55–67].

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

*Please submit completed answers to the Secretariat on or before **4 September 2012**.*

Name of country: Finland

Date of approval of Phase 3 evaluation report: 15 October 2010

Date of information: 11 September 2012

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation:

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

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

With regard to the Police, the following can be stated on the matter:

The National Police Board, the National Bureau of Investigation, the Support Unit for Combating Financial Crime and the Police College of Finland joined forces in 2011 to plan revisions to the training provided to pre-trial investigation authorities with regard to the investigation and uncovering of corruption offences. A training programme covering the entire Police administration was prepared for the purposes of training, which will be used to develop training in the long term. Several reforms were implemented in this regard during 2011. The objective has been to increase the Police's awareness of corruption and different forms of bribery, including bribery of foreign public officials. A second objective has been to train Police personnel to detect and uncover bribery offences more efficiently than before.

The training now factors in the recommendations issued to Finland by the OECD Working Group on Bribery. Guidelines on the distinction between non-aggravated and aggravated forms of active bribery offences will be produced insofar as this is possible on the basis of precedents concerning bribery offences. In the Criminal Code of Finland, the legislator has deliberately left it to the courts to assess on a case-by-case basis and taking into account the special characteristics of each offence whether a gift or other unlawful benefit is to be deemed considerable.

In 2011, the National Police Board invited all authorities involved in fighting financial crime in Finland to a seminar on international obligations in combating corruption, the pre-trial investigation of bribery offences and research initiatives relating to corruption crime.

The Police College of Finland is responsible for providing basic training to financial crime investigators. Since 2011, basic courses in financial crime investigation systematically cover different forms of corruption and their distinguishing characteristics. A course on money laundering and tracking criminal profits provided by the Police College of Finland will also cover corruption crime and especially money laundering in this context as of 2011. Topics prioritised in training provided to lead investigators in charge of financial crime investigations in 2011 included bribery offences and issues relating to bribery of foreign public officials. Once a year the Police College of Finland holds a basic course in the investigation of economic crimes. The course is held in two periods each lasting two weeks. Each person tasked with investigating financial crimes must attend the course 1-3 years since he or she started investigating economic crimes. An average of around 50 persons attends the course at a time. In addition to this, a special course on the investigation of economic crimes is held once a year for police officers who have already been working longer on such investigations. The person responsible at the National Bureau of Investigation for corruption matters lectures about the topic for four hours on both courses. The differences between the ordinary and aggravated act form of active bribery referred to the Criminal Code of Finland as mentioned in the OECD's recommendation, as well as the criminal liability of legal persons. In the same context, courses cover on a broader basis the anti-corruption conventions to which Finland is signatory (OECD, Council of Europe, UN). In addition, the courses particularly cover the actual criminal cases currently pending concerning the bribery of foreign officials. In 2011, all the cases concerning Finland referred to in the OECD incidence matrix were covered in detail, together with the main legislation issues related to them, including criminal liability of legal persons. In addition to the above, the Police College of Finland holds a tax offence course once a year. A separate module on corruption has been added to this course, which is usually attended by around 15-25 persons. Furthermore, the Police College of Finland holds a module about corruption in the basic training for everyone attending police training. This module also covers the corruption matters referred to above. In practice, training is held at intervals of about six weeks. Around 50 persons attend each course.

In Finland, police investigations into financial crime are divided nationally and regionally into four networks. A key objective of these networks is to make financial crime investigation more efficient and to speed up the process while also strengthening and developing cooperation and the exchange of information with prosecutors and other interested parties. The networks also share in the responsibility to provide regional training to financial crime investigators. These networks organised training related to corruption and uncovering and preventing bribery offences throughout 2011 and 2012, and this will continue.

The issues mentioned in the OECD's recommendations to Finland will be systematically incorporated into the national training programme and education in the future. Forms of bribery through an intermediary are also covered in training.

Lectures on corruption will be included in all basic courses of the Police as of 2012. The lectures will feature case studies of bribery of foreign public officials. Lectures on the internal operations of the Police and public sector ethics will also be given in this context.

Training relating to tax offences includes a standard module on uncovering corruption by means of corporate bookkeeping investigations.

Moreover, the following can be stated with regard to the prosecution service:

With regard to the problem of distinction between non-aggravated and aggravated forms of active bribery offences referred to in the OECD's recommendation, the question that determines whether the offence is deemed aggravated, i.e. whether the value of the gift or benefit is "considerable", cannot be definitively resolved by means of internal guidance for the prosecution service, and instead this is decided by the courts on a case-by-case basis.

As there is still no case law concerning this issue, prosecutors have been instructed in the matter in training and more guidance will be given in the future whereby the considerable value of a gift or benefit is to be interpreted according to case law established for other offences where a similar definition is used. Based on this interpretation guideline, a gift or benefit of as low a value as EUR 10 000–20 000 is generally to be deemed to fulfil the criteria for an aggravated form of the offence.

With regard to bribery offences committed abroad, determining the obligations of foreign public officials during pre-trial investigation may be problematic from the prosecutor's perspective, as the criteria for actions that are contrary to duties do not refer exclusively to the powers of foreign public officials, which are usually easy to establish, but also to all obligations that public officials must observe when acting within their powers.

