Implementing the OECD Anti-Bribery Convention in Lithuania

Phase 3 report

OECD

This Phase 3 Report on Lithuania by the OECD Working Group on Bribery evaluates and makes recommendations on Lithuania's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 7 December 2023.

EXECUTIVE SUMMARY

This Phase 3 report by the OECD Working Group on Bribery in International Business Transactions evaluates and makes recommendations on Lithuania's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report details Lithuania's achievements and challenges, including in enforcing its foreign bribery offence, as well as progress made since its 2017 Phase 2 evaluation and 2019 follow-up report.

Lithuania's legislative and policy framework for fighting foreign bribery is largely sound. Furthermore, Lithuania has made significant efforts in digitisation. An electronic system of requesting and obtaining judicial authorisation to lift bank secrecy has accelerated the execution of mutual legal assistance requests. The systems of the Prosecutor General's Office and Ministry of Justice for registering mutual legal assistance requests have been improved, though their statistical capabilities need to be strengthened. The establishment of a central register of beneficial owners is welcome, as is a requirement that the certain corporate annual reports provide information on fighting foreign bribery.

Nevertheless, some deficiencies remain. Of particular concern is that courts consider whether a company's shareholder is culpable before holding the company liable for a crime. Such a requirement does not accord with the realities of the modern corporation. Lithuania is recommended to urgently amend its legislation to address this concern. In addition, explicit recognition of corporate anti-corruption compliance programmes as a mitigating factor at sentencing would promote their implementation by companies. Making compliance programmes available as a term of a sentence or non-trial resolution would help prevent future offences. Greater efforts are also needed to encourage and assist large companies, state-owned enterprises and small- and medium-sized enterprises to develop compliance programmes.

Equally concerning is that Lithuania has yet to prosecute an individual or company for foreign bribery. Lithuanian authorities missed allegations of foreign bribery that were reported in the media. Up to just before the adoption of this report, they failed to investigate other allegations that contained detailed and compelling information. When opened, investigations should have been more proactive and thorough, with greater efforts to gather evidence in Lithuania. Enforcement can also be improved by setting out explicitly the procedure and benefits for individuals and company to self-report foreign bribery. A clear and transparent framework regarding non-trial resolutions such as penal orders would be helpful. More elements of non-trial resolutions should also be made public as appropriate. Sanctions imposed in practice for bribery need to be increased. Confiscation should be routinely sought against bribers and not only bribed officials.

The reporting and awareness of foreign bribery also need to be strengthened. Since Phase 2 Lithuania has commendably enacted a new whistleblower protection law, though the remedies available and the avenues for seeking redress can be improved. A new obligation on public officials to report corruption is also positive but needs to be enforced. Despite these legislative improvements, however, significant concerns remain about poor rates of whistleblowing and a reluctance to report corruption in practice. Overall, the public and private sectors have low awareness of foreign bribery. All relevant government bodies – not only the Special Investigation Service – need to further engage in awareness-raising.

The report and its recommendations reflect the conclusions of experts from Ireland and Slovenia and were adopted by the Working Group on 7 December 2023. It is based on legislation and other materials provided by Lithuania, as well as research by the evaluation team. Information was also obtained during a June 2023 on-site visit to Lithuania, during which the evaluation team met representatives of Lithuania's public and private sectors, prosecutors, judiciary, media, and civil society. Lithuania will report in two years on the implementation of the recommendations and on its enforcement efforts.

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A. INTRODUCTION

1. The on-site visit

1. On 19-23 June 2023, the OECD Working Group on Bribery in International Business Transactions (Working Group) visited Vilnius as part of the Phase 3 evaluation of Lithuania's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention), the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation), and related instruments.

2. The evaluation team was composed of lead examiners (Ireland and Slovenia) and the OECD Secretariat.[1] Before the on-site visit, Lithuania responded to the Phase 3 Questionnaire and supplementary questions, and provided relevant legislation and documents. The evaluation team also referred to publicly available information. During the on-site visit, the evaluation team met representatives of the Lithuanian public and private sectors, law enforcement, prosecutors, judiciary, civil society, and media. (See Annex 1 for a list of participants.) Lithuanian authorities absented themselves during meetings with non-governmental participants. The evaluation team expresses its appreciation to all participants for their openness during the discussions and to Lithuania for its co-operation throughout the evaluation.

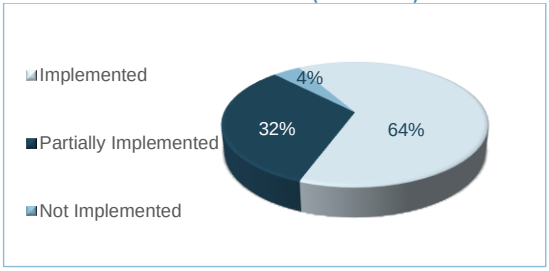
Table 1. Working Group evaluations of Lithuania

2017	Phase 1 Report
2017	Phase 2 Report
2019	Phase 2 Follow-up Report

2. Summary of previous monitoring steps

3. Lithuania's last full Working Group evaluation in Phase 2 in 2017 yielded 27 recommendations. In 2019, the Working Group concluded that Lithuania had fully implemented 16 recommendations, partially implemented 8, and not implemented 1. Two recommendations were converted to issues for future follow up.

Figure 1. Lithuania's Implementation of Phase 2 Recommendations (as of 2019)



3. Outline of the report

4. This report is structured as follows. Part B examines Lithuania's efforts to implement and enforce the Anti-Bribery Convention and Recommendation, having regard to Group-wide and country-specific issues. Particular attention is paid to enforcement efforts and results, and weaknesses identified in previous evaluations. Part C sets out the Working Group's recommendations and issues for follow-up.

4. Economic background

5. Lithuania has a population of over 2.8 million and the 7th smallest GDP of the 45 Working Group countries.[2] It is one of the fastest growing OECD economies since 2012 in per capita terms, buoyed by rising exports and integration into global value chains.[3]

6. In terms of trade, Lithuania was the 6th smallest exporter and importer of goods in the Working Group in 2021.[4] According to Lithuania, the top exported goods in 2022 were mineral products (17%), chemical products (12.3%), machinery and electrical equipment (11.4%), other manufactured articles (8.1%), and

[1] Ireland was represented by Mr. Liam Sheridan, Senior Prosecution Solicitor, Special Financial Crime Unit, Office of the Director of Public Prosecutions; and Ms. Catharina Gunne, Chief Superintendent, An Garda Síochána. Slovenia was represented by Mr. Gregor Pirjevec, Senior European and International Relations Advisor, Commission for Corruption Prevention; and Mr. Goran Vejnović, Senior Prosecutor, Supreme State Prosecutor's Office. The OECD Secretariat was represented by Mr. William Loo, Ms. Louise Lecaros de Cossío and Ms. Anaïs Michel of the Anti-Corruption Division.

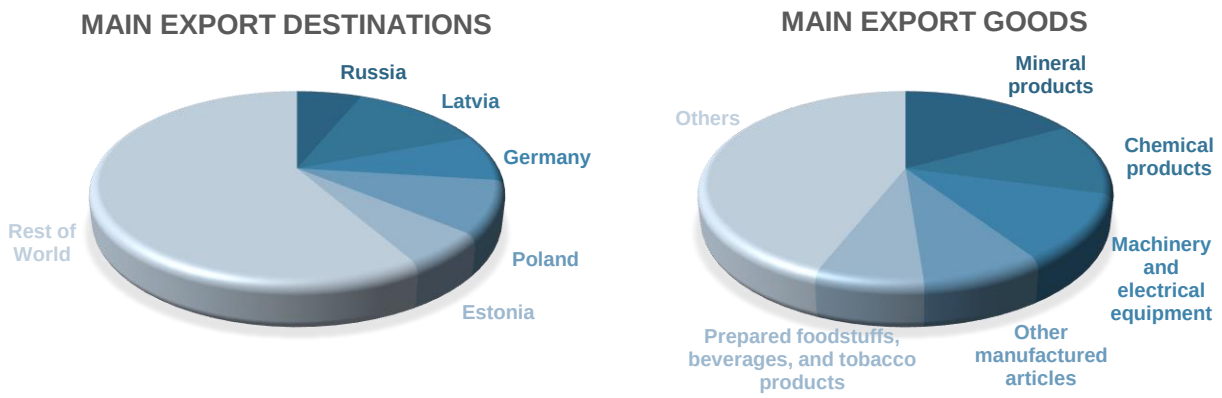
[2] OECD Data; IMF World Economic Outlook Database.

[3] OECD (2022), Economic Survey: Lithuania, pp. 10, 15 and 18.

[4] OECD Data; OECD (2022), Economic Survey: Lithuania, p. 26.

prepared foodstuffs, beverages, and tobacco products (7.2%). The main export destinations were Latvia (12.9%), Poland (9%), Germany (7.9%), Russian Federation (6.2%), and Estonia (5.7%). Belarus ranked 10th. The largest imports were mineral products (28.6%), machinery and electrical equipment (14.0%), chemical products (11.3%), transport equipment (8.9%), and metal products (6.6%). The top import sources were Germany (11.8%), Poland (11.7%), Latvia (7.8%), US (7.6%), and Sweden (5.3%).

Figure 2. 2022 exports of goods by destinations and category



Source: Lithuanian authorities

7. In terms of foreign direct investment (FDI), Lithuania in 2021 ranked 36th and 41st among 45 Working Group members in outward and inward FDI stocks.[5] According to Lithuania, the top destinations at the end of 2022 were Latvia, Estonia, Cyprus, Poland, the Netherlands, and Sweden. Some of these may be "pass through" countries for investment destined for other jurisdictions.

8. Lithuanian micro, small and medium-sized enterprises (SMEs) and state-owned enterprises (SOEs) are at risk of committing foreign bribery. Lithuania's SMEs accounted for 71% of persons employed in the business economy, 65% of value-added, and 51% of domestic exports of goods in 2022.[6] Four of Lithuania's 40 SOEs operate internationally through subsidiaries in energy and transport,[7] sectors which are considered at risk of corruption.

5. Cases involving bribery of foreign public officials

9. Lithuania does not have any foreign bribery convictions. There are eight known cases of active foreign bribery, i.e. allegations of Lithuanian individuals and/or companies bribing non-Lithuanian public officials. Three of these cases are under investigation, two investigations were opened just before the adoption of this report, and three were closed after investigation. These cases are summarised below. Where appropriate, this report also considers cases of passive foreign bribery (i.e. non-Lithuanian individuals or companies bribing Lithuanian officials).

a. Allegations not investigated until just before the adoption of this report

10. Helicopter (Colombia): According to Colombian media reports beginning in May 2018, an anonymous criminal complaint was filed in 2017 with the Colombian Prosecutor's Office against 20 military officers. The complaint alleged that multiple contracts awarded in 2011-2017 to the Colombian subsidiary of a Lithuanian company contained irregularities ranging from overpricing to unsuitable services. A second anonymous criminal complaint filed in March 2019 alleged similar irregularities in additional contracts. The Colombian Public Prosecutor's Office opened an investigation in May 2018. Lithuania became aware of

[5] OECD Data; OECD (2022), OECD International Direct Investment Statistics 2021.
[6] OECD (2022), Financing SMEs and Entrepreneurs 2022 - Full country profile: Lithuania, pp. 2 and 4.
[7] OECD (2022), Economic Survey: Lithuania, p. 42; OECD (2017), Size and Sectoral Distribution of State-Owned Enterprises; OECD (2018), Corporate Governance in Lithuania; *Valdymo koordinavimo centras*.

these allegations only after being informed by the Working Group in May 2018. Initially, it did not open an investigation "due to insufficient information". Just before the adoption of this report, Lithuania informed the Working Group that it had opened an investigation on 27 November 2023. At the time of this report, Lithuanian authorities are drafting a request for mutual legal assistance (MLA). No other investigative steps have been taken.

11. Freight Forwarding (Belarus): According to information published by a government and the media outside Lithuania, top managers of four Belarusian state-controlled companies allegedly received bribes or kickbacks in 2006-2020 from foreign companies in return for contracts. One was a Lithuanian company which obtained a transhipment contract. In 2021, ten individuals were convicted of bribery and other crimes in Belarus and sentenced to imprisonment and payment of compensation. Lithuania became aware of these allegations only after being informed by the Working Group in September 2021. Initially, it did not open an investigation "due to insufficient information". Like the Helicopter (Colombia) case, Lithuania informed the Working Group that it had opened an investigation on 27 November 2023 just before the adoption of this report. At the time of this report, Lithuanian authorities are drafting a plan of investigation. No other investigative steps have been taken.

b. Concluded investigations without charges

12. Food Company (Russia): According to media reports, in 2015 Russian authorities found contamination in food imported from Lithuania. To avoid an import ban and fine, the Lithuanian company which exported the food sought the help of a Lithuanian legislator. The legislator allegedly organised a meeting between the Lithuanian company and the relevant Russian official. He also reportedly advised the company on two occasions to give money to the Russian official. The legislator was convicted of abuse of office in 2022. The conviction was later upheld by the Court of Appeal and Supreme Court. A director of the Lithuanian company was convicted of false accounting in 2020 but the company was not charged with the same offence because no shareholder knew of any crime. Lithuanian authorities dropped active bribery charges because there was insufficient evidence that a bribe had been offered or paid. Lithuania argues that this case should be considered a successfully concluded foreign bribery enforcement action because "a large part of foreign bribery charges (*actus reus* and *mens rea*) were used in conviction of abuse of office". But the abuse of office offence is of a fundamentally different character than active foreign bribery. The legislator was convicted of abuse of his office as a Lithuanian legislator, not as a foreign official. Moreover, the two natural persons and the company that allegedly committed bribery were not convicted of abuse of office.

13. Helicopter (United States): According to US media reports beginning in 2013 and court documents, a Lithuanian company obtained a US military contract. A representative of the company later gave a USD 4 000 (EUR 3 649) watch to the wife of a US official who was associated with the contract. The official also received gifts such as a luxury vehicle, trips to Lithuania, and hunting expenses. In 2015, the official was convicted in the US of conflict of interest and making false statements. Lithuania opened an investigation for foreign bribery in 2016. It terminated the investigation in 2019 after concluding that there was insufficient evidence of bribery.

14. Blood Plasma (Latvia): In 2018, Lithuanian authorities began investigating a Lithuanian company and a Lithuanian official for attempting to rig the Lithuanian blood plasma market. Lithuania is trying the individuals for this alleged offence. During the investigation, however, the individuals were heard discussing a similar plan to rig the Latvian blood plasma market. Lithuanian authorities halted an investigation for foreign bribery after concluding that there was insufficient evidence that a bribe was offered or paid.

c. Ongoing cases

15. Printing Company (Kyrgyzstan): According to Kyrgyz media reports beginning in April 2019, a Lithuanian company allegedly bribed Kyrgyz officials to win a KGS 940 million (EUR 12.2 million) contract

to provide blank biometric passports. During a press conference in Lithuania in April 2019, a director of the Lithuanian company denied bribing Kyrgyz officials but admitted to paying for its "official consultants" to travel overseas to "business conferences". In December 2019, Kyrgyz courts convicted senior officials over the contract. Lithuania, however, opened a pretrial investigation for foreign bribery only in February 2023.

16. Oil Products (Kazakhstan): In April-June 2017, an individual with Lithuanian nationality allegedly paid a USD 25 000 (EUR 22 811) bribe to Kazakh officials. The purpose was to obtain a decision on the classification of oil products for export. Kazakh authorities opened an investigation in August 2017 and requested legal assistance from Lithuania in 2018. German prosecutors also requested legal assistance from Lithuania in February 2023. Lithuania then opened a pretrial investigation in March 2023.

17. Windfarm (Estonia): At an unspecified time, a Polish individual representing a Polish company allegedly offered a EUR 100 000 bribe to a Lithuanian company to win a contract in a windfarm project. The individual eventually provided part of the bribe. The Lithuanian company self-reported the crime to Lithuanian authorities, who then opened an investigation in October 2023. Lithuania states that this is a foreign bribery case because the Lithuanian company that received the bribe is a subsidiary of an Estonian state-owned enterprise. However, the case resembles domestic bribery in most respects, e.g. the bribe was offered and paid in Lithuania to a Lithuanian company to win a contract for a project in Lithuania.

Commentary

Lithuania's legislative and policy framework for fighting foreign bribery is largely sound. This is reflected in the Working Group's 2017 Phase 2 evaluation which produced only 27 recommendations, 18 of which were fully implemented or converted to issues for follow up by 2019. Nevertheless, as this report explains, the implementation of this framework can be improved. Lithuania has yet to prosecute an individual or company for foreign bribery. Up to just before the adoption of this report, it did not open investigations in two foreign bribery cases even though information reported by the media disclosed "signs of a criminal act". Investigations of other allegations should have been more proactive and thorough. Significant efforts have been made to raise awareness of fighting foreign bribery (see paras. 243-248). However, actual awareness among companies and the public is low. Recent practice has also revealed a significant deficiency in Lithuania's corporate liability regime.

B. LITHUANIA'S IMPLEMENTATION AND APPLICATION OF THE ANTI-BRIBERY CONVENTION AND RECOMMENDATION

1. Foreign bribery offence

18. Lithuania's foreign bribery offence is in Criminal Code (CC) Art. 227 and has not been amended since Phase 2. Art. 227(1) applies to "[a] person who directly or indirectly offers, promises or agrees to give or gives a bribe to a civil servant or a person equivalent thereto or a third party in exchange for a desired lawful act or inaction of the civil servant or person equivalent thereto in exercising his powers" (underlining added). Art. 227(2) covers bribery in return for unlawful acts or omissions. Art. 227(5) clarifies the coverage of bribery for an official to exercise his/her powers or to provide an "exceptional situation or favour" to the briber. Proof of how the public official understands the briber's actions is not necessary. CC Art. 7 provides universal jurisdiction on natural and legal persons for a list of offences covered by international treaties, including foreign bribery. Additional provisions deal with territorial jurisdiction (CC Art. 4(1)) and nationality jurisdiction (CC Art. 5). The text of these provisions is in Annex 3 at p. 65. The penalties for foreign bribery are described in section B.3 at p. 12.

19. The Phase 1 and 2 Reports examined the foreign bribery offence in detail and identified only one outstanding issue concerning the bribery of employees of foreign state-owned enterprises. The present report also considers several defences applicable to foreign bribery.

a. Definition of a foreign public official and state-owned enterprises

20. Lithuania defines a "foreign public official" in CC Art. 230(2). As mentioned above, the offence in CC Art. 227 applies to the bribery of "a civil servant or a person equivalent thereto". Art. 230(2) defines this term as "a person who, irrespective of his status under the legal acts of a foreign state […] ensures the implementation of public interest through employment or by holding office on other grounds at an institution or body of a foreign state […] or a legal person or another organisation controlled by the foreign state, also official candidates for such office shall be held equivalent to a civil servant" (underlining added).

21. In previous evaluations, Lithuania provided inconsistent explanations of this definition's coverage of employees of foreign state-owned enterprises (SOEs). In Phase 1 (para. 17), it stated that the provision applied to enterprises over which a foreign state exercised a "decisive influence", including by holding a majority of the voting rights or authorised capital. In Phase 2 (para. 152), Lithuania stated initially that the courts would assess whether an SOE "ensured implementation of a public interest". It later changed its position, stating that the courts would refer to the laws of the foreign state on how the enterprise is governed. The Working Group thus decided to follow up whether Lithuania's definition sufficiently covers employees of foreign SOEs as required by the Convention (follow-up issue 13(m)).

