

Implementing the OECD Anti-Bribery Convention



Phase 4 Report: Slovenia



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This Phase 4 Report on Slovenia by the OECD Working Group on Bribery evaluates and makes recommendations on Slovenia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the 44 members of the OECD Working Group on Bribery on 11 March 2021.

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

Table of contents

Executive summary	6
Introduction	8
Previous Evaluations of Slovenia by the Working Group on Bribery	8
Slovenia Economy and Foreign Bribery Risks	10
Foreign Bribery Cases in Slovenia	13
A. Detection of the foreign bribery offence	16
A.1. Reporting by the Ministry of Foreign Affairs and Embassies	16
A.2. Detection through the Slovenian Anti-Money Laundering Framework	17
A.3. Detection by the tax authority	18
A.4. Whistleblower protection	18
A.5. Detection and Reporting by Accountants and Auditors	21
A.7. Other Sources of Foreign Bribery Allegations	25
B. Enforcement of the foreign bribery offence	28
B.1. The Foreign Bribery Offence	28
B.2. Sanctions for Foreign Bribery	33
B.3. Investigative and Prosecutorial Framework	36
B.4. Investigating Foreign Bribery	51
B.5. Prosecuting Foreign Bribery	58
B.6. Mutual Legal Assistance and Extradition in Foreign Bribery Cases	62
C. Responsibility of legal persons	66
C.1. Scope of Corporate Liability for Foreign Bribery and Related Offences	66
C.2. Enforcement of Corporate Liability	70
C.3. Engagement with the Private Sector	71
D. Other issues	72
D.1. Money laundering	72
D.2. Accounting requirements, external audit, and company compliance and ethics programmes	74
D.3. Tax measures for combating bribery	75
D.4. Export credit and public advantages	78
D.5. Official Development Assistance	81

Conclusion: Positive achievements, recommendations, and issues for follow-up	85
Annex A. Phase 3 recommendations to Slovenia and assessment of implementation by the Working Group on Bribery in 2016	90
Annex B. List of participants in the virtual visit	95
Annex C. Legislative extracts	97
Annex D. List of abbreviations, terms and acronyms	100

Figures

Figure 1. Slovenia's Implementation of its Phase 3 Recommendations	9
Figure 2. Slovenia's handling of foreign bribery allegations (February 1999 – October 2020)	14
Figure 3. Protection Measures for Reporting Persons 2011-2019	20

Boxes

Box 1. Prior WGB Evaluations of Slovenia	8
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Executive summary

This Phase 4 report by the OECD Working Group on Bribery in International Business Transactions (Working Group or WGB) evaluates and makes recommendations on Slovenia's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. This report details Slovenia's particular achievements and challenges in this regard, including with respect to enforcement of its foreign bribery laws, as well as the progress Slovenia has made since its Phase 3 evaluation in 2014.

While the Working Group welcomes the opening of four additional foreign bribery investigations since 2014, it remains seriously concerned about the lack of foreign bribery enforcement in Slovenia. Nine allegations of foreign bribery by Slovenian nationals or companies have arisen since the foreign bribery offence was enacted in 1999, of which seven led to formal investigations but none to prosecution. Two investigations are on-going. The Working Group therefore reiterates Phase 3 recommendation that Slovenia seriously step up its enforcement of the foreign bribery offence and prioritise improving detection of foreign bribery.

With regard to detection, the Working Group notes that, to date, no cases of foreign bribery have been detected by government agencies other than law enforcement, including the Financial Intelligence Unit, Financial Administration or Ministry of Foreign Affairs, and recommends that Slovenia increase efforts to train officials on detecting and reporting foreign bribery. On the other hand, since Phase 3 several investigations have been opened following media reports, although the Working Group is seriously concerned that media in Slovenia may currently not operate in an environment conducive to the independent reporting of potential bribery allegations. The Working Group commends Slovenia for its strong legal framework for the protection of whistleblowers who report foreign bribery, and will monitor how this is affected by proposed reforms. It also positively notes the amendments to the Audit Act that translate into additional safeguards for auditor independence and reporting. The Working Group nevertheless reiterates concerns in Phase 3 about disconnect between the legal frameworks for protected reporting and their use in practice. Finally, the Working Group congratulates Slovenia on its beneficial ownership register and hopes that this will help facilitate greater detection and enforcement of the foreign bribery offence.

With regard to enforcement, the Working Group remains concerned that Slovenia's foreign bribery offence, unchanged since Phase 3, does not fully meet the requirements of the Convention in terms of scope and definition of foreign officials, and recommends that Slovenia, as a priority, take all measures necessary to ensure coverage of foreign public officials as defined in art. 1(4) of the Convention, including employees of foreign SOEs. Furthermore, Slovenia must amend its legislation to ensure that the defence of effective regret cannot be invoked in foreign bribery cases. The Working Group further recommends that priority measures are taken to provide specialised training to prosecutors and judges on applying effective, proportionate and dissuasive sanctions, including confiscation measures, on natural and legal persons convicted of the foreign bribery offence.

The Working Group also welcomes the adoption of amendments to the Integrity and Prevention of Corruption Act (IPCA) after years of delay and look forward to seeing a positive impact in terms of independence of the Commission for the Prevention of Corruption (CPC) and its role in the fight against

foreign bribery. On the other hand, the WGB remains deeply concerned about the ongoing allegations of political interference in the National Bureau of Investigation (NBI), responsible for investigating foreign bribery allegations in Slovenia, as well as the risk of interference and improper political influence in prosecutions. The Working Group strongly reiterates its recommendation issued in Phase 3 that Slovenia, as a matter of urgency, put in place sufficient safeguards to secure the independence of police investigations and ensure that law enforcement authorities are not subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention in deciding whether to pursue an investigation or prosecution.

Finally, the Working Group notes that Slovenia's corporate liability regime has not been amended since Phase 3 to implement its recommendations. This, in addition to the ongoing lack of case law involving liability of legal persons for bribery offences makes it impossible to assess any progress by Slovenia. Slovenia nevertheless has a strong legal framework for successor liability and the Working Group will follow its application in foreign bribery cases involving legal persons.

The report and its recommendations reflect the findings of experts from Latvia and Luxembourg and were adopted by the Working Group on 11 March 2021. The report is based on legislation, data and other materials provided by Slovenia and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its virtual visit from 30 September to 8 October 2020, during which the team met virtually with representatives of Slovenia's public and private sectors, media, and civil society. The team regrets that it did not have the opportunity to meet representatives from small-and-medium sized enterprises (SMEs), business associations, financial institutions and academics during the virtual visit. Slovenia will submit a written report within one year (March 2022) on steps taken to ensure that the definition of foreign public officials is consistent with the Convention; ensure the defence of effective regret does not apply in foreign bribery cases; and ensure that investigations and prosecutions are not subject to considerations prohibited under Article 5 of the Convention (Recommendations 7(a), 7(b), 8(e) and 8(f)). Within two years (March 2023), Slovenia will submit a written report on the implementation of all recommendations and its enforcement efforts.

Introduction

1. In March 2021, the Working Group discussed its fourth evaluation of Slovenia's implementation of the [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) (the Convention), the [2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions](#) (2009 Recommendation) and related instruments.

Previous Evaluations of Slovenia by the Working Group on Bribery

Box 1. Prior WGB Evaluations of Slovenia

2016	Phase 3 Follow-up
2014	Phase 3 Report
2009	Phase 2 Follow-up
2007	Phase 2 Report
2005	Phase 1 Report

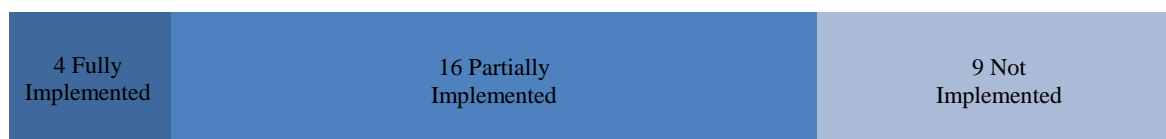
2. Monitoring of Working Group member countries' implementation and enforcement of the Convention and related instruments takes place in successive phases through a rigorous peer-review system. The monitoring process is subject to specific, agreed-upon principles. The process is compulsory for all Parties and provides for on-site visits (as of Phase 2) including meetings with non-government actors. The evaluated country has no right to veto the final report or recommendations. All of the OECD Working Group on Bribery evaluation reports and recommendations are systematically published on the OECD website.

3. During its Phase 3 evaluation by the Working Group in June 2014, Slovenia received 29 recommendations. In 2016, the Working Group concluded that Slovenia had taken initial steps to implement the Working Group's recommendations, but additional efforts were necessary in some areas, with 4 recommendations fully implemented, 16 partially implemented and 9 not implemented.¹

¹ See **Annex 1** for a list of Slovenia's Phase 3 recommendations and the Working Group's assessment of their implementation, based on Slovenia's Phase 3 Follow-up Report.

Figure 1. Slovenia's Implementation of its Phase 3 Recommendations

(WGB Assessment of Slovenia's Phase 3 Two-Year Written Follow-up Report – 2016)



Phase 4 Process and On-Site visit

4. Phase 4 evaluations focus on three key cross-cutting issues: enforcement, detection, and corporate liability.² They also address progress made in implementing outstanding recommendations from previous phases, as well as any issues raised by changes to domestic legislation or the institutional framework. Phase 4 takes a tailor-made approach, considering each country's unique situation and challenges, and reflecting positive achievements and good practices. For this reason, issues which were not deemed problematic in previous phases or which have not arisen as such in the course of this evaluation may not have been fully re-assessed at the virtual visit and may thus not be reflected in this report. However, some issues did require reopening due to the ongoing lack of jurisprudence on the foreign bribery offence and liability of legal persons and the WGB's commitment to equal treatment.

5. The team for this Phase 4 evaluation of Slovenia was composed of lead examiners from Latvia and Luxembourg, as well as members of the OECD Secretariat.³ After receiving Slovenia's responses to the Phase 4 questionnaire and supplementary questions, the evaluation team conducted a virtual visit from 30 September to 8 October 2020. The team met with representatives of Slovenia's government and law enforcement authorities. Judges of Slovenia's Supreme Court and District Court represented the judiciary; unfortunately, it was not possible to meet with investigative judges. Non-governmental representatives were also invited, and the evaluation team met with large companies (including State-owned-and-controlled enterprises (SOEs)) and external auditors, as well as civil society (non-government organisations, and the media).⁴ However, the lead examiners were disappointed by Slovenia's inability to ensure the participation of representatives from SMEs and the financial sector. Only two lawyers attended the discussion; and there were no representatives from business associations or academics. The evaluation team would nevertheless like to express its appreciation to all the participants for their contributions to the open and constructive discussions. The evaluation team is also grateful to the Slovenian authorities, in particular the Commission for the Prevention of Corruption, for all their cooperation

² See Working Group [Phase 4 evaluation procedures](#).

³ Latvia was represented by **Ms. Sintija Helviga-Eihvalde**, Head of the First Division (Strategic Analysis) Corruption Prevention and Combating Bureau (KNAB), and **Mr. Igors Gerasimins**, Prosecutor of the Methodology Division Department of Analysis and Management at Latvia's Prosecutor's General Office. Luxembourg was represented by **Ms. Caroline Moulin**, Head of the Department of Financial and Economic Criminality at the Police Grand-Ducale – Service de Police Judiciaire, and **Mr. Georges Keipes**, Attaché at Luxembourg's Ministry of Justice. The OECD was represented by **Ms. Leah Ambler**, Coordinator of the Phase 4 Evaluation of Slovenia; **Ms. Diane Pallez**, Legal Analyst and **Ms. Alejandra Tadeu**, Legal Analyst, all from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

⁴ See **Annex 2** for the agenda and list of participants in the virtual visit discussions.

throughout the evaluation, their efforts to organise the virtual visit, and the provision of additional information following the visit.

Slovenia Economy and Foreign Bribery Risks

a. *Economic background*

6. Slovenia is a relatively small economy among the 44 members of the Working Group, placing as the 41st largest economy in terms of gross domestic product (GDP). Slovenia is the 85th largest economy in the world and the 23rd largest economy in the European Union (EU).⁵ In 2018, its exports and imports of goods and services comprised 84.4 per cent and 75.3 per cent of its GDP, respectively. A large share of Slovenia's exports relate to machinery and transport equipment, manufactured goods and chemical and related products.⁶ With regard to the export of goods, Slovenia's major trading partners are EU member states (in particular Germany, Italy and Austria), and outside of the EU, Serbia, Bosnia & Herzegovina and Russia.⁷

7. Slovenia's outward foreign direct investment (FDI) is considerably smaller than its inward flows. In 2019, FDI outflows amounted to USD 135 million compared to USD 910 million in FDI inflows.⁸ As a recipient of FDI, Slovenia received EUR 15.2 billion at the end of 2018, an increase of 8.6% in relation to the previous year. The main investors are EU member states (particularly Austria, Luxembourg, Germany and Italy) and Switzerland and the largest investments were made in manufacturing, financial and insurance activities and wholesale, retail trade and repair of motor vehicles. Slovenian outward FDI amounted to EUR 6.1 billion at the end of 2018, an increase of 1.6% on the previous year. The Bank of Slovenia estimates that "approximately a quarter of outward FDI is under indirect foreign ownership, where domestic investors have foreign owners". The five main recipients of Slovenian FDI include Croatia, Serbia, Bosnia & Herzegovina, North Macedonia and Russia. Within the EU member states, the largest increase in Slovenian outward FDI in 2018 was in the Netherlands. FDI in the Netherlands increased by EUR 26 million in relation to 2017 and was mostly centered in the manufacturing sector. A large part of ourward FDI comes from Slovenian companies operating in manufacturing, followed by companies in wholesale and retail trade and repair of motor vehicles.⁹

8. Micro, small and medium-sized enterprises in the non-financial business economy account for 99.8% of all companies, translating to 145 996 of the total of 146 242 companies registered in Slovenia. The majority of SMEs are active in wholesale and retail trade and manufacturing. In 2016, 9.7% of SMEs undertook extra-EU exports of goods, although interstate trade and commerce within the EU is unknown.¹⁰ Slovenian SMEs are therefore active and involved in international trade and, as a corollary, face risks of bribery of foreign public officials. Given the importance of SMEs in the fabric of Slovenia's economy, it is regrettable that the evaluation team was unable to meet with any representatives of these companies to further discuss their specific challenges when facing these risks.

9. Following the economic crisis of the early 2010s in Slovenia, the country witnessed a five year expansion of its economy. Unemployment rates steadily decreased during that time period reaching a rate

⁵ [Eurostat - EU countries by GDP 2019; World Bank data, GDP 2019.](#)

⁶ [OECD Economic Surveys: Slovenia 2020.](#)

⁷ [World Trade Organisation: Slovenia's Trade profile.](#)

⁸ [UNCTAD World Investment Report 2020.](#)

⁹ [Bank of Slovenia Direct Investment 2018.](#)

¹⁰ [Slovenia – 2019 SBA Fact Sheet](#), Europa.eu.

of 4.4% in 2019, below the OECD average.¹¹ Slovenia's GDP in 2018 amounted to USD 54.03 billion, showing an annual increase of 4.1% in comparison to the annual growth of 1.3% in 2010.¹² The Slovenian economy has a very significant tertiary sector representing 56.4% of its GDP, mainly in the fields of information and communications technology, financial and commercial services and retail business. The industrial sector represents 28.4% of Slovenia's GDP. The main fields are the mechanical industries, electronics, pharmacy and chemicals. The World Bank estimates that the manufacturing sector alone contributes approximately 20% of Slovenia's GDP.¹³

b. State-Owned Enterprises

10. Despite a gradual transition to privatisation of companies that began in the early 90's, Slovenia still has a significant number of SOEs. A 2016 study by the European Commission found that, although in absolute numbers only approximately 1% of companies in Slovenia have minority or majority State control, Slovenia has the highest book value of equity of majority or minority SOEs relative to GDP in Europe. The State is the largest employer, asset manager and corporate debt holder in Slovenia.¹⁴ The State holds an interest in some of the key sectors (and main companies) in the country such as those operating in banking, insurance, energy, transport, telecommunications, postal services, manufacturing and gaming.¹⁵ Cross-ownership is common, creating an intricate network in the structure of companies with State participation.

11. The most recent OECD Economic Surveys expressed concerns that the large number of SOEs in these competitive sectors could be hindering competition and slowing down economic recovery, recommending that the State widen the scope for privatisation.¹⁶ State assets are managed by Slovenian Sovereign Holding (SSH) which was created in 2014 with the purpose of improving SOE governance and managing the privatisation programme. However, with the adoption of the state asset management strategy in July 2015, the SSH seems to have focused mostly on its first goal of improving governance, with the privatisations process lagging behind. The 2017 privatisation plan envisaged the privatisation of 20 SOEs, including two state-owned banks. Only three companies were sold and the sale of the Nova Ljubljanska Banka (NLB) and Abanka banks were postponed.¹⁷ Abanka was sold in its entirety in June 2019.¹⁸ The NLB's privatisation was concluded in June 2019 with the Slovenian State remaining its main investor with a holding of 25% plus one share.¹⁹ The privatisation of Telekom Slovenije, Slovenia's third largest SOE and main telecommunications company, has been pending without a timeline since 2013²⁰

¹¹ [OECD Economic Surveys: Slovenia 2020](#).

¹² [World Bank Country Profile: Slovenia](#).

¹³ [World Bank Country Profile: Slovenia](#).

¹⁴ European Commission – State-Owned Enterprises in the EU ([Institutional Paper 031](#) – July 2016).

¹⁵ European Bank for Reconstruction and Development. [Slovenia Diagnostics: Assessing Progress and Challenges in Developing a Sustainable Market Economy](#) (December 2018).

¹⁶ [OECD Economic Surveys: Slovenia 2020](#).

¹⁷ European Bank for Reconstruction and Development. [Slovenia Diagnostics: Assessing Progress and Challenges in Developing a Sustainable Market Economy](#) (December 2018).

¹⁸ Ljubljana Stock Exchange, [Announcement regarding the signing of an agreement on the sale of Abanka](#) (21 June 2019).

¹⁹ [NLB Press release](#) (19 June 2019)

²⁰ [Slovenia Diagnostics: Assessing Progress and Challenges in Developing a Sustainable Market Economy](#), European Bank for Reconstruction and Development, December 2018.

and the Republic of Slovenia is still its largest shareholder with an investment in 62.54% of its capital as of 30 September 2020.²¹

c. *The economic impact of the COVID-19 crisis*

12. The COVID-19 pandemic is set to have a major impact on the Slovenian economy with its GDP already having dropped 2.3% in the first quarter of 2020 in relation to the same quarter of 2019.²² Unemployment is also showing a slight increase at 4.6% in the first quarter of 2020. Slovenia enacted containment measures as soon as mid-March 2020 following the confirmation of the first case earlier that month. This contributed to an effective response to the pandemic and measures have been gradually lifted between the end of April and early June. Whereas the to date moderate rise in unemployment can be attributed to measures to support jobs and incomes, the manufacturing industry is being more severely hit by a decrease in foreign demand. The OECD currently predicts a decrease in Slovenian GDP of 7.8% for 2020 (or 9.1% in the event of a second wave hitting the country) and a slow recovery commencing in 2021.²³

13. Slovenian authorities have adopted several stimulus packages to support economic recovery, with measures ranging from tax deferrals and exemptions to wage subsidies to deferral of bank loan repayments.²⁴ However, the Slovenian government has recently been involved in a corruption scandal over the alleged political interference by Slovenia's Minister of Economy in the grant of a contract to procure medical ventilators. According to media reports, the Ministry of Economy was recorded pressuring the Commodities Reserves Agency to sign the contract with a specific company. The company was awarded an EUR 8 million contract, despite allegedly being the provider in the procurement process with the most expensive ventilators and presenting a bank guarantee which covered only 50% of the amount of the transaction.²⁵ The Minister of Economic Development and Technology is currently under investigation by the NBI, which conducted a raid in his residence in June 2020. This led to the resignation of the Police Commissioner.²⁶ The Ministry of Interior initially also presented his resignation but withdrew it in September 2020, claiming that the NBI investigation was politically motivated.²⁷

d. *Slovenia's exposure to foreign bribery risks*

14. Corruption is perceived as a risk of doing business in Slovenia, particularly as there appears to be an overlap between business and politics creating a scope for abuse in public-private interactions.²⁸ The Global Competitiveness Index ranks Slovenian institutions low in the field of ethics and corruption, with a particularly low score attributed to "public trust in politicians", "irregular payment of bribes in the awarding of public contracts and licenses" and "favoritism in decisions of government officials".²⁹ A total of 50% of Slovenian businesses interviewed in the context of the Flash Eurobarometer on businesses and corruption

²¹ Telekom Slovenije [ownership structure](#), consulted on 30 November 2020.

²² [Republic of Slovenia's Statistical Office](#).

²³ [OECD Economic Surveys: Slovenia 2020](#).

²⁴ [IMF COVID-19 Policy Tracker](#).

²⁵ [Sta](#) (1 May 2020).

²⁶ [Total Slovenia News](#) (25 April 2020); [Daily Observer](#) (1 July 2020)

²⁷ [Slovenia Times](#) (22 September 2020).

²⁸ [Transparency International Slovenia](#).

²⁹ World Economic Forum, [Global Competitiveness Index](#) (2015-2016).

stated their belief that corruption has prevented their company from winning a public tender or a public procurement contract between 2017 and 2019, in contrast to the EU average of 30%.³⁰

15. As was signalled above, a great percentage of Slovenian outflows of FDI are towards neighbouring countries, many of which feature on the lower half of Transparency International's corruption perception index.³¹ In addition to this geographical risk, a significant percentage of FDI outflow originates from Slovenian companies under foreign control (26.9% of outward FDI by the end of 2018). According to data collected by the Bank of Slovenia, the largest Slovenian investments under foreign control were in Serbia, Croatia, Bosnia & Herzegovina and North Macedonia, followed by Slovenian companies under foreign control in Liberia and Russia. In 2018, 99 Slovenian firms under majority foreign ownership held a direct or indirect controlling interest in 290 foreign firms. Performance indicators reveal that the companies that generated the greatest sales revenues had their beneficial owner located in Croatia, China and Austria.³²

16. Parent companies headquartered in countries requiring internal controls, compliance and business ethics can require a similar corporate culture in their foreign subsidiaries. However, the opposite can also be the case. The high percentage of FDI outward flows under foreign ownership of companies headquartered in countries with high perceived rates of corruption can increase the risk of using Slovenian subsidiaries for foreign bribery payments and to conceal beneficial ownership, particularly given the low level of enforcement of corruption offences in Slovenia.

Foreign Bribery Cases in Slovenia

17. The case information contained in this report is based on the evaluation team's analysis of Slovenia's responses to the Phase 4 questionnaire, information provided by Slovenian authorities during the virtual visit, and independent research. Slovenia also provided anonymised data related to ongoing and terminated cases.

a. Overall enforcement situation in Slovenia

18. Slovenia has not prosecuted any foreign bribery cases since it became a Party to the Convention in 1999. The evaluation team is aware of nine allegations of foreign bribery by Slovenian nationals or companies that have arisen since the foreign bribery offence was enacted in 1999, of which seven led to formal investigations. Of these seven investigations, two investigations are ongoing while five have been terminated. The two remaining allegations were not pursued after preliminary review in 2016.

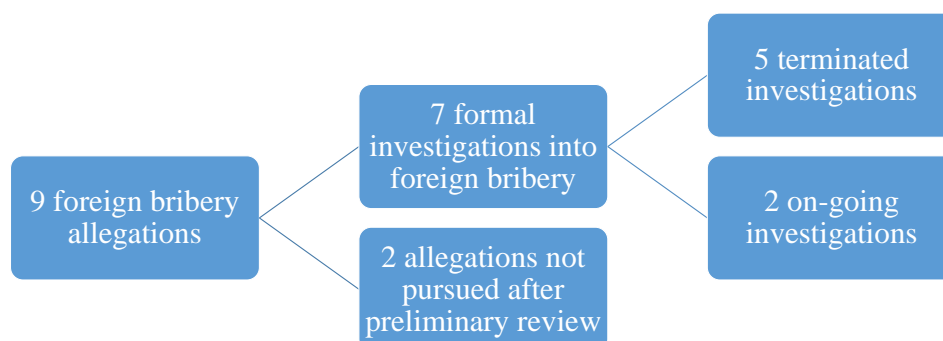
19. The flow chart in figure 2 shows the status, as of March 2021, of all the known allegations into foreign bribery in Slovenia since the Convention came into force in 1999.

³⁰ Flash Eurobarometer 482, [Businesses' attitudes towards corruption in the EU](#) (September – October 2019).

³¹ [Corruption Perceptions Index 2019](#).

³² [Bank of Slovenia Direct Investment 2018](#).

Figure 2. Slovenia's handling of foreign bribery allegations (February 1999 – October 2020)



Note: Data to March 2021

Source: Phase 4 evaluation case data

b. Level of enforcement since Phase 3

20. At the time of Phase 3 (June 2014), Slovenia had not sanctioned any individuals or legal persons for the foreign bribery offence. Given the fact that there were no concluded cases of foreign bribery, the Working Group expressed concern about the low level of enforcement. At that time, only four allegations of Slovenian individuals and/or companies bribing foreign public officials had surfaced in the context of the WGB Matrix of alleged foreign bribery cases. The WGB noted that this figure was very low, given Slovenia's strong economic links to countries with high risks of corruption. Of the four allegations, two cases were under preliminary investigation (Construction Case; Public Works Case) and one case had been closed (Iraq Oil-for-Food Case). The remaining allegation (Pharmaceuticals Case) did not result in the opening of an investigation of foreign bribery at the time of the Phase 3 despite public information about the case being available since 2011.

21. Since Phase 3, seven additional allegations of foreign bribery cases involving Slovenian individuals and/or companies have surfaced, as reported by the Slovenian authorities in Phase 3 follow-up reports and in the Phase 4 questionnaire. The Slovenian authorities opened four new investigations, in addition to the two investigations already open at the time of Phase 3.

22. Since Phase 3, the Slovenian authorities have closed four investigations : (i) the two preliminary investigations opened at the time of Phase 3, both against legal persons, which were closed at the end of 2014 respectively for lack of evidence and absence of proof of criminal offence, (ii) an investigation was opened in 2015 against a legal person and a number of unidentified individuals; and terminated in 2016 after the evidence gathered did not confirm the allegations and (iii) one case opened in 2018 against a legal person and a natural person and was discontinued in 2019 because the prosecution of the legal person in question was ultimately not possible as it declared bankruptcy and the individual became incapable to be tried due to illness. In addition, two allegations have not resulted in investigations due to insufficient evidence to open an investigation, and lack of evidence of elements of the foreign bribery offence.

23. Accordingly, as of March 2021, the foreign bribery enforcement situation in Slovenia is as follows:

- Slovenia has not sanctioned any individuals or legal persons for the foreign bribery offence;

- Two investigations are on-going against 1 individual and 1 legal person in each case.

Commentary

The lead examiners welcome the opening of additional foreign bribery investigations by Slovenian authorities since 2014. However, they remain seriously concerned about the lack of foreign bribery enforcement in Slovenia and recommend that Slovenia prioritise improving detection of foreign bribery and strengthen enforcement of its anti-bribery legislation, as detailed further in the report.

A. Detection of the foreign bribery offence

A.1. Reporting by the Ministry of Foreign Affairs and Embassies

24. Foreign diplomatic missions have a strategic role to play in the detection and reporting of foreign bribery. Officials posted abroad are well positioned to identify and report foreign bribery, in particular because of their knowledge of the business opportunities in the host countries and their familiarity with the local environment, including local media.

25. At the time of Phase 3, the Slovenian Ministry of Foreign Affairs (MFA) and Slovenian embassies abroad had not detected any suspected cases of foreign bribery, including in the context of official development assistance (ODA) projects (see also Part D.6 ODA). The WGB recommended that Slovenia remind public officials, including those working with overseas development aid and within the MFA, of their obligation to report instances of foreign bribery, and issue clear instructions to be followed on how to recognise indications of foreign bribery and on the concrete steps to be taken if suspicions or indications of foreign bribery should arise, including reporting the matter as appropriate to Slovenian law enforcement authorities (Phase 3 Recommendation 10(a)).

26. Since Phase 3, the MFA has undertaken a number of awareness-raising initiatives. It issued a note in December 2014 for Slovenian diplomatic missions pointing out the need for proactive enforcement of the Convention and providing instructions to staff in diplomatic missions on how to proceed if they came across suspected foreign bribery. As reported in Phase 3 follow-up reports, the MFA also organised several seminars and panel discussions in 2015 with the support of Slovenia's CPC which covered the OECD Anti-Bribery Convention and recommendations for detecting and reporting foreign bribery by public officials and focused on specific areas of work covered by the MFA and its diplomatic missions and consular posts. A seminar on integrity and prevention of corruption, tax havens and terrorism financing was also organised in April 2016 jointly by the MFA, the CPC and the Office for Money-Laundering Prevention (OMLP), intended primarily for public officials working in the MFA economic diplomacy and development cooperation departments. There have been no additional trainings on foreign bribery for MFA and Embassy officials since then.

27. The MFA also regularly updates its intranet with information regarding the OECD Anti-Bribery Convention and other matters of integrity and the prevention of corruption, including the MFA Integrity Plan, which is available to all its employees. The Integrity Plan was revised in 2019 and sets out the procedure for reporting suspicions of misconduct, including foreign bribery, which applies to all MFA employees, including those working abroad. There is a dedicated email address at the MFA for anonymously reporting suspected integrity breaches. MFA officials are required under the Code of Conduct to report first internally within the MFA although some public servants may decide the issue is so significant that they might contact the CPC directly. The Ministry legal service is responsible for assessing the report and deciding on next steps. The MFA indicated during the virtual visit that this system is functioning very well, with all the staff being educated about bribery risks and knowing how to deal with them. In addition, Slovenia has developed some operational Guidelines for all Slovenian officials, both high-level officials

and civil servants, “*who in their work meet with Slovenian companies that operate in foreign markets*”. This document provides concrete advice on the steps to be taken in case of serious suspicion of corrupt practices, including whether and how to report directly to the District SPOs, the SSPO and to the police. These guidelines also request Slovenian officials to provide information to companies on corruption, including on national and international regulations, and offer them assistance in situations, in which they are exposed to concrete corruption offers or claims, with general preventive advice or by answering specific questions.

28. However, in terms of actual detection and reporting by the MFA and embassies, the situation remains unchanged since Phase 3: the MFA and Embassies have not made any reports of suspected foreign bribery to the Slovenian law enforcement authorities and thus no foreign bribery cases have been opened based on information detected and reported by MFA and foreign embassies.

Commentary

The lead examiners welcome the efforts of the MFA to raise awareness of its staff on foreign bribery, including delivering specific trainings in this area, developing operational guidelines for Slovenian officials and establishing an internal reporting procedure. They note however that (a) that there have been no reports of suspected foreign bribery from MFA or embassy staff, to date; and (b) that there have not been MFA trainings on detecting and reporting foreign bribery since 2016. On this basis, they reiterate Phase 3 Recommendation 10(a) and recommend that the MFA increase efforts to train staff on detecting and reporting foreign bribery.

A.2. Detection through the Slovenian Anti-Money Laundering Framework

29. An effective system designed to detect and deter money laundering may uncover underlying predicate offences such as foreign bribery and thus trigger investigations. The Phase 3 Report noted low levels of reporting by designated non-financial businesses and professions (DNFBPs), namely the legal and accounting and auditing profession, and recommended the OMLP increase efforts to train and raise awareness on foreign bribery-based money laundering (Recommendation 6). The Working Group noted in Slovenia’s Phase 3 Written Follow-Up Report that while the OMLP had trained its own staff, no steps had been taken to train non-financial reporting entities or develop typologies on laundering the proceeds of bribes and considered Recommendation 6 partially implemented.

30. Slovenia’s framework to prevent, detect and report money laundering is set out in the Act on Prevention of Money Laundering and Terrorist Financing (APMLFT). The OMLP is Slovenia’s Financial Intelligence Unit (FIU). The OMLP has not received any Suspicious Transaction Reports (STRs), to date, relating to foreign bribery-based money laundering. However, in 2019, the OMLP received a request from a foreign FIU for information relating to a Slovenian national and his company, suspected of possible bribery of officials in that foreign country. The OMLP did not report this case to law enforcement authorities as the Slovenian police had already cooperated with the police of the foreign country. As noted below (Investigating Foreign Bribery), the NBI specialises in foreign bribery investigations, under the direction of the SSPO. The OMLP should therefore be reporting any money laundering cases predicated on foreign bribery to these agencies, as a matter of course. STRs have increased steadily in Slovenia, going from 449 STRs reported to the OMLP in 2016 to 1 030 in 2019.

31. Financial institutions did not participate in the virtual visit, so it was not possible to gauge their level of awareness of risks of foreign bribery-based money laundering or obtain their perspectives on the efforts of the Slovenian government to prevent and detect this phenomenon. Accountants and auditors were not aware of any specific typologies that existed to aid with the detection of foreign bribery-based money laundering but considered that these would be useful. According to the OMLP’s 2019 Annual Report, there have been eight STRs reported by the profession in the last five years. Accountants and auditors attributed

the low reporting rate to the lack of serious penalties for and enforcement of economic crime offences in Slovenia and the perceived low levels of money laundering risks. Accountants and auditors at the virtual visit considered that the general perception that Slovenia was a low money laundering risk jurisdiction was not representative of the actual situation. In terms of reporting by other reporting entities, the OMLP reported receiving five STRs from the legal profession in 2019 and three in 2016.

Commentary

The lead examiners note that Slovenia has yet to detect a case of foreign bribery through its anti-money laundering framework. The OMLP has not received any STRs related to foreign bribery-based money laundering, and reporting from key professions, including lawyers, accountants and auditors, is minimal. The OMLP has not taken any steps to train reporting entities or develop typologies on detecting and reporting the laundering of the proceeds of bribes. The lead examiners therefore reiterate Phase 3 Recommendation 6 and recommend that Slovenia increase the potential for detecting foreign bribery through its anti-money laundering system by providing specific guidance with case studies and typologies on foreign bribery-based money laundering to reporting entities.