Bringing charges in Finland may require a thorough investigation and legal evaluation of the duties of foreign public officials. Pre-trial investigation in Finland is led by the Police, but the prosecutor is ultimately responsible for ensuring that suspicions of offences are investigated thoroughly enough for the purposes of a trial. This kind of an arrangement places considerable demands on the cooperation of prosecutors and police officers in pre-trial investigation when it comes to establishing such unusually complex evidential matters as the one discussed here.

This is why training relating to cooperation between prosecutors and police officers has been reformed and increased considerably since 2010. Topics prioritised in the revised training programme include issues relating to acquiring proof in complex criminal cases and the drafting of joint investigation plans of the prosecution service and the Police. The first cooperation course held following the reform in November 2010 featured an extensive study into the cooperation of the prosecution service and the Police in an international bribery case that was under investigation at the time. These kinds of courses are held regularly once or twice a year.

The Office of the Prosecutor General held a course on corruption offences on 24-26 May 2010. The course was attended by 21 prosecutors and 6 police officers.

The course programme covered:

- corruption offences in general, up-to-date information about criminal cases of a public official, Professor Pekka Viljanen from the University of Turku
- corruption in the business world, Central Chamber of Commerce
- anti-corruption in business, PriceWaterhouseCoopers
- situational awareness of corruption, Police College of Finland
- bribery in business, Professor Matti Tolvanen from the University of Joensuu

- The current situation as regards corruption offences in Sweden, state prosecutor Schultz from Sweden
- how to conduct a pre-trial investigation when the recipient of bribery is a foreign public official (National Bureau of Investigation)
- an analysis of actual bribery cases, a number of cases from across Finland

The next course will take place on 19-20 November 2012. A total of 22 prosecutors and 3 police officers have been accepted for the course. The framework of the programme will be similar to the one above. In addition, the misuse of a position of trust will be covered.

In addition, a seminar on economic crime was held on 6-8 June 2011. This was attended by a total of 278 persons, comprising representatives of the local police, the Police College of Finland, the National Bureau of Investigation, the Police Administration, the Ministry of the Interior, the prosecution service, the tax authority, the National Administrative Office for Enforcement, the Ministry of Justice, the office of Bankruptcy Ombudsman and Finnish Customs.

The programme content was as follows:

- the latest developments in fighting crime
- money detection dogs in investigating economic crime
- human trafficking for forced labour
- amendments to the Criminal Investigations and Coercive Measures Acts
- international obligations in preventing corruption (OECD, Council of Europe, UN)
- experiences of investigating bribery offences in Finland and abroad (presentation of OECD cases)
- organisation of national special debt collection
- electronic bank enquiries
- economic crime research projects
- commitment of economic crime investigators to their job
- mechanism to monitor corruption offences
- extending incrimination of corruption

The seminar covered the structure of the OECD's Convention and of other related documents, including the 2009 recommendation. In addition, the recommendations given to Finland by the OECD, the bribery of foreign public officials and bribery of members of parliament as referred to in the Criminal Code of Finland and bribery taking place through arbitrators were some of the topics studied in detail. Furthermore, the investigations of bribery offences relating to the area of the OECD Convention currently pending and the main experiences appearing in them, including cooperation with foreign authorities.

With regard to the criminal liability of legal persons, the relevant provisions and the application of these in prosecution activities have been incorporated into the basic training that is systematically provided to all prosecutors. The topic also features regularly in training relating to specific types of crime.

Text of recommendation:

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

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

Finland recalls its position that in this respect, there is no gap in substantive law. Nonetheless, the recommendation is being implemented.

The Legal Affairs Committee of Parliament has noted (Parliamentary Legal Affairs Committee Report 45/2010) its position that persons holding a legislative office in a foreign country may be deemed to be in the same position as foreign public officials. This position is based on the OECD recommendation to Finland.

Finland's Parliamentary Legal Affairs Committee considers all legislative proposals concerning legislation in the field that the Finnish Government makes to Parliament. The Committee states its own opinion of the legislative proposal under consideration and its statement then becomes part of the Government proposal and at the same time part of the preparatory work of future acts. In Finland, this means that the factors referred to in the preparatory work of an act serve as the highest interpretation guide when applying the act in question. Courts of law apply the preparatory work of an act as an interpretation guide in practical situations. The statement by the Legal Affairs Committee thus remains in force. The statement by the Legal Affairs Committee in this matter is annexed.

For the sake of clarity, it should be mentioned that the statement by the Legal Affairs Committee referred to and annexed in the previous paragraph contains a reference to the above-mentioned points in the Criminal Code of Finland. The statement by the Legal Affairs Committee relates particularly to the legislative proposal concerning trading in influence, which there was no time to consider because of the 2011 parliamentary elections. In its statement, the Legal Affairs Committee notes that the proposal concerning trading in influence must be urgently prepared again.

After this, the matter concerning trading in influence was included the new government's programme in spring 2011. Page 42 of Prime Minister Jyrki Katainen's government programme states (published online in English) the following:

“The network of authorities leading the anti-corruption activities will be strengthened. The sectors and situations prone to corruption will be identified so that they can be addressed. The Government will outline the regulatory alternatives for the criminalisation of trading in influence.”

The matter referred to in the OECD's recommendation will be considered in the same context. At the moment, it would appear that preparation of the matter will be pushed back to next year.