22. There has not been practice clarifying this issue. During this evaluation, Lithuania indicates that employees of foreign SOEs are considered foreign public officials under CC Art. 230(2). Reference to the definition of an official under foreign law is not necessary. There is no case law to support this position, however. Jurisprudence on the bribery of *domestic* (i.e. Lithuanian) SOEs is not particularly helpful for determining the coverage of *foreign* ones. Domestic SOEs are defined in CC Art. 230(3). The provision uses language different from CC Art. 230(2) which applies to foreign SOEs.

Commentary

The lead examiners recommend that the Working Group continue to follow up the application in practice of CC Art. 230(2) to employees of foreign SOEs.

b. Defences to foreign bribery

23. There are no defences that apply specifically to the foreign bribery offence. The present report considers two categories of defences of general application, namely (a) release from liability, and (b) necessity and justified economic risk.

i. Release from liability

24. CC Arts. 36-40 contain provisions for releasing an offender from liability. In previous evaluations, the Working Group decided that several of these provisions did not *prima facie* pose problems. Since Phase 2, however, Lithuania has enacted a new provision on the release from liability for reporting crime. A second provision exempting liability with a surety or bond has been applied in foreign bribery cases.

(1) Release from liability for reporting crime

25. CC Art. 39^2 was enacted in 2018 after Phase 2. The provision applies to misdemeanour and less serious foreign bribery (see Table 2 at p. 13 for the classification). Lithuania is considering expanding the provision to serious crimes, which would cover aggravated bribery. CC Art. 39^2 exempts from liability a person who is recognised as a whistleblower under the Whistleblower Protection Law (see section B.10.c at p. 48). (This requirement implies that the provision does not apply to legal persons.) The individual must confess to a crime and assist in uncovering a second, more dangerous crime committed by another person. In addition, the individual must be a first-time offender. He/she must also not be an organiser of the crime he/she helped to uncover, or have been classified a "dangerous recidivist". Lithuania states that the rationale for this provision is to encourage the reporting of a co-conspirator. Short of a release from liability, reporting can also mitigate sentence upon conviction (CC Art. 62).

26. Crucially, the new CC Art. 39[2] applies at the discretion of a pretrial investigation judge or trial judge. A person "may be released from liability by the court" if the above-mentioned conditions are met (CC Art. 39[2](1)). The provision thus differs from a defence of "effective regret" in some Parties to the Convention. Furthermore, the release from liability can be coupled with sanctions such as confiscation and a ban on a particular job or activity (CC Art. 67). Lithuania also states that CC Art. 39[2] requires more than a mere confession but active assistance in an investigation. The provision has not been applied in corruption cases, according to the Ministry of Justice and the Special Investigation Service.

(2) Exemption from liability with a surety or bond

27. CC Art. 40 allows a court to exempt an offender from liability by placing him/her under the supervision of an individual (surety) who has a "positive influence". The offender may also be required to make a monetary deposit (bond). Like CC Art. 39[2], misdemeanour and less serious foreign bribery qualifies for this provision. Four conditions must be met: (1) the person is a first-time offender, (2) he/she admits guilt and is remorseful, (3) the damage caused is at least partially compensated, and (4) there are reasonable grounds to believe that the person will not commit further offences. Some sanctions are available, such as confiscation and a ban on a particular job or activity (CC Art. 67). The exemption is revoked if the offender re-offends within a specified period. A court's decision to apply CC Art. 40 depends on the circumstances in a specific case, according to "Judicial Practice" published by the Supreme Court.[8]

28. Though originally intended for petty crimes, CC Art. 40 has been applied to natural persons in corporate bribery cases. The sufficiency of sanctions in these cases is examined in section B.3.e at p. 15. The provision is also available to legal persons under certain circumstances.[9]

ii. General defences of necessity and justified economic risk

29. CC Arts. 28-35 contain defences applicable to all crime types, including three defences that have an economic dimension. CC Art. 28 provides a defence where the commission of a crime is necessary for "defending or protecting […] property […] or the interests of society" from an "initiated or imminent dangerous attack". CC Art. 31 contains a further "necessary necessity" defence where a crime is committed to eliminate "a danger" to a person's rights, or to the "interests of society". CC Art. 34 provides a defence if a crime is "justified by professional or economic risk for a purpose beneficial to society".

30. It is doubtful that these provisions apply to foreign bribery cases. On-site visit participants were asked to consider whether it is a defence if bribery is said to be necessary for doing business, keeping a business alive, or avoiding job losses. The Ministry of Justice, prosecutors, Supreme Court judges, private sector lawyers and academics all answered in the negative. There are no examples where such defences were raised or succeeded in corruption cases.

2. Responsibility of legal persons

31. CC Art. 227(8) states that "[a] legal person is also responsible for the [active bribery offences] provided for in paragraphs 1, 2, 3 and 4 of this Article." CC Arts. 20(2)-(3) set out the standard of liability. CC Art. 20(6) clarifies that liability applies to state-owned enterprises (enterprises and public bodies "of which the State or the municipality is the owner or shareholder, and public limited liability companies and private limited liability companies in which the State or the municipality holds all or part of the shares"). CC Art. 20(5) provides that corporate liability is "not removed by the criminal liability of a natural person, as well as by the fact that the natural person is exempted from criminal responsibility for this act or is not held accountable for other reasons." (See Annex 3 at p. 65 for the full text of the provisions.)

[8] Supreme Court (24 Oct. 2019), AB-51-1 "Overview of court practices in application of exemption from criminal liability pursuant to bond (Article 40 of the Criminal Code)".
[9] Supreme Court (10 Nov. 2021), 2K-7-44-719-2021.

32. The Working Group's Phase 2 Report examined these provisions extensively. It did not recommend any legislative action but decided to follow up "corporate liability for the foreign bribery offence as practice develops" (follow-up issue 13(n)). Since Phase 2, these provisions have not been amended.

33. The present evaluation considers one issue of significant concern raised by post-Phase 2 practice in foreign bribery cases, namely the requirement of shareholder culpability for corporate liability. It also considers three issues mentioned in the Phase 2 Report, namely successor liability, bribery committed by intermediaries, and the benefit vs. damage of a crime.

a. Natural persons triggering corporate liability and requirement of shareholder culpability

34. Anti-Bribery Recommendation Annex I.B.3 describes the natural persons whose criminal acts should result in corporate liability for foreign bribery. Paragraph 3.b is relevant for present purposes. In short, a company should be liable if senior company management (1) commits, directs or authorises foreign bribery, or (2) fails to prevent a lower-level person from committing foreign bribery.

35. On its face, Lithuania's CC Art. 20 largely mirrors the Anti-Bribery Recommendation. A company is liable for a crime committed by a person who can represent, make decisions on behalf of, or control the activities of the company (Art. 20(2)). This definition should include senior company management. Liability equally arises if these individuals direct or permit an employee or authorised representative to commit a crime (first part of Art. 20(3)). Their insufficient supervision and control of an employee or authorised representative which result in a crime would also lead to liability (second part of Art. 20(3)).

36. However, Lithuanian courts have imposed additional restrictions that are not explicit in the statute. In the 2012 leading case on this issue, the Supreme Court held that a legal person is liable only if its shareholders are culpable by knowing, encouraging, or tolerating the commission of the crime:[10]

> What is important is whether the owner (shareholders) of the legal entity ensured effective control over the activities of the natural person or tolerated the relevant activities and others. When determining the connection between a criminal act committed by a natural person and a legal entity, it is necessary to assess whether the owner (shareholders) of the legal entity was interested in the criminal act committed by the natural person and its consequences. The fact that the owner (shareholders) of a legal entity did not know, did not encourage, or did not create conditions for the illegal actions of a natural person is one of the circumstances by which the criminal liability of a legal entity is decided. Thus, the owner of a legal entity or the main shareholders of a legal entity, who have the right to a decisive vote, must perceive and encourage or perceive and tolerate the criminal acts of a natural person (whose powers are established in Article 20, Part 2 of the Criminal Code). When deciding the issue of guilt and criminal liability of a legal person, such a mutual relationship between the culprit - a natural person and the legal person to be prosecuted must be established [underlining added].

37. As the Phase 2 Report (para. 164) pointed out, "any requirement involving an assessment of shareholders' involvement in the offence would go beyond the Convention". The Anti-Bribery Recommendation is clear, the acts and mental states of shareholders are irrelevant. This approach is sensible. Leaving aside sole proprietorships and micro-enterprises, the vast majority of companies are corporations whose management and ownership are separated by design. This is in fact the *raison d'être* of the modern corporation. Shareholders are thus not expected to be involved in the company's day-to-day operation and management. Requiring their knowledge of or contribution to a crime before holding the company liable is therefore not reasonable. The requirement would also be unworkable for many large corporations that have thousands of shareholders in multiple countries.

[10] Supreme Court (10 Jan. 2012), 2K-P-95/2012.

38. The requirement of shareholder culpability was a significant obstacle in Lithuania's post-Phase 2 foreign bribery cases. In the *Food Company (Russia)* case, a Lithuanian company allegedly bribed a foreign public official. A director of the company was convicted of false accounting in 2020. But Lithuania states that the company was not charged because no shareholder knew of the crime, among other reasons. In a separate passive foreign bribery case, the director of a Lithuanian subsidiary of a foreign company allegedly bribed a Lithuanian official. The conviction was later overturned. Nevertheless, proceedings were not brought against the company because there was no evidence that the director "acted with the knowledge of company participants [i.e. shareholders], managers, their instructions, etc."

39. Lithuania cites case law that underscores this concern. It refers to one case for the proposition that shareholder culpability is not determinative and only one circumstance that would be considered in imposing liability.[11] But this is beside the point: shareholder culpability should not be considered in every situation, according to the Anti-Bribery Recommendation. A second case was cited to support the argument that a lack of shareholder culpability does not automatically exculpate the legal person. But the court found that a shareholder was culpable in the case and imposed corporate liability.[12] The company was also held liable in another case because the natural person perpetrator held 50% of the company's shares.[13] In a last case, the company's general director committed the crime. This alone should have been enough to impose liability, according to the Anti-Bribery Recommendation. Instead, the Supreme Court returned the case to the lower courts to examine the role of the general shareholders' meeting in company management functions, and the meeting's authority to resolve issues related to the company's activities.[14]

40. This jurisprudence may also indicate that shareholder culpability is a necessary condition for liability rather than merely a factor to be considered as the Supreme Court suggests. In all the cases above where corporate liability was imposed, the courts found that a shareholder was culpable. Lithuania has not referred to any cases in which a company was held liable absent a culpable shareholder.

41. Lithuania disagrees that shareholder culpability is an issue. It states that its legal framework complies with the Anti-Bribery Recommendation because shareholder culpability "is not necessary under the Criminal Code". The statute is indeed silent on this issue, but the courts have consistently required the consideration of shareholder culpability. Lithuania is also unsure "whether it would be possible to amend the Criminal Code to prohibit courts from assessing shareholder culpability for corporate liability." But the legislature clearly has the power to enact legislation on the standard of corporate liability that must be applied by the courts. Lithuania further argues that the Working Group should merely follow up this issue rather than recommend legislative change because "the courts have applied various models of shareholder accountability". But follow-up is inappropriate because Lithuanian law is settled: a long line of Supreme Court cases requires shareholder culpability for corporate liability. The requirement has also impeded an actual foreign bribery enforcement action. Urgent legislative amendment rather than continued monitoring is therefore necessary.

Commentary

The lead examiners are seriously concerned that shareholder culpability is considered when determining whether to impose corporate liability in Lithuania. Such a requirement does not accord with the realities of the modern corporation and is thus not permitted under the Anti-Bribery Recommendation. In practice, such a requirement will allow many companies to escape liability for foreign bribery. The lead examiners therefore recommend that Lithuania urgently enact legislation

[11] Supreme Court (2 May 2017), 2K-7-30-788/2017.
[12] Supreme Court (12 Jan. 2017), 2K-7-28-303/2017. The natural person perpetrator acted "not only as the general director of [the company], but also as a shareholder and board member of this company". The company owner also "did not ensure effective control of the activities of the natural person [perpetrator], was aware of his criminal actions, tolerated them and was interested in the consequences of this action." As well, "the unaccounted money (taking interest-free loans) was used by the company's shareholder".
[13] Vilnius Regional Court (11 Nov. 2021), 1-325-1035/2021.
[14] Supreme Court (21 Dec. 2010), 2K-582/2010.

to ensure that its corporate liability regime complies with Convention Art. 2 and Anti-Bribery Recommendation Annex I, including by repealing the consideration of shareholder culpability for corporate liability.

b. Successor liability, bribery through intermediaries, and benefit vs. damage

42. A minor issue related to successor liability has been clarified. In determining whether a successor legal person should be liable for the acts of its predecessor, a court should consider whether (1) the sole objective of a re-organisation is to avoid liability, (2) the managers of the predecessor or perpetrators of the offence are involved in the successor or the re-organisation, (3) the successor company assumed the predecessor's assets or benefits of the offence, and (4) the legal persons involved were or should have been aware of, tolerated or acknowledged the offence.[15] The Supreme Court has clarified that these are four factors to be considered – not cumulative preconditions – in determining liability.[16]

43. A second issue concerning bribery via intermediaries is unresolved. The Phase 2 Report (para. 166) stated that corporate liability results from foreign bribery committed by most but not all intermediaries. According to a Constitutional Court ruling, an "authorised representative" as defined by CC Art. 20 covers "agency relationships based on contract, statute, court judgement, and administrative acts". However, "persons who act in their own name although in the interest of the other person (sales intermediaries etc.)" would be excluded. In Phase 3, Lithuanian authorities and practitioners state that a company is liable in this last scenario if the other requirements for liability in CC Arts. 20(2) and (3) are met. No supporting case law is provided, however.

44. An issue regarding the benefit and damage of an offence is also outstanding. Corporate liability arises under CC Art. 20 only if a crime is committed "for the benefit or in the interests" of the legal person. In Phase 2 (para. 164), Lithuanian considered that "liability would be excluded in cases where the legal person suffered more damage from the offence than the benefit gained and where legal entities are incorporated as instruments of crime (in the context of foreign bribery, this could include letterbox companies)." Since Phase 2, Lithuania has provided training to clarify this issue. However, the concept of damage vs. benefit resurfaces in the Prosecutor General Recommendations on the Application of Criminal Liability of Legal Persons (Order I-362). Recommendation 20 states that a natural person who intends to misappropriate a legal person's property may commit multiple crimes, some of which benefits the legal person. The legal person could not be liable if "the property damage caused to the legal person negates the benefit that the legal person received". Lithuanian authorities, practitioners and judges state that damage would not be taken into account but do not refer to supporting case law.

Commentary

The lead examiners recommend that the Working Group follow up (a) the application of corporate liability for foreign bribery committed via intermediaries, and (b) whether liability arises only when an offence's benefit outweighs its damage to the company.

3. Sanctions

a. Sanctions available against natural persons

45. There have not been significant changes since Phase 2 to the sanctions available against natural persons for foreign bribery. Foreign bribery offences are divided into four categories for the purposes of sanctions: (1) bribery for a legal act/omission (CC Art. 227(1)); (2) bribery for an illegal act/omission (CC Art. 227(2)); (3) aggravated offences involving bribes of EUR 12 500 or more (CC Art. 227(3)); and (4) misdemeanour bribery for bribes of up to EUR 50 (CC Art. 227(4)). The aggravated and misdemeanour offences apply to bribery for both legal and illegal acts/omissions. Available sanctions for the four

[15] Supreme Court (30 Dec. 2016), 2K-7-304-976/2016.
[16] Supreme Court (8 Nov. 2018), AB-49-1 "Review of case law on the application of criminal liability of legal persons".

categories include imprisonment, fine, arrest, and restriction of liberty (CC Arts. 11 and 227). Only one of these penalties may be imposed for each offence committed (CC Art. 42(3)). A custodial sentence (imprisonment, arrest, or the deprivation of liberty) may be suspended (CC Chapter X).

Table 2. Sanctions against natural persons for foreign bribery

	Art. 227(1) ("for legal action or inaction")	Art. 227(2) ("for illegal action or inaction")	Art. 227(3) ("aggravated" – bribes of EUR 12 500 or more)	Art. 227(4) ("misdemeanour" – bribes of EUR 50 or less)
Category of offence (CC Art. 11)	Less serious	Less serious	Serious	Misdemeanour
Maximum imprisonment	4 years	5 years	7 years	Not available
Maximum arrest	90 days	90 days	Not available	45 days
Maximum restriction of liberty	2 years	2 years	Not available	2 years
Minimum fine	Highest of the instrument, damage, benefit, or EUR 5 000 (MSL 100)	Highest of the instrument, damage, benefit, or EUR 5 000 (MSL 100)	Highest of the instrument, damage, benefit, or EUR 7 500 (MSL 150)	Highest of the instrument, damage, benefit, or EUR 750 (MSL 15)

46. CC Art. 47(6), enacted in October 2017, sets out a special rule for fines in bribery cases. It states that the fine for offences in CC Chapter XXXIII (which includes bribery) cannot be less than the object of the offence, property damage caused, property benefit received or sought, or the statutory minimum in CC Arts. 47(3)-(4), whichever is the highest. The statutory minimum in CC Arts. 47(3)-(4) is expressed in units of "minimum standard of living" (MSL) whose value is set by government decree. (One MSL currently equals EUR 50.)[17] There is no statutory maximum limit to the fine in bribery cases.

b. Sanctions available against legal persons

47. The provisions on corporate sanctions for foreign bribery are mostly unchanged since Phase 2. A legal person may be fined EUR 10 000 to 5 million (MSL 200-100 000) (CC Art. 47); subject to a restriction of its operation for 1-5 years (CC Art. 52); or be liquidated (CC Art. 53). As with natural persons, the court may only impose one of these sanctions per offence committed (CC Art. 43(3)). Since July 2019, in addition to one of these three sanctions, one or more of the following "punitive measures" may also be imposed: confiscation, extended confiscation, and contribution to a fund for victims of crimes (CC Art. 43(5); see section B.4 at p. 16 for details on confiscation). The court's judgment imposing punishment "must be announced through the means of public information" (CC Art. 43(2)).

c. Aggravating and mitigating factors

48. CC Art. 54 sets out the grounds for determining the sentence in a specific case. The average of the maximum and minimum punishment is the starting point (Art 61(3)). The court then determines the type of sanction and its quantum starting from the average, having regard to the mitigating and aggravating circumstances (Art. 61(2)). Lithuania indicates that where there is no statutory maximum fine, as in the case of foreign bribery (see para. 46), the court decides the starting point of the sanction.

49. CC Arts. 59(1) and 60(1) list mitigating and aggravating factors. The list of mitigating factors is not exhaustive; the court can recognise additional relevant circumstances that are not enumerated (CC Art. 59(2)). In Phase 2, the Working Group decided to follow up "mitigating circumstances inherent to

[17] Government Resolution 707 which entered into force on 1 Jan. 2018.

[foreign bribery]" (follow-up issue 13(q)). This section considers two specific mitigating factors: co-operation by an offender, including self-reporting; and length of proceedings.

i. Co-operation by an offender

50. For natural persons, two provisions also deal with mitigation resulting from an offender's co-operation. First, a custodial sentence should be no greater than the average of the statutory minimum and maximum if the perpetrator admits to committing and sincerely regrets the crime; actively helps solve the crime; and there are no aggravating circumstances (Art. 61(4)). Second, a sentence below the statutory minimum may be imposed if a perpetrator self-reports the crime; admits and sincerely regrets it, and/or helps the pretrial investigation of the crime; and fully or partially compensates or removes the property damage caused (Art. 62(1)). As mentioned in section B.1.b.i(1) at p. 8, an individual who self-reports can also be exempted from liability.

