



IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION



PHASE 3 TWO-YEAR FOLLOW-UP REPORT **COLOMBIA**

This report, submitted by Colombia, provides information on the progress made by Colombia in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 10 December 2021.

The Phase 3 report evaluated and made recommendations on Colombia'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 OECD Working Group on Bribery on 12 December 2019.

Table of contents

| | |
|--|----|
| Colombia Phase 3: Two Year Written Follow-Up – Summary and Conclusions by the Working Group on Bribery | 4 |
| Annex. Phase 3 Evaluation of Colombia: Two-Year Written Follow-Up Report by Colombia | 12 |

Colombia Phase 3: Two Year Written Follow-Up – Summary and Conclusions by the Working Group on Bribery

Summary of main findings¹

1. In December 2021, Colombia presented its two-year written follow-up report to the OECD Working Group on Bribery (“Working Group” or “WGB”), outlining the steps taken to implement the 34 recommendations and to address the follow-up issues contained in its December 2019 [Phase 3 evaluation](#). Based on Colombia’s two-year written follow-up report, the Working Group concludes that Colombia has fully implemented 12 recommendations, partially implemented 13 recommendations and not implemented 9 recommendations.

2. The Working Group welcomes efforts by Colombia to reinforce its framework for investigating and prosecuting foreign bribery, in particular by providing training to key investigators and prosecutors in the Prosecutor General’s Office (“PGO”) and the Superintendency of Corporations (“Superintendency”). The Protocol on Exchange of Information between these two bodies, along with its accompanying Memorandum of Understanding (MOU) and the regular Committee meetings between the PGO and Superintendency should also lead to improved co-ordination and increased enforcement of the foreign bribery offence as concerns both natural and legal persons. Efforts to enhance co-operation between Colombia’s financial intelligence unit (UIAF), fiscal authorities (DIAN) and law enforcement authorities are also expected to facilitate the conduct of foreign bribery investigations and prosecutions. The Working Group further welcomes the introduction of Bill 341/2020 before Colombia’s Parliament in October 2020, which should reinforce Colombia’s foreign bribery enforcement framework. Bill 341/2020 appears to have the potential to address a number of Phase 3 recommendations, in particular as concerns legal persons, including benefits for collaboration and confiscation of the proceeds of the bribery, co-operation between the Superintendency and other public entities, and the false accounting offence and corresponding sanctions. As of the time of adoption by the Working Group of the present summary and conclusions (10 December 2021), Bill 341/2020 was still undergoing the Parliamentary process, and was expected to be passed into law by end 2021. There was therefore insufficient time for the evaluation team and the

¹ The evaluation team for this Phase 3 two-year written follow-up evaluation of Colombia was composed of lead examiners from Chile (**Mr. Alejandro Litman**, Legal Advisor, Anti-Corruption Specialised Unit, Public Prosecutor’s Office) and Luxembourg (**Ms. Cindy Coutinho**, Attachée, Criminal and Judicial Affairs Department, Ministry of Justice) as well as members of the OECD Anti-Corruption Division (**Ms. France Chain**, Coordinator of the Phase 3 Follow-Up Evaluation of Colombia and Senior Legal Analyst, **Mr. Apostolos Zampounidis**, Legal Analyst and **Ms. Martha Monterrosa**, Legal Analyst).

Working Group to carry out an in-depth review of relevant provisions in their final form. In addition, shortly before the Working Group's discussions of Colombia's report, the evaluation team was disappointed to learn from Colombia that the chapter dedicated to the protection of whistleblowers had been removed from the bill. Furthermore, on 6 December, a new article 68 was introduced in Bill 341/2020 that would allow for sanctions against "legal representatives or members of any community organisation" for defamation or slander against public officials, former public officials or their family. If passed, this could hamper freedom of the press, as outlined by several Colombian media,² and – coupled with the absence of adequate whistleblower protection in Colombia – could become a major disincentive for reporting corruption, including foreign bribery. Colombia indicates that there are still several steps before final adoption of the bill and that the government will do everything in its power to ensure article 68 does not become law, including by calling on the Constitutional Court. The Working Group will follow up on all aspects of Bill 341/2020 relevant once it is passed into law.

3. In terms of other positive developments, the Working Group welcomes efforts to strengthen Colombia's anti-money laundering framework to combat foreign bribery, including the recognition in the National Anti-Money Laundering Policy of the linkages between foreign bribery and money laundering. It further commends Bancóldex for the significant steps taken over the past two years to put in place stronger measures to prevent and detect foreign bribery in officially supported export credits. Finally, the WGB welcomes Colombia's renewed active participation in the Working Group's meetings, law enforcement networks and other horizontal work.

4. Notwithstanding these positive achievements, the Working Group regrets that Colombia has not taken steps to address some of the Working Group's recommendations. In particular, no steps have been taken since Phase 3 to enhance safeguards and protect the independence of foreign bribery investigations and prosecutions. This, along with the absence of new concluded foreign bribery cases, raises the Working Group's concern. In addition, while initial steps have been taken to collect statistics on sanctions imposed for foreign bribery and related offences, the absence of any concluded foreign bribery case since Phase 3 makes it difficult to assess whether sanctions imposed in practice are sufficiently effective, proportionate and dissuasive. The Working Group further regrets the limited engagement of the PGO as concerns enforcement of foreign bribery cases, as well as its minimal participation in this two-year follow-up evaluation.

5. With respect to foreign bribery enforcement, at the time of Colombia's Phase 3 evaluation in 2019, the Working Group welcomed the proactive engagement by Colombian law enforcement authorities, in particular, the Superintendency of Corporations. In 2019, 20 preliminary foreign bribery investigations into legal persons had been opened by the Superintendency, of which 15 preliminary foreign bribery investigations have now been dismissed due to lack of grounds and 5 are still ongoing. As of end 2021, there appears to have been a decrease in enforcement: while the Superintendency continues to be fairly active in its enforcement efforts involving legal persons, there is very limited apparent progress with respect to cases involving natural persons. In addition to the reported 20 ongoing investigations in the Phase 3 report, the *Construction Company* case was closed by the Superintendency due to lack of merit before an indictment was issued. As a positive development, since 2019, the Superintendency opened six new preliminary foreign bribery investigations, four of which were dismissed and two of which are ongoing (one with preliminary inquiry – *indagación preliminar* –, prior to an indictment). The *Water Utility Company* case – already concluded at the time of Phase 3 – remains the Superintendency's only completed foreign bribery case resulting in sanction against a legal person. As concerns natural persons, the PGO has not reported any progress since Phase 3 – noting that, at the time, no foreign bribery case involving an individual had been prosecuted or concluded.

² See, for example, "Colombia Reports, 8 December 2021, [Colombia's congress approves media bans](#); El Pais, 7 December 2021, [Pese a polémica por artículo de censura a la prensa, fue aprobada la Ley Anticorrupción](#); and Pares, 7 December 2021, [El mico contra la libertad de prensa en Proyecto de Ley Anticorrupción](#).

6. In summary, based on Colombia's report, since Phase 3 in 2019:

- Concerning legal persons and proceedings by the Superintendency:
 - No further foreign bribery cases have been concluded with sanctions;
 - 7 foreign bribery investigations (6 preliminary investigations and 1 preliminary inquiry) are ongoing involving legal persons, 3 of which are included in the WGB's Matrix of foreign bribery cases³ [*Contracting Services Company, Aviation Company, Reinsurance Company* cases] and four, which are not.
 - 31 investigations have been discontinued due to no merit or competence.
- Concerning natural persons and proceedings by the PGO:
 - No foreign bribery cases have been concluded with sanctions;
 - Colombia is carrying out investigations into natural persons related to the *Construction Company, Contracting Services Company, Aviation Company* and the *Reinsurance Company* cases.
 - The PGO clarified that its investigation into natural persons related to the *Water Utility Company* case (already ongoing at the time of Phase 3, and concluded by the Superintendency where legal persons were concerned) was not a foreign bribery investigation but rather a domestic bribery case.

7. The Working Group's Summary and Conclusions with respect to specific Phase 3 recommendations are presented below. The summary and conclusions should be read in conjunction with the report prepared by Colombia, annexed to the present document.

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

- ◆ *Recommendation 1 – Not implemented:* The Working Group welcomes proposed amendments in Bill 341/2020, which appear to address the concerns raised by the Working Group concerning liability of legal persons for foreign bribery. The bill aims to clarify that benefits for collaboration would only apply if self-reports by legal persons are made prior to the Superintendency becoming aware of the misconduct by other sources, prior to investigations being carried out by another domestic or foreign authority, and are accompanied by appropriate remedial action. Notwithstanding this positive development, until the bill is passed into law and the final relevant provisions can be assessed by the Working Group, this recommendation remains not implemented.
- ◆ *Recommendation 2(a) – Not implemented:* As noted above in the summary of foreign bribery-related enforcement actions, no foreign bribery case has been concluded since Phase 3. Consequently, the Working Group is not in a position to assess whether sanctions imposed in practice against legal persons in foreign bribery cases are effective, proportionate and dissuasive. The Working Group nevertheless welcomes amendments introduced by Bill 341/2020, which would ensure that the sanction never be less than the benefit obtained or sought.
- ◆ *Recommendation 2(b) – Not implemented:* The Working Group recommended that Colombia adopt legislation to allow for confiscation of the proceeds of foreign bribery in the hands of legal persons, even in the absence of proceedings against a natural person. The Protocol of Exchange of Information between the Superintendency and the PGO is a welcome step, including the appointment of a representative from the Money Laundering and Asset Forfeiture Unit, to facilitate the sharing of information for the purpose of confiscation, but does not amount to the adoption of

³ The Matrix is a collection of foreign bribery allegations using public sources, such as the media. The inclusion of allegations in the Matrix does not prejudice the issue of whether the allegations are, in fact, an offence under any applicable law.

the necessary legislation. A proposed amendment in Bill 341/2020 would allow for imposition of a sanction against legal persons corresponding to the value of the benefit obtained or sought, in addition to the fine already available. The Working Group therefore encourages Colombia to proceed with the passing of this law.

- ◆ *Recommendation 3(a) – Fully implemented:* The Working Group welcomes the amendments to the 2019 MoU between the Superintendency and UIAF. The 2021 MoU now allows the UIAF to: (1) spontaneously disclose relevant foreign bribery-related financial information to the Superintendency, and (2) respond to requests by the Superintendency in the context of specific foreign bribery cases. Another positive step is the recognition in the National AML Policy (CONPES 4042 of 2021) of the linkages between foreign bribery and money laundering, and the importance of information exchange between the UIAF and the Superintendency for purposes of foreign bribery investigations against legal persons.
- ◆ *Recommendation 3(b) – Fully implemented, and converted to a follow-up:* The Working Group welcomes Colombia's efforts to provide training to investigators and prosecutors on the specificities of the foreign bribery offence, including trainings to the Criminal Investigations and Interpol Directorate, the Department of Financial Crimes, Special Directorate for Financial Investigations (DEIF), Corps of Technical Investigators (CTI) and the Tax and Customs Police (POLFA). Moreover, a guide on investigation of the foreign bribery offence was issued to virtually all officials in the PGO. The Working Group encourages the Superintendency and the PGO to continue their training efforts for investigators and prosecutors, and will follow up in the context of the next evaluation cycle to ensure that this training yields concrete results.
- ◆ *Recommendation 3(c) – Fully implemented and converted to a follow-up:* The Working Group welcomes Colombia's efforts since Phase 3 to establish a Committee to support the implementation of the MoU and Protocol between the PGO and the Superintendency with a view to facilitating exchange of information between the two bodies in specific foreign bribery cases. The Working Group welcomes the frequency and consistency of committee meetings in 2020 and 2021, as well as indications that the PGO and the Superintendency have exchanged information on eight alleged foreign bribery cases during this time. The Working Group will continue to follow up on the practical effectiveness of this mechanism in the context of Colombia's next evaluation cycle.
- ◆ *Recommendation 3(d) – Fully implemented:* The Working Group welcomes Colombia's National AML Policy (CONPES 4042 of 2021), which recognises the link between money laundering and corruption, as well as makes an express reference to combatting foreign bribery into a national strategy and policy document. Colombia's National AML policy will be implemented by a variety of government stakeholders. The national policy highlights some of the shortcomings identified by the Working Group during the Phase 3 evaluation. In particular, it promotes the fluid exchange of information between different entities to strengthen administrative investigations and sanctioning against legal and natural persons for foreign bribery by the Superintendency and the PGO.
- ◆ *Recommendation 3(e) – Not implemented:* The Working Group regrets that Colombia has not established further safeguards against any political interference in foreign bribery cases. In particular, Colombia has not taken any steps, either through policies, training or issuing clear criteria since Phase 3, to address the risk of politicisation of the appointment of the Prosecutor General and, in turn, the risk of direct intervention in individual foreign bribery proceedings by means of technical legal committees or the allocation of cases to individual prosecutors.
- ◆ *Recommendation 4(a) – Partially implemented:* In Phase 3, the unavailability of statistics on criminal, civil and administrative sanctions imposed in domestic and foreign bribery cases against natural and legal persons made it difficult to assess whether sanctions imposed in practice were sufficiently effective, proportionate, and dissuasive. The Superintendency now publishes on its

website detailed information on concluded cases against legal persons, including sanctions imposed. However, detailed statistics concerning sanctions imposed against natural persons were not provided.

- ◆ *Recommendation 4(b) – Partially implemented:* Colombia reports that the Delegate for Criminal Finance of the PGO has implemented a system to collect statistics on the use of confiscation, including in foreign bribery cases. However, no statistics could be provided since no foreign bribery cases to date have led to confiscation in Colombia.
- ◆ *Recommendation 4(c) – Partially implemented:* Colombia indicates that the PGO maintains an information system that keeps detailed statistics in relation to money laundering cases, including on sanctions, fines and asset seizures or confiscation. However, Colombia could not provide statistics specific to foreign bribery related money laundering cases, as none have been concluded.
- ◆ *Recommendation 4(d) – Partially implemented:* Colombia reports that the Specialised Directorate for the Investigation of Money Laundering in the Directorate for Financial Crime of the PGO has implemented a system to collect statistics on procedural fraud and falsification of private documents. While this is an encouraging step, Colombia has yet to provide supporting statistics.
- ◆ *Recommendation 4(e) – Partially implemented:* Colombia reports that the Superintendency initiated a process to aggregate historical direct MLA requests within its investigations against legal persons and has been able to collect updated MLA data from 2018 to December 2021. The Working Group welcomes these new efforts by the Superintendency to collect such data, and recognises that Law 1778/2016 allows the Superintendency to engage in direct MLA requests; however, concerns remain whether the Superintendency, as an administrative body, will be able to effectively solicit MLA and furthermore collect this data in a comprehensive manner, particularly since there appears to be no efforts by the PGO to collect comprehensive data on MLA requests in relation to foreign bribery cases for natural persons.

Recommendations for ensuring effective prevention, detection and reporting of foreign bribery

- ◆ *Recommendation 5(a) – Partially implemented:* The Working Group welcomes the many steps taken by Colombia to address the scope of Designated Non-Financial Business and Professions (DNFBPs) covered by AML reporting obligations and customer due diligence (CDD) obligations. The scope of non-financial entities covered by reporting obligations has increased since Phase 3, as have the CDD obligations, in particular related to PEPs and beneficial ownership, notably thanks to Decree 830 of 26 July 2021 and changes to the Basic Legal Circular of the Superintendency of Corporations (new Chapter X). Amendments relating to these topics have also been included in Bill 341/2020. While these are welcome steps, the Working Group's concerns remain in terms of the scope of coverage for individuals (lawyers and accountants) when they are not entities (law firms, accounting firms), given the high money laundering risk faced by these professions and the very limited number of professionals covered.
- ◆ *Recommendation 5(b) – Fully implemented:* The Working Group welcomes the numerous trainings and awareness-raising activities conducted by the Superintendency for compliance officers, administrators and the public since Phase 3 to provide guidance to reporting entities. Likewise, the Working Group welcomes the efforts of the UIAF to develop case typologies for the financial and non-financial sectors that specifically address identification of red flags for active foreign bribery.
- ◆ *Recommendation 6(a) – Not implemented:* Bill 341/2020 includes amendments to the Code of Commerce that would introduce a specific false accounting offence covering all types of omissions and falsifications prohibited under Article 8 of the Anti-Bribery Convention, as well as providing for

sanctions against legal persons and natural persons. The amendment will also increase the sanctions considerably with maximum fines being approximately USD 525 400 for natural persons and USD 26.27 million for legal persons. The Working Group welcomes this development. However, until the bill is passed into law and the final relevant provisions can be assessed by the Working Group, this recommendation remains not implemented.