General Parliamentary elections were held in Finland in April 2010. The new Government was not formed until the end of June 2011. The Government Policy Programme contains a few references to offences by public officials, and this matter will in time lead to action. Since this requires the reform of legislation on offences by public officials, the OECD recommendations shall be implemented at the same time. The timetable is still open. It may be noted that even if the implementation of the OECD recommendation is a technical one, for reasons of consistency it requires several other amendments of the Criminal Code (Criminal Code chapter 40, section 11, subsections 4 and 6; chapter 40, section 12, subsection 4; chapter 16, section 20, subsection 4; and chapter 1).

Members of the anti-corruption cooperation network, which has been operating since 2002, include all the main authorities and private sector representatives active in anti-corruption work. Since October 2010, (second phase of the OECD's country evaluation), the OECD's recommendations to Finland have been considered in detail in each cooperation network meeting. Furthermore, the Ministry of Justice has reviewed the recommendations separately with each representative and has made plans together with them to implement the recommendations. In its latest meeting held on 20 September 2012, the cooperation network decided to draw up, by the end of 2012, a detailed plan of action or work plan to increase general awareness of anti-corruption work in the public and private sectors. The plan will also include the actions that the OECD requires of Finland. In addition, research work on sectors vulnerable to corruption will be stepped up.

Text of recommendation:

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

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

According to Finnish legislation, the limitation period for bribery offences committed abroad is five years. This limitation period can be extended by one year in special circumstances. The limitation period for an aggravated bribery offence is 10 years.

The issue has been discussed several times in the cross-departmental anti-corruption committee and the Ministry of Justice proposed that the recommendation be incorporated into the new Government's Government Programme in the summer of 2011, but this was unfortunately not done. The Ministry of Justice has proposed that all recommendations of the OECD Working Group on Bribery that have not yet been implemented be incorporated into a Finnish Government Resolution on issues relating to corporate and social responsibility that will be adopted in the autumn of 2012. At the moment, wording to this effect is included in the draft version of the resolution.

Text of recommendation:

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

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

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

Provisions on corporate criminal liability are contained in chapter 9 of the Criminal Code. For reasons of principle and for legal clarity, corporate criminal liability extends only to certain serious offences, all of which are contained in the Criminal Code. The Criminal Code defines these offences, and also contains the general provisions on corporate criminal liability. Since, therefore, no corporate criminal liability exists in Finland for any offence defined outside of the scope of the Criminal Code, it is not possible to extend such liability to the minor offences (punishable only by a fine) that are defined in the Accounting Act. However, the extension of corporate criminal liability to accounting and auditing offences defined in Chapter 30 of the Criminal Code shall be taken under consideration.

The issue has been discussed several times in the cross-departmental anti-corruption committee and the Ministry of Justice proposed that the recommendation be incorporated into the new Government's

Government Programme in the summer of 2011, but this was unfortunately not done. The Ministry of Justice has proposed that all recommendations of the OECD Working Group on Bribery that have not yet been implemented be incorporated into a Finnish Government Resolution on issues relating to corporate and social responsibility that will be adopted in the autumn of 2012. At the moment, wording to this effect is included in the draft version of the resolution.

Text of recommendation:

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

a) Take urgent steps to raise awareness within the public and private sectors that the bribery offences under § 16:13 and § 16:14 of the Criminal Code include: (i) bribery of a foreign public official, including of a person holding a legislative office in a foreign country; and (ii) bribery through an intermediary, including through a related legal person abroad (Convention, Article 1(1) and 1(4)(a); 2009 Recommendation III(i)).

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

The issue of awareness-raising has been discussed in detail at several meetings of the Anti-Corruption Cooperation Network following the OECD meeting in October 2010, most recently in May 2012. The Network brings together the key authorities as well as private sector and civil society entities involved in anti-corruption activities. Each representative has been charged with conveying the importance of this issue to their respective organisation.

In addition, awareness-raising has been discussed extensively at the training session for Finland's economic and financial offence investigators held during 2011–2012. All such investigators – including those who investigate cases linked with corruption – were present at this seminar, over 300 in all. In this connection, the OECD recommendations were presented, including the recommendations on awareness-raising. In addition, the respective authorities have decided to include this issue as a separate topic in the basic and continued training of police officers and prosecutors. See also answer to recommendation No 1 above.

The Ministry for Foreign Affairs published a new edition of its Anti-Corruption Handbook on 4 September 2012, which includes a detailed presentation of the OECD Convention and its related background documents. Particular attention is being paid to ensuring that the text covers all the issues raised in the recommendations adopted in respect of Finland. This Handbook will be distributed to all Finnish diplomatic missions abroad and to all ministries and key authorities. This Handbook can be found on the Internet at <http://formin.finland.fi/public/default.aspx?contentid=255644>.

Particular attention has also been paid to awareness-raising in the private sector. For this reason, the Ministry of Justice together with the Confederation of Finnish Industries shall arrange training as early as during 2012–2013. The intention is to present the OECD Convention and the related documents in detail to the members of the Confederation. It has also been agreed that the Confederation shall distribute written material widely by electronic mail to all companies in Finland.

Text of recommendation:

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

b) Take concrete steps to raise awareness of the Convention and the foreign bribery offence in key government agencies, including FINNVERA, MFA, and the Tax Administration (2009 Recommendation III(i)).

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

With regard to FINNVERA, it can be stated that a copy of the OECD's country evaluation report on Finland has been sent to FINNVERA for the purposes of taking action. See response to Section 11. FINNVERA will update its bribery guidelines, which were adopted in 2006, to comply with the OECD's recommendations.