51. For legal persons, self-reporting of foreign bribery likely can mitigate sentence, though this is not explicitly provided for in the legislation. The provisions for natural persons described above do not apply to legal persons. Instead, the Criminal Code does not list mitigating factors exhaustively (see para. 50). In theory, a court can thus accept self-reporting as mitigating, according to the Ministry of Justice.

52. The role of self-reporting in detecting foreign bribery is further examined in section B.5.b.ii at p. 18.

ii. Length of proceedings

53. Lengthy criminal proceedings can also reduce penalties (Phase 2 Report para. 194 and follow-up issue 13(q)). The Supreme Court has held that this results from CC Art. 54(3), which allows sentence reductions "if the imposition of the punishment […] clearly contradicts the principle of justice".[18] In Phase 3, Lithuania indicates that sentence mitigation for this reason constitutes an "exceptional circumstance". The courts would consider the complexity of the case, seeking of mutual legal assistance, conduct of the prosecuted persons, actions or inaction of the law enforcement authorities, and procedural coercive measures applied. A sentence would not be reduced if the objectives of the sentence cannot be attained.[19]

54. Lithuania states that, the length of proceedings has reduced the sentence in only one case of corruption or economic crime since Phase 2.[20] Three Lithuanian officials were convicted of committing bribery and other offences after proceedings that lasted more than ten years. The trial court imposed jail sentences of five to seven years that were suspended for three years. In reducing the sentence and upholding the suspension due to the length of proceedings and the nature of the crime, the Supreme Court held that the "application of a real prison sentence to persons convicted of criminal acts of an economic nature, who do not hide from justice and do not pose a direct danger to society, is hardly compatible with the goals of punishment and the principles of law". The Prosecution Service cannot provide data but adds that "there are not many such cases" of sentence reductions due to lengthy proceedings.

d. Corporate compliance programmes and sentencing

55. The Criminal Code does not specifically provide that a corporate anti-corruption compliance programme implemented by the company after the offence can mitigate sentence. This is nevertheless permissible since the list of mitigating factors is not exhaustive (see para. 49), according to judges and the Ministry of Justice. But there are no examples where courts have taken compliance programmes into account in practice. The Ministry of Justice is preparing draft legislation to address this issue.

56. Clearer is that a company cannot be required as part of a sentence to implement a compliance programme for preventing future offences. Judges and private sector lawyers participating in this

[18] Supreme Court (17 Apr. 2007) 2K-7-45/2007; (22 Sep. 2009) 2K-256/2009; (7 Dec. 2010) 2K-503/2010; (12 Apr. 2011) 2K-192/2011; (21 Oct. 2014) 2K-409/2014; and (3 Jan 2017) 2K-48-696/2017.
[19] For instance, see Supreme Court (31 Jan. 2017), 2K-55-699/2017 and (8 Oct. 2019), 2K-215-895/2019.
[20] Supreme Court (13 Mar 2018), 2K-7-8-788/2018.

evaluation agree that only sanctions expressly provided for by the Criminal Code can be imposed. Many lawyers would support making compliance programmes available as a term of a sentence or non-trial resolution.

Commentary

The lead examiners consider that the explicit recognition of corporate anti-corruption compliance programmes as a mitigating factor at sentencing would promote their implementation by companies. Furthermore, making compliance programmes available as a term of a sentence or non-trial resolution would help prevent future offences. The lead examiners therefore recommend that Lithuania consider enacting legislation or taking other steps to expressly provide that (a) a legal person's anti-corruption internal controls, ethics and compliance programme would be considered when determining sanctions against the legal person for foreign bribery, and (b) such programmes can be imposed as part of a sentence or non-trial resolution in foreign bribery cases.

e. Sanctions imposed in practice

57. The Phase 2 report (para. 195) expressed concerns about the sanctions imposed in practice. The media reported that the average fine in 2015-2017 for serious bribery offences was under EUR 5 000, or 9% of the maximum. The corresponding figures for the first half of 2017 were EUR 3 300 and 6%. A particular concern was that fines for active bribery were only 11% of those for passive bribery in 2012-2016. The report also noted that in 2013-2017, five convictions for aggravated active bribery involving bribes of EUR 12 000-16 000 yielded jail sentences of 1-3 years. The Working Group thus decided to follow up whether fines in foreign bribery cases are effective, proportionate and dissuasive (follow-up issue 13(p)).

58. Statistics in Phase 3 indicate that actual sentences against natural persons remain light. Lithuania has not imposed sanctions in a foreign bribery case. It instead provides data on 599 cases of active domestic bribery convictions in 2018-2022. Ten cases involved bribes of over EUR 5 000. In two of these cases, a suspended jail sentence and bond were imposed in lieu of a fine. Of the eight remaining cases, the fine imposed was less than the bribe in two cases (just 25% the value of the bribe in one case). In one of these cases, a EUR 9 000 bribe was paid which led to a procurement contract of EUR 70 085.69. The two defendants were fined EUR 15 064, which is higher than the bribe but much less than the contract. A third defendant was fined EUR 2 485.56. None of these cases with low sanctions involved particularly unusual mitigating factors. Some of the defendants were remorseful and most did not have prior convictions. Both factors are common in bribery cases. The proceedings in some of these cases began after CC Art. 47(6) was enacted. The provision requires the fine in bribery cases to be at least the value of the bribe, property damage caused, and property benefit received or sought (see para. 46).

59. A closer look at specific passive foreign bribery cases lead to a similar conclusion of inadequate sanctions. In one case, a company director paid a EUR 5 000 bribe to unblock a project worth EUR 790 000. The director was exempted from liability without bond under CC Art. 40 (see section B.1.b.i(2) at p. 9). A conviction in a second case for paying a EUR 90 000 bribe resulted in only a EUR 60 000 fine. The sentence was reduced by one-third due to the use of a penal order (see section B.5.f.ii at p. 25).

60. No legal person has been sanctioned of foreign bribery. Four were sentenced for domestic bribery in three cases in 2018-2022 which resulted in fines of EUR 15 064-94 150.

Commentary

The lead examiners are concerned that sanctions imposed in practice for bribery are too low in Lithuania. They therefore recommend that Lithuania take steps (such as guidance, training and awareness raising) to ensure that sanctions (including fines) for foreign bribery imposed in

practice are effective, proportionate and dissuasive, particularly when penal orders, CC Art. 39[2] or CC Art. 40 is applied.

4. Confiscation of the bribe and the proceeds of bribery

61. The Phase 2 Report (paras. 198-200) described Lithuania's legal framework for confiscation as "solid". Upon the conviction of a natural or legal person, it is mandatory to confiscate the instruments (*įrankis*), means (*priemonė*) or proceeds (*rezultatas*) of the crime (CC Arts. 43(5), 67(2), 72; CCP Art. 94(1)). CC Art. 230(6) extends the definition of property subject to confiscation in bribery cases. Value confiscation is available (CC Art. 72(5)). The 2020 Civil Property Confiscation Law provides for confiscation of unlawfully obtained property whose value does not correspond to its owner's legitimate income.

62. The Phase 2 Report (para. 199) raised concerns about a "very low rate" of confiscation in bribery cases. The measure was imposed in less than 10% of cases in which a defendant was fined. Even when ordered, in some cases courts confiscated the bribe from the official and not the proceeds obtained by the briber. In September 2017, the Prosecutor General instructed prosecutors to take measures to ensure confiscation in bribery cases (Phase 2 Report para. 200). Nevertheless, the Working Group recommended that Lithuania train investigators and prosecutors (recommendation 12(a)). In 2019, the Working Group found that Lithuania had implemented this recommendation (Written Follow-Up Report p. 8).

63. In Phase 3, little real progress is observed in terms of practice. As mentioned above, Lithuania provides statistics on active domestic bribery convictions in 2018-2022. Of the 39 cases involving bribes of more than EUR 2 000, confiscation was ordered against the bribed officials in some cases, like in Phase 2. Yet not a single case resulted in the confiscation of the proceeds of bribery from the briber. In one case, confiscation was not ordered against bribers who had won a procurement contract of over EUR 70 000. In another case, bribers won eight procurement contracts with a total value of over EUR 82 000.

64. Lithuania disagrees that confiscation is inadequate in practice. It argues that there is no property to confiscate in some cases, e.g. bribery to avoid detention, or when a bribe is only offered or promised. But several of the 39 cases do not fall into this category. Lithuania also states that confiscation in public procurement cases applies not to the full value of the contract but only the profit obtained by the briber. To ascertain the profit, "an economic expert" may be required "to establish what costs a legal entity has incurred in carrying out a public procurement". Retaining such experts is not justified in the above-mentioned cases because the contracts are too small (EUR 70 000). However, the Working Group has pointed out that when the profit cannot be ascertained, then the gain to the briber should be presumed to equal at least the value of the bribe. (Otherwise, there would be no reason to commit the crime.) Confiscation in this amount should therefore be imposed.[21]

65. Lithuania also alludes to a lack of capacity or expertise. The STT has created a new Asset Recovery Division. Nevertheless, it states that it "consistently faces difficulties in establishing the amount of bribery proceeds in pretrial proceedings, as suspects deny having received illicit proceeds or minimise the amount of the proceeds of bribes".

Commentary

The lead examiners are concerned that there is still a low rate of confiscation in actual bribery cases in Lithuania. Lithuania argues that the Working Group should merely follow up this issue. However, the low rate of confiscation has persisted since Phase 2 in 2017. The lead examiners therefore reiterate Phase 2 recommendation 12(a) and recommend that Lithuania take further steps

[21] OECD and StAR (2012), Identification and Quantification of the Proceeds of Bribery, p. 43; Phase 4 Italy, paras. 248-253 and Recommendation 12(c).

to ensure that law enforcement authorities and prosecutors take into account the value of the bribe and routinely seek confiscation of the proceeds of bribery from the briber in foreign bribery cases.

5. Investigation and prosecution of the foreign bribery offence

a. Bodies responsible for foreign bribery enforcement

66. As in Phase 2, the two bodies principally responsible for criminal foreign bribery investigations and prosecutions are the (1) Department for Investigation of Organised Crime and Corruption (*Organizuotų nusikaltimų ir korupcijos tyrimo skyrius*, OCCI) in the Prosecutor General's Office (PGO), and (2) Special Investigation Service (*Specialiųjų tyrimų tarnyba*, STT).

67. The prosecutor is responsible for organising and directing pretrial investigations (Constitution Art. 118; Code of Criminal Procedure (CCP) Art. 164(1); Prosecution Service Law (PSL) Art. 16(1)). The Prosecution Service (PS) consists of the PGO and five Regional (*apygardų*) Prosecutor's Offices (PSL Art. 6; Phase 2 Report para. 94). The PGO and each Regional Office have an OCCI Department.[22] The recommendations and regulations of the Prosecutor General (PG) are binding on other prosecutors (PSL Art. 16(2)). The PG has ordered that the OCCI in the PGO would be responsible for foreign bribery investigations (PG Orders I-87 para. 11 and I-141 paras. 7-8; Phase 2 Report para. 96). The Chief Prosecutor of the OCCI assigns each case to one of the seven prosecutors in the Department who specialise in corruption cases, taking into account their workload.

68. The prosecutor responsible for a case may conduct the pretrial investigation personally or assign it to one or more "pretrial investigation institutions" (CCP Arts. 164-165). (Some investigative actions must also be performed by a pretrial investigation judge (CCP Art. 164(2))). As a pretrial investigation institution, the STT has jurisdiction over "criminal prosecutions for criminal acts of a corrupt nature" (STT Law (STTL) Art. 7). In 2012, the PG instructed prosecutors to commission the STT to investigate all cases of "complex corruption".[23] Since Phase 1, Lithuania has asserted that "complex corruption" includes foreign bribery and thus falls within the STT's remit. In Phase 2, the STT was investigating Lithuania's two ongoing foreign bribery cases (Phase 2 Report para. 91). Foreign bribery cases are not investigated by a special unit in the STT but by its five units each covering a different region, states Lithuania. Cases are assigned to individual STT officers according principally to their workload but also relevant skills such as language.

b. Sources of allegations

69. A pretrial investigation may be commenced based on a "complaint, statement or notification of a criminal act", or if there are "signs of a criminal act" (CCP Art. 166(1)). Contrary to Phase 2 (para. 115), the STT states that an anonymous complaint that is sufficiently "concrete" can lead to a pretrial investigation. In 2022, 222 out of 4 507 (4.9%) reports received by the STT were anonymous.[24]

70. Lithuania's seven cases of bribery of foreign public officials derived from five different sources: the Working Group (Helicopter (Colombia) and Freight Forwarding (Belarus)); criminal intelligence (Food Company (Russia) and Blood Plasma (Latvia)); incoming MLA request (Oil Products (Kazakhstan)); Internet information (Helicopter (United States)); and media (Printing Company (Kyrgyzstan)).

71. Two sources of allegations merit further examination, namely media monitoring and self-reporting.

i. Media monitoring

72. As in Phase 2 (para. 47), Lithuania states that its diplomatic missions monitor the foreign media for foreign bribery allegations as "part of the daily media monitoring routine". Mission staff review "all the

[22] PG Order I-87.
[23] PG Decision 17.2-7188 (28 Mar. 2012) "On the Pretrial investigations the Execution Whereof Is Assigned upon the Special Investigations Service".
[24] STT Annual Report 2022, p. 12.

leading media of their country of residence" daily, and also search the internet with relevant keywords. In Phase 3, the Ministry of Foreign Affairs (MFA) adds that it "uses digital tools to monitor the information space".

73. The monitoring could be more comprehensive, however. Lithuania discovered the Printing Company (Kyrgyzstan) case through the media. But in the Helicopter (Colombia) and Freight Forwarding (Belarus) cases, Lithuania received the allegations in the media from the Working Group. Lithuania states that its diplomatic mission in Belarus had limited human resources at the relevant time, which might have led to the relevant media articles being overlooked. Its only diplomatic representation in South America is in Brazil, which does not cover Colombia or monitor the Colombian media. The MFA also states that, due to the "enormous volume of daily information", some media information "may remain unprocessed".

74. There is also confusion over the STT's role in monitoring the media for foreign bribery allegations. Lithuania's questionnaire responses state that the STT requests the National Crisis Management Centre (NCMC) in the Government Office to conduct online research using a special search engine with selected keywords. The STT then analyses the search results. This method covered media posts in English since 2021 and Russian since 2022. But after seeing a draft of this report, Lithuania states that "the NCMC's functions are not related to bribery or the monitoring of related events in the media, and mentioning the NCMC in this context would be incorrect." It is thus unclear whether and how the STT monitors the media.

Commentary

Lithuania monitors the media for foreign bribery allegations through its diplomatic missions. However, the coverage is only partial; relevant media reports have therefore been missed. Furthermore, whether and how the STT monitors the media is unclear. The lead examiners therefore recommend that Lithuania strengthen its media monitoring of foreign bribery allegations, including by (a) substantially expanding the language and geographical coverage of the monitoring, and (b) assigning a clear role to the STT in these efforts.

ii. Self-reporting

75. The Working Group decided in Phase 2 to follow up self-reporting in foreign bribery cases (follow-up issue 13(j)). There are limited provisions on self-reporting a crime to the authorities. For natural persons, CC Art. 62(1) mitigates the sentence of a perpetrator who self-reports the crime, admits and sincerely regrets it, and/or helps the pretrial investigation of the crime, and fully or partially compensates or removes the property damage caused (see section B.3.c.i at p. 14). CC Art. 39^2 exempts from liability a whistleblower who reports and confesses to a crime, and assists in uncovering a second, more dangerous crime committed by another person (section B.1.b.i(1) at p. 8). For legal persons, self-reporting may mitigate sentence, though this is not expressly provided for in the Criminal Code (section B.3.c.i at p. 14).

76. The effectiveness of these provisions in corruption cases is unproven. Statistics provided by Lithuania indicate that in 2018-2022 CC Art. 62(1) did not lead to the detection of any cases of economic crime, including foreign or domestic bribery. Data on CC Art. 39^2 have not been provided. The STT states that there is no indication that this provision applies in its cases very often. It is unclear whether these legislative provisions were applied in the Windfarm (Estonia) case where a company self-reported in 2023.

77. Almost all participants at the on-site visit would welcome the creation of a more structured and well-defined corporate self-reporting programme. Several private sector lawyers agree that "more regulation and encouragement of reporting could be better." Three companies consider that such a programme could encourage companies to adopt more compliance measures. A fourth agreed but emphasised the importance of clearly defining the consequences and benefits of self-reporting.

78. The STT also confounds the issue of self-reporting with the reporting of foreign bribery generally. It states that it "regularly communicates about the importance of reporting corruption and available benefits for whistleblowers for their valuable information". It also refers to its campaigns to raise awareness of

reporting and whistleblowing (see Section B.10.b.ii at p. 47). But the general reporting of corruption is different from self-reporting by wrongdoers which requires a particular legal framework and incentive structure that currently do not exist in Lithuania.

Commentary

Self-reporting is an important source of detection of foreign bribery cases. Under Lithuania's Criminal Code, self-reporting may mitigate sentence or exempt an individual from liability. However, companies are likely to self-report only if there is an explicit legal framework setting out the procedure for and benefits of doing so. The lead examiners therefore recommend that Lithuania consider measures to encourage persons who participated in, or have been associated with, the commission of foreign bribery, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions.

c. Opening a foreign bribery investigation

79. The criminal procedural rules are largely identical for natural and legal persons in foreign bribery cases and have not been amended since Phase 2 (CCP Art. 387(1)). The principle of legality (i.e. mandatory prosecution) applies. A pretrial investigation must be commenced if the prosecutor or a pretrial investigation institution receives a complaint, statement, notification or "signs of a criminal act" (CCP Art. 166(1)). Within ten days of receiving this information, non-coercive investigative measures may be conducted to clarify the allegation (CCP Art. 168(1)).

80. A pretrial investigation is refused if the information received does not disclose a criminal act (CCP Art. 168(1)) or if criminal proceedings are prohibited by CCP Art. 3(1), e.g. the act in question lacks "the characteristics of a crime or misdemeanour", the statute of limitation has expired, or *ne bis in idem* applies (CCP Art. 168(1)). In cases where there has been a complaint, a refusal to start an investigation must be supported by a written reasoned decision. A pretrial investigation officer can refuse only with the consent of the head of his/her institution (CCP Art. 168(2)). A refusal by a pretrial investigation officer may be appealed to the prosecutor, and the prosecutor's decision to the pretrial investigation judge (CCP Art. 168(5)).

81. If the test for opening an investigation is met, then the prosecutor must immediately begin a pretrial investigation (CCP Art. 169(1)). A pretrial investigation institution like the STT can also open an investigation but must simultaneously inform the prosecutor; the prosecutor then decides who carries out the investigation (CCP Art. 171). Once opened, the investigation must be registered according to a procedure set by the PG (CCP Art. 166(3)).

82. Actual foreign bribery allegations involving Lithuanian companies raise three concerns about the application of these rules: (1) requiring confirmation by foreign authorities, (2) information in incoming MLA requests, and (3) delay in opening investigations.

i. Requiring confirmation by foreign authorities

83. Lithuania initially did not open investigations in two foreign bribery cases even though information reported by the media disclosed "signs of a criminal act" within the meaning of CCP Art. 166(1). In the Helicopter (Colombia) case, beginning in May 2018 the media reported anomalies in at least five contracts between the local subsidiary of a Lithuanian company and the Colombian military. The reported information included the contracts' date, value and subject matter. It described alleged irregularities, such as overcharging and contracts with an unfit purpose or for unnecessary services. The reports also stated that the Colombian Public Prosecutor's Office opened an investigation. In the Freight Forwarding (Belarus) case, information in the media and on the Internet indicated that a Lithuanian company allegedly paid bribes or kickbacks to managers of Belarusian state-controlled companies to win contracts. Ten defendants were convicted in December 2021 in Belarus. They were sentenced to imprisonment and

payment of compensation. Lithuanian authorities eventually opened the investigations in November 2023 just before the adoption of this report.

