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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Lithuania Phase 2 Report

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EXECUTIVE SUMMARY

The Phase 2 Report on Lithuania by the OECD Working Group on Bribery evaluates and makes recommendations to Lithuania on its implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The Working Group commends Lithuania for the significant legislative steps it has taken to fight foreign bribery and related offences both before and after its Phase 1 evaluation. As a result Lithuania's legislative framework is now of a generally high standard. However, further efforts are necessary in order for Lithuania to effectively enforce its legal framework relating to corporate liability and impose sanctions for foreign bribery, including confiscation.

The Report expresses concerns that Lithuanian law enforcement authorities are not yet sufficiently trained to enforce corporate liability in foreign bribery cases. It recognises however, that many of the amendments to Lithuania's corporate liability regime are very recent and have not yet been tested in practice. The Working Group will therefore follow up on these issues as practice develops. The Report notes with concern the established practice of prosecutors and judges in seeking and imposing fines well below the required average in domestic bribery cases. The Working Group will therefore follow up on practical implementation of significant recent reforms to Lithuania's sanctions framework to increase the maximum available sanctions for natural and legal persons for foreign bribery. In the same context the Working Group remains concerned about the very low rate of confiscation in actual bribery cases. The Working Group will also follow up on issues pertaining to pre-trial investigation time limits, and reduced sentences due to the length of criminal proceedings, which may impact on the effective, proportionate, and dissuasive nature of the sanctions for the offence. In addition to the issues identified above, the Working Group is concerned that the exceptions to the definition of 'monetary transaction' and 'customer' which have remained in the new AML/CFT Law create potential loopholes for detection of foreign bribery-based money laundering. Similarly, the Working Group is of the view that Lithuania is not actively pursuing potential money laundering predicated on bribery offences.

The Report highlights several positive aspects of Lithuania's work to fight foreign bribery. Lithuania's Special Investigations Service has taken considerable steps to raise awareness of the foreign bribery offence across Lithuania, both in other government agencies and across the private sector. On the other hand, the Working Group notes a lack of relevant efforts by supervisory authorities and professional associations to raise awareness of the foreign bribery offence and the need to detect and report it, particularly in the field of accounting and auditing. The Working Group is also pleased with the capacities of Lithuanian tax officials to detect and report suspected bribery, and with measures in place to allow for the sharing of tax information internally and abroad. With regard to public advantages, the Report notes Lithuania's efforts to put appropriate export credit and development cooperation structures in place and calls for the immediate inclusion of anti-corruption and sanctioning clauses in all ODA contracts. The Working Group commends Lithuania on its recent enactment of standalone, comprehensive public and private sector whistleblower protection legislation and will follow up on preparations for its entry into force in January 2019.

With regard to enforcement of the foreign bribery offence, the Working Group congratulates the STT for its proactivity in opening investigations into two ongoing foreign bribery cases. It also welcomes Lithuania's sincere efforts to train investigators and prosecutors on foreign bribery criminal proceedings

and in safeguarding STT's ability to carry out bribery investigations free from undue political influence. However, the Working Group will follow up on the activities of the Seimas Anti-Corruption Commission to ensure that the heads of law enforcement agencies are not compelled to answer questions or provide information in relation to specific cases. The Working Group also notes that Lithuania demonstrates strong capacity to provide prompt and effective mutual legal assistance (MLA) in criminal investigations and proceedings, including a proactive approach in seeking MLA in the current foreign bribery investigations.

The Report and its recommendations reflect findings of experts from Ireland and Poland and were adopted by the OECD Working Group on Bribery. The report is based on analysis of laws, regulations and other materials supplied by Lithuania. It is also based on information obtained by the evaluation team during its five-day on-site visit to Vilnius on 10-14 July 2017 where the team met representatives of Lithuania's public administration, private sector, and civil society. Lithuania will provide an oral follow-up report on its implementation of certain recommendations by December 2018. It will further submit a written follow-up report by December 2019.

A. INTRODUCTION

1. This Report concerns the Phase 2 peer evaluation of Lithuania conducted by the OECD Working Group on Bribery in International Business Transactions (Working Group). It evaluates Lithuania's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention); 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation); 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation); and the 2016 Recommendation of the Council for Development Co-operation Actors on Managing Risks of Corruption (2016 Aid Recommendation). The purpose of the evaluation is to study the structures in place in Lithuania to enforce the laws and regulations implementing these instruments and to assess their application in practice.

1. The On-Site Visit

2. An evaluation team composed of lead examiners from Ireland and Poland, and the OECD Secretariat visited Vilnius, Lithuania on 10-14 July 2017.¹ The on-site visit was conducted pursuant to the procedure for the Phase 2 self and mutual evaluation of the implementation of the Convention and the 2009 Recommendation. During the on-site visit, the evaluation team met representatives of the Lithuanian public and private sectors, judiciary, parliamentarians, civil society, and media (see Annex 1 for a list of participants.) Prior to the on-site visit, Lithuania provided written responses to the Working Group's standard and supplementary Phase 2 questionnaires. Further information was provided after the on-site visit. The evaluation team also conducted independent research to gather additional information.

3. The evaluation team appreciates the high level of co-operation received from the Lithuanian authorities at all stages of the Phase 2 evaluation, including detailed questionnaire responses, the provision of translated legislation, jurisprudence and other pertinent documentation, and smooth organisation and co-ordination of the well-attended on-site visit. The evaluation team is additionally grateful to all on-site visit participants for their co-operation and openness during the discussions.

2. General Observations

(a) Political and Legal Systems

4. Lithuania is a parliamentary republic with a unicameral parliament (the Seimas). The Seimas is composed of 141 members, elected every four years through a mixed electoral system, with 71 members elected in single-seat constituencies by majority vote and the remaining 70 in a nationwide constituency

¹ Ireland was represented by Mr. Gerard Walsh, Garda National Economic Crime Bureau and Mr. Joe Flynn, Office of the Revenue Commissioners. Poland was represented by Mr. Adam Ożarowski, Ministry of Justice and Mr. Jacek Łazarowicz, State Prosecutor's Office. The OECD Secretariat was represented by Ms. Leah Ambler, Mr. Apostolos Zampounidis and Ms. Daisy Pelham, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

based on proportional representation. Executive power is vested in the government (consisting of the Prime Minister and Ministers (Council of Ministers)). The President appoints the Prime Minister subject to parliamentary approval. The President is the Head of State and is directly elected for a five-year term.²

5. After restoring Lithuanian independence in 1990, the legal system was significantly reformed and the Constitution of the Republic of Lithuania was adopted in 1992. Lithuania's legal system is based on civil law. The court system consists of courts of general jurisdiction (the Supreme Court, Court of Appeal, regional courts and district courts); administrative courts (the Supreme Administrative Court and regional administrative courts); and the Constitutional Court. Courts of general jurisdiction hear civil, criminal and administrative cases. There are 49 district courts which adjudicate at first instance and 5 regional courts which are the appellate instance for district court decisions and the first instance for cases assigned to their jurisdiction. The Court of Appeal hears appeals of regional court decisions and the Supreme Court is the ultimate appellate jurisdiction.³

(b) Economic Background

6. Lithuania has a population of 2.9 million and it is ranked by the World Bank as a “high income” economy.⁴ Since 2011, Lithuania’s economic growth has been one of the highest among European countries, reflecting a swift recovery from the global financial crisis thanks to the economy’s flexibility. The institutional environment is overall stable, transparent, and market-friendly.⁵ Lithuania was ranked 21st out of 190 economies in the 2017 World Bank Ease of Doing Business Index.⁶ Lithuania joined the World Trade Organization in 2001 and the European Union (EU) in 2004. After operating under a currency board for the preceding 25 years, it joined the euro area in 2015.

7. Lithuania has a small, but open economy. Lithuania's merchandise trade exports represented less than 1% of the world total in 2016. In 2016, its largest merchandise trade export destinations were the EU-28 (60.7%), the Russian Federation (13.5%), the United States (5.2%), Belarus (3.9%) and Norway (3%). In 2015, the main merchandise exports were manufactures (60%), agricultural products (21.5%), and fuels and mining products (17.7%).⁷ Lithuania's outward foreign direct investment stock represented 5.6% of GDP in 2016, which is below the world average of 34.6% and the EU average of 55.5%.⁸ OECD statistics from 2015 show that major recipients of Lithuanian foreign direct investment were Netherlands (20%), Poland (12%), Latvia (12%), Estonia (9%), Cyprus⁹ (8%), Belarus (3%), United Kingdom (3%) and Russia

² OECD (2015), [Review of the Corporate Governance of State-Owned Enterprises: Lithuania](#), p. 11.

³ Group of States against Corruption (2015), [Fourth Evaluation Round: Report on Lithuania](#), p. 25.

⁴ The “high income” designation is the highest possible level in the [World Bank rankings](#).

⁵ OECD (2016), [Economic Survey of Lithuania](#), p. 6.

⁶ World Bank (2017), [Ease of Doing Business Report: Lithuania](#), p. 6.

⁷ World Trade Organization (2016), [Country Trade Profile: Lithuania](#).

⁸ United Nations Conference on Trade and Development (2017), [Country Fact Sheet: Lithuania](#).

⁹ Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The

(3%).¹⁰ Lithuania's financial sector is dominated by Scandinavian banks; following the recent bankruptcy of the two major Lithuanian banks (see below, Part B.7) the three largest banks in Lithuania are subsidiaries of Swedish and Norwegian banks.

8. Small- and medium-sized enterprises (SMEs) and state-owned enterprises (SOEs) play important roles in the Lithuanian economy. Its business sector is dominated by SMEs with only 0.2% of all businesses considered to be "large" under EU definitions, many of which are subsidiaries of foreign enterprises. The SOE sector accounts for approximately 3.2% of total employment, which is higher than the 2.4% average for all OECD countries. Many SOEs operate in sectors on which private business and the general public depend (such as electricity, gas and transportation).¹¹

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

9. The Law on Ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions No. XIII-305 was adopted by the Seimas on 20 April 2017. It was published in the Register of Legal Acts on 2 May 2017 and entered into force on 3 May 2017. Lithuania deposited its instrument of accession to the Convention on 16 May 2017 and became the 42nd party to the Convention on 15 July 2017. Lithuania has undertaken significant legislative reforms since its Phase 1 Evaluation in June 2017. Major modifications of the Law on the Prevention of Money Laundering and Terrorist Financing (AML/CTF Law) entered into force on 13 July 2017. Following the Phase 2 on-site visit, on 30 August 2017, the government amended the decree setting the monetary unit for the Minimum Subsistence Level (MSL), the basis for calculating monetary fines and calculating the amount of the bribe for the purpose of defining the category of foreign bribery offence in the Criminal Code.¹² The Decree will be effective from 1 January 2018 and will increase the MSL from EUR 37.66 to EUR 50. Law No. XIII-653 of 28 September 2017 entered into force on 6 October 2017 and substantially modifies the Criminal Code's sanctions framework by, *inter alia*, increasing the maximum sanctions available for natural and legal persons for all offences, including foreign bribery, money laundering and accounting offences, and making a fine available as an alternative sanction to imprisonment for the aggravated bribery offence. During and after the on-site visit, Lithuania provided information on draft legislation amending the Law on Prevention of Corruption. In accordance with the established practice of the Working Group, the draft legislation will be evaluated if and when it enters into force.

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

10. Lithuania has two ongoing foreign bribery cases. *Case #1*: In 2016, Lithuania received an MLA request from US authorities regarding the investigation of bribes that were allegedly paid by the son of the owner of a Lithuanian aircraft engineering company to a US Army officer in the context of helicopter maintenance contracts with the US Army.¹³ The Special Investigation Service (STT) executed the MLA

information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

¹⁰ This FDI data was gathered in the context of the OECD Investment Committee's 2017 accession review for Lithuania.

¹¹ OECD (2015), [Review of the Corporate Governance of State-Owned Enterprises: Lithuania](#), p. 13-14; European Commission (2016), "Small Business Act Factsheet 2016 Lithuania", p. 2. The EU defines large companies as those with at least 250 employees, EUR 50 million turnover or a balance sheet of at least EUR 43 million.

¹² Resolution on the amendment of resolution no 1031 of the Government of the Republic of Lithuania of 14 October 2008 "on the approval of the basic amount of penalties and sanctions" 30 August 2017, No 707.

¹³ Reuters, [Pentagon opens criminal probe of Russian helicopter deals](#) (29 August 2013).

request and opened a pre-trial investigation in March 2016. *Case #2*: In July 2016 the STT opened a pre-trial investigation into alleged bribery by a Lithuanian frozen food company of the head of the regional office of the Federal Service for Veterinary and Phytosanitary Surveillance of the Russian Federation in Kaliningrad. The bribe was allegedly offered to allow the company to continue exporting food products to the Russian Federation despite the detection of contamination in previous exports by the company.

3. Outline of the Report

11. This report is structured as follows: Part B focuses on the measures in place for the prevention, detection and awareness of foreign bribery and discusses ways to enhance their effectiveness; Part C deals with the investigation, prosecution and sanctioning of foreign bribery and related offences; and Part D sets forth the recommendations of the Working Group and the issues that it has identified for follow-up. Translations of the principal legislative and other legal provisions are reproduced in Annex 3. A list of the principal acronyms and abbreviations used in the report is included in Annex 2.

B. PREVENTION, DETECTION AND AWARENESS OF FOREIGN BRIBERY

1. General Efforts to Raise Awareness

12. The 2009 Anti-Bribery Recommendation III lists the development of awareness-raising initiatives in the public and private sector for the purpose of detecting foreign bribery as one area where each country should “take concrete and meaningful steps in conformity with its jurisdictional and other basic legal principles to examine”. This section therefore considers Lithuania's efforts to raise awareness of foreign bribery in the public and private sector.

(a) Overall anti-corruption strategy

13. Lithuania has adopted four national anti-corruption programmes since 2002. The National Anti-Corruption Programme for 2015-2025 (the Programme) is the current anti-corruption strategy in Lithuania and was approved by the Seimas by Resolution No. XII-1537 of 10 March 2015. Lithuania has also adopted an Action Plan for 2015-2019 which proposes concrete measures and appoints a competent authority in each area to ensure implementation of the Programme. Lithuania's Inter-Agency Commission on Counter-Corruption Coordination functions as a supervisory body to ensure government bodies are implementing the National Anti-Corruption Programme. The Programme does highlight cooperation with the OECD Working Group on Bribery but most of the emphasis in both the Programme and Action Plan appears to be on the public and private dimensions of domestic corruption. At the on-site visit, Lithuanian officials stated that despite the focus on domestic corruption, this has not prevented Lithuania from taking measures to address foreign bribery and noted that the current strategy is nevertheless the first to explicitly reference foreign bribery. It is also noteworthy that the National Security Strategy was taken into account when developing the National Anti-Corruption Programme. Corruption is explicitly listed as a risk factor in the National Security Strategy and a number of Lithuanian officials at the on-site referred to corruption and foreign bribery as a threat to national security. The President recently called on the Seimas to ensure anti-corruption initiatives are among the priority issues addressed during the 2017 autumn session of the Seimas.

(b) Government Initiatives to Raise Awareness

14. Since beginning the process to accede to the Convention in 2015, Lithuania has increased efforts to raise awareness of foreign bribery. Noting that many of these efforts are fairly recent, it is difficult to fully assess whether they have yet had a visible impact. Nevertheless, the level of awareness of foreign bribery at the on-site visit appeared to be high.

(i) Within the government and public agencies

15. The Special Investigation Service (STT) is mandated not only as the pre-trial investigation agency responsible for domestic and foreign bribery cases but is also responsible for bribery and corruption prevention and awareness raising activities. To this end, the STT has its own anti-corruption advertising strategy and appears to conduct the majority of foreign bribery awareness-raising activities in Lithuania. It has regular contact with other government bodies as well as representatives from the private sector and civil society.

16. The STT conducted at least ten awareness-raising seminars which addressed foreign bribery in 2016 and 2017 for the following state and municipal institutions: National Cancer Institute; Lithuanian Armed Forces; Ministry of Health; MOFA; State Road Transport Inspectorate under the Ministry of Transport and Communications; Border Guard Service; Širvintos District Municipality; Ministry of Finance; and Customs Training Centre. The STT has also developed a Guide on the Development and Implementation of an Anti-Corruption Environment in the Public Sector,¹⁴ in cooperation with the Lithuanian Chief Official Ethics Commission, the Ministry of Justice (MOJ), the State Tax Inspectorate (STI) and the Ministry of Education and Science. The Guide was published in 2016 and includes information for public sector employees on measures to combat corruption such as what to do in cases of bribe solicitation as well as guidance on reporting channels and obligations and information on obligations under the Convention. In addition, the STT initiated a 'Map of Corruption' in 2016 which was conducted by Vilomorus, a public opinion and market research centre, to provide an overview of corruption perceptions and trends in Lithuania focusing mainly on domestic corruption.

17. A few additional government bodies have conducted awareness-raising activities, often in collaboration with the STT. The MOJ co-organised a seminar for public sector representatives in April 2016 on overcoming challenges to foreign bribery enforcement, successful private sector engagement and effective participation in the WGB's monitoring process. The tax authorities have raised awareness of tax officials (see below, Part B.6(c)). The Prosecution Service has also raised awareness among prosecutors (see below, Part C.1(b)). The Ministry of Foreign Affairs (MOFA) has engaged in awareness-raising activities among foreign diplomatic representations (see below, Part C.5(a)). At the on-site visit, judges noted, however, that more could be done to raise awareness of the Convention amongst judges and stated that they will seriously consider including information about the Convention in the next training programme for 2018 (see below, Part C.1(f)).

18. Lithuania has also taken steps to enhance inter-agency cooperation to detect foreign bribery. In April 2017, the STT, the General Prosecutor's Office (GPO), Financial Crime Investigation Service (FCIS), State Tax Inspectorate (STI), Customs Department, Police Department and Public Procurement Office (PPO) signed an Agreement for Cooperation to Reveal Bribery of Foreign Public Officials in Cases of International Business Transactions (Foreign Bribery Cooperation Agreement). Under this Agreement, the aforementioned Lithuanian institutions agree to cooperate and exchange information for the purpose of detecting and investigating cases of bribery of foreign public officials and afford each other mutual assistance to ensure the STT can effectively detect and investigate cases of foreign bribery.

(ii) Within the private sector

19. Lithuania's foreign bribery awareness-raising activities have also been focused on the Lithuanian private sector. In 2016, the STT published the Anti-Corruption Handbook for Business¹⁵ (the Handbook). The Handbook includes contributions from other government bodies, Lithuanian business associations, civil society organisations and companies. It provides guidance to help the private sector prevent corruption in business dealings and includes information on the legal consequences of corruption-related offences, including liability for bribing foreign public officials, and provides a number of practical documents and examples of best practices. The STT referred to both the Anti-Corruption Ethics and Compliance Handbook for Business jointly prepared by the OECD, United Nations Office on Drugs and

¹⁴ Lithuanian Special Investigation Service (2016), [Guide on the Development and Implementation of an Anti-Corruption Environment in the Public Sector](#).

¹⁵ Lithuanian Special Investigation Service (2016), [Anti-Corruption Handbook for Business](#), produced to implement measure 2.1.2 of the Inter-Institutional Action Plan under the National Anti-Corruption Programme for 2015-2025.

Crime (UNODC) and World Bank and the 2010 OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance in the development of the Handbook. The STT translated the Handbook into English and it is easily accessible on the STT website.¹⁶ The STT, together with contributors from the private sector and other government agencies, including the Ministry of Economy and the Lithuanian National Contact Point (NCP), held five events across Lithuania in 2017 to promote the Handbook among the business community. At the on-site visit, companies were aware of the Handbook and noted its popularity among the business community. Participants noted that some companies are already making use of the templates and best practices outlined in the Handbook and replicating them for their own business. The STT also conducted numerous awareness-raising seminars in 2017 for individual Lithuanian companies, including SMEs. With respect to SOEs, the Conference on Good Governance of SOEs in Europe and Future Perspectives was held in Vilnius on 8 November 2017 and addressed integrity, anti-corruption and responsible business conduct in the SOE sector. The conference was attended by members of Parliament, representatives of SOEs and municipal enterprises, business, social partners, and NGOs.

20. According to the amendments made to the Law on Prevention of Corruption, which entered into force on 1 January 2017, all Lithuanian SOEs will be required to perform a periodic Corruption Risk Analysis in Q3 2017, and will be required to share the assessment with the responsible ministry, which will then share with the STT.¹⁷ Lithuania indicated that the competent ministries had received corruption risk assessments for 2017 by the 31 October deadline and were in the process of analysing them. Lithuania indicated that the STT organised 30 trainings and seminars on corruption risk analysis for SOEs in 2017 and provided methodological support to more than 250 State and municipality-owned enterprises across Lithuania. .

(c) Private Sector Initiatives to Raise Awareness

21. Many Lithuanian companies operate in sectors and countries that expose them to risks of foreign bribery. At the on-site visit, business as well as civil society representatives seemed to be aware of these risks and highlighted particular concerns about business dealings with Lithuania's eastern neighbours.

(i) Companies

22. Fourteen large companies, including seven SOEs, with operations and exposure abroad attended the on-site. Many Lithuanian companies operate in sectors and countries that expose them to risks of foreign bribery. Companies present at the on-site visit were aware of the Convention, Lithuania's foreign bribery offence and other corruption-related offences. All large companies present appeared to have adequate anti-corruption policies and all companies noted strict gift policies. One large company present, a Lithuanian subsidiary of an international telecommunications group, noted the introduction of strict corporate compliance and anti-corruption policies following the group's involvement in a foreign bribery enforcement action and highlighted the significant repercussions for the group as a whole. Large companies saw themselves as standard setters with regards to corporate compliance and were keen to collaborate with government agencies to help reinforce existing frameworks.

23. The Lithuanian chapter of Transparency International (TI Lithuania) measured the anti-corruption policies of a number of Lithuanian companies in the context of its Transparency in Corporate

¹⁶ See page on Corruption Prevention on STT website: <https://www.stt.lt/en/menu/corruption-prevention/#turinys> (accessed 1 September 2017).

¹⁷ Article 7 of the Resolution of the Government of Lithuania N 1601, approved in 2002-10-08, On the approval of the Regulations on Corruption Risk Analysis implementation" (Available at: www.e-tar.lt/portal/lt/legalAct/TAR.B96A881B578F/KYtUEdEsla (in Lithuanian)).

Reporting project.¹⁸ The study demonstrated that Lithuanian subsidiaries of large global companies tend to lead the way for smaller Lithuanian companies in this regard. One SME operating abroad noted that anti-bribery measures have been imposed by its overseas partners, and that these measures include an annual or biannual training session on anti-corruption for all employees as well as a Code of Conduct and Conflict of Interest Disclosure Form. Another SME stated that it had recently implemented measures outlined in the OECD Good Practice Guidance. Companies present highlighted the effectiveness of awareness-raising activities initiated by the STT, Lithuanian business associations such as LAVA and the Investor's Forum Clear Wave Initiative,¹⁹ and NGOs, with many referencing the popularity of the Handbook. However, companies also noted that government leadership is lacking.

(ii) Business Organisations

24. The three business organisations present at the on-site panel agreed that Lithuanian companies operating overseas are exposed to corruption and noted specific risk sectors, namely logistics, construction and information and communications technology. One association also stated frankly that corruption is certain to occur in oil and gas companies. Associations also observed that large Lithuanian companies most likely have adequate compliance programmes, but that many SMEs may not have the correct procedures in place or even consider foreign bribery a risk.

25. The Lithuanian Investors' Forum reported that it has a business ethics group and supports a business integrity initiative entitled Clear Wave. Launched in 2007, Clear Wave encourages companies to ensure transparent business operations and the 40 + member companies can use the Clear Wave label on products, services and marketing material. Clear Wave contributed to the STT's Anti-Corruption Handbook for Business and companies at the on-site highlighted Clear Wave's efforts to raise awareness of corruption. The Investors' Forum also informed that they have worked with TI Lithuania on a project which looked at the level of transparency of all member companies of the Clear Wave initiative and made recommendations on how to improve the transparency of information on their websites. The Innovative Pharmaceutical Industry Association (IFPA) noted that all its member companies, along with member companies of the Pharmaceutical Manufacturers' Association (VGA), have adopted a Code of Ethics to follow in their daily activities which is supervised by the Pharmaceutical Marketing Ethics Commission. The Code of Ethics does not explicitly address foreign bribery. Also present at the on-site was the Lithuanian Confederation of Industrialists which unites 51 trade associations and 7 regional business associations, covering over 3 000 businesses operating in Lithuania and representing a wide range of sectors. The Confederation does not appear to be conducting activities to raise awareness of foreign bribery among its members. Finally, although the Lithuanian chapter of the International Chamber of Commerce (ICC) did not attend the on-site visit, the other business organisations present noted that the ICC was very active in anti-corruption awareness-raising activities and noted its involvement in the production of the Anti-Corruption Handbook for Business.

26. Business associations demonstrated awareness of government activities such as the STT's Anti-Corruption Handbook for Business as well as the STT's campaigns to promote channels for reporting corruption. One business association also highlighted MOFA's efforts to disseminate information on foreign bribery to foreign diplomatic representations. All business associations present agreed that the STT's efforts to raise awareness of bribery and corruption were effective but hoped to see increased involvement of other government institutions. One business association questioned whether Export Lithuania and Invest Lithuania could be doing more in this regard. Export Lithuania is an agency that

¹⁸ TI Lithuania, The largest companies in Lithuania have become more transparent (31 October 2017) (available at: <http://www.transparency.lt/en/20171031/>).

¹⁹ Clear Wave (www.baltojibanga.lt/en.html).

provides support to SMEs and Invest Lithuania is an agency that aims to attract foreign investment. Both agencies are supervised by the Ministry of Economy.

Commentary

The lead examiners welcome recent anti-bribery awareness raising initiatives undertaken by the Lithuanian government, noting the lead role played by the STT. The lead examiners encourage other agencies working with Lithuanian business, especially SOEs and SMEs, to increase their efforts to raise awareness of the foreign bribery offence. With respect to private sector initiatives, the lead examiners appreciate recent joint efforts by the STT, business organisations and NGOs to raise awareness among Lithuanian companies. The lead examiners encourage Lithuania to continue these awareness raising efforts, and to monitor and evaluate the impact they are having on prevention and detection of foreign bribery.

2. Reporting and Whistleblowing

(a) Duty to Report Crimes

27. The 2009 Anti-Bribery Recommendation IX (ii) asks countries to ensure that “appropriate measures are in place to facilitate reporting by public officials, in particular those posted abroad, directly or indirectly through an internal mechanism, to law enforcement authorities of suspected acts of bribery of foreign public officials in international business transactions detected in the course of their work, in accordance with their legal principles”.

28. Lithuania does not currently have a legal obligation for public officials to report suspected cases of foreign bribery. However, Lithuania has developed draft legislation to amend the Law on Prevention of Corruption in order to introduce an obligation for public servants to report suspected acts of corruption. At the on-site visit, Lithuanian officials stated that the draft law is still to be discussed in Parliament but expects the law to be enacted before the end of 2017. Some Lithuanian officials at the on-site also believe that there is a general obligation to report misconduct deriving from an obligation to be loyal to Lithuania which falls under the Law on Civil Service. Some government agencies do require their officials to report suspected criminal offences, including foreign bribery. The Statute on Internal Service (art. 29(3)) requires officials serving in bodies that operate under the Ministry of Internal Affairs to report crimes and other violations to law enforcement authorities. Reporting by officials of foreign diplomatic representations and tax officials is discussed below (Part B.5(b) and 6(b), respectively).

29. In 2012, Lithuania introduced requirements for state institutions to establish channels for reporting misconduct (including anonymously) and internal mechanisms for receiving, processing and investigating the information received.²⁰ The Resolution applies to all public institutions and agencies accountable to the Government which accept and examine information on infringements provided by telephone and/or via the Internet and recommends to all other institutions and agencies to apply its provisions to information collected through such channels. As a result, state institutions have now created the required channels and mechanisms for reporting misconduct. The exact number of reporting channels is unknown however there are estimated to be over 100 different reporting hotlines. As part of a scoping exercise for the whistleblower protection law, the MOJ conducted a survey on the effectiveness of the different reporting hotlines in 2016. State institutions reported that 235 internal investigations had resulted from reports received through the hotlines. Of these, only six were subsequently passed on to law enforcement authorities. At the on-site visit, MOJ officials noted that there had been no efforts to develop a

²⁰ Government of the Republic of Lithuania, Resolution on the approval of the description of the procedure for provision and processing of information on infringements 24 October 2012, No 1287.

clear framework or guidelines on how reporting channels should function; with the result that each state agency has developed its own reporting practice. The whistleblower protection law was developed with the aim of rectifying the deficiencies in reporting channels identified in the survey.

30. For those who choose to report corruption, the STT accepts reports through its 24-hour telephone hotline, by mail, via its website or in person. In 2016, the STT also developed a mobile application for reporting corruption.²¹ The STT has conducted a number of activities, including via social media, at seminars and in its Guide for the Public Sector, to raise awareness of the reporting channels. The Procedure on Delivery of Reports to STT outlines the legal basis for the handling of reports to the STT.

31. At the on-site, a number of participants stated that the reporting culture in Lithuania is improving and noted that, as a former Soviet country, the negative connotations associated with those who report misconduct are gradually fading. Such progress may be demonstrated by the increase in reports received by the STT in 2016 (1925 reports received) in comparison to the number in 2015 (1509 reports received). The STT has also noted an increase in reports from the private sector. Anonymous reporting is possible and approximately 30% of all reports received are anonymous. To encourage reporting, the STT introduced on 22 October 2015 a procedure to offer once-off remuneration from the STT budget to people who report valuable information about corrupt activities on the condition that they are the first to disclose, identify other accomplices and are not yet a suspect or witness in criminal proceedings. Remuneration is paid once the pre-trial investigation has finished. In 2015, the STT paid remuneration for valuable information to 6 persons and the total amount paid was EUR 6,800. During the same year, 5 pre-trial investigations were initiated by the STT on the basis of the information provided by such persons. The STT was uncertain as to whether the increase in reporting is due to the introduction of the STT's remuneration procedure.

(b) Whistleblowing and Whistleblower Protection

32. The 2009 Anti-Bribery Recommendation IX (iii) asks member countries to ensure that appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions. Lithuania recently enacted a comprehensive legal framework to protect whistleblowers which will enter into force on 1 January 2019. The Labour Code provides general protections to employees from unfair dismissal under certain circumstances. The Law on the Protection of the Participants of Criminal Proceedings and Criminal Intelligence, Officers of Justice and Law Enforcement Institutions against Criminal Influence provides limited protections to persons involved in criminal proceedings, but not to whistleblowers more generally.

33. Larger companies present at the on-site visit had internal reporting channels in place, including several with specific hotlines to report possible instances of corruption. Others noted having cooperation agreements with the STT to report possible cases of corruption. Companies cited negative connotations associated with reporting misconduct stemming from Soviet times as a reason for distrust of whistleblowing, a view that was echoed by other participants at the on-site visit. However, some panellists noted that a cultural change is already underway, noting the need for continuous awareness-raising measures to shift public perceptions.

34. In March 2017, the Seimas established a working group comprised of members from different political parties as well as representatives from MoJ, STT, GPO, TI Lithuania and other NGOs to draft whistleblower protection legislation. Lithuania enacted the Law on the Protection of Whistleblowers on 28

²¹ STT (11 September 2016), "[STT invites to inform about corruption via mobile app](#)".

November 2017. The law applies to persons linked by service, employment or contractual relationship to public or private institutions. It provides protection for those who disclose information about ‘infringements’ which include criminal acts, such as foreign bribery. Protections set out in the law include: prohibition on retaliation; immunity from contractual, civil or criminal liability for the disclosure (such as violation of professional, commercial or bank secrecy, confidentiality or privacy provisions); right to remuneration for valuable information or to compensation; possible release from liability for participation in infringements reported; and free legal aid. The burden of proof lies with the employer to demonstrate that the negative consequences for the reporting person were not in connection with the disclosure. Lithuania’s new whistleblower protection law provides for protected reporting through the relevant institution’s internal channel; to the competent authority (Prosecution Service); or to the public. The law requires institutions to introduce protected internal reporting channels. In urgent cases involving a threat to human life, public health or the environment, the disclosure may be made directly to the competent authority or to the public. It will enter into force on 1 January 2019, providing a year for Lithuania to undertake necessary legislative and institutional changes to ensure its effective implementation.

Commentary

The lead examiners congratulate Lithuania on the enactment of comprehensive, standalone public and private sector whistleblower protection legislation. The Working Group should follow up on legislative and institutional changes undertaken in preparation for its entry into force in January 2019.

3. Officially Supported Export Credits

35. Export credit agencies provide export financing in the form of credits (i.e. loans/financial support), credit insurance and/or guarantees to companies that engage in international business transactions. The bodies responsible for managing export credits support, including reviewing applications, are known as Export Credit Agencies (ECAs). Where export credits are provided by or on behalf of a government, rather than by a private financial institution, the export credit is considered “officially supported”. ECAs can therefore play a vital role in preventing and identifying bribery of foreign public officials in international business transactions.