On 4 September 2012, the Ministry for Foreign Affairs of Finland published a new anti-corruption handbook. The information presentation was attended by 150 persons. The Ministry for Foreign Affairs has prepared an Anti-Corruption Handbook on account of the recommendation, which has been published on the ministry's website and an announcement of its publication sent to all of the ministry's employees. Copies of the Handbook will also be sent to all Finnish missions abroad. See response to Section 5a. Among other things, the Handbook contains information about the OECD Anti-Bribery Convention and bribery offences committed abroad.

A copy of the OECD's country evaluation report on Finland has been sent to tax authorities, and discussions have also been held between the Tax Administration and the Ministry of Justice concerning the OECD Convention and the implementation of the recommendations issued to Finland. Training as referred to in Section 1 of the recommendation has also been given to all key parties involved in combating financial crime as well as to tax inspectors who cooperate with the Police and prosecutors. A training event where the OECD Convention and other related documents as well as their contents were discussed was held for tax inspectors and their interest groups in the summer of 2011.

Text of recommendation:

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

c) Take concrete steps to raise awareness of Finland's framework for combating foreign bribery in the private sector, including within high risk sectors such as the defence industry and with SOEs, SMEs and the legal, accounting and auditing professions (2009 Recommendation III(i)).

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

The Ministry of Justice together with the Confederation of Finnish Industries has decided to organise special training on the OECD Convention and its application. One training event on bribery was held in the autumn of 2011, and more extensive training will be available in the winter of 2012/2013. A newsletter discussing the OECD Convention and related documents will also be sent along with other

material via e-mail to all organisations and businesses belonging to the Confederation of Finnish Industries.

The Confederation of Finnish Industries represents all private sectors of business and companies of all sizes; it has approximately 16 000 member companies, of which 96 percent are small and medium-sized enterprises. Its members represent more than 70 percent of Finland's gross domestic product and more than 95 percent of Finland's exports. Together the member companies have approximately 950 000 employees.

In autumn 2011, the Ministry of Employment and the Economy held a seminar about fighting corruption relating to business notably in the Baltic Sea Region and Russia. Seminar topics were:

- international anti-corruption actions in Sweden (Birgitta Nygren/Sweden)
- what fighting corruption means for companies (Global Advice Network, Jens Berthelsen)
- fighting corruption in Finland, recommendations given to Finland by the OECD's Working Group on Bribery and their implementation (Juha Keränen)
- cooperation with Russia in combating corruption (Nordic Council of Ministers, Mika Boedeker)
- perceptions of corruption in business, Aalto University
- comments by business on fighting corruption, Central Chamber of Commerce

HAUS Finnish Institute of Public Management Ltd regular holds anti-corruption training courses twice a year for state and municipal employees and especially for persons performing internal audits. Over the past three years, training has also included international obligations with regard to anti-corruption and, *inter alia*, the OECD Anti-Bribery Convention and the recommendations based thereon given to Finland have been presented on these courses. In addition, a representative from the National Bureau of Investigation has presented the legislation currently in force and cases of bribery offences in practice.

Every year, the National Bureau of Investigation's Financial Intelligence Unit provides regular training to persons subject to disclosure obligation and duty of care. In 2012, training was revised in accordance with the OECD's recommendations to correspond also more to the exposure of corruption. A module has been added to training to increase the awareness of corruption matters among persons subject to disclosure obligation.

During 2012, the National Bureau of Investigation held lectures for representatives in the banking sector on the subject of bribery as practiced by Finnish companies at home and abroad. In addition, the lectures covered the various ways how banks could identify suspect money transfers and bribes and report them to the Finance Intelligence Unit.

In conjunction with Transparency International Finland, on 27 September 2012, the Ministry of Justice held a seminar about observations of corruption made by actors carrying out investigative work in Finland. The Ministry of Justice presented the OECD's recommendations to Finland and outlined the situation regarding their implementation.

The next training/lecture relating to the topic about the OECD's anti-bribery work and combating corruption in Finland will be held on 15 October 2012 for representatives of the Consultative Committee for Corporate Security. Principal business representatives and organisations in Finland are members of the Consultative Committee.

Text of recommendation :

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

d) Take concrete steps to raise awareness of the responsibility of legal persons for the foreign bribery offence, including amongst SOEs and their auditors (Convention, Article 2; 2009 Recommendation III(i)).

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

The issue has been discussed several times in the cross-departmental anti-corruption committee and the Ministry of Justice proposed that the recommendation be incorporated into the new Government's Government Programme in the summer of 2011, but this was unfortunately not done. The Ministry of Justice has proposed that all recommendations of the OECD Working Group on Bribery that have not yet been implemented be incorporated into a Finnish Government Resolution on issues relating to corporate and social responsibility that will be adopted in the autumn of 2012. At the moment, wording to this effect is included in the draft version of the resolution.

Text of recommendation:

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

e) Promote the Good Practice Guidance in Annex 2 of the 2009 Recommendation to all Finnish enterprises, business organisations and professional associations, including through Finnish missions abroad (2009 Recommendation X.C).

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

See answers in 5a–b. This is mentioned in the new Anti-Corruption Handbook published by the Ministry for Foreign Affairs. To date, the Handbook has only been published in English.

Text of recommendation:

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

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

The issue has been discussed several times in the cross-departmental anti-corruption committee and the Ministry of Justice proposed that the recommendation be incorporated into the new Government's Government Programme in the summer of 2011, but this was unfortunately not done. The Ministry of Justice has proposed that all recommendations of the OECD Working Group on Bribery that have not yet been implemented be incorporated into a Finnish Government Resolution on issues relating to corporate and social responsibility that will be adopted in the autumn of 2012. At the moment, wording to this effect is included in the draft version of the resolution.