84. Lithuanian authorities explain that they did not initially investigate these allegations "due to insufficient information". When there is only information on the Internet, they contact foreign authorities to confirm the information and provide additional details. They later qualify this position by stating that "such a confirmation is not a prerequisite [but] it would be unreasonable to require an investigation into any allegation posted on the internet." In the Helicopter (Colombia) case, Lithuania sought information from Colombian authorities informally only from December 2022 to June 2023, some five years after the media reported the allegations. In the Freight Forwarding (Belarus) case, Lithuanian authorities state that geopolitical circumstances prevent them from communicating with their Belarusian counterparts.

Commentary

The lead examiners are concerned that Lithuanian authorities require their foreign counterparts to confirm foreign bribery allegations in the media before opening investigations. There is no legal obligation to seek such confirmation. In practice, however, until they opened investigations just before the adoption of this report, two foreign bribery allegations were not investigated for this reason. Such a requirement can obstruct many foreign bribery cases, since the authorities in the country of a bribed official may be unwilling or unable to provide such confirmation. This could arise, for example, when the bribery occurs in a country with weak governance or enforcement capacity. In such cases, attempts should nevertheless be made to investigate the allegation, such as by making inquiries domestically. This is especially the case when an allegation is sufficiently detailed and compelling, such as the ones that have arisen in Lithuania. The lead examiners therefore recommend that Lithuania take all necessary measures to ensure that law enforcement authorities act promptly and proactively so that complaints of foreign bribery are seriously investigated by competent authorities.

ii. Opening investigations based on information in incoming MLA requests

85. In the Oil Products (Kazakhstan) case, Lithuanian authorities did not open an investigation despite learning of the allegation in an incoming MLA request. An individual with Lithuanian nationality allegedly bribed a Kazakh official in 2017. Kazakh authorities opened an investigation and requested MLA from Lithuania in 2018. Lithuania executed the MLA request but did not open a domestic investigation for foreign bribery. An investigation was only opened after Lithuania received a second MLA request from Germany in February 2023. Lithuanian prosecutors explain that the first MLA request was sent to the central authority for MLA in the Prosecution Service, and not prosecutors responsible for domestic investigations. In the future, such allegations would be forwarded to the OCCI to consider whether a domestic investigation should be opened.

Commentary

The lead examiners are concerned that Lithuania did not consider opening a domestic investigation after receiving the first MLA request in the Oil Products (Kazakhstan) case. They are encouraged that the Prosecution Service states that its MLA central authority would forward such allegations to the OCCI in the future. They note, however, that this was already provided for in the Foreign Bribery Co-operation Agreement which predates the MLA request in the Oil Products (Kazakhstan) case (see para. 94). The Agreement also does not cover the Ministry of Justice, which is also a central authority for some MLA requests (see para. 199). The lead examiners therefore recommend that the Working Group follow up whether allegations of foreign bribery in incoming MLA requests are assessed with a view to determining whether a domestic investigation should be opened.

iii. Delay in opening investigations

86. In two foreign bribery cases, Lithuanian authorities opened investigations but only after significant delay. In the *Printing Company (Kyrgyzstan)* case, Lithuanian authorities learned of the foreign bribery allegations in media reports in April 2019. The Kyrgyz Prosecutor General's Office wrote Lithuanian authorities in February 2021. But Lithuania's pretrial investigation started only in February 2023. Lithuania explains that the delay was due to inquiries with Interpol and an examination of the company's geographical locations of operation. It is nevertheless surprising that this took almost four years to complete. In the Helicopter (United States) case, the media first reported the allegations in 2013. In April 2015, the concerned foreign official pleaded guilty in the United States. However, the STT opened the pretrial investigation only in March 2016.

87. Delay also occurred in one passive foreign bribery case. In August 2012, the UK authorities opened an investigation into allegations that a company bribed Lithuanian officials to win power plant contracts. The UK requested legal assistance from Lithuania in August 2012 and provided additional information in January 2015. The media began reporting the investigation as early as 2014. But Lithuania opened its own investigation only in September 2015.

Commentary

Lithuania opened several foreign bribery investigations only after substantial delay. The lead examiners therefore recommend that Lithuania take all necessary measures to ensure that its law enforcement authorities act promptly and proactively so that complaints of foreign bribery are seriously investigated and credible allegations are assessed by competent authorities.

d. Conduct of a foreign bribery investigation

88. If the test for opening a pretrial investigation is met, then the prosecutor conducts the investigation him/herself or assigns it to a pretrial investigation institution (CCP Art. 169(2)). In the latter case, the prosecutor controls how the investigation is conducted (CCP 170(2)). Decisions of a pretrial investigation officer may be appealed to the prosecutor in charge of the case. The prosecutor's decisions can also be appealed to a higher prosecutor and a pretrial investigation judge (CCP Arts. 62-65).

89. The STT and prosecutors maintain communication during an investigation. In Phase 2 (para. 121 and follow-up issue 13(i)), the Working Group decided to follow up whether "STT investigators are in an open and constant dialogue with the supervising prosecutor in all foreign bribery cases". In Phase 3, Lithuania stated that the STT is "bound by the prosecutor's instructions" and "it cannot be said that investigators have full autonomy". The STT and Prosecution Service meet as parties to a Foreign Bribery Co-operation Agreement to discuss strategic issues (see para. 94). The STT adds that investigators meet prosecutors regularly as equal partners and that communication is "quite good".

i. Proactive investigation

90. Lithuania's investigation of the Printing Company (Kyrgyzstan) case could be more proactive. The STT opened a pretrial investigation in February 2023. It then sent an MLA request to Kyrgyzstan and a European Investigation Order to Belgium. A second request was then sent to Kyrgyzstan. Whether additional investigative measures would be taken in Lithuania depends on the outcome of the second request. No other steps were taken. The media had reported that, during a press conference in Lithuania in April 2019, the company's director denied bribing Kyrgyz officials but admitted paying for business-related foreign travel unrelated to the tender for its "official consultants". Nevertheless, Lithuanian authorities did not take steps to gather evidence in Lithuania.

91. Just before the adoption of this report, Lithuania states that some investigative steps in Lithuania have been taken in the Oil Products (Kazakhstan) case. Since opening a pretrial investigation on 8 March 2023, Lithuanian authorities sought a European arrest warrant for the concerned Lithuanian individual and

subsequently obtained a statement from him/her. MLA from Kazakhstan was also requested. However, no steps have been taken to gather evidence in Lithuania until an individual was extradited to Lithuania in May 2023. The Lithuanian authorities interviewed the individual four times. They also confirmed that the company in question does not have operations in Lithuania.

92. Lithuania's response does not alleviate concerns. It argues that "there may be tactical reasons not to carry out active investigative measures without first gathering all objective information, including information from foreign countries." But there is no suggestion that this was why evidence has not been gathered domestically in the Printing Company (Kyrgyzstan) case. Lithuania also argues that this case is ongoing and that the necessary investigative steps would eventually be taken. However, at the time of this report the investigation has been opened for ten months without any efforts to gather evidence in Lithuania.

Commentary

The lead examiners are concerned that Lithuanian authorities have not proactively gathered evidence in Lithuania in at least one foreign bribery case. Instead, significant reliance is placed on seeking MLA from foreign authorities. They therefore recommend that Lithuania take steps to ensure that law enforcement authorities take a proactive approach to the investigation and prosecution of foreign bribery, particularly by gathering evidence in Lithuania.

ii. Co-ordination among Lithuanian law enforcement bodies and with foreign authorities

93. Foreign bribery cases are centralised in the PGO's OCCI. The arrangement is unchanged since Phase 2 (para. 117). A foreign bribery case opened by a Regional Prosecution Office must be transferred to the PGO's OCCI. If the STT opens a foreign bribery pretrial investigation, then it must inform the prosecutor no later than the following working day.

94. Co-ordination among law enforcement authorities is further provided for by a 2017 Agreement for Co-operation to Reveal Bribery of Foreign Public Officials in Cases of International Business Transactions (Foreign Bribery Co-operation Agreement). The parties to the agreement include the STT, Prosecution Service, Financial Crime Investigation Service in the Ministry of the Interior, State Tax Inspectorate, Customs Department, Police in the Ministry of the Interior, and Public Procurement Office. Under the Agreement, a law enforcement agency that uncovers a foreign bribery allegation while investigating a different crime must notify the STT. If a pretrial investigation has been opened, then the prosecutor in charge of the case must transfer the foreign bribery aspect of the investigation to the STT. The Agreement has not been amended since Phase 2 (paras. 18 and 122).

95. To reiterate these arrangements, the OCCI's Chief Prosecutor circulated a letter (No. 17.9-13387) dated 17 October 2019 on "the investigation of bribery of foreign officials". The letter was addressed to prosecutors, the STT and other parties to the Foreign Bribery Co-operation Agreement. It recalls that the PGO's OCCI is responsible for foreign bribery investigations. All "data on possible criminal acts related to the foreign public officials must be systematically provided to the [OCCI]". Agencies must also transfer relevant information to the STT under the Agreement.

96. If a foreign bribery case involves related offences (e.g. false accounting), then the supervising prosecutor may assign that aspect of the investigation to the Police or FCIS (financial intelligence unit). The July 2021 PG Order I-161 made the STT responsible for pretrial investigations of money laundering involving foreign bribery. In all cases, the PGO is responsible for co-ordinating the actions of the pretrial investigation institutions (PSL Arts. 8(5) and 17).

97. Two passive foreign bribery cases raise questions about co-ordination with foreign authorities. The first case concerned the director of a Danish-owned company in Lithuania who admitted to bribing Lithuanian officials during the execution of a waterworks contract. In the second case, the Lithuanian subsidiary of a Norwegian company allegedly bribed Lithuanian officials to win IT and telecommunications

contracts. Lithuanian authorities did not inform their Danish and Norwegian counterparts to consider whether proceedings should have been taken against the parent companies in those jurisdictions.

98. Lithuania argues unconvincingly that it did not have to liaise with foreign authorities in these cases. It explains that in both cases "[its] investigation did not establish any link between the parent company and alleged criminal offences committed by companies operating in Lithuania". But this overlooks the fact that the evidence and the law on corporate liability in Denmark and Norway could be different from those in Lithuania. It is for the authorities in those jurisdictions, not Lithuania, to decide whether the parent companies should be prosecuted under the laws of those countries. Lithuania also contends that the Working Group in fact informed Denmark and Norway of these two cases. The onus is then on these countries to contact Lithuania. However, Anti-Bribery Recommendation XIX.B.ii tasks each Party to the Convention – not the Working Group – with spontaneously providing information to other Parties. There will also be future instances where the relevant information is known to Lithuania but not the Working Group.

Commentary

The lead examiners are concerned that, in cases of passive foreign bribery, Lithuania does not routinely contact other Parties to the Convention that have a connection to the case. They therefore recommend that Lithuania take steps to ensure that it considers transmitting information – without prior request, where appropriate and in a manner consistent with national laws and relevant treaties and arrangements – to a competent authority in another Party to the Convention where such information could assist the country in undertaking investigations or successfully concluding foreign bribery proceedings.

iii. Investigative techniques

99. The Phase 2 Report (paras. 124-125) did not note any issues concerning investigative techniques. A pretrial investigation officer, prosecutor and court can demand items and documents (CCP Art. 97). Foreign bribery investigations qualify for all special investigative techniques such as interception of electronic communications (CCP Art. 154); examination and seizure of property or documents (Art. 155); undercover operations (Art. 158); simulation of a criminal act (Art. 159); and use of tracking devices (Art. 160). The pretrial investigation judge authorises special investigative techniques upon the prosecutor's request. Since May 2017, the STT may obtain a legal person's bank records without prior judicial authorisation (STT Law Art. 8(1)(2)).

100. In 2022, Lithuania created a beneficial ownership registry (JANGIS). The registry is a subsystem of the Information System of Legal Entities Participants (JADIS). Data in JANGIS and JADIS are available to eligible recipients, including law enforcement. The STT states that the system is "very useful for detecting ties, flows of money, hidden interests [and] corruption." JANGIS will eventually be connected to a European central platform to allow access to beneficial owner information in the EU. According to Lithuania, entities covered by the anti-money laundering regime are required to check and report any errors in JANGIS.

Commentary

The lead examiners welcome the establishment of JANGIS as a central register of beneficial owners.

e. Time limits in foreign bribery cases

i. Statute of limitations for foreign bribery

101. Lithuania's statute of limitations for foreign bribery is unchanged since Phase 2 (para. 158). The same rules apply to natural and legal persons. Time runs from the commission of the offence to the first

instance judgment (CC Art. 95(2)). A legal person may be held liable even if the natural person proceedings are time-barred (CCP Art. 387(3)(1)).

Table 3. Statute of limitations for foreign bribery

Penalties	Art. 227(1) ("for legal action or inaction")	Art. 227(1) ("for illegal action or inaction")	Art. 227(3) ("aggravated" – bribes of EUR 12 500 or more)	Art. 227(4) ("misdemeanour" – bribes of EUR 50 or less)
Category of offence (CC Art. 11)	Less serious	Less serious	Serious	Misdemeanour
Limitation period	12 years	12 years	15 years	3 years

102. There are limited grounds for suspending the limitation period. Among other things, the period is suspended for up to 25 years if the accused absconds during pretrial proceedings or a court hearing (CC Arts. 95(1)(2) and 95(4)). Time also stops running if a court during trial requests MLA (CC Art. 95(6)(2)), but not if a prosecutor makes a similar request during a pretrial investigation.

103. In Phase 2, the Working Group considered these provisions to be "generally adequate" but decided to follow up their practice (follow-up issue 13(k)). Two active domestic bribery investigations had been time-barred, though other offences were successfully prosecuted in one of the cases. Statistics provided in Phase 3 showed that no foreign bribery cases were time-barred in 2018-2022. The limitation period expired in only seven investigations and four trials of domestic bribery during the same period. This includes one passive foreign bribery case.

ii. Time limits for pretrial investigations

104. An additional limitation period applies to pretrial investigations. Such investigations must be completed within the shortest possible time, and in any event within three months for foreign bribery that is classified as misdemeanours, six months for less serious offences, and nine months for serious offences (CCP Art. 176(1)). The prosecutor can ask a more senior prosecutor to extend these limits due to a case's complexity, large volume of evidence or other important circumstances (CCP Art. 176(2)).

105. An excessively long pretrial investigation can lead to its termination. If the time limits specified above are exceeded, then the defence may complain to the pretrial investigation judge (CCP Art. 176(3)). It can also complain if an investigation is not completed within six months of the first questioning of the suspect (CCP Art. 215(1)). In both cases, the judge may reject the complaint, in which case the defendant can complain again in three months (CCP Arts. 215(3)(1) and (4)). The judge may set a deadline for completing the investigation, which can be extended at the prosecutor's request (CCP Arts. 215(3)(2) and 215(5)). The judge can also terminate the investigation (CCP Arts. 215(3)(3) and 212(10)). The judge's decision may be appealed to the court (CCP Art. 215(4)).

106. In Phase 2 (para. 127), the Working Group decided to follow up the application of these provisions (follow-up issue 13(l)). A particular difficulty with these limits arises in bribery cases. The value of the bribe determines the seriousness of the offence (see Table 2 at p. 13 for the classification). But this amount may be unknown early in an investigation. For this reason, the two foreign bribery cases ongoing in Phase 2 were considered less serious offences with just six months for investigation. Furthermore, foreign bribery cases will frequently require MLA, which can be time-consuming. In and of itself, seeking MLA is not an explicit ground for extension. However, the prosecutor and pretrial investigation judge would consider this factor, according to Lithuania.

107. These time limits do not appear to be a concern in practice. In Phase 2 (paras. 126-128), 60% of the STT's investigations in 2014-2016 exceeded 12 months and required at least one extension. Extensions from prosecutors were "almost automatic" and had "never been denied in practice". Judges did terminate three (non-corruption) investigations, however. In Phase 3, data provided by Lithuania show that

the investigative limitation period did not expire in any cases of economic crime, including foreign or domestic bribery. Prosecutors state that earlier dismissals were "a huge blow to the Prosecution Service". Since then, "every prosecutor is obliged to monitor every case and not allow this again".

f. Termination of foreign bribery cases, including non-trial resolutions

108. CCP Art. 212 sets out the grounds for terminating a pretrial investigation. The prosecutor or the pretrial investigation judge terminates the investigation if there is insufficient evidence to substantiate the suspect's guilt, or if (as described at para. 80) criminal proceedings are prohibited by CCP Art. 3(1) (CCP Art. 214(1)). Termination on other grounds must be confirmed by the pretrial investigation judge (CCP Art. 214(2)). Terminations may be appealed to a higher prosecutor, the pretrial investigation judge, and eventually the court (CCP Art. 214(4)). A terminated investigation may be resumed, e.g. if "essential circumstances that are important for the correct resolution of the case [later] become clear" (CCP Art. 217).

109. If the pretrial investigation yields sufficient evidence to support the suspect's guilt, then the prosecutor informs the suspect of the investigation's completion and his/her right to access the evidence gathered (CCP Art. 218(1)). The prosecutor then drafts the indictment (CCP Art. 218(7)) and transfers the matter to court (CCP Art. 220). Foreign bribery offences classified as serious are heard in the Regional (*Apygardos*) Court (CCP Art. 225(1)). The remaining are heard in the District (*Apylinkės*) Court (CCP Art. 224).

110. In Phase 2 (paras. 118-119), the Working Group decided to follow up the use of two "simplified procedures" for concluding pretrial investigations, namely the "expedited procedure" and the "penal order" (follow-up issue 13(j)).

i. Expedited procedure

111. The expedited procedure is not a non-trial resolution within the meaning of the Anti-Bribery Recommendation since it merely provides for a fast-track trial. The process applies to matters in District Courts (*apylinkės teismas*); it is thus available to misdemeanour and less serious foreign bribery offences. The prosecutor may invoke the expedited procedure during a pretrial investigation if the circumstances of the offence are clear (CCP Art. 426(1)). The prosecutor drafts a statement containing a brief description of the alleged act; a list of witnesses and victims; the prosecutor's position; and the defendant's decision on whether to call witnesses (Art. 427(1)). The prosecutor submits the statement and the evidence gathered to the court (Art. 426(2)). If the court rejects the statement, the investigation resumes (Art. 429). Otherwise, the court tries the accused within 14 days, though the trial may be adjourned up to 20 additional days for the accused to prepare a defence (Arts. 428-429). At the trial, the prosecutor's statement instead of an indictment is read; otherwise, the usual procedures governing trials and appeals apply (Art. 432). The offender benefits from a sentence reduction of one-third (CC Art. 64^1).

112. In 2018-2022, the expedited procedure was used to conclude 89 domestic bribery and 5 economic crime cases. It was not applied to cases of foreign bribery.

ii. Penal Order

113. CCP Chapter XXXI Section 1 sets out the penal order. The measure is available for an offence where "any punishment may be imposed as the sole or alternative" except where only "fixed-term imprisonment or life imprisonment" may be imposed (Art. 418(1)). All foreign bribery offences thus qualify (Phase 2 Report para. 118). In addition, the offender must compensate or eliminate the damage caused by the offence, or undertake to do so (Art. 418(1)). Lithuania states that the PGO Strategic Action Plan 2023-2025 encourages the use of penal orders unless the statutory preconditions for their application are not met. Penal orders were used to conclude 465 investigations of domestic bribery and 206 of economic crime in 2018-2022.