- ◆ *Recommendation 6(b) – Not implemented:* The Working Group regrets that Colombia has not taken measures to adopt effective protection for auditors. Bill 341/2020 proposes to introduce whistleblower protection in both the private and public sectors (see below recommendation 9), but it is uncertain if the provisions contemplated would amount to effective protection for private sector auditors who report suspected acts of foreign bribery either within or outside the company.
- ◆ *Recommendation 6(c) – Fully implemented:* The Working Group welcomes the training initiatives conducted by the Superintendency for fiscal auditors since Phase 3, which include both in-person training and online materials. The widely disseminated online materials specifically address the practicalities around the reporting processes as well as the detection of foreign bribery red flags, which is a welcome development to promote the role and obligations of fiscal auditors.
- ◆ *Recommendation 7(a) – Not implemented:* As concerns the non-tax deductibility of bribes, Colombia has not taken any steps to sufficiently extend the statutory time limit during which a tax return may be re-examined. As at the time of Phase 3, the ordinary time period that tax authorities have to investigate is three years from the date of filing of the tax return (with the exception of transfer pricing).
- ◆ *Recommendation 7(b) – Fully implemented:* In order to put in place, the necessary mechanisms to inform DIAN of foreign bribery-related convictions concerning legal persons, the Superintendency and DIAN signed in 2021 a framework co-operation MoU relating to digital information exchange, with a complementary agreement pending to further define the scope of exchange. Furthermore, the PGO and DIAN share relevant information of foreign bribery-related convictions concerning natural persons through periodic working group meetings held between the two entities. Based on this information, DIAN reviews all tax crimes, including foreign bribery and whether bribes were impermissibly deducted.
- ◆ *Recommendation 7(c) – Partially implemented:* The above mentioned framework co-operation MoU includes plans for the provision of training to DIAN officials on foreign bribery red flags, and the first training was conducted by the Superintendency on 7 December 2021. Such training sessions, along with the circulation of an online training course in April 2020, are a welcome first step. The Working Group looks forward to broader and regular trainings of DIAN officials with a view to enhancing their capacity to detect foreign bribery red flags.
- ◆ *Recommendation 7(d) – Partially implemented:* As concerns the sharing of information from DIAN to Colombian law enforcement authorities, Colombia reports progress in communications between DIAN and the PGO: in particular, under Decree 1742/2020, DIAN is under obligation to provide foreign bribery-related information to the PGO and the entities conduct periodic working group meetings. Where the Superintendency is concerned, Bill 341/2020 would amend Law 1778/2016 and introduce a duty on DIAN to collaborate with the Superintendency in the detection, investigation and sanctioning of foreign bribery. The Working Group welcomes this development. However, until the bill is passed into law and the final relevant provisions can be assessed by the Working Group, this recommendation is considered only partially implemented.
- ◆ *Recommendation 8(a) – Partially implemented:* The Working Group welcomes the efforts by the Ministry of Foreign Affairs to include training on foreign bribery as part of the induction process for all officials posted abroad, and to publish on its website the Superintendency's guide on the fight

against foreign bribery. The Working Group encourages the Secretariat of Transparency also to take steps to raise the awareness of foreign bribery among Colombian public officials.

- ◆ *Recommendation 8(b) – Fully implemented:* Colombia’s Secretariat of Transparency has resumed successfully its role as the head of delegation to the Working Group. Colombia has participated actively in all Working Group meetings since Phase 3, as well as in surveys and activities conducted under the auspices of the Working Group, and ensured the participation of relevant authorities in the WGB Law Enforcement Officials meeting as well as other regional law enforcement meetings.
- ◆ *Recommendation 8(c) – Partially implemented:* The Working Group is encouraged by Colombia’s efforts to conduct awareness raising and training on foreign bribery, including the Superintendency’s initiative to provide awareness raising and training to the judiciary. These include educational material, courses, webinars and conferences for the private and public sector, and sessions for unions, companies, and the Chamber of Commerce. However, it does not appear that the professions that are concerned by the new reporting obligation under Law 1952/2019, and that were specifically identified for targeted training in Phase 3, in particular judicial employees, notaries and other authorities that administer justice, have participated in these awareness-raising initiatives. The Working Group considers that further efforts are therefore necessary in this regard.
- ◆ *Recommendation 8(d) – Partially implemented:* Colombia has made some efforts to increase the visibility and accessibility of its public channels for reporting foreign bribery. For instance, the Superintendency has promoted its reporting channel through its awareness-raising and training activities on foreign bribery and on its website. Colombia has also implemented an Inter-Institutional Transparency and Anti-corruption Network (RITA) to promote the creation and improvement of reporting channels within public entities, which includes reporting on foreign bribery. However, to date, Colombia has not received reports on foreign bribery, and it is unclear how the PGO is promoting awareness of its channel for reporting. Further efforts therefore appear necessary to promote the awareness and effectiveness of reporting channels for foreign bribery.
- ◆ *Recommendation 9 – Not implemented:* In Phase 3, the Working Group expressed serious concerns about the absence of whistleblower protection and the circumstances faced by whistleblowers in the country. Bill 341/2020 initially included provisions on whistleblower protection but regrettably, these were removed during the discussion of the bill in Parliament. This is Colombia’s third failed attempt since 2017 to legislate on whistleblower protection, and reinforces the Working Group’s concerns from Phase 2 and Phase 3 regarding whistleblower protection in the country.
- ◆ *Recommendation 10(a) – Not implemented:* Colombia reports that it is possible for public officials to access the debarment lists of multilateral financial institutions on the Colombian Anticorruption Portal (PACO) of the Secretariat of Transparency, but provides no concrete information on efforts to encourage public procurement authorities to make routine use of these lists, as per this recommendation. Similarly, there is no indication that Colombia has taken steps to encourage procurement authorities to consider using internal controls, ethics or compliance programmes, as also recommended by the Working Group under recommendation 10(a). Colombia reports that Bill 341/2020 will introduce internal controls, ethics and compliance programmes; notwithstanding this positive development, until the bill is passed into law and the final relevant provisions can be assessed by the Working Group, this recommendation remains not implemented.
- ◆ *Recommendation 10(b) – Partially implemented:* Concerning the reporting and recording of foreign bribery convictions and sanctions in a central system, Colombia reports that the Superintendency sends resolutions of foreign bribery cases concerning legal persons to the Chamber of Commerce (as was done in the *Water Utility Company* case) or to the Superintendency of Finance if it concerns a financial entity, with the sanction being reflected in the company’s certificate. Further, Colombia

reports that the Chamber of Commerce administers the Single Business and Social Registry (RUES), which aims to promote transparency of business through inquiries of fines and sanctions. In relation to natural persons under the jurisdiction of the PGO, Colombia did not indicate whether the responsible authorities have any policy in place similar to that of the Superintendency to ensure convictions and sanctions are adequately registered in an analogous centrally accessible system.

- ◆ *Recommendations 11(a), (c), (d) and (e), Fully implemented; Recommendation 11(b) – Partially Implemented:* Colombia's Development Bank, Bancóldex, which serves as Colombia's export credit agency, has significantly strengthened its efforts to prevent and detect foreign bribery in the transactions it supports. In particular, since 2020, Bancóldex has been active in raising the awareness of foreign bribery among its staff, intermediary banks, and other clients (11(a)). It has further started verifying that prospective clients do not appear on the debarment lists of international financial institutions. In case of such a listing, or where Bancóldex detects foreign bribery red flags through news and dubious transaction screening, this would trigger enhanced due diligence, and may be ground for exclusion from the selection process, or for declaring an event of default, in case such a listing occurs after the conclusion of the promissory note (11(c) and (d)). Bancóldex has included a standard default clause in this regard in the promissory notes concluded with intermediary banks and other clients (11(e)). However, Bancóldex still does not require from intermediary banks, and other clients to provide anti-corruption declarations i.e. to undertake that neither they, nor anyone acting on their behalf have engaged or will engage in bribery, and disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge or, within a five-year period preceding the application, have been convicted for foreign bribery. Despite assertions in Phase 3 that it would do so,⁴ Bancóldex now explains that this is not possible due to the nature of the promissory notes that it concludes. The Working Group welcomes steps taken by Bancóldex to require clients to respond to the Wolfsberg Questionnaire, which includes an anti-bribery chapter, but notes that this does not include a requirement to provide anti-corruption declarations, as recommended under 11(b).

Conclusions of the Working Group on Bribery

8. Based on these findings, the Working Group concludes that recommendations 3(a)-(d), 5(b), 6(c), 7(b), 8(b), 11(a), (c), (d) and (e) have been fully implemented, with recommendations 3(b) and (c) converted to follow-up issues; recommendations 4(a)-(e), 5(a), 7(c) and (d), 8(a), (c) and (d), 10(b), and 11(b) have been partially implemented; and recommendations 1, 2(a) and (b), 3(e), 6(a) and (b), 7(a), 9, and 10(a) have not been implemented. The Working Group invites Colombia to report back in writing within two years (i.e. by December 2023) on outstanding recommendations 1, 2(a) and (b), 3(e), 6(a) and (b), and 9 as well as on the status of foreign bribery enforcement and on any other relevant issues arising in particular from the passing into law of Bill 341/2020. As per the Phase 4 procedures (para. 60), which also apply to Phase 3, Colombia may ask for additional recommendations to be re-assessed at that time. The Working Group will continue to monitor follow-up issues as case law and practice develop. In particular, Colombia will inform the Working Group as soon as Bill 341/2020 is enacted into law, in the context of the Tour de Table in March 2022. Colombia will also report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

⁴ See Phase 3 report, para. 200.

Annex. Phase 3 Evaluation of Colombia: Two-Year Written Follow-Up Report by Colombia

Instructions

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

Name of country: COLOMBIA

Date of approval of Phase 3 evaluation report: 12 December 2019

Date of information: 30 August 2021 with additional information on 28 September and 4 November 2021

PART I: RECOMMENDATIONS FOR ACTION

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

Text of recommendation 1:

1. Regarding the liability of legal persons, the Working Group recommends that Colombia clarify that self-reporting (i) is possible only prior to the discovery of the misconduct, by providing original information to the Superintendence of Companies and (ii) should be accompanied by appropriate remedial action by the legal person. [Convention, Article 2].

* The evaluation schedule is based on the Phase 4 Two-Year Written Follow-Up Report Timetable set out in Annex 8 to the [Phase 4 Monitoring Guide](#).

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

As it has been reported by Colombia in the WGB meetings, the Bill 341 of 2020 on transparency and prevention of corruption that will be discussed in its second debate in the Senate (“Bill 341/2020”) proposes to include an amendment to article 19 of Law 1778 of 2016, aimed at ensuring that benefits for collaboration may only be granted, among other requirements set forth in said article, when the information disclosed is not previously known by the Superintendency of Corporations (“Superintendency”), nor has been communicated by other means, or the conduct has not been subject of any investigation by other national or foreign authorities. Additionally, self-reporting must be accompanied by appropriate remedial actions ordered by the Superintendency.

Relevant legal provisions from the Bill 341/2020:**Artículo 31. Modifíquese el artículo 19 de la Ley 1778 de 2016, el cual quedará así:**

Artículo 19. Beneficios por colaboración. La Superintendencia de Sociedades podrá conceder beneficios a participantes en las infracciones descritas en esta ley, siempre y cuando los mismos la pongan en conocimiento de la Superintendencia y colaboren oportunamente con la entrega de información y pruebas relacionadas con dicha conducta conforme a las siguientes reglas:

1. Los beneficios podrán incluir la exoneración total o parcial de la sanción. En todo caso, cualquiera sea la modalidad de exoneración, la Superintendencia deberá tener en cuenta los siguientes criterios para conceder dichos beneficios:
 - a. La calidad y utilidad de la información suministrada a la Superintendencia para el esclarecimiento de los hechos, para la represión de las conductas y para determinar la modalidad, duración y efectos de la conducta ilegal, así como la identidad de los responsables, su grado de participación y el beneficio que hubiera obtenido con ella.
 - b. La oportunidad en que la Superintendencia reciba la colaboración.
 - c. La información suministrada a la Superintendencia de Sociedades no ha sido previamente conocida por ella, o no ha sido difundida por otros medios, o la conducta no ha sido objeto de alguna investigación por otras autoridades nacionales o extranjeras.
 - d. La persona jurídica ha adoptado las acciones remediales o las medidas correctivas adecuadas que establezca la Superintendencia de Sociedades.
 - e. La exoneración total de la sanción podrá ser concedida siempre que de manera previa a que se hubiere iniciado la correspondiente actuación administrativa, la persona jurídica: (i) haya puesto en conocimiento de la Superintendencia, las infracciones de que trata esta ley y (ii) no se hayan ejercido las obligaciones y derechos que surgieron de un contrato originado en un negocio o transacción internacional conforme lo menciona esta ley, según sea el caso.
2. La exoneración parcial de la sanción, podrá ser concedida cuando la información haya sido entregada de manera posterior a la iniciación de la actuación administrativa. En todo caso, la disminución de la sanción, en lo que respecta a la multa, no podrá exceder del 50% de la misma.

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

Once the Bill 341/2020 becomes a law, Resolution No. 200-000816 of 2018, shall be amended in conformity. The Resolution will also include a preliminary negotiation phase to grant the collaboration benefits.

Text of recommendation 2(a):

2. Regarding sanctions and confiscation, the Working Group recommends that Colombia:
- a) Ensure that sanctions imposed in practice against legal persons for foreign bribery are effective, proportionate and dissuasive [Convention Article 3].

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

There have not been any concluded foreign bribery cases against legal persons since the Evaluation Phase 3. Therefore, it is not possible to assess in practice the effectiveness, proportionality, and dissuasiveness of the sanctions for legal persons for foreign bribery. This could only be assessed by analysing each specific sanction imposed in a concrete case of foreign bribery against legal persons. Due to the nature of this recommendation, we believe that it should become a follow-up.

Notwithstanding the foregoing, and considering the recommendation, in Bill 341/2020 it is proposed to include an amendment to article 5 of Law 1778 of 2016 on sanctions to legal persons, to add to the current fine, the greater of the benefit obtained or the benefit sought. Pursuant to Law 1778 of 2021, the establishment of the fine begins with the determination of a base fine that will be the initial reference within a process, after which, using the corresponding aggravating and mitigating factors, the final fine to be imposed on the legal person will be reached, to which the benefit obtained or sought will be added. Therefore, the fine would never be less than the benefit obtained or sought, making it more dissuasive.

Relevant legal provisions from the Bill 341/2020:

Artículo 30. Modifíquese el artículo 5 de la Ley 1778 de 2016, el cual quedará así:

Artículo 5°. Sanciones. La Superintendencia de Sociedades impondrá una o varias de las siguientes sanciones a las personas jurídicas que incurran en las conductas enunciadas en el artículo 2° de esta ley. La imposición de las sanciones se realizará mediante resolución motivada, de acuerdo con los criterios de graduación previstos en el artículo 7° de la presente ley:

1. Multa de hasta doscientos mil (200.000) salarios mínimos mensuales legales vigentes, a la que se le sumará el mayor valor entre el beneficio obtenido probado o pretendido. El Superintendente de Sociedades podrá ordenar a la persona jurídica sancionada que destine parte de la multa a la implementación o mejora de los programas de transparencia y ética empresarial.
2. Inhabilidad para contratar con el Estado colombiano por un término de hasta veinte (20) años. La inhabilidad para contratar con el Estado iniciará a partir de la fecha en que la resolución sancionatoria se encuentre ejecutoriada. Esta inhabilidad será impuesta a las personas jurídicas, de acuerdo con lo previsto en el artículo 8° de la Ley 80 de 1993 o la norma que la modifique o derogue.

3. Publicación en medios de amplia circulación y en la página web de la persona jurídica sancionada de un extracto de la decisión administrativa sancionatoria por un tiempo máximo de un (1) año. La persona jurídica sancionada asumirá los costos de esa publicación.
4. Prohibición de recibir cualquier tipo de incentivo o subsidios del Gobierno, en un plazo de cinco (5) años.

Parágrafo. Una vez ejecutoriado el acto administrativo por medio del cual se impongan las sanciones de que trata esta ley, este deberá inscribirse en el registro mercantil de la persona jurídica sancionada.

La Superintendencia de Sociedades remitirá el acto administrativo a la Cámara de Comercio del domicilio de la persona jurídica o a la Superintendencia Financiera de Colombia, según sea el caso, para su inscripción en el registro correspondiente a fin de que esta información se refleje en el correspondiente certificado de existencia y representación legal.