A.3. Detection by the tax authority

32. No cases of suspected foreign bribery have been detected and referred by the Slovenian tax authority (Financial Administration) to law enforcement authorities (see also Part D.4 Tax measures for combating bribery). During the virtual visit, representatives of the Financial Administration indicated that in case a suspicion of foreign bribery arose during a tax audit, they would report the suspicion directly to the police or the District SPOs or the SSPO. However, tax officials at the virtual visit indicated that there are no specific procedures for detecting potential bribery—or the possible tax deduction of bribes—in the context of tax audits or examination of tax return. The Financial Administration has not conducted specific training on the non-deductibility of bribes or detection of foreign bribery since 2014.

Commentary

The lead examiners note that no cases of foreign bribery have been detected and reported by the tax authority to law enforcement authorities so far and that there has not been any training provided on this issue since 2014. They therefore recommend that the tax authority provide targeted training to tax officials to assist them to detect foreign bribery when handling tax returns or conducting tax audits.

A.4. Whistleblower protection

a. The legal framework for whistleblower protection in Slovenia

33. To date, no foreign bribery cases have been detected through whistleblower reporting in Slovenia. Slovenia has no specialised whistleblower protection law but the IPCA dedicates a chapter (Chapter III) to the protection of public and private sector employees who, reasonably and in good faith, report suspicions of any “form of illegal or unethical behaviour,” which would include foreign bribery. The CPC is responsible for the implementation of the law. Additional protections for public sector employees are found in the Civil Servants Act and Code of Ethics, both of which prohibit retaliation against civil servants for reporting wrongdoing. The 2014 Slovene Sovereign Holdings Act also requires SOEs to establish whistleblowing mechanisms and protection measures.

34. In Phase 3, the Working Group considered the legal framework comprehensive but expressed concerns that its implementation in practice was ineffective. The Group was also concerned that reduced trust in the system due to perceptions of lengthy procedures and delays may undermine reporting of foreign bribery. It also considered that the CPC should be provided additional resources to carry out its whistleblower protection mandate. Recommendation 10(b) asked Slovenia to raise awareness within both public and private sectors of whistleblower protections in the IPCA and the Slovene Sovereign Holdings Act and Recommendation 10(c) asked Slovenia to ensure that foreign bribery reports were handled efficiently and afforded the protections guaranteed by the law. At the Phase 3 Written Follow-Up Report, the Working Group considered Recommendation 10(b) partially implemented due to limited efforts to train public sector officials on reporting obligations. Recommendation 10(c) was considered not implemented due to a lack of any action by Slovenia to address it.

35. Under the IPCA, 'any person' may report suspected corruption to the CPC or any other competent body (art. 23(1)). It therefore provides protection to public and private sector reporting persons. Reporting persons also have the right to 'inform the public' unless the report contains information that is classified, in which case the report must be made to the CPC or criminal law enforcement authorities (art. 23(2)). The identity of the reporting person 'shall not be established or disclosed' unless a court rules that it is strictly necessary to safeguard the public interest (art. 23(8)). Information on whistleblowers cannot be disclosed in response to a Freedom of Information (FOI) request. It is an offence to file a malicious report (art. 23(4)), punishable by a maximum fine of EUR 2 000. This offence has been enforced in practice against malicious reporting (see below, Protection of Reporting Persons in Practice).

36. Protection is provided on the condition that the report was made 'in good faith'. The 'good faith' criterion is established with reference to the following criteria (art. 23(5)):

- the nature and gravity of the practice reported,
- the threat of damage posed by that practice or the actual damage caused as a result,
- possible breach of the reporting person's duty to protect specific information; and
- the status of the body or person to which the report has been made.

37. IPCA art. 25 sets out the remedies available to reporting persons who suffer retaliation. These include a right to claim compensation from their employer; and (for public servants) a transfer to an equivalent post. The burden is on the employer to prove that the measures taken against the employee were not as a consequence of the report. The CPC is mandated to provide assistance to reporting persons in establishing a causal link between the reporting and the retaliatory measures and the CPC can also order employers to cease retaliatory measures. CPC representatives at the virtual visit described the process for issuing a report on causality and good faith. The CPC collects information from the employer and the reporting person, focusing on chronology and accuracy of the information. The CPC indicated that it is developing internal practice, but there are no official guidelines on these causality or good faith reports.

38. Slovenian public officials are subject to a requirement in art. 145 of the Criminal Procedure Act (CPA), to report criminal offences for which the perpetrator is prosecuted ex officio, if they are informed about them or if they are otherwise aware of them. Failure to report a suspected criminal act, including foreign bribery, as well as its perpetrator is criminalised under art. 281 Criminal Code (CC). Criminalisation of the failure to report can have a chilling effect on reporting.

39. Slovenia has until 17 December 2021 to transpose the requirements of the EU Whistleblower Protection Directive.³³ The Ministry of Justice (MoJ) is responsible for preparing the draft laws to complete the transposition. MoJ officials at the virtual visit indicated that they had undertaken a legislative stocktake and identified more than 60 laws in place in Slovenia that were impacted by the requirements of the

³³ [Directive \(EU\) 2019/1937](#) of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

Directive. They indicated that the preferred idea is to enact a standalone comprehensive whistleblower protection law. This may have implications for the competent authority, noting that CPC is currently mandated to receive and action whistleblower reports exclusively relating to corruption and the EU Directive applies to all breaches of EU law. Some of the other key decisions to be taken included the material scope of the amendments, obligations for the private sector, and whether to include new remedies for reporting persons. Representatives from the private sector and civil society had not yet been consulted on the process for transposition but all expressed hope that the amendments would improve trust in the framework for protected reporting.

b. Protection of reporting persons in practice

40. The CPC provided the following data on measures taken to provide protection to reporting persons in accordance with the IPCA:

Figure 3. Protection Measures for Reporting Persons 2011-2019

Measure	2011	2012	2013	2014	2015	2016	2017	2018	2019
Identity Protection (pseudonym)	13	14	10	5	2	1	2	5	0
Retaliation Claims	1	1 (for 3 persons)	/	/	/	/	/	1	1
Establishing the causal link	/	4	/	/	1	/	/	1	1
Malicious reports	2*	/	2*	/	/	1	/	/	/

* Were appealed and the court found in favour of the CPC, confirming that the reports were malicious.

41. In the cases in which the reporting person filed a lawsuit against their employer (1 in 2011; 3 in 2012; 1 in 2018; 1 in 2019), the claimants were reinstated in 4 cases and did not seek damages. The 2018 case was settled out of court and, reportedly thanks to the CPC report proving the causal link between the report and the retaliation, the reporting person received financial compensation. The amount paid in damages is confidential, however, Slovenia indicated that under art. 118 of the Employment Relationships Act, the maximum amount payable in compensation if reinstatement is not possible is 18 months' salary (defined as the average of the last three months' salary). The 2019 case is still pending. This is a very low rate of reporting and recourse to the protections afforded under the IPCA, which could be indicative of low levels of trust in the legal framework and its implementation, as well as the lack of meaningful protections or remedies.

42. A high-profile case of whistleblower reporting and subsequent retaliation arose in the context of the COVID-19 pandemic. The former Head of Legal and General Services at Slovenia's Commodities and Reserves Agency (CRA) reported on RTV Slovenia that the Minister of Economy had personally intervened in favour of a EUR 8 million contract with a specific company (see also above, The economic impact of the COVID-19 crisis). In August 2020, the whistleblower filed criminal complaints against the Minister of the Economy for uneconomical use of public funds and damage to the State. In October 2020, he was

dismissed from his position at the CRA.³⁴ The CPC announced on 9 November 2020 that it had conducted a preliminary inquiry into the purchase of protective facemasks and ventilators and would launch inquiries into the individuals involved. At the same time, it announced that the individual had invoked the whistleblower protection provisions of the IPCA and that the CPC would try to establish a causal link between the individual's disclosure and his dismissal from the CRA.³⁵

43. With respect to SSH, discussions at the virtual visit indicated that training and awareness raising of protected reporting frameworks had been held for Slovenian SOEs and other official bodies. Participants indicated that many SOEs, as well as the stock exchange and Institute of Directors had recently established whistleblower protection frameworks and integrity functions based on SSH recommendations.

Commentary

The lead examiners commend Slovenia for its strong legal framework for protection of whistleblowers who report corruption and efforts to raise awareness about its existence and the need for organisations to put in place protected reporting frameworks. They therefore consider Phase 3 Recommendation 10(b) fully implemented. They welcome initiatives already underway to transpose the EU Whistleblower Protection Directive and encourage Slovenia to consult with all stakeholders as part of this process. The lead examiners nevertheless reiterate concerns expressed in Phase 3 about disconnect between the legal framework for whistleblower protection and its use in practice. A high-profile case of retaliation against a whistleblower reporting suspected corruption in the context of COVID-19, coupled with stakeholders indicating that there was a lack of trust in the system and that protections were insufficient, demonstrate a need for improvement.

The lead examiners recommend that Slovenia, in the context of forthcoming reforms to its whistleblower protection legislation, ensure that public and private sector employees who report suspected acts of foreign bribery continue to be protected from disciplinary or discriminatory action and that the authority competent to receive reports has sufficient human and financial resources. The Working Group considers that Phase 3 Recommendation 10(c) should be converted to a follow-up issue, as case law develops, to ensure that whistleblowers who report suspected foreign bribery are afforded the protections guaranteed by the law.

A.5. Detection and Reporting by Accountants and Auditors

44. The 2009 Recommendation on Further Combating Bribery of Foreign Public Officials (2009 Recommendation) encourages Parties to require external auditors to report indications of suspected bribery to corporate management and, if appropriate, corporate monitoring bodies and to consider requiring reporting to external law enforcement authorities. As gatekeepers in the financial system, the accounting and audit profession can be an important source of detection.

45. Slovenia's Companies Act (2006) requires companies to keep books and records and make year-end accounts following the Slovenian Accounting Standards or the International Financial Reporting Standards (IFRS). The IFRS are mandatory for listed companies. In Phase 3, Slovenia reported that some SOEs were required to disclose information on financial transactions to the Public Payments Administration, which is then published online. The data is also accessible in an on-line application called "Erar"³⁶ (managed by the CPC), including the attribution of contracts.

³⁴ [Sio1.net](https://sio1.net) (9 October 2020).

³⁵ [Total Slovenia News](https://www.total-slovenia.com) (6 November 2020).

³⁶ See also [Erar](https://erar.si/) website: <https://erar.si/>.

Detection of foreign bribery by external auditors

46. Regarding external auditing requirements, all large and medium sized companies (whether listed or unlisted), all listed small companies and SOEs meeting specific additional criteria must have their annual reports externally audited by a registered auditor.³⁷ It is unclear which categories of SOEs would therefore not be subject to a mandatory external audit. The audit report must be published together with the company's annual report. Considering the relevant number of small unlisted companies in Slovenia with foreign operations, and the fact that these companies do not meet the external auditing threshold, the Working Group recommended that Slovenia consider the adequacy of external auditing requirements (Phase 3 recommendation 7(b)). This recommendation was deemed only partially implemented in the Phase 3 Written Follow-up.

47. In its questionnaire responses, Slovenia confirms that current legislation has no special auditing requirements for small companies that have operations abroad and that there are no plans to expand the obligation of external auditing to other legal persons. The Slovenian Institute of Auditors and the Agency for Public Oversight of Auditing expressed their opinion that external auditing requirements on companies are adequate, comparable to other EU countries, and consistent with the relevant EU Directives. As the evaluation team was unable to discuss with Slovenian SMEs during the virtual visit, it was not possible to have a complete picture of the situation with respect to the adequacy of external auditing requirements.

48. Participants in the virtual visit, both representatives from the auditing profession and the Slovenian Institute of Auditors, mentioned that there are no clear typologies used by auditors to detect bribery. They expressed the need for further cooperation from anti-corruption and anti-money laundering agencies in Slovenia to develop these typologies with examples drawn from real cases that can be explained to and used by auditors (see also, Money Laundering).

Reporting foreign bribery

49. New provisions under the Audit Act 2008 requiring companies to appoint auditors on the basis of a one-year renewable term raised concerns during the Phase 3 evaluation that fear of dismissal could undermine auditor reporting. The Working Group recommended that Slovenia take steps to ensure that auditors who report reasonably and in good faith suspicions of foreign bribery are protected from legal or other retaliatory action, and that they are made aware that such protections exist (Phase 3 recommendation 7(d)). The Working Group also decided to follow-up on the impact of the Audit Act on auditor independence, and whether independence has been supported or compromised in practice (Phase 3 follow-up issue 12(k)). At the time of Slovenia's Phase 3 Written Follow-Up Report, amendments to the Audit Act to introduce protected reporting for auditors were scheduled for June 2016 and the Group therefore considered the Recommendation 7(d) partially implemented.

50. Auditors in Slovenia apply the International Standards on Auditing (ISA) 240 and 250 to detect material misstatements in financial statements due to fraud. ISA 240 requires an external auditor to report

³⁷ According to art. 55 of the Companies Act, companies in Slovenia are classified in terms of their size as micro, small, medium and large, based on the average number of employees, their net turnover and the value of their assets. **Micro companies:** average number of employees in a financial year does not exceed 10, net turnover of less than EUR 700 000 and the value of its assets does not exceed EUR 350 000. **Small companies:** do not meet the requirements to be a micro company and meets two of the following criteria: average number of employees in a financial year does not exceed 50, net turnover of less than EUR 8 000 000 and the value of its assets does not exceed EUR 4 000 000. **Medium companies:** do not meet the requirements to be a micro or a small company and meets two of the following criteria: average number of employees in a financial year does not exceed 250, net turnover of less than EUR 40 000 000 and the value of its assets does not exceed EUR 20 000 000. **Large companies** are those that do not meet the previous requirements for a micro, small or medium company. Large companies include at all times public interest entities, stock exchanges and companies that are obliged to prepare a consolidated annual report.

illegality to the audited company. ISA 240 (40)-(42) require fraud or suspicion of fraud that results in material misstatements of financial statements to be reported to those charged with the company's governance on a timely basis. ISA 250(22)-(24) require material misstatements resulting from non-compliance with laws to be communicated to those charged with governance unless the matters are "clearly inconsequential". If the non-compliance is intentional and material, the auditor shall report the matter "as soon as practicable." Materiality is determined on quantitative and qualitative bases. Slovenia states that in cases of insufficient management action upon receipt of such a report, the external auditor would be under an obligation to report to a company monitoring body, independent of management.

51. The International Ethics Standards Board for Accountants (IESBA) Non-Compliance with Laws and Regulations (NOCLAR) standard led to a revision of certain provisions to the International Standards of the IAASB as well as the IESBA Code of Conduct. In particular, it led to a revision of ISA 250 regarding the approach to identifying and dealing with instances of identified or suspected NOCLAR. These changes became effective for audit or financial statements for periods beginning on or after 15 December 2017. The revised ISA 250 and the IESBA Code of Conduct were translated to Slovenian in May 2018³⁸ and April 2019³⁹, respectively. According to Slovenia, the revised ISA 250 and the Code of Conduct were presented to auditors through seminars and they must be taken into account by professionals in the course of an audit.

52. Auditors are bound by a duty of confidentiality under art. 38 of the Auditing Act. This duty does not extend to reasonable suspicions of a criminal act and can, therefore, allow auditors to report suspicions of foreign bribery externally to law enforcement authorities. However, there is no legal obligation for auditors to do so.

53. Slovenia reported amendments to the Audit Act in 2019 to introduce a new art. 74c, a provision on whistleblower protection. Under art. 74c, the reporting of a violation, whether anonymously or not, shall not be treated as a violation of professional secrecy under the principle of the protection of the identity of a reporting person. Additionally, reporting of persons in a contractual relationship with the auditor shall not be considered a breach of the employment contract or a breach of statutory obligations of employees and, therefore, does not constitute grounds for termination of employment. The reporting person shall also not be liable for damage resulting from the report, if the auditor had justified reason to believe a violation had occurred. In case the identity of the reporting person is disclosed, the employer shall provide appropriate conditions to prevent retaliation, discrimination or other forms of inappropriate treatment, or remedy any consequences.

54. As noted above (Whistleblower Protection), art. 23 IPCA also contains whistleblower protection provisions that can be applied to auditors. Any person may report factual instances of corruption to the CPC or any other competent body and has the right not to have his or her identity disclosed where the report is made in good faith, and there is reason to believe the information conveyed is truthful. At the reporting person's request, the CPC and other competent authorities notify the reporting person of the measures or the course of action taken in this respect. This provision does not encroach on the reporting person's right to inform the public of the corrupt practice in question.

55. In January 2019, the Agency for Public Oversight of Auditing (APOA) became the only supervisory and regulatory body of the audit profession. The agency provides interpretation on independence issues and has detected two cases of auditor independence violations since 2016. Slovenia claims that the amendments to the Audit Act introduced stricter provisions regarding auditor independence under art. 44. Among other measures, this provision imposes a maximum fee percentage, in order to avoid audit firms

³⁸ [ISA 250](#), translation to Slovenian.

³⁹ [IESBA Code of Conduct](#), translation to Slovenian.

being dependant on big clients and expands the transparency of auditors' work through additional reporting requirements.

56. Participants in the virtual visit clarified that the appointment of auditors on the basis of a one-year renewable term was extended to three-year terms in the 2019 amendments to the Audit Act. Although they believe that the new measures under art. 74c in addition to the protections already afforded by the IPCA make for a strong legislative framework for protected reporting, they remain sceptical about its practical implementation and enforcement. Participants unanimously voiced their concerns about the reality of retaliation, particularly against small auditors, who are then inhibited to report any suspicious findings in the course of their work.

Training

57. At the Phase 3 on-site visit, representatives of the profession mentioned that large accounting and auditing firms provide in-house training on foreign bribery, but that no such training had been provided by the government or professional associations. The Working Group recommended that Slovenia take appropriate steps to raise awareness specifically on the foreign bribery offence among auditors, and ensure that the profession benefits from regular training, including specific methods for detecting foreign bribery (Phase 3 recommendation 7(c)). This recommendation was deemed not implemented in Slovenia's Phase 3 Written Follow-Up Report.

58. Slovenia reports in its questionnaire responses that APOA has collaborated with the Slovenian Institute of Auditors in encouraging reporting and enhancing the detection capacities of external auditors of suspected foreign bribery. According to Slovenia, they have organised seminars, issued articles in professional journals and alerted professionals about actual bribery cases. No further details were provided regarding the published articles and some information was made available regarding past seminars. Slovenia informed the evaluation team that the annual conference of auditors took place in September 2020 (via ZOOM) focusing on anti-money laundering. There are also a number of seminars lined up for the first two quarters of 2021,⁴⁰ and APOA claims to be planning activities to raise awareness and expertise to detect instances of bribery (including foreign bribery) among auditing professionals in 2021 and 2022.

59. Representatives of the profession present during the virtual visit expressed the view that Slovenia's legal framework was adequate but the relevant authorities were not engaging enough with auditors to focus on foreign bribery detection and providing auditors with a proper mandate, nor did they receive sufficient support from the government and legislators to do so. In line with this, they also commented on the need for a top-down approach to fighting corruption and educating public opinion on the importance of this topic. An emphasis was added to the need of raising awareness and educating professionals in this area, as there is lack of expertise in the field in terms of being able to trace assets and uncover potential instances of bribery. None of the representatives present at the virtual visit mentioned the annual conference of auditors or past or future seminars organised by APOA. One participant suggested that it would be very helpful if Slovenia promoted international anti-corruption standards such as the ISO 37001.

Commentary

The lead examiners commend Slovenia for the amendments to the Audit Act that translate into additional safeguards for auditor independence and protected reporting. However, the various reports from the private sector on cases of retaliation against auditors that contribute to a very low number of reports to law enforcement authorities suggest that the framework is not functioning as it should. The lead examiners therefore recommend that Slovenia fully implement Phase 3 recommendation 7(d) by (i) taking further steps to encourage the reporting of foreign bribery by

⁴⁰ [Doing business with suppliers: ordering abuse, corruption, and conflicts of interest](#) (17.03.2021), [Whistleblowers - future legal obligation](#) (21.04.2021) and [Prevention of Money Laundering](#) (16.06.2021).

the auditing profession, (ii) ensure that auditors who report suspicions of foreign bribery are protected from legal or other retaliatory action, and (iii) raise awareness within the profession of the available legal protections. They also recommend that the Working Group continue to follow-up on auditor independence in light of the amendments to the Audit Act (Phase 3 follow-up issue 12(k)).

Furthermore, the lead examiners are very concerned by the apparent lack of awareness and expertise necessary to detect instances of foreign bribery among the accounting and auditing profession. They reiterate Phase 3 recommendation 7(c) and recommend that Slovenia prioritise specific awareness-raising on the foreign bribery offence among auditors, including methods for detecting foreign bribery. They also recommend that the Working Group follow-up on the adequacy of external auditing requirements in Slovenia, particularly regarding SMEs with foreign operations and SOEs that do not meet the specific requirements for mandatory external audit (Phase 3 recommendation 7(b)).

A.7. Other Sources of Foreign Bribery Allegations

Media

60. The WGB has recognised media reporting as an essential source of detection in foreign bribery cases, as well as an important tool for public awareness raising on corruption.⁴¹ In Slovenia, media reports of alleged foreign bribery can be a basis for opening a criminal investigation, subject to their quality and relevance, and by crosschecking the information with other sources if necessary. Slovenia reported that the Public Relations Division within the Slovenian Police monitors national media sources on a daily basis using press-clipping services provided by the Government Communication Office for all state institutions, including the Ministry of the Interior and the Police. If a media report raises suspicion of a criminal offence, the competent police division is notified and acts in accordance with its powers and legal obligations. The SPO also has daily press clippings for national press. Prosecutors responsible for enforcement of offences with extraterritorial application follow foreign media reporting, as well. The CPC also monitors the press, including major foreign media, for prevention purposes. Prosecutors at the virtual visit indicated that it is possible to open a criminal investigation based on just one media report, even though a very detailed story is not enough to get a court order for the use of investigative or special investigative techniques.

61. In 2020, one allegation of foreign bribery by a Slovenian company was the subject of an investigation by a foreign journalist. The Slovenian authorities opened an investigation based on different media reports in Slovenia, which mostly summarised the findings of the foreign investigative journalist. During the virtual visit, prosecutors also indicated that there have also been domestic bribery cases opened based on media monitoring.

62. Slovenia ranked 32 out of 180 countries in the Reporters without Borders' World Press Freedom Index in 2020, which reports that problems for press freedom continue despite pressure from international NGOs for improvement.⁴² Recent media articles raise concerns about significant and systematic attacks on the press by the government in recent months. In a new report published in September 2020,⁴³ the International Press Institute notes with concern a decline in press freedom in Slovenia since the new government came to power in April 2020. Panellists confirmed these concerns during the virtual visit, mentioning public attacks on journalists reporting on corruption by Slovenian politicians and proposed new laws governing the media, which would undermine press freedom. In early July, the government proposed

⁴¹ OECD (2017), "[The Detection of Foreign Bribery](#)", Chapter 4.

⁴² Reporters without borders, World Press Freedom Index (2020), [Slovenia](#).

⁴³ [International Press Institute](#) (1 September 2020)

a series of amendments to media laws, which would reduce the budget of the public broadcaster and allow greater government control over the Slovenian Press Agency as reported during the virtual visit.

63. In addition, several media associations voiced concerns in December about the recent announcement by the Government Communication Office (UKOM) of the suspension of the financing of the Slovenian Press Agency and the possible impact of this decision in terms of media freedom.⁴⁴ These concerns were echoed by the Commissioner for Human Rights of the Council of Europe in a letter addressed to the Slovenian Prime Minister dated 7 December 2020,⁴⁵ and by the European Commission's spokesperson for the judiciary in the daily press briefing on 11 January 2021.⁴⁶ At the European Parliament on 10 March 2021, the European Commission Vice President warned of "worrying developments" for media freedoms in Slovenia - along with Hungary and Poland.⁴⁷ The public TV broadcaster recently disclosed alleged political interference in the procurement of PPE in the context of COVID-19 procurement. Furthermore, media also reported end of December that the government envisaged abolishing State funding for NGOs.⁴⁸ Media and civil society representatives at the virtual visit indicated that it was now very difficult for them to exercise their roles of anti-corruption watchdogs.

64. Finally, participants in the virtual visit from civil society and the media reported difficulties in accessing public information, including information and statistics of courts on bribery cases. Representatives from the CPC disagreed with this assertion, noting advanced legislation on access to public information in Slovenia. As noted below (Access to Beneficial Ownership), the creation of a Register of Beneficial Ownership in Slovenia in 2016 is a positive step forward for transparency and the Register could prove useful in anti-bribery compliance and law enforcement efforts.

Commentary

The lead examiners welcome the more proactive efforts by Slovenia to detect foreign bribery since Phase 3, notably regularly monitoring press reports and opening investigations based on media reporting, and consider it a good practice.

However, the lead examiners are concerned that media in Slovenia may not operate in an environment conducive to the reporting of potential bribery allegations. The lead examiners note the important role of investigative journalism in developing serious, vigorous and high profile reporting of foreign bribery issues. They therefore recommend that Slovenia ensure that laws relating to freedom of the press are fully applied in practice in respect of foreign bribery reporting. Besides, they recommend that the Working Group follow-up the impact of the proposed legislative reforms on the ability of the media to play an effective role in detecting and reporting allegations of foreign bribery.

International Cooperation and multilateral organisations

65. Considering the low level of detection of foreign bribery, the Working Group decided in Slovenia's Phase 3 evaluation to follow-up on the treatment of incoming mutual legal assistance (MLA) requests, and whether such requests triggered the opening of a foreign bribery investigation in Slovenia (Follow-Up Issue 12(m)). In its responses to the questionnaire, Slovenia reports that, to date, no foreign bribery investigations have been initiated on the basis of an MLA request.

⁴⁴ [International Press Institute](#) (7 December 2020) and [International Federation of Journalists](#) (7 December 2020).

⁴⁵ Council of Europe, Commissioner for Human Rights [letter](#) to the Prime Minister of Slovenia on 7 December 2020.

⁴⁶ [Euronews](#) (12 January 2021).

⁴⁷ [RFE/RL](#) (10 March 2021).

⁴⁸ [Total Slovenia News](#) (20 December 2020).

66. As will be further developed below (Incoming and Outgoing MLA Requests), incoming MLA requests are received both by the MoJ and by the prosecutor's office. Representatives from the MoJ clarified at the virtual visit that its MLA department is responsible for verifying that the requests meet the legal requirements after which it forwards them to the competent national authority, which may be a district court or the District SPOs or the SSPO, depending on the nature of the request. The MoJ does not look into the facts of the case and therefore does not perform any functions of detection.

67. The SPO does not have a central contact point to receive MLA requests (except exclusively for those requests relating to asset recovery). Consequently, the requests may be sent to any of the 11 district state prosecutor offices in the country and the SSPO. Prosecutors at the virtual visit stated that it is the obligation of each prosecutor who receives an MLA request for execution to have the diligence to analyse it to determine whether the facts warrant the opening of a criminal investigation in Slovenia. However, there are no guidelines in place for prosecutors regarding this topic. It is therefore unclear if and how each of these prosecutor offices coordinate with the SSPO, which has jurisdiction in foreign bribery cases (see below, Investigative and Prosecutorial Framework), when facing a potential allegation of foreign bribery.

68. In relation to multilateral organisations, Slovenia initiated a foreign bribery investigation based on a referral received from the World Bank after it debarred a Slovenian company for corrupt practices in relation to a project financed by the Bank. The first contact was made in the context of the Working Group meetings at the OECD in June 2016. The case was further discussed at a meeting with representatives of the World Bank, the SSPO and the NBI. Slovenia reports that the information received from the World Bank was referred to the NBI for investigation in January 2017.

Commentary

The lead examiners are concerned about the lack of centralisation of incoming MLA requests and the risk that they may be forwarded to offices of prosecutors without the requisite experience and training in economic crimes. Considering that no foreign bribery investigations have been initiated on the basis of an MLA request to date, the lead examiners reiterate Phase 3 follow-up issue 12(m) and recommend that the Working Group continue to follow-up on the treatment of incoming MLA requests, and whether such requests trigger the opening of a foreign bribery investigation in Slovenia.

B. Enforcement of the foreign bribery offence

B.1. The Foreign Bribery Offence

69. Foreign public officials and international public officials are defined in art. 99 CC. Art. 262 CC criminalises active bribery of public officials and therefore, read in conjunction with art. 99 CC definitions, criminalises bribery of foreign public officials as required by the Convention. The private sector bribery offence is criminalised in art. 242: Unauthorised Giving of Gifts, to a person performing an economic activity”, this term is also separately defined in art. 99 (see Annex 3: Legislative extracts).

70. In Phase 3, the WGB was concerned that Slovenia’s foreign bribery offence did not fully meet the Convention requirements for the definition of foreign public officials (Recommendation 1(a)) and coverage of bribes to employees of foreign SOEs (Recommendation 1(b)). The Group was also concerned by the application of the defence of effective regret to the foreign bribery offence (Recommendation 1(c)). It further decided to follow-up on the application of the offence to bribery for acts outside the official’s authorised competence (Follow-up issue 12(a)).

71. At the time of the Phase 3 WFU Report (2016), Slovenia had taken no measures to address these issues and the WGB found that these key recommendations were not implemented. Due to this lack of implementation, the WGB agreed that Slovenia would report in writing in one year. The Working Group also agreed to continue to monitor Follow-up issue 12(a). In an additional follow-up report (2017), Slovenia had taken some steps to address the WGB’s concerns about the scope of the foreign bribery offence through a letter sent from the MoJ to the Supreme Court and the General Prosecution Office (see below).

72. This Phase 4 report focuses on remaining issues regarding the foreign bribery offence since Phase 3 and subsequent actions taken by Slovenia to address them.

a. **Scope of the Offence**

i. *Limitation to officials with management powers and responsibilities*

73. In Phase 3, the WGB noted that the definition of public official in art. 99(1)(3)CC includes the following language (emphasis added): “a person carrying out official duties or exercising a public function *with management powers and responsibilities* within a state authority or an authority of a self-governing local community or any other entity governed by public law”. The Phase 3 report concluded that, by requiring that the person carrying out public functions must *also* have “management powers and responsibilities”, the definition of foreign public official was narrower than Article 1 of the Convention.⁴⁹ Slovenian authorities asserted that art. 99 was meant to cover all the possibilities addressed in the Convention. However, the report concluded that in the absence of case law, the language remains a

⁴⁹ Article 1 of the Convention defines a foreign public official to include “any person exercising a public function for a foreign country, including for a public agency or public enterprise”. See also Commentary 12.

significant – and problematic – departure from Phase 2, as it could exclude bribes to lower level foreign public officials. It therefore recommended that Slovenia take all measures to ensure that the foreign bribery offence covers bribery of any person exercising a public function for a foreign country, regardless of whether that person has management powers and responsibilities (Phase 3 Recommendation 1(a)(i)).

74. At the time of the Phase 3 WFU Report (2016), Slovenia reiterated its Phase 3 position and had not taken any additional measures to clarify that the foreign bribery covers any person exercising a public function for a foreign country, regardless of whether that person has management powers or responsibilities as requested by the WGB. Thus the WGB considered that Slovenia had not implemented Recommendation 1(a)(i).

75. In July 2017, as reported by Slovenia in its additional report to the WGB, the MoJ sent a letter to the Supreme Court and the Supreme SPO to clarify several provisions of the CC. It stated that the "Criminal Code should be interpreted as intended, including in the light of the OECD Convention, which is part of the Slovenian proper legal order". The letter notably stated that "the applicable Slovenian legislation ensures that the criminal offense of bribery of foreign public staff includes all persons exercising public office for a foreign country, irrespective of whether or not they perform an official function with managerial powers and responsibilities or not". This intended to clarify the concern raised by the WGB.

76. No additional measures have been taken since this letter was sent. During the virtual visit, the MoJ confirmed that this letter has no legal effect on prosecutors or courts and the prosecutors confirmed that it is not legally binding but should be used as an explanatory tool. They all shared the view that there is no need – and no plan – to amend the definition of public officials, as it is wide enough and that all is clear from the definition.

77. Slovenia further indicated that the concept of public official has not been interpreted, tested or applied in the context of ongoing or completed domestic bribery cases so that there is no case law available to confirm the interpretation of the Slovenian authorities.

ii. Coverage of officials of non-internationally recognised countries

78. The Phase 3 report highlighted that art. 99(1)(3) CC expressly refers to officials in "a self-governing local community" or "other entity governed by public law". Concerns had been raised in Phase 2 that the definition possibly excluded officials of non-internationally recognised countries, autonomous territories and separate customs territories, contrary to Commentary 18 to the Convention (Follow-Up Issue 8(a)(ii)).⁵⁰ Despite the broader functional reference in art. 99(1)(3), art. 99(1)(6) of the CC (i.e., the core provision) still only refers to officials from a "foreign country". At the Phase 3 on-site visit, as in Phase 2, there was no consensus among lawyers, judges or the MoJ as to whether the revised definition was broad enough to satisfy Commentary 18.⁵¹ Slovenia therefore was asked to clarify its CC to ensure that the offence of foreign bribery covers bribery of officials of autonomous territories and separate customs territories (Phase 3 Recommendation 1(a)(ii)).

79. In the Phase 3 WFU Report, Slovenia reiterated arguments provided at the time of Phase 3 and had taken no additional measure to ensure that the offence of foreign bribery covers bribery of officials of autonomous territories and separate customs territories in line with the WGB recommendation. There was also no evidence that these particular issues have been covered in training sessions. Therefore the WGB considered that Recommendation 1(a)(ii) was not implemented.

80. At the 2017 additional follow-up report, Slovenia referred to the letter from the MoJ described above. However the letter did not address the issue raised by the WGB in the sense that it acknowledges

⁵⁰ See Slovenia [Phase 2 Report](#), at p. 141.