114. The prosecutor initiates the penal order process during the pretrial investigation before indictment (Art. 418(3)). He/she writes a statement to the court describing the crime and proposing a sentence (Art. 419). Upon receiving the penal order, the court has three options:

(a) The court may accept the order, though it cannot change the proposed punishment (Art. 420). The order is then delivered to the accused who can accept the order within 14 days (Art. 422). The offender benefits from a sentence reduction of one-third (CC Art. 64[1]). If the accused rejects the order, then the matter proceeds to trial (Arts. 422(1) and 425(1));

(b) The court may send the matter to trial if the circumstances of the case described in the order are not sufficiently clear (Art. 423); or

(c) The court may terminate the case if the proceedings are impossible (Art. 424).

115. The penal order is a form of non-trial resolution because it differs from the expedited procedure in two respects. First, a trial on the merits is averted when an accused accepts a penal order. Second, the prosecutor negotiates with the accused. The Phase 2 Report (para. 118) stated that penal orders "do not involve [the] negotiation of the penalty". But the statute is in fact silent on negotiations. In Phase 3, prosecutors state that they "usually talk to defence counsel" via an "unwritten procedure". Negotiations could result in the dropping of a weaker count and proceeding on a stronger one. One private sector lawyer added that settlement negotiations do occur informally.

116. Such unregulated negotiations result in flexibility but also reduced transparency and accountability. There is no guidance on the criteria for using a penal order beyond the statutory preconditions in CCP Art. 418 and the PGO Strategic Action Plan. Prosecutor General Order I-134 provides recommendations to prosecutors. In terms of whether to use a penal order, however, the recommendations merely restate the statutory preconditions. There is therefore no guidance on what may be negotiated, such as the sentence sought; whether the prosecution would proceed on alternate or lesser charges; what facts would underpin the penal order; and the role (if any) of factors such as self-disclosure, co-operation and remedial measures. There is also no requirement to publish important elements of a penal order such as the main facts, parties involved, considerations for using a penal order, and the rationale for the sanctions imposed. Lithuanian prosecutors state that "usually penal orders are not made public" as there is "no requirement" to do so.

117. Another ambiguity is the application of penal orders to legal persons. The statute is also silent on this issue. Lithuania's questionnaire responses only state that "the CCP does not prohibit" the application of penal orders against legal persons. This falls short of stating affirmatively that they would apply. The PGO argues that the statutory provisions refer to an "accused person" or "defendant" and therefore covers legal persons. But there are no examples of penal orders applying to legal persons in practice that would confirm this interpretation.

118. Participants at the on-site visit largely favour a more explicit and developed framework for non-trial resolutions. One prosecutor states that, in his personal opinion, he would prefer a more formal and structured process for penal orders. A second prosecutor agrees that more guidance on the negotiation and sanctions would be beneficial. One defence lawyer states that a system of formal, "official" settlements is preferrable to the existing arrangement. Some prosecutors and private sector lawyers are also open to new forms of non-trial resolutions such as deferred prosecution agreements found in other jurisdictions.

Commentary

The lead examiners are encouraged that non-trial resolutions in the form of penal orders are available in foreign bribery cases in Lithuania. But as the Anti-Bribery Recommendation XVIII observes, non-trial resolutions are effective only if they follow the principles of due process, transparency and accountability.

The lead examiners therefore recommend that Lithuania adopt a clear and transparent framework regarding non-trial resolutions such as penal orders, including (a) whether these resolutions are available to natural and/or legal persons; (b) what may be negotiated, such as the sentence sought, whether the prosecution would proceed on alternate or lesser charges, or what facts would underpin the penal order; and (c) the factors that may be taken into account during negotiations, such as voluntary self-disclosure of misconduct, co-operation with law enforcement authorities, and remediation measures.

To ensure the transparency and accountability of non-trial resolutions such as penal orders, the lead examiners also recommend that Lithuania, where appropriate and consistent with data protection rules and privacy rights, as applicable, make public elements of non-trial resolutions, including: (i) the main facts and the natural and/or legal persons concerned; (ii) the relevant considerations for resolving the case with a non-trial resolution; (iii) the nature of sanctions imposed and the rationale for applying such sanctions; and (iv) remediation measures, including the adoption or improvement of internal controls and anti-corruption compliance programmes or measures and monitorship.

Finally, the lead examiners also recommend that Lithuania consider introducing additional forms of non-trial resolutions, such as deferred and non-prosecution agreements.

g. Expertise and training

119. Lithuania states that it has sufficient access to forensic investigative expertise. The STT has two forensic information technology (IT) experts, three additional experts from its IT department and at least five from its regional offices. The Prosecution Service relies on experts from the Lithuanian Forensic Expertise Centre and the Lithuanian Police Forensic Research Centre. It also seeks the assistance of the STI (tax authorities) for certain property investigations and FCIS (FIU) for financial investigations.

120. Prosecutors have received relevant training but could benefit from more. In 2018-2019, 679 prosecutors participated in 30 training sessions on “Improving the Competences of Law Enforcement Officials in the Detection, Investigation and Support of Prosecution of Criminal Acts of a Corruption, Including Foreign Bribery”. Between May 2020 and October 2022, prosecutors also participated in 20 training events on corporate investigations. Some of these courses specifically related to financial crime, crimes against the EU's financial interests, money laundering and fraudulent accounting, though not foreign bribery and corruption. Despite these efforts, however, private sector lawyers believe that the capacity of prosecutors in corporate cases is uneven. Some prosecutors “are very qualified, but others not that much”.

121. Training for judges and the STT is less clear. In 2021-22, the STT organised 20 training sessions that included the subtopic of foreign bribery for judges in district and regional courts. Training on “Theoretical and practical aspects of criminal liability of legal persons” was provided in 2019. STT officers received training on foreign bribery investigations from the PGO in May 2023, and attended a conference on foreign bribery in Latvia in September 2023. Nevertheless, some legal academics believe that traditional training on corruption and international standards needs to be strengthened. There is no information on the training of STT investigators on foreign bribery or corporate investigations.

Commentary

The lead examiners recommend that Lithuania continue to train STT investigators, prosecutors and judges on foreign bribery and corporate investigations.

h. Resources

122. Since Phase 2, the STT’s budget has increased but not its staffing. Its budget increased by 68% from 2017 to 2023 in nominal terms (EUR 8.738 to 14.709 million). Staffing has been fairly constant (268 in 2018 and 277 in 2022, a 3% increase). Foreign bribery cases are distributed among the central and four

regional units. There are 20 pretrial investigators and 51 criminal intelligence officers. At the end of 2022, the STT had 60 ongoing cases. The STT argues that these cases are burdensome because they involve multiple criminal acts and suspects.

123. Workload for prosecutors may be heavier. The number of prosecutors in the PGO's OCCI who are available to investigate foreign bribery increased from five in 2020 to seven in 2023. This unit had 50 cases at the end of 2022, i.e. 7.1 cases per prosecutor. Across the Prosecution Service, the number of prosecutors decreased from 666 in 2019 to 602 in 2023.

124. Of greater concern are the financial resources for the Prosecution Service and, to a lesser extent, the courts. A reform of the civil service increased the remuneration of many public officials from 1 July 2023. Judges' salaries reportedly doubled, though not those of court administrative staff. The National Courts Administration states that it remains underfinanced and indebted. Prosecutors were also not among those who benefited from the reform. The Prosecutor General has thus stated publicly on at least three occasions that "political decisions" consider "the financing needs of the prosecutor's office […] as secondary". Prosecutor salaries, even those with over 20 years' experience, are "significantly lower" than judges and investigators. Lithuania states that the Prosecution Service's budget increased from 2019 to 2023 by 20% (EUR 35 to 42 million). However, this apparently did not raise salaries to appropriate levels. In response, the Ministry of Justice states that the number of prosecutors per capita in Lithuania is high compared to other European countries.

125. The concern is that the Prosecution Service may gradually be hollowed out. Because of low salaries, many experienced prosecutors have left the Prosecution Service in recent years, according to the Prosecutor General, private sector lawyers, legal academics, members of the Seimas (legislature) and civil society representatives. Meanwhile, vacant positions are increasingly difficult to fill, especially in the capital Vilnius where the cost of living is higher. In a speech to the Seimas on 20 June 2023, the President of Lithuania also alluded to the inadequacy of prosecutor salaries.

Commentary

The lead examiners are concerned that the salaries of prosecutors in Lithuania are too low compared to judges and private sector lawyers. As a result, the Prosecution Service is increasingly unable to attract and retain talent. After reviewing a draft of this report, Lithuania states that it would increase the Prosecution Service's 2024 budget by EUR 8.5 million, mostly for salaries. The lead examiners encourage Lithuania to see through this budget increase, and recommend that Lithuania provide adequate resources to permit effective prosecution of foreign bribery, including by ensuring that prosecutor salaries are competitive with those of judges and private sector lawyers.

i. Independence and Article 5 of the Convention

126. Foreign bribery investigations and prosecutions must conform to Art. 5 of the Convention. They must not be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved. Commentary 27 further requires that decisions in investigations and prosecutions be based on professional motives and not be influenced by political considerations. By extension, the judiciary, as the ultimate arbiters of prosecutions, must also be independent of political influence.

127. Two issues from Phase 2 relating to Convention Art. 5 remain outstanding: judicial appointments, and the independence of prosecutors and STT.

i. Judicial appointment, the Selection Commission and Judicial Council

128. The President of Lithuania appoints district, regional and regional administrative court judges, and appellate judges with the Seimas' approval (Constitution Art. 112). A Selection Commission provides the

Presidents with recommendations for candidates. The Commission comprise three judges and four lay members appointed by the President for a three-year term. The Phase 2 Report (para. 132) suggested that the Commission's independence could be improved by modifying the procedure for selecting its members. A more important role in judicial appointments could also be given to the Judicial Council, a body composed of 23 judges appointed by the General Meeting of Judges. Phase 2 recommendation 8(b) thus asked Lithuania to "pursue its reform of the procedure for selecting and appointing judges, to strengthen the independence of the Selection Commission and the role of the Judicial Council."

129. Recommendation 8(b) has been implemented. The Courts Law was amended in 2020. The Judicial Council now appoints the three judges on the Selection Commission; the President continues to appoint the four lay members (Art. 55^{2}(2)). The Commission provides a list of candidates to the President (Arts. 57 and 70). A person may now appeal the Commission's selection to the Supreme Court on grounds of "a fundamental procedural violation" (Art. 55^{7}). The Judicial Council approves the criteria for selecting candidates and the procedure for using experts in the selection process (Arts. 55^{1}(7), 55^{6} and 120).

ii. Independence of prosecutors and STT

130. In Phase 2 (para. 114), the Working Group decided to follow up an issue concerning the Seimas' power to compel the Prosecution Service and STT to provide information (follow-up issue 13(h)). A 2017 legislative amendment has resolved a second issue relating to the Seimas' authority to unilaterally dismiss the Prosecutor General (PG) and STT Director (Phase 2 Written Follow-Up Report p. 6).

(1) General provisions on independence

131. Lithuanian law states that the prosecutor is independent in the performance of his/her functions and obeys only the law (Constitution Art. 118; PSL Arts. 3(2) and 11). Interfering with prosecutorial independence may constitute an offence of interference with the activities of a civil servant or person performing the functions of public administration (CC Art. 288; PSL Art. 11(4); Phase 2 Report para. 108).

132. The STT's activities "are based on the principles of the supremacy of the law, legality, respect for human rights and freedoms, equality of persons before the law, publicity and confidentiality, the personal initiative of officers and the coordination of official discipline" (STTL Art. 4). State institutions, political parties, non-governmental organisations, media, and "other natural and legal persons" are prohibited from interfering in the STT's criminal intelligence or other activities (Art. 25(2)). Only the Prosecutor General can initiate a pretrial investigation against an STT officer (Art. 26).

(2) Seimas' oversight and power to compel information

133. The Seimas sets the annual state budget, a part of which finances the Prosecution Service and STT (PSL Art. 57; STTL Art. 14(1)). The PG is required to submit an annual activity report to the President and Seimas (PSL Art. 4(3); Seimas Statute Art. 206(5)). The STT must provide in writing at least annually "information about the results of [the STT's] activities", among other things (STTL Art. 8(2)(3); Seimas Statute Art. 206(5)). Reports do not contain "information on specific pretrial investigations and criminal intelligence investigations", however (STTL Art. 16).

134. Annual reporting aside, the Seimas can also compel the Prosecution Service and STT to provide information on an *ad hoc* basis. Lithuania states that the Seimas Statute Art. 209(1) requires the PG to attend a Seimas plenary meeting at a specified time to answer questions. The meeting is broadcast live and a meeting transcript is available afterwards. As well, the Seimas Anti-Corruption Commission (SACC), a Seimas sub-body that consists of legislators, can also require the Prosecution Service and STT to attend its meetings.

135. One concern is the frequency of attendance. Information from Lithuania indicates that, from the beginning of 2017 to February 2023, the PG attended the Seimas 36 times, i.e. once every two months.

The STT also listed seven instances in which it submitted information to SACC from 2017 to March 2023. The Phase 2 Report (para. 114) stated that SACC asked the PG to report as often as twice per month.

136. A further issue is the subject matter of the requests. Many of the topics of the PG's appearances are uncontroversial, e.g. discussion of the annual report, criminal legislative amendments and policy, budget and resources. But some meetings concern specific investigations. For instance, in June 2021, the STT and later Deputy PG attended because of a search of a Seimas member's office as part of an investigation. In January 2023, the PG had to answer questions about an alleged leak of an investigation of another Seimas member. Lithuania adds that the purpose of SACC's invitations "is usually to find out whether the STT or Prosecutor Service is conducting or planning to conduct a pretrial investigation into the same question under the Commission's consideration, in order to avoid duplication of investigations (the parliamentary and pretrial investigations)." But this could arguably require the STT or the Prosecution Service to reveal whether it is investigating a particular allegation.

137. There is thus a danger that these meetings may result in (actual or perceived) attempts of political interference in criminal investigations and prosecutions. There is no suggestion that pressure from the Seimas has led prosecutors and investigators to change their decisions or inappropriately divulge case-specific information. The Prosecution Service states that it begins these meetings by stating that "we cannot provide information about ongoing cases". The STT indicates that it "always responds that this is secrecy of pretrial investigation" where appropriate. Nevertheless, both bodies confirm that they are asked about ongoing cases. Regarding the PG's January 2023 attendance in the Seimas mentioned above, a Seimas member admits that "the PG could have felt very uncomfortable. I felt very uncomfortable about certain questions," and that "my colleagues were not right to [ask such questions]".

Commentary

The lead examiners are concerned that the Seimas' power to compel the attendance of the Prosecution Service and STT may negatively impact prosecutorial and investigative independence. Given the Seimas' role in setting their budgets, a certain level of parliamentary oversight (e.g. requiring annual reports) is reasonable. Equally understandable is the Seimas' consultations with these bodies on resourcing or relevant criminal legislation and policy. However, the frequency of meetings, especially with the Prosecutor General, is unusually high. In some instances, the Seimas seeks information about specific ongoing investigations. Coupled with its budgetary powers, the Seimas' exercise of its ability to compel the attendance of the Prosecution Service and STT could be perceived as undue pressure that interferes with prosecutorial and investigative independence.

The lead examiners therefore recommend that Lithuania raise awareness in the Seimas of the duty to respect the principles in Convention Art. 5 and the independence of the Prosecution Service and STT, including the need to (a) exercise restraint in compelling the attendance of the Prosecution Service and the STT, and (b) refrain from seeking information about ongoing investigations and prosecutions.

6. Money laundering

a. Money laundering offence

i. Elements of the offence

138. Lithuania's money laundering offence is in CC Art. 216. All crimes are eligible predicate offences. The offence has been expanded since Phase 2. It criminalises the acquisition, management, use, transfer, or transformation of property knowing that it derived from crime or was obtained while participating in criminal activities. Such actions must be for the purpose of concealing or legalising the property, or assisting another person participating in criminal activities to evade the legal consequences of the offence. CC Art 224[1] defines "property" as "any form of property obtained directly or indirectly from a criminal act".

Natural persons are punishable for money laundering by a fine of MSL 1 500-6 000 (EUR 75 000-300 000) and 7 years' imprisonment. Legal persons are subject to a fine of MSL 50 000-100 000 (EUR 2.5-5 million).

139. In Phase 2 (para. 177), the Working Group decided to follow up the interpretation of the intent element of the money laundering offence (follow-up issue 13(o)). Participants in earlier evaluations stated that a requirement that the accused "be aware" that the property is obtained by criminal means was challenging. In 2012-2016, one-third of first instance convictions were overturned on appeal because of this issue. It was noted, however, that proof of knowledge of the specific predicate offence was not required. The *mens rea* element of the offence is also consistent with Lithuania's international obligations. In Phase 3, Lithuania refers to some post-Phase 2 jurisprudence which largely describes the intent requirement as in Phase 2. Lithuania also states that CC Art. 216 has a 50% conviction rate.

ii. Enforcement of the money laundering offence

140. Lithuania has implemented Phase 2 recommendation 7(b) to "clearly define the competence of pretrial investigation agencies with respect to enforcement of foreign bribery-based money laundering". The Financial Crime Investigation Service (FCIS) of the Ministry of Interior is a pretrial investigation body mandated to investigate a wide range of financial crime including money laundering (FCIS Law (FCISL) Art. 7). In July 2021, the Prosecutor General issued Order I-161 which amended the 2003 Recommendations on the Allocation of Criminal Investigations to Pretrial Investigation Bodies. The amendment makes the STT responsible for pretrial investigations of money laundering involving foreign bribery. It also allows for investigation teams with STT and FCIS officers in such cases.

141. The Phase 2 Report (paras. 180-182) also found that there were few final convictions for money laundering. In 2011-2017, there were 41 natural person and 1 legal person convictions. The Working Group therefore recommended that Lithuania "review its policy and resources for enforcement of the money laundering offence" (recommendation 7(b)).

142. In response, the PGO adopted Recommendations on the Pretrial Investigation of Money Laundering Offences on 16 November 2020 (Order I-358). The Recommendations are addressed to prosecutors and pretrial investigation officers. They explain the different elements of money laundering offence, and provide suggestions on matters such as the use of criminal intelligence to aid detection, standard for opening an investigation, and importance of investigating money laundering along with the predicate offence (Recommendations 33, 35 and 36).

143. Nevertheless, data available in Phase 3 indicate that enforcement continues to be limited. The Prosecution Service reports only six investigations of natural persons in 2018-2022 for money laundering related to bribery, and none against legal persons. During the same period, only one natural person was convicted and fined for money laundering (as well as domestic bribery and document forgery). There were no money laundering investigations or charges in foreign bribery cases.

Commentary

The lead examiners welcome the PGO's Recommendations on the Pretrial Investigation of Money Laundering Offences. However, enforcement of money laundering predicated on bribery, including foreign bribery, remains lacking. The lead examiners therefore recommend that Lithuania take further measures (such as guidance, training and awareness raising) to enforce the money laundering offence more effectively in connection with foreign bribery cases.

b. National money laundering risk assessment

144. The FCIS co-ordinates Lithuania's national money laundering risk assessment (NRA) that is drawn up at least once every four years (Prevention of Money Laundering and Terrorist Financing Law (AML

Law) Arts. 27-28). Eight institutions[25] participate in the NRA and, additional "institutions, organisations, experts, specialists and other persons" may also be called to participate (AML Law Art. 27). Lithuania's last NRA is from 2019.[26] It identifies 88 risk scenarios applicable to 19 sectors (e.g. banking, accountants, auditors, and tax advisors, lawyer, and notaries). However, predicate offences are not identified, and bribery is not mentioned. The NRA did not analyse the risk of laundering the proceeds of foreign bribery. According to Lithuania, this will be rectified in the next NRA of 2023, which will be published in 2024.