En el caso de personas que no tienen la obligación de tener el registro mercantil que llevan las Cámaras de Comercio, el acto administrativo sancionatorio se remitirá al ente de control que los supervisa o vigila, con el fin de que lo publique en su página web. La publicación deberá realizarse en un aparte que se destine exclusivamente a la divulgación de los nombres y número de identificación tributaria de las personas que hayan sido sancionadas de conformidad con esta ley.

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

N/A

Text of recommendation 2(b):

2. Regarding sanctions and confiscation, the Working Group recommends that Colombia:
 - b) Introduce the necessary legislation to allow the Superintendence of Corporations to request the forfeiture of the bribe and proceeds of foreign bribery, or property the value of which corresponds to that of such proceeds or introduce monetary sanctions of comparable effect against legal persons, even in the absence of prosecution or conviction of a natural person [Convention Article 3.3].

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

Bill 341/2020 includes an amendment to article 5 of Law 1778 of 2016 on sanctions to legal persons consisting of adding a confiscatory equivalent component to the fine for the conduct of foreign bribery, equal to the greater of the benefit obtained or the benefit sought.

In Colombia, the law of extinction of property rights, implemented by law 1708 of 2014, corresponds to a patrimonial action that seeks to extinguish the property of people who have participated in illicit activities, where the ownership of the property is declared in favor of the State, by judgment and without compensation to the affected party.

Law 1708 of 2014, especially in articles 1, 17 and 18, clearly establishes that it is independent of the procedure against the natural and legal person, and is appropriate for any crime, even when it goes against public morality.

“(…)

ARTICLE 1. DEFINITIONS. For the interpretation and application of this law, the following definitions will be considered: 1. Affected. Person who claims to be the owner of any right over the property that is the subject of the domain extinction procedure, with legitimacy to go to the process. 2. Illegal Activity. All those classified as criminal, independent of any declaration of criminal responsibility, as well as any activity that the legislator considers capable of applying this law for deteriorating social morality. 3. Assets. All those that are susceptible of economic valuation, movable or immovable, tangible, or intangible, or those on which a right of patrimonial content may fall.

(…)

ARTICLE 17. NATURE OF THE ACTION. The action for the extinction of ownership referred to in this law is of a constitutional, public, jurisdictional, direct nature, of patrimonial nature and content, and will proceed on any property, regardless of who has it in their power or who has it purchased.

ARTICLE 18. AUTONOMY AND INDEPENDENCE OF THE ACTION. This action is different and autonomous from the criminal one, as well as from any other, and independent of any declaration of responsibility. In no case will the prejudicially proceed to prevent a sentence from being pronounced, or incidents other than those provided for in this law”.

(…)”.

Although it is not a confiscation in constitutional terms, it does have the same effects. This law allows to dispose of the confiscation, for the facts that are related to the crime of foreign bribery.

For purposes of sharing information that might be useful to open an investigation for asset forfeiture, pursuant to the Protocol of Exchange Information between the PGO and the Superintendency dated 2 December 2019, on 27 July 2021, a delegate from the Money Laundry and Asset Forfeiture Unit of the PGO was designated to attend the bi-monthly Coordination and Monitoring Committee. This in accordance with the PGO’s obligation set forth in the Protocol to carry out the asset forfeiture investigations related to foreign bribery when requirements are met. The designated delegate attended its first meeting of the Coordination and Monitoring Committee on 12 August 2021.

Relevant Legal Provisions from the Bill 341/2020:

Artículo 30. Modifíquese el artículo 5 de la Ley 1778 de 2016, el cual quedará así:

Artículo 5°. Sanciones. La Superintendencia de Sociedades impondrá una o varias de las siguientes sanciones a las personas jurídicas que incurran en las conductas enunciadas en el artículo 2° de esta ley. La imposición de las sanciones se realizará mediante resolución motivada, de acuerdo con los criterios de graduación previstos en el artículo 7° de la presente ley:

1. Multa de hasta doscientos mil (200.000) salarios mínimos mensuales legales vigentes, a la que se le sumará el mayor valor entre el beneficio obtenido probado o pretendido. El Superintendente de Sociedades podrá ordenar a la persona jurídica sancionada que destine parte de la multa a la implementación o mejora de los programas de transparencia y ética empresarial.
2. Inhabilidad para contratar con el Estado colombiano por un término de hasta veinte (20) años. La inhabilidad para contratar con el Estado iniciará a partir de la fecha en que la resolución sancionatoria se encuentre ejecutoriada. Esta inhabilidad será impuesta a las personas jurídicas, de acuerdo con lo previsto en el artículo 8° de la Ley 80 de 1993 o la norma que la modifique o derogue.
3. Publicación en medios de amplia circulación y en la página web de la persona jurídica sancionada de un extracto de la decisión administrativa sancionatoria por un tiempo máximo de un (1) año. La persona jurídica sancionada asumirá los costos de esa publicación.

4. Prohibición de recibir cualquier tipo de incentivo o subsidios del Gobierno, en un plazo de cinco (5) años.

Parágrafo. Una vez ejecutoriado el acto administrativo por medio del cual se impongan las sanciones de que trata esta ley, este deberá inscribirse en el registro mercantil de la persona jurídica sancionada.

La Superintendencia de Sociedades remitirá el acto administrativo a la Cámara de Comercio del domicilio de la persona jurídica o a la Superintendencia Financiera de Colombia, según sea el caso, para su inscripción en el registro correspondiente a fin de que esta información se refleje en el correspondiente certificado de existencia y representación legal.

En el caso de personas que no tienen la obligación de tener el registro mercantil que llevan las Cámaras de Comercio, el acto administrativo sancionatorio se remitirá al ente de control que los supervisa o vigila, con el fin de que lo publique en su página web. La publicación deberá realizarse en un aparte que se destine exclusivamente a la divulgación de los nombres y número de identificación tributaria de las personas que hayan sido sancionadas de conformidad con esta ley.

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

N/A

Text of recommendation 3(a):

3. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

a) Establish appropriate mechanisms for co-operation and co-ordination between the Superintendence of Companies and Colombia's financial intelligence unit (the UIAF) to ensure all suspicions of foreign bribery or related offences can be effectively investigated by the Superintendency [Convention, Articles 2 and 5].

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

The National AML Policy- CONPES 4042 of 2021 recognizes the link between money laundering and corruption and in order to specifically fight against foreign bribery and other conducts, it is of mayor relevance that the UIAF, provides the Superintendency with relevant and timely information on alleged foreign bribery and other corruption conducts, and that there is a fluid exchange of information that may serve as a guiding criteria for the administrative investigations and sanctioning against legal persons for foreign bribery by the Superintendency.

The Superintendency and the UIAF have been negotiating an amendment to the MoU, dated 17 May, 2019 which purpose is the co-operation and sharing of information between the two entities, to prevent and fight foreign bribery. The amendment aims to:

- (i) Allow the UIAF to require information related to the investigations on foreign bribery carried out by the Superintendency;
- (ii) Allow spontaneous disclosure of relevant financial intelligence information related to alleged acts of foreign bribery by the UIAF to the Superintendency;

- (iii) Allow, upon formal request by the Superintendency, the supply by UIAF of relevant financial intelligence information on foreign bribery cases related to investigations carried by the Superintendency, as well as provide collaboration to request information to other financial intelligence units through Egmont Group, and
- (iv) Establish quarterly committees to exchange information on foreign bribery cases and to develop a strategic study on foreign bribery, including possible red flags and typologies.

Additionally, within the Colombian AML/CFT supervisory framework, since December 2020, the UIAF has provided to the Superintendency, as responsible for the AML/CFT supervision of registered companies, quarterly reports on frequency of suspicious activity reports of companies, whereby, among others, it is discriminated the number of reports related to foreign bribery.

The UIAF, within the Colombian AML/CFT supervisory framework, has informed that there are not currently reports on suspicious activities indicating conducts of foreign bribery. It is scheduled on 27 August 2021, a meeting of the committee to discuss and verify whether there are reports on suspicious activities related to foreign bribery.

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

Currently, there is an ongoing signing process of an amendment to the MoU dated 17 May 2019, between the UIAF and Superintendency to specify the co-operation and exchange of information between these two entities.

Text of recommendation 3(b):

3. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

b) Provide training to investigators and prosecutors on the specificities of the foreign bribery offence [Convention Article 5 and Commentary 27; 2009 Recommendation II, III(i), V and Annex I.D].

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

Within the PGO, it was socialized with all the officials and through the Communications Department, a guide for the investigation of the crime of foreign bribery. During 2021, the Superintendency provided training on the detection and investigation of foreign bribery of legal persons to (i) the Criminal Investigations and Interpol Directorate (*Dirección de Investigación Criminal e Interpol – DIJIN*) on 29 July, which was addressed to 45 judicial police officers investigators, and (ii) the Department of Financial Crimes (*Unidad de Finanzas Criminales*) (which covers foreign bribery, money laundry and asset forfeiture) in 4 August, addressed to 85 prosecutors.

On 4 August 2021, the Superintendency amended its internal guide on foreign bribery investigations addressed to investigators and law enforcement officials within the Foreign Bribery and Other Crimes Investigations Group and to officers of the Security and Forensic Informatics Group. It includes criteria on the detection of foreign bribery and guidelines on the way administrative visits to legal persons with foreign bribery risk should take place (inspector's activities prior, during and after the administrative visit). It also includes the support from the Security and Forensic Informatics Group and the application of protocols when collecting information or content from IT equipment to guarantee the chain of custody of the evidence.

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

The Superintendency has approached the Corps of Technical Investigators (*Cuerpo Técnico de Investigación- CTI*) and the Tax and Customs Police (*Policía Fiscal y Aduanera- POLFA*) in order to provide them with training on foreign bribery of legal persons.

Text of recommendation 3(c):

3. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

c) Take further steps to ensure that the PGO and the Superintendency of Corporations effectively and proactively exchange information in foreign bribery cases [Convention Article 5 and Commentary 27; 2009 Recommendation II, III(i), V and Annex I.D].

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

As made known in the country's last Phase 3 Report, the PGO and the Superintendency has signed a memorandum of understanding for co-operation in foreign bribery investigations and its corresponding amendments, as well as the Protocol of Exchange of Information.

Under the terms of the aforementioned MoU and Protocol, during 2020 and 2021, the Coordination and Monitoring Committee with representatives of the Superintendency and the PGO have held several meetings to facilitate the exchange of information and monitoring of foreign bribery cases, in the following dates:

| # of Meetings of Coordination and Monitoring Committee | Date |
|--|------------|
| 1 | 31/01/2020 |
| 2 | 26/02/2020 |
| 3 | 13/03/2020 |
| 4 | 02/09/2020 |
| 5 | 27/10/2020 |
| 6 | 28/02/2021 |
| 7 | 12/03/2021 |
| 8 | 18/03/2021 |
| 9 | 22/04/2021 |
| 10 | 27/05/2021 |
| 11 | 03/06/2021 |
| 12 | 08/07/2021 |
| 13 | 16/07/2021 |
| 14 | 12/08/2021 |

In these meetings and during 2020 and 2021, the Superintendency has exchanged information with the PGO in relation to 7 allegedly foreign bribery cases. On the other hand, the PGO has exchanged information with the Superintendency of 1 allegedly foreign bribery case that led to the opening of a preliminary investigation by the Superintendency in October 2020.

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

The Superintendency and the PGO will continue to assist to the meetings of the Coordination and Monitoring Committee in accordance with the MoU and Protocol.

Text of recommendation 3(d):

3. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

d) Adequately address foreign bribery issues in law enforcement authorities' anti-corruption policy and strategy documents [Convention Article 5 and Commentary 27; 2009 Recommendation II, III(i), V and Annex I.D].

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

Colombia in its National AML Policy- CONPES 4042 of 2021 recognizes the link between money laundering and corruption and in order to fight against foreign bribery, the public policy established the importance of the exchange of relevant and timely information on possible foreign bribery and other behaviours from the UIAF to the Superintendency of Corporations. The latter, so that there is a fluid exchange of information that may serve as administrative investigations and sanctioning against legal and natural persons for foreign bribery by the Superintendency and the PGO.

Taking into account the recommendations of the Phase 3 evaluation of the Working Group on Bribery (WGB), Colombia introduced in the public policy the link between money laundering and foreign bribery.

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

N/A

Text of recommendation 3(e):

3. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:

e) Establish clear safeguards against any political interference in foreign bribery cases, with a view to ensuring that foreign bribery investigations and prosecutions cannot be influenced by considerations prohibited under Article 5 of the Convention [Convention Article 5 and Commentary 27; 2009 Recommendation II, III(i), V and Annex I.D].

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

N/A

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

As said in Colombia's Phase 3 report, regarding that individual prosecutors may be subject to political influence, through their hierarchical subordination to the Prosecutor General, given the modalities for her/his appointment, this influence may be exerted through two main mechanisms: technical-legal committees that may intervene in specific cases, and where the office of the Prosecutor General may be represented; and the Prosecutor General's competence to allocate or reallocate cases to individual prosecutors.

Technical-legal committees are regulated by Decree-Law 16 of 2014, partially modified by Decree-Law 898 of 2017, and Prosecutor General Resolution 1053 of 2017. Their purpose is to "*review situations and cases and take actions to ensure the effective and efficient conduct of criminal investigations*" (Decree-Law 16 of 2014). They are defined as a mechanism to support, follow up, assess and monitor criminal investigations in order to ensure the unity of management and hierarchy within the PGO, without prejudice to the autonomy and independence of prosecutors (Resolution 1053).

Committees may be convened by the Prosecutor General, the Deputy Prosecutor General or Directors of the PGO at any stage of the case. The prosecutor in charge of a case may ask the relevant Director to convene a committee, but the Director retains discretion over such decision. Participants are designated by the convener. The Prosecutor General and the Deputy Prosecutor General may designate an official to participate in any committee. A committee convened by the Prosecutor General or the Deputy Prosecutor General can overrule a decision by a previous committee.

Decisions are taken by a simple majority vote. The prosecutor is always invited to take part in the committee but his/her presence is not required for a quorum to be met. Where the prosecutor in charge of the case disagrees with the committee's decision, he/she may submit a written request to reconsider the case to the Prosecutor General. A different committee is then be set up and called to vote on the matter, informed by the prosecutor's request and supporting arguments. The second committee's decision cannot be appealed. A written report is always prepared after any committee meeting. It is however confidential and cannot in any case be disclosed to a third party. The PGO indicates that any type of decision may be taken by committees, including applying the principle of opportunity, or referring a person to trial.

While committees do decide to apply the principle of opportunity or file a case (a decision that is not reviewed or subject to appeal), they most frequently decide to prosecute, refer to trial or request the collection of additional evidence. A committee has never decided to request the extinction of an investigation.

Allocation of cases to individual prosecutors. Cases are automatically and randomly assigned to specific prosecutors, taking into account objective criteria, including the principle of speciality (article 3 of Prosecutor General Resolution 985 of 2018). A case may however "freely" be assigned or reassigned by the Prosecutor General by means of a reasoned order, which may not be appealed (article 253(1) of the Constitution, article 116(2) of Law 906 of 2004, article 115(4) of Law 600 of 2000, article 4(3) and (4) of Decree-Law 16 of 2014, partially modified by Decree-Law 898 of 2017).

Text of recommendation 4(a):

4. Regarding statistics, the Working Group recommends that Colombia:
- a) Maintain detailed statistics on the criminal, civil and administrative sanctions imposed for domestic and foreign bribery against natural and legal persons in order to assess whether they are sufficiently effective, proportionate and dissuasive [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D].

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

The sanctions for foreign bribery imposed against legal persons by the Superintendency are published on the entity's website at the following link, , with more than 3.420 views up to date: https://www.supersociedades.gov.co/delegatura_aec/Paginas/Decisiones_en_firme.aspx.

Within the PGO, 5 cases have been initiated for the crime of foreign bribery in the PGO and, at the same time, the Delegate of Criminal Finance of the PGO is keeping the statistics of the ongoing cases to monitor the processes that are carried out for the crime of foreign bribery, as well as the decisions related to the confiscation of assets that are affected within these actions. Contrary to the Superintendency data, these statistics are not public.

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

As more foreign bribery cases against legal persons are concluded with sanctions, the statistics will be constructed.

Text of recommendation 4(b):

4. Regarding statistics, the Working Group recommends that Colombia:
- b) Maintain detailed statistics on the use of confiscation against natural and legal persons [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D].

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

The Delegate for Criminal Finance of the PGO has implemented the corresponding statistics to monitor the processes that are carried out for the crime of foreign bribery, as well as the decisions related to the confiscation of assets that are affected within these actions.

This means that the Delegate of Criminal Finance of the PGO has implemented a system that gathers the statistics specifically related to the monitoring of foreign bribery cases.