⁵¹ "Foreign country" is not limited to states, but includes any organised foreign area or entity, such as an autonomous territory or a separate customs territory".

that officials in autonomous territories fall under the definition of art. 99 only if such territories are part of a recognised country: "If autonomous or separate tax territories are not part of a recognized country or that state officially does not control the autonomous area, there are no such civil servants who can be considered as "foreign civil servants". As noted above, this letter is not legally binding. Slovenia has not taken any further measures since the letter to address this issue.

iii. Bribes to employees of foreign SOEs

81. In Phase 3, the WGB was concerned by the lack of clarity surrounding the application of the foreign bribery offence to bribery of employees of foreign SOEs and recommended that Slovenia clarify this (Phase 3 Recommendation 1.b). It was unclear during Phase 3 on-site visit whether the private sector bribery offence (art. 242: Unauthorised Giving of Gifts (to a person performing an economic activity)) or the offence of bribery of public officials (art. 262: Giving Bribes) would apply to the bribery of a person exercising a public function for a foreign public enterprise. Following the onsite visit, the Slovenian authorities confirmed that the bribery of an employee of a foreign SOE "would be prosecuted under art. 242". In the absence of case law, however, the validity of this interpretation could not be confirmed.

82. In the Phase 3 WFU Report, Slovenia stated that the bribery of employees of foreign SOEs is *generally* criminalised in art. 242. Art. 242 CC was amended in 2015 in order to increase the sanctions for the bribery offence. The *travaux préparatoires* of the Act amending the CC explicitly state that these amendments are to meet OECD standards and WGB recommendations. Slovenia also specified that that bribery as an economic offence is generally criminalised in art. 242. Special incrimination (*lex specialis*) of bribery of domestic or foreign officials is set out in art. 262. According to Slovenia, should art. 262 be interpreted as narrower than required by the Convention, in that it excludes bribery of foreign SOE employees, art. 242, as functionally equivalent, would apply. This information did not directly address the concern of the WGB with regard to the actual coverage by either art. 242 or 262 CC of any person exercising a public function for a foreign public enterprise and therefore at the time of Phase 3 WFU Report, the WGB considered that Recommendation 1(b) was not implemented.

83. Since then, the abovementioned letter from the MoJ to the Supreme Court and Supreme SPO reiterated that "bribery of employees of foreign public companies and companies, business entities in which the majority or dominant influence is a state or self-management local community, is criminalized in art. 242 CC". The letter added "this legislation allows the prosecution of bribery of foreign civil servants even in the case bribery of employees in foreign public companies and companies or business entities in which the majority or dominant influence is a state or self-management local community".

84. During the Phase 4 virtual visit, prosecutors were of the view that art. 242 CC would apply to bribery of employees of foreign public companies. However there are still no concluded cases in Slovenia of bribery of employees of foreign SOEs, so this interpretation is yet to be tested. Slovenia did not take any further actions to clarify this issue which is outstanding since Phase 2.

85. Despite the 2015 amendments to the CC, several differences remain between the provisions of art. 262 and art. 242 regarding the elements of the offence. Of additional concern is that by using art. 242 CC (private bribery) to prosecute bribery of employees of foreign SOEs, issues could arise noting that Slovenia requires dual criminality to exercise nationality jurisdiction. Should private bribery (or bribery of SOE employees) not be criminalised in the foreign jurisdiction concerned, it would be difficult for Slovenian prosecutors to exercise jurisdiction. While this issue has not arisen in a foreign bribery case, to date, it is likely to impact one of Slovenia's ongoing foreign bribery investigations.

iv. Bribery for acts outside the official's authorised competence

86. Phase 2 Recommendation 4(a) asked Slovenia to "ensure that all bribes to a foreign public official to obtain any use of the official's position – whether or not within the official's authorised competence and whether or not for the purpose of obtaining an "official" act – constitute the basis for a foreign bribery

offence". The recommendation stemmed from Slovenia's then-existing art. 268 CC, which only covered bribery for obtaining the performance of acts or omissions by the official "within the scope of his/her official authority,"⁵² and did not meet the broader scope of Article 1 of the Convention, which covers acts or omissions "in relation to the performance of official duties".

87. In Slovenia's Phase 2 Written Follow-Up Report, the Working Group noted that art. 262 of the new CC maintains language establishing criminal responsibility for the giving of a bribe for the public official to perform or omit to perform "official acts within the scope of his official duties", but also includes a new provision which covers "other abuse of office" by the public official. While the Working Group considered the revision regarding "other abuse of office" may be sufficient to implement recommendation 4(a), since the CC had only recently been changed and not tested in practice, the Recommendation was considered partially implemented.⁵³

88. In Phase 3, Slovenia stated that the courts had yet to interpret this provision⁵⁴ and the WGB decided to follow-up on the application of art. 262 CC (and art. 242 CC for bribery of employees of foreign SOEs) to ensure that all bribes to a foreign public official to obtain any use of the official's position – regardless of whether or not it falls within the official's authorised competence – constitute the basis for a foreign bribery offence (Phase 3 Follow-up issue 12(a)).

89. Since Phase 3, there have been no case law developments to clarify this issue. During the virtual visit, prosecutors were not aware of any domestic prosecutions where bribery was prosecuted where the official improperly exercised influence over another official outside his/her authorised competence. The situation therefore remains unchanged since Phase 3.

b. Defence of Effective Regret

90. Slovenian law provides for a waiver of punishment where natural or legal persons report paying a bribe following solicitation by an official before the offence is discovered (otherwise known as the defence of effective regret). The Working Group has been recommending that Slovenia address this issue since Phase 2 and it has also been the subject of strong recommendations and follow-up for other WGB countries.⁵⁵

91. In Phase 2, the Working Group recommended that Slovenia either amend its provisions to waive punishment for natural persons (then art. 268(3) CC) and legal persons (art. 11(2) Liability of Legal Persons for Criminal Offences Act) or take measures to ensure they did not contravene the Convention, e.g. through issuing prosecutorial guidelines (Recommendations 6(a) and (b)). In Slovenia's Phase 2 Written Follow-Up, the Working Group considered recommendations 6(b) partially implemented and recommendation 6(c) not implemented. The Report noted that, in addition to the defence of effective regret in the CC, art. 163 CPA maintained that a prosecutor was not obliged to start criminal proceedings or could abandon prosecution if the CC lays down that a court may or must waive the penalty for a criminal offender.⁵⁶

92. At the time of Phase 3, the defence of effective regret had been amended such that, pursuant to the new art. 262(3) CC, the waiver could now only be enforced "provided this is not in contravention of the rules of international law." This new language was implemented with the amendments of CC (KZ-1B) in

⁵² See Slovenia [Phase 2 Report](#), para. 144. See also Slovenia [Phase 1 Report](#), pp. 10-11.

⁵³ See Slovenia [Phase 2 Written Follow-up](#), para. 14

⁵⁴ The domestic bribery offence in art. 261 CC contains a similar provision regarding "other abuse of position"; however, the courts have not yet interpreted this provision either.

⁵⁵ The Czech Republic, Greece, Poland, Portugal, the Slovak Republic, Spain at the time of their respective Phase 3 evaluations.

⁵⁶ See Slovenia [Phase 2 Written Follow-up](#), at para. 20.

force from May 2012. According to Slovenia, the *travaux préparatoires* to the Act introducing these amendments referred to the Working Group's Phase 2 recommendation. Slovenia had not issued any prosecutorial guidelines on applying art. 262(3) CC or art. 11(2) of the Liability of Legal Persons for Criminal Offences Act as recommended, in the alternative, by the Working Group. The Working Group's concerns about the discretion to waive penalties in art. 163 CPA remained, as the provision had not been amended since Phase 2. In its Phase 3 WFU Report, Slovenia reiterated its arguments in Phase 3 (the reference to "international law" in art. 262(3) CC is intended to cover the Anti-Bribery Convention). In addition, Slovenia has also amended art. 242 (3) CC (Unauthorised Giving of Gifts) in 2015 to include the same language as in art. 262(3) and mention that "the punishment is to be remitted only if this is not contrary to the rules of international law". Here again, the *travaux préparatoires* amending the CC mentioned that that these amendments were made in order to meet OECD standards and based on previous WGB recommendations. However, Slovenia did not take any further actions to address the WGB's concerns about the defence of "effective regret" and its application in foreign bribery cases. The WGB considered recommendation 1(c) not implemented.

93. In its additional WFU report, Slovenia indicated that the 2017 letter from the MoJ to the Supreme Court and Supreme SPO stated that the defence of "effective regret" in art. 262(3) CC and art. 11(2) LLPCO "does not interfere directly to the Republic of Slovenia's obligations under the OECD Convention" and thus did not apply to foreign bribery. As noted above, the letter itself does not have legal effect and the WGB considered that the letter did not implement the Phase 3 recommendation.

94. The virtual Phase 4 visit confirmed that Slovenia has remained inactive on this very serious issue that the Working Group first raised in Phase 2 in 2007. Lawyers at the virtual visit indicated that the defence of effective regret was not used in practice and was not a defence strategy, even in domestic bribery cases, due to the risk of prosecution. They cited uncertainties over the consequences of self-reporting for companies as a reason for the provision not being used. The prosecutors confirmed this: art. 262(3) CC operates as a defence and therefore a person who reports seeking to invoke this provision will nevertheless be prosecuted but can rely on this provision as a defence. With respect to the 2012 amendments introducing the requirement that the provision be applied in accordance with international law, there has been no case law to confirm this provision would exclude application of the defence in foreign bribery cases.

Commentary

The lead examiners note that the definition of foreign public officials (art. 99 CC) has not been amended since Phase 3 and therefore the Working Group's concerns about the scope of the offence remain and Recommendation 1(a) remains unimplemented. In addition, the coverage of bribery of employees of foreign SOEs remains problematic and would create potential problems for jurisdiction if private bribery is not criminalised in the foreign country (art. 242 CC). The lead examiners are concerned that there are still no reforms planned to address these issues and recommend that Slovenia, as a priority, take all measures to ensure that the definition of foreign public officials covers all categories of foreign public officials as defined in art. 1(4) of the Convention, including employees of foreign SOEs.

The defence of effective regret and its potential application to foreign bribery also remain problematic, despite the fact that the provision appears not to be used in practice. The lead examiners recommend that Slovenia amend relevant legislation to ensure that the defence of effective regret does not apply to natural persons or legal persons in foreign bribery cases.

B.2. Sanctions for Foreign Bribery

a. *Criminal Sanctions available under Slovenian law*

95. In Phase 3, the Working Group recommended that Slovenia make fines available for the bribery offence for ‘proper’ acts or omissions in art. 262(2) CC (Recommendation 3(a)). It also recommended that Slovenia ensure that sanctions imposed in practice are effective, proportionate and dissuasive (Recommendation 3(b)), and that Slovenia draw the attention of prosecutorial and judicial authorities to the importance of applying such sanctions on natural and legal persons convicted of foreign bribery (Recommendation 3(c)). The available penalties for the foreign bribery offence in Slovenia were amended in 2015 to make fines mandatory. The penalties for the (foreign) bribery offence in art. 262 CC are as follows (i) imprisonment between one and six years and a mandatory fine for an “improper” act or omission of the public official (art. 262(1) CC), and (ii) imprisonment between six months and four years in cases of a “proper” act/omission (art. 262(2) CC).⁵⁷ Penalties for the private bribery offence in art. 242 CC were also increased at the same time to replicate the penalties for the art. 262 offence. As an accessory sanction, Slovenia can ban a convicted person from the performance of his/her profession (arts. 69-71 CC).⁵⁸

96. In the Phase 3 Written Follow-Up Report, the Working Group commended Slovenia for making mandatory fines for natural persons available for bribes paid for legal and illegal acts and considered Recommendation 3(a) fully implemented. It considered, however, that the level of sanctions applied against natural and legal persons for domestic bribery and other economic offences in practice remained low, and deemed Recommendation 3(b) not implemented. While some efforts had been made to raise awareness among law enforcement authorities of the importance of applying sanctions which are sufficiently effective, proportionate and dissuasive for foreign bribery, the Working Group considered Recommendation 3(c) only partially implemented.

97. The maximum fines available for the foreign bribery offence translate to EUR 360 000 for an “improper” act or omission of the public official (art. 262(1) CC) and EUR 1 500 000 if the criminal act had been committed “out of greed”. Fines imposed are set out in the judgment as “daily instalments” (i.e., day-fines), which may amount to a minimum of ten (increased from a minimum of five in Phase 2), and a maximum of three hundred and sixty. If the criminal offence was committed for one’s “own benefit,” a maximum sanction of one thousand five hundred daily instalments may be imposed. Courts fix the daily instalment amount by taking into account the perpetrator’s entire financial situation, but it may not exceed EUR 1 000. In fixing the amount, the court bases its decision on recent economic data. If such data is unavailable or could cause disproportionate difficulties or delay, or if a punitive order is issued, the daily amount is fixed using recent economic data and the perpetrator’s pecuniary circumstances.

98. Penalties for legal persons have not changed since Phase 3. Art. 13(1) LLPCO provides for a fine between EUR 10 000 EUR and EUR 1 000 000. Art. 13(2) further provides that “in the case of the legal person’s criminal offence having caused damage to another’s property, or of the legal person having obtained illegal assets, the highest limit of the fine imposed may be 200 (two hundred) times the amount of such damage or benefit.”

99. As a point of comparison, sanctions available for the money laundering offence include a maximum of 5 years imprisonment (art. 245(1)) and imprisonment of up to 8 or 10 years and fines may also be applied depending on the aggravating factors surrounding the offence (arts. 245(3) and 245(4)). The false accounting offence in art. 235 CC is punishable with a maximum of 2 years’ imprisonment for natural

⁵⁷ [Slovenia Phase 3 Report](#), para. 43.

⁵⁸ [UNCAC IRG Report \(2015\)](#), p.4.

persons and a maximum fine of EUR 500 000 or up to 100 times the amount of the damage caused or property obtained through the offence for legal persons.

b. Sanctions imposed in practice

100. As Slovenia is yet to conclude a foreign bribery case, it is still impossible to determine whether sanctions applied in practice are effective, proportionate and dissuasive as required by the Convention (Art. 3). Slovenia provided extensive information on penalties imposed in bribery cases between 2010-2015 for its Phase 3 Written-Follow-Up Report. Following the Phase 4 virtual visit, Slovenia provided information on fines imposed in 36 domestic bribery cases between 2016 and 2020 concluded by SPOs across Slovenia, including the SSPO, involving 79 defendants prosecuted for corruption offences under arts. 241, 242, 261, 262, 263 and 264 CC. The fines ranged from EUR 100 to EUR 40 000: well below the statutory maximum. The amount paid in bribes or obtained in benefits was quantified in relation to 62 defendants and ranged from EUR 7.30 (value of a bottle of wine) to EUR 112 848. The fines were, against most defendants, greater than the value of the bribes or benefits when these were below EUR 10 000. However, the fines imposed in the more serious corruption cases, involving bribes or benefits above EUR 10 000 were dramatically less and averaged 12.7% of the value of the bribe or benefit. Terms of imprisonment were imposed on 25 defendants in domestic corruption cases between 2016-19, whereas 52 defendants received suspended prison sentences. In the majority of these cases, fines were imposed in addition to the prison sentences. Confiscation was imposed against 29 natural persons, averaging EUR 1 987 per person. Slovenia provided data on confiscation measures imposed in corruption cases separately, so it was impossible to correlate with the previous figures on fines, prison sentences and bribes/benefits.

101. After the virtual visit, Slovenia also provided data on sanctions imposed for the false accounting (art. 235 CC) and money laundering (art. 245 CC) offences which can be a useful comparison to gauge the effectiveness of sanctions imposed in bribery and corruption cases. Between 2016-2020, 402 natural persons received prison sentences (average of 133 days per person, unclear if firm or suspended sentences); 244 natural persons were fined (average fine: EUR 7 250); and confiscation was imposed on 6 natural persons (average of EUR 208 500 confiscated per person) for the false accounting offence. Thirty-two legal persons were fined between 2017-2020 (average fine: EUR 15 542) and confiscation measures were imposed on two legal persons (average of EUR 980 confiscated per company) for false accounting. In the same period, for the money laundering offence, 47 natural persons received prison sentences (average of 527 days per person, unclear if firm or suspended); 51 natural persons were fined (average fine of EUR 7 907); and confiscation was imposed on 31 natural persons (average of EUR 613 707 confiscated per person). One legal person was fined EUR 400 000 for money laundering and had EUR 109 932 confiscated. It is unclear whether sanctions were imposed cumulatively for the same defendants, the averages of amounts imposed in fines does not allow for an assessment of variations in sentencing, and no data was provided on the nature of the offence and specifically the amounts involved. Nevertheless, these sanctions appear generally higher than those imposed in bribery cases, most notably the average amounts confiscated against both legal and natural persons.

c. Confiscation of the bribe and the proceeds of foreign bribery

102. As noted in the Phase 3 Report, Slovenia provides for both civil and criminal confiscation. Civil confiscation is governed by the Confiscation of Assets of Illicit Origin Act (ZOPNI) and criminal confiscation is set out in arts. 74-77 CC and arts. 498-507 CPA. Art. 41 LLPCO provides for search and seizure in criminal proceedings against legal persons by applying *mutatis mutandis* the relevant CPA provisions. This confiscation regime has not been amended since Phase 3, however the Constitutional Court ruled (U-I-6/15-23 dated 5. 7. 2018), in relation to the ZOPNI, that the article that allowed the Act to be used retroactively, even for the assets gained before the Act entered into force, was unconstitutional. Civil confiscation is therefore only available in cases that occurred after its entry into force in 2012.

103. The Working Group decided to follow up on the application in practice of freezing and confiscation measures in on-going and future foreign bribery cases, including in relation to legal persons (Follow-up Issue 12(d)). The Working Group considered during Slovenia's Phase 3 Written Follow-Up Report that Slovenia had demonstrated a level of effectiveness in freezing assets but further efforts were needed with respect to confiscation.

104. There have been no concluded foreign bribery cases since Phase 3, and no freezing measures have been imposed in the context of Slovenia's ongoing foreign bribery cases. Furthermore, Slovenia indicated in its responses to the Phase 4 questionnaire that the courts do not inform the SPOs and the SSPO about judicial rulings on confiscation in specific cases, or the execution of confiscation orders, as they are not legally required to do so. The Supreme SPO therefore does not have accurate data on confiscation orders with respect to proceeds of crime and property of illegal origin and was unable to provide information on the number of confiscation measures imposed and the amount of assets confiscated. In 2019, assets were frozen in relation to 7 money laundering cases.

105. As noted above, Slovenia was able to provide data on confiscation measures imposed on natural and legal persons for the corruption, false accounting and money laundering offences after the virtual visit. Confiscation measures were imposed against 29 natural persons (out of 79 natural persons prosecuted for corruption offences), with an average of EUR 1 987 confiscated per person. With respect to false accounting, just 6 natural persons were subject to confiscation measures (compared the 402 who received prison sentences), however the amount confiscated averaged EUR 208 500. Only two companies were ordered to pay confiscation (averaging EUR 980 per company) despite 32 being fined for the offence. In relation to money laundering cases, 31 individuals had assets confiscated (with an average value of EUR 613 707 per person) and one legal person was fined and had EUR 109 932 confiscated. Without data on the actual offences, it is impossible to assess whether the confiscation measures imposed would have met the Convention standard of being 'effective, proportionate and dissuasive.' The evaluation team was also unable to discuss this data with Slovenian experts during the virtual visit. Regardless, it appears that confiscation measures are not systematically imposed in economic crime cases.

106. In its responses to the Phase 4 Questionnaire, Slovenia indicated that there are no specialised units in the SSPO for the purpose of tracing, quantifying and/or seeking confiscation of the proceeds of crime. However, the Supreme SPO has established a dedicated Asset Recovery Office/CARIN contact point. There were differing opinions among panellists during the Phase 4 virtual visit on whether or not there had been training on seizure and confiscation of assets for prosecutors. The OMLP in its 2019 Annual Report referred to a dedicated financial investigation group established under the ZOPNI, however this was not referred to at the virtual visit.

Commentary

The lead examiners were unable to assess the situation with respect to sanctions for the foreign bribery offence due to the ongoing lack of concluded foreign bribery cases in Slovenia. The monetary penalties imposed in domestic bribery cases fall well below the maximum limit and tend to be inversely proportionate as the value of the bribe and/or benefit increase. Confiscation is not imposed systematically in bribery cases.

The lead examiners therefore consider that Phase 3 Recommendations 3(b) and 3(c) remain unimplemented. The lead examiners recommend that specialised training is provided to prosecutors and judges on applying effective, proportionate and dissuasive sanctions, including confiscation measures, on natural and legal persons convicted of the foreign bribery offence.

In relation to confiscation, the lead examiners are concerned at the lack of available detailed data from Slovenian courts on confiscation orders with respect to proceeds of crime and property of illegal origin. They recommend that Slovenia maintain detailed statistics on sanctions imposed in foreign bribery cases and related offences, including in relation to confiscation of the instrument and proceeds of the bribe.

B.3. Investigative and Prosecutorial Framework

107. At the time of Phase 3, a number of institutional and procedural changes had taken place with regard to the competence and coordination of law enforcement authorities over the foreign bribery offence and the WGB welcomed the establishment of specialised anti-corruption law enforcement authorities. These included:

- the creation of the NBI as a specialised criminal investigation unit of Slovenia's police;
- the establishment of the SSPO, which has exclusive jurisdiction over the prosecution of acts of active bribery, including foreign bribery,
- the establishment of specialised departments at the district court level.
- In addition, Slovenia had previously established in 2004 the CPC as an anti-corruption watchdog.
- This institutional framework has not changed since Phase 3; however a number of developments have impacted the functioning of these different authorities, and in particular, the issue of their independence has been raised several times since the last evaluation as described below.

a. *Commission for the Prevention of Corruption*

i. *Mandate*

108. The CPC is an independent state body established in 2004 with a mandate to first and foremost prevent corruption. In addition and despite not having formal law enforcement powers, the CPC has certain statutory investigative and information-gathering powers. The CPC can conduct independent administrative investigations of various corrupt practices, including conflict of interest in the public sector, limitation of business activities in the public sector, breaches of integrity of public office and lobbying. It is also responsible for handling whistleblower reports of corruption offences (see above, Whistleblower Protection) and transmitting corruption allegations to law enforcement authorities.

109. According to Slovenia's answers to the Phase 4 questionnaire, the reform of the IPCA, adopted and entered into force in November 2020⁵⁹ (see below for more details) foresees improvement of existing tools in the area of investigation (procedure before the CPC, procedural rights of investigated persons, demarcation of CPC's supervisory and misdemeanour procedures), gift giving and acceptance, lobbying and supervision of asset declarations. Additionally, the act offers new tools the CPC can use for corruption investigations and supervision of compliance with the IPCA. The most notable tool is systemic supervision of public sector entities' compliance with the IPCA involving a a supervisory procedure in which multiple supervisory bodies take part (CPC, inspectorates, the Court of Audit). Finally, the amendments provide a legal basis for the CPC's "Erar" tool: an online application that enables easy browsing of financial transaction data from the entire public sector. The IPCA amendments enable the CPC to include more data sources into Erar and thereby make public spending even more transparent. According to the CPC, these amendments will give more power and credibility to the institution. None of these amendments, however, materially change the role of the CPC with respect to foreign bribery, which is limited to prevention and detection initiatives. The CPC does not have any legal powers to investigate or prosecute the foreign bribery offence.

ii. *Independence*

110. The WGB has expressed concern about possible political interference in the operation of the CPC several times since Phase 3. In Phase 3, the WGB took note of the resignation of the leadership of the Commission in November 2013, in a public protest against the lack of political support for more robust anti-

⁵⁹Act Amending the Integrity and Prevention of Corruption Act – ZIntPK-C (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 158/20 of 2 November 2020, entered into force on 17. November 2020)

corruption mechanisms, followed by a controversial appointment process of the new CPC leadership team in March 2014. Accordingly, the Working Group urged Slovenia to strengthen legal safeguards and take any measures to ensure that the exercise of the CPC's powers, in particular for the foreign bribery offence, is not subject to improper influence by concerns of a political nature, as foreseen in Article 5 of the Convention (Phase 3 Recommendation 4(c)).

111. In 2015, Slovenia launched a reform of the IPCA for a more effective and independent operation of the CPC. However, the CPC continued to face major internal challenges that had seriously harmed its credibility, power and influence in Slovenia. In January 2016, the WGB issued a public statement⁶⁰ where it expressed its serious concern regarding the situation of the CPC in Slovenia. It noted that no reform had materialised since 2014, when the WGB expressed concerns in the Phase 3 report about possible political interference in the operation of the CPC. On the contrary, the Working Group noted that the CPC continued to face important challenges in carrying out its duties. These challenges particularly related to the capacity of the CPC to efficiently implement its mandate, achieve results in full independence and maintain its power, leadership and influence in the public. Given the seriousness of these issues, the Working Group called on Slovenia to urgently take all appropriate measures to ensure that the CPC can implement its mandate in full independence and with the appropriate resources.

112. Since then, as reported in the Phase 3 WFU Report (2016), Slovenia adopted several instruments to strengthen existing safeguards for the CPC : the Integrity Plan; the Integrity Risk Register; a decision on the CPC 'Senate' (which prescribes that whenever the CPC 'Senate' adopts a final decision in a concrete corruption case, which is not in line with the prior proposal of the Commission's expert staff, the 'Senate' is obliged to provide a written reasons); the Rules of Procedure of the Commission and the Code of Conduct of employees. In addition, Slovenia mentioned that the amendments were being prepared to the IPCA that would introduce changes to the procedure for appointing members of the CPC 'Senate', to further strengthen the independence of the Commission. The revised IPCA was supposed to be adopted in 2016.

113. However, at the time of the Additional WFU Report (2017), the MoJ was still reviewing IPCA. Furthermore, press articles highlighted major challenges in the management and functioning of the CPC, including alleged political influence.⁶¹ The WGB requested Slovenia to provide a further update on the adoption of the IPCA amendments in October 2018. At its next update, Slovenia reported having withdrawn the bill amending the IPCA following the resignation of the Prime Minister.

114. The MoJ then carried out additional consultations and prepared a new draft act amending the IPCA. The government adopted it in July 2019 and submitted it to the Parliament. The IPCA amendment (ZIntPK-C) was approved by the Parliamentary Committee on Justice on the 1st of October 2020, and on October 21, the amendment was passed in the National Assembly before being published in the Official Gazette on 2 November 2020 and entering into force on 17 November 2020.⁶²

115. The amendments to the IPCA provide new criteria for improving the transparency of the procedure for the appointment of the CPC Chief Commissioner and deputies. According to Slovenia's answers to Phase 4 questionnaire, the proposed amendments to the nomination committee (instead of the selection committee) exclude members with political backgrounds. Previously, a representative of parliament was also a member of the selection committee. The nomination committee nominates candidates who fulfil legal conditions. Additionally, the nomination committee also conducts a personal suitability assessment.

⁶⁰ OECD Working Group on Bribery's [public statement on Slovenia's limited implementation of the Anti-Bribery Convention](#) (24 February 2016).

⁶¹ [STA](#) (13 September 2017).

⁶² [Act amending the IPCA published in the National Gazette on 2 November 2020](#) and [Unofficial consolidated version of the IPCA in English](#)

The role of the nomination committee is similar to that of the Officials Council, Judicial Council or the Prosecutorial Council – it acts as a professional filter in the selection process. The President of the Republic of Slovenia takes the final decision on appointment of the CPC Chief Commissioner. The President of the Republic of Slovenia can also initiate a procedure to remove the Chief Commissioner or the deputies from the office of his/her own initiative (and not only on the initiative of the National Assembly). In a press release following the adoption of the law, Transparency International Slovenia welcomed the changes but nevertheless noted that a representative of the National Assembly had again been placed in the vetting commission for the presidency of the CPC, which increased the possibility of political influence in the process.⁶³ Slovenia asserted that due to the changed role of the vetting commission, the role of any individual member, including the representative of the National Assembly, was minimal.

iii. Resources

116. At the time of Phase 3, the Working Group raised the issue of the adequacy of financial and human resources available to the CPC. The CPC budget is defined by the Government and adopted in the Parliament. The annual budget of the CPC has averaged EUR 1.73 million since 2011, going from EUR 1 626 500 in 2015 to EUR 1 932 864 in 2020.⁶⁴

117. In Phase 3, the CPC stated a need for an additional 10-20 staff members to carry out its tasks. The Working Group decided to follow-up on the level of resources available to the CPC, together with the NBI and the SSPO, to support the effective prevention, detection, investigation and prosecution of foreign bribery (Follow-up issue 12e). In its Phase 3 Written Follow-up, Slovenia provided new data regarding the human and financial resources of the CPC. In December 2015, it employed 41 persons, i.e. six more than in 2014.

118. During the virtual visit, the CPC indicated that it is foreseen that the CPC will be provided with four extra staff and budget for extra technology to accompany new responsibilities resulting from the IPCA amendments. The CPC strongly emphasised that this was not enough, as the institution already needed additional human resources for its current responsibilities, in order to fulfil expectations of society with regard to CPC powers. Both human and financial resources are thus lacking, as well as IT software to better conduct oversight over public institutions. Furthermore, because of the COVID-19 pandemic, the entire state budget was adjusted so the CPC received 2.4% less than the amount that was initially foreseen under the state budget for 2020. The future law on whistleblower protection, which has to be implemented end-2021, will potentially grant new powers and additional employees to the CPC. However, until the adoption of the law, these additional resources are not guaranteed.

iv. Training

119. During the Phase 4 virtual visit, the CPC underlined that its preventive role, including awareness raising, was the most important with respect to combating foreign bribery. All stakeholders at the virtual visit were unanimous that the CPC enjoys a good reputation with other Slovenian authorities, civil society and the private sector. The CPC provides a number of ad hoc trainings on bribery including foreign bribery, but mainly for public institutions and SOEs.

Commentary

The Working Group welcomes the positive direction that the IPCA amendments take regarding the role and independence of the CPC and welcomes their adoption after years of delay. The lead

⁶³ [Transparency International](#) (21 October 2020). See also, [The Slovenia Times](#) (22 October 2020).

⁶⁴ 5th Evaluation Round Compliance Report of Slovenia adopted by GRECO at its 86th Plenary Meeting (Strasbourg, 26-29 October 2020) (forthcoming).

examiners recommend that the Working Group follow-up on the concrete impact the IPCA reforms will have in terms of independence of the CPC and its role in the fight against foreign bribery.

The Working Group also recognises the important role that the CPC plays in terms of corruption prevention, training and awareness raising among public institutions in Slovenia. It recommends that Slovenia ensure that the CPC is given adequate human and financial resources to be able to fulfil this role and to deal with the additional tasks it will have following enactment of the IPCA amendments.

b. National Bureau of Investigation

i. Mandate

120. At the national level, economic crime is dealt with through two divisions within the Criminal Police Directorate: the Economic Crime Division (strategy) and the NBI (investigation), made up of expert investigators (mainly lawyers and economists). However, police officers at the national, regional, and local level are also involved in detecting and investigating economic offences. In order to improve the effectiveness of such investigators, Slovenia obtained funds from the European Commission's Internal Security Fund to conduct training specifically focussed on forensic accounting, internal auditing, and assessment of company value. The intention was to ensure that police are expertly qualified to combat complex forms of economic crime.

121. The NBI was established in 2010 as a criminal investigation unit within the Criminal Police Directorate of the General Police Directorate in Ljubljana. Under the Organisation and Work of Police Act (Police Act),⁶⁵ the NBI is responsible for the detection and investigation of "complex criminal acts"; in principle, this includes instances of foreign bribery. However, Slovenian legislation does not expressly provide the NBI with exclusive jurisdiction to investigate foreign bribery cases. Investigators present at the virtual visit clarified that foreign bribery investigations may be carried out by regional police units, but that due to the cross-border nature of these cases, such investigations will be predominantly led by the NBI.

122. At the time of Phase 3, Slovenia reported the existence of coordination guidelines that would ensure the NBI was informed of a foreign bribery case being investigated by the local police and that the investigation would "most probably" be transferred to the NBI. Each police unit therefore has a discretion to retain the investigation and not transfer to the NBI. At the virtual visit, investigators informed the evaluation team of a new case involving alleged foreign bribery by Slovenian nationals, which was investigated not by the NBI, but by the Police Directorate in Ljubljana.

123. The Police Act determines that the NBI Director has the exclusive competence to accept cases for investigation and can request to take over any case from any unit of the criminal police in the country. The respective regional head of the police may disagree with this request, in which case the Head of Police will make a final decision as to which unit will carry out the investigation.

124. As described below (Coordination between relevant agencies and attribution of cases), the NBI operates under the direction of the SSPO, which has exclusive competence for directing the investigation of cases of active bribery and can set guidelines for police work under art. 160a CPA.

125. During the virtual visit, several participants alluded to a possible reform of the NBI in the near future, some alluding to the possibility that this reform would in fact spell the end of the NBI as a special investigative unit. The nature of these reforms was not mentioned by Slovenia in its questionnaire responses. Following the virtual visit, Slovenia informed the evaluation team that there were no reforms planned for the NBI. However, the media has quoted the Ministry of Interior saying that the function and status of the NBI should be defined more clearly within the Police Act and that amendments were

⁶⁵ Official Gazette of the Republic of Slovenia no. 5/1311/14, 86/15, 77/16, 77/17, 36/19 in 66/19 – ZDZ and 200/20.

envisioned by the end of 2020. Further exchanges with Slovenia clarified that amendments to the Police Act are still underway. The current proposal regarding the status of the NBI determines that the General Director of the Police will issue, upon proposal of the director of the Criminal Police Directorate (in addition to the Director of the NBI), an internal act determining which suspicions of criminal offences are to be investigated by the NBI.⁶⁶

Commentary

The lead examiners are somewhat concerned about the lack of clarity regarding jurisdiction over foreign bribery investigations. They recommend that Slovenia establish clear and specific procedures to ensure appropriate coordination, sharing of information and resolution of conflicts of competence in foreign bribery investigations between the several investigative units of the Police. They also recommend that the Working Group follow-up on the proposed amendments to the Police Act, to ensure that they do not compromise the independence of the NBI and that there is sufficient clarity regarding the NBI's investigative jurisdiction in foreign bribery cases.

ii. Independence

126. Article 5 of the OECD Anti-Bribery Convention recognises and protects the independence of investigations by ensuring that investigative discretion is exercised on the basis of professional motives and not subject to improper influence by concerns of a political nature.⁶⁷ Concerns regarding Slovenia's potential violations of Article 5 were stressed in previous evaluations, with the Working Group expressing concern that police investigations were at risk of being influenced by considerations prohibited by Article 5 and were often exposed to external pressure.⁶⁸

127. In Phase 2 the Working Group recommended that Slovenia "take further steps to ensure that police investigations of the foreign bribery offence cannot be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the persons involved" (Recommendation 3(a)). In Phase 3, the Working Group recommended that Slovenia urgently strengthen safeguards and take any other steps to ensure that law enforcement authorities are not subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention (Recommendation 4(c)). This recommendation was deemed only partially implemented in the Phase 3 Written Follow-up.