Commentary

The lead examiners recommend that Lithuania specifically assess the risk of money laundering predicated on foreign bribery in its national money laundering risk assessment, including by examining examples of whether and how the proceeds of this crime may be laundered.

c. Detection and reporting of foreign bribery and related money laundering

i. Preventive measures, including politically exposed persons

145. As in Phase 2 (para. 80), "obliged entities" such as financial institutions defined in AML Law Art. 2(7) must implement systems for detecting money laundering. They must conduct due diligence (Art. 9), and in some situations enhanced due diligence, such as when transactions or business relations are carried out with politically exposed persons (PEPs). Enhanced due diligence is also required where the reporting entity considers there is a "great risk of money laundering and/or terrorist financing" (Art. 14).

146. The Phase 2 Report (para. 79) did not find an issue with the definition of PEPs. The AML Law does not distinguish between domestic and foreign PEPs. Art. 2(18) defines PEPs as natural persons who are or have been entrusted with important public functions and their immediate family members or close associates. Art 2(19) includes a list of positions in Lithuania, the EU, international or foreign institutions. In May 2021, the FCIS published a list of important public positions in Lithuania that are considered PEPs.

147. The FCIS and Bank of Lithuania periodically inspect obliged entities to ensure compliance with PEP-related requirements. A breach of such rules results in a maximum fine of EUR 1.1 million, and up to EUR 5.1 million or 10% of annual turnover for financial institutions (AML Law Arts. 39-40). Lithuania has identified breaches in cases involving domestic but not foreign PEPs. The Bank of Lithuania also found deficiencies in the internal control procedures of some financial market participants for identifying PEPs. The FCIS and Bank of Lithuania have provided risk-based training on PEPs to obliged entities.

ii. Suspicious transaction reporting

148. Obliged entities must also file suspicious transaction reports (STRs). AML Law Art. 16(1) requires such entities to notify the FCIS "immediately, no later than within one working day […], if they know or suspect that assets of any value have been directly or indirectly obtained from a criminal act or through participation in such in the act". Obliged entities are also required to report cash transactions of EUR 15 000 or more (AML Law Art. 20). Reports are submitted via an electronic system.

149. The Phase 2 Report raised concerns about the absence of guidance on identifying and reporting suspicious transactions that specifically addressed foreign bribery. Recommendation 5(b) therefore asked Lithuania to "ensure that guidance and training materials (e.g. typologies) issued under the revised AML Law contain information on the identification and reporting of laundering of bribes to foreign public officials, and their proceeds".

150. Lithuania has not issued foreign bribery-specific guidance and typologies. Since Phase 2, Lithuania has amended FCIS Order V-240 on "Approval of Criteria for Identifying Possible Money Laundering

[25] Bank of Lithuania, Department of Cultural Heritage, Gaming Supervision Service, Lithuanian Bar Association, Chamber of Notaries, Chamber of Auditors, Chamber of Bailiffs, and the Chamber of Probation.
[26] Lithuanian National Risk Assessment of Money Laundering and Terrorist Financing.

Suspicious Monetary Operations or Transactions". Information on the amendment was also posted on the FCIS website. However, the revisions were not extensive, adding 7 criteria of suspicion to the approximately pre-existing 60. Lithuania indicated that 6 are relevant to foreign bribery (criteria 2.39, 2.40, 2.41, 2.47, 2.48, and 3.5). However, these criteria do not refer specifically to foreign bribery and could cover many situations unrelated to this crime. Moreover, four of these criteria were already in Order V-240 in Phase 2.

151. FCIS training materials now refer to foreign bribery. Lithuania states that these materials have been supplemented with "the criteria for possible money laundering and the identification of suspicious monetary transactions related to bribery of both Lithuanian and foreign officials". Examples of such criteria include providing a loan on favourable terms or making payments without economic justification to foreign officials. A standard presentation to obliged entities includes the definition of the foreign bribery offence and the criteria in FCIS Order V-240 relevant to identifying the crime (see previous paragraph). The STT also indicates that it plans to further develop the criteria for identifying suspicious money laundering transactions and to conduct workshops on their implementation.

152. Additional training is provided by the Centre of Excellence in Anti-Money Laundering, a public-private partnership founded by the Ministry of Finance, Bank of Lithuania and commercial banks. Other institutions such as the FCIS co-operate with the Centre. The Centre has provided training on PEPs but not foreign bribery-related money laundering, according to the private sector. The STT and the Centre planned a discussion in November 2023 with AML, compliance and corruption prevention officers on "corruption as a predicate offence to money laundering".

Commentary

The lead examiners welcome Lithuania's efforts to incorporate foreign bribery into its training on suspicious transaction reporting. However, there are still no guidance or typologies addressing foreign bribery specifically. They therefore reiterate Phase 2 recommendation 5(b) and recommend that Lithuania issue guidance and typologies that specifically address the identification and reporting of money laundering predicated on foreign bribery.

iii. Legal, accounting and audit professions

153. Obliged entities include non-financial businesses and professionals (AML Law Art. 2(10)). In Phase 2 (para. 86), the Working Group noted a significant need to alert lawyers, accountants and auditors to their reporting obligations, and in particular the risks of foreign bribery-related money laundering. Recommendation 5(c) asked the FCIS to continue "efforts to raise awareness among the legal and accounting and audit profession [*sic.*] of amendments to the AML Law, including in relation to STR reporting obligations and the risks of foreign bribery-based money laundering".

154. Lithuania has implemented the Group's recommendation. The FCIS trained lawyers, auditors, and accountants in 2017-2022. Topics included these entities' capacity to implement measures for preventing and identifying money laundering; timely identification of foreign bribery; and PEPs. In 2020-2022, the FCIS organised meetings with the Lithuanian Chamber of Notaries and the Lithuanian Bar Association to discuss the money laundering risks in these sectors. Money laundering related to foreign bribery was specifically covered.

iv. Sanctions for failure to report suspicious transactions

155. In Phase 2 (para. 82), the Working Group decided to follow up the enforcement of sanctions for failure to submit STRs (follow-up issue 13(g)). The available sanctions are unchanged. The maximum fine for financial institutions is EUR 5.1 million for natural and legal persons or 10% of annual turnover (AML Law Art. 39). Fines for other obliged entities are EUR 2 000-1.1 million (AML Law Art. 40). Lithuania is unable to provide statistics on the sanctions imposed since Phase 2. However, more general statistics

suggest that sanctions may be too low. In 2018-2022, the average penalty for 78 violations of the AML Law (including for failure to submit STRs) was only EUR 5 527.

Commentary

The lead examiners recommend that Lithuania maintain statistics on the sanctions imposed for failure to submit STRs, and that the Working Group continue to follow up this issue.

v. Suspicious transaction reporting in practice

156. There has been an explosion in the number of STRs. Reports surged 13-fold from 2020 to 2021, and then doubled again in 2022. The additional STRs were submitted almost entirely by startup international fintech companies and virtual currency operators based in Lithuania (see Table 4).

157. As in Phase 2, the number of STRs that have been forwarded to law enforcement agencies (LEAs) for investigation remains low. Lithuania's financial intelligence unit is the Money Laundering Prevention Department (MLPD) within the FCIS. The MLPD receives and analyses STRs submitted by obliged entities. In 2016, it forwarded 38% of the STRs to LEAs for further investigation (Phase 2 Report para. 83). The corresponding figure in 2022 was 0.81%. Lithuania argues that this statistic is skewed by fintechs and virtual currency operators which file numerous STRs of low quality. But even assuming that STRs from these entities did not lead to any referrals, only 33.25% of STRs were forwarded to law enforcement in 2022, and 26.24% in 2018-2022. Both figures are lower than the corresponding number in the Phase 2 Report. In the five years to 2022, on average five STRs annually were related to corruption and were forwarded to the STT. None of these reports concerned foreign bribery.

Table 4. Statistics on STRs received and forwarded by Lithuania's financial intelligence unit

	2018	2019	2020	2021	2022
Total STRs received	**1 368**	**1 501**	**3 526**	**45 709**	**99 911**
Total STRs excluding fintechs and virtual currency operators	1 272	1 255	2 401	1 950	2 430
Total of STRs forwarded to law enforcement	**240**	**287**	**497**	**610**	**808**
% of STRs forwarded to law enforcement	17.54%	19.12%	14.10%	1.33%	0.81%
% of STRs forwarded to law enforcement excluding STRs from fintechs and virtual currency operators	18.87%	22.87%	20.70%	31.28%	33.25%
Corruption-related STRs forwarded to STT	1	1	5	6	12

158. The MLPD provides feedback to improve the quality of STRs. Reporting entities receive feedback for each STR submitted, including on the report's quality (rated from one to five). Discussions of challenges, best practices and feedback also occur during annual meetings with specific sectors, and quarterly with fintech associations. Similar meetings take place with individual entities as needed. Private sector representatives describe their co-operation with the MLPD as good.

vi. Resources for suspicious transaction reporting

159. The MLPD's financial resources have increased but its staffing may still be insufficient. According to Lithuania, the MLPD's budget was relatively stable until 2022 when it increased to almost EUR 1.4 million, which was more than double the amount in 2018. Another EUR 295 000 was provided in 2022 as a supplement. Total staffing in three units (on analysis, compliance, and supervision) increased from 24 in 2020 to 44 currently, of which 20 are STR analysts. Another 10 more staff members are expected in 2024. Optional training on anti-corruption (which covers foreign bribery) has been offered to MLPD staff. The MLPD also invests in IT tools. But despite these resource increases, the MLPD states that staffing remains insufficient for processing the growing volume of STRs. It also indicates that its staffing level is below those of financial intelligence units with similar responsibilities in comparable neighbouring countries.

Commentary

The lead examiners recommend that Lithuania ensure that the MLPD has sufficient human resources for processing the STRs that it receives.

7. Accounting, external audit, corporate compliance and ethics programmes

a. False accounting offence

160. Earlier Working Group evaluations found that Lithuania's false accounting offence complied with the Convention. CC Art. 205 prohibits fraudulent statements about a legal person's activities or assets in an official report that misleads the state, an EU institution, international organisation, creditor, shareholder, or another person who suffered significant financial damage as a result. CC Art. 222 prohibits fraudulent accounting and the concealment or destruction of accounting documents. CC Art. 223 criminalises the mere or negligent failure to maintain legally required accounting documents. The last two offences require proof that the accounting misconduct prevented a full or partial determination of a person's activities, assets, equity, or liabilities. A June 2023 amendment extended these two offences by also imposing liability for accounting misconduct that causes "significant property damage" to the state or a person. An earlier amendment in 2021 addressed accounting digitisation under the Accounting Law. All three offences apply to natural and legal persons.

161. The maximum sanctions for these offences were increased recently. As in Phase 2, natural persons are liable to two to four years' imprisonment and a EUR 100 000-200 000 fine. However, the 2023 amendment increased the maximum sanctions under CC Art. 222 to seven years' imprisonment and a EUR 300 000 fine for fraudulent accounting causing "very large material damage". Legal persons are punishable by a fine of up to EUR 5 million.

162. The Administrative Offences Code also applies to false accounting though the resulting sanctions are very low. Natural persons who violate financial accounting laws are punishable by a fine of up to EUR 140, and up to EUR 780 for repeated offences (Arts. 205(1)-(2)). Other provisions allow fines up to EUR 6 000, but only if the accounting misconduct has tax consequences (Arts. 205(3)-(6)). Art. 223 prohibits failing to submit or submitting incorrect financial statements, annual reports, and other data to corporate regulators. The offence is punishable by a fine of up to EUR 3 000 against the head or legal representative of the company. However, the provision does not apply to false internal books and records that do not have to be submitted.

163. The enforcement of these offences raises questions. The Phase 2 Report (para. 186) noted greater enforcement of false accounting than foreign bribery. It therefore questioned whether law enforcement pursued foreign bribery charges in false accounting cases. An initial recommendation was converted to a follow-up issue in 2019 (Written Follow-Up Report p. 7). Data in Phase 3 show few cases of bribery-related false accounting, with only 3.2 investigations and 2.8 prosecutions annually in 2018-2022. (Information on convictions is not available.) This compares to at least 600 convictions for domestic bribery over the same period. The *Food Company (Russia)* case did not result in foreign bribery charges but a company director was convicted of fraudulent accounting. He was exempted from liability by posting a EUR 2 000 bond for two years (see paras. 12 and 59). The company was not charged, likely because of the absence of shareholder culpability (see section B.2.a at p. 10).

164. When asked about the lack of prosecutions of bribery-related false accounting, Lithuania's Ministry of Justice states that the June 2023 amendments to CC Arts. 222-223 would make future prosecutions easier. This seems debatable: the new ground of liability added by the amendments still requires proving "significant property damage", which could be challenging in practice. (Lithuania points out that liability also results if a full or partial determination of a person's activities, assets etc. was prevented. But this was already the case before the 2023 amendments.) Furthermore, under Convention Art. 8, proof of damage should not be a condition to liability for foreign bribery-related false accounting. Lithuanian prosecutors

added that "we see accounting evidence in the investigation file but would like to see it more. […] Investigators are trying to update their knowledge, and applying them to financial investigations and use special knowledge more often".

Commentary

The lead examiners recommend that the Working Group continue to follow up Lithuania's enforcement of the false accounting offence, as required by Anti-bribery Recommendation XXIII.A.iv.

b. Detecting foreign bribery through accounting and auditing

165. The institutional framework for accounting and auditing remains the same as in Phase 2 (para. 59). The Authority of Audit, Accounting, Property Valuation and Insolvency Management (Audit Authority) has ultimate public oversight of auditors and audit firms in Lithuania. It can sanction auditors (Audit of Financial Statements Law (AFSL) Art. 56). It delegates the supervision of auditors regarding ethics compliance to the Lithuanian Chamber of Auditors. The Chamber provides continuing education, examines qualification, and reviews the quality of audits of non-public interest entities. The National Audit Office audits SOEs on specific issues, while external auditors conduct annual financial audits (State and Municipal Enterprises Law Art. 17). There is no functioning supervisory body for accountants. The Lithuanian Association of Accountants and Auditors is the professional body for accountants and auditors.

i. Accounting standards

166. In Phase 2 (para. 63), the Working Group did not make recommendations on Lithuania's accounting standards. The Financial Accounting Law (FAL) defines the accounting standards to be applied based on the type of the company. All public interest entities (PIEs), including credit institutions, must apply the International Financial Reporting Standards (IFRS) when preparing financial statements. Listed companies must compile consolidated financial statements according to the IFRS. Listed companies (for their separate financial statements) and all other companies (including SMEs) can apply IFRS or Lithuanian Financial Reporting Standards (LFRS) as defined by the Ministry of Finance. Currently all but one listed company use IFRS. FAL violations are sanctioned under the Administrative Offences Code and Criminal Code.

167. Certain companies must now provide information on foreign bribery in their annual reports. In 2021, Lithuania amended the Accountability Law (AL) and Consolidated Accounting of Groups of Enterprises Law (CAGEL).[27] The annual reports of large companies and consolidated annual reports of groups of companies must contain information on issues such as combating corruption and bribery. The information must also distinguish between domestic bribery, and foreign bribery when concluding international business transactions. For large public interest companies and parents of such companies that meet certain criteria, the information on corruption and bribery is contained in a social responsibility report (AL Art. 23(2), (5) and (8); CAGEL Art. 10(2) and (4)).

Commentary

The lead examiners commend Lithuania for requiring the annual reports of large companies and consolidated annual reports of groups of companies to provide information on fighting foreign bribery.

ii. External auditing standards and auditor independence

168. External auditing standards remain unchanged since Phase 2 (para. 64). The AFSL sets out audit requirements and applies the International Standards on Auditing (ISAs) in Lithuania (AFSL Art. 33). An audit is required for PIEs, public limited liability entities, SOEs, and private limited liability companies,

[27] Formerly Financial Reporting by Undertakings and Consolidated Financial Reporting by Undertaking Groups Laws.

among others, if at least two of the following criteria are met: (i) net turnover over EUR 3.5 million; (ii) balance sheet over EUR 1.8 million; and (iii) at least 50 employees for the financial year (AL Art. 24(2)).

169. AFSL Arts. 3-4 provide for auditor independence. Auditors and audit firms must comply with the ISAs and the International Federation of Accountants' (IFAC) Code of Ethics for Professional Accountants in fulfilling their professional duties (Arts. 13 and 33). An audit firm can be fined up to EUR 100 000 for an AFSL violation (Art. 56). The AFSL and EU Regulation 537/2014 govern the activities of PIE auditors. PIE auditors are subject to a similar range of sanctions as provided for in the AFSL.

170. The Phase 2 Report (paras. 71-73) stated that "egregious auditing misconduct" had put into question the dissuasiveness of penalties for ensuring auditor independence and professionalism. The concerns stemmed from two cases in which external auditors apparently failed to detect the insolvency of major banks. The Working Group accordingly decided to follow up on the "investigation and supervision of the audit profession by the Audit Authority and Chamber of Auditors" (follow-up issue 13(f)).

171. In Phase 3, Lithuania states that the Audit Authority conducts Audit Quality Inspections of PIE auditors and audit firms. It investigates improper auditor conduct, and breaches of law including EU Regulation 537/2014 on auditor independence and conflicts of interest (AFSL Art. 48). In 2022, 11 PIE audit firms and 30 PIE auditors were inspected, identifying deficiencies in 4 firms and 11 auditors. Sanctions ranged from warnings and suspensions of an auditor's certificate to requiring auditors to undergo professional development. In addition, the Chamber of Audit reviewed 35 non-PIE audit firms and 52 auditors in 2022, finding deficiencies in 2 firms and 5 auditors.

172. One particular inspection concerned foreign bribery. In 2019, an Audit Authority inspection revealed that an audit firm had detected suspicions of foreign bribery during an audit. The firm did not report the matter as required by the ISAs (see next section). The firm was reprimanded, and the responsible auditor was ordered to take a four-hour course on preventing money laundering and foreign bribery.

iii. Reporting to company management and encouraging management to respond

173. External auditors are required to report foreign bribery to company management. ISAs 240-265 require external auditors to report "to the appropriate level of management" or "those in charged with governance" material misstatements due to fraud, non-compliance with laws, and deficiencies in internal control. In addition, EU Regulation 537/2014 requires a PIE statutory auditor or audit firm to report suspected "irregularities, including fraud" to the audited entity, and invite the entity to investigate and respond (Art. 7). The audit committee is also informed (Art. 11).

174. Companies informed of foreign bribery suspicions are not required to respond actively and effectively, however. Lithuania refers to AFSL Art. 69(5)(1), but this provision only requires the audit committee to inform the company's head or supervisory body of the audit results. Lithuania also refers to AFSL Art. 69(5)(3). Yet this provision only tasks the audit committee with monitoring the company's internal control and risk management systems for preventing foreign bribery, among other crimes. It does not require the committee to act on a report of foreign bribery provided by an auditor. Lithuania's Ministry of Finance agrees that "it should be a general requirement for a company to react proactively when it receives a report [of suspected foreign bribery] from an auditor". It also believes that such a requirement should be extended to reports from an accountant, lawyer or any other individual.

Commentary

The lead examiners recommend that Lithuania encourage companies that receive reports of suspected acts of foreign bribery from an external auditor to actively and effectively respond to such reports.

iv. Reporting to competent authorities

175. Auditors may further report foreign bribery to competent authorities independent of the company, though this falls short of being a comprehensive obligation. Since 2019, an auditor or audit firm must report suspicions of foreign bribery to the STT, "as determined in the recommendations referred to in AFSL Art. 73(15)" (AFSL Art. 38(11)). The recommendation referred to in this provision was issued in September 2022 by the Chamber of Auditors (Recommendation 1.4-31.9.7.1.1 for auditors to prevent corruption of foreign officers in international business transactions when providing audits of financial statements). However, this Recommendation does not in itself impose an obligation to report. Paragraph 15 states that, an auditor who finds sufficient grounds to suspect foreign bribery acts during an audit is only "recommended" to report in writing to the STT. The Chamber states that the recommendation to report to the STT "is a good practice that a good auditor should do, but the auditor is not required to do the job as an investigator". PIE auditors, however, must report suspected breaches of laws to competent authorities (EU Regulation 537/2014 Art. 12(1)). None of Lithuania's foreign bribery cases to date was detected through external auditing.