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

N/A

Text of recommendation 4(c):

4. Regarding statistics, the Working Group recommends that Colombia:
- c) Maintain detailed statistics on sanctions imposed for foreign bribery-related money laundering [Convention Article 7];

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

As stated by Colombia in its Phase 3 Report, the PGO's information systems keep detailed statistics in relation to money laundering cases, including on sanctions, fines and asset seizure or confiscation. Additionally, the statistics on foreign bribery have been updated in accordance with this recommendation.

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

N/A

Text of recommendation 4(d):

4. Regarding statistics, the Working Group recommends that Colombia:
- d) Maintain detailed statistics on the enforcement of the provisions against false accounting, including sanctions imposed [Convention Article 8].

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

Considering that false accounting is not a crime in Colombia, the Specialized Directorate for the investigation of the crime of money laundering of the Directorate of the Financial Crime PGO has implemented the statistics corresponding to procedural fraud and falsification of private document.

However, in the bill on transparency and prevention of corruption that is in legislative process in the Congress of the Republic, an amendment to article 57 of the Commercial Code was proposed to clarify that false accounting it's not possible and doing so will have a commercial sanction for violation of the prohibition of trade books.

Relevant Legal Provisions from the Bill 341/2020:**Article 27. Modify article 57 of the Commercial Code, which will read as follows:**

Article 57. Prohibitions on trade books. In the trade books it is prohibited:

- Alter in the entries the order or the date of the operations to which they refer;
- Leave spaces that facilitate collations or additions in the text of the entries or after them;
- Make leading, scratches or corrections in the seats. Any error or omission will be saved with a new entry on the date it is noticed;
- Delete or strike out all or part of the entries;
- Tear off sheets, alter their order or mutilate books, or alter electronic files;
- Create accounts in the accounting books that do not have the corresponding vouchers and supports;

- Failure to enter the operations carried out in the accounting books;
- Keeping double accounting, that is, keeping two or more equal books in which, the same operations are recorded differently, or when there are different receipts for the same acts;
- Register in the accounting books improperly operations, non-existent expenses or liabilities without the correct identification;
- Use false documents to support accounting, and
- Refrain from disclosing items in the financial statements, without due correspondence with the accounts recorded in the accounting books.

Article 28. Modify article 58 of the Commercial Code, which will read as follows:

Article 58. Sanctions for violations of the prohibitions on trade books, the obligations of the merchant and others. Without prejudice to the penalties and sanctions established in special regulations, the violation of the obligations, and prohibitions established in articles 19 and in Chapter I of Title IV of Book I of the Commercial Code, or failure to supply the information required by the authorities in accordance with current regulations, or failure to comply with the prohibition to engage in trade, profession or trade, proffered by a competent judicial authority, will be sanctioned with a fine of up to two thousand (2.000) current legal monthly minimum wages, if it is natural persons and a hundred thousand (100.000) current legal monthly minimum wages in the case of legal persons, in accordance with the provisions of article 50 of Law 1437 of 2011 or the regulations that modify or add it.

The sanction will be imposed by the Superintendency of Corporations or the corresponding inspection, surveillance and control entity, as the case may be, ex officio or at the request of any person.

In the event that a person who has been sanctioned by judicial authority with the disqualification from exercising the trade, profession or trade, is exercising said activity through a commercial establishment, in addition to the fine established in the previous paragraph, the Superintendency of Corporations or the corresponding inspection, surveillance and control entity, as the case may be, ex officio or at the request of any person, will order the suspension of commercial activities carried out in the establishment, for a term of up to two months. In case of recidivism, it will order the definitive closure of the commercial establishment.

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

N/A

Text of recommendation 4(e):

4. Regarding statistics, the Working Group recommends that Colombia:
 - e) Collect comprehensive data on MLA, including in relation to foreign bribery cases [Convention Article 9].

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

N/A

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

The Superintendency is in the process of collecting all the historical data related to direct MLA requests to foreign authorities regarding foreign bribery cases of legal persons pursuant to article 24 of Law 1778, to have some sort of statistics or organized information.

Text of recommendation 5(a):

5. Regarding money laundering, the Working Group recommends that Colombia:

a) Align the scope of professionals covered by AML preventive measures, as well as customer due diligence obligations, including in relation to PEPs and beneficial owners, with the Financial Action Task Force Recommendations [Convention Article 7; 2009 Recommendation III(ii)].

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

Since 2020, taking into account your recommendations and FATF standards, the following measures were implemented:

The concept of PEP was adapted to the FATF standards with the issuance of Decree 830 of 26 July 2021 by which some articles were modified and added to Decree 1081 of 2015 in relation to the regime of Politically Exposed Persons ("Decree 830/21"). The Colombian Government expanded the obligations and the public list of Politically Exposed Persons (PEP) in the country, with the aim of strengthening the measures that combat money laundering, terrorist financing and corruption by public servants.

This new Decree 830 establishes that the Politically Exposed Persons must also declare the names and identification of the people with whom they have a conjugal partnership, in fact, or in law; the names and identification of their relatives up to the second degree of consanguinity, first affinity and first civil; the existence of financial accounts in a foreign country; and the names and identification of the legal or natural persons or trusts.

In addition, by the AML / CFT regulations of the Financial Superintendence, *Superintendencia Solidaria*, DIAN, MinTIC, Coljuegos and Superintendency, applicable to financial institutions and Designated Non-Financial Businesses and Professions - DNFBP- includes FATF standards regarding PEPs.

As to the principle to conduct customer due diligence, it was included as a legal obligation in Bill 341/2020. In addition, the supervisor's AML / CFT regulations (*Superintendencia Solidaria* and the Superintendency) were modified to adapt the CDD obligation pursuant to FATF Recommendations.

By means of article 4 of Law 2155 of 2021, the Social Investment Law, the definition of beneficial owners was included. Also, in the Bill 341 of 2021, we will include the due diligence principle.

Also, UIAF has developed the identification and systematization of the typologies of the Financial and DNFBP sectors, including a typology of foreign bribery which is included in the compilation document of AML / CFT typologies of the year 2020. Additionally, to this date, the supervisors' pact has been fully developed, in which training, forums, events and feedback on matters related to the AML / CFT system have been carried out.

Furthermore, the Superintendency issued the External Circular 100-00016 of 24 December 2020 (partially modified by External Circulars 100-000004 of 9 April 2021 and 100-000015 of 24 September 2021), which modifies Chapter X of the Basic Legal Circular of the Superintendency (hereinafter, the “New Chapter X”), which establishes a Comprehensive Regime of Self-control and Risk Management of ML / FT / PF (including the obligation to have a Comprehensive Self-control and Risk Management System of ML / FT / PF- SAGRILAFT or to comply with a Regime of Minimum Measures) and adjusts the AML / CFT / CPF regulation applicable to DNFBPs supervised by said entity.

This new regulation modifies the thresholds to include more supervised companies, including more DNFBP companies, obliged to AML / CFT measures, going from having 1,376 obliged companies in 2020 to approximately 7,700 obliged companies in 2021, of which approximately 2,600 correspond to DNFBP companies supervised by the Superintendency, compared to the 96 DNFBPs obliged in 2017 (GAFILAT, 2018, p. 102).

The New Chapter X includes, among other obligations, the application of counterparty due diligence measures, including an intensified due diligence for PEP and beneficial owner identification, in accordance with the FATF Recommendations.

Relevant Legal Provisions from the Bill 341/2020:

Article 19. Principle of due diligence. The State Entity and the natural person, legal person or structure without legal personality, that has the obligation to implement a system of prevention, management or administration of the risk of money laundering, financing of terrorism and proliferation of weapons or that have the obligation to deliver information to the Sole Registry of Final Beneficiaries, must carry out due diligence measures that allow, among other purposes, to identify the final beneficiary, taking into account at least the following criteria:

1. Identify the natural person, legal person or structure without legal personality with which the legal business or state contract is celebrated.
2. Identify the final beneficiary and the ownership and control structure of the legal person or structure without legal personality with which the legal business or state contract is celebrated and, take reasonable measures to verify the information reported.
3. Request and obtain information that allows knowing the objective that is intended with the legal business or the state contract. When the state entity is the contractor, it must obtain the information that allows understanding the contractor's corporate purpose.
4. Carry out the due diligence of the legal business or state contract, examining the transactions carried out throughout that relationship to ensure that the transactions are consistent with the knowledge of the person or structure with which the legal business is conducted or the state contract, its business activity, risk profile and source of funds.

The person obliged to comply with the due diligence principle of this article must keep the information provided by the other party updated and verify that the payments meet the obligations agreed in the legal business or the state contract.

Paragraph 1. Within the six (6) months following the issuance of this law, the authorities of the executive branch that exercise inspection, surveillance and control functions over the subjects obliged in this article, will define the specific conditions that must consider their supervised or supervised to advance the due diligence process. Failure to comply with the principle of due diligence and conservation and updating of information will be sanctioned by each authority, considering their corresponding sanctioning regimes.

Paragraph 2. The full identification of the natural persons and legal entities referred to in article 27 of Law 1121 of 2006, is fulfilled as described in this article.

Paragraph 3. Those obliged to comply with this article must keep the information obtained in application of the principle of due diligence during the time that the legal business or state contract lasts, and at least during the following five (5) years counted from 1 January of the following year in which the legal business or state contract is terminated, or the occasional transaction is carried out. When the legal person, structure without legal personality or state entity is liquidated, the liquidator must keep the information obtained in application of the principle of due diligence for at least the following five (5) years as of 1 January of the following year to liquidation.

Paragraph 4. Failure to comply with the provisions of this article will entail the respective sanctions provided for by each of the authorities that exercise inspection, surveillance, and control functions for those obliged to comply with them.

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

N/A

Text of recommendation 5(b):

5. Regarding money laundering, the Working Group recommends that Colombia:
 - b) Provide adequate guidance and training to reporting entities on identifying and reporting active (foreign) bribery [Convention Article 7; 2009 Recommendation III(ii)].

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

The Superintendency has conducted 36 trainings related to the risk of AML/CFT/CPF (including the obligation to report suspicious transactions- STR- to the UIAF) during 2020 and 2021, addressed to 4.403 persons (including compliance officers, administrators, and the public), of which 20 have been on the New Chapter X, addressed to more than 3.532 persons. During 2020 and 2021, the Superintendency has responded to 184 queries on the prevention and mitigation of ML/FT/PF risk. Additionally, the Superintendency, on 16 February 2021, issued a document on “Frequently Asked Questions on Chapter X of Basic Legal Circular No. 100-00005 of 2017, integrally amended by External Circular No. 100-000016 of 2020 - AML/CFT/CPF Comprehensive Self-control and e Risk Management Regime and report of suspicious transactions to the UIAF (2021)”, with more than 3.200 views to date. In February 2021, the Superintendency launched a virtual course on AML/CFP/CPF which has had more than 40.100 views up to date.

Furthermore, the Superintendency during 2020 and up to date has carried out 14 awareness- raising activities on the prevention and identification of foreign bribery of legal persons and compliance programs.

Notwithstanding the STR obligation, the Superintendency in all its awareness- raising activities on foreign bribery of legal persons, promotes its reporting channel. Likewise, in the Superintendency's Educational Material (Virtual Course on Foreign Bribery, Info- graphic on the Superintendency's Role regarding Foreign Bribery, Practical Guide to Understand the Fight against Foreign Bribery) a link to the reporting channel is included.

Moreover, UIAF has developed the identification and systematization of the typologies of the Financial and DNFBP sectors, including typologies of foreign bribery, which were included in the compilation document of AML / CFT typologies of the year 2020.

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

The Superintendency will continue providing adequate guidance and training on AML/CFT/CPF and on the identification and reporting of foreign bribery as STR.

Text of recommendation 6(a):

6. Regarding accounting requirements, external audit and internal company controls, the Working Group recommends that Colombia:

a) Ensure that all omissions and falsifications listed in Article 8.1 of the Convention are subject to effective, proportionate and dissuasive sanctions, including for legal persons [Convention Article 8].

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

Bill 341/2020 included an amendment to (i) article 57 of the Commercial Code to include the prohibition of all types of accounting conducts prohibited under article 8.1 of the Convention and to (ii) article 58 of the Commercial Code to increase the sanctions (fines) applicable to legal persons for said inappropriate accounting conducts.

Relevant Legal Provisions from the Bill 341/2020:

Article 27. Modify article 57 of the Commercial Code, which will read as follows:

Article 57. Prohibitions on trade books. In the trade books it is prohibited:

- Alter in the entries the order or the date of the operations to which they refer;
- Leave spaces that facilitate collations or additions in the text of the entries or after them;
- Make leading, scratches or corrections in the seats. Any error or omission will be saved with a new entry on the date it is noticed;
- Delete or strike out all or part of the entries;
- Tear off sheets, alter their order or mutilate books, or alter electronic files;
- Create accounts in the accounting books that do not have the corresponding vouchers and supports;
- Failure to enter the operations carried out in the accounting books;
- Keeping double accounting, that is, keeping two or more equal books in which, the same operations are recorded differently, or when there are different receipts for the same acts;
- Register in the accounting books improperly operations, non-existent expenses or liabilities without the correct identification;
- Use false documents to support accounting, and
- Refrain from disclosing items in the financial statements, without due correspondence with the accounts recorded in the accounting books.

Article 28. Modify article 58 of the Commercial Code, which will read as follows:

Article 58. Sanctions for violations of the prohibitions on trade books, the obligations of the merchant and others. Without prejudice to the penalties and sanctions established in special regulations, the violation of the obligations, and prohibitions established in articles 19 and in Chapter I of Title IV of Book I of the Commercial Code, or failure to supply the information required by the authorities in accordance with current regulations, or failure to comply with the prohibition to engage in trade, profession or trade, proffered by a competent judicial authority, will be sanctioned with a fine of up to two thousand (2.000) current legal monthly minimum wages, if it is natural persons and a hundred thousand (100.000) current legal monthly minimum wages in the case of legal persons, in accordance with the provisions of article 50 of Law 1437 of 2011 or the regulations that modify or add it.

The sanction will be imposed by the Superintendency of Corporations or the corresponding inspection, surveillance and control entity, as the case may be, ex officio or at the request of any person.

In the event that a person who has been sanctioned by judicial authority with the disqualification from exercising the trade, profession or trade, is exercising said activity through a commercial establishment, in addition to the fine established in the previous paragraph, the Superintendency of Corporations or the corresponding inspection, surveillance and control entity, as the case may be, ex officio or at the request of any person, will order the suspension of commercial activities carried out in the establishment, for a term of up to two months. In case of recidivism, it will order the definitive closure of the commercial establishment.

If no action has been taken to implement recommendation 6 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N/A

Text of recommendation 6(b):

6. Regarding accounting requirements, external audit and internal company controls, the Working Group recommends that Colombia:

b) Ensure that auditors making reports under article 32 of Law 1778 of 2016 are protected from legal actions by companies [2009 Recommendation III(v) and X.B].

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

As indicated in our oral report in June 2021, the Colombian government was promoting a Bill which included whistleblower protection. However, in that moment, the situation was not favourable with this topic in the Congress.

In Bill341/2020, a regulatory framework for the protection of whistleblowers is proposed for both the private and public sectors.

If no action has been taken to implement recommendation 6 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N/A

Text of recommendation 6(c):

6. Regarding accounting requirements, external audit and internal company controls, the Working Group recommends that Colombia:

c) Clarify and promote the reporting role and obligations of auditors, including through training on the detection of foreign bribery red flags [2009 Recommendation III(v), IX and X.B].

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

The Superintendency held a training event on 29 April 2021, to the Technical Council for Public Accounting (*Consejo Técnico de la Contaduría Pública*- CTCP) on the role of the fiscal auditor in the fight against foreign bribery, money laundering and terrorism financing, which had 179 assistants.

Moreover, based on the Superintendency's Guide- "Role of the Fiscal Auditor in the Fight against Foreign Bribery, Money Laundering and Terrorism Financing" issued on 2019, which is in the entity's website, with more than 9.290 views, the Superintendency launched on 13 November 2020, a video on "The Role of the Fiscal Auditor in the Fight against Foreign Bribery, Money Laundering and Terrorism Financing", with more than 1.400 views so far.

If no action has been taken to implement recommendation 6 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The Superintendency in co-ordination with the Central Board of Accountancy (*Junta Central de Contadores*) has scheduled for the last quarter of 2021 an event to provide training to external auditors on foreign bribery, reporting obligations and other matters.

Text of recommendation 7(a):

7. Regarding tax measures for combating bribery, the Working Group recommends that Colombia:

a) Sufficiently extend the statutory time during which a tax return may be re-examined to effectively determine whether bribes have been deducted.