128. In Phase 3, Slovenia indicated that additional procedures were in place to ensure the professional independence of the NBI Director. Slovenia reported that the NBI Director is appointed by the Director General of the Police, who takes into account the opinion of an external professional commission. This commission is composed of the State Prosecutor's Council, a representative of Slovenia's FIU and a recognised expert in the field of criminal law or law enforcement who is appointed by the Ministry of Interior. The process for dismissal of the NBI Director also requires the approval of this professional commission.

Procedure for appointment and dismissal of the NBI Director

129. The procedure for appointment and dismissal of the NBI Director has been causing debate in Slovenia following the dismissal of the NBI Director in May 2020 (see below). Following the virtual visit, Slovenia provided extensive information regarding the process, which includes a public tender supervised by an Official's Council made up of 12 members. The chosen candidate is then formally appointed by the

⁶⁶ [Total Slovenia News](#) (19 October 2020).

⁶⁷ [Commentary to Article 5 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.](#)

⁶⁸ [Phase 2 report](#), para. 87.

Director General of the Police under art. 49 of the Police Act, who is in turn directly appointed by the Minister of Interior.

130. According also to the information provided by Slovenia, the appointment and dismissal of the NBI Director is governed by the rules under the Public Officials Act⁶⁹, in particular, arts. 82 and 83. These provisions pertain to appointments of managerial positions within a ministry and set the mandates for a period of five years. Under art. 83, public officials appointed in this manner can be dismissed without just cause within one year of their initial appointment. The Official's Council was established under art. 60 of the Public Officials Act with the objective of increasing transparency in the selection process of top-level officials and the independence of the chosen candidates.⁷⁰ This screening is also meant to guarantee the professional and technical competence of candidates and follows criteria that is publicly available on the website of Slovenia's Ministry of Public Administration.⁷¹

131. Even though the Official's Council is meant to ensure independence of the appointment process, its decision on the selection of a candidate for a public management position does not appear to be mandatory. There have been recent examples of NBI Directors appointed by the Director General of the Police that did not follow a public tender process (see below). Similarly, the manner in which the Public Officials Act was applied to the appointment and dismissal of the NBI Director has been questioned in the course of the legal proceedings instituted by the NBI Director dismissed in May 2020.

132. The NBI Director was dismissed and transferred to a new position as Senior Police Superintendent on 6 May 2020, less than a year after his initial appointment in June 2019. He challenged his dismissal in court, claiming that the rule in art. 83 that allows for dismissal of public officials without just cause within their first year of office does not apply to the position of NBI Director. He argued that art. 83 applies only to political office holders and the NBI is merely a unit with the General Police Department.⁷² In October 2020, the Nova Gorica Administrative Court found in his favour and annulled his dismissal, returning the case to the authority that issued the decision.⁷³ The question of the validity of his employment contract has raised further questions regarding the appointment of the NBI Director pursuant to the Public Officials Act. Slovenia filed an appeal, which was accepted by the Supreme Court on 6 January 2021, on whether it is admissible to apply art. 83(5) of the Public Officials Act to dismissal proceedings of the Director of the NBI.

133. Following the decision of the Nova Gorica Administrative Court, the public tender procedure for the position of NBI Director was reopened and used as a basis to set aside this individual's initial appointment. The decision on the dismissal was then stayed as a result of the setting aside the original appointment decision. According to the arguments used to justify this new decision, if the provisions under the Public Officials Act are not applicable to the dismissal of the NBI Director, it follows that the Act cannot be applicable to the appointment procedure and, therefore, the appointment was illegal *ab initio*. This naturally brings into question the validity of the appointment of all NBI Directors, and not only this specific case. Following this interpretation, a new public tender to fill the vacancy of NBI Director was launched in late October 2020.⁷⁴

⁶⁹ Official Gazette of the Republic of Slovenia no. 63/07.

⁷⁰ The Official's Council is composed by 12 members: 3 are appointed by the President of the Republic by experts in the public sector field, 3 are selected by officials holding titles of the first and second grades in the State administration authorities, 2 are appointed by trade unions representative of professional activities within State authorities and 4 are appointed by the Government following a proposal by the responsible Minister.

⁷¹ [Standards of Professional Qualifications](#).

⁷² [Sta](#) (25 May 2020).

⁷³ Judgement no. III U 82/2020-33 of 17. 9. 2020. [Total Slovenia News](#) (20 October 2020).

⁷⁴ [24Ur](#) (17 November 2020).

134. The former NBI Director obtained a precautionary measure against the decision to set aside his original appointment, therefore the decision is not yet final. He also filed a wrongful termination suit in the Ljubljana Labour and Social Court against the Ministry of Interior and the Police. The Labour Court ruled that he had no claim against the Police, but at the appeals stage, the High Court overturned this decision and ruled that the contract remains valid and, therefore, he is legally still the NBI Director.⁷⁵ The High Court also upheld a request to suspend in the interim selection of a new candidate in the pending tender and returned the case to the Labour Court for re-assessment. Although the procedure itself was not stayed, the Labour Court effectively suspended the selection of a candidate. Slovenia objected to this decision and subsequently filed an appeal which was rejected by the court on 23 December 2020.

Several replacements of the NBI Director surrounded by allegations of political interference in police investigations

135. In 2020 Slovenian media extensively reported on the succession of new appointments to the position of NBI Director that followed the initial dismissal in May 2020.

136. As described in the previous section, the acting Director General of the Police dismissed the NBI Director on 6 May 2020. Media outlets reported on the political controversy surrounding this decision. Government officials reportedly accused the previous government of appointing this individual, who was formerly Head of the OMLP, to the NBI to prevent investigations into alleged money laundering offences in connection with Iran and involving Slovenia's largest state-owned bank (NLB). In turn, officials of the previous Government have publicly called into question the lawfulness of the dismissal, claiming that the current Government wants to stop certain investigations from moving forward, particular into alleged irregularities by individuals connected to the governing party.⁷⁶ This replacement follows other in key agencies in Slovenia, such as the Police Commissioner and the Head of the OMLP.

137. In the intervening period between the dismissal of the NBI Director in May 2020 and the decision of the Nova Gorica Administrative Court, several other individuals were appointed to lead the NBI. The former deputy president of the CPC was appointed acting NBI Director on 6 May 2020, while the formal public procurement process to fill the position of NBI Director was underway.⁷⁷ The new acting Director also formally applied via the public tender to fill the position of NBI Director along two other candidates. However, none of the three candidates were selected. Allegations in the media sustain that the decision not to hire the acting Director to continue filling the role was connected to a recent investigation into alleged irregularities in the procurement of medical (PPE) equipment, which led to an NBI raid at the house of the Minister of Economy.⁷⁸ On 30 June 2020, the Minister of Interior announced that neither he nor the Police Commissioner had any previous knowledge of this raid, and therefore would both resign from their respective positions.⁷⁹ The Minister of Interior stated that the raid had been politically motivated and called on the acting Director to also present his resignation.⁸⁰ He responded to these accusations by publicly defending the integrity of the work of NBI investigators.⁸¹ The newly appointed acting Director General of the Police dismissed him and appointed a second acting NBI Director in July 2020. On 21 September 2020, the Minister of Interior informed the media that he had withdrawn his resignation. The evaluation

⁷⁵ [Reporter](#) (17 November 2020).

⁷⁶ [Total Slovenia News](#) (7 May 2020).

⁷⁷ [Sta](#) (6 May 2020).

⁷⁸ [The Slovenia Times](#) (2 July 2020) and [The Slovenia Times](#) (24 July 2020).

⁷⁹ [Reuters](#) (30 June 2020).

⁸⁰ [The Slovenia Times](#) (24 July 2020).

⁸¹ [The Slovenia Times](#) (2 July 2020).

team was not able to ascertain why the public tender was bypassed in favour of appointing a new acting Director.

138. In October 2020, during the virtual visit, the evaluation team learned that the third NBI Director since May had resigned from his position, citing personal reasons. The NBI currently has a new acting director, given that the public tender process was suspended following the High Court's ruling on the validity of the employment contract of the NBI Director dismissed in May 2020.

139. During the virtual visit, representatives from civil society and journalists were concerned about the pressure on the NBI that accompanied this string of events. In their views, Slovenia has systematically faced politically motivated decisions on staffing in law enforcement agencies following an electoral win, which intensified under the current Government and has been accompanied by budget cuts for a number of key institutions in the fight against corruption. Among other events that cause general concern is the reported leaking in Parliament of the names of investigators working in specific cases and public statements by members of the cabinet directed at the police to investigate certain individuals. Talks about "cleaning house" in the NBI, which is currently investigating three individuals close to the ruling party, raise questions regarding the media-publicised proposed reforms of the NBI.

Commentary

The evaluation team is gravely concerned about the ongoing allegations of political interference in the NBI, particularly given the successive changes of its Director, with three new appointments in a very short period. The evaluation team reminds Slovenia that its obligations under the Convention require it to abide by the principles set forth in Article 5. The evaluation team therefore recommends that Slovenia take urgent steps to ensure that sufficient safeguards are in place to secure the independence of police investigations. In particular, the evaluation team recommends that Slovenia ensure that sufficient safeguards are in place regarding the appointment and dismissal of the NBI Director.

iii. Resources

140. The Phase 3 evaluation noted that the NBI was staffed with 62 investigators and the agency's annual budget since 2010 was EUR 3 million. Law enforcement representatives present at the Phase 3 on-site visit noted an insufficient level of resources. In its Phase 3 Written Follow-up, Slovenia reported that the NBI was staffed with 75 agents and there were 8 other job openings in that division.

141. Slovenia provided information regarding the NBI's annual budget and current staffing after the virtual visit. The NBI's budget has increased in the last four years, from EUR 3 820 423 in 2017 to EUR 4 370 938 in 2020. The projected budget for the NBI in 2021 is EUR 4 736 923. This is a welcome increase that amounts to EUR 1 million additional funding in comparison with previous years. Regarding NBI's staff, as of 11 August 2020 the NBI employed 71 persons and 10 job openings were available. This means that not only the actual number of currently employed staff has decreased, but also the overall number of positions available (from 83 to 81).

iv. Training

142. In Phase 3 the Working Group recommended that Slovenia provide in-depth training specifically on the foreign bribery offence to investigators and prosecutors (Recommendation 4(d)). In its Phase 3 Written Follow-up Slovenia reported the organisation of a seminar and three joint training sessions between the Judicial Training Centre and the Supreme SPO focusing specifically on foreign bribery and the recommendation was deemed fully implemented.

143. In its questionnaire responses, Slovenia indicates that since 2016 its Criminal Investigation Course for newly employed criminal investigators includes a specific focus on how to prevent, detect, and investigate foreign bribery. The Police has regular annual training plans with include a scheduled training

on the field of corruption and, particularly, on the topic of bribery of foreign public officials in international business transactions. In September 2017, the Police, CPC, MoJ and Supreme SPO organised a specific training on the Anti-Bribery Convention for prosecutors, legal advisers and participants from their and other agencies who had not had previous training in this area. However, no information was provided regarding the number of attendees.

c. State Prosecutor's Office and Specialised State Prosecutor's Office

i. Mandate

144. The mandate of the different prosecution agencies forming the State Prosecution Service of Slovenia has not changed since Phase 3.

145. The Supreme State Prosecutor Office is the highest-ranking prosecutor's office in the country. It supervises and coordinates the work of 11 district state prosecutors' offices as well as the SSPO. The appointment and dismissal of the Prosecutor General are made by Parliament upon a proposal of the State Prosecutorial Council and following the preliminary acquisition of the opinion of the government (art. 111 (1) SPO Act).

146. The SSPO, established in 2011 by the State Prosecutor's Office Act, is responsible for prosecuting serious criminal activities in the areas of organised crime and economic crime, terrorism, corruption and other criminal activities requiring detection and prosecution by specially organised and trained state prosecutors (art. 192 SPO Act). As such, the SSPO has exclusive jurisdiction in Slovenia for directing investigations and prosecuting cases of active bribery, including foreign bribery cases. The Head of the SSPO is appointed by the State Prosecutor's Council upon proposal of the State Prosecutor General and the prosecutors of the SSPO are appointed from among existing prosecutors by the State Prosecutor's Council on the proposal of the State Prosecutor General and the opinion of the Head of the SSPO (art.195 SPO Act). External candidates who are not prosecutors can also be appointed to the SSPO following the same general procedure as for the appointment of a new state prosecutor.

147. In addition, Slovenia counts 11 district State Prosecutor's Offices, which have jurisdiction in the territory of a District Court of general jurisdiction and Local Courts pertaining to the territory of this District Court.

148. Finally, the State Prosecutorial Council is an independent state body that performs the tasks of state prosecution, self-governance and administrative tasks as determined by art. 102 SPO Act, and participates in ensuring the uniformity of prosecution and safeguarding the independence of state prosecutors. The State Prosecutorial Council consists of four members elected by state prosecutors, four members elected from among the legal experts by Parliament on the proposal of the President of the Republic, and one member appointed by the Minister of Justice from among the heads of district state prosecutor's offices.

ii. Independence

149. The Working Group raised in the past several concerns about possible undue influence on foreign bribery investigations and prosecutions in Slovenia and implementation of Article 5 of the Convention. Article 5 of the Convention requires foreign bribery investigations and prosecutions to be governed by the rules and principles that apply generally to all cases and prohibits the consideration of three specific factors in decisions to prosecute foreign bribery: national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

150. Regarding prosecutors, the Phase 3 report highlighted in particular the risk of interference in investigations and prosecutions where the natural persons involved hold prominent positions; and the perception that prosecutors may refrain from prosecuting legal persons for economic reasons. The Working Group recommended that Slovenia, as a matter of urgency, strengthen safeguards and take any

other steps to ensure that law enforcement authorities [and the CPC] are not subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention in deciding whether to pursue an investigation or prosecution, or transmit corruption allegation reports to law enforcement authorities (Recommendations 4(c)). This recommendation was assessed as only partially implemented at the time of the WFU Report in 2016, taking into account the proposed IPCA reform.

151. Since Phase 3, Slovenia has taken some legislative and institutional steps to address this recommendation. Slovenia amended the Judicial Service Act, the Courts Act and the State Prosecutor Office Act in 2015 with the aim of limiting and preventing corruption risks among judges and prosecutors. Concrete measures have been adopted, including the establishment of a Commission for Ethics and Integrity, the adoption of a Code of Ethics of State Prosecutors within the State Prosecutorial Council and the adoption a Code of Judicial Ethics. In particular, the Commission for Ethics and Integrity is competent to (i) deliver principled opinions in compliance with the Code of Ethics of State Prosecutors, (ii) issue recommendations on meeting the standards of state prosecutors' ethics and integrity, (iii) adopt guidelines on the internal organisational measures of state prosecutor's offices in cases of interactions with persons who have ceased to perform prosecutorial functions, and (iv) ensure, in cooperation with the Judicial Training Centre, state prosecutors' training and education on ethics and integrity. The State Prosecutor General also adopted the Policy for Detecting and Managing the Risks and Vulnerabilities of Corruption in the Prosecution Service in March 2016, in line with recommendations from the Council of Europe's Group of States against Corruption (GRECO) recommendations.

152. These measures do not, however, appear to address Phase 3 recommendation 4(c) and its focus on risks of interference linked with the status of natural persons involved in cases.

153. During the virtual visit, civil society, media and lawyers reported that, while there was no clear perception of political influence in prosecutions, the recent political pressure on the police (as described above) might also impact on prosecutors in certain cases. Panellists were also of the view that the prosecution service had greater legal protection from political pressure than the police, but expressed concerns that it would nevertheless be targeted. A number of serious issues have emerged since Phase 3 with respect to the independence of prosecutors, as further detailed below.

Stronger hierarchical control over state prosecutors' decisions

154. The principle of the functional independence of Slovenia's state prosecutors in relation to filing criminal charges is considered by the case law of the Constitutional Court as implicitly contained in the first paragraph of art. 135 of the Constitution.⁸² According to Slovenia, the legislation guarantees the independence of the prosecution and protects the independent position of prosecutors, which can be compared to the position of judges. A prosecutor cannot be given instructions or orders in a specific criminal case.

155. However, it is unclear how this principle interacts with the "quality check" system, which exists under Slovenian law and is currently being broadened. According to art. 169 SPO Act, case prosecutors must submit a draft of their prosecutorial decisions in specific cases of "special importance" for "inspection" to the head of the relevant SPO, in order to ensure the efficiency and uniformity of prosecution, as explained by Slovenia in the Phase 3 WFU Report. According to art. 89 of the State Prosecutorial Rules, a matter can be determined as being of "special importance" if this is needed for the efficiency and uniformity of prosecution. During the virtual visit, prosecutors explained that each SPO decides which cases require authorisation from the SPO Head based on the SPO's priorities.

156. The state prosecutor may file a document or order a procedural action to be executed only after the head of the relevant SPO or an authorised person has signed the draft indicating that it was examined

⁸² Constitution of Slovenia, art. 135 (State Prosecutor). "State Prosecutors file and present criminal charges and have other powers provided by law. The organisation and powers of state prosecutor offices are provided by law."

and there are no objections. If the head of the state prosecution service refuses to sign the document, s/he must provide written reasons and explain to the prosecutor how to eliminate inadequacies or incomprehensibility. If the subsequent revisions still fail to comply with the explanation, the head of the state prosecution service may again refuse authorisation. If the head of the relevant SPO does not agree with the decision of the case prosecutor s/he may assign the case to another case prosecutor. Prosecutors at the virtual visit indicated that a case had never been reassigned in the District SPO pursuant to this procedure and clarified that this procedure did not mandate the head of the relevant SPO to request a prosecutor to dismiss a case. This procedure also applies to the SSPO, where the draft prosecutorial decisions for approval have to be directed to the head of the SSPO.

157. Amendments to art. 169 SPO Act were enacted in September 2020. These amendments extend the requirement for SPO Head approval to all decisions to dismiss cases/decide against indictment for offences carrying greater than three years' imprisonment. According to Slovenia, the main goal of these amendments is to provide additional tools to SPO Heads to ensure uniformity of prosecution and strengthen the quality of the judicial system as well as the reputation of the judiciary. Slovenia argues that the draft law merely extends the current regulation, and that the proposed amendments do not affect the case prosecutor's discretion or imply a requirement for the consent of the executive branch to open, close or continue an investigation or prosecution. The art. 169 SPO Act procedure and its proposed amendments, nevertheless, raise concerns about the independence of individual case prosecutors.

New timeframe imposed on prosecutors for filing an indictment

158. The Government recently proposed amendments to the CPA regarding the timeframe for prosecutors to file an indictment after receiving a criminal complaint or a case from an investigative judge. In their initial version discussed during the virtual visit, the amendments to art. 147 CPA proposed a 60-day limitation period to dismiss the complaint, request an investigation or file an indictment following the receipt of a criminal complaint. A timeframe of 15 days is currently provided as a guideline for a prosecutor to file an indictment upon receiving a case from an investigative judge; the proposed amendments to art.184 CPA introduced a mandatory 30-day period for filing an indictment. These limitation periods can be extended on request by a prosecutor. However, if the prosecutor does not comply with the deadlines and has not obtained an extension, s/he is bound to notify the relevant SPO Head or the State Prosecutor General of the reasons for the delay.

159. During the virtual visit, prosecutors were of the view that this timeframe is too tight for economic crime cases, including foreign bribery cases, which are complex and time-consuming. They also mentioned that the consequence of failure to meet the deadline could be disciplinary sanctions for the prosecutor. The initially proposed amendments were changed in the legislative procedure and the amendments were adopted by the National Assembly on 17 December 2020. The Act was published in the National Gazette on 29 December 2020 and entered into force on 13 January 2021. The initially proposed 60 days deadline in art. 147 was extended to 90 days as a "non-preclusive deadline" for the prosecutor to act after the receipt of the complaint. The 15 days deadline in art. 184 was doubled to 30 days.

Parliamentary inquiries into individual cases

The Parliamentary inquiry into corruption prosecutions of a current member of the National Council

160. In June 2019, the National Council requested the National Assembly to open a parliamentary inquiry into corruption prosecutions of a current member of the National Council, State Secretary for Ministry of Interior, and former mayor of a Slovenian city. He, together with others, had been investigated and prosecuted for corruption offences in a number of cases, some of which had been adjudicated while others were pending. The National Assembly launched the inquiry to investigate alleged political motives of the prosecutors and judges involved in these cases. The establishment of the parliamentary inquiry was approved by the National Assembly and the Minister of Justice on the basis of the Constitution and the Rules of Procedure of the Assembly.

161. In July 2019, the CPC in response to this parliamentary procedure, initiated proceedings for violations of public sector ethics and integrity rules and conflicts of interest by the National Council and some National councillors.⁸³

162. In September 2019, the Supreme SPO and the Judicial Council filed separate petitions with the Constitutional Court to review the constitutionality and legality of this specific parliamentary inquiry. The Constitutional Court suspended the parliamentary inquiry against judges and against state prosecutors respectively in October and November 2019 on the basis that it impedes the constitutional principle of independence of the judiciary. The activities of the inquiry are therefore suspended until the Constitutional Court delivers its final decision. It is unknown when this decision will be taken. The evaluation team heard during the virtual visit that despite the Constitutional Court's order to suspend the procedure, the parliamentary commission was still questioning police inspectors and former prosecutors. Parliamentarians at the virtual visit considered the power to establish parliamentary commissions as a support to the judiciary. They were aware that the proceedings of the Commission were ongoing but not in relation to the provisions that were pending a ruling from the Constitutional Court.

163. The Working Group issued a public statement on 15 October 2019, to express its concern that an ongoing parliamentary inquiry might constitute direct pressure on and interference with the work and functioning of the judiciary in Slovenia.⁸⁴ GRECO also released an Ad hoc Report on Slovenia in application of its Rule 34 at its 84th Plenary Meeting in December 2019 on this matter, noting that the Constitutional Court had put on hold the implementation of the parliamentary inquiry.⁸⁵ This inquiry continues to raise serious concerns about the risk of considerations prohibited under Article 5 of the Anti-Bribery Convention being taken into consideration when prosecuting and sanctioning foreign bribery cases in Slovenia.

Parliamentary inquiries into the NLB case

164. As noted above, in 2017, Slovenia launched an investigation following money laundering allegations involving its largest state-owned bank (NLB) in transactions with Iran nearing EUR 1 billion between 2008 and 2010. The case has been the subject of two parliamentary inquiries, including into political influence into the investigation and political financing as part of the laundering scheme. Criminal complaints were lodged with the SSPO against the criminal investigators in the case, and then dismissed. The commissions of inquiry presented their findings but the Prosecutor decided not to follow them, and the criminal proceedings for abuse of office by the bank executives were discontinued. Proceedings for alleged money laundering offences are reportedly ongoing against a British/Iranian citizen in connection with the case. During the virtual visit, parliamentarians agreed that investigations and prosecutions of serious criminal offences need to be conducted without political pressure and that changes to be made to avoid similar issues arising in future.

Other issues of concern related to improper political influence in prosecutions

165. Recent developments, even though they are not directly related to foreign bribery cases, reveal risks of political interference in prosecutorial work, and question the independence of prosecutors. As reported by the media, the Prime Minister addressed a letter dated 19 June 2020 to the State Prosecutor General, criticising alleged inaction in prosecuting death threats expressed at anti-government protests

⁸³ Letter dated 16 July 2019 of the Head of the Slovenian delegation to GRECO cited in the Ad-hoc Greco report of December 2019 on Slovenia, <https://rm.coe.int/ad-hoc-report-on-slovenia-rule-34-adopted-by-greco-at-its-84th-plenary/16809c897b>

⁸⁴ OECD Working Group on Bribery's [public statement on potential political interference by the legislative branch in the independence of the judiciary in Slovenia](#) (15 October 2020).

⁸⁵ GRECO [Ad Hoc Report](#) on Slovenia, adopted 6 December 2019 and published 18 February 2020.

and associated attacks on the police.⁸⁶ The Prosecutorial Council condemned the letter as unacceptable political pressure by the most senior representative of the executive branch of power on the State Prosecutor General.

166. On 1 October 2020, the SSPO filed an indictment against the Prime Minister for alleged corruption related to a real estate transaction involving an exchange of property in rural Slovenia for an expensive apartment in Ljubljana. Participants in the virtual visit reported that the Prosecutor in the case had been subject to political attacks in media close to the Prime Minister, which could be perceived as an indirect pressure on the prosecution service.

167. In addition, according to media reports from early January 2021,⁸⁷ the government delayed the appointment of new state prosecutors proposed by the Minister of Justice for several months despite staff shortages, especially in the District State Prosecutor's Office in Ljubljana. These delays in appointments are allegedly due to the names of the candidates selected. The media also reported that the Ministry of Justice submitted at the end of December 2020, with a very tight timeframe for adoption, a proposal for amendments to the Prosecutor's Office Act, which envisages some changes in the procedure for the appointment and promotion of prosecutors.⁸⁸

168. Furthermore, as reported by the media⁸⁹, the Slovenian Association of State Prosecutors sent a complaint on 4 March 2021 to the Council of Europe (CoE) Consultative Council of European Prosecutors (CCPE) outlining "inadmissible pressure" from the Prime Minister as well as from media outlets he controls.

Commentary

The lead examiners are concerned at recently adopted reform of the CPA imposing pre-trial investigation time limits on prosecutors, accompanied by the threat of disciplinary sanctions. The Working Group recommends that Slovenia ensure that the amendments to the CPA introducing time limits for prosecutors to bring indictments do not hinder the effective prosecution of the foreign bribery offence.

The possibility for cases to be recalled and redistributed by senior prosecutors based on the 'quality check' procedure that was recently broadened to cover all decisions not to prosecute serious crimes exacerbates these concerns about prosecutorial independence.

The lead examiners are also concerned about the risk of interference and improper political influence in prosecutions where the natural persons involved hold prominent positions, in violation of Article 5 of the Convention. The two current parliamentary inquiries into individual cases (Commission of Inquiry into corruption prosecutions of a current member of the National Council; and Commission of Inquiry for investigating the alleged money laundering in NLB) are cause for serious concern.

The Working Group strongly reiterates the recommendation 4(c) issued in Phase 3 that Slovenia, as a matter of urgency, strengthen safeguards and take any other steps to ensure that prosecutors are not subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention in deciding whether to pursue an investigation or prosecution. In particular, the Working Group should follow up on the activities of the Parliamentary commissions of inquiries, to ensure that these commissions do not compel the SPO to answer questions or provide information in relation to specific cases.

⁸⁶ [Total Slovenia News](#) (6 July 2020) and [STA](#) (6 July 2020).

⁸⁷ [Necenzurirano.si](#) (11 January 2021) and [Svet24](#) (11 January 2021), in Slovenian.

⁸⁸ *Ibid.*

⁸⁹ [Dnevnik](#) (4 March 2021) and [Total Slovenia news](#) (5 March 2021).

iii. Resources

169. In Phase 3, the lead examiners were concerned by the discussions during the on-site visit that the current level of human and financial resources available to the NBI, SSPO and CPC were insufficient. In particular, the SSPO lacked financial and human resources and due to budget cuts the number of prosecutors provided in practice (14) did not correlate to the number provided for under the law (at least 10 permanent prosecutors and 11 seconded prosecutors). Slovenia indicated that resources would be increased. The Working Group decided to follow-up on the level of resources available to these bodies to support the effective prevention, detection, investigation and prosecution of foreign bribery (Phase 3 Follow-up issue 12(e)).

170. In the Phase 3 WFU Report, Slovenia reported that additional human and financial resources had been allocated to the SSPO. The budget for the SSPO in 2013 was EUR 2 040 679 while the budget for 2016 was EUR 2 983 665. This represented more than a 31% increase of funds. Between 2013 and 2015 the SSPO went from having 20 to 29 state prosecutors and from 2 to 6 senior legal advisors. Two additional state prosecutors joined the SSPO in 2016. Slovenia also reported an increase in the number of prosecutors and legal advisors at the District SPOs. In September 2015, 30 new prosecutors were appointed in different District SPOs and in 2014, 40 new senior legal advisers were employed.

171. More recently, resources have continued to increase: the total 2019 budget of the SPO was EUR 22 932 318, a 7.5% increase on the 2018 budget. In 2020, the budget specifically allocated to the SSPO was EUR 3.878.905, which represents a slight decrease from 2019. In terms of staff, in 2020, the SSPO had 28 prosecutors and 11 legal advisors.

172. Slovenia also reported an increased budget for the courts to ensure adequate adjudication of bribery cases: the 2019 budget allocation was EUR 177 340 872, which is 5.48 percent more than in 2018. Furthermore, the budget of the State Prosecutor's offices has increased.

173. During the virtual visit, prosecutors reported receiving a 30% cut in their salary as a result of austerity measures imposed during a 2.5 month period in the COVID-19 crisis, whereas some other public servants have received salary increases. Prosecutors lodged claims with the Labour Court and Constitutional Court. The Labour Court ruled that the cuts were possibly unconstitutional, interrupted the procedure before the court and filed a request for a constitutional review by the Constitutional Court. At the time of writing, the Constitutional Court had not yet issued its preliminary opinion.

174. In addition, according to recent media allegations, the SPO is facing staff shortages, especially in the key District SPO in Ljubljana, due to government delays in appointing several state prosecutors (see above Independence).

Commentary

The Working Group will continue to follow-up on the human and financial resources available to the prosecutors' offices to support the effective detection, investigation and prosecution of foreign bribery.

iv. Training

175. In Phase 3, the Working Group was concerned that Slovenia had not provided prosecutors with any specific training on the foreign bribery offence and recommended that Slovenia promptly provide in depth training specifically on the foreign bribery offence to investigators and prosecutors (Phase 3 Recommendation 4(d)). Prosecutors had also not received any training or guidance with regard to the liability of legal persons. The Working Group recommended that Slovenia issue specific guidance and training to both police and prosecutors on investigating and prosecuting legal persons, especially with regards to foreign bribery and other intentional economic crimes (Phase 3 Recommendation 2(d)).

176. Since Phase 3, Slovenia reported a series of trainings for the SSPO and other law enforcement authorities on foreign bribery. In particular, in March 2016 the Judicial Training Centre organised a one-day seminar on foreign bribery aimed at providing special training for judges and state prosecutors at different levels. In addition, the Office of The State Prosecutor General, and the Judicial Training Centre hosted joint training sessions focussed specifically on the foreign bribery offence in November 2014, April and October 2015. In view of the steps taken to train law enforcement authorities on the foreign bribery offence, the WGB considered that Recommendation 4(d) was fully implemented at the time of the Phase 3 WFU report (2016). Since then, a training on the OECD Foreign Bribery Convention was organised in September 2017 together with CPC, Police, MoJ and Supreme SPO for participants from these and other agencies who had not undergone previous foreign bribery training. There have not been any further training or awareness raising activities on foreign bribery since 2017.

177. Regarding specific training and guidance to State prosecutors and law enforcement authorities on the liability of legal persons (Recommendation 2(d)), at the time of the Phase 3 WFU report (2016), the information on training provided did not show any focus on the issue of prosecution of legal persons, and thus the WGB found the recommendation was not implemented. Since then, Slovenia reported in its Additional WFU (2017) a series of initiatives aiming at further providing guidance and training to both police and prosecutors on investigating and prosecuting legal persons, especially with regard to foreign bribery and other intentional economic crimes, using different formats and tools. However during the Phase 4 virtual visit, prosecutors mentioned that they had not received any trainings specifically on corporate liability.

Commentary

The lead examiners are concerned at the continuing lack of training provided to law enforcement authorities in relation to the liability of legal persons for foreign bribery and reiterate Phase 3 recommendation 2(d), which remains not implemented, to promptly provide specialised training in this regard.

d. Coordination between relevant agencies and attribution of cases

178. In the Phase 3 report, the WGB was concerned about the flow of information between the police and prosecutors in an ongoing foreign bribery case at the time (Pharmaceutical case). The WGB recommended that Slovenia take measures to enhance detection and to develop working relations with foreign law enforcement authorities and the use of information from diverse sources at the pre-investigative stage (Recommendation 4(a)(iv)). The recommendation was considered partially implemented in Slovenia's Phase 3 WFU Report, with the Working Group considering that more could be done to prioritise foreign bribery and enhance detection.

179. As noted above, the SSPO has exclusive jurisdiction to direct investigations and prosecute active bribery cases, including foreign bribery (art. 192 SPO Act). Art. 198(2) of the Act also stipulates, "the head of the district state prosecutor's office... and/or head of the competent administration and/or Police unit shall immediately inform the head of the SSPO on matters in the competence of the SSPO and shall submit to him the files of the matter including all collected evidence without delay." In addition, art. 160a CPA defines cooperation during the pre-trial procedure as including, inter alia, the prosecutor's ability to exercise his/her authority to set guidelines for police work, joint investigation teams and work with other competent authorities, and to supervise by giving instructions, expert opinions and proposals for information-gathering. Slovenia indicates that the SSPO has received 657 corruption reports in total in the period 2016-2020. This includes domestic and international corruption cases and all reports and notifications, regardless who filed the report. The highest number of reports of corruption offences between 2016-2020, at the national level, was filed by the police (55%) and followed by victims of criminal offences (22%) and other reporting parties (other: 21%). The rest of the categories (the prosecutor's office, other natural persons, the court, the inspection authorities, the perpetrator himself) represent only 2% of the reports.