The Ministry for Foreign Affairs has announced that it will draft guidelines on reporting to law enforcement authorities on account of the recommendation issued by the OECD. A corruption officer at the Money Laundering Clearing House of the National Bureau of Investigation will be responsible for logging incoming reports. At the same time, the Ministry for Foreign Affairs will amend its IT-based document management system so that any report containing the keyword 'corruption' or 'bribery' will be automatically forwarded to the National Bureau of Investigation.

Text of recommendation:

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

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

The issue has been discussed several times in the cross-departmental anti-corruption committee and the Ministry of Justice proposed that the recommendation be incorporated into the new Government's Government Programme in the summer of 2011, but this was unfortunately not done. The Ministry of Justice has proposed that all recommendations of the OECD Working Group on Bribery that have not yet been implemented be incorporated into a Finnish Government Resolution on issues relating to corporate and social responsibility that will be adopted in the autumn of 2012. At the moment, wording to this effect is included in the draft version of the resolution.

Text of recommendation:

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

a) Take measures to ensure that the significant number of companies released from the obligation to carry out an external audit, following amendments to the Auditing Act, continue to voluntarily submit to an external audit and are aware of the foreign bribery offence and related accounting and auditing offences (Phase 2 Evaluation, Recommendation 5; 2009 Recommendation X.B(i));

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

The issue has been discussed several times in the cross-departmental anti-corruption committee and the Ministry of Justice proposed that the recommendation be incorporated into the new Government's Government Programme in the summer of 2011, but this was unfortunately not done. The Ministry of Justice has proposed that all recommendations of the OECD Working Group on Bribery that have not yet been implemented be incorporated into a Finnish Government Resolution on issues relating to corporate and social responsibility that will be adopted in the autumn of 2012. At the moment, wording to this effect is included in the draft version of the resolution.

A reform of the auditing system is currently under way in Finland. This issue will be revisited in connection with the reform.

Text of recommendation:

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

b) Amend the Auditing Act to require external auditors who discover indications of a suspected act of foreign bribery to report this discovery to management and, as appropriate, to corporate monitoring

bodies (Phase 2 Evaluation, Recommendation 3; 2009 Recommendation X.B(iii));

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

According to the new Auditing Act that entered into force in 2007, an auditor must make a note in the auditor's report if a partner, a member or the chairperson or the deputy chairperson of the Board of Directors or of the Supervisory Board or of an equivalent governing body, or the Managing Director or any other accountable person in the corporation or foundation

- 1) is guilty of an act or negligence which may result in liability in damages towards the corporation or foundation or
- 2) has violated a law applicable to the corporation or foundation or the articles of association, deed of partnership or bylaws of the corporation or foundation.

The auditor's report must be submitted to the Board of Directors or equivalent governing body of the corporation or foundation.

Under the Auditing Act, an auditor must comply with good auditing practice when carrying out the duties referred to in the Act. An auditor must observe any particular instructions given by the partners or by the general meeting or equivalent governing body, insofar as these instructions are not in conflict with the law, the articles of association, the rules, the deed of partnership, international auditing standards, good auditing practice or the principles of professional ethics.

On an international scale, the concept and content of good auditing practice are largely determined by practising auditors and their professional unions. The International Federation of Accountants (IFAC) plays a crucial role here, and the standards and recommendations that bind its members have been followed since 2000. IFAC completed an extensive review programme (known as the Clarity Project) in the spring of 2009, which covered all 36 ISAs (International Standards on Auditing) as well as the ISQC 1 quality control standard. The objective of the review project was to clarify the standards and to improve their readability. The linguistic style and structure of the standards were revised and an attempt was made to separate requirements placed on the auditor from application instructions, for example. Changes were also made to the contents of approximately half of the standards. The revised standards must be observed in financial years beginning on or after 15 December 2009.

Conceptually, good auditing practice refers to a common law equivalent of good legal practice and good bookkeeping practice, for example, in other words practices and procedures generally followed by conscientious professionals on the basis of professional judgement, which guide the performance of auditing duties. Good auditing practice also refers to compliance with the principles of professional ethics, such as objectivity, due diligence and confidentiality. In practice, the principles of professional ethics are based on the IFAC Code of Ethics.

Good auditing practice has been seen to comprise, among other things, legislative regulations, IFAC's ISA standards on auditing, court rulings and decisions, guidelines and opinions of the Auditing Board of the State and the Auditing Board of the Central Chamber of Commerce.

The object of an audit is to provide an opinion on whether the financial statements and the annual report give a true and fair view, in accordance with the applicable financial reporting framework, of the result of operations and the financial position of the corporation or foundation and whether the information included in the annual report is consistent with the information included in the financial

statements. The auditor must also carry out an audit on administration and issue an opinion thereof. The objective is to examine the legality of the actions of the individuals responsible for the operations of the corporation (accountable persons) on the basis of the norms governing the corporation (e.g. Companies Act and articles of association).

If an auditor discovers a case of misuse or obtains information that indicates potential misuse, the issue must be brought to the attention of the management as soon as possible. This must be done even in minor cases of misuse. If an auditor suspects that the management or employees who play an important role in internal monitoring are guilty of misuse, the suspicion must be reported to the governing bodies. Barring a few exceptions (e.g. Money Laundering Act), an auditor's vow of confidentiality prevents the auditor from reporting suspicions of misuse to parties outside the company.