176. For auditors who choose to report, protection from reprisals may be less than adequate. Lithuania states that the Whistleblower Protection Law (WPL) would apply. As described in section B.10.c.i at p. 48, the WPL applies to natural persons who reports wrongdoing in an institution with which it has a contractual relationship (WPL Art. 2(2)). This definition could cover external auditors. But to obtain protection, the auditor is required to be recognised as a whistleblower under the WPL. Moreover, the WPL only applies to "a natural person who submits information about a violation" (Art. 2(2)). It would not protect an audit firm from legal action or other reprisals. Lithuania argues that WPL protects legal entities "if a person reports a breach as a shareholder" of the entity because the person "clearly identifies his/her relations with the concrete legal entity". This interpretation is highly dubious and unsupported by jurisprudence. In any event, an audit firm should be protected even when the auditor who reports is not a shareholder. A final issue is awareness of the WPL. Auditors who participated in this evaluation are aware of the WPL, but not its relevance to reporting foreign bribery detected during audits.

Commentary

The lead examiners are concerned that the WPL does not adequately protect auditors and audit firms that report suspicions of foreign bribery detected during an audit. They therefore recommend that Lithuania take further steps (such as guidance, training and awareness raising) to ensure that auditors and audit firms that report foreign bribery are protected from legal action, as required in Anti-Bribery Recommendation XXIII.B.v.

v. Training and awareness-raising

177. As mentioned above, the Chamber of Auditors' Recommendation 1.4-31.9.7.1.1 relates to foreign bribery. The Recommendation contains red flag indicators of foreign bribery for auditors to consider when conducting an audit. The indicators are comprehensive and cover the essential indicia, such as the geographic areas of activity, and the sector and nature of the activity. A second Recommendation 1.4-31.9.7.1.2 concerns measures to prevent audit firms from committing foreign bribery themselves.

178. Since 2018, the AFSL requires auditors to receive at least 120 hours of training every three years, including on the foreign bribery offence (Art. 36). The Chamber of Auditors organised a conference and four training sessions in 2020-2022 that covered foreign bribery. But these events focused on preventing this crime, not its detection during audits. In August 2023, the Chamber organised a training session covering foreign bribery and the identification of red flags. Unfortunately, only a few auditors attended, according to the STT. Auditors at the on-site visit were not familiar with Recommendation 1.4-31.9.7.1.1 and the red flag indicators of foreign bribery. The Ministry of Finance states it will encourage the Chamber to disseminate its Recommendations and continue training auditors.

Commentary

The lead examiners welcome the Chamber of Auditors' Recommendations 1.4-31.9.7.1.1 and 1.4-31.9.7.1.2. They recommend that Lithuania disseminate and raise awareness of these Recommendations to auditors, especially regarding the red flag indicators of foreign bribery.

c. Promoting corporate anti-corruption compliance programmes

179. Lithuania has made some efforts to promote anti-corruption corporate compliance programmes. Phase 2 recommendation 4(b) asked Lithuania to "provide guidance to Lithuanian companies, including SOEs, on new rules on the creation of supervisory boards and audit committees and encourage them to implement internal company controls with a particular focus on preventing foreign bribery". In response, the STT prepared Guidelines for Creating an Anti-Corruption Environment for Business. The Guidelines describe many of the components of a good compliance programme mentioned in Anti-Bribery Recommendation Annex II. Missing, however, is the importance of senior management support for the programme and the designation of a compliance officer to oversee the programme. As mentioned at para. 174, a company's audit committee must monitor the company's internal control and risk management systems for preventing foreign bribery, among other crimes. The role of compliance programmes in criminal sentencing is discussed in section B.3.d at p. 14.

180. Initiatives to promote compliance programmes in SOEs mostly focus on domestic corruption. The Corruption Prevention Law sets out measures to address corruption in Lithuanian SOEs, not the bribery of non-Lithuanian officials (see para. 218). A similar focus is found in the Guide on the Creation of an Anti-Corruption Environment and Integrity in State- and Municipal-Owned Enterprises.

181. In practice, anti-corruption compliance programmes may not be sufficiently prevalent in Lithuanian companies. According to the STT's annual survey in 2022,[28] only 41% of companies have an internal code of conduct that encourages employees not to give or take bribes, 38% encourage employees to report bribery or other illegal activities, and 25% train employees on anti-corruption. An analysis of the corporate websites of the 20 largest companies in Lithuania shows that only 10 have publicly available codes of ethics and/or anti-corruption and anti-bribery policy, and only 3 of which refer to foreign bribery. Civil society representatives state that there is "big room for improvement". Business associations acknowledge that they "cannot say every company [has a compliance programme]". Even those that have such programmes would focus on domestic corruption rather than foreign bribery. In response, the STT plans to organise training in 2023-2024 on identifying and reporting foreign bribery for Lithuanian companies that are internationally active on anti-corruption matters.

182. It is unclear whether the STT's advice to companies extends beyond compliance programmes to the legality of specific transactions. The STT Recommendations for Lithuanian Business Entities Operating in Foreign Countries (p. 5) state that, "in case of suspicion of corruption […] the STT can be consulted directly". Advising companies on the legality of a specific transaction may place the STT in conflict with its investigative powers. When asked about this issue, the STT states that it would refer such queries to its investigation department. But it is not clear that the investigation department could or should respond to questions about the legality of a prospective transaction that has yet to occur.

Commentary

The lead examiners welcome Lithuania's efforts to promote anti-corruption compliance programmes. Nevertheless, they agree with the private sector and civil society that there is significant room for improvement. They therefore recommend that Lithuania make greater efforts to encourage and assist large companies, SOEs and SMEs that are internationally active to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the

[28] Lithuanian Corruption Map 2022-2023, Slide 152.

purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance in the Anti-Bribery Recommendation Annex II.

8. Tax measures for combating bribery

a. Non-tax deductibility of bribes

i. Legislative provisions

183. As in Phase 2 (para. 49), Lithuania's Corporate Income Tax Law (CITL) and Personal Income Tax Law (PITL) expressly prohibit the deduction of "expenses incurred while engaging in acts prohibited by the Criminal Code, including bribes" (CITL Art. 31(1)(20); PITL Art. 18(3)(14)). Taxpayers must substantiate deductions with valid accounting documents as defined in CITL Art. 11(4) and PITL Art. 18(8).

184. Also not deductible are fines and confiscation imposed in a foreign bribery enforcement action. CITL Art. 31(1)(3) and PITL Art. 18(3)(7) provide that "fines paid to the budget and state funds", and "other sanctions for violations of legal acts of the Republic of Lithuania" cannot be deducted. Lithuania indicates that confiscated property is covered by these provisions.

185. The time available to re-examine a tax return in a foreign bribery case is unchanged despite some legislative amendments. In Phase 2, the State Tax Inspectorate (STI) could re-examine tax returns from the previous five years. This has been reduced to three years since 2019 (Tax Administration Law (TAL) Art. 68(1)). However, if it is necessary to establish the damage to the state in a criminal case, then the re-examination period is extended to the limitation period for the alleged criminal offence (TAL Art. 68(5)). Lithuania indicates that such an extension applies to foreign bribery cases since the damage to the state would consist of the unpaid tax. The period for re-examination in cases of serious (i.e. aggravated) bribery would therefore be 15 years (from the commission of the offence, not the filing of the tax return), 12 years for less serious bribery, and 3 years for misdemeanours. (See Table 3 at p. 24 on the statute of limitations for the foreign bribery offence.)

186. The available sanctions for unpaid tax have changed. In Phase 2, the STI could impose administrative fines of up to 10-50% of missing tax (TAL Art. 139). The fine is now 20-100%. Lithuania indicates that the final sanction is determined once the criminal case is concluded. However, the STI may begin the re-examination as soon as it learns of the bribery allegation.

ii. Enforcement of non-tax deduction

187. The STT shares with the STI information about natural and legal persons suspected or charged with bribery pursuant to a Co-operation Agreement (see para. 191). The STI then analyses the information and "risky [taxpayers] are selected for individual evaluation". The evaluation could then lead to the monitoring of a taxpayer, a "control" and a revision of the tax declaration. In 2018-2022, the STI evaluated 123 referrals from the STT. The entities evaluated include both bribe givers and takers, as well as natural and legal persons. The evaluations led to 27 monitoring, 20 controls, and 3 revisions of tax declarations. The STT's referrals included two passive foreign bribery cases in which courts found that individuals had bribed Lithuanian officials. The STI evaluated the natural but not the legal persons in these cases.

b. Detecting foreign bribery

188. As in Phase 2, STI tax auditors have tools for detecting foreign bribery. The STI has issued binding "Rules on the identification of cases involving indications of alleged corruption-related offences and communication of information of such cases to STT". The Rules require tax auditors to examine indicators of bribery during tax inspections (Phase 2 Report para. 52). Official commentaries on the CITL (pp. 359-360) and PITL (pp. 240-241) reiterate the non-tax deductibility of bribes and provide examples. Training events in May 2021 and January 2023 covered foreign bribery. The STI's performance plan sets out

priorities and allocates resources for tax audits. As in Phase 2, the plan does not consider foreign bribery as a priority. Nevertheless, tax auditors are required to consider bribery in every audit, says the STI.

c. Reporting foreign bribery

189. STI officials must report suspected criminal offences detected during tax audits to law enforcement (TAL Art. 127(2)). Upon detecting suspicions of foreign bribery, a tax auditor should report to the STI's Infringement Assessment Division within three days. The latter has 15 days to decide whether to communicate the information to the STT. Lithuania states that failure to report leads to disciplinary penalties under Public Service Law Arts. 32-33. Employees working under employment contracts may be sanctionable under the Labour Code or order of the STI Head. No STI officials have been sanctioned for failure to report bribery.

190. STI reports have led to few criminal investigations of bribery. In 2018-2022, the STI did not report any cases of suspected foreign bribery to the STT. It submitted 24 reports concerning domestic bribery, only one of which resulted in an STT investigation. The STT did not provide the STI with feedback on why the report led to an investigation (or why the 23 others did not). The PGO started three domestic bribery investigations following detection by tax authorities, but the STI indicates that it had not referred any cases directly to the PGO.

Commentary

The lead examiners observe that the STI has reported few cases of bribery to the STT, and even fewer of these cases have resulted in investigation. They therefore recommend that Lithuania (a) take steps to improve the STI's capacity to detect bribery during tax audits, and (b) ensure that the STT provides feedback on the reports of bribery received from the STI.

d. Sharing information with Lithuanian and foreign law enforcement

191. The STI is required to co-operate with Lithuanian state and municipal institutions, exchange information and conduct joint inspections (TAL Art. 30; Phase 2 Report para. 56). The STI/STT Co-operation Agreement covers data exchange, prevention initiatives, and assistance in detection and investigation. In Phase 3, Lithuania states that the STT has direct access to information held by the STI.

192. The Working Group decided to follow up Lithuania's provision of tax information to foreign authorities for use in foreign bribery investigations (follow-up issue 13(e)). In Phase 2 (para. 57), only one out of Lithuania's 55 double taxation agreement (DTAs) provided for the use of tax information for non-tax purposes. Since then, Lithuania has concluded three DTAs with such provisions.[29] As in Phase 2, Lithuania is also a party to the multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC). MAAC allows a party to use tax information received from another party in a criminal foreign bribery investigation in the first party, provided the laws of the latter allow such non-tax use. The competent authority of the supplying state must also authorise such use in the specific case (MAAC Art. 22(4); TAL Art. 30; STT/STI Co-operation Agreement).

193. Lithuania initially could not provide statistics on the providing and seeking of tax information to and from foreign authorities for non-tax purposes. This is somewhat surprising, since the STI must expressly seek or grant authorisation for such sharing (MAAC Art. 22(4); OECD Model Tax Convention Art. 26). Lithuania states that it records such authorisations and requests but that statistics are not available. After reviewing a draft of this report, Lithuania states that since May 2023 it has received and granted 15 requests under the MAAC or EU Directive 2011/16/EU to use tax information from non-tax purposes.

[29] DTAs with Kosovo and Liechtenstein (both Art. 26(2)) and with Japan (Art. 27(2)).

9. International co-operation

a. Mutual legal assistance

i. Legal framework and procedure for mutual legal assistance

194. Lithuania may request and provide mutual legal assistance (MLA) based on bilateral and multilateral treaties, and in the absence of a treaty, on reciprocity. Lithuania is party to ten bilateral MLA agreements[30] that may be used in foreign bribery cases and has further signed two since Phase 2 that are not yet in force.[31] Also applicable are two agreements between the EU and two Parties to the Convention.[32] Several multilateral agreements may also be applicable.[33] Lithuania states that it accepts the Anti-Bribery Convention as a basis for MLA in foreign bribery cases. MLA requests between Lithuania and EU countries are generally made through European Investigation Orders (EIOs). EU law also applies to freezing and confiscation, including confiscation of crime-related proceeds.

195. The legal framework for MLA set out in CCP Chapter IV is largely unchanged since Phase 2. Incoming requests are executed according to the procedure in the CCP and applicable treaties (CCP Art. 66(1)). All investigative tools available in domestic criminal investigations can be provided as MLA. Assistance not explicitly provided for in the CCP is also available if it is included in a relevant treaty and its provision does not violate the Constitution, other Lithuanian laws and fundamental principles of criminal procedure (Art. 67(1)). Assistance is not conditional on a minimum penalty (Phase 2 Report para. 135).

196. Dual criminality may be required. The CCP does not explicitly demand dual criminality for MLA, but an applicable treaty may impose this requirement. In addition, Lithuania states that "it may still assess dual criminality for non-treaty-based MLA requests seeking coercive measures, or special investigative techniques and where a court order is necessary or in cases where the type of requested assistance is not envisaged by the CCP" (Phase 2 Report para. 136).

197. Lithuania states that it can provide MLA in non-criminal proceedings against a legal person as required by Convention Art. 9(1). It does not have any specific laws governing this matter. Nevertheless, it states that dual criminality (if required) is based on an assessment of the factual circumstances of the case. Since foreign bribery is an offence in Lithuania, an incoming request in an administrative proceeding for foreign bribery would meet the dual criminality requirement. As in Phase 2 (para. 136), Lithuania adds that such a request must also not contravene its laws or the fundamental principles of criminal procedure.

198. Bank secrecy is not a justification for Lithuanian authorities to refuse MLA (Phase 2 Report para. 137). A pretrial investigation judge's authorisation is needed to obtain bank information (CCP Art. 155). Since August 2020, a prosecutor can request and receive judicial approval electronically via the International Legal Assistance Module system of the Integrated Information System of Penal Process (IBPS). Through the system, the prosecutor also transmits the request to banks, which usually respond within one day to one month. Lithuania states that the system has accelerated MLA requests seeking bank information, allowing execution in four or five days when banks' responses are received within a few days.

199. Lithuania's MLA procedure is also unchanged since Phase 2. The same process applies to requests involving natural and legal persons. The Ministry of Justice (MOJ) and Prosecutor General's Office (PGO) are the central authorities for incoming and outgoing requests (CCP Arts. 66(2) and 67(2)). Lithuania adds that the PGO is the central authority for cases at the pretrial investigation stage, and the MOJ at the court stage. Requests based on reciprocity are transmitted through diplomatic channels. Exceptions may apply

[30] Armenia, Azerbaijan, Belarus, China, Kazakhstan, Moldova, Poland, Russia, Ukraine and Uzbekistan.
[31] Brazil and United Arab Emirates.
[32] Lithuania states that it is bound by the EU's agreements with Japan and the US.
[33] Multilateral MLA agreement with Estonia and Latvia; European Convention on Mutual Legal Assistance in Criminal Matters and its Additional Protocols; Criminal Law Convention on Corruption; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; United Nations Convention against Transnational Organized Crime; and United Nations Convention against Corruption.

in cases of urgency, if provided for by treaty, or with the central authority's permission. In such instances, a request and the evidence gathered may be transmitted directly between foreign authorities and Lithuanian courts, Prosecution Service or pretrial investigation authorities (CCP Arts. 66(2), 67(2) and 67(5); Phase 2 Report para. 138).

Commentary

The lead examiners commend Lithuania for its electronic system of requesting and obtaining judicial authorisation to lift bank secrecy in MLA requests. This has accelerated the execution of incoming MLA requests seeking bank information.

ii. Mutual legal assistance in practice and the absence of statistics

200. In Phase 2 (para. 141), Lithuania could not provide detailed statistics on MLA. The Working Group thus recommended that Lithuania "maintain comprehensive statistics on the offences involved, assistance requested, and time required for execution of all incoming and outgoing MLA requests so as to identify more precisely the proportion of those requests that concern bribery of foreign public officials" (recommendation 9(a)).

201. In Phase 3, Lithuania has improved its statistical capabilities but shortcomings remain. As mentioned in para. 198, the PGO launched a new IBPS International Legal Assistance Module in 2020. The module records the requesting state and allows for the categorisation of offences, including bribery. It tracks the procedural steps and the duration of each request. However, due to technical issues, it cannot generate statistics on the procedural steps taken, average execution times, type of assistance requested, or reasons for refusal. The PGO states that data on incoming requests are entered manually into the system. But this should not prevent statistics from being generated, since the PGO admits that the system already records the start and end dates of a request. The PGO also states that determining the completion date may require translating the evidence received to see whether the request has been fully executed. But such translation would surely have to be done in any event. As for the MOJ, its document management system has also improved by categorising requests by offence and assistance type. But the system does not generate statistics on these matters or record the time for execution.

202. The statistics provided by Lithuania in Phase 3 reflect these limitations. Lithuania states that it has not sent or received an MLA request based on the Convention. Requests based on other treaties received by the PGO have significantly increased in recent years. Most were EIOs from EU countries. In 2021-2022, the PGO received almost 5 000 requests and sent 1 900. Two-thirds of the requests related to economic and financial crimes, including 18 incoming requests (of which two EIOs were related to foreign bribery) and 17 outgoing requests related to bribery and corruption. Information from the MOJ was even more limited: only the number of treaty requests sent and received was available. Lithuania states that these requests were mainly for documents or court testimony.

203. Lithuania also provides some information on execution times, but these are only estimates and not statistics. The PGO states that "the average time of execution is three months and it depends on the nature of actions requested, volume and complexity of the case". The corresponding time for outgoing requests is four months. The MOJ generally takes one to three months to execute a request. Lithuania adds that "the [PGO] has also recommended that MLA requests are responded within a maximum timeframe of four months". But this is clearly aspirational and not a statement of actual performance. It adds that "time limits in the MLA request or EIO are always respected and urgent legal assistance is provided without delay." This is at best an unproven assertion that is unsupported by data.

204. As a result, it is difficult to assess the MLA system's performance in practice. The STT states that obtaining MLA is one of the major challenges in foreign bribery cases. Without statistics, however, it is not possible to determine the magnitude of the problem and whether it concerns particular countries or types of requests. The STT also cites the Blood Plasma (Latvia) case as an example, but it obtained MLA

successfully in the case. The central authorities, on the other hand, appear unaware of the challenge cited by the STT. The PGO responds that it reminds foreign authorities of outstanding requests after six months. In the absence of a response, it uses Eurojust, European Judicial Network or PGO offices abroad to accelerate requests. The MOJ also maintains contact with foreign authorities.