36. Lithuania does not currently provide official export credit support, but is an Adherent to the 2006 Export Credit Recommendation (as of February 2017). However, on 13th September 2017, the government adopted a decree introducing a new export credit programme to be operational by the beginning of 2018.²² The decree states that the new programme will be implemented by UAB Investment and Business Guarantees (INVEGA), a public loan guarantees institution that promotes growth and competitiveness for Lithuanian SMEs and operates under the Ministry of Economy. The programme will operate with a budget of approximately EUR 7 million, and initially export credit guarantees and support will be offered only to Lithuanian SMEs, with plans to expand to provide support for larger companies from 2019. SMEs will be able to apply for support of up to EUR 500 000, and for a maximum duration of up to 2 years. Other conditions in the new programme state that products must be made in Lithuania and available for export transactions to non-EU and non-OECD countries. At the on-site, Lithuanian officials also stated that the new programme will implement the verification requirements of the 2006 Export Credit Recommendation.

Commentary

²² Available at: <https://www.e-tar.lt/portal/lt/legalAct/b17aaa309ea811e79127a823199cc174> (in Lithuanian).

The lead examiners acknowledge Lithuania's awareness of the 2006 Export Credit Recommendation and encourage it to fully implement the 2006 Recommendation in its new official export credit programme. The lead examiners also encourage Lithuania to participate fully in the on-going discussions in the OECD Working Party on Export Credits and Credit Guarantees (ECG) to revise the 2006 Recommendation, so that any changes to its provisions might be replicated in the processes and procedures put in place by INVEGA. The WGB should follow up on steps taken by INVEGA to ensure internal processes and procedures are introduced to effectively prevent, identify and report the bribery of foreign public officials by applicants for, and recipients of, official export credit support.

4. Official Development Assistance

37. The Recommendation of the Council for Development Co-operation Actors on Managing Risks of Corruption (2016 Recommendation) entered into force on 9 December 2016 and replaces the 1996 DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement.²³ The 2016 Recommendation suggests measures to prevent and detect corruption in development cooperation projects, details a sanctioning regime to respond to cases of corruption and advises development agencies to develop comprehensive systems for corruption risk management. Lithuania is one of the first WGB member countries to be evaluated on implementation of the 2016 Recommendation.

38. Lithuania's total net official development assistance (ODA), as reported to the OECD, reached USD 58 million in 2016 (0.14% of Gross National Income (GNI)). Approximately 75% of Lithuania's ODA is channelled through multilateral institutions, and primarily through the EU (accounting for over 88% of multilateral ODA in 2016). In 2016, Lithuanian bilateral development cooperation amounted to USD 14.9 million and top recipients were Belarus, Georgia, Moldova and Ukraine. Other bilateral recipients include Armenia, Azerbaijan, Jordan and West Bank and Gaza Strip. The main priorities of Lithuania's development cooperation are to contribute to the implementation of the 2030 Sustainable Development Goals (SDGs) in partner countries giving priority among others to ending poverty, ensuring inclusive and equitable quality education and promoting lifelong learning opportunities, achieving gender equality and empowering all women and girls, taking urgent action to combat climate change etc.

(a) Institutional and legal framework

39. The Law on Development Cooperation and Humanitarian Aid sets out the legal framework for Lithuania's development cooperation programme. It was adopted in 2013 and amended recently to take into account the 2016 Recommendation. There are three levels in Lithuania's development cooperation framework: policy making, supervision and administration, and implementation. The National Commission on Development Cooperation oversees Lithuania's development cooperation policy. The Commission, which meets twice a year, is chaired by the Vice-minister of Foreign Affairs and includes representatives from all ministries, the office of the Prime Minister, other relevant state institutions as well as representatives of municipal institutions, civil society and the private sector. Lithuania's Development Cooperation and Democracy Promotion Programme is supervised and centrally administered by the MOFA. The MOFA is responsible for the development cooperation policy guidelines, which for the period 2017-2019 were included in the Inter-institutional Action Plan on Development Cooperation. The Action Plan was adopted by the Government on 21 September 2016 and sets out as measures to ensure implementation of development cooperation activities by all state institutions. The Action Plan will be

²³ The 2016 Recommendation of the Council for Development Co-operation Actors on Managing Risks of Corruption is available in both French and English on the OECD website: <http://www.oecd.org/corruption/oecd-recommendation-for-development-cooperation-actors-on-managing-risks-of-corruption.htm>.

revised annually. In March 2017, the MOFA signed a Joint Activity Agreement with the Central Project Management Agency (CPMA), under which the CPMA assumed partial responsibility for administering Lithuania's Development Cooperation and Democracy Promotion Programme including project contract oversight, evaluation and audit.

(b) Awareness-Raising Efforts

40. Lithuania has made efforts to raise awareness with development cooperation officials and partners of the risk of foreign bribery in development assistance projects, consistent with 2016 Recommendation 3. At the on-site visit, MOFA officials stated that ethics and anti-corruption training seminars are provided annually to relevant officials. In April 2017, the General Inspector of the MOFA provided a briefing to ministry employees on corruption risks. In May 2017, a training session on the obligations under the Convention and the 2016 Recommendation was co-organised by the MOFA and the STT for Lithuanian diplomats taking up development cooperation functions in overseas embassies and locally engaged development cooperation staff, whereas the same topics were also part of the 2017 annual retreat of Lithuanian diplomats in charge of economic diplomacy in diplomatic representations. During the same month, MOFA officials conducted activities in foreign diplomatic representations to further raise awareness of the 2016 Recommendation. Most recently in October 2017, the CPMA organised a training for all project promoters on the rules and conditions for aid project delivery, including on the incorporation of anti-corruption clauses in all ODA contracts.

(b) Prevention and Detection of Foreign Bribery

41. The 2016 Recommendation 6 asks development cooperation agencies to ensure that persons applying for ODA contracts declare that they have not been convicted of corruption offences and establish mechanisms to verify the accuracy of information provided by applicants, including by checking publicly available debarment lists of national and multilateral financial institutions. In April 2017, the National Commission on Development Cooperation required the inclusion of a standard anti-corruption clause²⁴ in all ODA contracts specifically prohibiting implementing partners, their possible sub-contractors and all persons participating in the activities of the project from engaging in corruption, including foreign bribery, consistent with 2016 Recommendation 6(v). The CPMA incorporated the standard clause in all new ODA contracts from June 2017. In its responses to the Phase 2 questionnaire, Lithuania indicated that the CPMA will require persons applying for ODA contracts to self-disclose prior convictions which are subsequently verified by the CPMA. To date, an ODA contract has not been denied or rescinded on the basis of information about a prior corruption conviction. MOFA officials conduct due diligence on applicants in the countries where development cooperation projects are being implemented. The CPMA Procedure on Development Cooperation and Support for Democracy Programme (CPMA Procedure), adopted in August 2017, provides for "on-the-spot" checks of a project in cases where information is received from the media or third parties about possible irregularities during the implementation of a project, where the value of the project exceeds EUR 58 000, or if the CPMA considers there is a risk that the project is being implemented in violation of legal requirements.²⁵ Project implementation reports must be prepared in accordance with

²⁴ "The project manager and the persons participating in the activities of the project are aware that according to the laws of the Republic of Lithuania the project manager and the project partners are prohibited to enter into any agreements of a corruptive nature with program coordinators, recipients of the assistance, public servants and other third parties, and that bribery of foreign servants shall incur the same criminal responsibility of the natural and legal persons as bribery of Lithuanian civil servants, and that foreign bribery incurs criminal responsibility even if it is not considered a crime in that country."

²⁵ Lithuania CPMA Procedure for Development Cooperation and Support for Democracy Programme, August 2017, p. 14.

the Law on Accounting and are reviewed by the Development Cooperation and Humanitarian Aid Commission of the MOFA. The MOFA's General Inspectorate and Internal Audit Division audited four development cooperation projects following media reports in 2009. The allegations were in relation to misallocation of ODA funds however the MOFA found that the project was selected and financed in accordance with requirements. The CPMA provided that they would verify debarment lists of national or multilateral financial institutions only if such verification was included in the project selection criteria.

(c) *Duty to Report Foreign Bribery*

42. The 2016 Recommendation 7 asks development cooperation agencies to remind officials of their obligation to report suspected foreign bribery, ensure broad accessibility of secure, confidential reporting mechanisms, protect reporting persons from retaliation and provide timely follow-up to their reports. At the on-site visit, the CPMA stated that there is no specific legal obligation for its officials to report an irregularity including suspicions of a criminal offence. However, the CPMA considered its code of ethics to constitute a general duty to report any suspicions of a criminal offence. In the event of a suspicion of a criminal offence, the CPMA official would report this to the irregularity officer of the CPMA's Law and Quality Control Service who would then refer the information to law enforcement authorities. According to the CPMA Procedure, if during an internal investigation of a suspected offence the Law and Quality Control Service suspects a corruption-related criminal offence has taken place it must immediately inform the STT and the FCIS.

43. A banner to report corruption is visible on Lithuania's Development Cooperation website.²⁶ MOFA also provides information about how to report instances of corruption to the MOFA General Inspectorate on its website.²⁷ Reports may be anonymous and can be made by email or telephone. It is also possible for the person who submits the report to receive an update on the subsequent investigation into the report. The CPMA has a page on its website dedicated to corruption prevention and lists the different reporting channels available.²⁸ To date, no reports of suspected foreign bribery in connection with development cooperation projects have been received by either agency.

(d) *Sanctioning Regime*

44. The 2016 Recommendation III.8(i) recommends that ODA contracts provide for termination, suspension or reimbursement clauses when the information provided by applicants to ODA funds was false, or when the implementing partner subsequently engaged in corruption during the course of the contract. As of June 2017, Lithuania's ODA contracts contain such clauses. According to the CPMA Procedure, if an irregularity is identified which contains evidence of a criminal offence, the CPMA's Law and Quality Control Service may propose to the Development Cooperation and Humanitarian Aid Commission of the MOFA to terminate the project implementation agreement and to recover all funds that have already been paid, to reduce the funding of the project and/or recover the part of financial assistance that has already been paid, and/or any other appropriate measure. The CPMA provided these sanctions would be applied in principle only after the conclusion of any related criminal proceedings and subsequent court decision. The CPMA further indicated that it could transfer information relating to suspected foreign bribery to the STT, although it appears that there are currently no institutional cooperation arrangements in place to facilitate such information exchange.

Commentary

²⁶ Orange Project: orangeprojects.lt/en/.

²⁷ MOFA website: <http://urm.lt/default/lt/veikla/korupcijos-prevencija>.

²⁸ CPMA website: www.cpva.lt/lt/skaidrumas.html.

The lead examiners are encouraged by Lithuania's efforts to implement the 2016 Recommendation and the measures planned and already in place by the CPMA, a newly designated ODA authority. However, the lead examiners recommend that Lithuania i) include as a priority anti-corruption and sanctioning clauses in all ODA contracts; ii) train and raise awareness among Lithuanian government officials and development cooperation partners and providers of the framework in place to prevent, detect, report and sanction bribery of foreign public officials in the context of development cooperation, and that the WGB follow up on the CPMA's relevant efforts.

5. Foreign Diplomatic Representations

45. Lithuanian overseas diplomatic representations can play an important role in interacting with Lithuanian companies operating abroad, both in terms of raising awareness and reporting suspicions of foreign bribery.

(a) Awareness-raising efforts

46. With regard to raising awareness of foreign bribery and the Convention in Lithuania's foreign diplomatic representations, the MOFA and the STT appear to collaborate well when organising and producing awareness-raising activities and materials. In January 2017, MOFA sent an instruction to all of Lithuania's diplomatic representations informing them about the provisions of the Convention and its practical implications as well as instructions to report suspected cases of corruption to the STT, providing guidance on how embassy officials might detect and identify foreign bribery. It also instructed representations to provide information related to the foreign bribery offence and its legal implications to companies operating abroad in case of bribe solicitation and assist the STT with making contact with the local law enforcement authorities. The role of Lithuanian overseas diplomatic representations in preventing and detecting foreign bribery is also highlighted in the STT's 2016 Anti-Corruption Handbook for Business.²⁹ MOFA and the STT also jointly prepared a brochure in May 2016 on the bribery of foreign public officials. All diplomats receive training on the risks of corruption before they are posted overseas. Such training is conducted by the STT which organised two training seminars on corruption and foreign bribery risks in 2016 and 2017 for newly appointed diplomats to be posted overseas. Furthermore, MOFA informed the lead examiners of its intention to address foreign bribery and the Convention at future annual meetings of diplomats.

(b) Detection of foreign bribery and duty to report

47. Lithuania's overseas diplomatic representations monitor foreign media for possible allegations of corruption and pursuant to the 2017 MOFA instruction, Lithuanian diplomats must report bribery allegations involving Lithuanian citizens or companies cited in the foreign media and other sources to the STT. In January 2017, Lithuania posted banners on MOFA's website in both English and Russian. These banners provided a direct link to report corruption through the STT's website. Similar banners in Lithuanian, English, Ukrainian and Russian are visible on the homepages of the websites of Lithuania's embassies in Eastern Partnership countries and the Russian Federation. At the on-site visit, Lithuanian officials stated that in spite of these efforts, there has not yet been an increase in reports from overseas embassies. Lithuania noted that given these efforts to promote reporting channels were introduced at the beginning of 2017; it is too early to see concrete results.

Commentary

²⁹ STT (2016), [Anti-Corruption Handbook for Business](#), p. 112.

The lead examiners welcome the initiatives by MOFA along with the STT to raise awareness among its foreign diplomatic representations. Given the important role that embassies play in interacting with Lithuanian companies operating abroad, both in terms of awareness raising as well as reporting suspicions of foreign bribery, the lead examiners encourage Lithuania to continue awareness raising activities for staff in overseas posts. In particular, they recommend that Lithuania ensure that foreign diplomatic representations, in their contacts with Lithuanian businesses operating overseas, i) disseminate information on the corruption risks in their country of operation and the legal consequences of foreign bribery under Lithuanian law, and ii) encourage Lithuanian businesses and individuals to report suspected instances of foreign bribery to the appropriate authorities.

6. Tax Authorities

48. The 2009 Recommendation of the OECD Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation) asks member countries to expressly prohibit the tax deductibility of bribes and provide guidance to taxpayers and tax authorities on identifying and detecting such bribes. This section examines non-deductibility of bribe payments in Lithuania. It also addresses the measures taken by the State Tax Inspectorate (STI), Lithuania's tax authority, to prevent, detect and report foreign bribery, as well as to share tax information with Lithuanian and foreign authorities for use in foreign bribery investigations.

(a) Non-deductibility of bribes

49. Lithuania's Law on Corporate Income Tax (LCIT) and Law on Personal Income Tax (LPIT) allow deductions for all expenses incurred for the purpose of earning income or deriving economic benefit, unless provided otherwise in the relevant statute. Following amendments that came into effect on 1 January 2015, both laws now expressly prohibit the deduction of "expenses incurred while engaging in acts prohibited by the Criminal Code, including bribes."³⁰ The burden of proving the validity of the deduction falls on the taxpayer, who must substantiate deductions with valid accounting documents (as defined in the LCIT and LPIT).³¹

50. If a taxpayer is convicted of (domestic or foreign) bribery, tax authorities should re-examine the tax returns for the relevant years to determine whether the bribes had been deducted. The Law on Tax Administration (LTA) provides for recalculation of tax for the previous five calendar years (art. 68(1)) which can be extended to the length of the limitation period for the relevant criminal offence (i.e. up to 15 years for the foreign bribery offence) if during criminal proceedings it is necessary to determine the damage done to the State and the limitation period has not expired (art. 68(4)). Lithuania indicates that such an extension would be granted in foreign bribery cases where damage to the Lithuanian State would consist of tax not paid to the budget. In practice, STI would conduct a tax re-examination upon request by a law enforcement authority.

51. At the on-site visit, the Central Tax Administrator (STI) officials confirmed that if a taxpayer was convicted of bribery, they would re-examine tax returns to see whether bribes had been deducted. STI also indicated that it does not wait for criminal proceedings to end before assessing tax returns: as soon as there is a suspicion of bribery, a new tax assessment is opened. Furthermore, STI can impose administrative tax fines up to 10-50% of the new tax assessment with interest, for failing to prove allowable deductions, even in the absence of a concluded criminal prosecution. However, in some cases pre-trial investigations outrun

³⁰ Law on Corporate Income Tax, Art. 31(1)(20); Law on Personal Income Tax, Art. 18(3)(14).

³¹ Law on Corporate Income Tax, Art. 11(4); Law on Personal Income Tax, Art. 18(8).

the five-year limitation period for tax recalculation. In these cases it is impossible to re-examine tax returns unless the pre-trial investigation authority provides the STI with the relevant information. To better facilitate post-conviction non-deductibility in practice, the STI requested from the STT, in writing, information on taxpayers convicted of bribery, which the STT provided, taking into account the relevant limitation periods. . The STT/STI Cooperation Treaty³² is currently being modified to address this issue.

(b) Detection and reporting of bribe payments

52. Detection and reporting of bribery detected in the course of tax assessments are governed by LTA art. 127(2) which requires tax administrators to report to law enforcement authorities suspected criminal acts detected in the course of tax inspections and the STI's binding "Rules on the identification of cases involving indications of alleged corruption-related offences and communication of information of such cases to STT"³³ (STI Rules). Pursuant to the STI Rules, tax examiners should examine payments for intermediary or consultancy services; legal and business services (if amounts appear excessive); advertising and promotion; payments for goods and services higher or lower than market value; transactions where key terms differ from other transactions, especially if payments are made in cash.³⁴ The STI Rules set out a framework for reporting. STI officials have 3 days from the identification of the case to report internally to the STI's Infringement Assessment and Comment Analysis Division which has 10 days to decide whether to submit to the STI's Assessment Working Group, which in turn has 10 days to determine whether to communicate the information to the STT. STI maintains a checklist for tax auditors using software which requires them to certify that they have undertaken compulsory inspections, including in relation to corruption. The checklist is updated annually. STI maintains a performance plan which identifies priorities and allocates resources for tax audits based on identified risk areas. The performance plan is updated annually to reflect government priorities and programmes, for example, the national priority at the time of the on-site visit was the fight against the shadow economy. The performance plan identifies categories of taxpayers and specific sectors where tax audits should be focused. At the on-site visit, STI representatives indicated that tax auditors who fail to comply with the STI Rules (including reporting obligations) could incur disciplinary or criminal sanctions depending on the nature of the violation. While the STI Rules do not set out specific sanctions, penalties provided in the Criminal Code, the Law on Public Service and the Rules on impositions of sanctions for civil servants would apply. To date, STI officials have not been sanctioned for failure to comply with the STI Rules.

53. From 5 July 2016 (entry into force of revised STI Rules) to 1 November 2017, STI had referred ten cases of suspected corruption-related offences to STT detected through tax assessments, nine related to bribery of Lithuanian public officials and one related to bribery of foreign public officials. The case relating to suspected foreign bribery came to light in the course of a January 2017 tax investigation for the period 2014-15 when, a company sought to deduct monthly bank transfers to a foreign national. The STI identified the foreign national as a relative of the company's general manager. During the tax inspection the company acknowledged it could not provide proof of the alleged works and services completed in return for the transfers and submitted a revised tax return, agreeing to pay a higher amount of tax. STI referred the case to STT on 1 February 2017 for an investigation into potential foreign bribery, on the basis that the transfers were made to help establish the company on the foreign market because the company was under embargo at the time.

³² No. (1.11-04-2)23-38/8-74 of 14 June 2013.

³³ Order No. V-299 of the Head of the STI of 8 September 2006 (as amended by Order No. V-380 of 5 July 2016).

³⁴ Responses, pp.134-5.

54. STI also has mechanisms for anonymous reporting in the form of: a “trust line” on its website; a mobile application; hotline; e-mail or by post. Between 2014 and July 2017, STI received 691 reports through its trust line (not counting reports relating to tax evasion), of which 77 disclosed possible corruption offences. All reports received through the trust line are registered and transferred to STI’s Internal Security Division which then evaluates the report, collects additional information and decides whether to transfer to STI’s audit selection unit to plan a tax inspection or to STT in suspected cases of corruption.

(c) Training and awareness of foreign bribery

55. Tax auditors at STI headquarters as well as municipal offices have received training on the STI Rules, STT/STI Cooperation Treaty and the OECD Handbook, including on the indicators of fraud and bribery and examination techniques. STI has translated the OECD Bribery and Corruption Awareness Handbook for tax Examiners and Tax Auditors (2013) into Lithuanian and included it on its internal website. In December 2016, STI and STT held three joint trainings on the non-deductibility of bribes to foreign public officials as well as recognising and reporting to STT indicators of bribery in the course of regular tax examinations. Following the training, STI received a report of potential bribery of foreign public officials. In light of the positive results from these trainings, STI plans to repeat them in 2018. FCIS agents and Ministry of Interior officials have also undergone training at the OECD International Academy for Tax Crime Investigation.³⁵ STT conducted 4 trainings for public officials, including STI officials, in 2016 on detecting and reporting domestic and foreign bribery offences. In 2017 STT organised 5 joint seminars with STI to present the STT Handbook. With respect to raising awareness of taxpayers, STI published notifications of the amendments to LCIT and LPIT in 2015 on its website and media articles, and conducted seminars with taxpayers to present the legislative changes. STI and Ministry of Finance published special commentaries on LCIT arts. 2 and 31, with explanations and examples of bribery on its website.³⁶

(d) Sharing of tax information

56. The 2009 Tax Recommendations I(iii) and II ask member countries to permit the sharing of tax information with law enforcement authorities, both domestically and internationally. In Lithuania, tax administrators must report suspected criminal offences detected during tax audits to the relevant law enforcement authority (LTA art. 127(2)), cooperate with other state or municipal institutions, exchange information and conduct joint inspections (LTA art. 30). STI does not have investigative powers and instead refers suspected offences detected in the context of tax assessments or audits to relevant pre-trial investigation authorities, such as FCIS or STT, or directly to the GPO. The STI/STT Cooperation Treaty provides for cooperation in data exchange and assistance to detect and investigate corrupt activities, including illicit enrichment, and undertake prevention initiatives.

³⁵ FCIS and Ministry of Interior officials participated in trainings at the Academy in Ostia, Italy in 2015 and 2016. The Academy Programme highlights the connections between bribery and corruption and other crimes such as tax evasion and money laundering. It emphasises the need to take a broader view of financial crimes and recognise the potential associated crimes and the need for asset forfeiture and recovery of the proceeds of such crimes.

³⁶ Responses, pp. 45-7 (see: https://www.vmi.lt/cms/verslui-bendrai/-/asset_publisher/da6CAWm8TgFA/content/kovos-su-korupcija-priemones?redirect=https%3A%2F%2Fwww.vmi.lt%2Fcms%2Fverslui-bendrai%3Fp_p_id%3D101_INSTANCE_da6CAWm8TgFA%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D2 (in Lithuanian)).

57. On an international level, exchange of information with foreign authorities is governed by LTA arts. 28 and 29. Lithuania has concluded 55 Double Taxation Conventions (DTCs) which cover its main trading partners. Only one of these provides for the use of tax information for other purposes.³⁷ Lithuania's model treaty has been revised to incorporate this provision for future DTCs. Since June 2014, Lithuania has been a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) and its amending protocol.³⁸ Since that date, Lithuania has been using the MAAC, in addition to its bilateral agreements, as a basis for sharing tax information contained in tax assessments either spontaneously or by request of another Party's tax authority. Pursuant to MAAC Art. 22(4), information provided under the Convention for tax purposes may be used for other purposes "when authorised by the relevant agreement." Lithuania's Civil Code (CC) prohibits the disclosure of information covered by bank or commercial secrecy (art. 6.925 and 1.116(1), respectively). The board of a company can determine what information constitutes a commercial secret with respect to a company (Law on Companies, art. 34(3)). Both types of secrecy are overridden, without need for a court order, where the STI requests information for the purpose of carrying out its functions (including EOI).³⁹ Between 2012 and 2015, Lithuania received spontaneous information regarding 195 cases from its exchange of information (EOI) partners and sent information spontaneously in 25 cases to 8 jurisdictions. In August 2015, Lithuania received an overall rating of Compliant with the international standard on exchange of information on request (EOIR).⁴⁰ In January 2017, Lithuania signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports.⁴¹ Lithuania undertakes automatic exchange of information on an annual basis. It committed to first exchanges under the Common Reporting Standard on automatic exchange of information by 2017; Lithuania has sent information on an automatic basis in 124 cases and received information in 89 cases. To date there has been no exchange of information to or from Lithuania relating to bribery of foreign public officials.

Commentary

The STI has demonstrated proactivity in ensuring the implementation of the non-deductibility of bribes in practice, including in relation to re-examining tax returns of individuals and companies that have been convicted of bribery. The lead examiners nevertheless recommend that the Working Group follow up on the STI's efforts to ensure post-conviction non-deductibility, as case law develops.

The lead examiners welcome the STI Rules as a mandatory framework for Lithuanian tax officials to detect and report suspected bribery. STI's efforts to train and raise awareness of the Rules among tax officials has resulted in increased levels of detection and reporting, including in the context of tax audits. The STI should continue these activities.

The lead examiners congratulate Lithuania on the measures in place to allow for the sharing of tax information between STI and criminal law enforcement authorities in Lithuania, and abroad. Nevertheless, due to the very few DTCs allowing for the provision of tax information

³⁷ Art. 27(2) (Exchange of Information) of the tax treaty with India.

³⁸ See [chart](#) of jurisdictions participating in the Convention.

³⁹ LTA arts. 28(4), 33(1) and 49(2).

⁴⁰ OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, Exchange of Information on Request: Ratings, available at: <http://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/#d.en.342263>.

⁴¹ OECD, Country-by-Country reporting: www.oecd.org/tax/exchange-of-tax-information/country-by-country-reporting.htm.

for other purposes, the lead examiners recommend that the WGB follow up Lithuania's provision of tax information to foreign authorities for use in foreign bribery investigations.

7. Detection through accounting, audit and internal controls

58. The 2009 Anti-Bribery Recommendation X asks WGB member countries to raise awareness of the foreign bribery offence among the accounting and auditing profession and to encourage the development of specific foreign bribery training. It also asks members to encourage the adoption of adequate internal controls in companies (notably through the implementation of its Annex II "Good practice guidance on internal controls, ethics and compliance"). This section examines issues relating to the accounting and auditing profession in Lithuania, including awareness of foreign bribery, relevant accounting and auditing standards, corporate compliance measures for prevention and detection, and independence of and reporting by external auditors. The false accounting offence is discussed in Part C(5).

(a) Awareness-raising efforts

59. The Authority of Audit, Accounting, Property Valuation and Insolvency Management⁴² (Audit Authority) has ultimate public oversight of all auditors and audit firms in Lithuania and the power to impose sanctions on auditors.⁴³ However, some functions, including provision of continuing education, monitoring of auditors' and audit firms' compliance to ethics requirements, qualification examinations and reviews of quality of the audits performed by auditors and audit firms of non-public interest entities, are delegated to the Lithuanian Chamber of Auditors. The Chamber of Auditors is supervised by the Audit Authority, which operates as a state institution under the Ministry of Finance. In addition, under the Law on Securities, the Bank of Lithuania may inspect whether issuers' individual and/or consolidated financial statements have been drawn up in accordance with the relevant requirements (specifically, the International Financial Reporting Standards (IFRS)). The National Audit Office can conduct audits of SOEs, however these are systemic audits of all SOEs in relation to specific issues rather than annual audits of individual SOEs' financial statements. Annual audits of each SOEs' financial statements are obligatory and performed by external auditors or audit firms.

60. The Chamber of Auditors conducts mandatory training programmes for members of the profession, who must complete a certain number of hours focusing on ethics issues. It indicated communicating information on bribery in the context of these trainings but did not provide specific information on training on the issue of foreign bribery. The Chamber of Auditors translated the new International Ethics Standards Board for Accountants (IESBA) standard on "Responding to Non-Compliance with Law and Regulations"⁴⁴ into Lithuanian and published it on its website but representatives were not convinced that it would have any positive impact on reporting. In general, professionals considered that audit procedures were not tailored to detect bribery and that bribes were very rarely detected in the course of an audit. Discussions with both regulators and members of the profession at the on-site visit demonstrated that the priority concern for the profession in Lithuania is the entry into force of the EU Audit Directive 2014/56/EU and Regulation No 537/2014 on specific requirements regarding

⁴² Established in January 2016 and replacing the former Authority of Audit and Accounting.

⁴³ Art. 56, LAFS.

⁴⁴ IESBA's Responding to Non-Compliance with Laws and Regulations entered into force on 15 July 2017 and sets out a framework to guide auditors and other professional accountants on actions to take in the public interest when they become aware of non-compliance with laws and regulations (NOCLAR) by a client or employer, including corruption and bribery. For more information: www.ifac.org/publications-resources/responding-non-compliance-laws-and-regulations.

statutory audit of public-interest entities⁴⁵ and accompanying obligations for auditors of PIEs starting the next financial year. The auditing profession indicated that it would welcome detailed guidance on these new reporting requirements, including on their application to cases of suspected foreign bribery. Accountants and auditors also noted that International Standards on Auditing (ISAs) are not explained in Lithuania.

61. Neither supervisory authorities, nor individual firms have conducted specific training for the profession on Lithuania's framework for combating bribery of foreign public officials and the importance of detecting and reporting suspected foreign bribery. This is particularly concerning in the context of two recent cases of egregious auditing misconduct in Lithuania (see below, Section 7(d)(i) Auditor Independence) and a lack of general guidance on ISAs and new requirements for disclosure of non-financial and diversity information. The Lithuanian Chamber of Auditors with the STT conducted the first of a series of foreign bribery trainings in December 2017.

Commentary

The lead examiners are seriously concerned by the lack of efforts by supervisory bodies and professional associations to raise awareness among the accounting and audit profession of its role in detecting and reporting foreign bribery. The lead examiners therefore recommend that Lithuania work with the accounting and auditing profession to raise awareness of the foreign bribery offence and provide guidance on its role in the detection and reporting of suspected instances of foreign bribery.

(b) Accounting and audit standards

62. Art. 8 of the Convention requires Parties to establish accounting and audit standards that prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.

63. The Ministry of Finance is responsible for developing accounting standards in Lithuania. The Law on Accounting (LA) regulates the preparation of corporate financial statements in Lithuania and defines the accounting standards to be applied, based on company type. All public interest entities (PIEs),⁴⁶

⁴⁵ On 1 March 2017 amendments to the Law on Audit implementing EU Regulation No. 537/2014 and EU Directive 2014/56/EU entered into force.

⁴⁶ Art. 2(32) of the Law on Audit of Financial Statements defines a "public interest entity" as: an entity that is of significant public relevance because of the nature of its business, its size or the number of clients. A public-interest entity shall be: 1) an undertaking whose securities are traded on the regulated market of the Republic of Lithuania and/or any other Member State; (2) a bank and the Central Credit Union; (3) a credit union, where its assets on the last day of the financial year for at least two consecutive financial years exceed EUR 20 million; (4) a financial brokerage firm; (5) a collective investment undertaking as defined in the Law of the Republic of Lithuania on Collective Investment Undertakings, a pension fund as defined in the Law of the Republic of Lithuania on the Accumulation of Pensions and the Law of the Republic of Lithuania on the Supplementary Voluntary Accumulation of Pensions, an occupational pension fund as defined in the Law of the Republic of Lithuania on the Accumulation of Occupational Pensions; (6) a management company which manages at least one of the entities referred to in point 5 of this paragraph, an association of participants of an occupational pension fund/funds; (7) an insurance undertaking, a reinsurance undertaking; (8) the Central Securities Depository of Lithuania, the operator of the regulated market; (9) a state enterprise, a municipal enterprise, a public limited

including credit institutions, insurance companies, and financial brokerage companies must apply the International Financial Reporting Standards (IFRS). Listed companies must compile consolidated financial statements according to the IFRS. Listed companies for their separate financial statements and all other companies, including SMEs, have the option to apply IFRS or Lithuanian Business Accounting Standards (BAS), as defined by the Ministry of Finance. Currently all listed companies except one use IFRS. Companies must report all economic events and transactions that change the amount or structure of their assets, equity, funding or liabilities (LA, art. 6(2)). The head of the company (i.e. CEO) is responsible for providing correct, accurate, complete and timely information to the entity's accountant or accounting service provider (LA art. 14(2)). The accounting service provider is responsible for the accuracy of the accounting entries (LA art. 11(1)) and persons who violate the law shall be held liable (LA art. 23). The Law on Accounting does not, however, provide sanctions for violation of its provisions. Lithuania notes that violations of the Law on Accounting would be sanctioned through the application of provisions in the Code of Administrative Breaches and the Criminal Code. The Law on Financial Reporting by Undertakings (LFRU) and Law Consolidated Financial Reporting by Groups of Undertakings prescribe additional requirements for financial statements. In December of 2016 LFRU and the Law on Consolidated Financial Reporting by Groups of Undertakings were amended to implement the Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups. These Laws entered into force on 1 January 2017. The LFRU requires large public-interest companies with more than 500 employees to disclose in their social responsibility report information on policies, risks and outcomes as regards environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues. Parent public interest undertakings of the groups of large undertakings will also be required to draw up consolidated social responsibility reports. These reports will be included in the management report (consolidated management report), reviewed by the companies' auditors, and indicated in the audit report.