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

N/A

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

As was stated in Colombia's Phase 3 Report, the time that is provided is enough to make the revisions of the tax return, in order for citizens to determine if it is correct or not. It is important to emphasise that this time is not limiting the investigation process, but it is provided for the citizenship to review their information.

This modification to extend the statutory time during which a tax return may be re-examined to effectively determine whether bribes have been deducted, will not be considered because it would mean the modification of all the system of tax procedure, not only the provision of foreign bribery.

Text of recommendation 7(b):

7. Regarding tax measures for combating bribery, the Working Group recommends that Colombia:

b) Put in place the necessary mechanisms to inform promptly DIAN of foreign bribery-related convictions so that DIAN may verify whether bribes were impermissibly deducted.

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

On 11 February 2021, the Superintendency and DIAN signed a framework co-operation MoU in the digital area and information exchange. Based on said MOU, the parties are currently negotiating a complementary agreement on foreign bribery co-operation, which includes, among others, the report to DIAN on foreign bribery sanctions to legal persons so that it may verify whether bribes were impermissibly deducted.

Furthermore, the PGO and DIAN share relevant information of foreign bribery-related convictions concerning natural persons through the working groups that are held periodically between the two entities.

This working group facilitate the support to the contribution of evidentiary material by the DIAN for the criminal proceedings being carried out by the PGO and in high-impact investigations that seek the dismantling and prosecution of criminal organizations directly related to Customs and Tax crimes.

The Specialized Directorate against Fiscal Crimes of the PGO has its origin in Law 2010 of 2019 and in Resolution 00720 of 15 April 2021.

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

Finish negotiating the complementary agreement and proceed with its signing.

Text of recommendation 7(c):

7. Regarding tax measures for combating bribery, the Working Group recommends that Colombia:

c) Resume efforts to provide training to DIAN officials with a view to enhancing their capacity to detect foreign bribery red flags; and

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

On 11 February 2021, the Superintendency and DIAN signed a framework co-operation MoU in the digital area and information exchange. Based on said MOU, the parties are currently negotiating a complementary agreement on foreign bribery co-operation, which includes, among others, training to DIAN officials on foreign bribery, including red flags.

Moreover, on April 2020, the Superintendency shared with DIAN the existence of the Online Course on Foreign Bribery and the reporting channel.

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

Once the complementary agreement is in place, a schedule of training sessions will be implemented.

Text of recommendation 7(d):

7. Regarding tax measures for combating bribery, the Working Group recommends that Colombia:

d) Ensure that mechanisms are in place for the effective sharing of information between the tax and law enforcement authorities, to ensure that both the PGO and Superintendence of Companies (i) receive timely and relevant reports from DIAN concerning suspected foreign bribery, and (ii) are able to request information from DIAN in the context of their foreign bribery investigations into natural and legal persons [2009 Recommendation VIII and 2009 Tax Recommendation].

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

With the issuance of Decree 1742 of 2020 after the Phase 3 Report of Colombia, according to numeral 16 of article 33, the Sub Directorate for Support in the Fight against Customs and Tax Crime, is in charge of responding to all requests for crimes from the PGO and UIAF, including foreign bribery in an efficient manner.

Considering this Decree, DIAN must give information to the PGO and will be able to send relevant information about any red flag concerning foreign bribery. In addition, this entity has the obligation to give any information regarding foreign bribery of natural and legal persons.

Additionally, the PGO and DIAN share relevant information of foreign bribery-related convictions concerning natural persons through the working groups that are held periodically between the two entities.

This working group facilitate the support to the contribution of evidentiary material by the DIAN for the criminal proceedings being carried out by the PGO and in high-impact investigations that seek the dismantling and prosecution of criminal organizations directly related to Customs and Tax crimes.

The Specialised Directorate against Fiscal Crimes of the PGO has its origin in Law 2010 of 2019 and in Resolution 00720 of 15 April 2021.

Furthermore, there is an Operational Working Group between DIAN-PGO-UIAF allows a better use of the information inputs provided by the DIAN as a result of the control functions, control actions, registration procedures, international exchange activity and consultation of the different databases of the entity, which are derived in Suspicious Operation Reports of Money Laundering and/or Financing of Terrorism (ROS) which ends up in an intelligence report according to the competence and institutional mission of the UIAF, transferring it to the operative table as a product that generates denunciations, for the generation of a criminal notice in the PGO and into a possible investigation in the Superintendency.

This working table have sectorized components, where different identified sectors of the Colombian economy are analysed in a macro way, which present high risk levels in the possible commission of criminal conducts, mainly focused on Fiscal Crimes and Money Laundering. The operational working group has been progressing in a co-ordinated manner and is currently analysing the possible commission of punishable acts by different International Trading Companies.

As to the sharing of information between DIAN and the Superintendency, on 11 February 2021, the Superintendency and DIAN signed a framework co-operation MoU in the digital area and information exchange. Based on said MOU, the parties are currently negotiating a complementary agreement on foreign bribery co-operation, which includes, among others, the exchange of information on foreign bribery, including any report of suspicious activities or fact that indicates an alleged foreign bribery and the supply of information upon request of the Superintendency in the context of an investigation against a legal person.

Furthermore, in Bill 341/2020, an amendment to article 22 of Law 1778 of 2016 on collaboration and disclosure of information was proposed so that not only DIAN but other public entities have the obligation to inform to the Superintendency on any report of suspicious activity or fact that indicates an alleged foreign bribery and to include also an obligation to collaborate with said entity so that it can perform its functions of detection, investigation and sanction of foreign bribery of legal persons.

Relevant Legal Provisions from the Bill 341/2020:

Artículo 33. Modifíquese el artículo 22 a la Ley 1778 de 2016, el cual quedará así:

Artículo 22. Colaboración y Remisión de información por parte de otras entidades públicas. La Dirección de Impuestos y Aduanas Nacionales (DIAN) y otras entidades públicas deberán informar a la Superintendencia de Sociedades sobre cualquier reporte de actividad sospechosa o hecho que indique la presunta realización de conductas típicas establecidas en esta ley y colaborar con dicha entidad para que ésta pueda adelantar sus funciones de detección, investigación y sanción de conductas de soborno transnacional. El Gobierno nacional reglamentará la materia.

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

Finish negotiating the complementary agreement and proceed with its signing.

Text of recommendation 8(a):

8. Regarding awareness-raising and the reporting of foreign bribery, the Working Group recommends that Colombia:

a) Remobilise key government agencies, in particular the Secretariat of Transparency and the Ministry of Foreign Affairs, and increase efforts to raise awareness within the public sector, in particular among officials in foreign embassies and those in contact with Colombian businesses operating abroad, as well as among the judiciary [2009 Recommendation III(i) and Annex I.A].

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

Since 2018, the Ministry of Foreign Affairs have been publishing on its website the guide to understand the fight against foreign bribery prepared by the Superintendency and collaborated in the promotion of the Superintendency's reporting channel.

Also, in the Minister of Foreign Affairs it is required that the training on "foreign bribery" to be part of the induction process for all officials appointed abroad, and so far, more than 63 officials have been trained.

If no action has been taken to implement recommendation 8 (a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

It is planned for the second semester of 2021 pedagogical sessions aimed at embassies and consulates, in order to socialize this topic.

As well, the Superintendency will submit the updated Practical Guide to Understand the Fight against Foreign Bribery so that the Minister of Foreign Affairs may update the information provided in its website.

Text of recommendation 8(b):

8. Regarding awareness-raising and the reporting of foreign bribery, the Working Group recommends that Colombia:

b) Ensure regular attendance at the meetings of the Working Group and engagement as appropriate in its work, including where foreign bribery enforcement is concerned [Convention Article 12; 2009 Recommendation XIV and XV.

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

The Superintendency and the Secretariat of Transparency have attended the March, June, October and December 2020 and March and June 2021 sessions of the plenary meetings of the Anti-Bribery Working Group (WGB). They also attended the WGB meetings to review the 2009 Anti-Bribery Recommendations, held in September and November 2020 and April and May 2021. The Superintendency also attended the following events:

- LEO meetings held in June and December 2020 and June 2021.
- Third meeting of the Latin America and Caribbean Anti-Corruption Law Enforcement Network (LAC LEN) in November 2020, whereby the Superintendency participated as a speaker on progress regarding compliance programs, and
- OECD webinar "Whistle-blower reporting and protection in the Latin America and Caribbean region" on 20 June 2021.

Furthermore, the Secretariat of Transparency has participated in the June High-Level Mission to Turkey, is part of the ad hoc group for the designation of the new WGB Chair and, the Advisor of this entity is part of the Management Group of the WGB.

Colombia has also responded to several OECD's surveys related to foreign bribery (Questionnaire on the impact of Covid-19 on anti-corruption work, Survey on the use of artificial intelligence tools in fighting corruption and foreign bribery, Survey on the role of the WGB Management Group and designation of its members) and submitted comments by written procedures to the "Review of the OECD Anti-Bribery Recommendation – Draft proposals on Priority Issues".

If no action has been taken to implement recommendation 8 (b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

N/A

Text of recommendation 8(c):

8. Regarding awareness-raising and the reporting of foreign bribery, the Working Group recommends that Colombia:

c) Undertake targeted awareness-raising and training for relevant public sector officials and private sector professionals on foreign bribery red flags [2009 Recommendation III(i) and Annex I.A].

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

From 2020 until the present, the Superintendency has participated in 14 foreign bribery awareness-raising activities in the private and public sector (including webinars, chats, conferences, trainings) were approximately 1.219 persons have participated.

During the same period of time, the Superintendency has launched the following educational material:

| Date | Educational material | Link | Views |
|------------|--|---|-------|
| 07/09/2020 | Guide- "Informative Bulletin- Risk of Transnational Bribery and other corrupt practices in times of Covid19" | https://www.supersociedades.gov.co/Noticias/Publicaciones/Revistas/2020/Boletin-informativo-Covid-Soborno.pdf | 4 755 |
| 13/11/2020 | Video- "The Role of the Fiscal Auditor in the Fight against Foreign Bribery, Money Laundering and Terrorism Financing" | https://www.youtube.com/watch?v=p4FISuZWHn0 | 1 504 |
| 04/08/2021 | Info- graphic- "Superintendency's role regarding Foreign Bribery" | https://www.supersociedades.gov.co/prensa/Infografias/Infografia-Soborno-Transnacional.pdf | 279 |

Additionally, the Superintendency has updated the following educational material:

| Date | Educational material | Link | Update | Views |
|------------|--|---|--|-----------------------------------|
| 04/08/2021 | Guide- "Practical Guide to Understand the Fight against Foreign Bribery" | https://www.supersociedades.gov.co/cgi/documents/09_InvestigacionesAdministrativas/Documentos/IA-G-001_GuiaEntenderLuchaSobornoInternacional.pdf | Inclusion of links to sanctions imposed, reporting channel and Virtual Course on Foreign Bribery, and other updates. | 51 |
| 20/05/2021 | Virtual course- "Foreign Bribery" | https://www.supersociedades.gov.co/delegatura_aec/Paginas/Curso-virtual-sobre-Soborno-Transnacional.aspx | The course was reorganized and additional material was included. | 35 836 |
| 20/05/2021 | Exam on the Course of Foreign Bribery | https://www.supersociedades.gov.co/delegatura_aec/Paginas/Evalua-tu-conocimiento.aspx | Changes were made to make it more educational. | 1 059 persons have taken the exam |

Furthermore, within the framework of the Business Integrity Route, the Transparency Secretariat has been carrying out training sessions for unions, companies, and the Chamber of Commerce at the national level.

Within the institutional offer of the Transparency Secretariat for the strengthening of capacities of the private sector in the fight against corruption, two essential themes are incorporated in these knowledge spaces: the use and appropriation of the Integrity App as a tool for self-evaluation of the compliance program in corporate integrity management; and the fight against Foreign Bribery from the Colombian private sector in collaboration with the Superintendency https://youtu.be/8QEFQc_TVxl.

Likewise, through the signing of the Integrity Pact with Confecámaras and the Transparency Secretariat, the process of promoting a culture of legality and integrity with the Chambers of Commerce at the territorial and national level begins.

In the process of implementing the Integrity Pact with the Chambers of Commerce, events have been held with its collaborators, members and affiliates, where information about Integrity App and Foreign Bribery has been shared.

To date, they have worked with 7 Chambers of Commerce, and the following senior-level employees:

1. Santa Marta Chamber of Commerce: 13 employees of the Chamber of Commerce and 30 affiliated companies.
2. Cali Chamber of Commerce: 3 collaborators of the Chamber of Commerce.
3. Tunja Chamber of Commerce: 1 collaborator of the Chamber of Commerce and 14 affiliated companies. In addition, an event was co-ordinated on 29 July with 104 companies affiliated to the Chamber of Commerce.
4. Chamber of Commerce of Bucaramanga: 12 employees of the Chamber of Commerce and 1 member of the Regional Competitiveness Commission. In addition, an event was co-ordinated on 28 July with companies affiliated to the Chamber of Commerce.
5. Chamber of Commerce of Medellín and Antioquia: Members and more than 203 companies affiliated to the Chamber of Commerce of Medellín, Urabá, Aburra Sur, Oriente Antioqueño and Magdalena Medio and Nordeste Antioqueño.
6. Ipiales Chamber of Commerce: Members and 78 companies affiliated to the Chamber of Commerce.
7. Bogotá Chamber of Commerce: 20 companies affiliated to the Chamber of Commerce.

Management with the Guilds and companies:

Within the framework of the institutional strategy to fight corruption in the private sector, 12 integrity pacts have been signed with different economic sectors and the Transparency Secretariat, that bring together 56 unions in the country, that group approximately 37,670 companies that represent sectors that involve an important percentage of the Gross Domestic Product of Colombia.

In the process of implementing the Integrity Pact with the unions and companies along with the Transparency Secretariat, spaces for dialogue and knowledge have been developed with their collaborators and associated / affiliated companies, where information on Integrity App and Foreign Bribery has been shared.

During 2021, the Transparency Secretariat has held meetings with unions and companies where the issue of the fight against Foreign Bribery and Integrity App is socialized: 12 unions which include the Collective Action of the Electricity Sector and the Grupo Soluciones Business Group and the following senior-level employees:

1. ASOMEDIOS: 2 employees of the union. (General Secretary and Sector Coordinator).
2. Chamber of Digital Industry and Services –ANDI: 4 employees of the union (President, Deputy Director, Coordinator of Economy and intern).
3. PORKCOLOMBIA National Pig Farming Fund: 4 employees of the union. (Administrative and Financial Directorate, Directorate of the technical area and Sub directorate of environmental management and CSR).
4. ASOGRASAS: 1 employee of the union (Lawyer).
5. Acoplastics: 1 collaborator of the union (President).
6. FENALCO Agricultural Sector: 1 collaborator of the Guild Director Guild.
7. FENALCO Security and Surveillance Sector: 1 collaborator (Union Director).
8. Fedetranscarga: 1 employee of the union and 28 associated companies.
9. Colombian private security chamber: 1 union member (General Director) and 5 companies associated with the union.
10. ASTIEMPO - Timeshare Association: 1 employee of the union (President).
11. Collective Action Electricity Sector: 2 collaborators of the Collective Action (Technical Secretariat of Collective Action).
12. Grupo Soluciones: 1 collaborator of the Group (CEO).

ikewise, different training spaces have been developed on the Business Integrity Route with unions in which the Transparency Secretariat has participated through webinars: Camacol, Fedesoft, Asociación Colombiana de la Industria de la Cobranza, COLCOB, Alquilería, Sector de Servicios Públicos Domiciliarios.

If no action has been taken to implement recommendation 8 (c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

It is scheduled on 25 November 2021 an awareness- raising training on foreign bribery for the judiciary provided by the Superintendency.

Text of recommendation 8(d):

8. Regarding awareness-raising and the reporting of foreign bribery, the Working Group recommends that Colombia:

d) Promote the awareness and effectiveness of public channels for reporting foreign bribery, including by increasing their visibility and accessibility [2009 Recommendation III(i) and (iv) and Annex I.A].

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

The PGO has authorized public channels in which you can file a complaint for any crime, including foreign bribery.

In all the awareness- raising activities on foreign bribery performed by the Superintendency, the entity's reporting channel for alleged foreign bribery is promoted. Additionally, the Superintendency has included in its educational material in its website (Virtual Course on Foreign Bribery, Info-graphic "Superintendency's role regarding Foreign Bribery" and Guide- "Practical Guide to Understand the Fight against Foreign Bribery ") visible links to access the reporting channel. In April 2021, the Superintendency updated its reporting channel and made it more visible in its website for its access.