180. Since 2009, legislation in Slovenia has provided for multi-agency teams to be brought together to work on investigations, under the direction of the SPO (“joint investigation teams”). The composition of these teams varies depending on the demands of the case, and can include officials from the tax administration, customs administration, police, and other agencies as required.

181. The Decree on the Cooperation between the SPO, Police and other competent authorities in detection and investigation of perpetrators of criminal offences, which was amended in 2010, lays down the procedure, time limits and forms of cooperation between the SPO, Police and other competent authorities in the fields of tax, customs, financial operations and corruption within the framework of specialised and joint investigation teams. The Decree provides for mutual exchange of information among authorities and defines the roles of various authorities in specialised and joint investigation teams led by prosecutors.

182. The SPO indicated in Slovenia’s Phase 3 WFU report that it cooperated with a range of public and private sector institutions (MFA, CPC, Chamber of Commerce, TI Slovenia, etc.) to obtain information regarding foreign bribery at the pre-investigative stage. During the Phase 4 virtual visit, participants underlined strong cooperation between the police, SSPO and CPC. A memorandum of understanding was concluded in 2010 between the CPC, the Police and the Ministry of Interior and updated in 2019. Ad hoc joint investigation teams led by prosecutors and bringing together representatives from relevant authorities depending on the needs of the investigation have also been used successfully in criminal cases (economic crime, organised crime, corruption). Law enforcement authorities at the virtual visit confirmed that the SSPO is very active in forming specialised and joint investigation teams, although these are yet to be used in foreign bribery cases. Prosecutors at the virtual visit demonstrated clear communication channels with the NBI and one of the ongoing foreign bribery investigations was as the result of a prosecutor alerting the NBI to alleged foreign bribery in a media report and requesting an investigation.

B.4. Investigating Foreign Bribery

a. *Initiating an investigation*

183. In Slovenia, the investigation of a criminal offence begins with a preliminary police investigation, within a “pre-trial” procedure. The standard of proof required to begin an investigation is “grounds for suspicion” that someone committed a criminal offence. Slovenia has established a policy of prosecutor-led investigations in corruption cases, which means that the police takes charge of the investigation but is under the direction of state prosecutors who also determine the use of investigative measures.

184. Following a preliminary investigation, the state prosecutor has three options: (i) determine that a well-grounded suspicion exists (that there is probable cause) and call for a formal investigation conducted by an investigative judge; (ii) file a direct indictment, without moving to the phase of judicial investigation; or (iii) close the proceedings.

185. The phase of judicial investigation that can be requested by the state prosecutor is part of judicial criminal proceedings, and is carried out by an investigative judge who acts as the lead litigator. Investigative judges also play a role at various stages of the preliminary investigation phase, particularly regarding certain investigative tools. The main objective of the judicial proceedings is gathering further evidence in order to determine whether to bring charges or discontinue proceedings. In its questionnaire responses, Slovenia indicates that the required standard of proof to launch a judicial investigation is “reasonable suspicion”, whereby the degree of probability that a certain person committed a criminal offence is higher than the probability that they did not, based on the facts of the case and the evidence gathered during the preliminary investigation.

186. Slovenia applies the principle of mandatory prosecution, but state prosecutors can dismiss a criminal report submitted by the police at the preliminary investigation stage if satisfied that no offence was

committed, or if no reasonable suspicion exists against the suspect. The prosecutor can also make this decision following the conclusion of judicial investigation.

b. Establishing jurisdiction

187. Slovenia's legal framework on jurisdiction has not changed since Phase 3. In Phase 3, the Working Group considered that, in the absence of case law, questions remain on whether the application of territorial and nationality jurisdiction for foreign bribery was sufficiently broad in Slovenia. The Working Group decided to follow up on the application of territorial and nationality jurisdiction for foreign bribery, especially with regard to legal persons and the ability for Slovenia to exercise jurisdiction over parent companies for acts of foreign bribery committed abroad by their subsidiaries (Follow-up issue 12(g)).

i. Territorial jurisdiction over legal persons in foreign bribery cases

188. Art. 3(1) CC provides that Slovenian and foreign legal persons are liable for criminal offences committed in Slovenia. Pursuant to art. 3(3), Slovenian and foreign legal persons can also be found liable if an offence is committed against a foreign state, foreign citizen or foreign legal person. In Phase 3, there had been no cases where jurisdiction had been established over legal persons for offences partly or wholly committed abroad as well as no cases where a parent company in Slovenia was sanctioned for the actions of its subsidiaries abroad. These issues do arise, however, in the context of the ongoing foreign bribery investigations.

ii. Nationality jurisdiction in foreign bribery cases

189. The CC requires dual criminality for the establishment of nationality jurisdiction. In both Phases 1 and 2, Slovenia asserted that technical differences in criminalising the conduct would not be an obstacle to establishing nationality jurisdiction over bribery offences. Slovenia further asserted that it would be able to establish jurisdiction in cases where a bribe is given by a Slovenian national to a public official of country A in country B, where country B does not criminalise foreign bribery, provided the bribery of domestic officials is punishable in country B.

190. During the Phase 4 virtual visit, MoJ representatives were not aware of any problems with this dual criminality requirement and were of the view that this requirement would not be an issue in foreign bribery cases, as most countries are parties to the UNCAC. They also reiterated their position adopted in Phases 2 and 3 that the criminalisation of the exact same criminal offence in the foreign jurisdiction is not required to comply with the dual criminality principle. However, lawyers indicated that the application of the principle of dual criminality to nationality jurisdiction might potentially be very problematic in foreign bribery cases involving corporate criminal liability. Indeed, in theory, a company could not be held liable if the crime has been committed in a jurisdiction which provides for administrative or civil (as opposed to criminal) corporate liability, as is the case in some countries. They underlined that further clarification on this is needed. So far, there is still no established case law to confirm the interpretation of Slovenian authorities with regard to the application of nationality jurisdiction.

191. In addition, in the Phase 2 WFU Report, Slovenia stated that art. 11 CC applies to anyone who commits a criminal offence abroad and has to be prosecuted in all signatory countries of the international treaties regardless of where the offence was committed. It further noted that art. 14 CC provides that "any person can be prosecuted without the condition of dual criminality." However, such prosecutions can only be started under specified conditions, including, inter alia, if authorised by the Minister of Justice, and no objective criteria had been set for granting or refusing authorisation. The Working Group noted that the issue of authorisation had to be further examined.

192. According to the art. 14(5) CC: "If, ... the criminal offence is not punishable in the country where it was committed, the perpetrator may be prosecuted only by permission of the Minister of Justice and with

the provision that, according to the general principles of law recognised by the international community, the offence in question constituted a criminal act at the time it was committed.” This issue was identified at the time of Phase 2 but not looked into in Phase 3.

193. During the virtual visit, lawyers were not aware of any actual case where universal jurisdiction had been applied under the Slovenian CC. It remains unclear whether, in foreign bribery cases, where it is not possible to establish dual criminality, the authorisation of the Minister of Justice would be required. According to the MoJ this would not be an issue as bribery is criminalised in every country.

194. However, the lead examiners are concerned that establishing jurisdiction regarding bribery of employees of foreign SOEs (covered by the private bribery offence in art. 242 CC, as discussed above (The Foreign Bribery Offence)) could be problematic if commercial bribery is not criminalised in the foreign country. Slovenian prosecutors considered that the interaction between dual criminality and corporate liability was not an issue, noting that it has not yet arisen in practice.

c. *Ne bis in idem*

195. During the virtual visit, Slovenia mentioned that the *ne bis in idem* principle has never been invoked in domestic bribery cases. In foreign bribery cases concluded via non-trial resolution in another country, the application of this principle would depend on the law of the country where the non-trial resolution was concluded and on whether the decision is final (i.e. subject to judicial oversight); if the decision came from a court, then the principle of *ne bis in idem* could apply. After the virtual visit, Slovenia confirmed that *ne bis in idem* may not be invoked in cases that are the subject of an agreement or debarment decision by a multilateral development bank.

Commentary

In the absence of case law, the lead examiners remain concerned about whether Slovenia can exercise jurisdiction over parent companies for acts of foreign bribery committed abroad by their subsidiaries. They are also concerned about the requirement of dual criminality for establishing nationality jurisdiction in cases of proceedings against legal persons, and the need for authorisation by the Minister of Justice when dual criminality cannot be established. Therefore, they recommend that the Working Group continue following up on the application of territorial and nationality jurisdiction concerning foreign bribery offences committed in whole or in part abroad, especially with regard to legal persons to ensure that the foreign bribery offence can always be prosecuted and sanctioned without regard to the place where the bribery occurred.

d. *Statute of limitations*

i. *Pre-trial investigation time limit*

196. In addition to the statute of limitations applicable to the foreign bribery offence, art. 185 CPA establishes a time limit of six months for an investigation led by an investigative judge. If the investigation has not been concluded within that period, the investigative judge informs the President of the Court of the reasons for the delay. The President of the Court may take the necessary measures to conclude the investigation, such as granting additional time or reassigning cases to other judges to lessen the caseload of the investigative judge in question. The President of the Court cannot, however, conclude the investigation on their own initiative, they are limited to using their managerial powers set out *inter alia* in arts. 60 and 71(c) of the Courts Act to ensure a timely conclusion of the investigation.

197. Since Phase 2 the Working Group has shown concerns that this time limit may be too short for foreign bribery investigations, which are inherently often very complex. Slovenian authorities stated during Phase 2 – and the same was reiterated by prosecutors, investigative judges and court judges during the Phase 3 on-site visit – that this time limit poses no real practical consequences, as it is intended as mere guidance for the investigative judge and not as an absolute limit. According to participants in both

evaluation phases, the Court President always grants an extension. Slovenia reports that no foreign bribery investigations have been terminated due to the investigation becoming time-barred.

198. Judges present at the virtual visit confirmed that the six-month time limit is merely indicative and that there are no legal consequences for not complying with such period. They also added that even sending a request to the Court President to grant an extension is not mandatory.

ii. Statute of limitations

199. Following an amendment to the CC in 2015, the statute of limitations for the foreign bribery offence is now 20 years (art. 90(1)(4) CC). The limitation period starts the day the criminal offence is committed (art. 91(1)) and it is interrupted if the perpetrator commits a second crime of the same or greater gravity before the first limitation period expires. The limitation period for the first offence shall resume following the interruption (art. 91(4)).

200. One of the ongoing foreign bribery investigations relates to facts that allegedly occurred in the 1990's, making it relevant to note the previous rules. The statute of limitation for the foreign bribery offence before the 2015 legislative amendment was 10 years. The rules on suspending the limitation period were also altered by a 2008 amendment to the CC. Hence, before 2008 the limitation period could be suspended where the prosecution, by reason of law, could not be commenced or continued or when the perpetrator was not within reach of the authorities (art. 91(3)). Prosecutors at the virtual visit clarified that certain prosecutorial acts, such as ordering investigative measures (including the issuing of an MLA request) also interrupted the period of limitation.

201. Slovenia reports that no foreign bribery cases to date have been terminated due to expiry of the statute of limitations. It is not clear at the moment how these rules will impact the ongoing case involving facts which precede the amendments to the CC of 2008 and 2015.

e. Investigative techniques

i. Special Investigative Measures

202. Law enforcement authorities in Slovenia have at their disposal a range of so-called "special investigative measures" which can be used in the context of an investigation into certain criminal offences, including foreign bribery.⁹⁰ Under arts. 150 and 151 CPA, these special investigative measures can only be used if there are grounds to suspect that a particular criminal offence has been committed, is being committed or is being prepared or organised "*using communications or computer systems where traditional investigative methods will either not permit the gathering of data, or could endanger the lives or health of people*".⁹¹ Because of the intrusive nature of these measures and their inherent conflict with constitutionally protected rights, only an investigative judge can order their execution, following a written proposal from the state prosecutor (art. 152(1)).

203. The investigative judge can only authorise the use of these investigative techniques for a period of a month, which can be renewed for an equal amount of time if there are reasonable grounds to do so. In any event, measures under art. 150 can only be renewed for a maximum of six months and measures under art. 151 for a maximum of three months. Investigators at the virtual visit were of the view that these limits should be extended since they create obstacles for investigations. They also added that the standards to obtain court approval for special investigative measures are excessively high, requiring

⁹⁰ The special investigative measures include monitoring of telecommunications, surveillance of letters, parcels and computer systems of banks and other legal entities which perform financial or commercial activities, listening and recording of conversations (art. 150 CPA) and secret surveillance, undercover operations and sting operations (art. 151 and 155 CPA).

⁹¹ [Phase 2 report](#), para. 106.

substantial evidence to meet the threshold. However, they indicated that a different standard is applied to European Investigation Orders (EIOs) received from foreign countries, as in those cases the court usually grants the request. Cooperation in criminal matters with the Member States of the European Union Act is not subject to specific deadlines, therefore the general time limits defined by the CPA are used.

204. Since Phase 2 that the Working Group has recommended that Slovenia review its current system of time limits imposed on the authorised use of special investigative techniques (Phase 2 Recommendation 3(d) and Phase 3 Recommendation 4(b)). The subject of the extension of these time limits was also discussed during GRECO's first round evaluation of Slovenia, prompting a discussion on the topic in the context of reforms to the CPA.⁹² However, no steps have been taken to implement these recommendations thus far and Slovenia reported in its responses to the questionnaire that there are currently no plans to further amend the CPA.

205. Arts.153 and 154 CPA regulate storage of data collected by law enforcement authorities. The police must hand all materials to the public prosecutor, who in turn has to deliver them to the investigative judge for examination. Information, messages, recordings and evidence obtained through measures decreed under arts. 150 and 151 are to be kept by the court. If the prosecutor declares that a criminal prosecution will not be commenced against the suspect, or does not issue a declaration within two years of the end of application of the special measures, all materials must be destroyed under supervision of the investigative judge (art. 153 (4) and 154 (2)).

206. It was established practice in Slovenia that the two-year deadline was merely instructive and, therefore, evidence gathered by means of special investigative measures could potentially be used beyond that deadline. This, however, changed following a high-profile corruption case against the mayor of Ljubljana in 2017 where the court ordered the destruction of the evidence obtained through special investigative measures since the prosecutor leading the case did not officially initiate a criminal prosecution within two years of the end of the application of the measures. In November 2017, the National Assembly issued an interpretation of arts. 153 and 154 CPA stating that the two-year deadline was merely instructive. However, the Supreme Court disregarded this interpretation and confirmed the position of the lower court that the two-year deadline was prescriptive and, therefore, the evidence gathered was inadmissible after that time had lapsed.⁹³

207. The Slovenian Prosecutor General filed a petition with the Constitutional Court for a review of the constitutionality of art. 153(4) and art. 154(2) CPA due to inconsistency with arts. 2, 14, 15, 22, 28, 135 of the Constitution and art. 13 of the European Convention on Human Rights. The petition included a proposal for temporary suspension of the implementation of such provisions, considering that the decision of the Supreme Court affected other open investigations.

208. By resolution no. UI-462/18 of 13 December 2018, the Constitutional Court determined the suspension of the execution of the first, second and third sentences of the second paragraph of art.154 CPA, unless the prosecutor declares that s/he will not initiate criminal proceedings. Until the Constitutional Court makes a final decision on the interpretation of these articles, all evidence gathered by means of special investigative measures where the two-year period has lapsed shall be sealed by the investigative judge and cannot be inspected or used.

209. Pending this decision from the Constitutional Court, art. 154 was nevertheless amended, with the changes entering into force on 20 July 2019. The amended art. 154 now establishes that only complete inaction from the prosecutor for a period of two years – or a declaration of non-prosecution – will lead to the destruction of evidence gathered by special investigative measures. If the prosecutor does not file an indictment but proposes, orders or carries out any activity, measure or investigative act aimed at

⁹² [GRECO, First Round Evaluation: Compliance Report on Slovenia \(2003\), para 29.](#)

⁹³ [Supreme Court Decision I Ips 15930/2017 of 31.5.2018.](#)

prosecuting the suspect, the collected evidence is not destroyed and the two-year deadline is suspended. The relevant evidence cannot be destroyed and it cannot be used in the context of the investigation until the Constitutional Court's ruling. Representatives from the MoJ at the virtual visit stated that the Constitutional Court could potentially extend its deliberation to the new amended arts. 153 and 154, but that this would be an unusual outcome, as the Court does not usually provide opinions on provisions not under its review. Slovenian authorities at the virtual visit were unable to provide a timeframe for the Constitutional Court's decision.

210. Following the virtual visit, Slovenia confirmed that in six cases the two-year period had already expired before the amendments entered into force and where, therefore, evidence collected could potentially be impacted by the pending Constitutional Court's decision. Two cases relate to domestic bribery offences. In one case the evidence was destroyed. In the second case, the evidence is currently being kept in the investigation file following a successful appeal by the prosecution of the destruction order. The four other criminal cases do not relate to bribery offences. One case is currently pending based on the decision of the Constitutional Court. In two cases, the question arose but the procedure has continued without a final decision on retaining or destroying the evidence based on other elements of the file. One of those cases is in the phase of judicial investigation and on the other there has already been a final verdict. In the last case, the defence invoked the two year deadline to request the destruction of evidence. The judge in charge of the case decided that, since the Constitutional Court decided to suspend the execution of art. 154 of the CPA, until its final verdict is rendered the deadline must be interpreted as merely instructional. The judge therefore did not stop the trial or decide in favour of destroying the evidence.

211. Participants at the virtual visit appeared divided regarding these provisions. On the one hand, there were concerns that high-profile cases would be dismissed due to destruction of evidence after the lapse of the two-year period. On the other hand, participants from across sectors and agencies agreed that there are considerations of due process that need to be taken into account given the nature of the measures in question.

ii. Use of investigative measures in bribery cases

212. To date, Slovenian authorities have not requested bank information from Slovenian financial institutions in the context of ongoing foreign bribery investigations. This type of information has been requested from banks in domestic bribery cases but a prosecutor must request a court order from an investigative judge for its execution (art. 156(1) CPA). Banks are required to comply with the court order and provide the information that is relevant to the criminal proceeding. In crimes for which the perpetrator is prosecuted *ex officio*, the police can request banking information without a court order, as long as there are grounds to suspect that the criminal offence has been committed or is being prepared and it is necessary to obtain information without delay. The police must make this request in writing to the bank (art. 156(5) CPA).

213. When banks do not cooperate in the lifting of bank secrecy, the files can be seized.⁹⁴ Non-compliance with a court order can also result in a fine for the bank. The CPC can also request banking information without a court order under art. 16 IPCA. The CPC must provide the legal basis for requesting the data, the reasons and the purpose of the requested data (art. 16(2) IPCA).

214. Information on company bank accounts is publicly available through the Agency for Public Legal Records and Related Services (AJPES). Access to this information must meet certain conditions such as having an appropriate legal basis and the tax identification number. This direct access can provide information on the bank account holder (name and address of natural person(s) or the legal entity) and the

⁹⁴ UNODC, Country Review Report of Slovenia (review cycle 2010-2015), p. 6.

information on the bank account (account number, bank name, account type, date of opening and closing).⁹⁵

215. Investigators can request information directly from the tax authorities without a previous court order as there is a Memorandum of Understanding in place (see also, Tax measures for combating bribery). Regarding the FIU, the NBI can request that information concerning suspects (both natural and legal persons) from the FIU's databases (see also, Money Laundering).

216. Prosecutors at the virtual visit commented that special investigative measures had never been used in a foreign bribery investigation but that these were common instruments in the context of investigations into other bribery offences.

Commentary

Given the lack of implementation of Phase 2 Recommendation 3(d) and Phase 3 Recommendation 4(b), the lead examiners reiterate their concerns, noting also that investigators at the virtual visit considered the pre-investigation time limits created obstacles in foreign bribery cases. They therefore recommend that Slovenia, as a priority, review its system of maximum 3-month or 6-month time limits for the authorised use of special investigative measures in foreign bribery investigations. The lead examiners are also concerned about further legal uncertainty surrounding the destruction of evidence obtained through special investigative measures brought on by the amendments to the legislation while the Constitutional Court's ruling is still pending. They recommend that the Working Group follow up on the decision of the Constitutional Court and application of the rule for destruction of evidence, as practice develops.

iii. Access to Beneficial Ownership information

217. Through amendments to the APMLFT which entered into force in November 2016, Slovenia introduced a Registry of Beneficial Owners. Slovenian commercial companies, legal entities and foreign funds, and institutions or entities with tax obligations in Slovenia are required to collect, store and register data on beneficial ownership. Beneficial owners are defined as natural persons who directly or indirectly hold more than 25% of the shares or voting rights in a legal entity, have otherwise obtained management control over such legal entity; or directly or indirectly provided the relevant legal entity with funds or assets, resulting in the power to supervise, direct or in any other way exercise influential power over the management. If the ultimate beneficial owner cannot be determined on the basis of these criteria, individuals in senior management positions of legal entity are considered as its "beneficial owners".

218. AJPES manages and maintains the Registry. Companies had until January 2018 to register beneficial ownership information in the registry and new entities will have to register within eight days of registration with the Slovenian commercial register. Information on personal name, address of permanent and temporary residence, amount of ownership or other means of supervision and the date of registration and deletion of the actual owner from the register are publicly available free of charge via the AJPES web portal (ePRS).⁹⁶ A legal entity which fails to store data and documentation on beneficial ownership can be fined up to EUR 120 000, while the responsible person within the legal entity can be fined up to EUR 4 000. A legal entity which fails to determine, register, store or update data on beneficial ownership is liable for a maximum fine of EUR 60 000, while the responsible person within such legal entity may be fined up to EUR 2 000. The OMLP reported performing inspections of registration of ownership data by reporting entities and issued 47 warnings to non-complying entities in 2019.

219. AJPES updates the data on a daily basis. "Sensitive data" (such as date of birth and citizenship of beneficial owner(s) etc.) will, however, only be accessible to law enforcement agencies, courts, and other

⁹⁵ *Ibid*, p. 96.

⁹⁶ AJPES, ePRS – Business Register of Slovenia: www.ajpes.si/prs/.

legal entities upon conducting a KYC test. Individuals will in principle only be granted access to “sensitive data” upon demonstrating a legitimate interest in acquiring such data.

220. Despite this very positive development, non-government participants at the virtual visit had reservations about its usefulness. Concerns related mainly to the information contained in the register rather than access to that information. These included the high threshold for listing beneficial ownership, resulting in a number of companies falling short of the obligation to register, and a lack of verification or oversight of information included on the register. Companies that had tried to use the register for KYC or due diligence checks found that it was not useful. Law enforcement authorities did not indicate having used the register in domestic or foreign bribery investigations. It is unknown whether it has been used for other law enforcement purposes, to date.

Commentary

The lead examiners welcome Slovenia’s introduction of a register of beneficial ownership for companies and other legal entities incorporated in Slovenia and consider this a positive achievement. They hope that this will help facilitate greater detection and enforcement of the foreign bribery offence.

B.5. Prosecuting Foreign Bribery

a. Awareness, training and specialisation of law enforcement agencies and the judiciary

i. Law enforcement

221. The WGB was concerned in Phase 3 that there was a general decline in the political will to combat corruption due to the absence of foreign bribery enforcement actions in Slovenia and despite the fact that a number of its companies are operating in high-risk geographic areas. It considered that the investigation and prosecution of foreign bribery was not, in practice, a priority for law enforcement authorities and recommended that Slovenia take measures to seriously step up its enforcement of the foreign bribery offence and take concrete and meaningful steps to ensure that foreign bribery is an area of priority for law enforcement authorities (Recommendation 4(a)(i)). The Police Act and Prosecution Policy prioritise the investigation and prosecution of corruption offences.⁹⁷

222. Since Phase 3, Slovenia has taken some steps taken to ensure that foreign bribery was an area of priority for prosecutors. In November 2014, the State Prosecutor General issued a “special call”, under the form of a letter to the Heads of all District SPOs and to the SSPO Head outlining the WGB’s concerns about the detection, investigation and prosecution of foreign bribery and urging prosecutors to treat foreign bribery as a priority offence. According to Slovenia, the SPO Heads were encouraged to issue general instructions (that are applicable to State prosecutors) for implementing this “special call” with the aim of ensuring more proactive detection and investigation as well as more effective prosecution of foreign bribery. The “special call” also called on prosecutors to promote pre-trial investigations by providing guidance to the Police. Within this call, the prosecutors were also encouraged to proactively use MLA. The SPO and SSPO do not appear to have made any efforts, since the “special call” in 2014 and it appears to have had little impact. As mentioned above (Foreign Bribery Cases in Slovenia), there have been very few foreign bribery investigations in Slovenia and no cases have been concluded, to date.

⁹⁷ Prosecution Policy, Office of the State Prosecutor General of the Republic of Slovenia, Number Tu-39/12-7, 27 June 2012.

Commentary

The lead examiners are concerned that, despite steps taken by Slovenia to ensure that foreign bribery was a priority for law enforcement authorities following the Phase 3 evaluation, these have not translated to increased detection and enforcement. They therefore reiterate Phase 3 recommendation that Slovenia seriously step up its enforcement of the foreign bribery offence.

ii. Judicial awareness, training and specialisation

1. Judicial awareness and training

223. As reported by Slovenia in previous follow-up reports, the Judicial Training Centre provides continuous education for judges, state prosecutors, specialised staff members and court staff. In particular, in March 2016 the Judicial Training Centre organised a one-day seminar on foreign bribery aimed at providing special training for judges and state prosecutors at different levels. Despite an annual, specialised training program provided by the ‘School for Judges’, this has not focused on foreign bribery, or related asset confiscation.

2. Specialisation

224. The four largest District Courts (Ljubljana, Koper, Celje, Maribor) have specialised departments for adjudicating complex cases of organised and economic crime, terrorism, corruption (including foreign bribery) and other similar criminal acts brought by SSPO prosecutors. These specialised departments also have specialised investigative judges assigned to SSPO prosecutions and additional judges are assigned to the department based on the annual work schedule. In Phase 3, Slovenia asserted that these new departments were expected to increase the specialisation of judges in corruption-related cases.

225. During the Phase 4 virtual visit, there was also a discussion about the establishment of a specialised court for serious economic crimes, to replicate the specialisation of the police and prosecution service (NBI and SSPO). However, this reform has never been implemented and it was noted that therefore the judges cannot have the same level of specialisation as the prosecutors and the police in economic crime cases, which can have an impact on the outcomes in such cases. In addition, there are no specialised investigative judges despite some special investigative techniques that only investigative judges can order – like wiretapping – requiring specialised knowledge of particular crime types.

3. Human and financial resources

226. Following the Phase 3 on-site visit, the Slovenian Supreme Court indicated that in 2014, the judiciary faced budgetary constraints that affected the number of employees. In light of this information, the lead examiners recommended that the WGB follow up on the impact of these budgetary constraints for the Slovenian judiciary on the speed of judicial proceedings (Phase 3 Follow-up issue 12(f)).

227. During the Phase 4 virtual visit, participants from the judiciary mentioned that there are not enough judges in criminal cases to handle all of the cases at first instance, which creates trial delays. This is particularly notable in complex cases where experts are needed. Cases requiring international cooperation also take longer than ordinary cases. Regarding financial resources, participants were not aware of any cuts so far due to the COVID-19 pandemic and could not comment more on this.

Commentary

The lead examiners are concerned by the lack of specialised training and awareness raising of judges on foreign bribery and related issues such as confiscation of assets. They recommend that concrete actions are taken to increase specialised training of judges in the area of international economic crime, including foreign bribery and asset confiscation. They also recommend that the Working Group continue to follow-up on the level of resources allocated to the judiciary and the impact on the speed of judicial proceedings.

b. Initiating and terminating proceedings

228. As noted in Phase 2 and Phase 3, the investigation of a criminal offence can proceed through either a judicial investigation, forming the first part of judicial criminal proceedings, or a police investigation within a “pre-trial procedure”. The preliminary investigation (or “pre-trial” stage) falls primarily within the authority of the police, which operates under the responsibility of the Ministry of Interior, at the direction of state prosecutors. After a preliminary investigation is undertaken, the state prosecutor has three options: (i) to determine whether there exists a well-grounded suspicion (a standard similar to probable cause) that calls for a judicial investigation conducted by an investigative judge; (ii) file a direct indictment (without a judicial investigation phase); or (iii) drop the case. As noted above, since Phase 2, Slovenia has implemented a system of prosecutor-led investigations in corruption cases. While the police conduct the preliminary investigation at which time most of the evidence gathering is undertaken, a state prosecutor is also involved and directs their work, including on the use of investigative measures. An investigation can be opened based on an incoming MLA request, whistleblower reports and media allegations.

229. Slovenia applies the principle of mandatory prosecution, or the legality principle. With respect to criminal offences prosecuted *ex officio*, the prosecutor has jurisdiction to take the necessary steps to detect criminal offences, trace perpetrators and direct preliminary criminal proceedings, to request that investigations be undertaken, to issue an indictment before the competent court, to file complaints against judgments that have not become final, and to apply extraordinary legal remedies against finally binding judicial decisions.⁹⁸ However, the CPA provides for three kinds of exceptions to legality principle. The first concerns cases where the seriousness of the criminal offence is disproportionate to the consequences of criminal prosecution (art. 161 CPA). The second relates to legal grounds to settle the case during the investigation stage (art. 161(a) CPA), taking into account the type and nature of the offence, the circumstances in which it was committed, the personality of the perpetrator and his/her prior convictions, as well as his/her degree of criminal liability. The third refers to the possibility of suspending the prosecution if the suspect agrees on performing certain actions to allay or remove the harmful consequences of the criminal offence (art. 162 CPA). As no foreign bribery cases have been concluded in Slovenia, to date, the application of the legality principle and these three exceptions remains untested with respect to the foreign bribery offence.

i. Threshold for initiating pre-trial investigations

230. The evidentiary threshold that must be satisfied prior to a prosecution of a natural or legal person being commenced is “reasonable suspicion” (*utemeljen sum*) that the person committed the offence. A reasonable suspicion is established if the degree of probability that a certain person has committed a crime is higher than the probability that s/he has not committed it, and the suspicion must be based on concrete facts and evidence. In Phase 2, the Working Group noted prosecutors’ concerns that the standard of proof applied by investigative judges for a judicial investigation was too high. Law enforcement authorities indicated that judges often applied a higher standard of proof than the required “well-grounded suspicion” standard. As a result, it was difficult to assemble the evidence necessary to satisfy the investigative judge, particularly in cases of complex economic crimes. The Working Group therefore recommended that Slovenia “ensure that the evidential burden placed on law enforcement authorities for the grant of a judicial investigation is not excessive” (Recommendation 3(c)). In its Phase 2 Written Follow-Up Report, Slovenia reported on planned amendments to the CPA providing for the establishment of joint investigative teams, which would increase the quality of an application for the grant of a judicial investigation. The Working Group deemed Recommendation 3(c) only partially implemented. At the Phase 3 on-site visit, police and prosecutors indicated that the situation had since improved in Slovenia and it is now easier to access an investigative judge and reach the stage of a judicial investigation.

⁹⁸ International Bar Association, “[Structured Settlements for Corruption Offences Towards Global Standards?](#)” (December 2018).

231. However, art. 148 CPA states that if grounds for suspicion exist that a criminal offence, prosecuted ex officio has been committed, the police shall take all necessary measures to identify the perpetrator, ensure the perpetrator or accomplices do not go into hiding or flee, detect and preserve traces of crime or objects of value as evidence, and collect all information that may be useful for the successful conduct of the criminal proceedings. In addition, Slovenia indicates that authorities can satisfy that standard even if they do not receive any response to an outgoing MLA request, if they can collect enough evidence with their own activities. This depends on individual cases and prosecutors at the virtual visit indicated that in their experience with foreign bribery investigations it would be unlikely that the threshold would be reached in the absence of information obtained from the jurisdiction where the bribery took place.

232. Banks, savings banks or other savings-credit services are required to disclose confidential information based on a well-founded request by the prosecutor (art. 156 CPA). During the virtual visit, law enforcement authorities indicated that prosecutors do not encounter any difficulties accessing bank information in domestic or foreign bribery cases and banks always comply with the orders of investigative judges.

ii. Plea bargains and guilty pleas

233. Slovenia has a system of guilty pleas (admission of guilt), regulated by art. 285(a-f) CPA. Under this system, a defendant can plead guilty before a judge at a pre-trial court session. The judge accepts the plea once s/he has verified that the defendant understands the implications of pleading guilty and there is a discussion on the sentence. At this stage, new evidence can still be introduced to determine the amount of the fine. There is a possibility for victims to appeal against the verdict. Prosecutors mentioned during the virtual visit that there are no judicial sentencing guidelines for guilty pleas so penalties depend on the discretion of individual judges. However, sentencing is regulated by the CC (Art. 49 “General Rules on Sentencing”) notably with respect to mitigating and aggravating circumstances and by the CPA, which provides that after accepting a guilty plea, the court may not impose a heavier penalty than that proposed by the prosecutor (Article 285.č §6 CPA).

234. Slovenia also has a system of plea-bargaining regulated by art. 450 (a-c) CPA, which takes place before the trial stage. Negotiations take place to conclude a contract between the prosecutor and the defendant. Both parties meet at the prosecutor’s office and hold confidential discussions about the case, including mitigating and aggravating circumstances. The prosecution has internal guidance on plea-bargaining, which is not binding on prosecutors but sets out good practice and recommendations, including that penalties imposed pursuant to a plea bargain should not be below two-thirds of the sanctions that would have been imposed had the matter gone to trial. Plea bargains must be validated by a judge, who is not informed of the facts. If the guilty plea or plea bargain is not supported by evidence in the court file, the judge rejects the plea bargain and remits the case for further proceedings. The same applies to guilty pleas. The court is bound by the agreed sanction between the prosecutor and the defendant (Articles 450.c and 450.č CPA), ensuring only that the sentence complies with the requirements prescribed by criminal law, without assessing their appropriateness. The fine is published once the judge validates the plea bargain. There have been cases where judges have not accepted plea-bargains and have remitted the case to trial.