64. Audit requirements are set out in the Law on Audit of Financial Statements (LAFS) which was amended to transpose the EU Audit Directive and Regulation (EU) No 537/2014 on specific requirements regarding statutory audit of public-interest entities with new provisions effective from 1 March 2017. LAFS requires statutory audits of financial statements from 1 January 2009 onwards to be conducted in accordance with ISAs (art. 33), including ISA 240 (material misstatements in financial statements due to fraud) and ISA 250 (breaches of laws and regulations resulting in material misstatements in financial statements). The external auditor or audit firm is elected or removed from their position by the general meeting of shareholders (Law on Companies, art. 20(1)(5)), taking into account the proposal of the management body or the supervisory body; the audit committees of public interest entities are involved in the selection of external auditors (Regulation (EU) No 537/2014, art. 16)). A mandatory audit is required for all public interest entities, public limited liability entities, SOEs and for private limited liability companies if at least two of the following criteria are met: (i) net turnover over EUR 3.5m; (ii) balance sheet over EUR 1.8m; and (iii) at least 50 employees for the financial year.⁴⁷ In reality, this translates to around 3000 of the 60 000 Lithuanian companies being subject to mandatory audit.

liability company and a private limited liability company whose shares or a part of shares carrying more than 1/2 of all the votes at the general meeting of shareholders of these enterprises are held by the right of ownership by the State and/or a municipality and which are considered to be large enterprises under the Law of the Republic of Lithuania on Financial Reporting by Undertakings.

⁴⁷ Cooperatives, general partnerships and limited partnerships where all general partners are public limited liability companies or private limited liability companies, private limited liability companies where a shareholder is the State and/or a municipality, private limited liability companies where prices of goods (services) are regulated under the procedure set by laws, are all also subject to mandatory audit (art. 24 LFRU).

(c) *Internal controls, corporate codes of conduct and audit committees*

65. The 2009 Anti-Bribery Recommendation X asks Parties to encourage companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery. Companies should also be encouraged to create monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards.

(i) *Internal controls*

66. With respect to internal controls, LFRU art. 23(1) requires listed companies to provide information about the scope of risk and management thereof in their corporate governance statements, along with describing the internal control system. Statutory SOEs are required to establish a system of internal controls pursuant to the Law on Internal Control and Internal Audit. Large SOEs are also required to establish an audit committee according to the Law on Audit of Financial Statements, which entered into force on 1 March, 2017. The Law on State and Municipal Enterprises requires that the annual reports of statutory SOEs include information on “the internal control system implemented in the enterprise” (Art. 16.2). The Nasdaq Vilnius Corporate Governance Code (the Code) recommends that audit committees review internal control and risk management systems to ensure that risks are properly identified and managed. The Law on Securities requires listed companies to report on their compliance with the Code (and explain any reasons for non-compliance) in their annual reports. The Law on the Prevention of Corruption now applies to both the public sector and companies in which the State holds over 50% of shares, following amendments that entered into force on 1 January 2017. Companies subject to the Law now need to identify and submit corruption risk analyses to STT.⁴⁸ To date, STT has received corruption risk analyses from 58 limited liability companies, 44 of which did not consider bribery to be a risk; 11 of which considered bribery a risk in the field of public procurement; and 3 of which considered bribery to be a risk in other areas. Following an analysis of the corporate websites of the 20 largest companies in Lithuania, eight companies had a publicly available Code of Ethics and five provided a corporate statement on responsible business conduct. Only eight companies referred to a prohibition or zero tolerance policy on bribery or corruption in their ethical codes or statements and none made specific reference to bribery of foreign public officials. Private sector representatives at the on-site visit indicated that government leadership is lacking in the field of guidance and awareness raising on anti-bribery compliance and internal controls but noted that this gap is filled by business associations and NGOs, notably LAVA, the Investors Forum and Clear Wave.

(ii) *Supervisory Boards and Audit Committees*

67. Since 2015, the Law on Companies requires public limited liability companies (public LLCs)⁴⁹ to establish at least one collegial body—either a one-tier board (a management board or a supervisory board) or a two-tier system with a management board and a supervisory board (art. 19).⁵⁰ The Law on Companies was amended on 21 November 2017 to require listed public limited liability companies to establish boards performing supervisory functions. This requirement will enter into force on 1 July 2018. The Code

⁴⁸ Art. 6(2) Analysis of the Risk of Corruption (Law on the Prevention of Corruption).

⁴⁹ As of 2016, Lithuanian authorities report that, according to data from the Register of Legal Entities, there are 121,446 private LLCs and 455 public LLCs in Lithuania.

⁵⁰ The Principles refer to boards of directors as encompassing both single-tier and two-tier board systems. While the SOE Guidelines use the terminology “management” and “boards of directors” to describe the separate executive and supervisory functions in jurisdictions with two-tier systems, this report applies the term “management board” to the executive management function and the term “supervisory board” to the supervisory function, in order to be consistent with the terminology applied in English translations of Lithuanian legislation and regulations.

recommends that listed companies establish a two-tier structure with both a supervisory board and an executive management board (Principle II.2.1.), noting: “The setting up of collegial bodies for supervision and management facilitates clear separation of management and supervisory functions in the company, accountability and control on the part of the chief executive officer, which, in its turn, facilitate a more efficient and transparent management process.” According to data provided by the Bank of Lithuania, as of end-2016 there were 31 listed companies (including two banks). All of them had management boards (29 had management boards and two companies transferred their management to management companies, which have management boards). Thirteen listed issuers had supervisory boards.

68. The LAFS requires PIEs to establish an audit committee, responsible notably for monitoring “the effectiveness of the entity’s internal control, internal audit where applicable, and risk management systems” and to ensure the independence and objectivity of the external auditor or audit firm, which reports to the audit committee (art. 52). Amendments to the LAFS that entered into force on 1 March 2017 have strengthened the role and independence of audit committees, including requirements pertaining to audit committees’ composition, formation, activities and functions, particularly in relation to the selection of external auditors. Requirements for audit committees of listed companies were established by the Resolution of the Securities Commission of 21 August 2008 and on 24 January 2017 replaced by the Resolution of the Bank of Lithuania. The Resolution established additional independence requirements for members of listed companies’ audit committees. Requirements for audit committees are complemented by Nasdaq Vilnius CGC Principle 4.14, which recommends the establishment of a specialised audit committee along with other measures regarding their role, composition and responsibilities; 22 out of 27 listed companies fully complied with this recommendation and 4 of 27 partially comply with this recommendation mainly because audit committee functions are performed by the audit committee of the parent company in 2016. Among the SOEs required to establish an audit committee, only two had complied.⁵¹ On 24 January 2017, the Bank of Lithuania adopted a Resolution establishing additional independence requirements for members of listed companies’ audit committees. On 24 May 2017 the Government adopted Resolution No 383 “On Requirements for the Audit Committees in State-Owned Enterprises and Municipality-Owned Enterprises”.⁵²

69. Discussions at the on-site visit revealed that despite legal requirements for certain categories of company, including SOEs, listed companies and banks, to adopt internal controls, ethics and compliance programmes; in practice these are nominal rather than functional. They indicated that while a corporate governance culture is developing, it is slow and the emphasis remains on spending for profit over compliance. These perspectives are reinforced by the findings of a Deloitte survey of audit committees in central Europe and the Baltics, which found that while they exist, they are ineffective.⁵³ The Anti-Corruption Handbook refers to the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance (2009 Anti-Bribery Recommendation Annex II) and was promoted during STT awareness raising events for the private sector and SOEs (see above, Part B.1. General Efforts to Raise Awareness).

Commentary

⁵¹ State-Owned Enterprises Governance Coordination Centre, [State-Owned Enterprises in Lithuania: Annual Report 2015](http://vkcs.turtas.lt/static/uploads/VKC_2016_EN_A4_WEB.pdf), p. 13 (available at: http://vkcs.turtas.lt/static/uploads/VKC_2016_EN_A4_WEB.pdf).

⁵² Government Resolution No 383 “On Requirements for the Audit Committees in State-Owned Enterprises and Municipality-Owned Enterprises” (available at: <https://www.e-tar.lt/portal/lt/legalAct/110b2b10453411e78ff8eec6d7a8f58e> (in Lithuanian)).

⁵³ Making a Difference: Audit Committees in Central and Eastern Europe (Deloitte & ICAEW, 2017).

Government leadership on the role of supervisory boards, audit committees and effective internal controls in detecting and combating foreign bribery is lacking. Lithuania should build on the important awareness raising work of professional associations and NGOs, to provide guidance to Lithuanian companies, including SOEs, on new rules on the creation of supervisory boards and audit committees and encourage them to implement internal company controls with a particular focus on preventing foreign bribery. These efforts should take into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance in Annex II of the 2009 Anti-Bribery Recommendation.

(d) External audit

70. 2009 Recommendation X.B requests Parties to maintain adequate standards to ensure the independence of external auditors and to require reporting of suspected acts of bribery discovered in the course of an external audit to management and, as appropriate, corporate monitoring bodies. It also encourages Parties to consider requiring external auditors to report suspected foreign bribery to competent authorities independent of the company and to ensure that they are protected from legal action.

i) Independence of external auditors

71. In Lithuania, the LAFS regulates the audit of financial statements. It provides for auditor independence (LAFS arts. 3 and 4) and requires auditors and audit firms to comply with ISAs and the International Federation of Accountants' (IFAC) Code of Ethics for Professional Accountants in fulfilling their professional duties (LAFS art. 13 and 33). The LAFS provides for sanctions for violation of its provisions which include public warnings, temporary suspension or cancellation of the qualification certificate (art. 56). The Chamber of Auditors controls compliance by members of the Chamber of Auditors with the Code of Ethics for Professional Accountants and, where necessary, takes decisions on breaches of compliance with this Code (the member can be expelled from members of the Chamber of Auditors (art. 72, 73)). Following amendments to the LAFS on 1 March 2017, fines up to EUR 100 000 can be imposed on audit firms for violation of the LAFS. The LAFS and EU Regulation No. 537/2014 govern the activities of PIE auditors, including procedures for appointment, duration of the engagement, functions of audit committees and the prohibition of the provision of non-audit services. PIE auditors are subject to a similar range of sanctions as provided for in the LAFS.

72. The role of audit firms in the audit of two major national commercial banks that were declared bankrupt raises serious concerns about the practical independence and oversight of the audit profession in Lithuania.⁵⁴ In the first case, Snoras Bank, Lithuania's largest domestic bank, was declared insolvent by the Vilnius Regional Court in August 2012. Less than a year before the collapse, Ernst & Young Baltic (EYB) issued an unqualified auditor's opinion on Snoras' financial statements. The Audit Committee of the Seimas asked the Audit Authority to investigate EYB's 2010 audit. Following the investigation, the Audit Authority found that EYB had failed to adhere to international audit standards and violated the principle of professional scepticism, ordering EYB to improve its auditing controls and cancelling the individual auditors' license. The Supreme Administrative Court confirmed the Audit Authority's decision following an appeal by EYB and the auditor.⁵⁵ In October 2014, EYB reached an LTL 40m settlement with

⁵⁴ For a detailed analysis, see "Are auditors at fault for the collapse of financial institutions in Lithuania?" Baltic Journal of Law & Politics 9:2 (2016): 171–197. Available at: www.degruyter.com/view/j/bjlp.

⁵⁵ UAB "Ernst & Young Baltic" and R. B. v the Authority of Audit and Accounting, The Supreme Administrative Court of Lithuania, Case No. A-492-492-14 (2014). Available at: [http://eteismai.lt/byla/244442619141615/A-492-492-14%20\(30\)](http://eteismai.lt/byla/244442619141615/A-492-492-14%20(30)) (in Lithuanian).

Snoras' administrators in relation to EYB's pre-bankruptcy audits.⁵⁶ In July 2015 the GPO formally commenced criminal proceedings following an STT investigation of the individual auditor for improper performance of duties.⁵⁷ The auditor was acquitted at first instance then convicted on appeal of the GPO to the Vilnius County Court. The judgment was delivered on 12 October 2017 and found the auditor liable for failure to perform official duties (art. 229 CP) and sentenced him to a EUR 1 883 fine and EUR 941 payment to a fund for the victims of crime. The judgment may still be appealed to the Supreme Court. In the second case, the Bank of Lithuania determined AB Ūkio Bankas (at the time the fourth largest bank in Lithuania) to be *de facto* insolvent in early 2013.⁵⁸ UAB Deloitte Lietuva had audited Ūkio Bankas for the previous decade. On 27 February 2013, the Audit Committee of the Seimas asked the Audit Authority to investigate Deloitte's audit of AB Ūkio Bankas. In 2014 the Kaunas Regional Court declared Ūkio Bankas bankrupt and ordered liquidation. At the same time, the Audit Authority concluded its investigation and found the individual auditor and Deloitte to have violated the Law on Audit, ordering the Chamber of Auditors to cancel the title of the individual auditor and issue a warning to Deloitte. The Audit Authority's decision was confirmed by the Supreme Administrative Court following an appeal by the auditor to the Vilnius Regional Administrative Court (which found in his favour) and a further appeal by the Audit Authority.⁵⁹ A civil case against Deloitte brought by Ūkio Bankas' administrators is ongoing in the Kaunas Regional Court. In both cases, the principal shareholders of the liquidated banks face criminal charges for alleged fraud, which could mean the auditors overlooked indications of alleged criminal activity.

73. These cases of egregious auditing misconduct put into question the dissuasiveness of available disciplinary penalties for ensuring auditor independence and professionalism and suggest a need for improved and more proactive supervision and investigation of suspected professional misconduct. The new LAFS incorporates Regulation (EU) No. 537/2014's strict requirements for auditor independence and avoidance of conflicts of interest, along with rules for how the Audit Authority carries out quality controls of auditors and audit firms. Whereas previously the Audit Authority could only initiate investigations when cases were referred to it, the LAFS grants the Authority new powers to initiate investigations not only in cases of suspected improper conduct of auditors but also in cases of suspected breaches of requirements of the Law and the Regulation (art. 48 LAFS)). The LAFS also grants the Authority new powers to conduct regular inspections of audits performed by PIE auditors and audit firms. The Chamber of Audit further conducts regular reviews of non PIE auditors and audit firms. In 2016, it inspected 45 audit firms and 71 auditors, identifying deficiencies in the reviews of 9 audit firms and 9 auditors. The Chamber instructed 8 auditors to undergo additional professional qualification (ranging from 4 to 40 hours), required 5 audit firms to rectify identified deficiencies and recommended an investigation of 1 audit firm and 1 auditor.

ii) Reporting by external auditors

74. As noted above, with the entry into force of EU requirements on statutory audits of public interest entities, PIE auditors in Lithuania must report to authorities supervising the entity or the auditor,

⁵⁶ Bank Snoras Website, "Akcinė bendrovė bankas Snoras (in administration) (Snoras) and Ernst & Young Baltic UAB (EYB) have reached a settlement on matters concerning EYB's audits of Snoras," 7 October 2014. Available at: www.snoras.com/en/about/news/archive?item=3819&metai=2014&page.

⁵⁷ STT Website, "Snoras auditor's case has been handed over to the Court," 1 July 2015. Available at: www.stt.lt/lt/naujienos/?cat=1&nid=2115 (in Lithuanian).

⁵⁸ Ūkio Bankas is insolvent, says Bank of Lithuania governor, 15min.lt, 18 February 2013. Available at: www.15min.lt/en/article/business/ukio-bankas-is-insolvent-says-bank-of-lithuania-governor-527-307976.

⁵⁹ The Authority of Audit and Accounting v. S.B., The Supreme Administrative Court of Lithuania, Case No. AS-261-1180-14 (2014).

any information of which they have become aware in the course of the audit and relates to a material breach of laws, regulations or administrative provisions. However, in the context of on-site discussions, the Chamber of Auditors considered that the new reporting obligation related only to unethical behaviour or fraud and that there was no specific requirement to report corruption or bribery. In addition, the LAFS requires auditors to first inform the company of any irregularities, including fraud, and if the company does not take action in response to the report the auditor must then inform the competent authorities. It is unclear whether suspected foreign bribery would fall under the definition of “irregularity.” At the time of writing, the Audit Authority had not received any reports of irregularities from auditors. Accounting and audit professionals on-site indicated that, aside from the new reporting obligations for PIEs, there was no clear obligation for auditors to report suspected bribery either internally within the company or externally to competent authorities. They did consider, however, that there were no restrictions on reporting if an auditor considered it necessary (i.e. commercial secrecy provisions would not prevent this). They were not aware of an auditor ever having reported a suspicion of foreign bribery. Lithuania indicated after the on-site visit that the Ministry of Finance plans to prepare draft amendments to the LAFS, for the spring 2018 session of the Seimas, which would introduce more obligations to auditors on reporting alleged wrongdoings which were established during audits.

Commentary

Recent cases of egregious audit misconduct highlight the inadequacy of Lithuania’s framework to ensure and enforce auditor independence. New independence requirements, inspection and additional investigation powers and administrative fines have been introduced under the Law on Audit of Financial Statements and may alleviate the examiners’ concerns in this respect. The lead examiners therefore recommend that the Working Group follows up on investigation and supervision of the profession by the Audit Authority and Chamber of Auditors. With respect to reporting by auditors, the lead examiners welcome recent amendments establishing an obligation for PIE auditors to report suspected breaches of laws or regulations to the competent authorities. The Working Group recommends that Lithuania extend the scope of the reporting requirement to suspicions of foreign bribery and consider extending its application to all auditors.

8. Detection through anti-money laundering systems

75. This section considers the effectiveness of Lithuania’s framework for preventing and detecting the laundering of bribes paid to foreign public officials and the proceeds of such bribery. An assessment of all aspects of Lithuania’s anti-money laundering framework is beyond the scope of this evaluation. Money laundering is criminalised in Lithuania pursuant to CC art. 216 (see section C.4). The Law on the Prevention of Money Laundering and Terrorist Financing (AML/CFT Law) establishes Lithuania’s framework for preventing, detecting and reporting money laundering and terrorism financing. A revised version of the AML/CFT Law was adopted by the Seimas on 29 June 2017 and entered into force on 13 July 2017. Lithuania is a member of the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and underwent the

fourth round mutual evaluation in 2012.⁶⁰ MONEYVAL adopted Lithuania's seventh follow-up report in September 2017 and decided to remove Lithuania from the follow-up process.⁶¹

76. The Money Laundering Prevention Department (MLPD) within the Financial Crime Investigation Service under the Ministry of Interior carries out the functions of a Financial Intelligence Unit (FIU). Established in 1998, it was originally housed within the Tax Police Department then subsequently merged into the Financial Crime Investigation Service (FCIS).⁶² The MLPD's role is limited to conducting financial intelligence, whereas the FCIS is a pre-trial investigation authority accountable to the Ministry of Interior and mandated to investigate a wide range of economic and financial crime. It is governed by the Law on the FCIS (FCISL).⁶³ The AML/CTF Law sets out the role of the FCIS in Lithuania's anti-money laundering framework. The FCIS receives and analyses suspicious transaction reports (STRs) submitted by reporting entities; conducts pre-trial investigations into money-laundering offences; cooperates and exchanges information with foreign and international agencies; collects, analyses and makes proposals on the effectiveness of the system for preventing money laundering; and cooperates with supervisory authorities.⁶⁴

(a) Definition of suspicious transactions

77. Following the recent amendments to the AML/CFT Law, Art.16(1) (Reporting of suspicious monetary operations or transactions) requires financial institutions and other reporting entities to report to the FCIS within one working day "if they know or suspect that property of any value is, directly or indirectly, derived from a criminal act or from involvement in such an act". The STR reporting requirement previously required reports of "suspicious monetary operations or transactions" which have a restrictive definition, as described below. However elsewhere in the AML/CFT Law, other AML/CFT prevention and reporting obligations (e.g. customer due diligence requirements) relate to "suspicious monetary operations or transactions." Art. 2(9) defines "suspicious monetary operation or transaction" as a monetary operation or transaction relating to property which is suspected of being, directly or indirectly, derived from a criminal act or from involvement in such an act. A "monetary operation" is defined in art. 2(16) as "any payment, transfer or receipt of money, other than payments to state and municipal institutions, other budgetary institutions, the Bank of Lithuania state or municipal funds, foreign diplomatic missions or consular posts or settlement with these entities." Furthermore, a "customer" is defined in art. 2(11) as "a person performing monetary operations or concluding transactions with a financial institution or another obliged entity, except for state and municipal institutions, other budgetary institutions, the Bank of Lithuania, state or municipal funds, foreign diplomatic missions or consular posts." The international standards do not foresee any exception to the reporting obligation if a reporting entity suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity.⁶⁵ Lithuania did not provide

⁶⁰ [Lithuania: Report on Fourth Assessment Visit](https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/16807168d6) (MONEYVAL(2012)29), 5 December 2012 (available at: rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/16807168d6).

⁶¹ MONEYVAL, Outcomes of MONEYVAL's 54th Plenary Meeting (available at: www.coe.int/en/web/moneyval/-/moneyval-held-its-54th-plenary-meeting-in-strasbourg-from-26-to-28-september-2017).

⁶² Ibid (p.71).

⁶³ LFCIS, Art. 2.

⁶⁴ AML/CFT Law, Art. 5.

⁶⁵ Recommendation 20 of the FATF states that "if a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU)."

an explanation for the inclusion—and retention—of these exceptions in the revised AML/CFT Law. These exceptions to the definition of monetary operation could create a loophole for the detection and reporting of suspected laundering of bribes to foreign public officials, namely transactions with or to foreign government institutions, SOEs or embassies that could involve bribe payments or their proceeds.

78. Reports of suspicious transactions must be made based on an objective assessment, taking into account customer due diligence (CDD) and criteria for identifying suspicious monetary operations or transactions defined by the FCIS. On 5 December 2014, FCIS issued Order No. V-240 “On Approval of Criteria for Identifying Possible Money Laundering Suspicious Monetary Operations or Transactions.” In December 2015, it issued guidelines for reporting entities on the identification and reporting of suspicious transactions. The FCIS revised and reissued the Order and Guidelines following the recent revisions to the AML/CFT Law on 8 November 2017, incorporating references to international payments to politically exposed persons (PEPs) and beneficiaries or other representatives of offshore companies.⁶⁶ STRs must be reported to the FCIS, or in the case of advocates or advocates’ associates, to the Lithuanian Bar Association, within one day of being identified.

79. With respect to foreign bribery-based money laundering, the definition of politically exposed persons (PEPs) must be broad enough to ensure that laundering of bribes by foreign PEPs can be detected and reported. PEPs are defined as natural persons who are or have been entrusted with prominent public functions and their immediate family members or persons known to be close associates, and subject to enhanced CDD measures.⁶⁷ Amendments to the AML/CFT Law in 2017 expanded categories of “prominent public functions” to address MONEYVAL concerns about the scope of the PEP definition.⁶⁸ The list now includes heads of State or governments, ministers and vice-ministers; members of parliament, supreme courts, boards of central banks, ambassadors, chargés d’affaires and high-ranking military officers; members of management and supervisory boards of SOEs; heads, deputy-heads and members of management bodies of intergovernmental organisations and political parties.⁶⁹

Commentary

Lithuanian companies operating abroad are exposed to the risk of bribery of officials of foreign government institutions, SOEs and embassies. The lead examiners are concerned that excluding transactions with these categories of institutions from the definition of “monetary operation” and “customer” under the AML/CTF Law could lead to foreign bribery-based money laundering going unreported, undetected, and unpunished. The lead examiners recommend that Lithuania amend the AML/CFT Law to eliminate these exceptions to the definitions of monetary operation and customer.

⁶⁶ Amendments to the Order and the Guidelines were adopted on 8 November 2017 by Order of FCIS director No. V-160.

⁶⁷ AML/CTF Law, arts. 2(18).

⁶⁸ MONEYVAL, 7th follow-up report by Lithuania (4th round of Mutual Evaluations) (MONEYVAL(2017)17-ANALYSIS).

⁶⁹ AML/CTF Law, art. 2(19).

(b) Reporting entities

80. The AML/CFT Law lists entities required to put in place systems to detect potential money laundering and make STR reports. These include financial institutions⁷⁰ and non-financial businesses and professionals such as accountants and auditors, lawyers, real estate agents, dealers in precious stones, metals, movable cultural goods and antiques, gaming companies, postal service providers and closed-ended investment companies.⁷¹ A range of different supervisory authorities are designated in the AML/CFT Law to oversee the implementation of anti-money laundering measures by reporting entities including the FCIS, Bank of Lithuania, Chamber of Auditors and Lithuanian Bar Association.⁷²

81. Following reforms in 2012, the Bank of Lithuania (BoL) is responsible for the supervision of all financial market participants for AML/CFT purposes. In order to make the supervision in certain cases more effective and coordinate the necessary actions with FCIS, BoL has signed a memorandum of understanding with FCIS which allows for exchange of information and joint inspections when necessary. The BoL conducts AML/CFT inspections based on the information gathered for prudential supervision purposes and a risk analysis of responses by financial institutions to annual AML/CFT questionnaires. Between 2013 and 2016, BoL and FCIS conducted a total of 20 inspections of financial institutions (7 of which were banks), imposing four written warnings, 8 resolutions to eliminate deficiencies, 1 license withdrawal, 1 removal of a manager and fining a management company EUR 8 688 and an e-payment institution EUR 11 000. BoL attributed this relatively low rate of inspections to the small financial market in Lithuania and the adequacy of its off-site supervisory tools, including the annual AML/CFT questionnaires. BoL is not bound to conduct inspections with any regularity and instead decides to conduct inspections on the basis of off-site analysis of data on entities' implementation of a risk-based approach, including: the size of the entity, nature and scope of the financial services (including delivery channels), client base, including the number of customers (including non-resident customers) and their turnovers, number of PEPs, risk scoring model, STR reporting, number of internal investigations, internal controls, geographical risk (transactions with third countries and (or) high risk jurisdictions). According to the BoL's "Risk Assessment System Concept of the Supervision Service", for large and systemically important financial institutions as well as for institutions presenting a higher risk of money laundering or terrorism financing, inspections are scheduled every 2 to 5 years. The Chamber of Auditors oversees the audit profession's implementation of AML requirements. To date, only two cases have arisen where auditors were considered to have unsatisfactory procedures to implement STR reporting requirements and in both cases they were required to eliminate deficiencies. The lead examiners are concerned that oversight and enforcement of STR reporting frameworks in Lithuania lack rigour and regularity.

(c) Sanctions for failure to report

82. Following amendments to the AML/CFT Law to transpose the Fourth EU AML Directive (2015/849) that entered into force on 13 July 2017, maximum sanctions for failure to report were increased from EUR 10 000 to EUR 5.1 million for natural and legal persons or 10 per cent of annual turnover for legal entities.⁷³ This now means that in Lithuania, sanctions for committing actual money laundering are far less than those for failing to report suspicious transactions (see section C.4(b)). At the on-site visit, FCIS representatives expected to see an increase in STR reporting as a result of these increased sanctions

⁷⁰ Defined in AML/CFT Law art. 2(7) as credit institutions, financial undertakings, electronic money and payment institutions, operators of currency exchange offices and crowdfunding platforms and investment companies with variable capital.

⁷¹ AML/CFT Law, art. 2(10).

⁷² AML/CFT Law, arts. 3 and 4.

⁷³ AML/CFT Law art. 39.

and the possibility of personal liability for managers and compliance officers. Lithuania referred to one instance in which a bank had been sanctioned for non-compliance with customer identification requirements.

(d) STR reporting in practice

83. In 2016, Lithuania counted seven national banks and eight foreign banks with local branches. Following the bankruptcies of AB Ūkio Bankas and Snoras Bank (see above, Part B.7(d) External Audit), the Lithuanian banking sector is made up mainly of subsidiaries of Scandinavian banks. On the basis of its October 2015 National Risk Assessment (NRA), Lithuania identified one high-priority risk to the financial sector: the increased use of technology in money transfer. MONEYVAL has previously expressed concerns about low levels of STR reporting by various categories of reporting entities and the lack of unified reporting form and guidance on reporting mechanisms.⁷⁴ As noted above, the FCIS updated its Order Guidelines following the recent amendments to the AML/CFT Law to include specific reference to international transactions with PEPs and beneficiaries or other representatives of offshore companies. In the context of Lithuania's most recent compliance report, MONEYVAL noted a significant increase in the number of STRs submitted by banks and casinos, a first STR from a currency exchange bureau and a rising number of STRs by notaries, indicating that the FIU's efforts to improve the reporting regime may have had a tangible impact. MONEYVAL nevertheless noted that the reporting level of many entities remained negligible.⁷⁵ Lithuania provided the following statistics on STR reporting:

Table 1: STRs received and transferred by FCIS 2012-2016

	2012	2013	2014	2015	2016
STRs received	257	402	335	480	541
Disseminated materials	162	154	154	203	207
Disseminated to STT	-	-	-	-	-

84. In June 2017, the MLPD received one STR related to the proceeds of bribing foreign public officials and transmitted it to the STT. MLPD representatives at the on-site visit remarked on the increasing usefulness of STR reports received and linked this to the FCIS strategy of encouraging quality rather than quantity in STR reporting. Despite the FCIS Order's emphasis on subjective suspicion, the FCIS prefers bank or financial institutions to conduct some level of analysis before making STR reports. This approach risks reporting entities' deciding that information that could otherwise constitute valuable criminal intelligence was not of a sufficient quality to make an STR report. Reporting by non-financial entities remains virtually non-existent; from Autumn 2017 the FCIS has included a topic on foreign bribery in the training programme for designated non-financial businesses and professions (DNFBPs).⁷⁶ One representative of the audit profession at the on-site visit indicated that in four years at an audit firm, there was only one instance in which an STR was reported.

⁷⁴ [Lithuania: Third Compliance Report](https://rm.coe.int/lithuania-3rd-compliance-report-9-april-2015/1680716963) (pp.9, 15) (available at: rm.coe.int/lithuania-3rd-compliance-report-9-april-2015/1680716963).

⁷⁵ MONEYVAL, 7th follow-up report by Lithuania (4th round of Mutual Evaluations) (MONEYVAL(2017)17-ANALYSIS).

⁷⁶ Lithuania's responses to the Phase 2 Questionnaire, p. 46.

*(e) Resources, awareness, and training**i) Supervisory authorities*

85. In its third and fourth round evaluations and subsequent compliance reports, MONEYVAL considered that Lithuania's FIU model did not comply with FATF standards as it lacked autonomy, leadership and resources to carry out its analytical, supervisory, investigative, awareness-raising and liaison functions and demonstrated weakness in analytical work. MONEYVAL further considered that the MLPD's tasks and responsibilities were diluted within the broader FCIS mandate to investigate economic and financial crime, leading to a reduced prioritisation of enforcement of the money laundering offence.⁷⁷ Within the MLPD, 12 people are responsible for STR analysis and the annual budget is approximately EUR 7m. Cash threshold reporting (cash transactions above EUR 15 000) undergoes automatic analysis by software which cross-checks various databases, however every STR is analysed by an FIU officer. FCIS representatives considered that human and financial resources were sufficient for them to carry out their role and that adequate investigative and analysis tools were available. STT provides annual training to FCIS officials. The FCIS, Police and GPO was undertaking trainings on enforcement of money laundering and corruption offences for law enforcement officials across Lithuania from October to December 2017. As noted above, the BoL is responsible for the supervision of all financial market participants for AML/CFT purposes. It currently has a staff of seven people to supervise AML/CFT systems, IT and operational risk in all financial market participants.

(ii) Reporting entities

86. In 2016, Bank of Lithuania carried out three AML/CFT training courses and two consultations with the banking sector on the implementation of the fourth AML Directive, the amendments to the AML/CFT Law and regulations on client identification. The FCIS provides annual trainings to the banking sector and is required by law to provide feedback to reporting entities on STR reports.⁷⁸ Discussions with financial sector representatives at the on-site visit indicated that there was a fruitful dialogue with the BoL and FCIS, which enabled useful feedback on the quality of the STRs as well as areas for closer attention. Training and awareness raising activities with the main banks appear to have been beneficial. Banks in general were aware of money laundering risks, noting in particular that they exercise care when dealing with "Eastern neighbours" and transaction descriptions that cannot be easily understood or do not provide a relative idea of the standard value or quantity of the product or service. However, there is a significant need for activities to alert other financial institutions, lawyers and accounting and auditing professionals to their AML/CFT reporting obligations, and in particular the risks of foreign bribery-based money laundering. In particular, the audit profession representatives at the on-site visit indicated that they would welcome guidance on dealing with foreign PEPs under the amended definition in the new AML/CFT Law. Lawyers present at the on-site visit indicated a very low rate of reporting by the profession, also noting that the FCIS had provided no guidance in this respect. The FCIS conducted trainings for the DNFBP sector, including the legal and audit professions, in October 2017.