Additionally, the Transparency Secretariat has implemented an Inter-Institutional Transparency and Anti-Corruption Network (RITA – by its acronym in Spanish), to promote the creation and improvement of complaint channels within public entities. Citizens and officials within the organization, who have knowledge of an irregular act that may constitute an act of corruption, are expected to report on these channels. RITA endorses that these channels: 1) Allow the reception of anonymous complaints, as a measure that guarantees security; 2) Have controls to prevent information from being leaked and 3) Controls to verify that any complaint is managed and made known to the competent bodies to investigate and judge.

If no action has been taken to implement recommendation 8 (d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

The UNODC has agreed to include a link to the Superintendency's reporting channel on foreign bribery in UNODC's website denominated "Towards Integrity".

Text of recommendation 9:

9. Regarding whistleblower protection, the Working Group recommends that Colombia adopt urgently legislation that provides clear and comprehensive protections from retaliation to whistleblowers across the public and private sectors [2009 Recommendation III(iv) and IX(iii)].

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

As indicated in our oral report in June 2021, the Colombian government was promoting a Bill which included whistleblower protection. However, in that moment, the situation was not favourable with this topic in the Congress.

In Bill341/2020, a regulatory framework for the protection of whistleblowers is proposed for both the private and public sectors.

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

N/A

Text of recommendation 10(a):

10. Regarding public advantages, the Working Group recommends that Colombia:

a) Encourage public procurement authorities to (i) routinely check the debarment lists of multilateral financial institutions in the context of public procurement contracting, and (ii) consider, as appropriate, the existence of anti-corruption internal controls, ethics and compliance programmes of companies seeking procurement contracts.

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

The Colombian Anticorruption Portal (PACO by its acronym in Spanish) of the Transparency Secretariat, aims to unify and guarantee the interoperability of the potential information for the investigation and analysis of the phenomenon of corruption, as well as for making correct public policy decisions on the matter.

In this Portal it is possible for public officials and entities to access to the debarment lists of WB, IDB and OFAC: <https://portal.paco.gov.co/Indicadores.html>.

Nevertheless, to "*routinely check the debarment lists of multilateral financial institutions in the context of public procurement contracting*", it is not legally valid, since the limitations for contracting are defined firstly by the constitution, and secondly by the Congress, by an empowerment given by the constitution. The foregoing limits the margin of appreciation so that public entities can define prohibitions to contract in their pre-contractual documents. In this sense, adopting this recommendation requires a legal reform.

Therefore, the debarment lists cannot be grounds for inability and the obligation to review them must also be introduced into the legal system through legal reform. So, even if we encourage it, public officials could not derive a legal consequence from the issue.

On the other hand, regarding the recommendation "consider, as appropriate, the existence of anti-corruption internal controls, ethics and compliance programs of companies seeking procurement contract" it is noted that the "Estatuto General de Contratación" contemplates an inability to contract those legal persons that are declared administratively responsible for the conduct of transnational bribery (Ley 2014 of 2019). These sanctions are imposed by the Superintendency of Corporation, which for the purposes of graduating the sanction must take into account the adoption of compliance programs by the investigated corporation (Ley 1778 de 2016).

The above operates in a similar way to the self-cleaning adopted in the EU, but adjusted to the constitutional guidelines of our legal system. However, the Bill 341 of 2020 will introduced internal controls, ethics and compliance programmes.

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

N/A

Text of recommendation 10(b):

10. Regarding public advantages, the Working Group recommends that Colombia:

b) Take appropriate measure to ensure that all convictions and sanctions in foreign bribery cases are systematically reported and registered in the Single Information System of Ineligibility (SIRI) [Convention Article 3.4; 2009 Recommendation XI(i)].

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

The Superintendency sends the resolutions of sanctions of legal persons to the Chamber of Commerce or to the Superintendency of Finance, in order to reflect this information in the corresponding certificate of existence and legal representation.

Investigations that are sent to the judge are centralized in the great central for business information of Colombia - RUES. The Single Business Registry (RUE by its acronym in Spanish) referred to in article 11 of Law 590 of 2000, includes the Commercial Registry and the Single Registry of Proponents.

The Single Business and Social Registry -RUES by its acronym in Spanish -, is administered by the Chambers of Commerce according to criteria of efficiency, economy, and good faith, to provide the State, society in general, businessmen, contractors, entities of solidarity economy and non-profit entities a reliable tool of integrated information both nationally and internationally.

According to the link below, among the services offered by the RUES, is the contribution to the transparency of business, inquiries of fines and sanctions of proponents and inabilities, impediments, and prohibitions of the commercial register. <https://www.rues.org.co/Home/About>.

SIRI is not the suitable mechanism to report and register foreign bribery sanctions. Colombian law has established that to publish inabilities to private sector companies, it is done through the Chamber of Commerce. Because, even in SIRI, to generate the background certificate of Colombian legal entities, the Chamber and Commerce Certificate is requested.

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

N/A

Text of recommendation 11(i):

11. Regarding officially supported export credits, the Working Group recommends that Bancóldex adopt without further delay the measures announced, notably:

(i) Raise awareness of the foreign bribery offence among its staff as well as among intermediary banks, and other clients as appropriate, and inform them about the legal consequences of bribery in international business transactions under Colombia's legal system.

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

In 2020, Bancoldex held a full month of socialization about foreign bribery through an intense mailing campaign, to its most important stakeholders, clients and intermediaries, which aimed to sensitize them on the importance of preventing corruption in their businesses which include foreign bribery. About Bank employees, a mailing campaign was also carried out with the same objective in April and, additionally, in October the annual regulatory and mandatory training on operational risk was carried out, which addresses issues related to corruption and fraud.

Additionally, on 12 February 2020, the Superintendence of Companies and Asobancaria, organized an event to provide training on Law 1778 of 2016- legal framework on foreign bribery of legal persons- addressed to compliance officers within the financial sector.

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

On the other hand, a webinar is planned to allow Bank employees to delve into this topic, bribery and fraud. Regarding clients and intermediaries, in the second semester of 2021 Bancoldex will carry out another mailing campaign with elements to prevent the risk of transnational corruption, and, finally, with the support of Asobancaria. As well, Bancoldex will sensitize the Bancoldex suppliers and business partners to identify and timely detection of the risk of corruption in their businesses.

Text of recommendation 11(ii):

11. Regarding officially supported export credits, the Working Group recommends that Bancóldex adopt without further delay the measures announced, notably:

(ii) Require intermediary banks, and other clients as appropriate, to undertake that neither they, nor anyone acting on their behalf have engaged or will engage in bribery, and disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge or, within a five-year period preceding the application, have been convicted for foreign bribery.

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

Bancóldex has not executed operations that can be considered OSEC. However, Bancóldex has included the recommendations of the OECD and the Convention in the generality of its operations.

Considering that Colombia has had only one prosecution for foreign bribery, Bancóldex in its international operation continues to request its foreign counterparts in the KYC processes to deliver the Wolfsberg Questionnaire, which is analyzed by the compliance team, which includes the Anti-Bribery Chapter. It is noted that this practice has been implemented since before 2019.

The Wolfsberg Questionnaire corresponds to a valid document that generates a binding declaration for the entity that signs it. Any breach of the representations and warranties incorporated in the Questionnaire is a misrepresentation.

Additionally, Bancóldex's rediscount operations are implemented in promissory notes that are jointly signed by intermediary banks and the final beneficiaries of the resources. Therefore, the Bank's default clause, including anti – bribery topics, is applicable to the intermediary bank and the final beneficiary.

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

N/A

Text of recommendation 11(iii):

11. Regarding officially supported export credits, the Working Group recommends that Bancóldex adopt without further delay the measures announced, notably:

(iii) Verify routinely the debarment lists of international financial institutions.

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

Under the role of Bancóldex and the operations regime, the Bank verify daily that its clients (including direct/indirect shareholders and ultimate beneficial owners), credit beneficiaries (including direct/indirect shareholders and ultimate beneficial owners), suppliers (including direct/indirect shareholders and ultimate beneficial owners) and employees are not included in the debarment lists.

In December 2019, Bancóldex included the IDB and WB lists in its screening tool; this means that clients, counterparties, credit beneficiaries, suppliers and employees are verified against the aforementioned lists not only at the time of their onboarding, but daily during the length of the contractual/legal relationship with the Bank. In the event that the aforementioned parties are reported, the Bank would not initiate any contractual/legal relationship with them.

Likewise, since January 2020 it was incorporated into the Bank's financial and supply instrumentation as a non-compliance event and as an event of default to be reported on the IDB and WB lists or on any other related to transnational bribery.

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

N/A

Text of recommendation 11(iv):

11. Regarding officially supported export credits, the Working Group recommends that Bancóldex adopt without further delay the measures announced, notably:

(iv) Undertake enhanced due diligence in cases where intermediary banks, and other clients as appropriate, are currently under charge or, within a five-year period preceding the application, have been convicted for foreign bribery, are listed in the debarment lists of international financial institutions, or there are reasons to believe that bribery may be involved in the transaction.

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

Taking into account the previous answers, in the situation that a client, counterpart, supplier or employee is reported on a debarment list or has been convicted, indicted or subjected by actions related to bribery, the operation / contract would not be executed, and in the event that the operation / contract has already been signed, Bancoldex is entitled to declare an event of default.

Additionally, it is important to highlight that a case review protocol was created in the Bank to trigger an enhanced due diligence in situations that do not fit into those of the previous paragraph, news screening, and dubious transactions in which there are bribery suspicions or red flags. This protocol applies to all bank operations.

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

N/A

Text of recommendation 11(v):

11. Regarding officially supported export credits, the Working Group recommends that Bancóldex adopt without further delay the measures announced, notably:

(v) Include the standard default clause in all promissory notes concluded by Bancóldex as well as in export credit contracts concluded by intermediary banks [2009 Recommendation XII and 2019 Export Credit Recommendation].

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

Under the role of Bancoldex and the operations regime, the default clause is already incorporated in all Bancoldex contracts and operations. Here is an example of this kind of provisions:

Promissory notes - SWIFT. "We authorize Bancoldex, with no need of judicial or extrajudicial requirement, to constitute ourselves in default and/or breach, declare the expiration of the term of the obligation herein or installments making up the balance, and require the total payment immediately, either judicial or extra judicially, regardless of the power to restore the term, as provided by law, if XXX and/or its Directors, Shareholders and /or ultimate beneficial owners are (a) named on lists promulgated from time to time by the United Nations Security Council or its committees pursuant to any resolution issued under Chapter VII of the United Nations Charter, (b) reported on the sanction lists promulgated from time to time by OFAC (Office of Foreign Assets Control of the US Department of the Treasury); (c) named on the IDB sanctions system or on the World Bank Listing of Ineligible Firms & Individuals and/or (d) convicted, indicted or subjected to any similar criminal sanction, by any court or other governmental authority of competent jurisdiction for violating (i) anti-money laundering/financing of terrorism laws, and/r (ii) anti bribery and anti-corruption laws".

Furthermore, Bancoldex has not executed operations that can be considered OSEC. However, Bancoldex has included the recommendations of the OECD and the convention in the generality of its operations.

Bancoldex's rediscount operations are implemented in promissory notes that are jointly signed by intermediary banks and the final beneficiaries of the resources. Therefore, the Bank's default clause, including anti – bribery topics, is applicable and obligatory to the intermediary bank and the final beneficiary.

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

N/A

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

Regarding Part II, countries are invited to provide information with regard to any follow-up issue identified below where there have been relevant developments since Phase 3. Please describe/include any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate.

16. The Working Group will follow up on the issues below as case-law, practice and legislation develop:

Text of issue for follow-up 12(a):

a) The application in practice of article 433 PC to ensure that an offer that does not reach the intended public official amounts to a foreign bribery offence under Colombian law [Convention, Article 1].

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

Considering what was said in the Phase 3 Report of Colombia, an offer that does not reach the intended public official is included within the criminal offense of foreign bribery as an attempted crime.

Text of issue for follow-up 12(b):

b) The application in practice of the benefits of collaboration in foreign bribery cases to ensure that they result in effective, proportionate and dissuasive sanctions [Convention Articles 2 and 3].

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

Since the Water Utility Company case, there has not been any application of benefits for collaboration in another case. On 2020, the Superintendency opened a preliminary inquiry (*indagación preliminar*) and administrative investigation against a legal person for foreign bribery and on 4 February 2021, said person filed a request for the granting of collaboration benefits pursuant to article 19 of Law 1778 of 2016, which is currently under study by the Superintendency while it carries on with the investigation. In this study, the Superintendency is considering the effectiveness, proportionality, and dissuasiveness of the sanction to be imposed.

Therefore, it is not yet possible to assess in practice the effectiveness, proportionality and dissuasiveness of the sanctions for legal persons for foreign bribery in the application of benefits for collaboration. This could only be assessed by analyzing each specific sanction imposed in a concrete case of foreign bribery against legal persons in the application of benefits for collaboration.

Notwithstanding the foregoing, in order to address some deficiencies raised in the Phase 3 Report, Bill 341/2020 proposes to include an amendment to article 19 of Law 1778 of 2016, aimed at ensuring that benefits for collaboration may only be granted, amongst other requirements set forth in said article,

when the information disclosed is not previously known by the Superintendency, nor has been communicated by other means, or the conduct has not been subject of any investigation by other national or foreign authorities. Additionally, self-reporting must be accompanied by appropriate remedial actions ordered by the Superintendency of Corporations.

Relevant Legal Provisions from the Bill 341/2020:

Artículo 31. Modifíquese el artículo 19 de la Ley 1778 de 2016, el cual quedará así:

Artículo 19. Beneficios por colaboración. La Superintendencia de Sociedades podrá conceder beneficios a participantes en las infracciones descritas en esta ley, siempre y cuando los mismos la pongan en conocimiento de la Superintendencia y colaboren oportunamente con la entrega de información y pruebas relacionadas con dicha conducta conforme a las siguientes reglas:

1. Los beneficios podrán incluir la exoneración total o parcial de la sanción. En todo caso, cualquiera sea la modalidad de exoneración, la Superintendencia deberá tener en cuenta los siguientes criterios para conceder dichos beneficios:
 - a. La calidad y utilidad de la información suministrada a la Superintendencia para el esclarecimiento de los hechos, para la represión de las conductas y para determinar la modalidad, duración y efectos de la conducta ilegal, así como la identidad de los responsables, su grado de participación y el beneficio que hubiera obtenido con ella.
 - b. La oportunidad en que la Superintendencia reciba la colaboración.
 - c. La información suministrada a la Superintendencia de Sociedades no ha sido previamente conocida por ella, o no ha sido difundida por otros medios, o la conducta no ha sido objeto de alguna investigación por otras autoridades nacionales o extranjeras.
 - d. La persona jurídica ha adoptado las acciones remediales o las medidas correctivas adecuadas que establezca la Superintendencia de Sociedades.
 - e. La exoneración total de la sanción podrá ser concedida siempre que de manera previa a que se hubiere iniciado la correspondiente actuación administrativa, la persona jurídica: (i) haya puesto en conocimiento de la Superintendencia, las infracciones de que trata esta ley y (ii) no se hayan ejercido las obligaciones y derechos que surgieren de un contrato originado en un negocio o transacción internacional conforme lo menciona esta ley, según sea el caso.
2. La exoneración parcial de la sanción podrá ser concedida cuando la información haya sido entregada de manera posterior a la iniciación de la actuación administrativa. En todo caso, la disminución de la sanción, en lo que respecta a la multa, no podrá exceder del 50% de la misma.

Text of issue for follow-up 12(c):

c) The application of Law 1778 of 2016 to ensure that a legal person cannot avoid responsibility for foreign bribery by using related legal persons [Convention Article 2 and 2009 Recommendation, Annex I.C].

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

To date, there is no case law regarding this issue.

Although, Colombia considers that article 2 of Law 1778 of 2016 addresses responsibility for foreign bribery by using related legal persons, in Bill 341/2020 an amendment to said article was included to add expressly that a subsidiary may be held liable where the parent company or any other legal person that is part of the same business group or that is directly or indirectly controlled by the parent company, commits foreign bribery, for the benefit of its subsidiaries.

Relevant Legal Provisions from the Bill 341/2020:

Artículo 28. Modifíquese el artículo 2 de la Ley 1778 de 2016, el cual quedará así:

Artículo 2°. Responsabilidad administrativa de las personas jurídicas. Las personas jurídicas que por medio de uno o varios: (i) empleados, (ii) contratistas, (iii) administradores, o (iv) asociados, Propios o de cualquier persona jurídica subordinada: (i) den, (ii) ofrezcan, o (iii) prometan, A un servidor público extranjero, directa o indirectamente: (i) sumas de dinero, (ii) cualquier objeto de valor pecuniario u (iii) otro beneficio o utilidad, A cambio de que el servidor público extranjero: (i) realice, (ii) omita, (iii) o retarde,

Cualquier acto relacionado con el ejercicio de sus funciones y en relación con un negocio o transacción internacional.