235. Art. 370 of the CPA also provides that the “injured party” may challenge a judgment rendered on the basis of the accepted confession of guilt and a guilty plea agreement (i) for substantive violation of the criminal procedure provisions; (ii) for violation of criminal law; and (iii) on the grounds of the decisions on criminal sanctions, confiscation of proceeds, costs of criminal proceedings, pecuniary claims and the decision to publish the judgment in the press or announce it on radio or television, except “if the judgment is pronounced in compliance with the conditions laid down by the state prosecutor for the confession of guilt in the indictment or in the concluded guilty plea agreement.”

236. Both guilty pleas and plea bargaining are used for legal persons. However, following the virtual visit, the SPO indicated that their case file information system does not contain any plea bargaining agreements regarding legal persons. During the Phase 4 virtual visit, Slovenia indicated that plea bargaining and guilty pleas are used in domestic bribery cases. For the period 2016 to 2020, Slovenia indicates that guilty pleas were used in 51 domestic bribery cases and plea bargaining was used to conclude 50 cases. Only one case during that period was not concluded by way of guilty plea or plea bargain and both resulted in imprisonment. Data on specific fines and confiscation measures imposed in these particular cases was unavailable. These procedures have not been used, to date, for foreign bribery cases.

Commentary

The lead examiners note that plea bargains and guilty pleas appear to be common practice for resolving bribery cases but that there is a lack of clarity regarding the procedure governing these mechanisms and in particular, how sanctions, including fines and confiscation, are calculated. The lead examiners therefore recommend that Slovenia provide appropriate guidance on, inter alia, factors to be taken into account when considering whether to enter into a plea bargain or guilty plea and the degree of mitigation of sanctions, to ensure that these procedures do not impede the effective enforcement of foreign bribery. The lead examiners also recommend that the Working Group follow-up on the use of plea bargains and guilty pleas in foreign bribery cases, including whether the sanctions applied are effective, proportionate, and dissuasive.

B.6. Mutual Legal Assistance and Extradition in Foreign Bribery Cases

a. Overall framework for international cooperation

237. MLA in Slovenia is governed by the CPA, the Act on Cooperation in Criminal Matters with Member States of the EU, as well as by bilateral and multilateral treaties. The CPA provisions apply in the absence of directly applicable treaty provisions. The central authority for incoming and outgoing MLA requests is the MoJ, but Slovenia is also party to international agreements that allow for the direct transmission of MLA requests between competent judicial authorities. The competent authorities for issuing MLA requests are Prosecutors' Offices and the courts. The competence for the execution of the foreign MLA requests is divided between the District Courts, investigative judges and public prosecutors. The latter are competent for their execution if the request relates to the acts for which, according to the law of the Republic of Slovenia, a public prosecutor is competent to order them.

238. Within the EU framework, MLA requests are sent to the competent authorities of other member states of the EU directly by prosecutors or the competent courts. For non-EU countries, MLA requests, issued by prosecutors or competent courts, are sent to foreign authorities according to the conditions set out under different legal instruments, which means that they can be forwarded through the MoJ, or sent directly between the judicial or law enforcement authorities. At the virtual visit, MoJ representatives also clarified that they are not informed of MLA requests issued by the competent Slovenian authorities in ongoing investigations, when the requests are sent directly between the competent Slovenian and foreign authorities and where the relevant legal basis allows for the direct communication.

239. In its Phase 3 Written Follow-up Report, Slovenia announced the establishment of a Department for International Cooperation at the SPO to take charge of international cooperation activities with foreign prosecutors as well as with international organisations. At the virtual visit, SSPO representatives clarified that this department was not formally established. International cooperation activities are concentrated in the SPO and delegated to individual state prosecutors. A senior state prosecutor has been appointed to manage, coordinate and carry out international activities. There is one prosecutor who is the EUROJUST contact point and another prosecutor at the Supreme SPO who is the contact person for matters relating to short-time securing, forfeiture or seizure of assets and proceeds of crime and property of illegal origin.

Several prosecution offices, including the SSPO, have contact points for the European Judicial Network. However, case prosecutors are responsible for arranging the necessary international cooperation in their specific cases.

240. The Deputy State Prosecutor General's Special Call (see above, Prosecuting Foreign Bribery) regarding prosecution of foreign bribery cases also recommended an active use of MLA, emphasising engagement with EUROJUST and contact points within the European Judicial Network (EJN). The Supreme SPO also organised two workshops in 2018 and 2019 in cooperation with the MoJ's Judicial Training Centre, the EJN and EUROJUST contact points and the district courts, regarding the use of the EIO and MLA, and the importance of seeking MLA requests in all criminal cases with cross border elements. The presentations dedicated time to the legal basis for MLA and the importance of international cooperation, as well as best practices in this field.

241. The MoJ also takes certain periodic actions to facilitate international cooperation. It sends letters to Slovenian law enforcement authorities notifying them about relevant international and EU instruments, case law of the European Court of Human Rights and the Court of Justice of the EU, documents adopted by the EJN and EUROJUST and about the use of EJN Atlas. Law enforcement authorities also receive notifications regarding the legal basis for MLA in concrete criminal proceedings based on the request of the law enforcement authority or on the MoJ's own initiative. Such letters, addressed to the competent courts and Prosecutors' Offices usually include information on topics such as the findings of the competent foreign authorities, use of forms, declarations and reservations of other states made to international instruments.

b. Incoming and outgoing MLA requests

242. In Phase 3, the Working Group expressed concerns that law enforcement authorities were not making adequate use of international cooperation mechanisms in the context of foreign bribery investigations, considering that Slovenia did not make any outgoing MLA requests in these cases, and recommended that Slovenia ensure its authorities are more proactive in seeking international cooperation (Phase 3, Recommendation 5). The Phase 3 Follow-Up Report noted that Slovenia has subsequently shown some proactivity in seeking MLA or other forms of international cooperation in an ongoing foreign bribery investigation but considered that complexities of systems to record MLA could raise difficulties in practice. The Working Group therefore found that Recommendation 5 was partially implemented.

243. Since then, Slovenia has sought international cooperation in two ongoing foreign bribery investigations through Interpol and Europol. In one of the cases, Slovenian prosecutors issued two MLA requests to two parties to the Convention, which are currently pending execution. This case also involved cooperation with EUROJUST that coordinated a meeting between the jurisdictions involved. One of the countries with jurisdiction in this case also requested MLA from Slovenia. The country in question reported that the request was executed by Slovenian authorities within three months and highlighted the quality of the cooperation.

244. A number of parties to the Convention provided inputs on Slovenia's cooperation through MLA. Although most countries did not have any experience of MLA requests with Slovenia in foreign bribery cases, the experience shared regarding cooperation in criminal matters in general was overall positive, with no issues reported.

245. At the time of the Phase 3 evaluation, Slovenia did not maintain statistics on incoming and outgoing MLA requests, although it communicated its authorities had not received any MLA requests concerning the offence of foreign bribery. Slovenia argued against a centralised contact point on international cooperation, on the grounds that it would have a negative effect on expediency and effectiveness. The evaluation team disagreed with this position and expressed their views that a mechanism for recording basic information pertaining to the countries and the timeframes of response would be essential for an

effective MLA regime. The Working Group recommended that Slovenia maintain statistics on incoming and outgoing MLA (Phase 3, Recommendation 5).

246. In 2016 the MoJ started operating a new system of statistical data regarding MLA that allows the processing of data on the number of requests made, received, processed, granted or refused, as well as the type of request, relevant country, relevant criminal offence and timeliness of response. The MoJ maintains statistics on incoming and outgoing MLA requests, including when the requests are sent by the competent authorities through the MoJ as the central authority. Where the MoJ acts as the central authority it forwards the incoming MLA requests to the competent Slovenian court or to the competent Prosecutor's office (there are 11 district state prosecutor offices in Slovenia), depending on the nature of the alleged offence and the corresponding jurisdiction of Slovenian authorities. All the requests that are forwarded to the competent law enforcement authorities through the MoJ are registered in its system.

247. Although the MoJ's system of statistical data was a welcome development, this data pertains solely to MLA requests that are sent by the competent authorities through the MoJ as the central authority. As mentioned above, the MoJ only deals with requests to and from non-EU countries and among those, countries where there is no international agreement that allows for direct cooperation between the competent law enforcement authorities. As there is no central authority or statistical register system processing the data that is sent through courts and prosecutors' offices, there is a potential for requests to be missed or duplicated.

248. The MoJ reported that it has forwarded seven MLA requests issued by the SSPO in relation to bribery offences since Phase 3. Regarding incoming MLA requests, only one concerned a foreign bribery offence. The MoJ has also received seven MLA requests for bribery offences since Phase 3. Slovenia reports that all the requests were executed. The average response time for an MLA request is one to two months. The EU Directive that regulates the EIO determines time limits for its recognition and execution.⁹⁹ Where no time limits are set, Slovenia states that the SPO tries to execute MLA requests "as fast as possible".

c. Extradition

249. An Amending Act to the CPA was adopted in March 2019 and entered into force the following October, introducing relevant changes to extradition proceedings. These mainly relate to the inclusion of human rights protections, in line with art. 3 of the European Convention on Human Rights. Art. 522 (1) of the CPA-N brought the shift of competence for the review of the condition for extradition that "*there is no likelihood that the person whose extradition is requested would be tortured or treated in an inhuman or degrading way in the requesting State*" – from the administrative authority, the MoJ, to the judicial authority, the District or Higher Courts in Slovenia, to ensure an independent and impartial judicial review, complete with criminal procedure guarantees, in the event of an alleged violation of human rights in extradition proceedings. Slovenia reports that, to date, it has not sought or granted extradition requests in foreign bribery cases.

Commentary

The lead examiners commend Slovenia for the broad range of actions directed at raising awareness among law enforcement authorities of the availability of international cooperation mechanisms. These initiatives appear to have been successful given their increased use in ongoing foreign bribery investigations. However, the lead examiners remain concerned about the lack of centralisation of information on MLA requests and consider that Phase 3 recommendation 5 remains only partially implemented. They therefore recommend that Slovenia adopt a centralised

⁹⁹ [EU Directive 2014/41/EU](#) of the European Parliament and the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. Time limits for recognition (30 days) and execution (90 days) of the EIO are set out under art. 12.

system that allows tracking of all incoming and outgoing MLA requests involving foreign bribery and related offences received or forwarded by all relevant Slovenian agencies and law enforcement authorities.

C. Responsibility of legal persons

C.1. Scope of Corporate Liability for Foreign Bribery and Related Offences

250. In Phase 3, the Working Group recommended that Slovenia review its approach to corporate liability. In particular, the Working Group wanted to ensure that Slovenia's legal liability regime adopted one of the approaches under Annex I B) b. of the 2009 Recommendation concerning the level of managerial authority and type of act that may trigger liability. Additionally, the Working Group wanted to ensure that (i) the elements required to prove a link between a natural person that perpetrated the crime and the liability of the legal persons are not obstacles to effective enforcement and (ii) that a legal person cannot be exempted from prosecution because of its "insignificant" level of participation in the commission of the criminal offence.

a. *Elements of corporate legal liability*

251. Slovenia's legislation on liability of legal persons for foreign bribery is unchanged since Phase 3. The regime was not established in the CC but rather in separate legislation; the Liability of Legal Persons for Criminal Offences Act (LLPCO). Art. 4 LLPCO lays out the requirements for triggering the liability of a legal person for a criminal act. According to this provision, a legal person can only be held liable for a criminal offence where the perpetrator acted in the name, on behalf or in favour of the legal person, if: (i) the crime was committed by carrying out an unlawful resolution, order or endorsement of management or supervisory bodies (art. 4(1)); (ii) management or supervisory bodies influenced the perpetrator or enabled him/her to commit the criminal offence (art.4(2)); (iii) the legal person has at its disposal criminal proceeds or uses proceeds obtained through a criminal offence (art.4(3)); or (iv) management or supervisory bodies have omitted due supervision of the legality of the actions of employees subordinate to them (art.4(4)).

252. Annex I B) b. of the 2009 Recommendation recommends that parties to the Convention implement a system for the liability of legal persons for the bribery of foreign public officials in international business transactions that takes one of two approaches.¹⁰⁰ Slovenia has consistently sustained that art. 4 LLPCO

¹⁰⁰ Under Annex 1 B of the [2009 Recommendation](#), member countries' systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should take one of the following approaches:

(a) the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or

(b)) the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:

(i) A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official;

(ii) A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and

(iii) A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures.

is not only fully compliant with the 2009 Recommendation, covering all the scenarios listed in Annex 1 B) b., but is also broader in scope by establishing liability of a legal entity by simply requiring it to have benefited from the criminal offence by obtaining property or gaining assets. Slovenia has also stated that the concepts of “management or supervisory bodies” are intentionally not defined under the LLPCO in order to encompass a broad range of internal corporate structures. Slovenian authorities claimed these terms would not only usually include directors, managers and supervisory boards, but also persons with delegated executive authority.

i. Link between the natural person who perpetrated the offence and legal persons

253. In Phase 4, Slovenia has reiterated that the elements required for proving a link between the natural person and the legal person are not an obstacle to enforcement of the LLPCO.

254. Under art. 5 LLPCO, providing that the conditions set out under art. 4 are met, a legal person is liable for criminal offence even if the perpetrator is not guilty or if the offence was committed under coercion or under threat made by the legal person. Art. 27 LLPCO establishes that criminal proceedings for the same criminal offence shall be commenced simultaneously against the natural and the legal persons. However, the proceedings can start only in relation to the legal person where the proceedings against the natural person “cannot be introduced for the reasons prescribed by law or if the procedure has already taken place”.

255. In its Phase 3 Additional Written Follow-up Report, Slovenia presented the results of an extensive review of the corporate criminal liability regime (Review and Analysis of Prosecutorial Practice related to the Prosecution of Legal Persons (Corporate Liability Review)) by analysing data and prosecutorial practice between 2014 and 2016 (see also below, Enforcement of Corporate Liability). The Corporate Liability Review mentions a judgement by the Supreme Court dated 2 June 2016 whereby if a court finds within a criminal procedure that an offence to which a legal person contributed has been committed, then not even the potential death of the perpetrator of the offence can preclude the criminal responsibility of the legal person.¹⁰¹ Slovenian authorities conclude that “in order to prosecute LPs, it is not necessary for a natural person to be formally connected to a LP; it could be a person who works outside a legal person; it is only necessary for the effects of the natural person’s actions to be able to be legally ascribed to a legal person”.¹⁰² It also states that “[a]s a general rule, the criminal procedure is managed for both the legal person and a natural person together; however, the conviction of a natural person or an institution of a criminal procedure against a natural person is not a prerequisite for determining the criminal liability of a LP. An LP can be held criminally liable even if a natural person is not convicted, or if there is no criminal prosecution against said natural person”.¹⁰³

256. Slovenian authorities believe that on the basis of the Supreme Court’s jurisprudence, if it can be proved or found in a criminal procedure that a natural person, even if unknown, committed all of the elements of an offence, a legal person can be held liable. . Lawyers present in the virtual visit were sceptical that the conditions set out under the LLPCO would make it possible in practice to establish criminal liability of a company without finding a natural person guilty of the criminal offence. However, after the virtual visit, prosecutors referred to a case where a legal person was held liable where the natural person was not.¹⁰⁴ As there have still not been any domestic or foreign bribery cases where a legal person was charged with

¹⁰¹ [Supreme Court Decision I Ips 17421/2017 of 2.6.2016](#) (in Slovenian).

¹⁰² Review and Analysis of Prosecutorial Practice related to the Prosecution of Legal Persons - Part III: Proposal for guidelines on the future work of State Prosecutors, including examples (unofficial translation reviewed by evaluation team).

¹⁰³ *ibid.*

¹⁰⁴ This case did not involve domestic or foreign bribery offences.

a criminal offence independently of a natural person, it remains to be tested in practice whether or not the elements required to prove the link between the natural and the legal person present a challenge to effective prosecution. Additionally, the findings of the Corporate Liability Review are not binding for prosecutors, creating the potential for different interpretations.

“Insignificant level of participation”

257. Art. 28 LLPCO defines the circumstances under which a prosecutor may decide not to initiate proceedings against a legal person. The reasons listed under this article take into account considerations of expediency in the initiation of proceedings, to cover for situations where the cost of the resources necessary for prosecution of the legal person would far outweigh its benefits, such as when the perpetrator of the criminal offence is the sole owner of the company or where the company is bankrupt (see also, Successor Liability).

258. Art. 28 LLPCO also permits prosecutors to dismiss proceedings against a legal person if its participation in the criminal offence was “insignificant”. The Working Group has been following-up on this exemption from corporate liability since Phase 2, but the provision remains unchanged.

259. Prosecutors present at the virtual visit stated they were not aware of many instances where prosecutors decided to dismiss a case on this basis, and none that involved a foreign bribery offence. However, it remains unclear what qualifies as “insignificant participation” of the legal person in face of the requirements to trigger liability set out under art. 4 LLPCO and whether a company can invoke that its participation was “insignificant” as a defence to dismiss a criminal proceeding. Prosecutors do not have guidelines regarding this matter. Slovenia provided a table indicating the number of cases dismissed under art. 28 LLPCO, as well as the types of crimes involved. The evaluation team could confirm that none of these cases involved an active bribery offence in proceedings against legal persons. However, the information provided does not allow to distinguish which cases were dismissed due to “insignificant participation” of the company in the criminal acts in opposition with the other causes for dismissal listed under art. 28.

ii. Liability of the legal person for acts committed by intermediaries, including related legal persons

260. During the Phase 3 on-site visit, law enforcement officials and judges indicated that Slovenia could prosecute the Slovenian parent company for acts of a foreign subsidiary if it can be proven that: (i) it knew about the illegal acts of the subsidiary, (ii) its management or supervisory bodies influenced the subsidiary or enabled it to commit the offence, or (iii) it benefitted from the bribe given by the subsidiary as described in art. 4(3) of LLPCO. Art. 4 of the LLPCO also requires that the acts are committed “in the name of, on behalf of or in favour of the legal person”, to invoke liability. Representatives from the legal profession at the on-site also agreed with this view. Given the unavailability of case law to support the application of this principle, the Working Group decided to follow-up on the liability of parent companies which use foreign subsidiaries to commit foreign bribery (Follow-Up Issue 12(c)). As noted above (Jurisdiction), the Working Group also decided in Phase 3 to follow up on the ability for Slovenia to exercise jurisdiction over parent companies for foreign bribery committed abroad by their subsidiaries (Follow-Up Issue 12(g)).

261. In its questionnaire responses, Slovenia reported no foreign bribery cases involving intermediaries or foreign subsidiaries. However, discussions at the virtual visit confirmed that a foreign subsidiary of a Slovenian company appears to be involved in an alleged case of foreign bribery. Prosecutors indicated that they are waiting for a response to an MLA request to start investigating the parent company.

iii. Successor liability to be tested in foreign bribery cases

262. Slovenia’s LLPCO expressly provides for successor liability in the event of a statutory change to the legal entity such as dissolution, bankruptcy, merger or demerger. Under art. 6 LLPCO, the resulting

legal entity may be held liable for a criminal offence committed by the original legal entity before or during the proceedings but instead of imposing a sanction in the form of a fine, it will be subjected to asset and proceeds forfeiture (art. 6(1)). This will also be the case where the original legal entity was convicted of a criminal offence, as long as the management or supervisory bodies of the legal successor were not aware that a criminal offence was committed at the time of the proceedings (art. 6(3)). Additionally, in the event of dissolution of a company before the completion of legal criminal proceedings, its legal successor may be deemed liable and sanctioned if its management and supervisory bodies had knowledge of the commission of a criminal offence prior to the winding-up of the convicted legal person (art. 6(2)). In the event the legal person is wound up after the legal completion of criminal proceedings, the imposed sanction shall be carried out in accordance with the provisions under art. 6 (2) and (3).

263. Prosecutors at the virtual visit had never been involved in a case where they could apply successor liability in the event of a company being wound-up, because there is never a surviving legal entity. As mentioned under the Corporate Liability Review, and confirmed at the virtual visit, discontinuation of criminal proceedings against legal persons due to bankruptcy is a frequent occurrence in Slovenia. The offenders will concentrate all the debts on the legal entity and the company is “predestined to fail”. Prosecution therefore often moves forward only in relation to the natural persons involved in the commission of the offence.

Commentary

The evaluation team notes that Slovenia’s corporate liability regime has not been amended since Phase 3 to implement the Working Group’s recommendations. This, in addition to the ongoing lack of case law involving liability of legal persons for bribery offences makes it impossible to assess any progress by Slovenia. While the Corporate Liability Review generated interesting insights, and there appears to be a broader interpretation of art. 4. LLPCO and its requirements for the link between liability of natural and legal persons, the lead examiners are concerned that a lack of training and awareness remains. Furthermore, as the conclusions of this Review are not binding and it does not reflect more recent case law developments, the lead examiners consider that Phase 3 recommendation 2(a) remains only partially implemented.

The lead examiners highlight Slovenia’s statutory provision for successor liability in art. 6 LLPCO as good practice, although they regret its lack of practical use. The Working Group should follow-up on the use of art. 6 LLPCO as case law develops.

b. Impact of a company’s compliance system on liability

264. The majority of companies that attended the Phase 3 on-site visit reported they did not have in place any internal ethics or compliance measures, and there was little incentive to do so due to the lack of enforcement in the country. The Working Group therefore recommended that Slovenia raise awareness of internal controls, ethics and compliance measures to specifically prevent foreign bribery, including among SMEs and SOEs, which should include promoting the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance in Annex II of the 2009 Anti-Bribery Recommendation. Phase 3 Recommendation 7(a) was deemed not implemented in the subsequent Written Follow-up Report, given that Slovenia reported having carried out only one training session for SMEs, which had only 10 representatives in attendance.

265. As noted above (Defence of Effective Regret), the provision, in art. 262(3) CC and art. 11(2) LLPCO, for a waiver of punishment for natural and legal persons who report bribery before the authorities become aware of it, could theoretically provide an incentive for self-reporting. However, these provisions are not used in practice, even in domestic bribery cases, because there is still a risk of prosecution for those who report and a lack of guidelines on the process for, and consequences of, self-reporting.

266. The detection of wrongdoing through an internal compliance programme and subsequent voluntary disclosure to the authorities is a practice that has been gaining traction in many countries. However, a significant portion of Slovenia's economy is represented by small companies that may find the costs of implementing compliance systems excessively high for a jurisdiction where enforcement is low and there are no real incentives to make such an investment.

267. The entry into force of the Slovene Sovereign Holding Act in April 2014, which requires SOEs to adopt corruption prevention measures, including whistleblowing mechanisms, was a welcome development. Representatives from large companies and SOEs at the virtual visit reported establishing compliance or integrity departments. However, most of them also stated that foreign bribery was not a concern for their company.

268. It is unfortunate that the evaluation team was not able to meet with SMEs at the virtual visit, in order to ascertain whether the perspective on the implementation of ethics and compliance measures remained the same or had evolved in recent years.

C.2. Enforcement of Corporate Liability

269. The Phase 3 evaluation highlighted the lack of prosecutions of legal persons in Slovenia for foreign bribery. Even though prosecutions against legal persons for other economic offences had seen an increase in previous years, it was also noted that no legal persons had been prosecuted for domestic bribery either. The Working Group thus recommended that Slovenia issue specific guidance and training to police and prosecutors on investigating and prosecuting legal persons and to take further steps to prioritise the prosecution of legal persons involved in foreign bribery (Phase 3 Recommendation 2(b)). In its Phase 3 Written Follow-up, Slovenia reported a number of training sessions targeting prosecutors and investigators, but these were not tailored to the specific challenges posed by the involvement of legal persons. The recommendation was deemed not implemented.

270. However, in 2017, Slovenia provided an additional written follow-up report and noted a series of initiatives aiming at further providing guidance and training to both police and prosecutors on investigating and prosecuting legal persons, especially with regard to foreign bribery and other intentional economic crimes, using different tools. The evaluation team then concluded that no further follow up was necessary regarding this recommendation.

271. At the same time, Slovenia reported having finalised its Corporate Liability Review (2014-16) focusing on: (i) a statistical review of the number and types of legal entities in Slovenia; (ii) a review of the prosecution of legal persons, including the nexus between liability of the legal person and natural person(s); and (iii) proposed instructions and guidelines on the future work of state prosecutors on criminal liability of legal persons, together with some examples of good practice.

272. The Corporate Liability Review has not led to the implementation of any prosecutorial instructions or guidelines to date. At the virtual visit, prosecutors clarified that the review itself was distributed among the SPOs and the SSPO, and it is meant to be used as a good practice reference for prosecutors. Slovenia also reported that the Review was presented in June 2018 at the annual Prosecutorial Educational Days, which had approximately 150 participants.

273. The data from the Corporate Liability Review reveals that there are 83% more discontinuations of prosecution against legal persons than natural persons. Around 42% of criminal complaints against companies are dismissed because there is no sufficient evidence to achieve the standard of proof of reasonable grounds that a criminal offence has been committed. Preclusion of prosecution, which occurs when a legal person ceases to exist whether by a process of merger and acquisition or liquidation, is invoked in 23% of the cases as a reason to terminate criminal proceedings (see above, Successor Liability). The third reason for dismissal is inability to establish the elements of the offence alleged in the

criminal complaint was committed. State prosecutors also invoked practicability, due to lack of company assets, as the reason for dismissal in 9% of cases. Slovenia reports that in the period between 2016 and 2020, 66 legal persons were held liable for economic offences, and mainly commercial fraud. There were no convictions of legal persons for bribery offences, either domestic or foreign.

C.3. Engagement with the Private Sector

274. In Phase 3, the Working Group called on Slovenia to further its awareness-raising in the private sector by issuing two recommendations. Recommendation 9(c) was directed at public agencies and ministries that interact with Slovenian companies operating abroad, urging them to provide guidance about risks of and measures to prevent foreign bribery. Recommendation 9(d) tasked Slovenia with adopting more active measures to raise awareness of the foreign bribery offence among business associations and companies, including SOEs and SMEs. Both recommendations were deemed only partially implemented in the Phase 3 Written Follow-up, as the evaluation team considered the measures undertaken insufficient and that it was unclear whether relevant officials were being encouraged to systematically provide such information to Slovenian businesses.

275. Slovenia issued guidelines specifically aimed at all Slovenian public officials who work with companies that operate in foreign markets, to enable them to offer assistance to companies. This assistance can take different forms such as providing general information on corruption, providing assistance in specific corruption cases and reporting to law enforcement authorities, establishing contacts between companies and other legal entities that have already faced corruption risks in the past, or referring companies for assistance in the application of anti-corruption clauses and integrity pacts in the context of their business agreements. These guidelines also reiterate the obligation set out under art. 145 CPA that all Slovenian officials report suspicions of bribery and it provides a template and the relevant contacts to submit such reports.

276. The overall perspective of panellists from the private sector present at the virtual visit was that the CPC is making good efforts to raise awareness in the private sector of corruption offences and whistleblower protection provisions, particularly by organising training sessions. However, it was noted by some of the participants that the CPC could have greater impact if its mandate was revised.

Commentary

The lead examiners are concerned by the apparent lack of awareness of foreign bribery risks among companies, and the lack of incentives and guidance for the implementation of internal controls, ethics and compliance programmes. This is particularly urgent in the case of SMEs, considering their dominance in the Slovenian economy and the fact that many of them have foreign operations. Therefore, the lead examiners consider that Phase 3 recommendation 7(e) concerning awareness-raising of internal controls, ethics and compliance measures to specifically prevent foreign bribery remains unimplemented and Phase 3 recommendations 9(c) and 9(d) remain only partially implemented. The evaluation team reiterates the recommendation and recommends that Slovenia issue guidance for companies on effective anti-bribery compliance programmes, and disseminate more targeted information for SMEs on implementing anti-bribery compliance measures to effectively prevent and detect foreign bribery.

D. Other issues

D.1. Money laundering

a. Money laundering offence

277. Slovenia uses an “all-crimes” approach to money laundering, which includes foreign bribery as a predicate offence. Money laundering is criminalised in art. 245 CC. It carries a maximum sanction of 5 years imprisonment (art. 245(1)), which is identical for self-laundering (art. 245(2)). Imprisonment of up to 8 or 10 years and fines may also be applied depending on the aggravating factors surrounding the offence (arts. 245(3) and 245(4)). Between 2011 and 2019, the SSPO secured convictions in 91 money laundering cases out of a total of 636 proceedings initiated over the same period.

278. As noted in Phases 2 and 3, while Slovenia does have jurisdiction under art. 11 CC to prosecute offences committed abroad, there is uncertainty as to whether money laundering predicated on foreign bribery could be prosecuted if foreign bribery was not criminalised in the country where the offence occurred (Follow up issue 12(1)).¹⁰⁵ Discussions at the virtual visit did not clarify this issue.

279. In terms of financial flows and risks of foreign bribery-based money laundering, the financial sector has seen few money laundering cases, with a single large money laundering case in 2017, and Slovenia is considered a low-risk country (ranked 133rd least at risk of money laundering out of 141 countries in the 2020 Basel AML Index).¹⁰⁶ The OMLP reported that 54 criminal proceedings for money laundering offences were opened in 2019 against 95 natural persons and 2 legal persons. The OMLP is coordinating the update of Slovenia’s National Risk Assessment for money laundering which was submitted to the Government at the end of 2020. The update has identified money laundering risks connected with bribery and corruption but not foreign bribery, per se.

b. Office of Money Laundering Prevention

280. The OMLP was established in December 1994 as a constituent body of the Ministry of Finance. If the FIU considers on the basis of information obtained under the APMLFT that there exists reason for suspicion of money laundering or financing of terrorism, or other CC offences punishable by imprisonment, in connection with a transaction or a certain person, it notifies the police or SPO in writing, accompanied by the relevant documentation.

281. In 2019, the OMLP had an annual budget of EUR 1.2 million (an increase on previous years), with 10 analysts and 13 other employees working on analytical processes. It did not report any specific negative impact on functioning of the agency, nor a downturn in STR reporting as a result of the COVID-19 crisis. OMLP representatives at the virtual visit regretted the lack of resources available to deal with the number of STRs received annually. Other representatives from the private sector and civil society echoed concerns about under-resourcing of the OMLP.

¹⁰⁵ [Phase 3 report](#), para. 102.

¹⁰⁶ [2020 Basel AML Index](#).

282. In relation to the independence of the OMLP, representatives at the virtual visit indicated that the OMLP Director is appointed on the same basis as Directors of other Slovenian government agencies (i.e. art. 83 of the Public Employees Act). In the same context as the dismissal of the Criminal Police Director and NBI Director (see above, National Bureau of Investigation), the OMLP Director was dismissed in May 2020. This raises concerns about the institutional independence of Slovenia's FIU. Furthermore, the Parliamentary Commission into the NLB case (see above, Parliamentary inquiries into individual cases), is an example of direct political interference in criminal money laundering proceedings and the broader work of the OMLP.

c. STR reporting

283. The Phase 3 evaluation analysed the APMLFT which had been amended since Phase 2 to revise reporting requirements. The APMLFT entered into force in November 2016, introducing several changes, including new inspection powers for the OMLP and a register of beneficial ownership (see above, Access to Beneficial Ownership Information). Reporting entities defined in the APMLFT are required to report to the FIU cash transactions exceeding EUR 15 000, cash transfers exceeding EUR 15 000 with high-risk countries and transfers of cash to or from the EU exceeding EUR 10 000 (art. 68) and all suspicious transactions (art. 4), irrespective of the amount. As noted above, the OMLP received 1030 STRs in 2019. None of these related to money laundering predicated on active domestic or foreign bribery, however 121 cases involved the use of foreign bank accounts. The OMLP could not provide statistics on the number of STRs related to transactions with foreign politically exposed persons (PEPs), which can be red flags for potential foreign bribery-based money laundering.

d. Awareness raising

284. The Phase 3 Report noted low levels of reporting by DNFBPs, namely the legal and accounting and auditing profession, and recommended the OMLP increase efforts to train and raise awareness on foreign bribery-based money laundering. The Phase 3 Written Follow-Up Report noted that while the OMLP had trained its own staff, no steps had been taken to train non-financial reporting entities or develop typologies on laundering the proceeds of bribes and the WGB considered Recommendation 6 partially implemented. To date, there are still no cases of foreign bribery that have been detected through Slovenia's AML frameworks (see also above, Detection through the Slovenian Anti-Money Laundering Framework). OMLP representatives at the virtual visit stated that the agency conducts a minimum of 5 trainings per year for financial institutions and non-financial reporting entities. These trainings do not, however, address foreign bribery-based money laundering beyond discussing how to identify PEPs and monitor subsequent transactions. As noted above, there is a need for greater training awareness raising among the accounting and legal professions.

e. Cooperation

285. The OMLP has cooperation frameworks in place with other Slovenian law enforcement authorities to share data, information and documentation required for detecting or investigating money laundering or terrorist financing offences. The OMLP has direct electronic access to databases of the police and SPO and can request information on cross-border currency movements and suspicious transactions from the Financial Administration. In addition, the OMLP has signed agreements and protocols of exchange of information with the Police and the Tax Administration, which facilitate the exchange of information among them. Cooperation with the SSPO and CPC has not, however, been formalised through such agreements or protocols. The OMLP sends STRs to the General Police Directorate for investigation and can provide information to the NBI upon request and cooperated in NBI investigations.

286. According to Slovenia's second Follow-up Report to MONEYVAL in 2019¹⁰⁷, the Permanent Coordination Group for Prevention, Detection and Prosecution of Money Laundering and Terrorist Financing, which was established in 2012, discusses problems arising in the field of prevention and detection of money laundering. Its main responsibility is, inter alia, to exchange experiences and discuss legal issues arising from Slovenian legislation in relation to prevention, supervision, detection and prosecution; and compare Slovenian legislation and court practice with those of other countries. The group holds regular meetings, prepares and adopts its action plan and reports on activities of its members.

Commentary

The lead examiners are concerned at the low level of resources available to the FIU to carry out its function. These concerns are exacerbated by reported recent budget cuts and political interference in the FIU's activities, by way of dismissal of the OMLP Director and the Parliamentary Commission in the NLB case. The lead examiners therefore recommend that the Slovenia urgently provide the OMLP with sufficient human and financial resources to undertake its functions, and put in place necessary measures to safeguard its independence from undue political influence.