(f) Exchange of information

87. Art. 5(4) of the AML/CFT Law requires the FCIS to forward to the competent domestic or foreign institutions information on possible criminal acts collected during the analysis of STR reports. The FCIS is also a party to the interagency Foreign Bribery Cooperation Agreement. FCIS representatives at the on-site visit indicated that there is no threshold for submitting STR information to pre-trial

⁷⁷ [Lithuania: Third Compliance Report](https://rm.coe.int/lithuania-3rd-compliance-report-9-april-2015/1680716963) (p.15) (available at: rm.coe.int/lithuania-3rd-compliance-report-9-april-2015/1680716963).

⁷⁸ AML/CFT Law, art. 5(9).

investigation agencies and that information can be shared even before the commencement of a pre-trial investigation. One-third of all STR reports disseminated relate to possible tax violations and are sent to STI; one-third to police and state security and one-third to local FCIS branches. The evaluation team noted a high rate of dissemination of STR reports by the FIU to pre-trial investigation authorities (other than the STT), relative to the number of STRs received (see Table 1, above). STT representatives at the on-site visit indicated that the law on criminal intelligence requires cooperation and information exchange between institutions involved in collection of criminal intelligence but that exchange is discretionary rather than automatic. FCIS passes all useful information to STT and also provides financial expertise in STT investigations, on request. With respect to international exchange of information, the FCIS has been a member of the Egmont Group since 1999 and may exchange information without the need for a memorandum of understanding (MOU). Nevertheless, the FCIS has entered into 20 MOUs with other FIUs.⁷⁹ Exchange of information is available both spontaneously and on request. Between 2012 and 2016, FCIS executed 1 083 foreign requests for information within an average period of 24 days and shared information spontaneously on 139 occasions.

Commentary

The lead examiners welcome the recent amendments to Lithuania's AML/CFT Law to implement the Fourth EU AML Directive. The Lithuanian authorities should use this occasion to raise greater awareness among reporting entities of reporting obligations, particularly with respect to foreign bribery-based money laundering, and the significant sanctions that now apply to failure to report. In particular, the FCIS should:

i) ensure that guidance and training materials (e.g. typologies) issued under the revised AML/CFT Law contain information on the identification and reporting of laundering of bribes to foreign public officials, and their proceeds;

ii) continue efforts to raise awareness among the legal and accounting and audit profession of amendments to the AML/CFT Law including in relation to STR reporting obligations and the risks of foreign bribery-based money laundering; and

iii) encourage broad STR reporting, including by striking a balance between its emphasis on quality rather than quantity of STRs, which could result in lower levels of reporting and FCIS missing out on valuable intelligence.

Inspections of financial institutions appear insufficient. The lead examiners recommend that the BoL allocate sufficient resources to ensure more rigorous supervision of reporting entities. The WGB should follow up on future enforcement of sanctions for STR reporting violations.

⁷⁹ Latvia, Estonia, Belgium, Czech Republic, Finland, Croatia, Poland, Slovenia, Bulgaria, Ukraine, Portugal, Russia, Serbia, Macedonia, Georgia, Kazakhstan, Kosovo, Italy, Panama and South Africa.

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

1. Investigation and Prosecution of Foreign Bribery

88. Commentary 27 to the Convention and Annex I.D) to the 2009 Anti-Bribery Recommendation requires that complaints of foreign bribery are seriously investigated by competent authorities and that adequate resources are provided to permit effective pre-trial investigations of bribery.

89. According to art. 118 of the Constitution pre-trial investigations shall be organised and directed, and charges on behalf of the State in criminal cases shall be upheld, by prosecutors. In practice, investigations are carried out either by the Prosecution Service or by a pre-trial investigation agency under the supervision of a prosecutor. CCP art. 165 designates the Police, the State Border Guard Service, the Special Investigation Service (STT), the Military Police, the Financial Crimes Investigation Service (FCIS), the Customs of the Republic of Lithuania and the Fire and Rescue Department as pre-trial investigation agencies. While not specifically defined by law, in practice the Prosecution Service's central office (the Prosecutor General's Office (GPO)) and the STT are primarily responsible for the investigation and prosecution of foreign bribery cases.

(a) Relevant Law Enforcement Authorities

(i) Special Investigation Service (STT)

90. The STT is a statutory law enforcement agency that is accountable to the President and the Seimas. It was set up in 1997 with a view to developing and implementing corruption prevention measures, and to detecting and investigating corruption related crimes. The Law on the Special Investigation Service (LSTT) is the main piece of legislation that defines the legal basis, composition, functions and powers of the STT. There is no reference to foreign bribery in LSTT and as the Phase 1 Report (para. 75) noted, there is no regulatory basis for the STT's jurisdiction to investigate foreign bribery cases.

91. Lithuania indicated that in 2012 the Prosecutor General instructed prosecutors to commission the STT to investigate all cases of "complex corruption"⁸⁰ and asserted in Phase 1 that foreign bribery cases would fall into this category. Moreover, in April 2017 the GPO and all pre-trial investigation agencies except the State Border Guard, Fire and Rescue Department and Military Police signed the Foreign Bribery Reporting Agreement and agreed to cooperate and exchange intelligence, to facilitate the STT's subsequent investigation of foreign bribery cases. It is unclear whether any agreements exist with respect to information sharing once a pre-trial investigation has been initiated. The STT is currently conducting the pre-trial investigations in Lithuania's two ongoing foreign bribery cases (see above Part A.1.(d)).

⁸⁰ Decision of the Prosecutor General No. 17.2-7188 (28 March 2012) "On the Pre-trial Investigations the Execution Whereof is Assigned upon the Special Investigations Service", addressed to chief prosecutors of regional prosecutor's offices.

92. In addition to preventing, detecting and investigating bribery, the STT also performs so-called “Integrity Checks” for candidates for positions in State or municipal institutions and enterprises.⁸¹ While the criteria for screening depend on the nature of the official position, art. 9 of the Law on Prevention of Corruption provides for examination of the candidate’s criminal record, information about dismissal from office or disciplinary penalties due to misconduct, tax inspections and other classified information that STT has collected or obtained from law enforcement authorities and other public bodies. Integrity Checks are mandatory for all candidates appointed by the President, the Seimas and its Chair, the Government or the Prime Minister, as well as for high ranking positions prescribed in art. 9(6) of the Law on Prevention of Corruption. Finally, the STT is in charge together with the Government of Lithuania for oversight of the National Anti-Corruption Programme. In this capacity, STT organises and participates in numerous anti-corruption research and awareness raising activities across Lithuania and with other national anti-corruption agencies.

93. The STT consists of five regional or field offices in Kaunas, Klaipėda, Panevėžys, Šiauliai and Vilnius, which also includes the Complaints Division. Although the Phase 1 Report (para. 78) notes that the STT has no official central office, the Service’s de facto headquarters are in Vilnius. With regard to foreign bribery allegations and complaints all regional offices must inform the headquarters and the GPO so that investigations are organised accordingly. The STT Director is responsible for the internal organisation of the Service including among others the establishment, reorganisation, and abolition of the STT offices, and the approval of the number of the staff (LSTT art. 9).

(ii) Prosecutor General’s Office (GPO)

94. The Prosecution Service is comprised of a central Prosecutor General’s Office (GPO) and five regional offices. The Service is headed by the Prosecutor General and his deputies within the remit determined by the Prosecutor General. Within the Prosecution Service, corruption investigations are organised and supervised by prosecutors from the Department for Investigation of Organised Crime and Corruption (OCCI). The OCCI has been established within the GPO but the five regional prosecution offices also have their own OCCI Department. All OCCI Departments are accountable to the OCCI at the GPO.

95. The Law on the Prosecution Service (LPS) governs the status, functions, structure, and framework of operation and control of the Prosecution Service. The LPS provides that the Prosecutor Service shall organise, coordinate, conduct, supervise and control pre-trial investigations. The GPO also has a mandate to prepare and implement national and international crime prevention programmes and contributes to the legislative drafting process on criminal justice issues (LPS art. 2).

96. The Competence Provisions of Prosecution Service and Prosecutors, approved by the order of the Prosecutor General, were amended in April 2017 to explicitly state that pre-trial investigations into foreign bribery should be handled only by OCCI prosecutors within the GPO. During the on-site visit Lithuania noted that if a foreign bribery investigation is opened by a regional office, it will be transferred automatically to the OCCI within the GPO.

⁸¹ Law on Prevention of Corruption art. 9; see also, STT Website: Integrity Checks (www.stt.lt/en/menu/integrity-checks).

(b) Resources and Training of Relevant Authorities

(i) Special Investigation Service (STT)

97. The STT annual budget is approved by the Seimas. For 2016 the budget was EUR 7.3 million, representing a 9.1% increase from 2014, and 23.5% increase from 2012.⁸² The STT budget is comparable to the FCIS budget, which for 2016 was around 7 million.⁸³ Furthermore, according to 2016 data the STT had 257 employees, of which 168 are dedicated to criminal intelligence and pre-trial investigations while the rest to prevention and awareness raising efforts. There was no significant change in the number of the STT employees in the period of 2012-2016 and there is no provision for the time being to increase this number despite the leading and multifaceted role of the STT in combating domestic and foreign bribery in Lithuania. However, the STT indicated that current resources are sufficient for this function but that additional resources would enable it to develop more sophisticated investigative techniques. All representatives at the on-site visit were unanimous in their praise for the STT's professionalism and efficiency.

98. In terms of expertise, the STT has in-house analytics and IT forensics experts but also outsources to external experts. For example, STT relies on FCIS for financial expertise and on institutions such as the Forensic Science Centre of Lithuania or the Lithuanian Police Forensic Science Centre for forensic analysis of accounting and IT.

99. Five STT officials participated in a study visit to the Munich Prosecutor's Office in July 2017 to receive specific training from experienced prosecutors in the field of foreign bribery. During the on-site visit the STT indicated that in line with the agency's 2018 priorities and strategic goals it is in the process of implementing a mandatory internal programme for educating new staff, including participation in relevant seminars and trainings abroad, and of developing targeted trainings on issues such as liability of legal persons and foreign bribery investigations.

100. With a view to learning from foreign jurisdictions and to enhancing the expertise of STT officers on corruption and foreign bribery, the STT has concluded cooperation agreements with foreign anti-corruption agencies including Moldova's Centre for Combating Economic Crimes and Corruption, Latvia's Corruption Prevention and Combating Bureau, Ukraine's National Anti-corruption Bureau and it is in the process of concluding cooperation agreements with Armenia's Special Investigation Service and the UK Serious Fraud Office.

(ii) Prosecutor General's Office (GPO)

101. Lithuania reports that the budget of the Prosecution Service does not have separately allocated funds for the purpose of ensuring activities of the OCCI. Accordingly, it was not possible for Lithuania to indicate the financial resources available to the OCCI. Currently, 62 prosecutors are employed at all central and regional OCCI Divisions. The OCCI within the GPO has 20 prosecutors with 7 of them specialising in corruption cases, 6 prosecutor's assistants and 11 chief specialists. Lithuania further provides that the number of prosecutors and other employees working at the OCCI and its regional Divisions has not changed in the period 2012-2016. Like the STT, the Prosecution Service does not have a permanent body of experts but has an annual budget allocation for the services of experts and consultants. The Prosecution Service was allocated EUR 7595 for external expertise in 2017.

⁸² STT website: 2015 Annual Report <https://www.stt.lt/en/menu/corruption-prevention/#turinys> (accessed 16 September 2017).

⁸³ Lithuania's responses to the Phase 2 Questionnaire, p. 118.

102. The Prosecution Service has been recently active with regard to foreign bribery training and capacity building for its prosecutors. In September 2016, the GPO circulated in line with the Regulations of Competence of the Prosecutor's Office and the Prosecutors an explanatory letter on "Investigating Cases of Bribery of Foreign Officials" which instructs all prosecutors to investigate bribery cases irrespective of the traditions and legal system of the country where the alleged act took place; whether such investigation would harm the economic interests of business entities of Lithuania; or whether an investigation for the same facts is ongoing in the country where the bribery took place. The letter refers to the principle of universal criminal jurisdiction and emphasises the importance of inter-institutional and international cooperation. Moreover, in December 2016, the OCCI organised a one-day seminar for the prosecutors of OCCI regional divisions on the Convention, its application, and the role of prosecutors in pre-trial investigations related to foreign bribery cases. Three GPO OCCI representatives also participated in the abovementioned study visit to the Munich Prosecutor's Office.

Commentary

The lead examiners welcome recent efforts by the STT and GPO to train investigators and prosecutors on foreign bribery investigations and prosecutions. They also commend STT on initiatives to establish cooperation agreements and mutual learning programmes with foreign anti-corruption agencies. Lithuania has demonstrated its willingness to cooperate with other countries and to set up networks for its law enforcement practitioners to improve its capabilities in investigating, prosecuting and sanctioning foreign bribery.

The lead examiners recommend that Lithuania assesses the STT budget, in light of its extensive mandate to prevent, educate, analyse, cooperate and investigate both domestic and foreign bribery, to ensure that adequate resources are provided to permit effective investigations of foreign bribery cases.

(c) Independence of Relevant Authorities

(i) Special Investigation Service (STT)

103. Art. 5 of the Convention requires that foreign bribery investigations and prosecutions are not influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved. Commentary 27 to the Convention adds that foreign bribery cases must not be subject to political influence.

104. With the adoption of the Law on the Special Investigation Service (LSTT) in May 2000, the STT became directly accountable to the Lithuanian President and the Seimas. Lithuania provides that the STT is a depoliticised and independent from the executive. To illustrate its independence, STT officers indicated during the on-site visit that the Service has recently conducted separate pre-trial investigations against a very popular politician and a senior advisor of the President without being influenced either by political considerations or by the public opinion. The first investigation is still ongoing while the latter was closed due to a court finding issues of obstruction of justice due to disclosure of classified information.

105. The STT Director is appointed and dismissed by the President with the consent of the Seimas. The Director is appointed for a term of five years, renewable once, and ultimately accountable to the President. The Deputy Directors are also appointed and dismissed by the President in coordination with the STT Director. LSTT art. 12 provides an exhaustive list of grounds for dismissal of the STT Director and Deputy Directors which include resignation; breach of oath; criminal conviction; ill health; transfer; and end of term. Both the current and previous STT Directors will have served for a full 5-year term. The STT Director is ultimately responsible for overseeing the pre-trial investigations conducted by STT officers and individual STT officers are accountable for those investigations to the supervising prosecutor. Moreover,

the STT Director is responsible according to for the administrative organisation of the STT, and therefore, has the power to establish, reorganise, and abolish units and offices, and determine the number of the staff of the Service (LSTT art. 9). The rest of STT staff is either officers or other public servants. The status of officers is governed by the LSTT and the STT Statute, while the status of other public servants employed at the STT is governed by the Law on the Public Service. From 2012-2016, only one STT officer was disciplined, with a warning, for negligent execution of duties. Lithuania has not provided further information with regard to the appointment, dismissal or discipline procedure of STT officers.

106. LSTT art. 16 prohibits state institutions and agencies or their employees, political parties, public organisations and movements, mass media, other natural or legal persons from interfering with operational and other official duties of STT officers. In addition, art. 17 provides that STT officers may only be prosecuted by the Prosecutor or Deputy Prosecutor General and arrested, detained or subject to body or property searches without the participation of the STT Director unless the STT officer is caught committing a crime in flagrante delicto. The LSTT treats information about STT officers who are carrying out or who have carried out special assignments as a state secret. Finally, STT officers and their family members may be provided with protection in the manner prescribed by the Law on the Protection of the Participants of the Criminal Procedure and of Criminal Intelligence, Officers of Judicial and Law Enforcement Institutions from Tampering. When carrying out pre-trial investigations, STT officers are organised and controlled by the supervising prosecutor and the STT Director. Civil society representatives at the on-site visit praised the work of the STT and its independence under current management. They suggested that clearer criteria on when the STT should open or refuse a pre-trial investigation would enable it to carry out its investigative functions with greater independence from undue influence.

(ii) Prosecutor General's Office (GPO)

107. The independence of prosecutors is enshrined in art. 118 of the Constitution, and CCP arts. 4 and 11. More specifically, art. 118(3) of the Constitution provides that, when performing their functions, prosecutors shall be independent and shall obey only the law. The CCP requires that prosecutor be independent of other state institutions, officers, political parties, political and non-governmental organisations and other persons in performing their functions. Any political, economic, psychological or social pressure or any other unlawful influence that might affect prosecutors' decisions is prohibited and any attempt to induce a prosecutor to take an unlawful decision is treated by the CPP as an unlawful interference with the prosecutor's activities. As a further safeguard of independence, CCP arts. 4 and 170 establish a relationship of accountability and control between on the one hand the prosecutor and the supervising prosecutor, and on the other hand the supervising prosecutor and the court. In fact, the supervising prosecutor may overrule the prosecutor's unlawful and unjustified decisions and the same applies to decisions of the supervising prosecutors and the court.

108. The Constitutional Court has consistently interpreted the principle of prosecutors' independence to include not only the abstinence of the legislative or executive powers and their officials from the performance of the functions of prosecutors but also the provision of sufficient guarantees of independence that allow prosecutors to discharge their functions properly. Violation of the CCP provisions on prosecutorial independence may qualify as "interference with the activities of a civil servant or a person performing the functions of public administration" under CCP art. 288. In 2012, the GPO submitted a complaint to the Seimas Commission for Ethics and Procedures in relation to a group of parliamentarians who sought to obtain detailed information about ongoing pre-trial investigations. The Commission investigated the complaint and ruled that these actions amounted indeed to undue influence over the performance of functions of the prosecutors.⁸⁴

⁸⁴ Decision No. 101-I-37 of 7 November 2012.

109. The Prosecutor General is appointed and dismissed by the President with the consent of the Seimas for a term of five years, renewable once, by virtue of art. 118 of the Constitution and LPS art. 22. Deputy Prosecutors General are appointed and dismissed by the President on the recommendation of the Prosecutor General. The term of office of Deputy Prosecutors General is in principle linked with the term of office of the Prosecutor General. The powers of the Prosecutor General are terminated upon the expiration of their term, attainment of retirement age, death or resignation. The Prosecutor General may be dismissed from office due to health reasons; loss of Lithuanian citizenship; breach of oath; or criminal conviction. The Prosecutor General cannot receive disciplinary sanctions for infringements of law, misconduct in office, actions demeaning a prosecutor's name or other breaches of the Code of Ethics for Prosecutors. If the Prosecutor General or the Deputy Prosecutors commit a service-related violation, which is considered as breach of oath, the President dismisses them by decree.

110. LPS art. 26 provides the procedure for admission to the Prosecution Service and for appointment to a prosecutor's post. A prosecutor can be dismissed by order of the Prosecutor General based on one of the grounds set out in LPS art. 44. According to LPS art. 41 a disciplinary sanction can be imposed by order of the Prosecutor General following a recommendation by the Ethics Commission or the Deputy Prosecutor General, chief prosecutor or deputy chief prosecutor of a GPO department or regional prosecutor's office. However, these recommendations are not binding to the Prosecutor General. Lithuania is taking further steps to improve independence safeguards for prosecutors. Lithuania reported draft amendments to the LPS after the on-site visit which would require prosecutors in charge of top-level corruption cases to be supervised by the Prosecutor General or a Deputy Prosecutor General and be exempt from dismissal or any other disciplinary sanction. The draft amendments passed a first vote in the Seimas on 19 September 2017. In accordance with established Working Group practice, any legislative changes will be evaluated if and when they enter into force.

111. Lithuania provides that between 2012 and 2016 the GPO Internal Audit Division conducted 181 investigations and in 76 cases concluded that prosecutors committed disciplinary offences. During the same period the Ethics Commission carried out 48 enquiries with regard to infringements of the Code of Ethics for Prosecutors, concluding 15 cases that the prosecutors infringed the Code. Regarding corruption-related infringements, a pre-trial investigation was initiated in February 2012 following an official inspection of four prosecutors from the Kaunas District Prosecutor's Office for conflict of interest, exertion of influence upon the prosecutor organising the pre-trial investigation, failure to opt out from the control of pre-trial investigation and provision of information about forthcoming decision in the context of pre-trial investigation. One prosecutor was demoted to a lower position and the other received a warning. However, the investigation of the other two prosecutors was discontinued by decision of the Prosecutor General as the statute of limitations for imposing disciplinary penalties had expired.

(iii) Requirements to report to Seimas

112. In recent years the Seimas has attempted to increase its control over the Prosecution Service. In 2013, arts. 206 (5) and (6) were incorporated to the Statute of the Seimas, requiring annual reports from agencies whose heads are appointed by the Seimas or whose appointment is subject to Seimas approval and granting the Seimas power to dismiss unilaterally their Directors, if the Seimas did not approve the agency's annual activity report. On 9 October 2013, the Seimas Committee on Legal Affairs tried to exercise this new power, drafting a resolution noting that the 2012 annual activity report of the Prosecution Service had not been approved⁸⁵ and recommending dismissal of the Prosecutor General. However, the resolution was not adopted by the Parliament. On 30 December 2015, the Constitutional Court found arts.

⁸⁵ Resolution of the Seimas (No. XII-528) "On the 2012 Annual Activity Report of the Prosecution Service of the Republic of Lithuania" of 1 October 2013.

206 (5) and (6) unconstitutional in that they vested the Seimas with the powers to either approve or disapprove the annual activity report and subsequently initiate a procedure of dismissal of the Directors. According to the Court, arts. 206 (5) and (6) created preconditions for possible pressure on the heads of the said agencies or unjustified interference with their activities.⁸⁶ Following the end of term of the Prosecutor General on 15 June 2015, the Seimas rejected two subsequent Presidential nominations for replacement in June and September 2016. The Seimas then explored unsuccessfully the possibility of amending the Constitution to empower the Seimas to nominate Prosecutors General, instead of the President. The President's third nomination was successful: in December 2016, the Seimas approved Prosecutor General Evaldas Pašilis for a five-year term.

113. The LSTT requires the STT to report in writing, at least twice a year, to the President and the Chairman of the Parliament about the results of the Service's activities and submit its proposals how to make the activities more effective (LSTT art. 9). Arts. 206 (5) and (6) of the Statute of the Seimas apply also to the STT Director. Following the Constitutional Court decision, the Parliament and its committees may continue discuss the annual reports and issue recommendations on STT priorities but no longer have a right⁸⁷ to approve or disapprove or apply disciplinary measures to the STT Director. On 15 November 2017 Lithuania submitted to the Seimas draft law No. XIII-1363 amending art. 206 (5) and repealing art. 206 (6) of the Seimas Statute. Pursuant to arts. 206 (2) and (3) the STT Director may nevertheless be required to report and answer questions posed by members of the Seimas and furnish other information concerning their activities.

114. Moreover, art. 2 of the Law of the Seimas Anti-corruption Commission vests the Commission with the power to investigate the phenomenon of corruption and cases ("atvejis") related to it, and control how the agencies are implementing the Commission's decisions. Representatives of the Parliament and the GPO noted during the on-site visit that in exercising its power of control the Commission calls the Prosecutor General to report to it quite often, sometimes even twice a month. Although art. 2(3) seems to prohibit the Commission from interfering with the activities of law enforcement authorities, where such activities are linked to their "direct functions" the lead examiners remain concerned about the impact of such oversight on the independence of the Prosecutor General. Furthermore, pursuant to arts. 8(1)(1) and 8(6) the Commission may decide to transmit material to law enforcement authorities for investigation and request information on the investigation progress. . As such, the Commission has recently called on the FCIS to investigate the possible connection of Lithuanian politicians involved in media revelations of bribery and money-laundering in connection with the so-called "Azerbaijani laundromat".⁸⁸

Commentary

The lead examiners are encouraged by the degree of independence of the STT, and its ability to carry out bribery investigations free from undue political influence. Lithuania should continue to safeguard STT's independence. With respect to the Prosecution Service, the lead examiners are concerned about previous attempts of the Seimas to exercise control over the Prosecutor General. Legal requirements, other than the annual activity reports, to report to the

⁸⁶ Decision of the Constitutional Court, Case No. 20/2013-1/2014.

⁸⁷ Pursuant to art. 107 of the Constitution and relevant jurisprudence "a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act (or part thereof) of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania."

⁸⁸ Armenpress, [Lithuanian parliament demands probe into Azerbaijani money-laundering scheme](#), 7 September 2017.

Seimas and to its Anti-Corruption Commission may expose both the STT Director and Prosecutor General to risks of political influence in bribery investigations and prosecutions. The lead examiners note that the Constitutional Court deemed art. 206(5) and (6) of the Statute of the Seimas unconstitutional and they are no longer applicable. They therefore recommend that Lithuania reflect the Constitutional Court decision in the Statute of the Seimas. The Working Group should follow up on the activities of the Seimas Anti-Corruption Commission, to ensure that the STT Director and Prosecutor General are not compelled to answer questions or provide information in relation to specific cases.

(d) The Conduct of Investigations

(i) The Commencement of Proceedings

115. CPP arts. 166, 169 and 171 provide that pre-trial investigations are opened by a prosecutor or by a pre-trial investigation agency upon receipt of a complaint, statement, or report of criminal activity, or identification of elements of criminal activity. A pre-trial investigation may be thus opened on the basis of mutual legal assistance (MLA) requests, and Lithuania states that the same applies to whistleblower or media reports. An anonymous report cannot be a ground to start a pre-trial investigation in and of itself, either by the STT or the Prosecution Service, but it would be treated as intelligence that could be used to gather sufficient additional information to open a pre-trial investigation. The two ongoing foreign bribery investigations were opened following information disclosed in MLA requests, international media sources, and criminal intelligence.

116. CCP art. 168(1) sets ten days from the receipt of the complaint, statement or report to open a pre-trial investigation. A prosecutor or an STT officer may refuse to open a pre-trial investigation in a limited number of circumstances set out in CCP arts. 3(1) and 168, including where there are no elements of a crime, where the alleged crime has been time-barred, the accused is dead or a minor. Lithuania states that according to CCP art. 2, the jurisprudence of the Supreme Court,⁸⁹ and the opinion of various legal scholars, the principle of legality prevails over the principal of discretion. Accordingly, a pre-trial investigation into foreign or domestic bribery must be commenced whenever there is indication of an element of a criminal offence, and there are no additional grounds that could be interpreted as granting discretion for the prosecutor or a pre-trial investigation agency to decide not to investigate the case. Upon refusal to open a pre-trial investigation, authorities must submit a reasoned report to the person or institution that filed the statement. However, a refusal by an STT officer must always be approved by the STT Director and can be appealed to a prosecutor. A refusal by a prosecutor can in turn be appealed to a pre-trial investigative judge. The decision of the pre-trial judge can be appealed to a higher court pursuant to CCP art. 168(4) and the procedures set out in CCP Part X. The decision of the higher court is final. Until 2016 there was no unified database to compile information about refusals to initiate pre-trial investigations either by prosecutors or pre-trial investigation officers. Between 1 January 2016 and 1 May 2017 prosecutors and pre-trial investigation agencies refused to open pre-trial investigations in 64 cases alleging bribery under CC art. 227 on the basis that no offence having the attributes of a crime could be established (CCP art. 3(1)(1)). To date, neither the STT or GPO has refused to initiate a pre-trial investigation into allegations of foreign bribery.

117. The OCCI within the GPO is the central and focal point for foreign bribery investigations. Where the STT receives a report of foreign bribery through its Complaints Division it has an obligation to notify the GPO within 24hrs after the opening of the investigation. Similarly, where foreign bribery is detected by

⁸⁹ Decision of the Supreme Court, Case No. 3K-3-374/2006 (05 June 2006); Decision of the Supreme Court, Case No. 3K-3-56/2007 (20 February 2007).

one of the STT's regional offices, the regional office must open a pre-trial investigation and notify the GPO. The same applies to regional prosecution offices. During the on-site visit Lithuania noted that if a foreign bribery investigation is opened by a regional prosecution office, it will be transferred automatically to the OCCI within the GPO. The suspect(s) may be charged at the outset of the pre-trial investigation if there is enough evidence to be satisfied with the relevant offence, during the course or at the end of the investigation.

(ii) Simplified procedures and self-reporting

118. The CCP provides the possibility for so-called “simplified procedures” to enable a more efficient resolution of criminal proceedings. The GPO makes regular use of these in domestic bribery cases: 88% of domestic bribery cases taken to trial between 2015 and 2016 were resolved either by way of penal order (CCP arts 418 to 425) or an application for hearing by expedited procedure⁹⁰ (CCP arts 426 to 432). Whereas simplified procedures present some features of plea bargaining e.g. the accused's consent is necessary to issue the bill of indictment, simplified procedures do not involve negotiation of the penalty. Moreover, simplified procedures are different from general procedures in that the circumstances of the case are sufficiently clear and do not require further examination by the court. The bill of indictment for both penal orders and expedited procedures is made public whereas penal orders are subject to an appeal. Pursuant to CCP art. 418, penal orders are available only for cases where the offender compensates for and eliminates the damage caused, and the criminal act is punished by a fine imposed as the only or alternative penalty (e.g. CC art. 2016 money laundering). Law No. XIII-653 introduced fines as an available penalty for the art. 227(3) aggravated foreign bribery offence. Therefore, penal orders will be available for prosecutions of all future cases of foreign bribery. During the on-site visit, GPO representatives and lawyers favoured the use of penal orders in foreign bribery proceedings with a view to increasing efficiency and flexibility.

119. CC art. 62 provides for mitigated sanctions when “a person who has committed a criminal act freely and voluntarily gives himself up or reports this act, confesses to commission thereof and sincerely regrets and/or assists pre-trial investigators and a court in detecting the criminal act and has fully or partially compensated for or eliminated the incurred property damage.” Discussions with prosecutors at the on-site visit indicated that CC art. 62 has been used in bribery and economic crime cases and could be used in future foreign bribery cases. Its use is limited; however, following Supreme Court jurisprudence that self-reporting should occur early in the proceedings and should not be influenced by evidence that has already been collected. The application of the principle of legality in Lithuania's criminal justice system may also be a deterrent to future defendants in foreign bribery cases self-reporting in accordance with CC art. 62. To date, companies have not self-reported under CC art. 62 and there are no instructions to prosecutors on how it should be applied generally or specifically to companies.

(iii) Cooperation and Coordination between GPO, STT and pre-trial investigation agencies

120. CCP art. 164 provides that prosecutors lead pre-trial investigations. Furthermore, pursuant to the Prosecutor General's Recommendations on the Allocation of Investigations to Pre-Trial Investigation Authorities, the GPO should conduct its own investigations into cases of significant importance to the public, unless the case is assigned to another specialised pre-trial investigation agency. Recommendations

⁹⁰ In its responses to the Phase 2 Questionnaire (p.101), Lithuania indicated that between 2015 and 2016, 1 247 domestic bribery cases were referred to court: 148 cases were referred to court with the Act of Indictment (all other cases were referred to court by way of a simplified procedure – either on the basis of the prosecutor's application for the issuance of a penal order or an application for the hearing of the case by applying the expedited procedure).

of the Prosecutor General are binding on all prosecutors and pre-trial investigation officers (LPS art. 16(2)). Contrary to Lithuania's statement at the time of the Phase 1 Report that in practice, prosecutors conduct pre-trial investigations themselves for various reasons including greater efficiency, competency, and impartiality, and due to the complexity of investigations,⁹¹ the STT is currently conducting both pre-trial investigations in Lithuania's first two foreign bribery cases (see above, Part A.2(d)).

121. Where the prosecutor decides to delegate the investigation of foreign bribery case to the STT, the prosecutor must supervise the course of the investigation, along with the STT Director who oversees STT officers. While the extent to which the supervising prosecutor is involved is ultimately at his/her discretion and depends on the proactivity of the investigator and prosecutor involved, certain key decisions, including whether to suspend, terminate, or take the case to trial, can only be made by the supervising prosecutor (CCP art. 170). During the on-site visit it was not possible to discuss with the prosecutors supervising the two ongoing foreign bribery investigations, however it became evident that while STT investigators could discuss cases with the supervising prosecutor, they appear to have significant autonomy in conducting investigations. Updating regularly the supervising prosecutor could ensure that all investigatory avenues are sufficiently and promptly pursued and that procedural safeguards are respected.

122. Police representatives at the on-site visit indicated that 60000 pre-trial investigations are opened in Lithuania each year and that 90% of these are opened by the Police. Therefore there may be instances when foreign bribery is reported to the Police, uncovered in the course of a separate pre-trial investigation, or revealed in an MLA request. STT representatives at the on-site visit indicated that pursuant to the Foreign Bribery Cooperation Agreement, every pre-trial investigation must notify the STT at the intelligence stage about the suspected foreign bribery. Should a pre-trial investigation into foreign bribery be opened by another investigation agency, the supervising GPO prosecutor would transfer the investigation on the foreign bribery element to the STT. The evaluation team considers that the centralisation of foreign bribery enforcement actions in the STT and GPO's OCCI should be further clarified with all prosecutors and pre-trial investigation agencies.

123. It is also important that the STT enhances coordination with other pre-trial investigations institutions. While the STT has jurisdiction over corruption cases, there may be instances where one case involves several offences (e.g. money laundering, false accounting or tax offences). In this instance, STT would likely have to work with the Police, FCIS or STI. This can be done by a decision of the supervising prosecutor either to assign the investigation to one or more pre-trial investigation agencies depending on the qualification of the primary offence or by establishing joint investigation teams depending on the complexity of the offence and the available resources. During the on-site visit STT investigators noted that cooperation between STT and FCIS may be informal. For example, the STT would often outsource financial investigations to FCIS, which is housed in the same building or seek the expertise of FCIS investigators who will be interviewed or questioned during the trial.