Dichas personas serán sancionadas administrativamente en los términos establecidos por esta ley.

Las entidades que tengan la calidad de matrices, conforme al régimen previsto en la Ley 222 de 1995 o la norma que la modifique o sustituya, serán responsables y serán sancionadas, en el evento de que una de sus subordinadas incurra en alguna de las conductas enunciadas en el inciso primero de este artículo, con el consentimiento o la tolerancia de la matriz.

También serán responsables y sancionadas las subordinadas cuando su (i) matriz o (ii) cualquier otra persona jurídica que sea parte del mismo grupo empresarial o que sea controlada directa o indirectamente por la matriz, incurra en alguna de las conductas enunciadas en el inciso primero de este artículo, en beneficio de las subordinadas.

Parágrafo 1. Para los efectos de lo dispuesto en el presente artículo, se considera servidor público extranjero toda persona que tenga un cargo legislativo, administrativo o judicial en un Estado, sus subdivisiones políticas o autoridades locales, o una jurisdicción extranjera, sin importar si el individuo hubiere sido nombrado o elegido.

También se considera servidor público extranjero toda persona que ejerza una función pública para un Estado, sus subdivisiones políticas o autoridades locales, o en una jurisdicción extranjera, sea dentro de un organismo público, o de una empresa del Estado o una entidad cuyo poder de decisión se encuentre sometido a la voluntad del Estado, sus subdivisiones políticas o autoridades locales, o de una jurisdicción extranjera.

Igualmente, se entenderá que ostenta la referida calidad cualquier funcionario o agente de una organización pública internacional.

Parágrafo 2. Lo previsto en esta ley para las personas jurídicas se extenderá a las sucursales de sociedades que operen en el exterior, así como a las empresas industriales y comerciales del Estado, sociedades en las que el Estado tenga participación y sociedades de economía mixta.

Parágrafo 3. Lo previsto en el presente artículo no se aplica cuando la conducta haya sido realizada por un asociado que no detente el control de la persona jurídica.

Text of issue for follow-up 12(d):

d) The effective, proportionate and dissuasive nature of sanctions imposed against natural persons [Convention Articles 1 and 3].

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

At this moment, in the PGO, 5 cases are being advanced for the crime of foreign bribery.

Text of issue for follow-up 12(e):

e) Whether access to the necessary financial information is possible in the context of foreign bribery investigations concerning legal persons, even in the absence of prosecution of a natural person [Convention Articles 2 and 5].

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

In the context of a specific foreign bribery case under preliminary inquiry (*indagación preliminar*), in October 2020 the Superintendency regarding the legal person under investigation, requested, (i) to the Colombian Superintendency of Finance, financial information, and (ii) to the Central Bank, information on clearing accounts, foreign investment filings, Colombian investment abroad and lending operations. This information was successfully provided to the entity without any obstacle in November 2020.

Regarding, access to information covered by secrecy, in Bill 341/2020, it is proposed to add a paragraph to article 20 of Law 1778 of 2016 so that secrecy does not prevent information being provided to the Superintendency in order for said authority to carry out its activities provided by law regarding foreign bribery investigations and that such secrecy is transferred when the information is provided to the Superintendency.

Relevant Legal Provisions from the Bill 341/2020:

Artículo 32. Adiciónese dos (2) párrafos al artículo 20 de la Ley 1778 de 2016, así:

Parágrafo 1. La Superintendencia de Sociedades podrá acceder a información de carácter reservado cuando la solicitud se efectúe para efecto de lo previsto en el artículo segundo de esta ley y en el ejercicio de las facultades conferidas para el efecto. Corresponderá a la Superintendencia de Sociedades mantener la reserva de la información con carácter reservado que llegue a conocer.

Parágrafo 2. Las competencias previstas deben ejercerse a la luz de lo dispuesto en el Código de Procedimiento Administrativo y de lo Contencioso Administrativo y en el Código General del Proceso, y no comprenden la realización de interceptaciones o registros ni otras actividades probatorias que, según la Constitución, se encuentran sometidas a reserva judicial de conformidad con lo consagrado en la Constitución y la Ley 1581 de 2012.

Text of issue for follow-up 12(f):

f) The independence of the Superintendence of Companies to ensure it cannot be subject to improper influence by concerns of a political nature and factors prohibited by Article 5 of the Convention [Convention Articles 2 and 5].

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

The Superintendency is an independent technical agency in charge of inspection, oversight, and control of legal persons. Its decisions cannot be altered by the government, but only judicially reviewed.

On 14 May 2020, the Colombian State Council declared the partial nullity of Decree 1817 of 2015, which modified the conditions related to the period, retirement and replacement of the Superintendents of Industry and Commerce, Corporations and Finance. The procedure established in article 2.2.34.1.3 contained in article 1 of the Decree 1817 of 2015 will continue to apply, therefore, the President of the Republic appoints the Superintendents of Industry and Commerce, Finance and Corporations, prior public invitation, amongst the candidates applying to the position that comply with the requirements and conditions established to occupy the respective position (article 2.2.34.1.2. of Decree 1817 of 2015). This ensures that superintendents are technical public officials instead of political officials. However, these superintendents do not have any more a fixed term nor a term that coincides with that of the respective presidential term. The superintendents, having a position of “free appointment and removal”, may be removed at the discretion of the President of the Republic. Nevertheless, the decision to remove any superintendent must be in accordance with the criteria of rationality, reasonableness and proportionality (article 44 of Law 1437 of 2011).

Text of issue for follow-up 12(g):

g) The effectiveness in practice of the agreement concluded between the Superintendence of Companies and DIAN to ensure it allows for the necessary sharing of information in relation to foreign bribery cases [Convention Articles 2 and 5; 2009 Tax Recommendation].

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

On 11 February 2021, the Superintendency and DIAN signed a framework co-operation MoU in the digital area and information exchange. Based on said MOU, the parties are currently negotiating a complementary agreement on foreign bribery co-operation, including in general, information exchange and training on foreign bribery. Once this agreement is signed and becomes operational, its effectiveness can be measured.

To reinforce the collaboration between the Superintendency and other public entities (including DIAN), in Bill 341/2020, an amendment to article 22 of Law 1778 of 2016 on collaboration and disclosure of information was proposed so that the DIAN and other public entities have the obligation to inform to the Superintendency any report of suspicious activity or fact that indicates an alleged foreign bribery and collaborate with said entity so that it can perform its functions of detection, investigation and sanction of foreign bribery of legal persons.

Text of issue for follow-up 12(h):

h) Efforts to raise awareness of sanctions imposed in foreign bribery cases [Convention Article 3; 2009 Recommendation III(i)].

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

Sanctions imposed for foreign bribery of legal persons are published on the Superintendency's website at: https://www.supersociedades.gov.co/delegatura_aec/Paginas/Decisiones_en_firme.aspx.

In addition, in all the awareness- raising activities on foreign bribery performed by the Superintendency, the sanctions so far imposed on foreign bribery are mentioned to explain foreign bribery, its actors and the way to prevent or report it.

Additionally, the Superintendency has included in its educational material in its website (Virtual Course on Foreign Bribery, Info- graphic- "Superintendency's role regarding Foreign Bribery" and "Practical Guide to Understand the Fight against Foreign Bribery ") visible links to access the sanctions imposed to legal persons for foreign bribery.

Furthermore, within the framework of the Business Integrity Route, the Transparency Secretariat has been carrying out training sessions for unions, companies, and the Chamber of Commerce at the national level.

Within the institutional offer of the Transparency Secretariat for the strengthening of capacities of the private sector in the fight against corruption, two essential themes are incorporated in these knowledge spaces: the use and appropriation of the Integrity App as a tool for self-evaluation of the compliance program in corporate integrity management; and the fight against Foreign Bribery from the Colombian private sector in collaboration with the Superintendency https://youtu.be/8QEFQc_TVxl.

Likewise, through the signing of the Integrity Pact signed with Confecámaras and the Transparency Secretariat, the process of promoting a culture of legality and integrity with the Chambers of Commerce at the territorial and national level begins.

In the process of implementing the Integrity Pact with the Chambers of Commerce, events have been held with its collaborators, members and affiliates, where information about Integrity App and Transnational Bribery has been shared.

To date, they have worked with 7 Chambers of Commerce and the following senior-level employees:

1. Santa Marta Chamber of Commerce: 13 employees of the Chamber of Commerce and 30 affiliated companies.
2. Cali Chamber of Commerce: 3 collaborators of the Chamber of Commerce.
3. Tunja Chamber of Commerce: 1 collaborator of the Chamber of Commerce and 14 affiliated companies. In addition, an event was co-ordinated on 29 July with 104 companies affiliated to the Chamber of Commerce.
4. Chamber of Commerce of Bucaramanga: 12 employees of the Chamber of Commerce and 1 member of the Regional Competitiveness Commission. In addition, an event was co-ordinated on 28 July with companies affiliated to the Chamber of Commerce.

5. Chamber of Commerce of Medellín and Antioquia: Members and more than 203 companies affiliated to the Chamber of Commerce of Medellín, Urabá, Aburra Sur, Oriente Antioqueño and Magdalena Medio and Nordeste Antioqueño.
6. Ipiales Chamber of Commerce: Members and 78 companies affiliated to the Chamber of Commerce.
7. Bogotá Chamber of Commerce: 20 companies affiliated to the Chamber of Commerce.

Management with the Guilds and companies:

Within the framework of the institutional strategy to fight corruption in the private sector, 12 integrity pacts have been signed with different economic sectors and the Transparency Secretariat, that bring together 56 unions in the country, that group approximately 37,670 companies that represent sectors that involve an important percentage of the Gross Domestic Product of Colombia.

In the process of implementing the Integrity Pact with the unions and companies along with the Transparency Secretariat, spaces for dialogue and knowledge have been developed with their collaborators and associated / affiliated companies, where information on Integrity App and Transnational Bribery has been shared.

During 2021, the Transparency Secretariat has held meetings with unions and companies where the issue of the fight against Transnational Bribery and Integrity App is socialized: 12 unions which include the Collective Action of the Electricity Sector and the Grupo Soluciones Business Group and the following senior-level employees:

1. ASOMEDIOS: 2 employees of the union. (General Secretary and Sector Coordinator).
2. Chamber of Digital Industry and Services –ANDI: 4 employees of the union (President, Deputy Director, Coordinator of Economy and intern).
3. PORKCOLOMBIA National Pig Farming Fund: 4 employees of the union. (Administrative and Financial Directorate, Directorate of the technical area and Sub directorate of environmental management and CSR).
4. ASOGRASAS: 1 employee of the union (Lawyer).
5. Acoplastics: 1 collaborator of the union (President).
6. FENALCO Agricultural Sector: 1 collaborator of the Guild Director Guild.
7. FENALCO Security and Surveillance Sector: 1 collaborator (Union Director).
8. Fedetranscarga: 1 employee of the union and 28 associated companies.
9. Colombian private security chamber: 1 union member (General Director) and 5 companies associated with the union.
10. ASTIEMPO - Timeshare Association: 1 employee of the union (President).
11. Collective Action Electricity Sector: 2 collaborators of the Collective Action (Technical Secretariat of Collective Action).
12. Grupo Soluciones: 1 collaborator of the Group (CEO).

Likewise, different training spaces have been developed on the Business Integrity Route with unions in which the Transparency Secretariat has participated through webinars: Camacol, Fedesoft, Asociación Colombiana de la Industria de la Cobranza, COLCOB, Alquilería, Sector de Servicios Públicos Domiciliarios.

Text of issue for follow-up 12(i):

i) The PGO's capacity to ensure clear and stable arrangements for the allocation of foreign bribery cases, so that expertise can be built in relation to such cases [Convention Article 5; 2009 Recommendation III(ii), V and Annex I.D].

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

The PGO, through Resolution No. 0-0985 of 15 August 2018, established the criteria for the distribution of cases, regulated the redistribution of workload, among other aspects.

Within the aforementioned resolution it is established that the distribution of criminal cases that reaches the entity will be done to the prosecutors, according to their administrative competences, specialties and particularities of the workload. The distribution of cases will also consider territorial division.

Additionally, the Attorney General of the Nation issued Resolution No. 00720 of 15 April 2021, in it, it is delimited that the crime of foreign bribery will be assigned to prosecutors who are part of the Specialized Directorate against Money Laundering.

And, within this framework, the Specialized Directorate against Money Laundering implemented in the entity's information system (SPOA) some questions that allow to know the facts, the crimes (including foreign bribery) and information of the criminal cases, in order for prosecutors to, according to their profile and experience, take these cases and have the best possible results.

Text of issue for follow-up 12(j):

j) The application of the principle of opportunity (article 324(18) CPC) to ensure it does not hinder the enforcement of the foreign bribery offence [Convention Article 5; 2009 Recommendation III(ii), V and Annex I.D].

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

To date, the principle of opportunity has not been applied in any of the cases pending before the PGO.

However, Colombia is one of a few countries who has the principle of opportunity in its legal framework (article 250 of the Political Constitution, and Law 906 of 2004, modified by Law 1312 of 2009 and Law 1474 of 2011, based on articles 321 and following), which do not represent a hinder for the fight against foreign bribery. The latter because the law does not allow it, due to the establish procedure that obligates that a judge must take part on the process.

Text of issue for follow-up 12(k):

k) Whether foreign bribery cases are preserved from undue influence and large-scale corruption in the judicial police [Convention Article 5; 2009 Recommendation III(ii), V and Annex I.D].

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

The PGO, DEIF's judicial police are trained to process foreign bribery crimes, for which the corresponding training has been carried out.

In addition, there are also control systems in both the investigation procedure, and in the follows up on the work through the reservation and security formats of the information that must be maintained in the face of the investigations in charge. The reports must be delivered, and follow-up is done by their superior in the PGO DEIF's judicial police, there is a culture of risk of awareness of management of sensitive information on which servers are constantly trained.

Text of issue for follow-up 12(l):

l) The existence of delays in the administration of criminal justice in complex cases and the appropriateness of time limits for prosecution, to ensure they do not impede the effective enforcement of the foreign bribery and related offences [Convention Article 5; 2009 Recommendation III(ii), V and Annex I.D].

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

In Phase 2, the Working Group noted that the statute of limitations for criminal investigations into foreign bribery (a minimum of 15 years; 20 years if initiated or committed abroad) appeared appropriate. Pursuant to article 175 CPP (*Código de Procedimiento Penal*, Law 906 of 2004), formal investigations into foreign bribery should not exceed two years (four years in case the investigation involves at least three persons or three offences). As clarified by the Constitutional Court (C-893/12), the time limit was introduced to encourage the PGO to conduct investigations in a diligent and effective manner.

The Constitutional Court mentions that, when the time limit is reached, the investigation “may” be filed, if the conditions set out in article 79 CPP are met, and should resume where new evidence is found, pursuant to article 79 CPP.

When the prosecutor expects more information to be collected (for example, if MLA from a foreign country is pending), the investigation would not be filed. The PGO establishes that the person being prosecuted cannot retroactively challenge a decision to extend the investigation beyond the legal limit. The time limit as set out in article 175 CPP does not seem to constitute a possible obstacle to the conduct of investigations into complex crimes, since it can be extended according to the needs of the investigation.

Text of issue for follow-up 12(m):

m) The PGO's handling of foreign bribery components in larger money laundering cases, in particular to assess whether all persons responsible for foreign bribery are effectively prosecuted and sanctioned [Convention Articles 5 and 7; 2009 Recommendation III(ii), V and Annex I.D].

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

The Criminal Finance Department of the PGO gave instructions to open parallel investigations, regarding money laundering and foreign bribery, which are carried out by the same prosecutor.

Text of issue for follow-up 12(n):

n) The UIAF's capacity to proactively build solid cases for dissemination to the PGO, in particular where indications of foreign bribery have been identified [Convention Article 7; 2009 Recommendation III(iv)].

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

During May 2020 to date, the UIAF had jointly developed with the PGO two high-impact transnational bribery cases involving, one of them, a former public official and the other a Colombian company.

Additionally, working groups have been held between the PGO and UIAF, and the DEIF has requested information from related third parties.

Text of issue for follow-up 12(o):

o) Clarification of the central authority functions in Colombia for handling MLA in foreign bribery cases, and appropriate communication to the OECD and WGB [Convention Articles 9 and 11; 2009 Recommendation III(ix)].

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

We updated the Responsible Authorities of Colombia following the instructions of the WGB, in June 2021.