Finnish legislation includes an obligation to report suspicions of bribery offences to the company's management even though this is not expressly stated in the Auditing Act as the recommendation issued by the OECD stipulates.

The issue has been discussed several times in the cross-departmental anti-corruption committee and the Ministry of Justice proposed that the recommendation be incorporated into the new Government's Government Programme in the summer of 2011, but this was unfortunately not done. The Ministry of Justice has proposed that all recommendations of the OECD Working Group on Bribery that have not yet been implemented be incorporated into a Finnish Government Resolution on issues relating to corporate and social responsibility that will be adopted in the autumn of 2012. At the moment, wording to this effect is included in the draft version of the resolution.

A reform of the auditing system is currently under way in Finland. This issue will be revisited in connection with the reform.

Text of recommendation:

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

c) Consider requiring external auditors who discover indications of a suspected act of foreign bribery to report to competent authorities independent of the company (2009 Recommendation X.B(v)).

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

The issue has been discussed several times in the cross-departmental anti-corruption committee and the Ministry of Justice proposed that the recommendation be incorporated into the new Government's Government Programme in the summer of 2011, but this was unfortunately not done. The Ministry of Justice has proposed that all recommendations of the OECD Working Group on Bribery that have not yet been implemented be incorporated into a Finnish Government Resolution on issues relating to corporate and social responsibility that will be adopted in the autumn of 2012. At the moment, wording to this effect is included in the draft version of the resolution.

A reform of the auditing system is currently under way in Finland. This issue will be revisited in connection with the reform.

Text of recommendation:

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

a) Establish clear guidelines for tax inspectors, particularly concerning: (i) the coverage of bribes to foreign public officials as a form of non-deductible expense under section 16 of the Business Tax Act; (ii) how active bribery investigations should be taken into consideration by the Tax Administration; and (iii) on the obligation of officials in the Tax Administration to report cases of suspected foreign bribery to investigative authorities (Phase 2 Evaluation, Recommendation 3; 2009 Recommendation VIII(i); 2009 Tax Recommendations I(i) and II).

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

(i) According to Section 16 of the Act on the Taxation of Business Profits, bribes and bribe-like benefits are not tax-deductible in Finland. This applies to both domestic and foreign expenditure, which means that a bribe or bribe-like benefit given abroad is also not tax-deductible. The Tax Administration issued a guideline corresponding to the OECD's recommendation on the matter on 16 June 2011 (document No 383/345/2011), which has been published online. The issue has featured in tax authorities' training for several years already.

The ineligibility of bribes for tax deduction has been dealt with in the handbook for tax auditors on the basis of the Business Tax Act and of the new tax administration instructions. The handbook is intended for tax auditors for training purposes. In addition, the Apaja internet website used by tax auditors within the Finnish Tax Administration contains a Finnish-language translation of the OECD's anti-corruption guidelines for tax auditors. Under the guidelines, all tax audit reports which involved suspected misuse must be reported to the tax rate department for consideration of actions. A representative of the National Bureau of Investigation has regularly lectured tax auditors in local training events about, *inter alia*, declaration obligation.

A new study module containing nine different courses has been prepared for new tax auditors. These courses include a course entitled Auditing income and expenses and examining the reliability of bookkeeping. This course deals, *inter alia*, with gifts, bribes and bribery in taxation (Business Tax Act, Chapter 16, Section 1 (8)).

Courses for new tax auditors are repeated annually and the latest one was held in February 2012. The next course will take place in early 2013.

In addition to the above, new tax auditors review the guidelines on hospitality, benefits and gifts issued by the Ministry of Finance on 23 August 2010 as a preliminary assignment on the course for a course entitled Introduction to tax audit work. The guidelines concern all state employees and attempt to define the boundaries between the acceptable and forbidden in related questions.

(ii) Filing reports of offences and monthly tax returns is the responsibility of the Tax Collection Unit. According to an operating model formulated by tax inspection and tax collection authorities together, administrators at the Tax Collection Unit are notified of all tax inspection reports where tax inspection authorities have identified indications of an offence. Suspected cases of bribery are therefore forwarded to the unit responsible for deciding whether a report of an offence should be filed. The Tax Administration can report tax offences or other offences relating to taxation to the Police for the purposes of pre-trial investigation. If a bribe has been deducted in the briber's tax returns, there is usually cause to suspect a tax fraud. When this kind of a case is reported, the Police also receive notification of the suspicion of bribery.

(iii) On 21 September 2012, the Tax Administration issued new guidelines concerning reports made to the police by government employees in the Tax Administration. In Finland, the police head the pre-trial investigation of offences independently. The guidelines are available online and apply both to tax authorities and taxpayers.

The wording of the guidelines is as follows:

“Description of the offence

The report of an offence itemises the offence, the constituent elements of which the suspect in the case must satisfy. Suspicion of having committed a tax fraud offence might include factors that can indicate satisfying the constituent elements of some other offence, such as bribery, under the official charge. This factor is taken into account when considering reporting the offence and when reporting it. Should, in a tax audit, costs have been considered as being non-deductible pursuant to Section 16 (8) (bribes and fringe benefits of bribes) of the Finnish Business Tax Act (360/1968 as amended), the report of offence states separately that tax imposed was too low (satisfying the constituent elements of tax fraud) partly or wholly explicitly as a result of the content of the unjustified expenses referred to above.”