Commentary

The lead examiners note that investigations in Lithuania can be commenced based on a wide range of sources, and congratulate the STT for its proactivity in opening investigations into the two ongoing foreign bribery cases. They further congratulate the STT for its efforts to clarify its responsibility for foreign bribery investigations through the Foreign Bribery Cooperation Agreement. The lead examiners nevertheless consider that uncertainty remains over the roles of Lithuania's various law enforcement agencies in foreign bribery cases and recommend that further steps should be taken to increase awareness among prosecutors and other pre-trial

⁹¹ Phase 1 Report, para. 79.

investigation agencies that all information relating to suspected foreign bribery should be systematically transmitted to GPO's OCCI and STT for investigation. Lithuania should also clarify the respective roles of the GPO's OCCI and STT in overseeing and conducting foreign bribery investigations to ensure greater efficiency in these cases.

In Lithuania's legal system, STT investigators enjoy a great amount of autonomy and often act without consulting the supervising prosecutor on all investigative steps in a foreign bribery case. Nonetheless, an arrangement where the supervising prosecutor is regularly updated as an investigation progresses would help ensure all investigatory avenues are sufficiently and promptly pursued and that procedural safeguards are respected. The Working Group should follow up to ensure that STT investigators are in an open and constant dialogue with the supervising prosecutor in all foreign bribery cases. The Working Group should follow up on the use of penal orders, expedited procedures and self-reporting pursuant to CC art. 62 in foreign bribery cases, as case law develops.

(iv) *Special Investigative Techniques, Bank Secrecy and Commercial Secrecy*

124. All investigative techniques set out in the CCP are available in corruption and foreign bribery cases. The CCP allows for control, documenting and accumulation of electronic communications (art. 154); examination and seizure of property or documents (art. 155); covert investigations (art. 158); sting operations (art. 159); and secret and covert surveillance (arts. 160 and 160¹). Special investigative techniques can only be carried out by pre-trial investigation agencies, by request of the supervising prosecutor and following approval by a pre-trial investigative judge. CCP art. 161 requires notification of a person who has been subject to special investigative measures as soon as possible without prejudice to the success of the investigation. The STT has obtained company and bank information and interviewed witnesses in the context of its foreign bribery investigation in *Case #1* but has not used special investigative techniques against the company in question.

125. Civil Code art. 6.925 provides that “the bank shall secure the confidentiality of the bank account, the deposit, all related operations and the client.” The bank, its employees and any third parties in possession of such information are prohibited from divulging it, indefinitely. Bank secrecy is overridden when a bank is required by law to disclose information (Law on Banks art. 55(6)). Information protected by bank secrecy can be obtained during pre-trial investigations following approval from a pre-trial investigation judge (CCP art. 155). This information includes not only the bank's own information but information in the bank's possession regarding the financial situation, assets, activities, activity plans, debt obligations to other persons or transactions concluded with other persons. The law specifies that entities, enterprises or organisations that refuse to provide the requested information or documents to the prosecutor may be punished by a fine (CCP art. 163). The CCP and Law on Criminal Intelligence override the provisions of the Law on Banks (Law on Banks art. 55(12)). Moreover, representatives of the Prosecution Service noted that they do not face difficulties in obtaining such information and there never been refused information by a bank. In May 2017, the LSTT was further amended to allow the STT to obtain bank records of legal persons in a more effective and speedy manner and without approval from a pre-trial investigation judge. The STT may also request to obtain tax information pursuant to LTA arts 30 and 127(2) (see also above, Part 6 (d)). When the commercial value of information relies on the fact that it is unknown to third parties, company boards have the power to classify it as covered by commercial or industrial secrecy (Law on Companies art. 34(3)). This information may still be obtained by virtue of CCP art. 155.

(v) *Time Limits, Suspension and Termination of Investigations*

126. CCP arts. 172 and 176 provide that pre-trial investigations must be completed within the shortest time possible and within three months for misdemeanours, six months for less serious offences, and nine

months for serious and grave offences. Given the complex nature of foreign bribery investigations, the pre-trial investigation time limits are too short. Moreover, as shown in Table 2 below the majority of STT pre-trial investigations between 2014 and 2016 took longer than 12 months and required at least one, if not several, renewals. According to LPS art. 15 where a case is “highly complex” the investigation time limit may be extended indefinitely on approval of a senior prosecutor (one level above the prosecutor supervising the investigation). Lithuania provided during the on-site visit that the approval is almost automatic and that it has never been denied in practice.

Table 2: Duration of STT pre-trial investigations

Duration of pre-trial investigation (STT)	2016	2015	2014
From 0 to 12 months	10	11	16
From 12 to 24 months	6	5	7
From 24 to 36 months	9	4	5
From 36 months	9	5	4

127. The STT is taking measures to reduce the length of its investigations, including systematic monitoring and control of the investigation process by identifying bad practices, determining their causes, risk factors, and by drafting recommendations based on the performed analysis and case studies. Lithuania reported after the on-site visit that in the first half of 2017 only 17% of all investigations exceeded 24 months. The six-month pre-trial investigation period has been extended four times in *Case #1* and three times in *Case #2*. In both of these cases, the STT chose to investigate foreign bribery under art. 227(2) (bribes for desired illegal action or inaction), which is categorised as a less serious offence and therefore has a six-month time limit for the pre-trial investigation. The STT did not investigate for the art. 227(3) aggravated offence (and therefore benefit from a longer, nine-month time limit) because of difficulties in establishing the amount of the bribes and satisfying the EUR 9 415 (250 MSL) threshold. This situation illustrates a significant disadvantage of Lithuania’s model for the offence, where applicable procedures and sanctions depend on a calculation of the amount of the bribe paid. Furthermore, it is likely to arise in future, given the increase in unitary value for MSLs effective 1 January 2018, which will raise the threshold for aggravated bribery to EUR 12 500.

128. If an investigation is not complete within six months from the first interview, the suspect (or her/his representative or legal counsel) may file a complaint with a pre-trial investigation judge who can then decide whether to dismiss the complaint; instruct the prosecutor to complete the investigation within a prescribed time limit; or terminate the pre-trial proceedings (CCP art. 215). To reach a decision, the pre-trial investigative judge may consider inter alia the stage of the investigations, the actions taken and the expertise sought, the reasonableness of the investigative means and whether there was an undue delay. Lithuania stated during the on-site visit that during the past five years three pre-trial investigations were terminated under CCP art. 215, however these did not involve charges of corruption. If the pre-trial investigation judge sets a prescribed time limit, the prosecutor may request an extension of that limit and can also appeal the decision of the pre-trial investigation judge to a higher court. A pre-trial investigation must be suspended or terminated where the prosecutor or the STT officer has exhausted all procedural steps but failed to identify the person who committed the criminal offence (CCP art. 3¹). A decision to suspend a pre-trial investigation can only be taken by the supervising prosecutor when the pre-trial investigation is being conducted by STT. Depending on the circumstances, a pre-trial investigation may be terminated by a prosecutor, pre-trial judge, or a pre-trial judge approving a prosecutor’s decision.

Commentary

The lead examiners remain concerned that the basic three, six and nine-month pre-trial investigation time limits are too short for the complex nature of foreign bribery investigations. The possibility for defendants to apply for termination of the pre-trial investigation within six months of their first interview could mean that, in aggravated foreign bribery cases, the defendant can apply for termination of the investigation before the expiry of the basic nine month time limit. Furthermore, CCP art. 215 does not set out specific grounds for termination of a pre-trial investigation, other than “excessive length”. The lead examiners recommend that the Working Group follow up on termination of pre-trial investigations and the application of CCP art. 215 in practice in foreign bribery cases.

(f) Courts

129. The Lithuanian court system consists of the Constitutional Court of the Republic of Lithuania (governed by the Law on the Constitutional Court), three-instance courts of general jurisdiction and two-instance courts of special (administrative) jurisdiction, governed by the Law on Courts (LOC). There are 49 district courts in Lithuania, which adjudicate at first instance. District court judgments can be appealed to the five regional courts, which can also hear cases at first instance when they are assigned to their jurisdiction. Regional court decisions, made while hearing cases at first instance can be appealed to the Court of Appeal of Lithuania; the Supreme Court of Lithuania is the final cassation court in Lithuania. A jurisdictional reform approved in 2013 and which will enter into force on 1 January 2018, will reduce the number of district courts to 12 and the number of administrative courts to two. The Constitutional Court has jurisdiction in cases challenging the constitutionality of actions of the legislative or the executive branches of government. As noted above in the context of liability of legal persons, the Constitutional Court also provides interpretative guidance in the context of its determination of the constitutionality of certain provisions.

130. Lithuanian judges were offered seminars on confiscation, liability of legal persons, corruption and economic crimes in the context of training programs approved by the Judicial Council between 2013 and 2016. Participation in these seminars was optional and it appears there was no specific training on the foreign bribery offence. Representatives of the judiciary at the on-site visit were all aware of the recent amendments to the Criminal Code and considered that these would facilitate interpretation of the foreign bribery offence in future cases. As noted below (Part C.6), sanctions imposed by the courts in domestic active bribery cases fall below the average provided for the relevant offence. Representatives of the judiciary at the on-site visit considered that this was because the public official who accepts a bribe should receive a harsher penalty than the citizen who pays the bribe to influence that official. Should this reasoning be applied to foreign bribery cases, it could create an obstacle to effective, proportionate and dissuasive sanctions. Judges at the on-site visit indicated that specific training on the Convention and foreign bribery would be beneficial. Lithuania indicates that the National Courts Administration has planned specific training on the foreign bribery offence and liability of legal persons for 2018.

131. Supreme Court judges are appointed by the Seimas on the nomination of the President; the candidates to a judicial office of the Supreme Court are selected and nominated by the President of the Supreme Court (LOC, art. 73). Court of Appeal judges are appointed by the President from among the persons entered in the register of persons seeking judicial office, with the concurrence of the Seimas and advice of the Judicial Council (LOC, art. 72). District, regional and regional administrative court judges are appointed, promoted, transferred and dismissed by the President, on advice by the Judicial Council. The Judicial Council is an independent body, composed of 23 judges from all levels of the courts of general jurisdiction and courts of special jurisdiction appointed for four year terms by the General Meeting of Judges. The Presidents of the Supreme Court, Court of Appeal and Supreme Administrative Court are *ex officio* members. Affirmative advice by the Judicial Council to appoint, promote or transfer a judge are not

binding on the President, whereas negative advice (namely to dismiss, or not to appoint, promote or transfer) are binding. Judges at the on-site visit indicated that in the past five years, the Judicial Council rejected between five and ten judicial candidates. Decisions of the Judicial Council must be in writing, reasoned and made public on the website of the National Courts Administration within three days of their adoption.

132. Candidates for judicial positions are chosen by majority vote in the Selection Commission of Candidates to Judicial Office (Selection Commission), which is composed of three judges and four lay members appointed by the President for a three-year term. Following the selection procedure, the Commission provides the President with reasoned recommendations for candidates. The Commission's recommendations are not binding on the President and candidates who disagree can appeal in writing within ten days, directly to the President. A judicial candidate has never appealed to the President, to date. The STT also conducts "integrity checks" on candidates at the request of the President (see above, Part C.1(a)). In its 2014 Fourth Round evaluation report, the Council of Europe's Group of States against Corruption (GRECO) recommended that Lithuania review the method for appointing members of the Selection Commission in order to strengthen its independence and that the procedure for appealing against the Commission's decisions be consolidated. GRECO further recommended that the Judicial Council be given a more important role in the procedure for selecting judges. This recommendation was considered not implemented after Lithuania's most recent Compliance Report in April 2017.⁹² At the on-site visit, judges indicated that in early 2017 the Judicial Council had created a committee to consider amendments to the Law on Courts inter alia, to implement GRECO recommendations to the extent permitted by constitutional law. The preliminary draft amendments have not yet been submitted to government but reflect an initial agreement between the President's Office and members of the Judicial Council to modify the system such that the Judicial Council appoints members of the Selection Commission and sets criteria for appointing judges. With respect to any role for the Judicial Council in reviewing decisions of the Selection Commission, judges indicated that this would go beyond the role of Judicial Council as defined in the Constitution.

133. With respect to disciplinary proceedings and dismissal of judges, the Judicial Council, the Judicial Ethics and Discipline Commission, a court president or any person with knowledge of the alleged misconduct, may submit a reasoned petition for bringing a disciplinary action against the judge to the Judicial Ethics and Discipline Commission (LOC, art. 84(4)). The Judicial Court of Honour presides over disciplinary actions against judges and can impose sanctions ranging from censure to severe reprimands (LOC, art. 87). The Judicial Court of Honour may request the President or Seimas to dismiss the judge from office according to the procedure established by law or suggest to the President to apply to the Seimas to institute impeachment proceedings against the judge (LOC, art. 86(2)). Decisions of the Judicial Court of Honour may be appealed to the Supreme Court. Judges at the on-site visit indicated that it was very rare that the Judicial Court of Honour would recommend dismissal of a judge.

Commentary

⁹² GRECO, recommendation vii (i) and (ii). The 4th Round GRECO Evaluation report notes that in 2013, 60 vacancies were filled and the President disagreed with the recommendations of the Commission in five cases: in one case, she appointed another candidate from the list of suitable candidates and in the other four cases, she decided not to appoint any of the candidates proposed and to repeat the election procedure. In 2014 (up to 9 September), 26 vacancies were filled and the President decided in two cases to appoint another candidate than the first candidate suggested ([Greco Eval IV Rep \(2014\) 5E](#)). GRECO Fourth Evaluation Round, Compliance Report: Lithuania, 24 April 2017 (GrecoRC4(2017)3).

The lead examiners recommend that Lithuania provide training to its judiciary on the Convention and in particular, its definition of the foreign bribery offence and its requirement for effective, proportionate and dissuasive sanctions. With respect to independence of the judiciary, the lead examiners recommend that Lithuania pursue its reform of the procedure for selecting and appointing judges, to strengthen the independence of the Selection Commission and the role of the Judicial Council.

(g) Mutual Legal Assistance (MLA) and Extradition

134. Art. 9(1) of the Convention requires Parties to cooperate with each other to the fullest extent possible in providing prompt and effective MLA in criminal investigations and proceedings, and non-criminal proceedings against legal persons, within the scope of the Convention. Lithuania's obligation under the Convention is two-fold as in conjunction with Art. 5, Lithuanian authorities must also be able to seek and use evidence from abroad in an efficient manner in order to effectively investigate and prosecute bribery and corruption.

(i) Mutual Legal Assistance

Legal Framework for MLA

135. Lithuania's framework to provide and seek MLA in criminal matters is set out in CCP art. 66 *set seq.* and remains unchanged since Phase 1. Lithuania may request and provide MLA based on bilateral and multilateral treaties, and in the absence of a treaty, based on reciprocity (Phase 1 Report para. 109). In such cases, the MLA request must not violate the Constitution, domestic legislation, or fundamental principles of criminal procedure. Lithuania transposed EU Directive 2014/41/EU regarding the European Investigation Order in criminal matters, and the implementing legislation came into force on 15 June 2017. During the on-site visit Lithuania clarified that its authorities may treat MLA requests from EU countries that have not yet transposed the Directive as Investigation Orders, and will execute them accordingly. Lithuania does not make MLA conditional on a minimum penalty.

Dual criminality

136. As described in the Phase 1 Report (para. 114), Lithuanian law does not make the provision of MLA conditional on dual criminality. However, Lithuania notes that it may still assess dual criminality for non-treaty based MLA requests seeking coercive measures, or special investigative techniques and where a court order is necessary or in cases where the type of requested assistance is not envisaged by the CCP. Lithuania provides that in determining the existence of dual criminality, authorities apply the conduct-based approach whereby the factual circumstances and not the legal qualification of the offence is important. Accordingly, if the offence for which MLA is sought constitutes only an administrative offence under Lithuanian law, Lithuania will still execute the request to the extent that the actions do not contravene its laws and the fundamental principles of criminal procedure. Regardless, Lithuania will abide by the conditions on dual criminality set out in the treaty under which MLA is sought. Therefore dual criminality is deemed to exist for all offences within the scope of the Convention.

Bank secrecy

137. Art. 9(3) of the Convention states that a Party shall not decline to render MLA within the scope of the Convention on the ground of bank secrecy. As explained in Phase 1 (para. 116), bank secrecy is not a justification for Lithuanian authorities to refuse the execution of an MLA request. The Law on Banks provides that bank secrecy may be lifted where it is necessary for institutions to carry out, among other things, pre-trial investigations, criminal intelligence, intelligence, tax administration, and supervision of financial markets (Law on Banks, art. 55(6)). The provision of MLA is understood to be among the

reasons for lifting bank secrecy. During the on-site visit GPO representatives noted that they have not faced difficulties in obtaining bank information from either banks or courts to respond to a foreign MLA request.

MLA procedure

138. Lithuania has in place a streamlined procedure for requesting and executing MLA requests. The competent authorities for incoming and outgoing MLA requests depend on the legal basis for the request. As such where the bilateral or multilateral treaty permits, and Lithuania has not stated otherwise, MLA requests from and to Lithuania may be made during pre-trial investigations directly between pre-trial investigation agencies or prosecution services. In principle, the STT is responsible for MLA in corruption cases. At the trial stage requests from and to Lithuania may be made directly between courts. Executed MLA requests may also be transmitted directly between the courts, prosecution services, and pre-trial investigation authorities. When the bilateral or multilateral treaty does not allow for direct transmission or when Lithuania has reserved its right, requests during pre-trial investigations are transmitted through the GPO and at the trial stage through the MOJ which both function as a Central Authority. Finally, requests based on reciprocity and their responses are transmitted through diplomatic channels (i.e. foreign ministries) to the Central Authority.

139. Requests received through the GPO are reviewed by the competent prosecutor and forwarded either to the particular regional or district prosecution office or the competent law enforcement institution for execution (e. g. area of residence of witnesses who are requested to be interviewed, location of the company which is in possession of documents requested to be provided) or executed by the GPO itself. Where an order by the pre-trial investigation judge is required, the prosecutor will request authorisation following the same procedure as for domestic criminal proceedings. Similarly, requests received through the MOJ are reviewed and forwarded to the competent court or the GPO for execution. Finally, requests received through the MOFA are forwarded to the Central Authority, which then follows the process described above.

140. Lithuania can provide all tools available for domestic criminal investigations in response to an MLA request and undertake procedures not included in the CCP, including certain special investigative techniques, where they are included in the relevant treaty and do not violate its Constitution and relevant laws. It is possible to send prosecutors abroad to participate in execution of MLA requests and this has been done in practice. Finally, Lithuania notes that in addition to formal MLA, its authorities can spontaneously exchange information with foreign authorities. However, such exchange requires the prosecutor's approval if it occurs during the pre-trial investigation.

MLA in practice

141. To date Lithuania has not received or sent MLA requests based on the Convention. However, it notes that the 1959 the European Convention on Mutual Legal Assistance in Criminal Matters is the main legal basis for MLA and that in 2015-2016 it received 1 828 requests (for all offences) based on international or bilateral treaties. Neither the GPO nor the MOJ keep statistics on the number of executed or rejected requests, the types of requested assistance and the criminal offence on which the MLA request was based. It is therefore, not possible to assess in practice Lithuania's responsiveness to providing MLA in bribery cases. Nevertheless, Lithuania indicated that most of the requests are executed immediately. After the on-site visit, representatives of the MOJ and GPO estimated the average time of execution at 3 months. The GPO has also recommended that MLA requests are responded within a maximum timeframe of 4

months⁹³. Both the MOJ and GPO indicated that time limits in the MLA request are always respected and urgent legal assistance is provided without delay. Finally, Lithuania indicates that it makes use of the European Judicial Co-operation Unit (Eurojust) and the European Judicial Network (EJN) and often consults with the competent authorities of Parties to the Convention and other jurisdictions in order to facilitate international cooperation.

142. Lithuania provided information on three foreign bribery cases where it executed MLA requests from other Parties to the Convention. In all three instances, the average time to respond to the MLA was between 1 and 3 months and the competent authorities were able to execute the types requested assistance, including the provision of bank information and other special investigation techniques. In one instance Lithuanian authorities consulted the requesting authorities directly in order to avoid any negative consequences of parallel processes. Lithuania has also been proactive both in opening domestic pre-trial investigations following information disclosed in MLA requests and in seeking evidence from abroad when it conducts its own investigations on foreign bribery. More specifically, in *Case #1* the STT opened a domestic investigation in March 2016 following the information disclosed in a MLA request from the United States on the same case. It subsequently, transmitted two MLA requests from the United States in April and May 2016. The STT has also requested assistance from Russia in *Case #2* during the relevant pre-trial investigations.

Commentary

The lead examiners congratulate Lithuania on its demonstrated capacity to provide prompt and effective MLA in criminal investigations and proceedings. Lithuanian authorities also appear to have proactively pursued MLA in their current foreign bribery investigations. Nevertheless, given the absence of comprehensive statistics, the lead examiners are unable to fully evaluate Lithuania's system for seeking and providing MLA. They therefore recommend that Lithuania maintain comprehensive statistics on the offences involved, assistance requested, and time required for execution of all incoming and outgoing MLA requests so as to identify more precisely the proportion of those requests that concern bribery of foreign public officials.

(ii) Extradition

Legal Framework for Extradition

143. Lithuania's framework to provide and seek extradition is set out in Constitution art. 13 and CCP art. 9. Lithuania may seek and provide extradition based only on multilateral and bilateral treaties, including the Convention which is considered a legal basis for extradition relating to foreign bribery, the European Arrest Warrant (EAW) and the Surrender Procedures between Member States. Where no legal basis for extradition exists, Lithuania can request extradition based on "good will" but cannot respond to an extradition request on this basis (i.e. the principle of reciprocity does not apply). Lithuania cannot extradite its citizens unless "an international treaty of the Republic of Lithuania establishes otherwise." However as identified in Phase 1, due to Lithuania's restrictive legal framework and the reservation under several international instruments, Lithuanian nationals can only be extradited pursuant to Lithuania's bilateral treaty with the United States, or an EAW.

⁹³ Explanatory Note on Execution of Requests for Legal Assistance from the Authorities of Foreign States ref. No. 17.9-3069 of 9 October 2014.

144. Lithuania explains that CCP art. 2 makes the investigation of any “criminal activity” obligatory and CCP art. 7 establishes the principle of universal jurisdiction. Therefore prosecutors and pre-trial investigation institutions would be required to take “all measures provided by law” to investigate a case where extradition is rejected on the basis of nationality “within the shortest time possible” regardless of the place of residence of the offender or the place of commission of a crime. In practice however, and as explained during the on-site visit, the opening of domestic investigations it is not always easy due to territorial jurisdiction issues and lack of information. Lithuania may also request that the foreign state transfer any criminal proceedings to Lithuania.

Extradition in practice

145. To date Lithuania has not received or sent extradition requests based on the Convention. The MOJ sent seven extradition requests in 2016, one of which was based on the UN Convention against Transnational Organized Crime. The request was executed and the person was surrendered to Lithuania 1.5 years after the initial request. The GPO issued nine extradition requests in 2016, of which three requests have already been executed. The GPO received eleven extradition requests in 2016 and has already executed two. The remaining nine requests are either pending or have been rejected. Lithuania could not provide information on the grounds for rejection. It noted however, that the most common grounds for refusal are the expiration of the statute of limitations or the conviction judgment, and asylum or temporary protection. To date, Lithuania has not sent or received an extradition request in a corruption case.

Commentary

The lead examiners recommend that Lithuania take all necessary measures to ensure that where a request for extradition of a person for suspected foreign bribery is prohibited or is refused solely on the ground that the person is a Lithuanian national, the case is submitted to the competent authorities for purposes of investigation, and prosecution, as appropriate .

2. The Offence of Foreign Bribery

146. Bribery of foreign public officials is criminalised in Lithuania through the combined application of CC arts. 227 (Active Bribery) and 230 (Interpretation of Concepts). In an effort to comply with the Convention, both articles were amended by Laws No. XII- 2048 (2015), XII-2780 (2016) and XIII-391 (2017), to fine-tune the definition of foreign public official, define foreign state, clarify the *mens rea* element, repeal the defence of “effective regret”, and criminalise the bribery of foreign public officials through intermediaries. At the time of its Phase 1 evaluation, the Working Group considered that Lithuania’s legislation to criminalise foreign bribery largely conformed to the standards of the Convention. The Group nevertheless identified several issues that warranted closer analysis in the context of the Phase 2 evaluation.

147. Since Phase 1, Lithuania has amended the decree setting out the monetary unit for the MSL, the basis for calculating monetary fines in the Criminal.⁹⁴ As of 1 January 2018, the MSL will be increased from EUR 37 66 to 50. This will mean that, as of 1 January 2018, the threshold for the aggravated foreign bribery offence will increase from bribes of minimum EUR 9 415 to EUR 12 500 euros (250 MSLs) or more. Bribes below this threshold will need to be assessed to determine whether they are bribes in return for legal or illegal actions or inactions. As noted above (Part C.1(d)(v)), the STT’s inability to benefit from the longer pre-trial investigation time limit afforded to the aggravated foreign bribery offence in its two

⁹⁴ Resolution on the amendment of resolution no 1031 of the Government of the Republic of Lithuania of 14 October 2008 “on the approval of the basic amount of penalties and sanctions” 30 August 2017, No 707.

ongoing investigations due to difficulties quantifying the amount of bribes illustrates a significant disadvantage of Lithuania's model for the offence, where applicable procedures and sanctions depend on a calculation of the amount of the bribe paid.

(a) *Elements of the Offence*

(i) *Intentionally*

148. In Lithuania's Phase 1 evaluation, the Working Group decided to follow up on the interpretation and practical application of the *mens rea* element of the bribery offence. Direct intent is the applicable mental element for the foreign bribery offence. CC Article 15 provides the relevant elements of direct intent for the purposes of proving the foreign bribery offence, namely when a person is aware of "the dangerous nature of the criminal act" and "desire[s] to engage therein."

149. Lithuania's Phase 1 report referred to Supreme Court jurisprudence which required proof of (i) how the actions of the briber were perceived by the public official; and (ii) the specific advantage sought by the briber.⁹⁵ Amendments to the Criminal Code in June 2017 sought to clarify the requisite intent for the foreign bribery offence by introducing CC article 227(6), which provides "A person, who carried out the actions provided for in paragraphs 1, 2, 3 or 4 of this Article is liable under this code both for seeking by bribe of a specific act or omission of the civil servant or person equivalent thereto in exercising his powers and for an exceptional position or a favourable attitude of this person, also regardless how his actions were perceived by a civil servant or person equivalent thereto." Judges at the on-site visit indicated that this provision would considerably influence future case law by relaxing the standard of proof in bribery cases.

150. CC art. 15 requires that the defendant be aware of the "dangerous nature of the criminal act" to prove direct intent. As noted in the Phase 1 Report, this could prove difficult for prosecutors in foreign bribery cases, particularly where public perceptions of the impact of the bribery may vary between Lithuania and the country or countries where the bribery took place.⁹⁶ At the on-site visit, GPO representatives insisted that ignorance of the law was no excuse and that the presumption is that if a person commits an offence, s/he is aware that it is dangerous. In some cases, defence counsel does raise the non-dangerous nature of the offence to downgrade the charges from criminal to administrative offences (e.g. false accounting offences). This could have an impact on the effective, proportionate and dissuasive nature of subsequent sanctions involved.

151. While judges confirmed that the requisite element of intent for the foreign bribery offence was direct intent, GPO and MOJ representatives considered that *dolus eventualis* or "indefinite intent," a sub-category of direct intent which is not codified but developed in Lithuanian jurisprudence, was equally applicable in foreign bribery cases. Lithuania referred to a Supreme Court decision where a defendant was held liable for abuse of office, through the imputation of indefinite intent, without knowing the exact actions that would be carried out in his favour.⁹⁷

(ii) *To a foreign public official*

152. Lithuania's definition of foreign public official includes persons employed "at a legal person or any other organisation, which is controlled by a foreign state" (CC art. 230(2)). The Criminal Code does not set out the degree of state control required to meet this definition. The Phase 1 report refers to relevant

⁹⁵ Lithuania: Phase 1 Report, paras. 8 and 9.

⁹⁶ Ibid, at para. 10.

⁹⁷ Supreme Court, Case No. 2K-440/2010 (12 October 2010).

provisions in other legislation which define control as exercising a “decisive influence”, including by holding a majority of the voting rights or authorised capital. It notes Lithuania’s assertions that the term would be interpreted broadly enough to encompass all kinds of dominant influence, whether direct or indirect, as required by Commentary 14 to the Convention. The Working Group nevertheless decided to follow up the coverage of SOE employees as public officials in future evaluations. In its responses to the Phase 2 Questionnaire (pp. 65-66), Lithuania anticipated that in foreign bribery cases, courts would assess whether the SOE employee’s position ensured “implementation of a public interest.” At the on-site visit, MOJ representatives opined that in practice, each case would need to be evaluated by the court, which would refer to the laws of the foreign state where the SOE is based, to see how it is governed. This approach could be contrary to the recently amended CC art. 230(2) requirement for an autonomous definition of foreign public official⁹⁸ as well as Commentary 3 to the Convention.

(iii) Performance of official duties

153. The Lithuanian Criminal Code differentiates between bribes for a lawful (art. 227(1)) and unlawful (art. 227(2)) “act or omission” of the public official “in exercising his powers.” Law XIII-391 (2017) inserted CC art. 230(5) which defines “exercise of powers” for the purpose of the active bribery offence as any use of the public official’s position “irrespective whether or not it is within his authority prescribed by the legal acts.” Case law pre-dating this amendment demonstrated a narrow interpretation of the exercise of powers and cast doubt as to whether bribes for acts/omissions outside an official’s authorised competence would fall within the scope of the offence.⁹⁹ The Working Group decided to follow-up on the interpretation and practical application of art. 230(5) in future evaluations. While prosecutors, judges and MOJ officials were all well aware of the recent modifications to the Criminal Code, it is too early to assess the practical implementation of these provisions which apply only to foreign bribery committed since their entry into force on 1 June 2017.

Commentary

The lead examiners congratulate Lithuania on the recent reforms to the foreign bribery offence but note that it is too early to assess their application and interpretation in practice. The lead examiners note a divergence in opinions on the applicable mental element for the foreign bribery offence. They recommend that Lithuania undertake the necessary measures to raise awareness among prosecutors and judges of the requisite intent for the foreign bribery offence (CC art. 227(5)). In the absence of case law examining the new requirements for an autonomous definition of foreign public official, the Working Group will follow up the practical application of CC art. 230(2), particularly in cases of bribery of SOE officials.

⁹⁸ Law XIII-391 (2017) modified CC art. 230(2) requiring the definition of public official to be interpreted “irrespective of [the official’s] status under the legal acts of a foreign state or an international public organisation.”

⁹⁹ Decision of the Supreme Court, Case No. 2K-P-181/2008 (28 October 2008), finding that bribes given to a public official “not for concrete action or inaction in exercise of powers ... is qualified as an abuse of office (Article 228 of the Criminal Code)”; Case No. 2K-7-48(2009) (10 February 2009), requiring that “the bribe is specifically related to exercising powers of a civil servant or a person equivalent to a civil servant”; Case No. 2K 207/2013 (14 May 2013) “It is sufficient that such actions are within the limits of this person’s office opportunities.”

(b) Defences, Release from Liability and Exemption from Prosecution

154. There are no specific defences to foreign bribery under Lithuania’s legislation. Legislation repealing the defence of effective regret with respect to the foreign bribery offence entered into force on 26 November 2015 (CC art. 227(7)).

155. CC art. 38 allows a defendant to be released from criminal liability in relation to misdemeanours, negligent crimes or minor or less serious premeditated crimes where s/he admits liability; voluntarily compensates or agrees to compensate for the damage; or reconciles with the victim or a representative of the legal person or government institution and there are grounds for believing that s/he will not reoffend. It therefore can be used for all categories of active bribery offence except the CC Article 227(3) aggravated bribery offence, which is categorised as a serious crime. A defendant can also be released from criminal liability when s/he confesses participation in an organised group¹⁰⁰ or criminal association and actively assists in detecting the crimes perpetrated by that group or association (CC art. 39¹). In Phase 1, Lithuania confirmed this provision could apply to cases of foreign bribery, raising concerns that persons involved in an organised bribery scheme could escape liability by confessing their participation and aiding the investigation. At the on-site visit, MOJ and GPO representatives clarified that these provisions on release from liability could be applied either at pre-trial investigation or trial stage but that in all cases, their application was at the discretion of the court. STT representatives considered their application in foreign bribery cases to be limited considering CC art. 38 requires reconciliation between the defendant and the victim, and CC art. 39¹ is designed specifically to facilitate enforcement of organised crime offences, not corruption.