Text of issue for follow-up 12(p):

p) The capacity of the Superintendence of Companies to effectively seek MLA in foreign bribery proceedings against legal persons (including in the absence of prosecution against a natural person), as well as the effectiveness of co-ordination and co-operation between the PGO and the Superintendency in seeking evidence from third countries where both institutions carry out parallel foreign bribery investigations [Convention Articles 2 and 9; 2009 Recommendation III(ix)].

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

The Superintendency is not recognized as a central authority for making MLA's. In case it requires to make a formal MLA to a foreign authority, it should be channeled through the Ministry of Justice and Law, Direction for International Affairs, as indicated in the OECD's Table of Responsible Authorities.

Notwithstanding the foregoing, the Superintendency has the power to directly request from foreign authorities and international organizations any information or evidence or to carry out the necessary procedures within the scope of its powers, as contemplated in article 24 of Law 1778 of 2016. The Superintendency has continued to contact different foreign authorities in order to enter into agreements

that allow this entity to obtain co-operation in relation to foreign bribery. On 13 August 2020, the Superintendency signed an agreement on direct information exchange on foreign bribery investigations with the Council for Citizen Participation and Social Control of the Republic of Ecuador (*Consejo de Participación Ciudadana y Control Social de la República de Ecuador*) who is in charge of investigating reports on corruption in the Republic of Ecuador, and as result it issues a report on the existence of evidence of responsibility for corruption that is then sent to the Ecuadorian PGO or Comptroller's Office.

Within an ongoing investigation on foreign bribery, the Superintendency in August 2021 channelled an MLA request through the Colombian PGO addressed to the PGO of the Republic of Ecuador. This is still pending to be filed at the PGO of the Republic of Ecuador.

Text of issue for follow-up 12(q):

q) Efforts to promote the adoption of effective compliance programmes, notably by SMEs active in foreign markets [2009 Recommendation III(v), X.C and Annex II].

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

On 2 October 2020, the Superintendency issued Resolution 100-006261, by means of which it defined the new criteria to determine the companies that must adopt business ethics and transparency programs (the "Programmes"). This Resolution revokes in its entirety, as of its effective day (1 January 2021), the preceding Resolutions No. 100- 002657 of 25 July 2016, and 200-000558 of 19 July 2018. The new criteria include more companies as it added surveilled companies surveilled that engages in international business or transactions directly (not only through third parties), eliminates the criteria by sectors, lowers the thresholds for total income or assets, establishes a value for international business or transactions and eliminates the threshold of direct employees. Thus, the new criteria include companies under surveillance by the Superintendency that, during the previous year, engaged in international business or transactions (directly or through third parties) with foreign natural or legal persons in excess of 100 minimum current legal monthly wages ("MCLMW") (Approx. USD 24 000) and have had incomes or total assets equal to or greater than 40,000 MCLMW (Approx. USD 10 000 000).

Later on, on 9 August 2021, the Superintendency issued Circular 100-000011 of 2021 which integrally modified External Circular No.100- 000003 of 26 July of 2016 ("Guide to implement business ethical programs for the prevention of foreign bribery"), providing new instructions and administrative recommendations for legal persons aimed at the preparation and implementation in a mandatory manner or as a good practice of good corporate governance of effective Programs, allowing entities subject to the supervision of the Superintendency, to be in a better position to mitigate the risk of foreign bribery and corruption.

These recommendations modifies again the criteria to determine the companies that must adopt a Program to mitigate the foreign bribery risk, broadening the range of obligated companies, by lowering the thresholds for total income or assets to 30,000 MCLMW (Approx. USD 7 000 000), but maintaining all the other requirements (surveilled companies, that during the previous year, engaged in international business or transactions (directly or through third parties) with foreign natural or legal persons, of public or private nature, exceeding 100 MCLMW (Approx. USD 24 000).

Moreover, the recommendations provide guidance on Programmes' design and approval procedures, compliance audit procedures, communication of Programmes (including awareness-raising and training), internal reporting channels, role of the board of directors or the highest corporate body, the legal representative, compliance officers and external auditors, stages of Programmes (risks

identification, risk factors identification, assessment or evaluation of risks, control and monitoring of compliance policies and Programmes); due diligence measures, red flags, reports on foreign bribery within the Superintendency's reporting channel, etc.

Under the Circular, the Superintendency may verify a company's compliance with these obligations at any time and impose fines for non-compliance of up to 200 MCLMW (approx. USD 45 000) to companies, compliance officers, external auditors, or administrators.

It is important to mention that the Superintendency may give the instruction at any time to any company subject to its supervision, not obliged to adopt a Program under the criteria in the Circular, to implement the measures indicated in said regulation, including implementing a Program.

This new Circular on Programmes will come into effect on 1 January 2022 and revokes preceding Circular No. 100-000003 of 2016; thus companies that meet the criteria established therein as of 31 December 2021, will have until 31 May 2022 to implement a Program under the guidelines of said Circular. For its part, Resolution 100-004237 of 9 August 2021 revokes Resolution 100-006261 of 2 October 2020, as of 1 January 2022; thus companies that meet the criteria under this resolution as of 31 December 2020, will have until 30 April 2021 to implement a Program.

Furthermore, on the same date, the Superintendency issued Circular 100-000012 of 2021 which sets forth the supervision policy on Programmes that aims to ensure a more effective supervision and provide operational guidance and follow up to companies. This policy is based on three fundamental pillars: (i) education; (ii) regulatory compliance and (iii) timely and early actions.

Regarding education, the Superintendency will focus its efforts on promoting, informing, communicating, educating, guiding and providing feedback to the obligated companies, their administrators, compliance officers, external auditors and, in general, businessmen in the real sector, about the risks of foreign bribery and corruption and on the characteristics, periodicity and controls in relation to the information that must be reported to the Superintendency.

The regulatory compliance is aimed at obligated companies to implement and adopt Programmes, in accordance with the Superintendency's regulation. For this purposes, the Superintendency may conduct in- site and extra- site supervision inspections to assess whether programs are in place and adequate, verifying several factors (having a risk matrix, that compliance programs are approved by the board of directors or equivalent body and designed pursuant to risk levels, having segmentation methodologies and classification of risk factors, having mechanisms for identification, measurement, evaluation, control and monitoring of risks, having a compliance officer with resources, independence and decision-making capacity, having adequate and sufficient due diligence procedures, effectively communicating compliance programs, etc.). If as a result of the regulatory compliance verification, there is an alleged violation of any of the obligations on Programmes by the obligated companies, its administrators, compliance officer, external auditor and other bodies and persons responsible for implementing them, the Superintendency may (i) issue orders to correct minor and non-repeated non-compliance and if the obligated company does not proceed to correct the irregularities, under the established terms and conditions, initiate an administrative sanctioning process, and (ii) initiate an administrative sanctioning process for an alleged regulatory breach. Sanctions are essentially fines, successive or not, up to two hundred (200) MCLMW (Approx. USD 45 000).

As to early and timely actions, the Superintendency designed Report 52, which will allow to have an overview of the regulatory compliance as to the implementation of Programmes and take timely and early actions to correct defaults. This information collected, every year, within each annual exercise, is processed and analyzed by the Superintendency with the purpose of generating a statistical report on compliance, allowing to identify the positive results, as well as shortcomings in the implementation and execution of Programmes and, to contribute to the decision-making process in matters of public policy and legislative process related to supervision.

Additionally, in Bill 341/2020 an amendment to article 23 of Law 1778 of 2016 was proposed so that the Superintendency is responsible for promoting the adoption of business ethics programs for preventing foreign bribery not only in companies under its surveillance (that meet certain thresholds and requirements, mainly assets or income) but in all companies under its supervision. This will expand even more the scope of companies obliged to adopt a Program.

As to the supervisory role, in 2020 and 2021, the Superintendency initiated 4 administrative sanctioning proceedings against legal persons for non-compliance of the Superintendency's regulation on Programmes, 2 of which have been concluded and with sanctions against legal persons. Said sanctions included monetary fines of up to COL \$10.902.312 (Approx. US\$2,839) individually, and jointly totalling COL\$21.804.624 (Approx. USD 5 678), correction orders and the order to read the sanction before the board of directors or shareholders' meeting.

As well, the training given to the different private actors by the Secretariat of Transparency, it incorporates the awareness and appropriation of the Integrity App. In fact, one step of the structure of the Business Integrity Route is to use this tool as a starting measure to provide support and generation of good business practices in the fight against corruption and made corporate integrity.

On the other hand, according to the report sent by the Alliance for Integrity, as of 21 July 2021, there is an increase of 105 new users compared to that reported in December 2020. Below is a table of the number of The Integrity App users:

| Date | Until 23 June 2020 | Until 10 July 2020 | Until 6 August 2020 | Until 10 September 2020 | Until 2 December 2020 | Until 21 July 2021 | New (Dic/20 a July/21) |
|-------------|--------------------|--------------------|---------------------|-------------------------|-----------------------|--------------------|------------------------|
| Total users | 100 | 107 | 110 | 117 | 148 | 253 | 105 |

Relevant Legal Provisions from the Bill 341/2020:

Artículo 34. Modifíquese el artículo 23 de la Ley 1778 de 2016, el cual quedará así:

Artículo 23. Programas de ética empresarial. La Superintendencia de Sociedades promoverá en las personas jurídicas y sucursales de sociedades extranjeras sujetas a su supervisión, la adopción de programas de transparencia y ética empresarial, de mecanismos internos anticorrupción, de mecanismos y normas internas de auditoría, promoción de la transparencia y de mecanismos de prevención de las conductas señaladas en el artículo 2° de la presente ley. La Superintendencia determinará las personas jurídicas y sucursales de sociedades extranjeras sujetas a este régimen, teniendo en cuenta criterios tales como el monto de sus activos, sus ingresos, el número de empleados y objeto social.

Text of issue for follow-up 12(r):

r) The allocation of sufficient resources to the Superintendence of Companies to allow it to effectively carry out preventive inspections as well as foreign bribery enforcement [Convention Article 2 and 2009 Recommendation III(v) and X.C].

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

Regarding preventive inspections, based on the criteria to determine the obligated companies to implement Programmes, together with a thorough risk-based analysis by the Superintendency, said entity will identify the companies, which could be the subject of administrative visits (extra and in situ visits) to verify the compliance on Programmes in order to target their resources more effectively and apply preventive measures that are commensurate to the nature of risks, in order to focus their efforts in the most effective way.

As to the dual role of the Superintendency— enforcement and prevention, by Decree 1736 of 22 December 2020, the general structure of the Superintendency was modified and the Compliance Directorate (*Dirección de Cumplimiento*) was created, whose functions, among others, are to carry out investigations to determine the administrative liability of legal persons for foreign bribery. On the other hand, the Superintendent of Corporations was given the function to propose the supervision and compliance policy related to Programmes, as well as the control, monitoring and compliance verification of Programmes. Moreover, by Resolution 100-000040 of 8 January 2021, that establishes the assignment of functions and defines the internal work groups within the Superintendency, the Supervision for Programmes and Special Risks Group (*Grupo de Supervisión de Programas y Riesgos Especiales*) and the Foreign Bribery and Other Crimes Investigation Group (*Grupo de Investigaciones de Soborno Transnacional y Otros Delitos*) were created. The first of them is in charge of monitoring and implementing the supervision policy approved by the Superintendent of Corporations related to Programmes and the second one is in charge of investigations and administrative sanctioning processes against legal persons for foreign bribery. Therefore, the prevention of foreign bribery is performed by different group and personnel to those engaged in investigations and sanctioning of foreign bribery, avoiding potential conflicts of interest.

The Superintendency's restructuring implied an increase of the personnel in charge of the prevention, as well as of the personnel in charge of the investigation of foreign bribery.

Text of issue for follow-up 12(s):

s) Whether Colombia engages in the future in the provision of official development assistance, and, if so, measures taken by Colombia to prevent, detect, report and sanction foreign bribery in line with the 2016 ODA Recommendation [2009 Recommendation XI(ii) and 2016 ODA Recommendation].

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

APC-Colombia does not present changes or updates regarding this point. Since the provision of ODA by Colombia is a scenario that has not yet been contemplated. Colombia is not a provider of Official Development Assistance (ODA) and, with a per capita income of USD 6,580 in 2019⁵, it is still far from exceeding the threshold of USD 12,535 per capita required to enter the category of high-income country. Due to the Covid-19 pandemic, all economic indicators declined. According to the National

⁵ World Bank, Data, Colombia. Web source: <https://data.worldbank.org/country/CO>.

Administrative Statistical Department in 2020 the Colombian economy contracted by 6,8%⁶ and based on the official projection of the Colombian Ministry of Finance the midterm economic growth path will be between 3,2% and 4,3%⁷.

Taking into account the latest economic prospect given by the World Bank, in 2021 Colombia's economy will grow 5,9%⁸. Under an optimistic scenario, assuming that the economy had a sustained economic growth at that average annual rate in the subsequent years, Colombia would reach the graduation zone in the year 2033. In that case, in 2035 the OECD would be warning Colombia that, if it continues with a growing income, it would graduate in the year 2038. Bearing in mind the above considerations, the scenario of Colombia as an ODA provider country, even with a positive economic growth, is not plausible within the next 17 years.

⁶ National Administrative Statistical Department DANE, National Accounts, GDP 2020. February 2021. Web source: https://www.dane.gov.co/files/investigaciones/boletines/pib/cp_PIB_IVtrim20.pdf.

⁷ Colombian Ministry of Finance and Public Credit, Medium term fiscal framework 2021, Graphic 73, page 227. Web source: https://www.minhacienda.gov.co/webcenter/ShowProperty?nodeId=%2FConexionContent%2FWCC_CLUSTER-165808%2F%2FidcPrimaryFile&revision=latestreleased.

⁸ World Bank, Data, Colombia, Global economic prospects, Annual GDP Growth (%). Web source: <https://data.worldbank.org/country/CO>.

PART III: ADDITIONAL ISSUES FOR INFORMATION

Efforts made to publicise and disseminate the Colombia Phase 3 Report, for example, through public announcements, press events, sharing with relevant stakeholders, particularly those involved in the on-site visit [*Phase 3 Monitoring Information Resources, para. 49*].

Action taken as of the date of the follow-up report:

- Semester meetings in relation to these issues with public entities involved have been taking place with the Secretariat of Transparency since 2019, but because of the pandemic they were interrupted.
- In the website of the Secretariat of Transparency it is shown that we are in Phase 3 and the matrix with the recommendations and the actions taken by the different entities has been published since 2020: <http://www.secretariatransparencia.gov.co/internacional/organizacion-para-la-cooperacion-y-el-desarrollo-economicos>.
- Timely responses have been given to the requirements made by International Transparency.
- Reports made by Colombian media:

| Media | Date | Headline | Link |
|---|------------|---|---|
| W Radio | 20/12/2019 | The Organisation for Economic Development recognizes the efforts of the SuperSociedades in the fight against this crime | https://www.wradio.com.co/noticias/actualidad/la-ocde-hizo-un-llamado-para-que-en-colombia-siga-la-lucha-contra-el-soborno-transnacional/20191220/nota/3994007.aspx |
| El Nuevo Siglo | 19/12/2019 | Greater toughness against bribery asks OECD to Colombia | https://www.elnuevosiglo.com.co/articulos/12-2019-mayor-dureza-contra-el-soborno-internacional-pide-ocde-colombia |
| Ambito Jurídico Columna de SuperSociedades | 17/01/2020 | Results of Phase 3 of the implementation of the OECD Transnational Bribery Convention | https://www.ambitojuridico.com/noticias/mercantil/administrativo-y-contratacion/resultados-de-la-fase-3-de-la-implementacion-de-la |
| Eafit | | Colombia targets transnational bribery | https://www.eafit.edu.co/investigacion/revisiatacientifica/edicion-168/Paginas/colombia-pone-mira-al-soborno-transnacional.aspx |
| Infolaft | | OECD calls for more co-operation between Supersociedades and UIAF | https://www.infolaft.com/ocde-pide-mas-cooperacion-entre-supersociedades-y-uiaf |
| Superintendencia de Sociedades | 20/12/2019 | OECD recognizes efforts of Supersociedades in the fight against Transnational Bribery | https://www.supersociedades.gov.co/Noticias/Paginas/2019/OCDE-reconoce-esfuerzos-de-Supersociedades-en-lucha-contra-Soborno-Transnacional-.aspx |
| Risk Global Consulting | 06/01/2021 | OECD Evaluation Report: Preventing corruption and impact for companies in Colombia | https://www.riskglobalconsulting.com/blog/informe-de-evaluacion-de-la-ocde-prevenir-la-corrupcion-e-impacto-para-las-empresas-en-colombia |

www.oecd.org/daf/anti-bribery