D.2. Accounting requirements, external audit, and company compliance and ethics programmes

287. Slovenia's false accounting offence is established under art. 235 CC. The false accounting offence is punishable with a maximum of 2 years' imprisonment for natural persons and a maximum fine of EUR 500 000 or up to 100 times the amount of the damage caused or property obtained through the offence for legal persons.

288. In Phase 3, the Working Group recommended that Slovenia ensure that false accounting cases are vigorously investigated and effectively prosecuted, where appropriate, and that sanctions imposed in practice for false accounting offences are effective, proportionate and dissuasive (Phase 3 recommendation 7(a)).

289. In its Phase 3 Written Follow-up Report, Slovenia provided statistics on enforcement of the false accounting offence that seem to conflict with the data that was reported during Phase 3. The numbers showed an increase in the number of indictments and judgments for false accounting between 2011 and 2014 (141 in 2011 and 199 in 2013). Unfortunately, these new statistics did not differentiate between natural and legal persons, making it hard to assess whether or not the sanctions imposed were effective, proportionate and dissuasive. This recommendation was deemed only partially implemented in the Phase 3 Written Follow-up.

290. Slovenia only provided a range of the sanctions imposed between 2011 and 2015, with prison sentences between 3 to 9 months and suspended sentences between 2 and 15 months. Fines ranged between EUR 167 and EUR 20 000. Even though it is not possible to distinguish between natural and legal persons, the numbers are sufficiently clear to show that the sanctions imposed in practice are fairly low and that most cases against natural persons result in a suspended sentence. It is not possible to determine whether sanctions of imprisonment and fines are cumulated in relation to natural persons.

291. Slovenia reported in its questionnaire responses that there were no false accounting cases related to foreign or domestic bribery in the period between 2016 and 2020. Slovenian authorities nevertheless provided data on enforcement of the false accounting offence over the same period following the virtual visit (see above, Sanctions). Between 2016 and 2020, Slovenian authorities 402 natural persons received prison sentences; 244 natural persons were fined; and confiscation was imposed on 6 natural persons for the false accounting offence. Thirty-two legal persons were fined between 2017-2020 and confiscation

¹⁰⁷ Slovenia's [2nd Follow-Up Report to MONEYVAL](#).

measures were imposed on two legal persons. The data supplied does not provide further information regarding the underlying offences in these cases.

Commentary

The lead examiners note the significant number of sanctions imposed for false accounting offences, particularly in comparison with sanctions imposed for bribery and other economic crimes. The lack of further data on the underlying offences does not make it possible for the lead examiners to ascertain whether sanctions imposed in practice for false accounting offences are effective, proportionate and dissuasive. Although no cases involving a false accounting offence have been connected to a bribery case thus far, the lead examiners recognise the efforts of the Slovenian authorities and the increasing number of convictions in relation to this offence. They therefore maintain that the Phase 3 recommendation 7(a) remains only partially implemented and recommend that Slovenia continue to ensure that false accounting cases are vigorously investigated and effectively prosecuted, where appropriate, and that sanctions imposed in practice for false accounting offences are effective, proportionate and dissuasive.

D.3. Tax measures for combating bribery

292. Since Phase 3, the tax administration and customs administration were merged in August 2014 to create a combined authority (the Financial Administration). The Financial Administration is mandated to ensure tax compliance through provision of services for taxpayers and to perform supervision over the legality, accuracy and timeliness of tax compliance, defined by taxation regulations, and the prevention and detection of tax offences, activities related to goods entering or leaving the customs area and other criminal acts, defined by regulations.¹⁰⁸

a. Non-tax deductibility of bribes and post-conviction enforcement

293. The non-tax deductibility of bribe payments remains unchanged since Phase 3. Art. 30 of the Corporate Income Tax Act (CITA) explicitly prohibits the deduction of bribes as business expenses in tax returns by all legal persons. The same principle applies to natural persons conducting economic activities pursuant to art. 48(2) of the Personal Income Tax Act (PITA).

294. If a taxpayer has been convicted of foreign bribery, Slovenian tax authorities may re-open a filed tax return to determine whether bribes had been deducted. The principle of re-examination of tax returns applies to all convictions and is based on the general rule that the tax authority must ensure that all tax returns are correct. Re-examination is limited to five years but this limitation period can be interrupted by any official act of the tax authorities.

295. At the time of Phase 3, it was unclear whether and how tax returns were re-examined in practice. The tax administration stated that it monitored case law and the judgments of the criminal courts but that there was no system in place where it could directly acquire judgments in corruption cases. It therefore could not independently track bribery convictions and routinely re-examine the tax returns of the legal or natural persons involved. Law enforcement authorities also did not routinely share information on corruption convictions with the tax administration. In this context, the WGB decided to follow-up the application of the non-tax deductibility of bribes, particularly whether law enforcement authorities promptly inform the tax administration of convictions related to foreign bribery and whether tax returns are re-examined to determine whether bribes have been deducted (Follow-up issue 12 (I)).

296. In its responses to the Phase 4 questionnaire, Slovenia indicated that, as there have not been no concluded foreign bribery cases to date in Slovenia, the Financial Administration was not informed of any

¹⁰⁸ OECD, [Effective interagency cooperation in fighting tax crimes and other financial crimes](#) (3rd Ed.), pp. 431-436.

convictions and did not therefore re-open tax returns to ensure bribes were not deducted. During the Phase 4 virtual visit, the Financial Administration indicated that it had not re-examined tax returns post-conviction in domestic bribery cases to ensure non-tax deductibility of bribe payments.

b. Tax treatment of sanctions and confiscation imposed on legal persons

297. In its answers to the Phase 4 Questionnaire, Slovenia indicated that art. 30 CITA explicitly prohibits the deduction of penalties imposed by the competent authority and the cost of enforcing the recovery of taxes or other charges. The law applies to all legal persons, as well as natural persons conducting economic activities pursuant to art. 48 (2) PITA.

298. During the virtual visit, the Financial Administration mentioned that there are no specific guidelines available on the tax treatment of confiscation. However, it confirmed that confiscated assets cannot be deducted from the tax basis of a company nor from the taxable income for the purposes of calculating corporate taxes, based on the general rule that only costs that are directly linked to the economic activity can be deductible. In the absence of practical experience, it remains unclear whether tax returns can be 'corrected' to take into account confiscated assets, including whether they may be deductible from the tax base on which corporate taxes are calculated (i.e. the taxable income).

c. Reporting suspicions of foreign bribery

299. Financial Administration officials are subject to a mandatory requirement to report suspected foreign bribery to law enforcement authorities. According to art. 145 CPA, all state bodies and public authorities are required to report criminal offences for which the perpetrator is prosecuted ex officio, if they are informed about them or if they are otherwise aware of them. Failure to report a suspected criminal act, including foreign bribery, as well as its perpetrator is criminalised under art. 281 CC. During the virtual visit, the Financial Administration representatives indicated that if a suspicion of foreign bribery arose during a tax audit, it would report directly to the police or the state prosecutor. Between 2016 and 2019 the Financial Administration has reported in total 1010 suspected offences to law enforcement authorities (SPO or Police). Slovenia indicates that this number includes all criminal reports, filled by Financial Administration, regardless the nature of suspected crime (beside Tax Evasion, it also includes other suspected crimes, like Violation of Fundamental Rights, of Employees, Undeclared Employment, Organising Money Chains and Illegal Gambling, Forgery or Destruction of Business Documents, etc.). However, the Financial Administration mentioned during the virtual visit that none of these concerned suspected foreign bribery.

d. Training

300. In Phase 3, the WGB was concerned by the insufficient training provided by the tax administration on foreign bribery and asked Slovenia to promptly train tax officials on issues related specifically to the detection of foreign bribery (Recommendation 8). The Phase 3 report highlighted the fact that since Phase 2, the Slovenian tax administration had not undertaken any significant steps to raise awareness specifically on foreign bribery risks among tax examiners.

301. At the time of the WFU Report, the WGB considered that Slovenia fully implemented Recommendation 8. Slovenia reported training events targeting tax officials in 2014 and 2016, each with a focus on bribery of foreign public officials. During the Phase 4 virtual visit, Financial Administration representatives confirmed receiving training on foreign bribery in 2014 but had not undergone further specific foreign bribery training since then.

e. Cooperation and exchange of information

i. With Slovenian law enforcement authorities

302. The regime for sharing tax information with Slovenia's law enforcement bodies has not changed since Phase 3. The Financial Administration does not have criminal investigation powers, unlike tax administrations in some other WGB countries. In Slovenia, tax and customs crime investigations are conducted by the police and overseen by the SSPO.¹⁰⁹ As mentioned above, under Slovenian law, tax authorities are obliged to disclose confidential information to law enforcement authorities (police or state prosecutors) upon request if suspicions of criminal activity are identified.

303. Cooperation between the Financial Administration and the police (including tax crime investigators) is established under a memorandum of understanding (MoU) and facilitated via a liaison officer who has direct access to both authorities' databases and systems. Information may also be exchanged directly without use of the liaison, both at central and local level. The Financial Administration is also required to provide information to the FIU where it is relevant to a possible money laundering investigation and upon request. Under a recent protocol, these requests can now be made electronically.¹¹⁰ Finally, Slovenia indicates that a specific MoU has been concluded between the Financial Administration and the CPC for the purposes of exchange of information.

304. There is no limitation on the kind of information that the Financial Administration can share with law enforcement authorities. The tax authority has also participated in a joint investigation under the direction of the SPO (see above) in a case not involving bribery.

ii. With foreign law enforcement authorities

305. Slovenia may exchange tax information under its mutual conventions, its double taxation agreements (DTAs) and its tax information exchange agreements (TIEAs). Under such agreements, information can be exchanged for the purposes of carrying out the provisions of the agreement or for the enforcement of domestic laws concerning taxation. Slovenia has signed DTAs with 61 countries¹¹¹ and TIEAs with two countries.

306. During the Phase 3 on-site visit, Slovenian tax officials stated that one of the difficulties they faced in detecting foreign bribery was obtaining tax information from countries with which they do not have tax information exchange relationships. Since Phase 3, Slovenia has incorporated the language of Art. 26(2) of the OECD Model Tax Convention in all bilateral tax treaties that entered into force. This allows tax authorities to share information with foreign law enforcement authorities for use in high priority non-tax matters (such as corruption investigations). The receiving State is required to specify to the supplying State the non-tax use of the information and confirm that such use is permissible under its laws. This framework has not been used, to date, in connection with a foreign bribery case.

307. Slovenia is also Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and amending protocol.¹¹² The Convention can also be used to provide tax information to foreign authorities for use in criminal foreign bribery investigations. Similarly to art. 26(2) of the OECD Model Tax Convention, art. 22(4) of the Multilateral Convention allows information provided under the Convention to be used for other (e.g. criminal investigation) purposes when "such information may be used for such other

¹⁰⁹ OECD, [Effective interagency cooperation in fighting tax crimes and other financial crimes](#) (3rd Ed.), pp. 431-436.

¹¹⁰ OECD, [Effective interagency cooperation in fighting tax crimes and other financial crimes](#) (3rd Ed.), pp. 431-436.

¹¹¹ Of the 61 conventions, 2 have been ratified but are not yet in force, www.gov.si/assets/ministrstva/MF/Davcni-direktorat/DOKUMENTI/List-of-Double-Taxation-Conventions-Currently-in-Force.pdf.

¹¹² Status of the signature and ratification of the Convention on Mutual Administrative Assistance in Tax Matters, available [here](#).

purposes under the laws of the supplying Party” and the supplying Party authorises such use. Again, it does not seem that the Multilateral Convention has been used as a ground to share tax information in foreign bribery.

Commentary

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

The lead examiners are also concerned that the Foreign Administration has not received any training on detecting and reporting foreign bribery since 2014 and no reports of suspected bribery have been made by the Financial Administration, to date. They recommend that Slovenia ensure that the Financial Administration provide ongoing training to tax examiners on the detection and reporting of foreign bribery.

The lead examiners welcome the strong cooperation between the Financial Administration, law enforcement authorities and the CPC, and in particular the participation of the tax authority in joint investigation teams led by prosecutors. They look forward to the use of these teams in future foreign bribery investigations.

D.4. Export credit and public advantages

a. Export Credit

308. Slovenia is a member of the OECD Working Party on Export Credits and Credit Guarantees. Slovenia implemented the 2006 Recommendation on Bribery and Officially Supported Export Credits (2006 Recommendation), into its export credit agency, the Slovene Export and Development Bank (SIDB), by internal regulations in April 2008. At the time of Phase 3, the OECD considered that Slovenia “generally fulfils” the requirements of the 2006 Recommendation.¹¹³ Since Phase 3, the OECD Council adopted the Revised Recommendation of the Council on Bribery and Officially Supported Export Credits on 13 March 2019, which replaced the 2006 Recommendation.¹¹⁴

309. Slovenia expressly informs exporters and applicants requesting official export credit support about the legal consequences of foreign bribery on its website, in its application forms, as well as in special conditions in its insurance policy, and if applicable, in recourse agreements. It also encourages exporters and, where appropriate, other relevant parties to develop, apply and document appropriate management control systems that prevent and detect bribery and raise awareness that parties involved in international business transactions should also comply with all relevant laws and regulations prohibiting bribery in the country or jurisdiction where they are conducting business.

310. Applicants are also required to make declarations that (i) no foreign bribery has been committed by partners participating in the implementation of credit; (ii) that they are aware of the obligation to develop a supervision system to prevent bribery and (iii) no executive, employees or intermediaries are subject to court proceedings or have been charged with bribery of a foreign public official in any country in the last five years.

¹¹³ See Working Party on Export Credits and Credit Guarantees, “Export Credit and Bribery: 2012 Review of Members’ Responses to the 2006 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits” (September 2013) TAD/ECG(2013)5/FINAL.

¹¹⁴ OECD (2019) [Revised Recommendation of the Council on Bribery and Officially Supported Export Credits](#). See also, [OECD Legal Instruments](#) for background information on the revision of the Recommendation.

311. Due diligence measures are undertaken, including verifying whether exporters and applicants are listed on the publicly available debarment lists of the international financial institutions/multilateral development banks.

312. Finally, regarding the implementation of policies and procedures for disclosing credible allegations or evidence that bribery was involved in the award or execution of the export contract to law enforcement authorities, Slovenia indicates that the underwriter must report such allegations/evidence to the compliance officer, who would then take appropriate measures.

313. During the virtual visit, SIDB representatives indicated that they are currently in a phase of modification and revision of their Export Credit Insurance Application Forms and are almost fully compliant with the OCED 2019 Recommendation. They still have to implement some additional information on certain agents in export businesses and the country or jurisdiction in which the commissions will be paid. These amendments are scheduled to be completed by mid-2021.

i. Awareness raising and training

314. In Phase 3, the Working Group recommended that SIDB promptly provide foreign bribery-specific training to its staff to better detect, report and mitigate the risk of foreign bribery (Phase 3 Recommendation 11(b)), as only training on corruption and fraud in general was provided. At the time of Phase 3 WFU Report, minimal efforts had been made to train SIDB staff on how to detect, report and mitigate the risk of foreign bribery: only one training session covering foreign bribery had been organised by the CPC in June 2016 for SIDB employees. The Group found that Slovenia had therefore only partially implemented Recommendation 11(b).

315. During the virtual visit, SIDB representatives indicated that the staff receive annual trainings, which cover foreign bribery, the last one was in November 2019 and the next one should take place in October 2020. SIDB has a Compliance Department, which provides advice in the area of corruption and indicators. When they are in a position to issue an insurance policy, employees are trained to recognise indicators of corruption and, in case of doubt, they can ask the Compliance Department to issue an opinion on whether there is a bribery or reputational risk. They cannot issue the insurance policy or conclude the transaction if the Compliance Department issues a negative opinion. SIDB applies the Centre for International Cooperation and Development's assessments of country risk when formulating the policy for export credit insurance and for financing international business cooperation (see below, Official Development Assistance).

ii. Detection and reporting of foreign bribery

316. SIDB has mandatory internal codes on detection and prevention of corruption and money laundering as well as a system of reporting non-ethical conduct. At the time of Phase 3, SIDB reported to law enforcement authorities a transaction (Construction case) which they had reason to believe might have involved foreign bribery and which was subject to enhanced due diligence, but the allegation did not result in a foreign bribery investigation.

317. Since then, SIDB reported one case to law enforcement authorities where an agent allegedly received a large commission, which was detected as an indicator of potential bribery. SIDB worked together with the authorities and shared relevant documents. The investigation revealed that the commissions were standard procedure and no foreign bribery was involved in the case. The case nevertheless demonstrated SIDB's ability to cooperate with law enforcement authorities.

318. SIDB also had a case where a foreign buyer was on the World Bank debarment list. In this case, SIDB made the decision internally and did not inform the authorities. As it was more than five years since the buyer was added to the list, the Compliance Department decided that, provided the company could prove adequate remedial compliance measures, the insurance policy could be issued.

319. Moreover, SIDB representatives indicated during the virtual visit that they detect three to five cases of suspected foreign bribery per year. However, they reported addressing these cases internally and not reporting them to law enforcement authorities. Regarding related offences, SIDB representatives reported having issued negative opinions in some cases involving indicators of money laundering or tax evasion and not issuing the insurance policy. However, here again they did not report these cases to law enforcement authorities as they considered that the reports were only suspicions with no actual proof.

Commentary

SIDB has made impressive efforts to implement anti-bribery compliance and reporting frameworks. The lead examiners welcome SIDB's awareness raising efforts and trainings, which have led to regular internal reporting of suspected foreign bribery and therefore consider Phase 3 Recommendation 11(b) as fully implemented. They are concerned, however, that SIDB has not reported these suspected foreign bribery cases to Slovenian law enforcement authorities. The Working Group recommends that SIDB introduce a clear, written policy on reporting foreign bribery allegations to Slovenian law enforcement authorities, and train staff on this issue.

b. Public procurement

320. Exclusion of companies from Slovenian public procurement processes is regulated by art. 75 Public Procurement Act (ZJN-3) and art. 39 Public Procurement for Defence and Security Act (ZJNPOV).

321. The National Review Commission for Reviewing Public Procurement Award Procedures (the National Review Commission) is a specific, independent, professional and expert state institution providing legal protection to tenderers at all procedural levels of the award of public contracts. The status and competence of the National Review Commission have been defined in the Auditing of Public Procurement Procedures Act, whereby formal conditions were fulfilled for the establishment and operation of the Commission as an independent expert institution. In 2011, a new Act on Legal Protection in Public Procurement Procedures was adopted, it was further amended in 2019.¹¹⁵ The National Review Commission consists of seven members, of which one is acting as a President; all members are appointed by the Parliament. Nine consultant experts support the work of members.¹¹⁶

322. At the time of Phase 3, Slovenia did not provide specific guidance to its contracting authorities to ensure that exclusion rules were applied effectively in practice, or ways to verify non-EU conviction records. The number of exclusions, which had resulted from such verifications, were unknown, as no centralised evidence of exclusions existed at the time. Therefore the WGB recommended that Slovenia (i) maintain centralised statistics on the number of candidates and tenderers excluded from public procurement based on prior criminal convictions, including for foreign bribery; and (ii) issue guidance to its contracting authorities to ensure that rules on exclusion from public procurement due to foreign bribery is effectively implemented in practice or ways to verify non-EU conviction records (Phase 3 Recommendation 11(a)).

323. In 2016, Slovenia established a new framework to maintain centralised statistics on the number of candidates and tenderers excluded from public procurement based on prior criminal convictions, including for foreign bribery. On 1 April 2016, a new Public Procurement Act entered into force, which transposed Directive 2014/24/EU and Directive 2014/25/EU and repealed Slovenian Public Procurement Act and Act Regulating Public Procurement in Water, Energy, Transport and Postal Services. According to the old and the new public procurement legislation exclusion of candidates and tenderers convicted for certain criminal actions, including foreign bribery, is mandatory for contracting authorities. Additionally, the new Public Procurement Act determines that in case of criminal convictions, the appropriate means of proof is an extract of judicial official records in Slovenia, other EU Member State, and country of origin or country of

¹¹⁵ [Act on Legal Protection in Public Procurement Procedures.](#)

¹¹⁶ See also DKOM website, www.dkom.si/introduction/.

headquarters or an equivalent document issued by relevant judicial or administrative authority. At the time of the Phase 3 WFU Report, the WGB considered that Recommendation 11(a) was only partially implemented as relevant contracting authorities had yet to receive guidance on the new framework put in place.

324. Since then, as indicated by Slovenia during the Phase 4 virtual visit, the Public Procurement Directorate went on a roadshow to different parts of Slovenia in 2018 to provide contracting authorities with information on the new legislation. The Public Procurement Directorate also implemented a helpdesk to provide daily support to authorities with queries about the legislation. Regarding the impact of multilateral development bank debarments on eligibility for Slovenian companies to participate in public procurement processes, during the virtual visit, the panellists participating in discussions of Slovenia's framework for exclusion for public procurement were not aware of the World Bank debarment of a Slovenian company for 18 months for bribery in the context of World Bank-financed projects in 2018. Slovenian authorities indicated after the virtual visit that a debarment decision by a multilateral development bank would not meet the criteria of 'conviction by final judgment' and therefore not provide a ground for exclusion from public tenders in Slovenia.

Commentary

The lead examiners welcome the establishment by Slovenia of a new framework to maintain centralised statistics on the number of candidates and tenderers excluded from public procurement based on prior criminal convictions, including for foreign bribery. They also note the efforts made by the public procurement directorate to provide guidance to contracting authorities on this new framework and therefore consider Phase 3 Recommendation 11(a) as fully implemented.

While some clarity was provided on the impact of debarment by multilateral banks on debarred companies' ability to participate in public procurement procedures in Slovenia, the Working Group nevertheless recommends that Slovenia encourage public contracting authorities to routinely check the debarment lists of multilateral financial institutions in relation to public procurement contracting, and take such lists into consideration as a basis for due diligence of applicants.

D.5. Official Development Assistance

325. This Phase 4 evaluation is the first time Slovenia's ODA framework is reviewed in light of the 2016 Recommendation for Development Cooperation Actors on Managing the Risk of Corruption (the 2016 Recommendation) and in particular sections 6-8 and 10, which more directly pertain to foreign bribery.¹¹⁷

a. Slovenia's ODA Profile

326. In the years between 2014 and 2019, the total amount of Slovenian ODA has increased every year, with a total of EUR 46.38 million in 2014 and EUR 77.44 million in 2019, according to information provided by Slovenia. Based on information from the OECD Development Cooperation Profiles, the total ODA for 2019 represented 0.16% of Slovenia's gross national income.¹¹⁸ Slovenia's ODA has stayed at 0.16% of its GNI since peaking at 0.19% in 2016. Its ODA/GNI ratio ranked 22nd among DAC member countries in 2019. Slovenia is committed, at the European level, to strive to achieve 0.33% ODA/GNI and collectively achieve a 0.7% ODA/GNI ratio by 2030.

¹¹⁷ The [2016 OECD Recommendation for Development Co-operation Actors on Managing Risks of Corruption](#) replaces the 1996 DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement.

¹¹⁸ [OECD Development Cooperation Profiles](#)

327. The majority of Slovenia's ODA is provided multilaterally (64% in 2019), primarily to EU institutions. Approximately half of bilateral ODA is provided to upper middle-income countries in the Western Balkans and Eastern Europe, supporting education, sustainable management of natural and energy resources and governance. Slovenia performs above the DAC average on its support to gender equality, environment and climate change.¹¹⁹ According to Slovenia, the top five recipient countries of ODA between 2014 and 2019 were Bosnia Herzegovina, North Macedonia, Serbia, Montenegro and Kosovo.

328. Slovenia's legal framework for ODA is the International Development Co-operation Act, September 2017 Resolution,¹²⁰ November 2018 Decree, and Development Cooperation and Humanitarian Aid Strategy until 2030, adopted in 2019.¹²¹

329. The Slovenian MFA, in particular the Department for Development Cooperation and Humanitarian Aid, is the national coordinator for development cooperation. The MFA is responsible for development cooperation policies and their implementation between ministries, as well as for consultation with providers, private sector, civil society and other stakeholders. In April 2019, the MFA adopted an Integrity Plan, which includes a section on systemic risks in development cooperation. The MFA reports to the CPC on the implementation of the Integrity Plan.

330. Under the International Development Cooperation and Humanitarian Assistance Act, adopted in 2018, the Centre for International Cooperation and Development (CMSR – *Center za Mednarodno Sodelovanje in Razvoj*) is responsible for implementing an important part of Slovenia's bilateral official development assistance. The CMSR is an independent non-profit organisation established by the Government of Slovenia and the Slovenian Development Bank. CMSR administers co-financing to public entities in partner countries for the implementation of infrastructure projects, signing the donation agreements with final beneficiaries on behalf of the Republic of Slovenia.

b. Detection, risk assessment and anti-corruption clauses

331. From information gathered at the virtual visit and in Slovenia's responses to the questionnaire, it is apparent that the level of due diligence and corruption risk assessment carried out by the MFA and the CMSR in the process of screening applicants for the implementation of a project is minimal. The applicants may only be foreign public bodies (governments, municipalities, cities) and at least 80% publicly owned companies. According to Slovenia, the applicant for an ODA contract is not required to declare previous convictions for corruption offences. There are also no clear procedures in place to verify the applicant's internal controls, ethics and compliance systems in relation to prevention of bribery in international business transactions. Bidders for implementation of ODA co-financed projects are chosen based on public procurement rules and do need to specify direct and indirect ownership of all legal entities in line with art. 14 IPCA. Representatives of the MFA present at the virtual visit explained that the ODA projects in Slovenia are fairly small, with the biggest current co-financing of project amounting to less than EUR 1 million, while the applicants and recipients of ODA may only be foreign public bodies and entities, which is the reason why they have never felt the need for implementing further mechanisms.

332. Regarding mechanisms to verify the accuracy of the information provided in the context of ODA funding, as mentioned above, Slovenia limits the participation of commercial entities, which are exposed to higher corruption risks, and procedures are based on partner countries' procurement requirements,

¹¹⁹ [OECD Development Cooperation Profiles](#)

¹²⁰ <https://www.gov.si/assets/ministrstva/MZZ/Dokumenti/multilateral/razvojno-sodelovanje/Resolution-on-development-cooperation-and-humanitarian-assistance-of-the-Republic-of-Slovenia.pdf>

¹²¹ Development Cooperation and Humanitarian Aid. Strategy of the Republic of Slovenia until 2030, www.gov.si/assets/ministrstva/MZZ/Dokumenti/multilateral/razvojno-sodelovanje/Development-Cooperation-and-Humanitarian-Aid-Strategy-of-the-Republic-of-Slovenia.pdf.

internal rules, and procedures of international organisations. According to Slovenia, the ODA award system consists of a three-stage process. First, a list of project proposals is prepared by the CMSR. Second, the final list of project proposals eligible for co-financing is approved by the Council of CMSR. Third, the final choice of project proposals as the basis for an ODA contract award is made by the MFA and the financier (the Ministry of Finance or other ministries).

333. ODA contracts in Slovenia rely on a mandatory anti-corruption clause, by which the contracting party expressly declares that neither the party nor any of its employees has been convicted of a corruption offence, in Slovenia or abroad. The standard text for the anti-corruption clause is set out under art. 14 IPCA. The anti-corruption clause is mandatory for implementing partners as well as sub-contractors. A false statement under the anti-corruption clause renders the contract null and void. The anti-corruption clause also foresees an annulment of the contract in case of proven corruption, whereby all financial means would have to be reimbursed following a full criminal prosecution and conviction. ODA agreements also include warranties and representation clauses that allow for the contract to be terminated with full restitution of funds where, for example, a company falsely declares not to have been convicted of corruption. These clauses also allow for a suspension in the payments pending a judicial investigation into a corruption offence. These provisions are publicly available and are published as part of each public call for proposals.¹²²

334. The CMSR has a division that specialises in country risk assessments, which informs the evaluation and selection of investment destinations. These assessments include an analysis of the risk of corruption and are internally accessible to CMSR staff working on the implementation of ODA projects.¹²³ In some rare circumstances, the CMSR is in charge of procurement on behalf of the public entity of the partner country. Procurement executed by Slovenian parties follows the rules and procedures under the Public Procurement Act, which specifies, under art. 75, the grounds for exclusion of a tenderer, including offences defined under the CC. Slovenia states that ODA officials verify whether there are restrictions on doing business with any selected provider and rely on publicly available information from companies, NGOs and other experts. Their most important source of information comes from diplomatic representations in partner countries. ODA officials do not, however, verify publicly available debarment lists as part of their due diligence processes on applicants.

335. According to Slovenia, implementing partners such as the CMSR, as well as the individual ministries funding a particular project are in charge of conducting internal and external audits and evaluations. Representatives of the CMSR at the virtual visit reported having initiated an internal audit of operations. The Ministry of Foreign Affairs conducted three evaluations so far, namely for projects in Montenegro in 2016, in Cabo Verde in 2018 and in North Macedonia in 2020. The key shortcomings revealed by the projects' evaluations relate to project selection and approval process within Slovenia's development cooperation, as well as project management and monitoring systems. The decision to move forward with an internal audit of a project is made by the financiers or the MFA and regular external evaluation plans are adopted by the MFA. At the virtual visit, representatives of the CMSR stated that an independent audit company also conducts an audit of financial statements every year. The CMSR adopted a Code of Conduct in July 2020, which applies to all stakeholders dealing with CMSR; the Code of Conduct specifically regulates Integrity (Corruption, Conflicts of Interest, Transparency, AML, etc.). The 2018 internal audit of the Ministry of Environment was focused on the process of selection of projects and contracts, including the ones, implemented through the CMSR.

¹²² [Public tender for the implementation of international development and humanitarian projects in the period from 2020 to 2022.](#)

¹²³ CMSR's website, economic analysis and research, <https://www.cmsr.si/en/economic-analysis-and-research/>.

c. Lack of clarity in reporting channels

336. Slovenia reported in its questionnaire responses that the bodies administering ODA do not have investigative authority. Any knowledge or suspicions of bribery have to be reported to the CPC under art. 145 CPA that requires all state agencies and organisations having public authority to report criminal offences brought to their attention.

337. In the MFA, the 2019 Integrity Plan established a contact point within the Secretariat General of the MFA to handle cases of reported unethical and corrupt offences, although to this date, there have been no reports. The legal service of the MFA will look into the reports and decide what the next steps should be. According to representatives from the Department for Development Cooperation and Humanitarian Aid present at the virtual visit, though no cases have been reported thus far, in theory they would not be typically involved in the process, or receive feedback on the follow-up of these reports. They also indicated that many projects are managed by the Ministry of Finance which also has its own Integrity Plan and internal procedures.

338. Considering that there have been no cases where a suspicion of bribery has been reported in connection with Slovenian ODA projects, MFA officials at the virtual visit denoted some uncertainty regarding what the procedure to manage such a situation would be and all the scenarios discussed were merely theoretical. In principle, the secretariat would order the suspension of the contract(s) and the implementers would not approve any further funds. Officials reported that there are internal guidelines detailing how and where to report a suspicion of bribery, but no clear channels of communication appear to be in place following that report.

339. In the case of the CMSR, its internal code of conduct provides for the appointment of an integrity officer, who is meant to notify the Director of the CMSR that a suspicion of bribery has arisen whilst keeping the reporting person anonymous. The integrity officer is tasked with verifying the information received but a formal investigation cannot be launched. There is no formal requirement for the CMSR to notify the ministries involved of a suspicion of bribery but their code of conduct requires them to file a report to the authorities, either the CPC or the Police.

340. Regarding whistleblower protection, the general mechanisms under the IPCA apply. The MFA's Integrity Plan also identifies weaknesses in whistleblowing mechanisms, such as the need to ensure the anonymity of whistleblowers in diplomatic representations, particularly if they have few employees, and to raise awareness of the rules and responsibilities of all officials in relation to reporting. Additionally, the Integrity Officer's functions include providing advice on whistleblower protection

Commentary

The lead examiners recommend that Slovenia further implement key aspects of the 2016 OECD Recommendation of the Council for Development Cooperation Actors on Managing the Risk of Corruption. In particular, Slovenia should ensure that (i) the agencies and ministries involved in ODA projects request that applicants to ODA contracts declare that they have not been convicted of corruption offences, in any jurisdiction, (ii) appropriate due diligence, including on the applicants' corruption risk management systems, is carried out prior to the granting of ODA contracts; (iii) there are communication channels in place about the processes and outcomes of reporting corruption internally within the MFA; (iv) there are clear, written and public rules on the processes and criteria for sanctioning foreign bribery in relation to ODA contracts.

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

341. The Working Group congratulates Slovenia on the progress it has made in recent years towards the implementation of the Convention and related instruments. While the Working Group welcomes the opening of four additional foreign bribery investigations since 2014, it remains seriously concerned about the lack of foreign bribery enforcement in Slovenia. Nine allegations of foreign bribery by Slovenian nationals or companies have arisen since the foreign bribery offence was enacted in 1999, of which seven led to formal investigations but none to prosecution. Two investigations are on-going. With regard to detection, the Working Group notes that, to date, no cases of foreign bribery have been detected by government agencies other than law enforcement.

342. Regarding implementation of the Phase 3 recommendations, Recommendations 10(b), 11(a) and 11(b) are fully implemented, Recommendations 2(a), 3(c), 4(a), 4(b), 5, 6, 7(a), 9(a), 9(c), 9 (d) and 10(a) are partially implemented and Recommendations 1(a), 1(b), 1(c), 2(b), 3(b), 7(c), 7(d) and 7(e) remain not implemented. The Phase 3 recommendations that are only partially or not implemented are reflected below in the Phase 4 recommendations to Slovenia. Recommendations 4(c), 7(b) and 10(c) were converted into follow-up issues.

Positive Achievements and Good Practices

343. Throughout this report a number of good practices and positive achievements by Slovenia have been identified, which may prove effective in combating bribery of foreign public officials and enhancing enforcement.