(c) Jurisdiction

156. Under Article 4 of the Convention, Parties must be able to assert jurisdiction both over bribery of foreign public officials committed by non-nationals within their territory as well as over foreign bribery committed by their nationals abroad. CC art. 5 establishes jurisdiction over Lithuanian citizens and permanent residents for crimes committed abroad, subject to dual criminality (Article 8(1)) and compliance with the principle of *ne bis in idem* (Article 8(2)). Article 7 CC establishes universal jurisdiction over a list of offences governed by international treaties, including the active bribery offence in Article 227. Discussions at the on-site visit confirmed that, pursuant to jurisprudence of the European Court of Justice and European Court of Human Rights, the *ne bis in idem* principle would be applied to exclude liability in Lithuania for an individual or company that was sanctioned under settlement arrangements in another country, provided that the decision was final and effective.

157. The Convention requirements for territorial and nationality jurisdiction over the foreign bribery offence apply similarly with respect to legal persons. In the Phase 1 Report (para. 70), Lithuania asserted that universal jurisdiction applies equally to natural and legal persons and that there are no restrictions on exercising jurisdiction over foreign or Lithuanian legal persons for the foreign bribery offence. Neither the Civil Code definition of “legal entity,” nor the Criminal Code provisions on corporate liability contain specific language requiring a territorial nexus with Lithuania, such as place of registration or incorporation, activities, or legal form. Furthermore, during the on-site visit Lithuanian authorities referred to the Commentary to the Criminal Code, which provides that the place of the legal entity’s registration carries no significance when declaring a legal entity to be a subject of criminal liability. They indicated that,

¹⁰⁰ CC art. 25 defines “organised group” as one in which two or more persons agree, at any stage of the commission of a criminal act, on the commission of several crimes or of one less serious, serious or grave crime, and in committing the crime each member of the group performs a certain task or is given a different role. This provision does not apply to the organiser or leader of the said group or association.

depending on the specific fact scenario, it would be possible to prosecute the foreign subsidiary of a Lithuanian company involved in bribery based on a combined application of the recent amendments providing for corporate liability for the acts of intermediaries (CC art. 20(4)), and universal jurisdiction for the foreign bribery offence. In practice, however, GPO representatives envisaged practical difficulties in prosecuting legal entities registered abroad, in particular the difficulty of enforcing a Lithuanian judgment against a legal entity registered abroad.

(d) Limitation Periods and Delays in Proceedings

158. The Phase 1 Report (para. 91) concluded that the statute of limitations for the foreign bribery offence was sufficiently long to enable prosecutions of natural and legal persons. CC art. 95(1) provides for a three-year limitation period for misdemeanours; twelve years for less serious premeditated crimes, and fifteen years for serious crimes. Therefore, all foreign bribery cases except the bribery misdemeanour will have a twelve or fifteen year limitation period. CCP Article 387(3) provides that a legal person may be held liable even if the natural person is not investigated, prosecuted or sentenced due to expiry of the statute of limitations. The limitation period commences from the moment of commission of the criminal act and runs until the passing of a judgment (Article 95(2)). An MLA request is not a ground for suspending or interrupting the limitation period during the pre-trial investigation. However, the limitation period can be suspended for a maximum of five years by the court, during the trial, due to absence of the defendant or council for the defence; pending a response to an MLA request; for the prosecutor or pre-trial investigative judge to carry out procedural steps; or for new defence council to prepare the case. In its responses to the Phase 2 Questionnaire, Lithuania indicated that in 2014 and 2015, two pre-trial investigations for active bribery were closed due to expiry of the limitation period due to the complexity of the cases. In one case, however, other offences were successfully prosecuted.

Commentary

The lead examiners consider the basic limitation periods and the framework for suspending or interrupting them to be generally adequate for the foreign bribery offence. They nevertheless recommend that the Working Group monitor future foreign bribery cases to ensure that the complexity of the cases does not pose an obstacle in terms of expiry of the limitation period.

3. Liability of Legal Persons

159. Art. 2 of the Convention requires each Party to “take such measures as may be necessary [...] to establish liability of legal persons for the bribery of a foreign public official”. The 2009 Anti-Bribery Recommendation in its Annex I provide more detailed standards for an effective corporate liability regime. CC art. 20 provides for criminal liability of a “legal entity” for specific CC offences, including foreign bribery, domestic bribery, smuggling, and money laundering.

(a) Legal entities subject to liability

160. The Phase 1 Report (para. 31) notes that “legal entity” is not defined in the Criminal Code. In accordance with Constitutional Court jurisprudence, “legal entity” should be interpreted consistently with relevant laws governing the formation of legal persons. These laws include the Civil Code, which defines a “legal person” as an enterprise or organisation which can assume rights and obligations under its own name, and appear before a court. Civil Code art. 2.34 distinguishes between public and private entities, stating that private legal persons are those aimed at meeting private interests, whereas public legal persons are those “established by the state or municipalities, their institutions, or other non-profit-seeking persons whose goal is to meet public interests (state and municipality enterprises, state or municipality institutions,

public institutions, religious communities, etc.).” In Lithuania, all legal persons, including non-profit organisations are required to register with the Centre of Registers to be deemed incorporated entities.¹⁰¹

161. Shortly before its Phase 1 evaluation, Lithuania enacted Law XIII-391 (2017) to amend CC art. 20(6) to clarify that “State and municipal enterprises, as well as public establishments, where the State or a municipality is an owner or a participant, and public and private companies, where the State or a municipality owns all or part of the shares, shall not be considered to be State and municipal institutions and agencies and they are liable under this code.” The amendment clarifies the exception from liability in CC art. 20(6) for the State, municipalities, state and municipal institutions and agencies, and international public organisations. In Phase 1, the Working Group undertook to follow up on the interpretation and practical application of this amendment. During the on-site visit all law enforcement representatives seemed to be aware of the amendment. Although there have been no convictions of SOEs under CC art. 20 to date, STT representatives provided examples of pre-trial investigations into indirect subsidiaries of SOEs as evidence that corporate liability for SOEs was being effectively applied.

(b) Standard of Liability

162. Lithuania has adopted the approach set out in Annex I.B) to the 2009 Recommendation which triggers liability with a person at the highest level of managerial authority either committing foreign bribery; directing or authorising a lower level person or authorised representative to commit foreign bribery; or failing to prevent such a person from doing so.

(i) Managing position

163. Under CC art. 20(2), a legal entity shall be held liable where a natural person holding a “managing position” and acting independently or on behalf of the legal entity, commits a criminal act, “for the benefit or in the interests of the legal entity”. The Criminal Code does not define a “managing position,” as such and there is currently no case law interpreting this term. However, CC art. 20(2) requires that the person holding a “managing position” be entitled either (1) to represent; or (2) to take decisions on behalf of; or (3) to control the activities of the legal entity. The Phase 1 Report considered that the legislation appeared clear and captured a wide range of persons holding managerial roles within an organisation. Of the seven convictions of legal entities for active domestic bribery since 2011, six involved bribes paid by the company director or heads of structural units within the company, and one involved bribes paid by the chairman of the board. In most cases the person who committed the offence also held all or a certain portion (at least 20%) of the shares of the company. Following the on-site visit the GPO issued on 19 September 2017 a recommendation to all regional prosecution offices recalling a January 2017 Supreme Court decision and calling for more active enforcement of corporate liability provisions, including when a natural person acting in the interests of the legal entity does not have controlling shares in the company.

(ii) For the benefit or in the interests of the legal entity

164. In Phase 1, the Working Group expressed concerns at jurisprudence requiring that the natural person commit the offence “for the benefit or in the interests of the legal entity” (CC art. 20(2)). Judges, prosecutors and lawyers at the Phase 2 on-site visit all concurred with the Supreme Court’s interpretation of art. 20(2) that a corporation must, at least in theory, be able to obtain a benefit and acknowledge the benefit it received or could receive from the offence.¹⁰² Representatives went one step further and

¹⁰¹ Civil Code, art. 2.62 & 2.63.

¹⁰² Lithuania, [Phase 1 Report](#), p. 13; Decision of the Supreme Court, Case No. 2K-620-677/2015 (22 December 2015).

considered that liability would be excluded in cases where the legal person suffered more damage from the offence than the benefit gained and where legal entities are incorporated as instruments of crime (in the context of foreign bribery, this could include letterbox companies). These restrictive interpretations suggest a lack of clarity over the standard of liability in CC art. 20(2) which could prove problematic when applied in practice in foreign bribery cases. Nevertheless, Lithuania provided that issues regarding the standard of proof required for the various elements of corporate liability set out in CC art. 20 were addressed in trainings organised in February-March 2017 on “Theoretical and Practical Aspects of Criminal Liability of Legal Persons: Recent Case-Law”, and in November 2017 on “Criminal Liability of Legal Persons, especially in Corruption Cases” which were attended by 135 and 20 prosecutors respectively. In relation to the requirement that a corporation must “acknowledge the benefit” or have an interest in the consequences brought about by the commission of the offence, Supreme Court jurisprudence requires the “owner (shareholders) knew about ... encouraged ... or contributed to the commission of the criminal offence.”¹⁰³ Lithuania referred again to a recent Supreme Court case which suggests that mere disinterest or indifference of shareholders towards the activities of a person in a managing position may be sufficient to establish this link.¹⁰⁴ During the on-site visit GPO representatives considered that, in accordance with these precedents, it is necessary to determine whether the owner/shareholders of the legal entity took an interest in the acts of the managers of the company. If it can be demonstrated that the owners/shareholder had taken all measures necessary to control the activities of the company managers, then the GPO would not prosecute the legal entity. However, the GPO did consider that the recent amendments to CC art. 20 would modify this established jurisprudence. Nevertheless, and as stated in Phase 1, any requirement involving an assessment of shareholders’ involvement in the offence would go beyond the Convention, particularly if applied to larger companies with multiple shareholders independent from company management.

165. With respect to the alternative requirement that the crime be committed “in the interest” of the company, Supreme Court jurisprudence provides that the concept of “interest” is wider than the concept of “benefit” and can encompass the latter. The majority of stakeholders interviewed during the on-site visit concurred with this interpretation. The category of corporate liability applying to acts by those in a managerial position (CC art. 20(2)) applies the broader standard of “for the benefit or in the interests of the legal entity.” Whereas, the categories of corporate liability relating to acts committed by employees, authorised representatives or related legal entities as a result of insufficient supervision of control (CC arts. 20(3) and 20(4)) apply the higher standard of proof that the acts be committed “for the benefit” of the entity. MOJ representatives considered this difference in treatment as a mere drafting discrepancy rather than a specific intent of the legislator to differentiate between categories of liability and indicated that this discrepancy could be rectified in subsequent revisions of the Criminal Code.

(iii) Authorised representative

166. The Working Group also expressed concerns about judicial interpretation of the scope of “authorised representative” (CC art. 20(3)) and undertook to follow up in Phase 2 on cases where the employee or the authorised representative committed the offence as instructed or authorised, or as a result of insufficient supervision or control by the person occupying a managing position. There is no case law on the term “employee” or “authorised representative.” Some interpretative guidance comes from the Constitutional Court’s ruling on “Certain provisions of the Criminal Code regulating criminal liability of legal persons” in which it explained that in defining the right of representation, the rules of the conclusion

¹⁰³ Decision of the Supreme Court, Case No. 2K-P-95/2012 (10 January 2012).

¹⁰⁴ Decision of the Supreme Court, Case No. 2K-7-28-303/2017 (January 2017).

of contracts by representatives, especially Civil Code art. 2.132 should be taken into account.¹⁰⁵ This provision covers agency relationships that are based on a contract, statute, court judgment, or administrative act but expressly exclude “persons who act in their own name although in the interest of the other person (sales intermediaries, etc.).” In light of this decision the Phase 1 Report (para. 41) noted that sales representatives and other persons in agency-type relationships play an important role in securing contracts, particularly in international commercial transactions and therefore they are at a high risk of bribery of foreign public officials. Lithuania provides that Civil Code art. 2.132 excludes sales representatives from the right of representation only when it comes to the conclusion of contracts. Therefore, expanding it to cover all types of representation under CC art. 20(3) and arguing that it does not create a nexus for corporate liability purposes would go beyond the ruling of the Constitutional Court. Moreover, Lithuanian judges and prosecutors explained during the on-site visit that to date there has been no practical application of CC art. 20(3), and if a case arises in the future they do not consider themselves bound to exclude sales representatives from the scope of the latter provision. They indicated that the civil law notion of representation was very broad and covered both authorised or *de facto* representation. Furthermore, judges indicated that if a person acted for the benefit or in the interest of a legal person, but could not be considered an authorised representative, the legal person could nevertheless be held liable through provisions on complicity. Since the on-site visit, the Prosecutor General instructed the OCCI to draft amendments to the Recommendations on Application of Criminal Liability to Legal Persons to clarify the requisite standards of proof for liability of legal persons. The timeframe for these amendments was not indicated.

Commentary

The lead examiners acknowledge recent efforts to bring to Lithuania’s corporate liability regime in line with Convention, but consider that law enforcement authorities are not sufficiently trained to enforce corporate liability in foreign bribery cases. Therefore, the lead examiners recommend that Lithuania provide guidance and training to practitioners on the practical application of Lithuania’s corporate criminal liability regime, especially CC art. 20(2), 20(3) and 20(4). The proposed amendment to the Recommendation on Application of Criminal Liability of Legal Persons is a positive step in this regard.

The lead examiners also recognise that many of the amendments to Lithuania’s corporate liability regime are very recent and have not yet been tested in practice. They therefore recommend that the Working Group follows up corporate liability for the foreign bribery offence as practice develops.

(c) Parent Companies and Subsidiaries

167. The 2009 Anti-Bribery Recommendation Annex I.C states that a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to commit foreign bribery. Pursuant to CC art. 20(4), a parent company may be held liable for foreign bribery committed by a subsidiary if the criteria in arts. 20(2) and (3) are met, that is, a person in a management position in the subsidiary paid the bribe, or an employee or authorised representative paid the bribe as instructed or authorised, or as a result of insufficient supervision or control. Lithuania indicated that it would be up to a court to determine whether a parent company could be liable for instructing, authorising, or failing to prevent another legal entity that it controls or is represented by from committing an offence under CC art. 20(4). Under Lithuanian law the notion of “control” generally requires that one company can exert influence over the

¹⁰⁵ Decision of the Constitutional Court, Case No. 34/2008-36/2008-40/2008-1/2009-4/2009-5/2009-6/2009-7/2009-9/2009-12/2009-13/2009-14/2009-17/2009-18/2009-19/2009-20/2009-22/2009 (8 June 2009)

other, whereas various forms of contractual representation are sufficient to show that one company represents another. Lithuanian authorities noted during the on-site visit that in order hold the parent company liable it is not necessary to prosecute or convict the subsidiary but only to establish the preconditions for the subsidiary's liability.

(d) Successor liability

168. The Working Group has observed in previous monitoring reports that without successor liability, companies could artificially escape sanctions by way of a reorganisation to become a new legal entity. The lead examiners therefore, considered appropriate to explore to what extent companies can be held liable under Lithuanian law when they acquire companies that have committed previous offences, as well as whether a company can be held liable if it undergoes a merger or other forms of reorganisation.

169. Lithuania's corporate liability regime does not address the issue of successor liability. However, the Supreme Court issued a judgment in a high-profile case in December 2016 and developed a detailed test for successor liability in cases of reorganisation. More specifically, to establish successor liability the Court considers necessary to assess whether i) the reorganisation of the legal person had the sole objective of avoiding criminal liability, ii) the same person(s) who held managerial positions and committed the offence for the benefit or in the interests of the legal person are involved in the successor company or whether they have contributed to the reorganisation, iii) the successor company took over the assets of its predecessor, obtained any benefit or interest from the offence, or its results; or iv) the other legal persons that merged during the reorganisation were aware or should have been aware of, tolerated or acknowledged the offence.¹⁰⁶ At the on-site visit, this Supreme Court jurisprudence and the concept of successor liability seemed well established and understood among Lithuanian law enforcement authorities and judges.

(e) Proceedings against legal persons in practice

170. Parties to the Convention are required to ensure that the conviction or prosecution of a natural person is not a precondition to the liability of a legal person for foreign bribery (2009 Recommendation Annex I.B). As described in the Phase 1 Report (para. 46), the recent amendments to the CC art. 20(5) and CCP art. 387(3) make it clear that legal persons can be held liable for an offence regardless of whether a natural person is prosecuted, convicted, acquitted, or released from or not subject to criminal liability for other reasons (e.g. death, mental, immunity, or conviction in another state).

171. Lithuania's law now provides for corporate liability where it is not possible to identify the natural person(s) who committed the offence but there is reason to believe that one or more persons related to the legal entity committed an offence either alone or through joint actions. However, judges and legal scholars interviewed during the on-site visit considered the amendments of dubious applicability and constitutionality and opined that it would not be possible to prosecute a legal person without identifying and individual perpetrator and establish his/her liability and status within the company. It remains to be seen how autonomous liability for legal persons in Lithuania will be applied in practice.

172. Investigations into legal persons in connection with the foreign bribery offence are carried out by GPO or the STT in accordance with the procedures described in Section C1.(d). In Lithuania prosecutors specialise by type of criminal offence. Therefore, the prosecutors are assigned with the task of organisation of pre-trial investigations on the grounds of the category of offences, rather than proceedings against natural or legal persons. Accordingly, for corruption and foreign bribery offences the GPO's OCCI will be the competent authority to investigate legal persons. Both the Prosecution Service and the STT have been proactive in training their officers with regard to investigations against legal persons. As noted above,

¹⁰⁶ Decision of the Supreme Court, Case No 2K-7-304-976/2016 (30 December 2016).

prosecutors have recently undergone training on corporate criminal liability, albeit prior to the latest amendments to the CC corporate liability provisions. STT officers also participate in international conferences and seminars on corruption investigations involving legal entities. That being said, GPO representatives considered that due to the complex nature of corporate proceedings more training is necessary. The abovementioned GPO recommendation to regional prosecutors issued following the on-site visit is a positive development in this regard.

173. Lithuania provides that when conducting a pre-trial investigation of a legal person, the competent authorities may make use of all procedural coercive measures (search, seizure, provisional restraint of ownership rights, etc.) except those measures, which in their essence, may be applied only with respect to natural persons. Furthermore, the CCP establishes procedural coercive measures, which are applied only with respect to legal persons. According to CCP art. 389 for example a pre-trial judge may order the temporary suspension or restriction of the economic, financial, commercial or professional activities of the legal entity following a request of the prosecutor if they deem that the continuation of the activities will impede the unobstructed conduct of criminal proceedings.

174. Lithuania has successfully held legal persons liable for a range of crimes. Between 2011 and 2015 authorities conducted 273 pre-trial investigations, 243 prosecutions, and convicted 170 legal persons for Criminal Code offences. Between 2013 and 2015, seven legal persons were convicted for active domestic bribery under CC art. 227 and a further 77 were convicted for other economic crimes. However, data provided by Lithuania show that the number of investigations against legal persons steadily declined between 2011 (92) and 2015 (35). During the on-site visit, STT representatives explained that this drop in the number of proceedings against companies is due to a focus on more complex corporate investigations.

Commentary

The lead examiners are encouraged by Lithuania's ability to enforce its corporate liability laws, particularly in relation to the domestic active bribery offence. Lithuania should also be commended on its expansive approach to subsidiary and successor liability. Lithuanian authorities should continue to actively investigate and prosecute companies for corruption-related offences. The lead examiners recognise that many of the recent amendments to Lithuania's corporate liability regime are yet to be tested before the courts. They therefore recommend that the Working Group follow-up on the application of corporate liability for the foreign bribery offence in Lithuania, as case law develops.

4. The Offence of Money Laundering

175. Art. 7 of the Convention requires Parties which have made bribery of domestic public officials a predicate offence for money laundering, to do the same for bribery of foreign public officials, regardless of where the bribery occurred. This section considers Lithuania's money laundering offence and its enforcement.

(a) Scope of the Money Laundering Offence

176. Lithuania's money laundering offence is set out in CC art. 216 and criminalises "legalisation of property obtained by criminal means." CC art. 224¹ defines property obtained by criminal means as property of every kind, which has been directly or indirectly obtained from a criminal offence. All offences in the Criminal Code constitute predicate offences to money laundering, including the active bribery offences in art. 227. The money laundering offence applies to natural or legal persons who conceal or legalise their own property or the property of another. While MONEYVAL has considered Lithuania's money laundering offence to be generally in compliance with FATF standards, it noted outstanding minor

technical concerns with regard to coverage of the conversion or transfer of property for the purpose of helping others to evade the legal consequences of their action.¹⁰⁷

177. In Phase 1, the WGB examined the requisite intent element for Lithuania's money laundering offence and considered that the requirement that the accused "be aware" that the property is obtained by criminal means appeared to set a high burden of proof.¹⁰⁸ MOJ representatives at the on-site visit considered it sufficient to demonstrate awareness that the property was obtained through conduct criminalised in Lithuania or in the country where it occurred, and that knowledge of the specific predicate offence was not required. Lithuania provided Supreme Court and regional court case law confirming that the requisite intent may be inferred from "objective factual circumstances."¹⁰⁹ While the *mens rea* element for Lithuania's money laundering offence is consistent with Lithuania's international obligations,¹¹⁰ its application in practice indicates that proving "awareness that the property is criminal proceeds" remains a challenge in prosecutions. Prosecutors at the on-site visit stated that 90% of defendants appeal their first instance money laundering convictions on the basis that they were unaware of the criminal origin of the proceeds. Between 2012 and 2016, one-third of first instance convictions were overturned on appeal, suggesting that proof of the requisite intent is indeed problematic for effective enforcement of the money laundering offence.

178. With regard to predicate offences committed abroad, Lithuania notes that universal jurisdiction applies to the money laundering offence (CC art. 7(5), see above Part C.2(b)). The GPO has prosecuted cases in which the predicate offences were committed abroad. In general, for EU predicate offences prosecutors did not have problems obtaining the necessary information to mount a successful prosecution; however difficulties were experienced with obtaining MLA from certain non-EU neighbouring countries in money laundering cases.

(b) Sanctions and Enforcement of the Money Laundering Offence

179. Law No. XIII-653 (entry into force 6 October 2017) increased maximum sanctions for natural persons for the money laundering offence (art. 216, categorised as a serious offence) from 1 500 to 6 000 MSLs or a maximum 7 year prison sentence. Following the 30 August 2017 amendments of the decree establishing the size of the MSL, the maximum fine for natural persons for the money laundering offence will be EUR 300 000 as of 1 January 2018 (see below, Part C.6(a)). Law No. XIII-653 also increased the maximum fine for legal persons from 50 000 to 100 000 MSLs (EUR 5m as of 1 January 2018) and both natural and legal persons can be subject to confiscation orders. The sanctions available for the money laundering offence are now closer to the new maximum sanctions for failure to report money laundering introduced by the recent amendments to the AML/CFT Law (see above, Part. B.8(c)).

¹⁰⁷ [Lithuania: 3rd Compliance report](https://rm.coe.int/lithuania-3rd-compliance-report-9-april-2015/1680716963), MONEYVAL(2015)13, p.5 (available at: rm.coe.int/lithuania-3rd-compliance-report-9-april-2015/1680716963).

¹⁰⁸ Lithuania, [Phase 1 Report](#), p. 26.

¹⁰⁹ Supreme Court, Case No. 2K-7-96/2012 (17 April 2012); Kaunas Regional Court, Case No. 1-29-290/2014 (9 October 2014).

¹¹⁰ UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) 1988, Art. 3(1)(b)(i) requires Parties to criminalise the conversion or transfer of property "knowing that such property is derived from any offence or offences ..."; Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETs No. 198), 2005, Art. 9(1)(a) requires Parties to criminalise the conversion or transfer of property, knowing that such property is proceeds. Art. 9(3) also allows (but does not require) Parties to criminalise the conversion or transfer of property where the offender suspected or ought to have assumed that the property was proceeds.

180. Since 2011, 41 natural persons and 1 legal person have been convicted for the money laundering offence in Lithuania. Average fines imposed on natural persons ranged from EUR 5 437 to EUR 10 089. Prison sentences were imposed against 16 individuals, ranging from 24 to 34.5 months. In the same period, a total of EUR 50 017 of conviction-base confiscation was imposed in 7 cases. The amounts that were laundered in these cases are unknown.

181. Despite the relatively high rate of STR reports transmitted to pre-trial investigation authorities, compared to the number of STR reports received (see above, Part B.8(d)), there are few resulting enforcement actions for the money laundering offence. The primary obstacle appears to be that of autonomous enforcement, despite jurisprudence and legal doctrine confirming that a prior conviction for the predicate offence is not required to establish money laundering.¹¹¹ Prosecutors indicated difficulties demonstrating the criminal origin of the proceeds and refused to open pre-trial investigations if a clear criminal link could not be demonstrated. They also considered the ten-day timeframe for opening a pre-trial investigation to be insufficient to establish whether the proceeds were of criminal origin and this also led to pre-trial investigations being refused (see above, Part C.1(d)). Only two cases (in 2012 and 2013) involved the predicate offence of bribery; most predicate offences were fraud or forgery.

182. The number of prosecutions resulting from STR reporting remains low; averaging slightly fewer than 30 per year over the 2011-2016 period, with a total number of final convictions over the same period for 41 natural persons and 1 legal person. As noted above, there is a high rate of appeal of first instance money laundering convictions, based on proof of awareness of the criminal origin of the proceeds. Over the same period, 9 natural persons and 5 legal persons were acquitted on appeal. These statistics are particularly low in light of the high number of sanctions imposed for the active bribery offence of the same period, which average 784 per year. While all of these cases (Lithuania notes that many domestic bribery cases involved *in flagrante delicto* cash payments to police officers) might not involve laundering of the bribe and its proceeds, the large discrepancy between bribery convictions and money laundering convictions suggests that Lithuania is not actively pursuing potential money laundering predicated on these offences. One problem could be related to a clear definition of competence between the pre-trial investigation agencies: the FCIS indicated at the on-site visit that it is not responsible for pre-trial investigations into foreign bribery-based money laundering and that these would be carried out by other agencies. On the other hand, the recent request of the Seimas Anti-Corruption Commission for the FCIS to investigate the possible connection of Lithuanian politicians involved in media revelations of bribery and money-laundering in connection with the so-called “Azerbaijani laundromat,” would suggest otherwise.¹¹²

Commentary

The lead examiners congratulate Lithuania on the recent amendments to the Criminal Code’s sanctions framework which resulted in increased maximum fines for the money laundering offence. The lead examiners remain concerned that proof of the requisite intent for the money laundering offence is a challenge for effective enforcement. The Working Group should follow up on the interpretation of the intent element in future cases of foreign bribery-based money laundering.

¹¹¹ Section 8 of “the Commentary on the Penal Code” (Part III, Articles 213-330) by A. Abramavicius et al, Registru centras, 2010, pages 44-45) ; Court of Appeal Case No. 1A-84/2013 (5 July 2013); Šiauliai regional court Case No. 1- 60-316/2013 (9 May 2013); Kaunas regional court Case No. 1-29-290/2014 (9 October 2014), as cited in [Lithuania: 3rd Compliance report](#), MONEYVAL(2015)13, p.9.

¹¹² Armenpress, [Lithuanian parliament demands probe into Azerbaijani money-laundering scheme](#), 7 September 2017.

The lead examiners note that in general there are very few final convictions for money laundering, compared with the number of STR reports transmitted to pre-trial investigations and the number of final convictions for active domestic bribery. They are concerned that Lithuania is not actively pursuing potential money laundering predicated on bribery offences. The lead examiners therefore recommend that Lithuania review its policy and resources for enforcement of the money laundering offence and clearly define the competence of pre-trial investigation agencies with respect to enforcement of foreign bribery-based money laundering.

5. The Offence of False Accounting

183. Article 8 of the Convention requires Parties to criminalise false and fraudulent accounting for the purpose of bribing foreign public officials or of hiding such bribery. As described in Lithuania's Phase 1 Report, CC arts. 205, 222, and 223 provide for criminal liability for natural and legal persons for fraudulent statements on activities or assets of a legal person, as well as for fraudulent or reckless accounting, where this disables, fully or in part, determination of the person's activities, amount or structure of assets, equity, or liabilities. The Civil Code and Administrative Offences Code (AOC) establish civil and administrative liability for omissions and falsifications concerning records, accounts, and financial statements. Natural persons who violate accounting laws or who present false financial statements can be held administratively liable under AOC art. 205. Administrative liability for false reporting by legal persons is set out in AOC art. 223.

(a) Sanctions for False Accounting

184. Maximum sanctions for natural persons for CC false accounting offences are determined in accordance with CC arts. 11 and 47 depending on the categorisation of offence as either a minor or less serious crime and include fines (following the entry into force of Law No. XIII-653: 2 000 MSLs for minor offence; 4 000 MSLs for less serious offence) or imprisonment for two to four years. Following the amendment to the calculation of MSL units which will enter into force on 1 January 2018, the maximum fines for accounting offences will therefore range from EUR 100 000 to EUR 200 000. With respect to legal persons, the available sanctions for the accounting offences are the same as for the foreign bribery offence and were also increased through Law No. XIII-653: either a maximum fine of 100 000 MSLs (EUR 5m as of 1 January 2018); restriction of operation; or liquidation. In relation to administrative sanctions for accounting offence, fines for natural persons range from EUR 30 to EUR 6 000 (AOC art. 205) and for legal persons, from EUR 200 to EUR 3 000, to be imposed on the head or legal representative of the company.

(b) Enforcement of the False Accounting Offence

185. Compared with bribery and money laundering offences, there is significant enforcement of criminal accounting offences in Lithuania against both natural and legal persons, accompanied by higher sentences both in terms of corporate fines and prison terms. Enforcement against legal persons appears, however, to have declined over the past five years, going from 21 fines and 7 liquidations imposed against legal persons in 2012 to just 6 fines and 2 liquidations in 2016. Table 3 sets out the average amount of sanctions imposed against natural and legal persons for the CC art. 222 and 223 accounting offences between 2012 and 2016. As noted below (Part C.6) fines imposed against natural and legal persons in practice remain well below the maximum, even in relation to the previous range before the MSL unit was increased (ie. EUR 18 830 to 37 660 for natural persons and EUR 1 883 000 for legal persons).

Table 3. The average amount of fine (EUR) for false accounting offences

Years	2012		2013		2014		2015		2016	
Article of the Criminal Code	222	223	222	223	222	223	222	223	222	223
Natural persons (fines)	3704	952	2886	1221	3537	1102	5140	1465	3129	1302
Natural persons (prison sentence)	37 months	33 months	33 months	25 months	33 months	24 months	31 months	28 months	32 months	32 months
Legal persons	15468		12920		8296		20261	3766	9576	

186. GPO representatives at the on-site visit indicated that in bribery cases, they would investigate for both bribery and accounting offences. However the high rate of enforcement of accounting offences against legal persons relative to enforcement of other economic offences could suggest that investigators and prosecutors are not proactively seeking to detect other crimes, such as bribery and money laundering, which might be concealed through false or fraudulent accounting.

Commentary

The lead examiners congratulate Lithuania on the significant increase of sanctions for false and fraudulent accounting offences. With respect to enforcement, the lead examiners recommend that Lithuania take steps to ensure that suspected foreign bribery in the context of fraudulent or false accounting is fully investigated and prosecuted where appropriate.

6. Sanctions for Foreign Bribery

187. Article 3 of the Convention requires Parties to provide for “effective, proportionate and dissuasive criminal penalties” comparable to those applicable to bribery of the Party’s own domestic officials. Additionally, the Convention requires each Party to take such measures as necessary to ensure that the bribe and the proceeds of the bribery of the foreign public official are subject to seizure and confiscation, or that monetary sanctions of “comparable effect” are applicable. Finally, the Convention requires each Party to consider the imposition of additional civil or administrative sanctions.

188. Since Phase 1, Lithuania amended the decree setting out the monetary unit for the MSL, the basis for calculating monetary fines in the Criminal Code on 30 August 2017. As of 1 January 2018, the MSL will be increased from EUR 37.66 to 50, to reflect the increase in income level in Lithuania since the MSL unit was last revised in 2008. In addition, Law No. XIII-653 entered into force on 6 October 2017 and significantly reformed the sanctions framework in Lithuania’s Criminal Code resulting, *inter alia*, in increased sanctions for both natural and legal persons for the foreign bribery offence, and a fine as an alternative sanction to imprisonment for the aggravated bribery offence (CC art. 227(3)).

(a) Sanctions against natural persons

189. The sanctions available for natural persons convicted of the foreign bribery offence are set out in CC art. 47 and calculated based on MSLs. The table below (Table 4) indicates the maximum fines

available at the time of Lithuania's Phase 1 evaluation and the new maximum fines introduced by Law No. XIII-653. In addition, Law No. XIII-653 introduced art. 47(6) which provides that for CC Chapter XXXIII offences (including foreign bribery), the amount of the fine cannot be less than the amount of the object of the crime; the material damage caused; or the material benefit sought or obtained. The amount of the fine must therefore be calculated as the highest of the above values, and may therefore exceed the maximum fines for the various categories of offence set out in CC art. 47. Pursuant to CC art. 42(3) only one penalty may be imposed for the commission of one crime or misdemeanour. In Phase 1 (paras. 51-55), the Working Group identified three main problems with the range of sanctions available for the foreign bribery offence: (i) the absence of a fine as an available sanction for the aggravated foreign bribery offence; (ii) the low levels of maximum fine available for the other active bribery offences; and (iii) potential difficulties with linking the amount of the sanction to the amount of the bribe when it is impossible to quantify the size of the bribe.