In addition to the above, discussion is currently under way about how the effectiveness of reports submitted by the Tax Administration could otherwise be improved as regards bribery offences (all bribery offences, Finnish and international). In 2011, Finland’s Financial Intelligence Unit formed the focus of the receipt of corruption reports. This is why consideration is now being given as to whether reporting activities could be directed in even more detail in practice. Legislation currently in force provides for an opportunity to improve operating efficiency based on existing provisions.

In this respect, Section 38 of the Act on Preventing and Clearing Money Laundering and Terrorist Financing (503/2008 as amended) reads as follows:

“Section 38.

General duty of certain authorities to exercise proper care and order of the Financial Intelligence Unit to seize funds

The tax authority shall ensure that in their work they pay attention to preventing and clearing money laundering and terrorist financing and to reporting any suspicious transactions or suspicions of terrorist financing they have detected in the course of their duties to the Financial Intelligence Unit.”

The Act on the Public Disclosure and Confidentiality of Tax Information (1346/1999 as amended) additionally states the following:

Section 18.

Right of the Tax Administration to disclose information on its own initiative

Notwithstanding the confidentiality obligation, the tax administration may, on its own initiative, disclose taxation information with identifiers related to the taxpayer to:

6) the Financial Intelligence Unit of any suspicious transactions detected in conjunction with tax supervision (29.12.2011/1500).

Related to this, the Ministry of Justice, Finland most recently negotiated on 19 September 2012 together with the Tax Administration and the National Bureau of Investigation the enforcement of the recommendation given to Finland by the OECD’s anti-bribery working group. At the time, it was agreed that the Financial Intelligence Unit at the National Bureau of Investigation would, together with its managerial agency, the National Police Board, issue more detailed guidelines about reporting bribery offences to the Financial Intelligence Unit. At the same time, it was preliminarily agreed that the new guidelines should be raised within the Tax Administration and together with the police in the regular training sessions that have been arranged.

To date, the Finnish Tax Administration has made no reports of suspected foreign bribery cases to the police.

Text of recommendation:

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

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

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

See Section 9a. Guidance to this end has been published online.

Text of recommendation:

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

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

The Ministry for Foreign Affairs has decided to take the following action on account of the recommendations issued by the OECD:

1) The Ministry for Foreign Affairs will revise all anti-corruption articles contained in its official development assistance contract templates so as to make them comply with the Working Group's recommendations.

2) The Ministry for Foreign Affairs will review the criteria and processes associated with the granting of assistance in order to establish the degree to which they take the prohibition of bribing foreign public officials into consideration. The general terms and conditions for using assistance will also be reviewed and the need to include sanctions in the event that a beneficiary takes part in corrupt activities discussed. At the same time, action will be taken to ensure that the practices of FINNFUND, which administrates business partnership assistance, are consistent with the practices of the Ministry for Foreign Affairs in this regard.

3) The Ministry for Foreign Affairs will conduct a review to establish the degree to which it is necessary to begin requesting that tenderers for official development assistance consultancy services or at least the company that wins each tender submit criminal record extracts concerning the company and its managers. The need to revise the contents of procurement contracts for official development assistance to make them more consistent with the Working Group's recommendations will also be discussed.

4) The Ministry for Foreign Affairs will review the anti-bribery provisions contained in the documents that are required as a basis for interest rate subsidy decisions in cooperation with FINNVERA in connection with reviewing concession loans (see Section 11). FINNVERA already requires that parties to a transaction sign an anti-bribery commitment in connection with guarantee applications.

The Ministry for Foreign Affairs has outlined the most critical processes and requirements relating to the issue in its Anti-Corruption Handbook that was published on 4 September 2012. The Handbook will be distributed to all ministries and foreign missions, in addition to which it has been published online.

Text of recommendation:

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

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

FINNVERA issued an internal guideline on anti-bribery action in 2006. On account of the recommendation issued by the OECD, it has decided to prepare a new internal guideline concerning an anti-bribery policy for export funding and associated procedures. Until now, anti-bribery practices have been recorded in various different places in export funding guidelines.

New guidelines were issued by FINNVERA on 24 January 2012 and entered into force same day. While the guidelines are confidential, they do cover due diligence, disclosure of credible evidence of bribery, consequences of allegations against FINNVERA clients and verification of black lists of international financial institutions.

The Ministry for Foreign Affairs has outlined the most critical processes and requirements relating to the issue in its Anti-Corruption Handbook that was published on 4 September 2012. The Handbook will be distributed to all ministries and foreign missions, in addition to which it has been published online.

Text of recommendation:

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

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

The Ministry for Foreign Affairs has outlined the most critical processes and requirements relating to the issue in its Anti-Corruption Handbook that was published on 4 September 2012. The Handbook will be distributed to all ministries and foreign missions, in addition to which it has been published online.

According to Finnish public contracts legislation, any tenderer who is found guilty of submitting materially false information can be excluded from the tender process. The general terms and conditions of public contracts that are widely used in public procurement and that were revised in 2009 include a contract termination clause according to which the procurement unit can terminate a contract with immediate effect if the procurement unit can prove that it would not have entered into a contract with the chosen supplier had it known at the time of deciding on the contract that the company in question was guilty of a bribery offence as referred to in the Act on Public Contracts.