344. The Working Group welcomes the opening of additional foreign bribery investigations by Slovenian authorities since 2014 and the more proactive efforts by Slovenia to detect foreign bribery since Phase 3, notably the monitoring of press reports and the opening of investigations based on media reporting, which the Working Group views as a good practice. The creation of a public Register of Beneficial Ownership in 2018 is a positive achievement and will hopefully assist with anti-bribery compliance and law enforcement efforts in Slovenia.

345. The Working Group welcomes the adoption of amendments to the IPCA after years of delay and will follow their implementation regarding the role and independence of the CPC. The Working Group also welcomes the strong cooperation between the Financial Administration, law enforcement authorities and

the CPC, and in particular the participation of the tax authority in joint investigation teams led by prosecutors. They look forward to the use of these teams in future foreign bribery investigations.

346. Finally, the Working Group congratulates Slovenia on its strong legal framework for successor liability and will follow closely its application in foreign bribery cases involving legal persons.

1. *Recommendations of the Working Group*

Recommendations regarding the detection of foreign bribery

1. The Working Group recommends that Slovenia increase its efforts to train officials from the Ministry of Foreign Affairs and Embassies on detecting and reporting foreign bribery [2016 Recommendation, 6.iv.; Phase 3 Recommendation 10(a)];
2. The Working Group recommends that Slovenia increase the potential for detecting foreign bribery through its anti-money laundering system by providing specific guidance with case studies and typologies on foreign bribery-based money laundering to reporting entities [Convention, Article 7; Phase 3 Recommendation 6];
3. The Working Group recommends that Slovenia provide targeted training to tax officials to assist them to detect foreign bribery when handling tax returns or conducting tax audits. [2009 Recommendation VIII(i); 2009 Recommendation on Tax Measures]
4. Regarding detection of foreign bribery through whistleblower protection and reporting, the Working Group recommends that Slovenia, in the context of forthcoming reforms to its whistleblower protection legislation, ensure that public and private sector employees who report suspected acts of foreign bribery continue to be protected from disciplinary or discriminatory action; and that the authority competent to receive reports has sufficient human and financial resources [2009 Recommendation IX(iii)].
5. The Working Group recommends that Slovenia ensure that laws relating to freedom of the press are fully applied in practice in respect of foreign bribery reporting. [Article 5 of the Convention and Commentary 27; 2009 Recommendation, Annex I.D.]
6. Regarding detection of foreign bribery by accountants and auditors, the Working Group recommends that Slovenia: (i) takes further steps to encourage the reporting of foreign bribery by the auditing profession, (ii) ensures that auditors who report suspicions of foreign bribery are protected from legal or other retaliatory action, (iii) raises awareness within the profession of the available legal protections, and (iv) prioritise specific awareness-raising on the foreign bribery offence among auditors, including methods for detecting foreign bribery [2009 Recommendation III.iv. and X.B.v. and Annex II; Phase 3 Recommendations 7(c) and (d)].

Recommendations regarding enforcement of the foreign bribery and related offences

7. Regarding the offence of bribing a foreign public official, the Working Group recommends that Slovenia:
 - a. As a priority, take all measures to ensure that the definition of foreign public officials covers, in a manner consistent with the Convention, (i) officials exercising a public function for a foreign country, regardless of whether that person has management powers and responsibilities, (ii) officials of organised foreign areas or entities that do not qualify or are not recognised as States; and (iii) officials of foreign public enterprises [Convention Article 1; Commentary 14 and 18; 2009 Recommendation III.ii and V; Phase 3 Recommendation 1 a. and b]
 - b. Amend relevant legislation to ensure that the defence of effective regret does not apply to natural persons or legal persons in foreign bribery cases. [Convention Articles 1 and 3; 2009 Recommendation III.ii and V; 2009 Recommendation Annex I.A; Phase 3 Recommendation 1. c]

8. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Slovenia:
- a. Prioritise improving detection and step up its enforcement of the foreign bribery offence [Phase 3 Recommendation 4.a]
 - b. Ensure that the CPC is given adequate human and financial resources to be able to fulfil this role and to deal with the additional tasks it will have following enactment of the IPCA amendments [2009 Recommendation III.i, Annex I.A and D; Phase 3 Recommendation 9.a.].
 - c. Ensure that the amendments to the Criminal Procedure Act introducing time limits for prosecutors to bring indictments do not hinder the effective prosecution of the foreign bribery offence [Convention, Article 5].
 - d. Establish clear and specific procedures to ensure appropriate coordination, sharing of information and resolution of conflicts of competence in foreign bribery investigations between the several investigative units of the Police. [Convention, Article 5]
 - e. Take urgent steps to ensure that sufficient safeguards are in place (i) to secure the independence of police investigations and (ii) regarding the appointment and dismissal of the NBI Director [Convention, Article 5]
 - f. Strengthen safeguards and take any other steps, as a matter of urgency, to ensure that prosecutors are not subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention in deciding whether to pursue an investigation or prosecution. [Convention Article 5; Phase 3 Recommendation 4(c)]
 - g. Take concrete actions to increase specialised training of judges in the area of international economic crime, including foreign bribery and asset confiscation.
 - h. Provide appropriate guidance on, inter alia, factors to be taken into account when considering whether to enter into a plea bargain or guilty plea and the degree of mitigation of sanctions, to ensure that these procedures do not impede the effective enforcement of foreign bribery;
 - i. As a priority, review its system of maximum 3-month or 6-month time limits for the authorised use of special investigative measures in foreign bribery investigations [Convention Article 5; 2009 Recommendation XIII and Annex I D; Phase 3 Recommendation 4(b)].
9. Regarding sanctions, the Working Group recommends that:
- a. priority measures are taken to provide specialised training to prosecutors and judges on applying effective, proportionate and dissuasive sanctions, including confiscation measures, on natural and legal persons convicted of the foreign bribery offence [Convention Article 3; 2009 Recommendation III(ii) and V; Phase 3 Recommendation 3(c)];
 - b. Slovenia ensure that sanctions imposed in practice for foreign bribery are effective, proportionate and dissuasive; [Convention Article 3; 2009 Recommendation III.ii and V, Phase 3 Recommendation 3(b)]
 - c. Slovenia maintain detailed statistics on sanctions imposed in domestic and foreign bribery cases, including in relation to confiscation of the instrument and proceeds of the bribe. [Convention Art. 3(1)];
10. Regarding international cooperation, the Working Group recommends that Slovenia adopt a centralised system that allows tracking of all incoming and outgoing MLA requests involving foreign bribery and related offences received or forwarded by all relevant Slovenian agencies and law enforcement authorities [Convention Article 9; Phase 3 Recommendation 5].

11. Regarding false accounting, the Working Group recommends that Slovenia continue to ensure that false accounting cases are vigorously investigated and effectively prosecuted, where appropriate, and that sanctions imposed in practice for false accounting offences are effective, proportionate and dissuasive [Convention Article 8; Phase 3 Recommendation 7(a)].

Recommendations regarding liability of, and engagement with, legal persons

12. Regarding liability of legal persons, the Working Group recommends that Slovenia:
 - a. Review its approach to corporate liability, in particular to ensure (i) that the elements required to prove a link between the natural person that perpetrated the crime and the liability of the legal person under the Act are not obstacles to effective enforcement of the Act; (ii) a legal person cannot be exempted from prosecution because of its “insignificant” level of participation in the commission of the criminal offence; and (iii) the regime of liability of legal persons adopts one of the approaches described in Annex 1 B) b. of the 2009 Recommendation concerning the level of managerial authority and the type of act that may cause that liability to be incurred; [Convention Article 2; 2009 Recommendation III.ii, V., Annex I.B; Phase 3 Recommendation 2.a.]
 - b. Promptly provide specialised training to law enforcement authorities in relation to the liability of legal persons for foreign bribery. [Phase 3 Recommendation 2(b)]
13. Regarding engagement with the private sector, the Working Group recommends that Slovenia issue guidance for companies on effective anti-bribery compliance programmes, and disseminate more targeted information for SMEs on implementing anti-bribery compliance measures to effectively prevent and detect foreign bribery [Phase 3 Recommendation 7(e), 9(c) and 9(d)]

Recommendations regarding other measures affecting implementation of the Convention

14. Regarding money laundering, the Working Group recommends that Slovenia urgently provide the OMLP with sufficient human and financial resources to undertake its functions, and put in place necessary measures to safeguard its independence from undue political influence [Convention, Articles 5 and 7].
15. Regarding tax measures to combat foreign bribery, the Working Group recommends that Slovenia ensure that the Financial Administration provide ongoing training to tax examiners on the detection and reporting of foreign bribery.
16. Regarding public advantages, the Working Group recommends that:
 347. SIDB introduce a clear, written policy on reporting foreign bribery allegations to Slovenian law enforcement authorities, and train staff on this issue (2009 Recommendation III.i, IX.i, XII.ii; 2019 Export Credit Recommendation).
 348. Slovenia encourage public contracting authorities to routinely check the debarment lists of multilateral financial institutions in relation to public procurement contracting, and take such lists into consideration as a basis for due diligence of applicants.
17. Regarding Official Development Assistance, the Working Group recommends that Slovenia further implement key aspects of the 2016 OECD Recommendation of the Council for Development Cooperation Actors on Managing the Risk of Corruption, in particular to ensure that (i) the agencies and ministries involved in ODA projects request that persons applying for ODA contracts declare that they have not been convicted of corruption offences, in any jurisdiction, (ii) appropriate due diligence is carried out prior to the granting of ODA contracts; (iii) there are communication channels in place about the processes and outcomes of reporting corruption internally within the MFA; and (iv) there are clear, written and public rules on the processes and criteria for sanctioning foreign bribery in relation to ODA contracts [2016 Recommendation 6(iii), 7(ix), 8(iv)].

2. *Follow-up by the Working Group*

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

- a. Whether whistleblowers who report suspected foreign bribery are afforded the protections guaranteed by the law [Phase 3 Recommendation 10(c)].
- b. Auditor independence, in light of the amendments to the Audit Act [Phase 3 follow-up issue 12(k)].
- c. The adequacy of external auditing requirements in Slovenia, particularly regarding SMEs with foreign operations [Phase 3 recommendation 7(b)].
- d. The impact of the proposed legislative reforms on the ability of the media to play an effective role in detecting and reporting allegations of foreign bribery [2009 Recommendation IX (iii)].
- e. The treatment of incoming MLA requests, and whether such requests trigger the opening of a foreign bribery investigation in Slovenia [Phase 3 follow-up issue 12(m)]
- f. The adoption of the revised IPCA and the concrete impact it will have in terms of independence of the CPC and its role in the fight against foreign bribery. [Convention Article 5; Phase 3 Recommendation 4.c)]
- g. The proposed amendments to the Police Act, to ensure that they do not compromise the independence of the NBI and that there is sufficient clarity regarding the NBI's investigative jurisdiction in foreign bribery cases [Convention Article 5].
- h. The human and financial resources available to the prosecutors' office to support the effective detection, investigation and prosecution of foreign bribery. [Phase 3 Follow-up issue 11 e.]
- i. The activities of the Parliamentary commissions of inquiries, to ensure that the Prosecution Service is not compelled to answer questions or provide information in relation to specific cases. [Convention Article 5; Phase 3 Recommendation 4.c.]
- j. The application of territorial and nationality jurisdiction concerning foreign bribery offences committed in whole or in part abroad, especially with regard to legal persons, to ensure that the foreign bribery offence can always be prosecuted and sanctioned without regard to the place where the bribery occurred [Convention Article 4 ; Phase 3 Follow-up issue 11.g.]
- k. The decision of the Constitutional Court and the application of the rule for destruction of evidence gathered through special investigative measures. [Convention Art. 5, Commentary 27].
- l. The level of resources allocated to the judiciary and the impact on the speed of judicial proceedings. [Phase 3 Follow-up issue 11 f.]
- m. The use of plea bargains and guilty pleas in foreign bribery cases, including whether the sanctions applied are effective, proportionate, and dissuasive.
- n. The application in practice of art. 6 LLPCO regarding successor liability of legal entities.
- o. The issue of post enforcement non-deductibility of bribes to foreign public officials [Phase 3 Follow-up issue 11 l.].

Annex A. Phase 3 recommendations to Slovenia and assessment of implementation by the Working Group on Bribery in 2016

Recommendations of the Working Group in Phase 3		Written follow-up July 2016
Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery		
1.	Regarding the <u>offence of bribing a foreign public official</u> , the Working Group recommends that Slovenia:	
	a) (i) take all measures to ensure that the foreign bribery offence covers bribery of any person exercising a public function for a foreign country, regardless of whether that person has management powers and responsibilities and (ii) clarify its Criminal Code to ensure that the offence of foreign bribery covers bribery of officials of autonomous territories and separate customs territories; [Convention Article 1; Commentary 18; 2009 Recommendation III.ii and V]	<i>Not Implemented</i>
	b) Clarify that bribery of employees of foreign SOEs is equally criminalised; Convention Article 1; Commentary 14; 2009 Recommendation III.ii and V]	<i>Not Implemented</i>
	c) Regarding the foreign bribery offence, the Working Group urges Slovenia to clarify by all appropriate means that the defence of “effective regret” in Article 262(3) of the Criminal Code and Article 11(2) of the LLPCO does not apply to foreign bribery. [Convention Articles 1 and 3; 2009 Recommendation III.ii and V; 2009 Recommendation Annex I.A]	<i>Not Implemented</i>
2.	Regarding the <u>criminal liability of legal persons</u> , the Working Group recommends that Slovenia:	
	a) urgently review its approach to corporate liability, in particular to ensure (i) that the elements required to prove a link between the natural person that perpetrated the crime and the liability of the legal person under the Act are not obstacles to effective enforcement of the Act; (ii) a legal person cannot be exempted from prosecution because of its “insignificant” level of participation in the commission of the criminal offence; and (iii) the regime of liability of legal persons adopts one of the approaches described in Annex 1 B) b. of the 2009 Recommendation concerning the level of managerial authority and the type of act that may cause that liability to be incurred; [Convention Article 2; 2009 Recommendation III.ii, V., Annex I.B.]	<i>Partially Implemented</i>
	b) issue further specific guidance and training to both police and prosecutors on investigating and prosecuting legal persons, especially with regards to foreign bribery and other intentional economic crimes, and take further steps to prioritise the prosecution of legal persons involved in foreign bribery. [Convention Article 2; 2009 Recommendation III.ii and V, Annex I B]	<i>Not Implemented</i>
3.	Regarding <u>sanctions and confiscation</u> , the Working Group recommends that Slovenia:	
	a) clarify that suitable fines are also available for “proper” acts or omissions in Article 262(2) CC as a useful additional deterrent; [Convention Article 3]	<i>Fully Implemented</i>
	b) ensure that sanctions imposed in practice for foreign bribery are effective, proportionate and dissuasive; [Convention Article 3; 2009 Recommendation III.ii and V]	<i>Not Implemented</i>
	c) continue to take measures to draw the attention of prosecutorial and judicial authorities on the importance of applying sanctions which are sufficiently effective, proportionate and dissuasive on natural and legal persons convicted for foreign bribery offences, in particular, emphasising the	<i>Partially Implemented</i>

Recommendations of the Working Group in Phase 3		Written follow-up July 2016
	importance of adequate economic sanctions. [Convention Article 3; 2009 Recommendation III.ii and V]	
4.	Regarding the <u>investigation and prosecution</u> of foreign bribery, the Working Group recommends that Slovenia:	
	a) (i) Seriously step up its enforcement of the foreign bribery offence and take concrete and meaningful steps to ensure that foreign bribery is an area of priority for law enforcement 4 http://imss.dz-rs.si/imis/91de2f302e7aecf4112c.pdf 43 authorities; (ii) take concrete steps to ensure that the National Bureau of Investigation and the Special State Prosecutor's Office proactively investigate all allegations of foreign bribery; (iii) assess all credible allegations of foreign bribery and seriously investigate complaints of this crime; (iv) generate foreign bribery cases through more proactive means of detection, including through enhancing working relations with foreign law enforcement authorities and using information from diverse sources at the pre-investigative stage; [Convention Article 5; Commentary 27; 2009 Recommendation XIII and Annex I D].	<i>Partially Implemented</i>
	b) Review the system of maximum 3-month or 6-month time limits imposed on the authorised use of some special investigative techniques in foreign bribery investigations and make full use of such measures at its disposal in foreign bribery cases; [Convention Article 5; 2009 Recommendation XIII and Annex I D]	<i>Partially Implemented</i>
	c) As a matter of urgency, strengthen safeguards and take any other steps to ensure that law enforcement authorities and the CPC are not subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention in deciding whether to pursue an investigation or prosecution, or transmit corruption allegation reports to law enforcement authorities; [Convention Article 5]	<i>Partially Implemented</i>
	d) Promptly provide in depth training specifically on the foreign bribery offence to investigators and prosecutors. [Convention Article 5]	<i>Fully Implemented</i>
5.	With respect to mutual legal assistance (MLA), the Working Group recommends that Slovenia ensure: (i) its authorities are more proactive in seeking MLA or other forms of international cooperation, as appropriate, in foreign bribery cases; and (ii) maintain statistics on incoming and outgoing MLA and extradition requests, including on the types of offence involved and the time required to execute requests. [Convention Article 9]	<i>Partially Implemented</i>
Recommendations for ensuring effective prevention and detection of foreign bribery		
6.	Regarding <u>money laundering</u> , the Working Group recommends that Slovenia raise awareness of foreign bribery as a predicate offence to money laundering and develop foreign bribery-related anti-money laundering measures, such as typologies and training on the laundering of bribes and the proceeds of bribery, for OMLP officials, as well as for reporting entities and relevant professionals. [Convention Article 7 and 2009 Recommendation, III.i.]	<i>Partially Implemented</i>
7.	Regarding <u>accounting and auditing, corporate compliance internal controls and ethics</u> , the Working Group recommends that Slovenia:	
	a) Ensure that false accounting cases are vigorously investigated and effectively prosecuted, where appropriate, and that sanctions imposed in practice for false accounting offences are effective, proportionate and dissuasive; [Convention Article 8]	<i>Partially Implemented</i>
	b) Consider whether the external auditing requirements on companies which escape the threshold and which export or have operations abroad are adequate; [Convention Article 8; 2009 Recommendation III.v. and X.B.i.]	<i>Partially Implemented</i>
	c) Take appropriate steps to raise awareness specifically on the foreign bribery offence among auditors, and ensure that the profession benefits from regular training, including specific methods for detecting foreign bribery; [Convention Article 8; 2009 Recommendation III.i.]	<i>Not Implemented</i>

Recommendations of the Working Group in Phase 3		Written follow-up July 2016
	d) Take steps to ensure that auditors who report reasonably and in good faith suspicions of foreign bribery are protected from legal or other retaliatory action, and that they are made aware that such protections exist; [2009 Recommendation III.iv. and X.B.v.]	<i>Not Implemented</i>
	e) Raise awareness of internal controls, ethics and compliance measures to specifically prevent foreign bribery, including among small and medium-sized enterprises and state-owned enterprises. This should include promoting the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance in Annex II of the 2009 Anti-Bribery Recommendation. [2009 Recommendation Annex II]	<i>Not Implemented</i>
8.	Regarding <u>tax measures</u> to combat bribery of foreign public officials, the Working Group recommends that Slovenia promptly train tax officials on issues related specifically to the detection of foreign bribery. [2009 Tax Recommendation]	<i>Fully Implemented</i>
9.	Regarding <u>awareness-raising</u> , the Working Group recommends that Slovenia	
	a) Ensure that measures for the prevention, detection and awareness-raising of foreign bribery are included in all national anti-corruption strategies, and that the CPC is provided with sufficient resources and political support to effectively prioritize, coordinate and implement these measures; [2009 Recommendation III.i, Annex I.A and D]	<i>Partially Implemented</i>
	b) Take measures to raise awareness of the Convention and the foreign bribery offence within the public administration, judiciary and other law enforcement authorities; [2009 Recommendation III.i and Annex I.A]	<i>Fully Implemented</i>
	c) Urge relevant public agencies that interact with Slovenian companies operating abroad, including the Ministry of Foreign Affairs, to provide guidance about risks of and measures to prevent foreign bribery to Slovenian companies operating abroad; [2009 Recommendation III.i and Annex I.A]	<i>Partially Implemented</i>
	d) Take more active measures to raise awareness specifically on the foreign bribery offence among Slovenian business associations and companies, including small and medium-sized enterprises and state-owned enterprises. [2009 Recommendation III.i, III.v., X.C and Annex II]	<i>Partially Implemented</i>
10.	With respect to the <u>reporting of foreign bribery</u> , the Working Group:	
	a) Urge Slovenia to remind public officials, including those working with overseas development aid and within the Ministry of Foreign Affairs, of their obligation to report instances of foreign bribery, and issue clear instructions to be followed on how to recognise indications of foreign bribery and on the concrete steps to be taken if suspicions or indications of foreign bribery should arise, including reporting the matter as appropriate to Slovenian law enforcement authorities; [2009 Recommendation XI.i. and XI.ii]	<i>Partially Implemented</i>
	b) Recommends that Slovenia raise awareness within both the public and private sectors of the whistleblower protections afforded under the Integrity and Prevention of Corruption Act and the Slovene Sovereign Holdings Act, for those who report suspicions of foreign bribery; [2009 Recommendation IX]	<i>Partially Implemented</i>
	c) Recommends that Slovenia take concrete steps to ensure that reports of suspected acts of foreign bribery made in good faith and on reasonable grounds are, in practice, handled efficiently and afforded the protections guaranteed by the law. [2009 Recommendation IX.iii.]	<i>Not Implemented</i>
11.	Regarding <u>public advantages</u> , the Working Group recommends that:	
	a) Slovenia (i) maintain centralised statistics on the number of candidates and tenderers excluded from public procurement based on prior criminal convictions, including for foreign bribery; and (ii) issue guidance to its contracting authorities to ensure that rules on exclusion from public procurement due to foreign bribery is effectively implemented in practice or ways to verify non-EU conviction records; [2009 Recommendation XI]	<i>Partially Implemented</i>

Recommendations of the Working Group in Phase 3		Written follow-up July 2016
	b) The Slovene Export Development Bank promptly provide foreign bribery-specific training to its staff to better detect, report and mitigate the risk of foreign bribery. [2009 Recommendation XII; 2006 Export Credit Recommendation]	Partially Implemented
Phase 3 Issues for follow up by the Working Group		Written follow-up March 2015
11.	The Working Group will <u>follow-up</u> the issues below as case law and practice develops:	
	The application of article 262 of the Criminal Code (and article 242 in the case of employees of foreign SOEs) to ensure that all bribes to a foreign public official to obtain any use of the official's position – regardless of whether or not it falls within the official's authorised competence – constitute the basis for a foreign bribery offence;	Follow-up in Phase 4
	The application of the conditions laid down under Article 11(1) of the Liability of Legal Persons for Criminal Offences Act;	Follow-up in Phase 4
	The liability of parent companies which use foreign subsidiaries to commit acts of foreign bribery;	Follow-up in Phase 4
	The application in practice of freezing and confiscation measures in on-going and future foreign bribery cases, including for legal persons;	Follow-up in Phase 4
	The level of resources available to National Bureau of Investigation, the Special State Prosecutor's Office and the CPC, to support the effective prevention, detection, investigation and prosecution of foreign bribery;	Follow-up in Phase 4
	The impact of the recent budgetary constraints confronting the Slovenian judiciary on the speed of judicial proceedings;	Follow-up in Phase 4
	The application of territorial and nationality jurisdiction for foreign bribery, especially with regard to legal persons and the ability for Slovenia to exercise jurisdiction over parent companies for acts of foreign bribery committed abroad by its subsidiaries;	Follow-up in Phase 4
	The time limitations imposed on prosecutors and investigative judges (and extensions thereof) to ensure that they do not impede the effective investigation and prosecution of foreign bribery;	Follow-up in Phase 4
	Whether the money laundering offence can be effectively enforced where the predicate offence is foreign bribery, regardless of where the bribery occurred;	Follow-up in Phase 4
	The adequacy of resources available to the Office of Money Laundering Prevention to ensure it can effectively detect money laundering cases predicated on foreign bribery;	Follow-up in Phase 4
	The impact of the Audit Act on auditor independence, and whether independence has been supported or compromised in practice;	Follow-up in Phase 4
	The application of the non-tax deductibility of bribes, particularly whether Slovenian law enforcement authorities promptly inform the Tax Directorate of convictions related to foreign bribery and whether tax returns are re-examined to determine whether bribes have been deducted;	Follow-up in Phase 4

Recommendations of the Working Group in Phase 3

Recommendations of the Working Group in Phase 3		<i>Written follow-up July 2016</i>
	The treatment of incoming MLA requests and in particular, if such requests trigger the opening of foreign bribery investigations in Slovenia.	<i>Follow-up in Phase 4</i>

Annex B. List of participants in the virtual visit

Government ministries and agencies

- Ministry of Foreign Affairs
- Ministry of Justice
- Ministry of Public Administration, Transparency, Integrity and Political System Service
- Ministry of Finance
- Commission for the Prevention of Corruption
- Centre for International Cooperation and Development (CMSR – *Center za Mednarodno Sodelovanje in Razvoj*)
- National Review Commission
- Slovenian Export and Development (SID) Bank
- Bank of Slovenia
- Parliamentary Committee on Justice
- Parliamentary Commission of Inquiry
- Tax Administration
- Office for Money Laundering Prevention
- Law enforcement and the Judiciary
- National Bureau of Investigation
- General Police Directorate
- Specialised State Prosecutor's Office
- Supreme State Prosecutor's Office
- Supreme Court of Slovenia
- Specialised Department of the District Court of Ljubljana

Private enterprises

- Mercator d.d.
- Telekom Slovenije d.d.
- 2TDK
- Krka d.d.
- Port of Koper
- GEN-I d.o.o.

- Deloitte d.o.o.
- Nova Ljubljanska Banka (NLB)
- Grant Thornton

Business organisations and auditing associations

- Slovenian Institute of Auditors
- Agency for Public Oversight of Auditing

Legal profession and compliance experts

- Wolf Theiss
- Private Practitioners

Civil society and journalists

- Transparency International Slovenia
- Focus Slovenia
- Investigative Journalists

Annex C. Legislative extracts

Criminal Code ((KZ-1)

Article 99

Meaning of Terms

“(1) For the purpose of this Criminal Code the term public official shall mean:

1. a member of the National Assembly, a member of the National Council, and a member of a local or regional representative body;
2. a Constitutional Court judge, a judge, a lay judge, state prosecutor, or state defender;
3. a person carrying out official duties or exercising a public function with management powers and responsibilities within a state authority or an authority of a self-governing local community or any other entity governed by public law;
4. any other person exercising official duties by authorisation of the law, of by-law (public authority) or of the contract on arbitration concluded on the basis of the law;
5. military person designated as a such with special regulations in instances, when the act is not already criminalised as a criminal offence against military duty;
6. a person in a foreign country carrying out legislative, executive or judicial function, or any other official duty at any level, providing that s/he meets the substantive criteria under points 1, 2, or 3 of this paragraph;
7. a person recognised as an official within a public international organisation providing that s/he meets the substantive criteria under points 1, 2, or 3 of this paragraph;
8. a person carrying out judicial, prosecutorial or other official function or duty with the international court or tribunal.”

(...)

10. For the purpose of this Code, “economic activity” means:

- 1) Any activity that is performed on the market for payment;
- 2) Any activity performed as part of profession for an agreed or prescribed payment or any organised activity performed for an agreed or prescribed payment.

11. Pursuant to this Code, economic activity or commercial operation shall include:

- 1) Implementation, governance, decision-making, representation, management and supervision within the framework of the activity referred to in paragraph 10 of this Article;
- 2) Management of immovable and movable property, funds, income, claims, capital assets, other forms of financial assets, and other assets of legal entities governed by public or private law, the use of these assets and control over them.

Article 262
Giving of Bribes

(1) Whoever promises, offers or gives an award, a gift or other proceeds to an official or a public officer for him, or her, or any third person in order to either perform an official act within the scope of his or her official duties that should not be performed, or in order not to perform an official act which should or could be performed, or in order to otherwise abuse his or her position, or whoever serves as an intermediary in the bribe shall be sentenced to imprisonment for not less than one and not more than six years and punished with a fine.

(2) Whoever promises, offers or gives an award, a gift or other proceeds to an official or a public officer or any third person in order to either perform an official act within the scope of his or her official duties that should or could be performed, or in order not to perform an official act that should not be performed, or in order to otherwise abuse his or her position shall be sentenced to imprisonment for not less than six months and not more than four years and required to pay a fine.

(3) If the perpetrator of the offence referred to in the preceding paragraphs who gave an award, gift or other proceeds at the request of an official or public officer, reports the commission of such offence in advance before it is detected or before he or she becomes aware that it has been detected, his or her punishment may be remitted, provided that it is not in contravention of the rules of international law.

Article 242
Unauthorised Giving of Gifts

(1) Whoever promises, offers, or gives an unauthorised award, gift or any other proceeds to a person performing an economic activity, intended for such a person or any third person with a view to obtaining any unauthorised proceeds for himself, or herself, or any third person when concluding or retaining a contract or other unauthorised proceeds referred to in paragraph one of Article 241, shall be sentenced to imprisonment for not less than six months and not more than six years and required to pay a fine.

(2) Whoever promises, offers, or gives an unauthorised award, gift or any other proceeds to a person performing an economic activity, intended for such a person or any third person in exchange for making or retaining a contract or other benefit, shall be sentenced to imprisonment for not more than four years and required to pay a fine.

(3) If the perpetrator referred to in the preceding paragraphs, who gave the unauthorised award, gift or any other proceeds upon request, declares the offence before it was detected or he knew it had been detected, his punishment may be remitted, provided this is not in contravention of the rules of international law.

(4) The award, gift or other proceeds given shall be seized, while in the case referred to in the preceding paragraph the same may be returned to the person who gave it.

Liability of Legal Persons for Criminal Offences Act (LLPCO)

Article 4
(Grounds for the Liability of a Legal Person)

A legal person shall be liable for a criminal offence committed by the perpetrator in the name of, on behalf of or in favour of the legal person:

1. If the committed criminal offence means carrying out an unlawful resolution, order or endorsement of its management or supervisory bodies;

2. If its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence;
3. If it has at its disposal unlawfully obtained property benefit or uses objects obtained through a criminal offence;
4. If its management or supervisory bodies have omitted due supervision of the legality of the actions of employees subordinate to them.

Article 5

(Limits of the Liability of a Legal Person for a Criminal Offence)

- (1) Under the conditions under the preceding Article a legal person shall also be liable for a criminal offence if the perpetrator is not criminally liable for the committed criminal offence.
- (2) The liability of a legal person does not preclude the criminal liability of natural persons or responsible persons for committed criminal offence.
- (3) A legal person may only be liable for criminal offences committed out of negligence under the conditions from Point 4 of Article 4 of this Act. In this case the legal person may be given a reduced punishment.
- (4) If a legal person has no other body besides the perpetrator who could lead or supervise the perpetrator, the legal person shall be liable for the committed criminal offence within the limits of the perpetrator's guilt.

Article 6

(Liability in the Case of a Change in the Status of a Legal Person)

- (1) A bankrupt legal person may be liable for a criminal offence regardless of whether this was committed before the initiation of bankruptcy proceedings or during them. In this case, however, a punishment shall not be imposed but instead only the confiscation of property benefits or the safety measure of confiscation of assets.
- (2) If a legal person has been wound up before the legal completion of criminal proceedings it may be deemed liable and the punishment and other sanctions are imposed on the legal person, which is its legal successor, if its management or supervisory bodies knew of the committed criminal offence prior to the winding-up of the convicted legal person.
- (3) A legal person which is the legal successor of a convicted legal person but whose management or supervisory bodies were not aware of the committed criminal offence shall only be convicted to the confiscation of property benefits or the safety measure of confiscation of assets.
- (4) If the legal person is wound up after the legal completion of criminal proceedings, the imposed sanction shall be carried out in accordance with the provisions of the second and third paragraphs of this Article.

Article 28

(Expediency of Initiation of Proceedings)

The state prosecutor may decide not to request the initiation of criminal proceedings against a legal person if the circumstances of the case show that this would not be expedient because the legal person's participation in the criminal offence was insignificant, because the legal person does not have any property or has so little property that this would not even suffice to cover the costs of the proceedings, because bankruptcy proceedings have been initiated against the legal person, or because the perpetrator of the criminal offence is the sole owner of the legal person against which it would be necessary to initiate proceedings.

Annex D. List of abbreviations, terms and acronyms

AJPES	Agency for Public Legal Records and Related Services
APMLFT	Act on Prevention of Money Laundering and Terrorist Financing
APOA	Agency for Public Oversight of Auditing
CC	Criminal Code
CITA	Corporate Income Tax Act
CMSR	Centre for International Cooperation and Development
CPA	Criminal Procedure Act
CPC	Commission for the Prevention of Corruption
CRA	Commodities and Reserves Agency
DNFBPs	Designated Non-Financial Businesses and Professions
DTAs	Double Taxation Agreements
EU	European Union
EUR	Euro
FDI	Foreign Direct Investment
FIU	Financial Intelligence Unit
GDP	Gross Domestic Product
IESBA	International Ethics Standards Board for Accountants
IFRS	International Financial Reporting Standards
IPCA	Integrity and Prevention of Corruption Act
ISA	International Standards on Auditing
MFA	Ministry of Foreign Affairs

MLA	Mutual Legal Assistance
MoJ	Ministry of Justice
NBI	National Bureau of Investigation
NLB	Nova Ljubljanska Banka
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OMLP	Office for Money Laundering Prevention
PEPs	Politically Exposed Persons
PITA	Personal Income Tax Act
SIDB	Slovene Export and Development Bank
SMEs	Small and Medium Enterprises
SOEs	State-Owned Enterprises
SPO	State Prosecutor's Office
SSH	Slovenian Sovereign Holding
SSPO	Specialised State Prosecutor's Office
STR	Suspicious Transactions Report
TIEAs	Tax Information Exchange Agreements
WGB	Working Group on Bribery in International Business Transactions

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