Table 4. Maximum criminal sanctions for natural persons for foreign bribery (Article 227)¹¹³

Penalties	Article 227 Paragraph 1 ("for desired legal action or inaction")	Article 227 Paragraph 2 ("for desired illegal action or inaction")	Article 227 Paragraph 3 ("aggravated bribery" – bribes of EUR 12 500 or more)	Article 227 Paragraph 4 ("misdemeanour" – bribes of EUR 50 or less)
Category of offence (CC Article 11)	Less serious	Less serious	Serious	Misdemeanour
Maximum imprisonment	4 years	5 years	7 years	-
Maximum arrest	90 days	90 days	-	45 days
Maximum restriction of liberty	2 years	2 years	-	2 years
Maximum fine (previously, at the time of Phase 1)	1000 MSLs (EUR 50 000)	1000 MSLs (EUR 50 000)	-	150 MSLs (EUR 7 500)
Maximum fine (current, as amended by Law No. XIII-653)	4000 MSLs (EUR 200 000) or the highest value of the instrument, damages or benefit sought or obtained	4000 MSLs (EUR 200 000) or the highest value of the instrument, damages or benefit sought or obtained	6000 MSLs (EUR 300 000) or the highest value of the instrument, damages or benefit sought or obtained	500 MSLs (EUR 25 000)

190. Law No. XIII-653 has addressed the Working Group's concerns about the absence of a fine as an available sanction for the aggravated foreign bribery offence, and ensures that it is treated similarly to the money laundering offence (CC art. 216) and passive corruption and abuse of office offences (arts. 225(2) and 228(2), respectively). By making a fine available as an alternative penalty, Lithuania has also responded to the unanimous agreement of prosecutors, investigators, lawyers, judges and civil society representatives heard at the on-site visit on this issue.

191. While the significant increase in fines demonstrated in Table 4 responds to the concerns of the Working Group in Phase 1, the practice of prosecutors and courts in consistently imposing fines at the lower end of the available amount should be monitored in future (see below, Part C.6(d)). The Working Group should also monitor the application by prosecutors and judges, of the new provision requiring an

¹¹³ Based on the value of one MSL (EUR 50) from 1 January 2018.

assessment of the higher value between the maximum fine, instrument, damages or benefit sought or obtained in foreign bribery cases (CC art. 47(6)).

192. With respect to the Working Group's concerns about qualifying the category of offence (and therefore imposing sanctions) based on the amount of the bribe when it is impossible to quantify the size of the bribe, the evaluation team was unable to assess this in the absence of case law. The recent modifications seem to alleviate concerns about the level of sanctions to be imposed, noting the calculation with the value of the instrument, damages or benefit sought or obtained that is now required for all categories of offence except the bribery misdemeanour. Nevertheless, the challenges in this approach are discussed with respect to the difference in pre-investigation time limit per category of offence, which also requires an early assessment of the quantum of the bribe (see above, Part C.1(d)(v)).

(b) Sanctions against legal persons

193. As with natural persons, the court may only impose one criminal sanction against legal persons per offence. CC art. 47 sets out the available penalties which include either a fine, restriction of operation or liquidation. Courts previously had the discretion of announcing convictions of legal persons in the media but following the enactment of Law No. XIII-653 (entry into force 6 October 2017), a judgment whereby a court imposes a penalty for crimes in CC Chapter XXXIII (including foreign bribery) must be announced in the media (CC art. 43). In addition, Law No. XIII-653 increases the maximum fine for a legal person convicted of any crime or misdemeanour in CC art. 47(4) from 50 000 to 100 000 Minimum Subsistence Levels (MSLs).¹¹⁴ As of 1 January 2018 (when the new unitary value for MSLs comes into effect), the maximum fine for legal persons will be EUR 5m (previously EUR 1.9m, at the time of Lithuania's Phase 1 Report). Pursuant to CC Article 52, a court may restrict the operation of a legal entity by prohibiting it from engaging in certain activities or ordering it to close a certain division for a period of one to five years. CC Article 53 enables a court to order the termination of a legal entity's entire economic, commercial, financial, or professional activity within a prescribed time limit.

(c) Mitigating factors

194. A prison sentence can be reduced to a fine pursuant to CC art. 62, which provides for mitigated sanctions when a defendant self-reports and cooperates with authorities (see above, Part C.1(d)(ii)). In addition, courts may impose more lenient penalties depending on the circumstances of the case (CC art. 54(3)). As noted in the Phase 1 report, the Supreme Court has interpreted CC art. 54(3) to include lengthy criminal proceedings as a mitigating factor in sentencing but refused to take the length of proceedings into account in a recent aggravated fraud case which lasted almost ten years.¹¹⁵ The Working Group decided to monitor emerging foreign bribery case law to determine whether reduced sentences due to "unreasonably long" criminal proceedings—or other mitigating circumstances inherent to bribery in international business—impact on the effective, proportionate, and dissuasive nature of the sanctions for the offence. GPO representatives at the on-site visit indicated that courts regularly apply CC art. 54(3), including in cases where they consider the pre-trial investigation to have been too long, and were of the view that length of proceedings could also be applied to mitigate sentences in foreign bribery cases. Although they did think

¹¹⁴ On 30 August 2017, the government amended the decree setting the monetary unit for the Minimum Subsistence Level (MSL), the basis for calculating monetary fines and calculating the amount of the bribe for the purpose of defining the category of foreign bribery offence in the Criminal Code. As of 1 January 2018, the MSL unit will be increased from EUR 37.66 to EUR 50. All calculations of MSLs in this document will be based on the MSL value as of 1 January 2018.

¹¹⁵ Phase 1 Report, para. 54; Cassation Rulings in Criminal Cases No. 2K-7-45/2007; 2K-256/2009; 2K-503/2010; 2K-192/2011, as cited in Decision of the Supreme Court, Case No. 2K-409/2014 (21 October 2014); Case No. 2K-48-696/2017.

that courts would recognise the time involved in seeking and obtaining MLA and forensic analysis. The evaluation team was unable to further follow up due to the absence of case law developments since Phase 1. In relation to proceedings against legal persons, there was general uncertainty at the on-site visit as to whether an internal controls, ethics and compliance programme could be taken into account as a mitigating factor in sentencing.

(d) Sanctions imposed in practice

195. According to media reports, the average fine for serious bribery offences sanctioned between 2015 and 2017 was under EUR 5 000, only 9 percent of the possible maximum fine. In the first six months of 2017, the average fine imposed in serious bribery offences was less than EUR 3 300 (6 percent of the possible maximum).¹¹⁶ From 2013 to the time of writing, five individuals have been convicted of the aggravated active bribery offence (CC art. 227(3)). Sanctions ranged from one to three years' imprisonment for bribes between EUR 12 000 and EUR 16 000. Although the sanctions available for the foreign bribery offence comply with the Convention requirement that the range of penalties be comparable to those applicable to bribery of domestic officials (art. 3(1)), in practice, fines for the active bribery offence between 2012 and 2016 were around 11 per cent of the fines imposed in passive bribery offences in the same period. As noted above (Part C.1(f)), this could be due to a prevailing view in the judiciary that public officials who accept bribes should receive harsher penalties than citizens who pay bribes to influence those officials. Should this reasoning be applied to foreign bribery cases, it could create an obstacle to effective, proportionate and dissuasive sanctions. The Judicial Council and National Courts Administration will organise an international conference on practical implementation of the OECD Anti-Bribery Convention and recommendations of the Working Group in December 2017. The target audience will be judges, prosecutors and the STT and the conference will focus on investigation, prosecution and sanctioning in foreign bribery cases.

196. As noted above (Part C.3(e)), between 2013 and 2015, seven legal persons were convicted for active domestic bribery under CC art. 227. Sanctions ranged from release from criminal liability on bail, to fines from EUR 7 530 to EUR 11 295 and liquidation. In its responses to the Phase 2 Questionnaire, Lithuania provided data on sanctions imposed on 63 legal persons for economic crimes (mainly accounting offences) between 2013 and 2016. The fines imposed ranged from EUR 753 to EUR 338 855 but remained well below the maximum EUR 1.8m fine available at the time. Twelve legal persons were sanctioned with liquidation, although GPO representatives at the on-site visit indicated that liquidation is often imposed in cases where letterbox or shell companies are created for the sole purpose of facilitating the criminal activity.

197. By letter dated 23 February 2016 (No. 17.9-1179), the Lithuanian Prosecutor General noted that the fines imposed by the courts against persons convicted for the commission of criminal offences against the state service and public interests "are not proportional with the criminal offences, do not have sufficient deterrent effect and are not efficient." Based on data from first instance convictions for bribery under CC art. 225, the letter notes that in more than 50 per cent of cases, prosecutors proposed fines below 10 per cent of the maximum fine available despite a lack of mitigating circumstances. Only four defendants received fines matching or exceeding the average amount available for the offence. Although it is not binding, the letter requests prosecutors of the GPO and regional prosecutors' offices responsible for such cases to refer to the rule of the average fine when proposing sanctions to be imposed against defendants. In October 2017 the OCCI analysed to what extent prosecutors had modified their approach to sanctions following the

¹¹⁶ Baltic Daily, Lithuania's parliament to discuss president's bid to raise fines for crimes, 14 September 2017.

Prosecutor General's letter. It found that penalties sought by prosecutors in corruption cases ranged from 12 to 16 per cent of the maximum sentence in the period 2015-2017. The OCCI also noted that the court of first instance imposed fines which were, on average, two-thirds of the amount of the fine requested by the prosecutor. GPO representatives at the on-site visit were aware of the Criminal Code rule for requiring the average penalty but noted that in practice, this was not systematically requested. GPO representatives did not consider that prosecutorial practice in requesting sentences would change even if the basic sanctions were increased. As noted above, Law No. XIII-653 significantly increases maximum fines for natural and legal persons for all Criminal Code offences, notably foreign bribery, money laundering and accounting offences, and adds a requirement to calculate the fine relative to the instrument, damage or benefit sought or obtained in foreign bribery cases. This law was prepared by the President to respond to the fact that "the theoretical possibility envisaged in the penal law to impose the lowest fine had become a rule in reality." The Working Group should monitor sanctions imposed in bribery cases that arise following the enactment of these new provisions, to ensure that prosecutors and judges apply effective, proportionate and dissuasive sanctions in practice.

Commentary

The lead examiners congratulate Lithuania on its recent and significant reforms to the Criminal Code's sanctions framework, which substantially increase the maximum sanctions available for natural and legal persons for the foreign bribery offence in Lithuania. Nevertheless, the established practice of prosecutors and judges in respectively seeking and imposing fines well below the required average in domestic bribery cases remains a concern and should be monitored in the context of bribery cases arising since the enactment of these reforms. The Working Group should also monitor foreign bribery case law to determine whether reduced sentences due to the length of criminal proceedings—or other mitigating circumstances inherent to bribery in international business—impact on the effective, proportionate, and dissuasive nature of the sanctions for the offence.

(e) Confiscation

198. Article 3(3) of the Convention requires confiscation of the bribe and its proceeds, or the ability to confiscate property of equivalent value. As noted in Phase 1, confiscation is obligatory against natural and legal persons where criminal instruments or direct or indirect proceeds are identified, regardless of whether the property is held by the offender or other natural or legal persons (CC arts. 67 and 72). Confiscation is mandatory upon conviction but also applies when a person is released from criminal liability or sanctions (CC art. 72(1)). CC art. 72³ provides for extended confiscation of property disproportionate to the legitimate income of the offender when there are grounds to believe it has been obtained through criminal means. In accordance with Supreme Court jurisprudence interpreting CCP Article 94(1)(1), confiscation can also be imposed when a suspect dies or has not reached the minimum age of criminal liability, or when conviction is precluded due to expiry of the statute of limitations. Confiscation is not considered to be a penalty, but a penal sanction, which can be imposed in conjunction with the penalty (regardless of the severity of the penalty or the Court's decision to apply a more lenient penalty pursuant to CC art. 62), as well as when a person is released from criminal liability pursuant to CC art. 38 (see above, Part C.2(b)).

199. With respect to confiscation of the proceeds of foreign bribery, the Supreme Court jurisprudence concluded that property confiscation did not apply when "*income is received from the activities recorded in the accounting records and in which an entity may engage legitimately in the manner stipulated by legal acts.*"¹¹⁷ The case in question involved an assessment of whether income earned by a freight forwarding

¹¹⁷ Supreme Court decision of 18 February 2010 "Review of the court jurisprudence in applying confiscation of property (Article 72 of the Penal Code)" No. AB-32-1

company that was operating without a licence could be confiscated as proceeds of criminal activity. Importantly, the Court reasoned that “*correctly declared the income, computed and correctly paid the taxes to the state.*” This exact scenario could occur in a foreign bribery case where the company declares income and pays taxes for profits obtained through contracts obtained through bribery. Lithuania notes that the enactment of CC Article 230(6) in 2016 clarifies this case law by stipulating that, in the context of bribery, criminal proceeds include property directly or indirectly obtained through bribing, including advantages obtained by a desired act or omission of a public official, irrespective of whether they were obtained through legal or illegal acts or omissions. While in Phase 1, Lithuania confirmed that confiscation was obligatory in cases where the instruments and proceeds of crime have been identified, its responses to the Phase 2 questionnaire indicate that confiscation is imposed in less than 10 per cent of cases where a defendant has been fined (and extended confiscation has been imposed in only 1 case in the last 5 years). Lithuania also referred to two active bribery cases in which confiscation was ordered by the Vilnius District Court and Court of Appeals, respectively. In each case, the court only ordered confiscation of the instrument of the bribe, rather than the proceeds.

200. GPO representatives at the on-site visit attributed the lack of examples of proceed confiscation to the newness of the abovementioned amendments. Investigators, prosecutors and judges at the on-site visit did not seem sufficiently familiar with these provisions and in particular how to calculate the proceeds of bribery, and resort instead to civil asset restitution and unjust enrichment provisions which would have doubtful application in foreign bribery cases.¹¹⁸ The evaluation team remarked an absence of instruction or guidance for prosecutors on systematically identifying, quantifying and seeking confiscation of the instrument or proceeds of bribery (or their equivalent). Following the on-site visit, the Prosecutor General issued an explanatory note on 8 September 2017 “On application of Article 230 (6) of the Criminal Code”. This explanatory note refers prosecutors to the Anti-Bribery Convention and requests them to ensure confiscation of both the bribe and its proceeds. The explanatory note also instructs prosecutors to ensure that pre-trial investigation officers determine and assess not only the object of the bribe but also any kind of property (including material benefit) obtained by the person who had offered the bribe as a result of this offence. In cases where such the bribe or its proceeds are identified during the pre-trial investigation, prosecutors are instructed to provisionally restrain the rights of ownership (CCP art. 151) and request that the court confiscate the property (CC art. 72(1) to (4)).

Commentary

The lead examiners are concerned that despite Lithuania’s solid legal framework for confiscation of the instrument and proceeds of bribery, or their equivalent, there is a very low rate of confiscation in actual bribery cases. The lead examiners therefore recommend that Lithuania train investigators and prosecutors on confiscation, and take steps to ensure that law enforcement authorities and prosecutors routinely seek confiscation in foreign bribery cases.

(f) Debarment from public procurement

201. The 2009 Anti-Bribery Recommendation XI provides that “Member countries’ laws and regulations should permit authorities to suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials in contravention of that Member’s national laws.”

¹¹⁸ Civil Code, arts. 6.237 and 6.242.

202. The Law on Public Procurement (LPP) was amended by Law No. XIII-327 of 2 May 2017 to implement the EU Procurement Directive¹¹⁹ and entered into force on 1 July 2017. Suppliers (both natural and legal persons) convicted of bribery, bribery of an intermediary, or graft must be excluded from public procurement (LPP art. 46). The exclusion applies to natural persons (directors, accountants, or other persons entitled to represent, control, adopt decisions or enter into transactions on behalf of legal persons) and legal persons against whom “a judgment of conviction was passed and became effective” within the past five years. The exclusion applies regardless of whether the suppliers (or their responsible persons) have been convicted in Lithuania or abroad. Lithuania indicated that the duration of the exclusion would be for the period of the “conviction,” but no longer than 5 years from the date of judgement. Pursuant to CC art. 97, the period of the “conviction” can vary from between the end of the penalty to 10 years after the penalty. Lithuania indicates that in any case, the period of exclusion would not exceed 5 years.

203. In terms of due diligence and exclusion in practice, suppliers must provide a certificate from a competent institutions – either the Information Technology and Communications Department under the Ministry of Interior Affairs or the “Centre of Registers” (a state enterprise that maintains cumulative data from different national registers) – to prove that they do not have prior convictions for the offences listed in LPP art. 46. The PPO cannot currently access this database without paying. The LPP empowers contracting authorities to request information on suppliers from national or foreign competent authorities but there are no systems in place to automatically provide or ensure direct electronic access to this information by contracting authorities. The recent amendments to the LPP provide for the linking of electronic systems, from 1 July 2020, the PPO’s e-procurement system with systems from competent institutions, including those which collect information on convictions which will enable procurement officials to conduct their own verifications of existing convictions. In terms of verification of debarment lists maintained by multilateral development banks, Lithuania reported that on 18 August 2017, the PPO inserted a link on its official website to the OECD website maintaining the debarment lists of major international financial institutions and released an information notice to Lithuanian public procurement stakeholders encouraging them to consult these lists, if needed.¹²⁰

204. Lithuania does not maintain statistics on specific grounds for exclusion from public procurement processes, however in its responses to the Phase 2 Questionnaire indicated that in 2016, 5537 tenderers were excluded based on the failure to meet the qualification requirements. At the on-site visit, representatives from the PPO indicated that none of these tenderers were excluded due to a corruption conviction and were not aware of any exclusions based on corruption convictions to date. Furthermore, representatives from Ministry of Economy and PPO considered that suppliers would not tender in the first place if they had such a conviction, as they are aware that it is a mandatory ground for exclusion.

Commentary

The lead examiners note possible issues regarding adequate access to information about corruption convictions by Lithuanian procurement authorities. They recommend that Lithuania facilitate direct access by procurement authorities to corruption convictions of natural and legal persons and ensure effective exclusion from future procurement in accordance with the provisions of the Law on Public Procurement.

¹¹⁹ EU Directive 2014/24/EU.

¹²⁰ See: www.oecd.org/trade/xcred/debarment-list.htm and vpt.lrv.lt/lt/nuorodos/ebpo-informacija;vpt.lrv.lt/lt/naujienos/nepatikimu-tiekeju-sarasus-sudaro-ir-tarptautines-finansu-institucijos (in Lithuanian).

D. RECOMMENDATIONS OF THE WORKING GROUP AND FOLLOW-UP

205. Based on its findings regarding Lithuania's implementation of the Convention and the 2009 Recommendation, the Working Group (1) makes the following recommendations to Lithuania under Part I; and (2) will follow up the issues in Part II when there is sufficient practice. Lithuania will report to the Working Group orally within one year, i.e. by December 2018, on the steps taken to implement recommendations 3(a), 5(a), 6(b), 10, 11 and 12(a). Lithuania will report to the Working Group in writing within two years by December 2019, on its implementation of all of the recommendations and on developments concerning the follow-up issues.

I. Recommendations

Recommendations for Ensuring Effective Prevention and Detection of Foreign Bribery

1. With respect to **prevention and awareness-raising**, the Working Group recommends that Lithuania:

- (a) encourage agencies working with Lithuanian business, especially SOEs and SMEs, to increase their efforts to raise awareness of the foreign bribery offence (2009 Recommendation III(i));
- (b) continue awareness raising efforts underway by STT, business organisations and NGOs, and monitor and evaluate the impact they are having on prevention and detection of foreign bribery (2009 Recommendation III(i));
- (c) ensure that foreign diplomatic representations, in their contacts with Lithuanian businesses operating overseas, i) disseminate information on the corruption risks in their country of operation and the legal consequences of foreign bribery under Lithuanian law, and ii) encourage Lithuanian businesses and individuals to report suspected instances of foreign bribery to the appropriate authorities (2009 Recommendation III(i) and (v)).

2. With respect to **officially supported export credits**, the Working Group recommends that Lithuania implement fully the provisions contained in the 2006 OECD Recommendation of the Council on Bribery and Officially Supported Export Credits, and participate fully in the on-going discussions in the OECD Working Party on Export Credits and Credit Guarantees (ECG) to revise the 2006 Recommendation, so that any changes to its provisions might be replicated in the processes and procedures put in place by INVEGA (2009 Recommendation XII).

3. With respect to **official development assistance (ODA)**, the Working Group recommends that Lithuania:

- (a) include as a priority anti-corruption and sanctioning clauses in all ODA contracts (2016 Recommendation III.6);
- (b) train and raise awareness among Lithuanian government officials and development cooperation partners and providers of the framework in place to prevent, detect, report and

sanction bribery of foreign public officials in the context of development cooperation (2016 Recommendation III.3).

4. With respect to **accounting requirements, external audit and internal company controls**, the Working Group recommends that Lithuania:

- (a) work with the accounting and auditing profession to raise awareness of the foreign bribery offence and provide guidance on its role in the detection and reporting of suspected instances of foreign bribery (2009 Recommendation III(i));
- (b) provide guidance to Lithuanian companies, including SOEs, on new rules on the creation of supervisory boards and audit committees and encourage them to implement internal company controls with a particular focus on preventing foreign bribery (2009 Recommendation III and X.C(i));
- (c) extend the scope of the reporting requirement to suspicions of foreign bribery and consider extending its application to all auditors (2009 Recommendation III(iv) and X.B(v)).

5. With respect to **money laundering**, the Working Group recommends that Lithuania:

- (a) amend the AML/CFT Law to eliminate the exceptions to the definitions of monetary operation and customer (Convention Article 7; 2009 Recommendation III(ii) and (vi));
- (b) ensure that Financial Crime Investigation Service (FCIS) guidance and training materials (e.g. typologies) issued under the revised AML/CFT Law contain information on the identification and reporting of laundering of bribes to foreign public officials, and their proceeds (Convention Article 7; 2009 Recommendation III(i));
- (c) ensure that the FCIS continues efforts to raise awareness among the legal and accounting and audit profession of amendments to the AML/CFT Law including in relation to STR reporting obligations and the risks of foreign bribery-based money laundering (Convention Article 7; 2009 Recommendation III(i));
- (d) encourage broad STR reporting, including by striking a balance between its emphasis on quality rather than quantity of STRs, which could result in lower levels of reporting and FCIS missing out on valuable intelligence (Convention Article 7; 2009 Recommendation III(i) and (iv));
- (e) ensure that the Bank of Lithuania allocates sufficient resources to ensure more rigorous supervision of reporting entities (Convention Article 7; 2009 Recommendation III(iv)).

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery and related offences

6. With respect to **capacity and independence** of law enforcement authorities, the Working Group recommends that Lithuania:

- (a) assess the STT budget, in light of its extensive mandate to prevent, educate, analyse, cooperate and investigate both domestic and foreign bribery, to ensure that adequate resources are provided to permit effective investigations of foreign bribery cases (Convention Article 5; Commentary 27; 2009 Recommendation II, V and Annex I.D);

- (b) reflect the Constitutional Court decision on the unconstitutionality of art. 206 (5) and (6) in the Statute of the Seimas (Convention Article 5 and Commentary 27).

7. With respect to **investigation and prosecution** of foreign bribery and related offences, the Working Group recommends that Lithuania:

- (a) take further steps to increase awareness among prosecutors and other pre-trial investigation agencies that all information relating to suspected foreign bribery should be systematically transmitted to GPO's OCCI and STT for investigation (Convention Article 5; Commentary 27; 2009 Recommendation II, V and Annex I.D);
- (b) review its policy and resources for enforcement of the money laundering offence and clearly define the competence of pre-trial investigation agencies with respect to enforcement of foreign bribery-based money laundering (Convention Articles 5 and 7; Commentary 27; 2009 Recommendation II, V and Annex I.D);
- (c) ensure that suspected foreign bribery in the context of fraudulent or false accounting is fully investigated and prosecuted, where appropriate (Convention Articles 5 and 8; Commentary 27; 2009 Recommendation II, V and Annex I.D).

8. With respect to the **judiciary**, the Working Group recommends that Lithuania:

- (a) provide training to its judiciary on the Convention and in particular, its definition of the foreign bribery offence and its requirement for effective, proportionate and dissuasive sanctions (Convention Articles 5 and 3; Commentary 27; 2009 Recommendation II, V and Annex I.D);
- (b) pursue its reform of the procedure for selecting and appointing judges, to strengthen the independence of the Selection Commission and the role of the Judicial Council (Convention Article 5; Commentary 27 and 2009 Recommendation Annex I.D).

9. With respect to **mutual legal assistance (MLA) and extradition**, the Working Group recommends that Lithuania:

- (a) maintain comprehensive statistics on the offences involved, assistance requested, and time required for execution of all incoming and outgoing MLA requests so as to identify more precisely the proportion of those requests that concern bribery of foreign public officials (Convention Article 9; 2009 Recommendation XIII);
- (b) take all necessary measures to ensure that where a request for extradition of a person for suspected foreign bribery is prohibited or is refused solely on the ground that the person is a Lithuanian national, the case is submitted to the competent authorities for purposes of investigation, and prosecution, as appropriate (Convention Article 10).

10. With respect to **foreign bribery offence**, the Working Group recommends that Lithuania undertake the necessary measures to raise awareness among prosecutors and judges of the requisite intent for the foreign bribery offence (CC art. 227(5)) (Convention Article 1; 2009 Recommendation III(i)).

11. With respect to **liability of legal persons**, the Working Group recommends that Lithuania provide guidance and training to practitioners on the practical application of Lithuania's corporate criminal liability regime, especially CC art. 20(2), 20(3) and 20(4) (Convention Article 2; 2009 Recommendation III(i) and Annex I.B).

12. With respect to **sanctions and confiscation** for foreign bribery and related offences, the Working Group recommends that Lithuania:

- (a) train investigators and prosecutors on confiscation, and take steps to ensure that law enforcement authorities and prosecutors routinely seek confiscation in foreign bribery cases (Convention Article 3(3); 2009 Recommendation III(i) and (ii));
- (b) facilitate direct access by procurement authorities to corruption convictions of natural and legal persons and ensure effective exclusion from future procurement in accordance with the provisions of the Law on Public Procurement (Convention Article 3(4); Commentary 24; 2009 Recommendation XI(i)).

II. Follow-up by the Working Group

13. The Working Group will follow up on the issues below:

- (a) follow up on legislative and institutional changes undertaken in preparation for the entry into force of the Law on Protection of Whistleblowers in January 2019 (2009 Recommendation III and IX(iii));
- (b) steps taken by INVEGA to ensure internal processes and procedures are introduced to effectively prevent, identify and report the bribery of foreign public officials by applicants for, and recipients of, official export credit support (2009 Recommendation XII);
- (c) CPMA's relevant efforts to prevent, detect and report foreign bribery in the context of ODA-funded projects (2009 Recommendation III(i); 2016 Recommendation III.3);
- (d) STI's efforts to ensure post-conviction non-deductibility, as case law develops (2009 Tax Recommendation I(i));
- (e) Lithuania's provision of tax information to foreign authorities for use in foreign bribery investigations (2009 Tax Recommendation I(iii));
- (f) investigation and supervision of the audit profession by the Audit Authority and Chamber of Auditors (2009 Recommendation X.B(ii));
- (g) future enforcement of sanctions for STR reporting violations (Convention Article 7; 2009 Recommendation III(i); (iv) and (viii));
- (h) the activities of the Seimas Anti-Corruption Commission to ensure that the STT Director and Prosecutor General cannot be compelled to answer questions or provide information in relation to specific cases (Convention Article 5; Commentary 27 and 2009 Recommendation Annex 1.D);

- (i) ensure that STT investigators are in an open and constant dialogue with the supervising prosecutor in all foreign bribery cases (Convention Article 5; Commentary 27; 2009 Recommendation V and Annex I.D);
- (j) use of penal orders, expedited procedures and self-reporting pursuant to CC art. 62 in foreign bribery cases, as case law develops (Convention Article 3(1); 2009 Recommendation III(ii));
- (k) future foreign bribery cases to ensure that the complexity of the cases does not pose an obstacle in terms of expiry of the limitation period (Convention Article 6);
- (l) termination of pre-trial investigations due to investigation time limits and the application of CCP art. 215 in practice in foreign bribery cases (Convention Articles 5 and 6; Commentary 27; 2009 Recommendation Annex I.D);
- (m) practical application of CC art. 230(2), particularly in cases of bribery of SOE officials (Convention Article 2; 2009 Recommendation Annex 1) ;
- (n) corporate liability for the foreign bribery offence as practice develops (Convention Article 2; 2009 Recommendation Annex 1);
- (o) interpretation of the intent element in future cases of foreign bribery-based money laundering (Convention Article 7);
- (p) monitor the practice of prosecutors and judges in respectively seeking and imposing fines in foreign bribery cases to ensure that these are effective, proportionate and dissuasive (Convention Article 3);
- (q) foreign bribery case law to determine whether reduced sentences due to the length of criminal proceedings—or other mitigating circumstances inherent to bribery in international business—impact on the effective, proportionate, and dissuasive nature of the sanctions for the offence (Convention Articles 3 and 6).

ANNEX 1 – LIST OF PARTICIPANTS AT THE ON-SITE VISIT

Public Sector

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| <ul style="list-style-type: none"> • President's Office <ul style="list-style-type: none"> - Law Group - Foreign Relations Group • Ministry of Justice <ul style="list-style-type: none"> - Minister's Office - Vice Minister's Office - Department of Administrative and Criminal Justice - Department of International Law • Special Investigation Service (STT) <ul style="list-style-type: none"> - Department of Administration - Department of Corruption Prevention - Complaints Division - Legal Division - Public Relations Division • State Police • Ministry of Foreign Affairs <ul style="list-style-type: none"> - Department of Development Cooperation - Department of External Economic Relations | <ul style="list-style-type: none"> • Ministry of Economy <ul style="list-style-type: none"> - Department of Company Law and Business Environment Improvement - Department of Economic Development - Department of EU Assistance Coordination - Department of Investment and Export • Ministry of Interior <ul style="list-style-type: none"> - Financial Crime Investigation Service • Ministry of Finance <ul style="list-style-type: none"> - Authority of Audit, Accounting, Property Valuation and Insolvency Management - Department of Accounting and Insolvency Management - Department of Tax Policy - State Tax Inspectorate • Central Project Management Agency • Bank of Lithuania • National Audit Office of Lithuania • Public Procurement Office |
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Prosecution Service and Judiciary

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| <ul style="list-style-type: none"> • Prosecutor Service <ul style="list-style-type: none"> - Deputy Prosecutor General's Office - Department of Organised Crime and Corruption Investigations, Prosecutor General's Office - Department of Criminal Prosecutions, Prosecutor General's Office - Department of Organised Crime and Corruption Investigations, Prosecutor General's Office - Department of Organised Crime and Corruption Investigations, Vilnius Regional Prosecutor's Office - Department of Organised Crime and Corruption Investigations, Kaunas Regional Prosecutor's Office | <ul style="list-style-type: none"> • Judiciary <ul style="list-style-type: none"> - Supreme Court - Court of Appeals - Vilnius District Court |
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Private Sector

Companies, Including SOEs

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|----------------------------------------|----------------------------------------|
| • Achema AB | • UAB Investicijų ir verslo garantijos |
| • Orlen Lietuva AB | • Amber Grid |
| • Telia Lietuva | • Energijos Skirstymo Operatorius AB |
| • UAB “Berlin chemie Menarini Baltic” | • Lietuvos Energija |
| • UAB Konekesko Lietuva | • Lietuvos Geležinkeliai |
| • UAB Thermo Fisher Scientific Baltics | • SE Lithuanian Oil Products Agency |
| • UAB Interlux | • SE Tarptautinis Vilniaus Oro Uostas |
| • UAB PakMarkas | • Orion Securities UAB FMI |
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Banks

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| • DNB Bank | • Swedbank |
| • SEB Bank | |
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Business Associations and Trade Unions

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|----------------------------------------------|--------------------------------------------------|
| • Employers’ Confederation of Lithuania | • Innovative Pharmaceutical Industry Association |
| • Business Association “Investors’ Forum | • Trade Union of Lithuanian Food Producers |
| • Lithuanian Confederation of Industrialists | • Trade Union Confederation |
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Legal Profession and Academics

- | | |
|---------------------------------|----------------------------------|
| • Lithuanian Bar Association | • Law Firm Cobalt |
| • Law Firm Tark Grunte Sutkiene | • Vilnius University Law Faculty |
| • Law Firm Sorainen | • Law Institute of Lithuania |
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Accounting and Auditing Profession

- | | |
|------------------------------------------------------|------------------------|
| • Lithuanian Chamber of Auditors | • Ernst & Young Baltic |
| • Lithuanian Association of Accountants and Auditors | |
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Civil Society

- | | |
|---------------------------------------------------|--------------------------------------------|
| • Transparency International Lithuania | • Lithuanian National Radio and Television |
| • Lithuanian Association for Responsible Business | • 15min |
| • Clear Wave | • BNS |
| • Freedom House | • Delfi |
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Parliamentarians

- | | |
|--------------------------------------------------|---------------------------------------------------------------------------------------|
| • Seimas Anti-corruption Commission | • Seimas temporary group of parliamentarians on preparation for accession to the OECD |
| • Seimas Law and Legislation Committee | |
| • Seimas National Security and Defence Committee | |
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ANNEX 2 – LIST OF ABBREVIATIONS AND ACRONYMS

Bank of Lithuania	BoL
Central Project Management Agency	CPMA
Central Tax Administrator	STI
Corporate Income Tax Law	CITL
Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism	MONEYVAL
Code of Criminal Procedure	CCP
Criminal Code	CC
Department for Investigation of Organised Crime and Corruption	OCCI
Double Taxation Conventions	DTCs
European Agency for Law Enforcement Training	CEPOL
European Arrest Warrant	EAW
European Judicial Co-operation Unit	EUROJUST
European Judicial Network	EJN
European Union	EU
European Federation of Pharmaceutical Industries and Associations	EFPIA
Export Credit Agencies	ECAs
Generally Accepted Accounting Principles	GAAP
General Prosecutor's Office	GPO
Gross National Income	GNI
Innovative Pharmaceutical Industry Association	IFPA
International Chamber of Commerce	ICC
International Ethics Standards Board for Accountants	IESBA
International Financial Reporting Standards	IFRS
International Standards on Auditing	ISAs
Financial Crime Investigation Service	FCIS
Financial Intelligence Unit	FIU
Financial Statements of Entities Law	FSEL
Law on Accounting	LA
Law on Audit of Financial Statements	LAFS
Law on Corporate Income Tax	LCIT
Law on Financial Statements of Undertakings	LFSU
Law on Personal Income Tax	LPIT
Law on Tax Administration	LTA
Law on the Financial Crime Investigation Service	FCISL
Law on the Prevention of Money Laundering and Terrorist Financing	AML/CTF Law
Law on the Prosecution Service	LPS
Law on the Special Investigation Service	LSTT
Ministry of Foreign Affairs	MOFA
Ministry of Justice	MOJ
Money Laundering Prevention Department	MLPD
Multilateral Convention on Mutual Administrative Assistance in Tax Matters	MAAC
Mutual Legal Assistance	MLA
Official Development Assistance	ODA
Personal Income Tax Law	PITL
Pharmaceutical Manufacturers' Association	VGA
Public Interest Entities	PIEs
Public Procurement Office	PPO
Transparency International	TI
Small and Medium-Sized Enterprises	SMEs
Special Investigations Service	STT
State-Owned Enterprises	SOEs
State Tax Inspectorate	STI
Suspicious Transaction Reports	STRs
UAB Investment and Business Guarantees	INVEGA

ANNEX 3 – EXCERPTS OF RELEVANT LEGISLATION

CRIMINAL CODE

Article 7. Criminal Liability for the Crimes Provided for in Treaties

Persons shall be liable under this Code regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime where they commit the following crimes subject to liability under treaties:...