Using international blacklists is not without problems due to the fact that bribery cases must be based on a final court ruling and that the lists should enjoy general trust and be comprehensive and up to date. The need to use blacklists must be investigated at European Union level in a consistent manner in order for the potential adoption of blacklists to take place simultaneously across the internal market and in line with the EU's procurement regulation.

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

Text of issue for follow-up:

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

a) Case law concerning the differentiation between aggravated and non-aggravated bribery.

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

Finland provided information about criminal cases relating to the subject matter of the OECD's Anti-Bribery Convention in connection with the country inspection and has subsequently done so on a regular basis in the OECD Working Group on Bribery. There are no new court cases pending.

Recent scientific discourse has strived to identify distinctions between aggravated and non-aggravated forms of the offence in the light of certain domestic bribery offence cases more systematically than before. The Supreme Court has commented on various characteristics and their effect on assessment in some of its decisions.

Finland has amended its Criminal Code in 2011 concerning bribery offences. There are new incriminations like bribery of Member of Parliament, aggravated bribery of Member of Parliament, new laws on bribery in business, aggravated bribery in business, acceptance of a bribe in business, aggravated acceptance of a bribe in business, acceptance of a bribe as a Member of Parliament and aggravated acceptance of a bribe as a Member of Parliament.

Since October 2010, two cases of aggravated domestic bribery in the public sector have been under pre-trial investigation with completed investigation. In addition, there are currently seven suspected aggravated bribery cases pending. In one of these cases, there are several different acts. There are currently two cases of aggravated bribery in the private sector (bribery in business).

Text of issue for follow-up:

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

b) The reliance by Finland on the aggravating feature in § 16:14(1) of the Criminal Code (bribes intended to make an official act in service contrary to his or her duties), in particular whether this non-autonomous element of the offence causes difficulties in the investigation and prosecution of the offence.

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

No such adverse effects have been observed with regard to domestic bribery offences.

Text of issue for follow-up:

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

c) The application of effective, proportionate and dissuasive sanctions against natural and legal persons, in particular concerning: (i) the lapse of sanctions; (ii) the use of provisions on exclusion from competition for public procurement; and (iii) bans on engaging in commercial activities under the Business Prohibition Act.

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

- (i) There have been no cases involving the lapse of sanctions.
- (ii) No data.
- (iii) No data.

1) Wärtasilä case: no changes in information. The case is going to court this autumn.

2) Patria:

- a) Croatia, pre-trial investigation is in the final stages with regard to Finland.
- b) Egypt, prosecutor has taken this case to court and prosecuted four ex- or present employees of Patria for aggravated giving of bribery, accounting violation and aggravated accounting violation. District Court has convicted these people for conditional imprisonment of accounting violation or aggravated accounting violation in June 2011. Prosecutor has appealed to the Court of Appeal.
- c) Slovenia, pre-trial investigation has been completed and the case has been forwarded to the

prosecutor for consideration of charges.

3) Instrumentarium/Costa Rica:

Charges have been brought in Finland against three people, in other words the case has come before the courts. The category of offence is aggravated bribery and aggravated subsidy fraud. The prosecutor made a decision not to prosecute in the case of one suspect. Insufficient proof was obtained as regards criminal liability of a legal person and so the prosecutor did not pursue a corporate fine.

Text of issue for follow-up:

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

d) The confiscation of the instrument of the bribe and its proceeds (or their equivalents), including pre-trial seizure and confiscation measures.

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

In criminal cases, the instrument and the proceeds (or the corresponding value) are always confiscated. There is no new case law in this regard. Asset freezing and confiscation measures are a normal part of an investigation and they are almost always carried out in connection with pre-trial investigation.

Text of issue for follow-up:

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

e) Experience of cooperation with competent authorities in other countries concerning the identification, freezing, seizure, confiscation or recovery of bribes, and the proceeds of bribes, to foreign public officials.

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

Text of issue for follow-up:

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

f) The proposal to introduce a system of plea bargaining in Finland, and any impact this system may have on the investigation and prosecution of foreign bribery cases.

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

Plea bargaining has been discussed on a general level but no such bargaining system has been adopted. Since bribery offences are considered serious crimes by nature in Finland, it is likely that bribery offences would be left outside such a system of bargaining.

Text of issue for follow-up:

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

g) The application of money laundering offences in cases where foreign bribery is the predicate offence.

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

Text of issue for follow-up:

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

h) The adequacy of the monetary thresholds that determine the application of the HILMA information system to public tenders.

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

Thresholds were last revised in June 2010 by means of a new act. The thresholds for the procurement of goods and services were doubled at the time to EUR 30 000. The thresholds for social welfare and health care services were raised to EUR 50 000 and those for construction contracts to EUR 150 000. Raising the national thresholds has decreased the administrative burden resulting from procurement processes with regard to public contracts. Efforts have been made to increase transparency relating to small contracts below the national thresholds and outside of the scope of public contracts legislation by encouraging procurement units to pay more and more attention in their strategies and guidelines to openly advertising small contracts. The adoption of electronic competitive tendering systems can also help to increase transparency relating to small contracts. The Ministry of Employment and the Economy monitors the effectiveness of public contracts legislation and also the adequacy of national thresholds and transparency. Since the thresholds were reviewed very recently, there is no need for a new assessment. Transparency relating to small contracts has been improved by revising procurement guidelines so as to allow small contracts to be advertised via the HILMA public contracts system.