- 5) property laundering (Article 216);
- 6) bribery (Article 225);
- 7) trading in influence (Article 226);
- 8) graft (Article 227);

Article 8. Criminal Liability for the Crimes Committed Abroad

1. A person who has committed abroad the crimes provided for in Articles 5 and 6 of this Code shall be held criminally liable only where the committed act is recognised as a crime and is punishable under the criminal code of the state of the place of commission of the crime and the Criminal Code of the Republic of Lithuania. Where a person who has committed a crime abroad is prosecuted in the Republic of Lithuania, but a different penalty is provided for this crime in each country, the person shall be subject to a penalty according to laws of the Republic of Lithuania, however it may not exceed the maximum limit of penalty specified in the criminal laws of the state of the place of commission of the crime.
2. A person who has committed the crimes provided for in Articles 5, 6, and 7 of the Criminal Code of the Republic of Lithuania shall not be held liable under this Code where he:
 - 1) has served the sentence imposed by a foreign court;
 - 2) has been released from serving the entire or a part of the sentence imposed by a foreign court;
 - 3) has been acquitted or released from criminal liability or punishment by a foreign court's judgment, or no penalty has been imposed by reason of the statute of limitation or on other legal grounds provided for in that state.
3. A citizen of the Republic of Lithuania or another person permanently residing in Lithuania who has committed abroad one or more crimes provided for in Article 149(3) and (4), Article 150(3) and (4), Article 151(2), Article 151¹, Article 152¹, Articles 153 and 157, Article 162(1), Article 307(3), Article 308(3) and Article 309(2) and (3) of this Code shall be punishable regardless of whether the committed act is punishable under the criminal law of the state of commission of the crime.

Article 20. Criminal Liability of a Legal Entity

1. A legal entity shall be held liable solely for the criminal acts the commission whereof is subject to liability of a legal entity as provided for in the Special Part of this Code.
2. A legal entity shall be held liable for the criminal acts committed by a natural person solely where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he, while occupying a managing position in the legal entity, was entitled:
 - 1) to represent the legal entity, or
 - 2) to take decisions on behalf of the legal entity, or
 - 3) to control activities of the legal entity.

3. A legal entity may be held liable for criminal acts also where they have been committed for the benefit of the legal entity by an employee or by an authorised representative of the legal entity as instructed or authorised, or as a result of insufficient supervision or control by the person indicated in paragraph 2 of this Article.
4. A legal entity may be held liable for criminal acts where they have been committed under conditions of paragraphs 2 or 3 of this Article by another legal entity controlled by or representing the legal entity, where they have been committed for the benefit of the former legal entity as instructed or authorised, or as a result of insufficient supervision or control by the person occupying a managing position in it or by his representative.
5. Criminal liability of a legal entity shall not release from criminal liability a natural person who has committed, organised, instigated or assisted in commission of the criminal act. Criminal liability of the legal entity for the criminal act committed, organised, instigated or assisted for its benefit or in its interests by a natural person shall not be eliminated by the natural person's criminal liability, as well as by the fact that the natural person is released from criminal liability for this act or is not subject to criminal liability due to other reasons.
6. The State, a municipality, a state and municipal institution and agency as well as international public organisation shall not be held liable under this Code. State and municipal enterprises, as well as the public establishments whose owner or stakeholder is the State or a municipality, and the public and private limited liability companies wherein the State or a municipality holds by the right of ownership all or part of shares shall not be considered to be state and municipal institutions and agencies and shall be held liable under this Code.

Article 39⁽¹⁾. Release from Criminal Liability When a Person Actively Assisted in Detecting the Criminal Acts Committed by Members of an Organised Group or a Criminal Association

1. A person who is suspected of participation in the commission of criminal acts by an organised group or a criminal association or belonging to a criminal association may be released from criminal liability where he confesses his participation in the commission of such a criminal act or his membership of the criminal association and where he actively assists in detecting the criminal acts committed by members of the organised group or the criminal association.

Paragraph 1 of this Article shall not apply to a person who participated in the commission of a premeditated murder or who had already been released from criminal liability on such grounds, also to the organiser or leader of an organised group or a criminal association.

Article 42. Types of Penalties

1. The following penalties may be imposed on a person who commits a crime:
 - 1) community service;
 - 2) a fine;
 - 3) restriction of liberty;
 - 4) arrest;
 - 5) fixed-term custodial sentence;
 - 6) custodial life sentence.
2. The following penalties may be imposed on a person who commits a misdemeanour:
 - 1) community service;
 - 2) a fine;
 - 3) restriction of liberty;
 - 4) arrest.
3. Only one penalty may be imposed on a person for the commission of one crime or misdemeanour.
4. In the cases provided for in Articles 63 and 64 of this Code, two penalties may be imposed.

5. If more than two penalties of a different type are imposed for several committed crimes, a court shall, when imposing a final combined sentence, select two penalties from those imposed: one of them being the most severe penalty, and the other one selected at the discretion of the court.
6. A person who committed a criminal act may, together with a penalty and in accordance with Articles 67, 68, 68¹, 68², 72, 72¹, 72² and 72³ of the Code, be imposed one or more of the following penal sanctions - prohibition of the exercise of a special right, deprivation of public rights, deprivation of the right to be employed in a certain position or to engage in certain activities, confiscation of property, the obligation to reside separately from the victim and/or prohibition to approach the victim closer than a prescribed distance, participation in programmes addressing violent behaviour, extended confiscation of property.
7. The types of penalties in respect of legal entities and peculiarities of imposition of penalties upon minors shall be stipulated by Articles 43 and 90 of this Code.

Article 43. Types of Penalties in Respect of Legal Entities

1. The following penalties may be imposed upon a legal entity for the commission of a criminal act:
 - 1) a fine;
 - 2) restriction of operation of the legal entity;
 - 3) liquidation of the legal entity.
2. Having imposed a penalty upon a legal entity, a court may also decide to announce this judgement in the media. The judgement whereby the court imposes a penalty on a legal person for the crimes provided for in Chapter XXXIII of this Code must be announced in the media.
3. Only one penalty may be imposed upon a legal entity for one criminal act.
4. The sanctions of articles of the Special Part of this Code shall not specify the penalties to which legal entities are subject. In imposing a penalty upon a legal entity, a court shall refer the list of penalties specified in paragraph 1 of this Article.

Article 47. Fine

1. A fine shall be a pecuniary penalty imposed by a court in the cases provided for in the Special Part of this Code.
2. A fine shall be calculated in the amounts of minimum standard of living (MSL).
3. The amounts of a fine shall be determined as follows:
 - 1) for a misdemeanour – from 15 to the amount of 500 MSLs;
 - 2) for a minor crime – from 50 to the amount of 2,000 MSLs;
 - 3) for a less serious crime – from 100 to the amount of 4,000 MSLs;
 - 4) for a serious crime – from 150 to the amount of 6,000 MSLs;
 - 5) for a negligent crime – from 20 to the amount of 750 MSLs.
4. The amount of a fine for a legal entity shall be from 200 to 100,000 MSLs.
5. The sanction of an article shall not indicate the amount of a fine for a committed criminal act. It shall be specified by a court when imposing the penalty.
6. The amount of the fine imposed for the criminal acts provided for in Chapter XXXIII of this Code cannot be lower than the amount of the established object of the criminal act, the material damage caused by the perpetrator or the material benefit sought or obtained by the perpetrator for oneself or for another person. Subject to several criteria for calculation of the amount of the fine, the amount of the imposed fine shall be calculated on the basis of the criterion the value in monetary terms of which is the highest. Where the fine is imposed in accordance with the rules set forth in this paragraph, the final amount of the fine imposed by the court for the criminal acts provided for in Chapter XXXIII of this Code may exceed the maximum amounts of a fine provided for in paragraphs 3 and 4 of this Article, but it cannot be lower than the minimum amounts of a fine provided for in paragraphs 3 and 4 of this Article

7. Where a person does not possess sufficient funds to pay a fine imposed by a court, the court may, in compliance with the rules stipulated in Article 65 of this Code and subject to the convict's consent, replace this penalty with community service.
8. Where a person evades voluntary payment of a fine and it is not possible to recover it, a court may replace the fine with arrest. When replacing the fine with arrest, the court shall act in compliance with the rules stipulated in Article 65 of this Code.

Article 61. Imposition of a Penalty in the Presence of Mitigating and/or Aggravating Circumstances

1. When imposing a penalty, a court shall take into consideration whether only mitigating circumstances or only aggravating circumstances, or both mitigating and aggravating circumstances have been established and shall assess the relevance of each circumstance.
2. Having assessed mitigating and/or aggravating circumstances, the amount, nature and interrelation thereof, also other circumstances indicated in paragraph 2 of Article 54, a court shall make a reasoned choice of a more lenient or more severe type of a penalty as well as the measure of the penalty with reference to the average penalty.
3. The average penalty provided for by a law shall be determined as the aggregate of the minimum and maximum measure of a penalty provided for in the sanction of an article, which is subsequently divided by half. Where the sanction of the article prescribes no minimum measure of a penalty for a committed criminal act, the average penalty shall be determined on the basis of the minimum measure of a penalty fixed for that type of penalties.
4. Where the offender voluntarily confesses to commission of a crime, sincerely regrets it and actively assists in the detection of the crime as well as there are no aggravating circumstances, a court shall impose upon him a custodial sentence not exceeding the average penalty provided for in the sanction of an article for the committed crime or a non-custodial sentence
5. A court may impose a custodial sentence not exceeding the average penalty provided for in the sanction of an article for the committed crime upon a person who participated in the commission of a premeditated murder, where he makes a confession regarding all the criminal acts committed by him and actively assists in the detection of the premeditated murder committed by members of an organised group or a criminal association.
6. Paragraph 5 of this Article shall not apply to the organiser or leader of a premeditated murder, organised group or criminal association.

Article 72. Confiscation of Property

1. Confiscation of property shall be the compulsory uncompensated taking into the ownership of a state of any form of property subject to confiscation and held by the offender or other persons.
2. An instrument or a means used to commit an act prohibited by this Code or the result of such an act shall be considered as property subject to confiscation. The property of any form directly or indirectly obtained from the act prohibited by this Code shall be considered as the result of the act.
3. The property held by the offender and being subject to confiscation must be confiscated in all cases.
4. The property held by another natural or legal person and being subject to confiscation shall be confiscated irrespective of whether the person has been convicted of the commission of an act prohibited by this Code, where:
 - 1) when transferring the property to the offender or other persons, he was, or ought to have been, aware that this property would be used for the commission of the act prohibited by this Code;
 - 2) the property has been transferred thereto under a fake transaction;
 - 3) the property has been transferred thereto as to a family member or close relative of the offender;

- 4) the property has been transferred to him as to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);
 - 5) when acquiring the property, he or the persons holding managing positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property is an instrument or a means used to commit an act prohibited by this Code or the result of such an act.
5. Where the property which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 4 of this Article a sum of money equivalent to the value of the property subject to confiscation.
 6. When ordering confiscation of property, the court must specify the items subject to confiscation or the monetary value of the property subject to confiscation.

Article 72³. Extended Confiscation of Property

1. Extended confiscation of property shall be the taking into ownership of the State of the property of the offender or part thereof disproportionate to the legitimate income of the offender, where there are grounds for believing that the property has been obtained by criminal means.
2. Extended confiscation of property shall be imposed provided that all of the following conditions are met:
 - 1) the offender has been convicted of a less serious, serious or grave premeditated crime from which he obtained, or could have obtained, material gain;
 - 2) the offender holds the property acquired during the commission of an act prohibited by this Code, after the commission thereof or within the period of five years prior to the commission thereof, whose value does not correspond to the offender's legitimate income, and the difference is greater than 250 minimum living standards (MLS), or transfers such property to other persons within the period specified in this point;
 - 3) the offender fails, in the course of criminal proceedings, to provide proof of the legitimacy of acquisition of the property.
3. The property referred to in paragraph 2 of this Article and being subject to confiscation, if it has been transferred to another natural or legal person, shall be confiscated from this person, where at least one of the following grounds exists:
 - 1) the property has been transferred under a fake transaction;
 - 2) the property has been transferred to the offender's family members or close relatives;
 - 3) the property has been transferred to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);
 - 4) the person whereto the property has been transferred or the persons holding managing positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property has been obtained by criminal means or with illicit funds of the offender.
4. The extended confiscation of property provided for in this Article may not be imposed on the property of the offender or third parties or part thereof if it is not recoverable under international treaties of the Republic of Lithuania and provisions of the Code of Civil Procedure of the Republic of Lithuania and other laws.
5. Where the property, or part thereof, which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 3 of this Article a sum of money equivalent to the value of the property subject to confiscation.

6. When ordering extended confiscation of property, the court must specify the items subject to confiscation or the monetary value of the property or part thereof subject to confiscation.

Article 216. Legalisation of Property Obtained by Criminal Means

1. A person who, seeking to conceal or legalise the property of his own or another person while being aware that it has been obtained by criminal means, acquires, manages, uses, transfers it to other persons, performs financial operations with this property, enters into transactions, uses it in economic and commercial activities, otherwise converts it or makes a false declaration that it has been obtained from lawful activities, also a person who, conceals the true nature, source, location, disposition, movement or ownership of or other rights with respect to his or another person's property, while being aware that such property has been obtained by criminal means, shall be punished by a fine or a custodial sentence for a term of up to seven years.
2. A legal entity shall also be held liable for the acts provided for in this Article.

Article 227. Active bribery

1. A person who directly or indirectly himself or through an intermediary offers, promises or agrees to give or gives a bribe to a civil servant or a person equivalent thereto or to a third party in exchange for a desired lawful act or omission of the civil servant or person equivalent thereto in exercising his powers shall be punished by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to four years.
2. A person who directly or indirectly himself or through an intermediary offers, promises or agrees to give or gives a bribe to a civil servant or a person equivalent thereto or to a third party in exchange for a desired unlawful act or omission of the civil servant or person equivalent thereto in exercising his powers shall be punished by a fine or by arrest or by a custodial sentence for a term of up to five years.
3. A person who carries out the actions provided for in paragraph 1 of this Article by offering, promising or agreeing to give or giving a bribe of the value exceeding 250 MSLs shall be punished by a fine or custodial sentence for a term of up to seven years.
4. A person who carries out the actions provided for in paragraph 1 or 2 of this Article by offering, promising or agreeing to give or giving directly or indirectly himself or through an intermediary a bribe of the value lower than 1 MSL shall be considered to have committed a misdemeanour and shall be punished by a fine or by restriction of liberty or by arrest.
5. A person, who carried out the actions provided for in paragraphs 1, 2, 3 or 4 of this Article is liable under this code both for seeking by bribe of a specific act or omission of the civil servant or person equivalent thereto in exercising his powers and for an exceptional position or a favourable attitude of this person, also regardless how his actions were perceived by a civil servant or person equivalent thereto.
6. A person shall be released from criminal liability for grafting where he was demanded or provoked to give a bribe and he, upon offering or promising to give or giving directly or indirectly himself or through an intermediary the bribe voluntarily notifies a law enforcement institution thereof within the shortest possible time, but in any case before the delivery of a notice of suspicion raised against him, also where he promises to give or gives the bribe with the law enforcement institution being aware thereof.
7. Paragraph 6 of this Article shall not apply to a person who directly or indirectly himself or through an intermediary offers or promises to give or gives a bribe to a person referred to in Article 230(2) of this Code.
8. A legal entity shall also be held liable for the acts provided for in paragraphs 1, 2, 3 and 4 of this Article.

Article 230. Interpretation of Concepts

1. The civil servants referred to in this Chapter shall be state politicians, state officials, judges and civil servants under the Law on Civil Service and other persons who, by way of employment or by holding

office on other statutory grounds at state or municipal institutions or agencies, perform the functions of a government representative or have administrative powers, as well as official candidates for such office.

2. A person who, irrespective of his status under the legal acts of a foreign state or an international public organisation, performs the functions of a government representative, including judicial functions, has administrative powers or otherwise ensures the implementation of public interest through employment or by holding office on other grounds at an institution or body of a foreign state or of the European Union, an international public organisation or an international judicial institution or a judicial institution of the European Union or a legal person or another organisation controlled by the foreign state, also official candidates for such office shall be held equivalent to a civil servant. A foreign state shall mean any foreign territory, regardless of its legal status, and includes all levels and subdivisions of government.
3. Moreover, a person who is employed or holds office on other statutory grounds in a public or private legal person or another organisation or is engaged in professional activities and has appropriate administrative powers or is entitled to act on behalf of the legal person or another organisation or provides public services, also an arbitrator or jury shall also be held equivalent to a civil servant.
4. A bribe referred to in this Chapter shall mean an unlawful or unjustified reward expressed in the form of any material or another personal benefit for oneself or for another person (whether tangible or intangible, having or not having economic value in the market) in exchange for a desired lawful or unlawful act or omission of a civil servant or a person equivalent thereto in exercising his powers.
5. The exercise of powers referred to in this Chapter shall mean any use of the position of a civil servant or person equivalent thereto, irrespective whether or not it falls within the authority of the civil servant or the person equivalent thereto as prescribed by the legal acts.
6. For the purposes of application of provisions of Article 72 of this Code, a result of the acts prohibited under paragraphs 1, 3, and 5 Article 226 and under Article 227 of this Chapter shall be property of any form directly or indirectly obtained from these acts, including material advantage that emerged from a desired act or omission of the civil servant or person equivalent thereto in exercising his powers, irrespective of whether it was obtained in the course of activities which in accordance with the procedure established by legal acts may be undertaken legally, or not.

CODE OF CRIMINAL PROCEDURE

Article 97. Recovery of things and documents that are relevant to the investigation and examination of criminal activity

The pre-trial investigation officer, prosecutor and court have the right to demand from individuals and legal entities to submit things and documents that are relevant to the investigation and examination of criminal activity.

Article 165. Pre-trial investigation Institutions

1. Police is a pre-trial investigation institution. In cases when criminal acts have been disclosed during execution of functions by the following institutions (as specified by the laws regulating activities thereof) such institutions shall also be pre-trial investigation institutions: State Border Guard Service, Special Investigations Service, Military Police, Financial Crimes Investigation Service, Customs of the Republic of Lithuania, Fire and Rescue Department.
2. Pre-trial investigation shall also be conducted by: captains of ships on a long voyage in respect of criminal acts committed by the members of the crew and passengers during a long voyage; officers of

the Prisons Department, directors of the pre-trial detention and correctional institutions or officers authorised by them in respect of the criminal acts committed in such institutions.

Article 166. Initiation of Pre-trial Investigation

1. Pre-trial investigation shall be initiated:
 - 1) upon receipt of a complaint, statement or notice of a criminal act;
 - 2) where a prosecutor or a pre-trial investigation officer themselves establish the characteristics of a criminal act.
2. In the cases specified by this Code, pre-trial investigation shall be initiated solely in the presence of the injured party's complaint.
3. Each case of initiation of pre-trial investigation shall be registered in accordance with the procedure laid down by the Prosecutor General of the Republic of Lithuania.
4. A notice of initiation of pre-trial investigation shall be sent to the person who has submitted a complaint, statement or notice.

Article 168. Refusal to Initial Pre-trial Investigation

1. Upon receipt of a complaint, submission or report and, where necessary, a revised complaint, submission or report, a prosecutor or a pre-trial investigation officer shall refuse to open a pre-trial investigation solely where the specified data on a criminal act are manifestly incorrect or where the circumstances referred to in Article 3(1) of this Code are evident. For the purpose of revising the data of the complaint, submission or report, the actions not related to procedural coercive measures may be carried out: an on-the-spot inspection of the place of the incident and interview of incident witnesses may be conducted, also data or documents may be requested from state or municipal enterprises, agencies, organisations, the applicant or the person in the interest whereof the complaint, submission or report has been filed, an interview of the applicant or the person in the interest whereof the complaint, submission or report has been filed may be conducted. Such procedural actions must be carried out within the shortest possible time limits, but not later than within ten days.
2. When refusing to open a pre-trial investigation, a prosecutor or a pre-trial investigation officer shall draw up a reasoned decision. The pre-trial investigation officer may refuse to open the pre-trial investigation solely with the consent of the head of a pre-trial investigation body or a person authorised by him.
3. A copy of a decision refusing to open a pre-trial investigation shall be sent to the person who has filed a complaint, submission or report. A pre-trial investigation officer must send the copy of the decision to a prosecutor within 24 hours.
4. Upon refusal to open a pre-trial investigation in the cases referred to in paragraph 1 of this Article, a person who has filed a complaint, submission or report shall have the right to access all material or part thereof on the basis of which a decision of a pre-trial investigation officer or a prosecutor has been taken to refuse to open the pre-trial investigation, also make copies or extracts of this material when accessing it. A written request for accessing the material referred to in this paragraph and/or making copies or extracts of this material when accessing it shall be submitted to the head of a pre-trial investigation body/division thereof or, in the cases where the complaint, submission or report was examined and a procedural decision thereon was taken by the prosecutor, to the prosecutor. The head of the pre-trial investigation body/division thereof or the prosecutor must consider this request not later than within three days from the receipt thereof. The head of the pre-trial investigation body/division thereof or the prosecutor shall indicate the extent to which the material is to be accessed by the person who has filed the complaint, submission or report. When accessing to the material referred to in this paragraph, the prohibitions referred to in Article 181(6) of this Code shall also apply.
5. A decision of a pre-trial investigation officer refusing to open a pre-trial investigation may be appealed against to a prosecutor, and the prosecutor's decision – to a pre-trial investigation judge. Where the prosecutor does not overturn the decision refusing to open the pre-trial investigation, his decision may

be appealed against to the pre-trial investigation judge. A decision adopted by the pre-trial investigation officer shall be appealed against in accordance with the procedure laid down in Part X of this Code. Appeals may be filed within seven days from the receipt of a transcript of the decision or an order. The persons authorised to file an appeal, if failing to keep to the time limit for filing an appeal for serious reasons, shall have the right to request that the prosecutor or the pre-trial investigation judge authorised to hear the appeal to reopen the exceeded time limit. The request to reopen the mentioned time limit may not be submitted after the lapse of more than six months after taking of the decision which has been appealed against.

6. In the event of a refusal to open a pre-trial investigation in the cases specified in paragraph 1 of this Article and having at his disposal data on an administrative offence or an offence provided for by other legal acts, a prosecutor, a pre-trial investigation officer shall, under a decision on refusal to open the pre-trial investigation, transfer a complaint, submission or report and a revised complaint, submission or report for resolution in accordance with the procedure laid down by the Code of Administrative Offences of the Republic of Lithuania or other legal acts.

Article 176. Terms of a pre-trial investigation

1. A pre-trial investigation shall be performed within the shortest time possible, but in any case, within no longer than:
 - 1) regarding a criminal offence – within three months;
 - 2) regarding minor, medium severity offences, or offences through recklessness – within six months;
 - 3) regarding serious and grave crimes – within nine months.
2. In view of a high complexity of the case, its scope or other material circumstances, upon a request of the prosecutor leading the pre-trial investigation by its respective resolution the superior prosecutor may extend the time limits referred in par. 1 of the present Article. A pre-trial investigation must be prioritized in the cases in which the suspects are detained, and the cases in which the suspects and the injured are minors.
3. In case a pre-trial investigation is lasting for too long, having received a complaint of a suspect or his defence attorney, the pre-trial investigation judge may decide to pass decisions referred to in Article 215 of the present Code.

Article 208. Basis of expert examination

Expertise is granted in cases where the judge or court of pre-trial investigation determines that a special investigation requiring scientific, technical, artistic or other special knowledge is necessary in order to determine the circumstances of a criminal offense

Article 215. Termination of a pre-trial investigation due to an excessive length of the pre-trial investigation

1. If a pre-trial investigation is not completed within six months from the first interrogation of the suspect, the suspect, his representative or defence counsel may file a complaint with a pre-trial investigation judge regarding the delay in the pre-trial investigation.
2. To examine a complaint, a pre-trial investigation judge shall hold a sitting to which the suspect or his counsel and a prosecutor shall be summoned.
3. Upon examining a complaint, a pre-trial investigation judge shall issue one of the following orders:
 - 1) to dismiss the complaint;
 - 2) to place the prosecutor under the obligation to complete the pre-trial investigation within the specified time limit;
 - 3) to terminate the pre-trial investigation.
4. An order of a pre-trial investigation judge may be appealed against in accordance with the procedure laid down in Article 65 of this Code. If a complaint is dismissed, the participants in the proceedings

referred to in paragraph 1 of this Article may file a repeated complaint not earlier than after the lapse of three months from the examination of the previous complaint.

5. A prosecutor must complete a pre-trial investigation and draw up an indictment or draw up a decision terminating the pre-trial investigation within the time limit specified by a pre-trial investigation judge. The prosecutor may refer to the pre-trial investigation judge requesting an extension of the time limit for completion of the pre-trial investigation. The issue of the extension of the time limit shall be considered at a sitting to which the participants in the proceedings referred to in paragraph 2 of this Article shall be summoned.

Article 387. Order of proceedings

3. Proceedings for a criminal act may be commenced or continued with respect to a legal entity separately from a natural person who has allegedly committed the criminal act for the benefit or in the interests of the legal entity:
 - 1) when the statute of limitations for criminal liability has expired with respect to the criminal act committed by the natural person, however, it has not yet expired with respect to the legal entity;
 - 2) when the natural person is released from criminal liability and the proceedings with respect to him are terminated;
 - 3) when a judgment regarding the same charges becomes enforceable with respect to the natural person;
 - 4) when the hearing of the case of the natural person is suspended or terminated because the natural person develops a mental disorder after commission of the criminal act rendering him incapable of understanding the nature of his actions or controlling them;
 - 5) when the natural person dies and the proceedings are not commenced or are terminated with his regard;
 - 6) when the competent authority of a foreign state does not give an authorisation to prosecute the natural person;
 - 7) when the natural person absconds from pre-trial investigation or trial, or when his whereabouts are unknown;
 - 8) when the natural person is outside the territory of the Republic of Lithuania and avoids appearing before the court, and the court, following the procedure set out in Article 433 of this Code, decides to continue the proceedings with respect to the legal entity and postpone the hearing of the case with respect to the natural person;
 - 9) when a prosecutor during pre-trial investigation or a court during trial decides to separate proceedings against the legal entity and the natural person who has allegedly committed the criminal act for the benefit or in the interests of the legal entity, if this allows to accelerate the proceedings against the legal entity or the natural person;
 - 10) when a sophisticated management structure of the legal entity or other circumstances do not allow to identify, to prosecute or to convict a specific natural person who has committed the criminal act, however, there is a reason to believe that the criminal act has been committed by one or more natural persons referred to in paragraph 2 or 3 of Article 20 of the Criminal Code of the Republic of Lithuania or that the criminal act has been committed by joint acts/omission of these persons;
 - 11) in other cases, when criminal proceedings are not commenced or continued with respect to the natural person who has allegedly committed the criminal act.

Article 418. A Prosecutor's Right to Decide to Complete Proceedings by a Penal Order

1. A hearing at court may be dispensed with and a penalty may be imposed by a penal order for the criminal acts for which any penalty may be imposed as the only or alternative penalty, except in the cases when only fixed-term imprisonment or imprisonment lifelong may be imposed for the criminal act. The procedure of rendering a penal order of the court shall apply only in the cases when the

offender compensates for and eliminates the damage caused, if any, or undertakes to compensate for and eliminate such damage.

2. The right to issue a penal order shall be held by a judge after receiving an application of a prosecutor concerning the completion of proceedings by a penal order of the court.
3. If a prosecutor decides to apply to a judge concerning the completion of the proceedings by a penal order of the court and the accused person does not object to that, a bill of indictment shall not be drawn up. In that case, the prosecutor shall draw up an application which shall be sent to the court according to jurisdiction together with collected material.
4. After making a decision to complete the proceedings by a penal order of the court, the prosecutor shall notify this to the victim. The victim may appeal against the prosecutor's decision to the pre-trial judge within seven days after the receipt of such notification. The appeal shall be dealt with under the procedure provided for in Article 64 of this Code.

Article 426. A Prosecutor's Right to Decide to Complete Proceedings by Expedited Proceedings

1. If the circumstances of commission of a criminal act are clear and the criminal case in respect of the commission of the act is subject to be heard before the district court, the prosecutor may on the day of commission of the act or within fourteen days from the start of the pre-trial investigation apply to the court which has jurisdiction over the case with an application to hear the case by expedited proceedings.
2. In the case referred to in paragraph 1 of this Article, the prosecutor shall dispense with the bill of indictment, but shall furnish the court with the application and the material collected during the pre-trial investigation if any procedural actions were carried out. The prosecutor and the pre-trial investigation institution must notify the accused, his counsel for the defence, the victim, the plaintiff in a civil action, the defendant in a civil action and their representatives and witnesses of the time and place of the hearing in which the case shall be adjudicated by expedited proceedings. The victims, plaintiffs in a civil action and defendants in a civil action examined during the pre-trial investigation shall also be notified that their failure to appear without legitimate reasons shall be considered as a consent to adjudicate the case in their absence and shall not preclude from hearing the case, except for the cases where the court acknowledges that their presence is obligatory.

LAW ON PERSONAL INCOME TAX

Article 18 Allowable Deductions Related to the Receipt of Income from Individual Activities

3. The following shall not be attributed to allowable deductions of a resident of Lithuania engaged in individual activities:
 - 14) expenses incurred while engaging in acts prohibited by the Criminal Code, including bribes.

LAW ON CORPORATE INCOME TAX

Article 31. Non-allowable Deductions

1. The following may not be deducted from income: ...
 - 20) costs incurred while engaging in acts prohibited by the Criminal Code, including bribes...

LAW ON BANKS

Article 55. Secret of a Bank

6. A bank shall provide the information which is considered a secret of a bank to:
 - 1) institutions performing functions of pre-trial investigation, criminal intelligence, intelligence, tax administration, the Deposit Insurance Fund and the Fund of Insurance of Liabilities to Investors, supervision of personal data processing, supervision of financial market, disputes' settlement between the consumers and financial market participants out of court in accordance with the Law of the Republic of Lithuania on the Bank of Lithuania, money laundering and/or terrorist financing prevention, if it is necessary for performance of the functions specified in this point;
12. The provisions of this Article shall apply to the extent they do not contradict the provisions of laws regulating activities of institutions that perform functions specified in Article 6(1). Provisions of other laws regulating provision of information comprising a bank secret shall apply as far as they do not contradict the provisions of this Article.