Commentary

The lead examiners welcome the improvements to the systems of the PGO and MOJ for registering MLA requests. Unfortunately, the systems still do not provide aggregate statistics on important metrics such as execution time broken down by partner countries, underlying offence and nature of assistance requested. The lack of data makes it impossible for the Working Group – and Lithuania – to fully assess the performance of Lithuania's MLA system. The lead examiners therefore reiterate Phase 2 recommendation 9(a) and recommend that Lithuania maintain comprehensive statistics on incoming and outgoing MLA requests including the foreign country involved, underlying offence, assistance requested, execution time, and grounds for refusal.

b. Extradition

i. Legal framework and procedure for extradition

205. Extradition with Lithuania generally requires an applicable treaty (Phase 2 Report para. 143). Lithuania will seek and grant extradition only pursuant to a treaty, a UN Security Council resolution or a European Arrest Warrant (EAW) (CC Arts. 9 and 9[1]). In the absence of one of these legal bases, it may seek – but cannot grant – extradition based on "good will". In other words, Lithuania cannot provide extradition based on reciprocity. Treaties which may apply to foreign bribery cases include the Anti-Bribery Convention; European Convention on Extradition and additional protocols; Council of Europe Criminal Law Convention on Corruption; UN Conventions against Corruption and against Transnational Organized Crime; and bilateral extradition treaties with China, India, UAE (signed but not yet in force), and US. Nine MLA agreements also include provisions on extradition.[34]

206. The framework and procedure for extradition has not changed since Phase 2. CCP Arts. 69-76 set out the procedure for seeking and providing extradition, including the EAW. The process is essentially the same as that for MLA requests described above. CCP Art. 71(3) lists the grounds for refusal.

ii. Extradition of nationals

207. Lithuania extradites its citizens in limited cases. It is prohibited from granting such extraditions unless required by an international treaty or a UN Security Council resolution (Constitution Art. 13; CC Art. 9; CCP Art. 71). Lithuania has made reservations under international instruments denying extradition to its nationals, including under the Convention. As a result, Lithuanian nationals can only be extradited pursuant to an EAW or a bilateral treaty with the US (Phase 2 Report para. 143).

208. The Phase 2 Report (para. 144) questioned whether Lithuania would prosecute a Lithuanian national for foreign bribery after refusing his/her extradition solely on grounds of nationality. Lithuania asserted that it is obliged to investigate any "criminal activity" (CCP Art. 2). It also has universal jurisdiction over foreign bribery (CC Art. 7; see also para. 18). In practice, however, domestic prosecution "is not always easy due to territorial jurisdiction issues and lack of information". Phase 2 recommendation 9(b) thus asked Lithuania to "take all necessary measures to ensure" it prosecutes such cases. In 2019, the Working Group converted this recommendation to a follow-up issue given the lack of practice (Written Follow-Up Report p. 7).

[34] Bilateral agreements with Armenia, Azerbaijan, Belarus, Kazakhstan, Moldova, Poland, Russia, Ukraine, and Uzbekistan; and multilateral agreement with Estonia and Latvia.

209. There continues to be no practice in Phase 3. Lithuania states that this is because other countries know not to make such requests. In the theory, where extradition in a foreign bribery case is denied because of nationality, the matter is forwarded to the PGO's OCCI for assessment. Lithuania does not provide any example where it has prosecuted a Lithuanian national whose extradition from Lithuania has been denied solely on grounds of nationality.

Commentary

The lead examiners recommend that the Working Group continue to follow up whether Lithuania, after declining a request to extradite a person for foreign bribery solely on the ground that the person is its national, submits the case to its competent authorities for the purpose of prosecution.

iii. Extradition in practice and statistics

210. As with MLA (see para. 201), statistics on extradition lack sufficient granularity. In this evaluation, the PGO and MOJ only provide figures on the number of requests sent and received. The PGO has requested extradition for a variety of offences including money laundering and fraudulent management of accounts. The MOJ provides some additional information on grounds for refusal, but this is likely because the number of requests is sufficiently low to allow for manual compilation of statistics. As with MLA, Lithuania again provides information on execution times which are only estimates. The PGO states that it took 9 months on average to execute a request. The MOJ outgoing extradition requests took 1 to 14 months.

Commentary

As with MLA, the lead examiners recommend that Lithuania maintain comprehensive statistics on incoming and outgoing extradition requests including the foreign country involved, underlying offence, execution time and grounds for refusal.

c. Resources for mutual legal assistance and extradition

211. The PGO and MOJ do not have separate funds allocated to their departments acting as central authorities for extradition and MLA. Prosecution Service staff in charge of international co-operation includes 13 prosecutors (six in the central PGO and seven in the Regional Offices) and 5 assistant prosecutors (2 in the central PGO and 3 in the Regional Offices). Prosecutors attended 33 training events on international co-operation since 2018. In the MOJ, four officials deal with MLA requests during trial to/from non-EU countries. (Lithuanian courts handle requests with EU countries directly.)

212. The lack of statistics also makes it difficult to assess the adequacy of resources. The PGO states its staff has decreased while the number of MLA requests has increased since 2018, including a threefold rise in EIOs. It would like more staff to "speed up the response time as much as possible", especially in cybercrime cases. The MOJ also states that it would like to have more human resources. But as mentioned above, Lithuania does not have statistics that would indicate whether response times are overly long. In fact, response times estimated by Lithuania (see paras. 202 and 210) suggest the contrary.

10. Public awareness and the reporting of foreign bribery

a. Overall strategy to fight foreign bribery

213. Lithuania has developed national-level planning documents in corruption prevention that mention foreign bribery briefly. In 2015, the Seimas adopted a National Anti-Corruption Programme for 2015-2025. This was replaced in June 2022 by a National Anti-Corruption Agenda for 2022-2033. The government then devised a series of three-year action plans to implement the Programme and Agenda, including the latest 2023-2025 Plan for Implementing Agenda adopted in May 2023. The current Agenda mentions that Lithuania is a Party to the Convention and Working Group member. It then lists around 100 "progress

targets", with just one referring to foreign bribery.[35] The 2023-2025 Plan then describes two measures: an action plan to implement the Anti-Bribery Recommendation, and training for investigators, prosecutors and judges.[36] The documents contain other topics (e.g. awareness-raising, whistleblower protection and asset recovery) that are relevant to the Convention but which do not expressly refer to foreign bribery.

214. These efforts do not amount to a national strategy to fight foreign bribery, however. Lithuania has not conducted a risk assessment to determine the activities or sectors vulnerable to committing foreign bribery. Nor has there been an in-depth analysis to determine whether there are weaknesses in the full panoply of efforts necessary to fight foreign bribery, i.e. from awareness-raising and legislation to enforcement. The role of law enforcement in fighting foreign bribery is mentioned; those of other relevant governmental and non-governmental stakeholders are not. The 2023-2025 Plan describes activities such as whistleblower protection and asset recovery which are potentially relevant to implementing the Convention. But it is not clear that these piecemeal efforts address the largest or most pressing weaknesses in Lithuania's fight against foreign bribery.

Commentary

The lead examiners commend Lithuania for developing the National Anti-Corruption Programme and Agenda and corresponding action plans. Unfortunately, foreign bribery does not figure prominently in these documents. More crucially, Lithuania has not conducted a national foreign bribery risk assessment and developed measures that address the risks identified. The lead examiners therefore recommend that Lithuania assess its foreign bribery risks and its approach to enforcement, and include policies and actions in its national anti-corruption strategy that are commensurate with these risks.

b. Reporting of foreign bribery

215. This section deals with general obligations of public officials and private individuals to report foreign bribery. Other sections address reporting in the areas of overseas missions and embassies (section B.10.d.i at p. 52); anti-money laundering (B.6.c at p. 32); accounting and auditing (B.7.b.iii and B.7.b.iv at p. 38); tax (B.8.c at p. 41); export credits (B.11.b at p. 55); and official development assistance (B.11.c56). Whistleblowing and whistleblower protection is considered in section B.10.c at p. 48.

i. Obligation to report foreign bribery

216. Private persons in Lithuania are not obliged to report suspicions of crime, including foreign bribery. Those who choose to do so can report to the Prosecution Service or to a pretrial investigation institution such as the STT (CCP Art. 166). The STT accepts reports (including anonymous ones) made orally or in writing through several means (e.g. phone app, hotline, email) (Phase 2 Report para. 30). The STT may compensate a person who voluntarily provides information or intelligence if certain conditions are met.

217. Since Phase 2, employees of public sector entities are obliged to report corruption under Corruption Prevention Law (CPL) Art. 9(1). Such an employee who reasonably believes that a "criminal act of a corrupt nature" has been or will be committed must notify the Prosecution Service, STT, or another pretrial investigation institution. The assistance, protection and encouragement measures in the WPL may apply (Art. 9(4)).

218. The main concern with this provision is that it does not clearly apply to the reporting of foreign bribery. The CPL is designed for fighting corruption in the Lithuanian public sector. It sets out at length measures to achieve this goal, such as requiring Lithuanian state entities to conduct corruption risk

[35] National Anti-Corruption Agenda for 2022-2033, para. 181 ("Leadership and proactivity of the Prosecutor's Office in pretrial investigations should be encouraged. Co-operation between pretrial investigation bodies should also be improved. The need to ensure the effective application of anti-corruption laws on the liability of legal persons for bribery of foreign officials, including confiscation of assets, remains a pressing issue.").
[36] Items 3.2.3 and 3.2.5.

analyses and management. Public sector employees are required to report "criminal acts of a corrupt nature" (Arts. 2(9) and 9). Foreign bribery is not specifically mentioned. Lithuania argues that this definition technically includes foreign bribery. But when read in the context of the entire CPL, it is not clear that the reporting obligation applies to foreign bribery committed not by another official but a private sector company or individual.

219. The reporting obligation also omits some relevant officials. The provision exempts persons "holding a post which is not subject to any educational or professional qualification requirements" (CPL Art. 2(15)). Lithuania states that the purpose is to exclude "a person performing only technical functions (for example, building safety, cleaning, etc.)". However, the provision as drafted could also exclude public officials who are not appointed based on explicit criteria related to professional or education qualifications.

220. A final concern is the enforcement of the reporting obligation. The CPL does not specify the sanctions for a failure to report. Lithuania states that such a failure would be considered misconduct punishable by disciplinary penalties under the applicable legislation governing public sector employees.[37]More importantly, the application of these provisions to a failure to report is yet to be proven. Lithuania does not provide any examples in which a public official has been sanctioned for such failure.

Commentary

The lead examiners commend Lithuania for enacting an obligation on its public officials to report corruption. Nonetheless, they recommend that Lithuania strengthen this obligation by (a) ensuring all public officials are subject to this obligation, including by eliminating the exception for public officials "holding a post which is not subject to any educational or professional qualification requirements"; and (b) enforcing the obligation to report and sanctioning breaches of this obligation. A further recommendation on awareness-raising is described below.

ii. Raising awareness of reporting and reporting in practice

221. Lithuania has raised awareness in the private sector of reporting corruption. The 2023 Guidelines for Creating an Anti-Corruption Environment for Business mention the possibility to report suspicions to the STT. Lithuania indicates that these Guidelines were "shared throughout the media, including posts on the STT social media channels". The STT Recommendations for Lithuanian Business Entities Operating in Foreign Countries refer to reporting to the STT. The STT has a webpage on "reporting corruption".

222. Lithuania could do more to promote the reporting obligation of public sector employees. The STT published in 2021 a brochure which presents the reporting obligation and channels.[38] There is no information on the brochure's dissemination except among Ministry of Foreign Affairs officials. The obligation is not mentioned in the Guide on the Creation of an Anti-Corruption Environment and Integrity in State- and Municipally-Owned Enterprises. The STT states that the reporting obligation is mentioned in all anti-corruption lectures and seminars provided to public and private entities.

223. Much more concerning is a reluctance to report, despite the efforts described above. No foreign bribery case was initiated based on reporting. According to the STT's annual survey in 2022,[39] only 66% of public officials stated that they would report a case of corruption. The figure drops to 25% for corporate respondents and 17% for private individuals' resident in Lithuania. For non-public officials, the top reason for non-reporting was the fear of reprisals (44-50% of respondents in the three categories). The lack of enforcement was also cited as a reason (39-46%).

[37] For example, Civil Service Law Art. 33, Internal Service Statute Art. 26 and Labour Code Art. 58.
[38] Brochure entitled "If you are a civil servant (or a person equivalent thereto) and have encountered corruption, you must know".
[39] Corruption Map of Lithuania 2022-2023, Slides 289-314.

Commentary

The lead examiners are concerned about a lack of willingness to report corruption in Lithuania. This concern is compounded by the ambiguity of whether the reporting obligation in the CPL applies to foreign bribery committed not by another official but a private sector company or individual (see para. 218). The lead examiners therefore recommend that Lithuania continue to raise awareness among public officials and private individuals of the importance of reporting foreign bribery, including by training public officials who could play a role in detecting and reporting this crime.

c. Whistleblowing and whistleblower protection

224. This Phase 3 evaluation is the Working Group's first assessment of whistleblower legislation in Lithuania. An earlier law on this topic entered into force in 2019, after the Phase 2 evaluation. This law has since been superseded by the Whistleblower Protection Law (WPL) enacted to transpose the EU Directive 2019/1937. The WPL entered into force on 15 February 2022.

i. Scope of application

225. The WPL applies to the reporting of foreign bribery and related offences. It covers whistleblowing of "violations", which includes "a criminal act" (Art. 2(7)). Art. 3(2) further explicitly covers the reporting of information on the "financing of illegal activities", "damage to the financial interests of the European Union", and "other violations". Violations may be planned or already committed. Whistleblowing in the public and private sectors are covered. Violations must pertain to an "institution", which is defined as "a public or private legal entity, another organisation, a branch of a foreign legal entity or organisation" (Art. 2(3)).

226. A range of reporting persons are covered. The WPL applies to a natural person who submits information obtained "from the service, work or contractual […] relations" with the institution in question. Also covered are persons with pre-contractual relations and in self-employment, as well as shareholders, members of company boards, subcontractors and suppliers (Art. 2(2)). Protection from reprisal can be extended to family members and colleagues (Art. 10(3)). A person's rights and remedies under of the WPL cannot be waived or limited by labour relations, arbitration or any other agreements (Art. 11(1)).

227. WPL Art. 4 sets out the requisite reporting channels. A person must notify the competent authority if he/she is aware of signs that a criminal act may about to be, is being or has been committed (Art. 4(5)). (The Prosecution Service is the competent authority in foreign bribery cases.)[40] For other violations, a person can report through the internal whistleblowing channels of the institution in question. Art. 4(4) states that he/she may report to an external competent authority directly in some circumstances, for example when it is necessary to prevent significant damage; if the person in charge of the institution committed the violation; or if internal reporting resulted in an ineffective response or none at all. However, Lithuania states that this provision is only a "recommendation", and that "in practice it is always possible for a person to choose to report immediately through an external channel in all cases". Additional provisions require the reporting person to be informed of the status of the report in a timely manner (Arts. 4(2)-(3) and 6). Disclosing the violation publicly is permissible under certain circumstances (Art. 4(10)).

228. Lithuanian authorities state that the WPL only applies to a whistleblower who subjectively believes that a violation has occurred or will occur. Arts. 3(4)-(5) further stipulate that a whistleblower must reasonably believe that he/she is providing correct information in order to benefit from immunity for defamation, damages, and contract or tort liability.

[40] PG Order I-207.

ii. Incentives for whistleblowing

229. A whistleblower may be remunerated for the information provided. Remuneration must be proportional to the damage caused or could be caused by the violation (Art. 12). Lithuania indicates that in practice the remuneration amounts to 10% of the (possible) damage caused by the violation unless the whistleblower took part in the offence. Remuneration will be granted if (i) the information reported is valuable, (ii) the information helped prevent possible property damage, save or obtain money, or prevent, terminate or lead to the investigation of a criminal act, and (iii) the whistleblower has not been compensated in any other form for information about the same or related violation(s).[41] The concreteness, completeness and importance of the information reported are taken into account. The Prosecutor General creates a commission that advises her on whether to pay remuneration.[42] Since 2020, five requests for remuneration have been received, resulting in payments of EUR 5 000-15 000 to four whistleblowers.

iii. Protection from retaliation and remedies

230. The WPL provides for the confidentiality. Every institution and person receiving or examining a report shall ensure the confidentiality of the reporting person's identifying information.[43] Breach of confidentiality is punishable by a fine of EUR 1 000-2 000, and EUR 2 000-4 000 for repeated offences.[44] However, confidentiality does not apply when the reporting person waives the requirement or knowingly provides false information (Art. 9(5)). Anonymous reports appear to be eligible for protection. Art. 3(6) provides that a person submitting a report "anonymously" is protected if his/her identity is disclosed.

231. A broad range of retaliation is prohibited. Art. 10(1) provides a non-exhaustive list of actions that are threatened, attempted, or taken. These include retaliation that is work-related (e.g. dismissal, transfer, removal from duties, denial of promotion, and change in contractual status, work hours or responsibilities); psychological (intimation, coercion, harassment); financial (wages or business income); reputational; and physical. In the event of a dispute between the whistleblower and an employer or contractual party, the latter has the onus of proving that the actions with negative impact did not result from the reporting (Art. 10(4)).

232. In case of retaliation, five avenues of redress are available, each with its limitations:

(a) The competent authority (i.e. Prosecution Service) can ask an institution to "eliminate" the "negative impact measure" by a particular deadline (WPL Art. 11(4)). The prosecutor could thus, for example, seek the reinstatement of a whistleblower's job, cancellation of a transfer, or cessation of harassment. But the prosecutor's request is unenforceable. Lithuania admits that "the Prosecutor's Office does not have the right to annul the administrative decisions of other institutions, therefore, in such a case, if the institution does not listen to the instructions of the Prosecutor's Office and does not stop the negative impact measures, the person has the right to apply to the court to have them removed" (see para. (c) below). In practice most requests from the Prosecution Service are accepted, says Lithuania.

(b) The whistleblower may ask the Prosecution Service for "compensation for the negative impact or possible consequences of the report submitted" (WPL Art. 11(7)). But the maximum amount payable is MSL 50 (i.e. EUR 2 500) (WPL Art. 13). This is roughly equivalent to just five weeks of lost wages for the average Lithuanian worker.[45] Furthermore, the compensation is paid by the Prosecution Service, not the individual or institution that inflicted the retribution. This remedy therefore would not deter reprisals. In 2020-2022, six requests for compensation led to payments of EUR 1 800-1 950 to three whistleblowers.

[41] Resolution 1133 of 14 Nov. 2018, Arts. 5-7.
[42] Resolution 1133 of 14 Nov. 2018, Arts. 10-13.
[43] WPL Arts. 6, 8, 9 and 16; Resolution 1133, Art. 9.
[44] Administrative Offences Code, Art. 555^1(3)-(4).
[45] The average gross monthly wage in Lithuania was EUR 1 959.90 in 2023 Q1 (Statistics Lithuania).

(c) The whistleblower may apply to the court (WPL Art. 11(5)). Lithuania states that breaches of the WPL, including reprisals against a whistleblower, is an offence under the Administrative Offences Code (AOC). The remedies available under the AOC include a warning, fine, performing public service, and compensation for damage, among other things (AOC Chapters V and XXXIX). Compensation is not capped. But the AOC does not allow for remedies such as reinstatement or injunctions (e.g. to cease retribution or to refrain from contact). Such measures can only be "applied by other authorities", acknowledges Lithuania, presumably under the other avenues of redress described above and below. Furthermore, the available fines under the AOC are only EUR 140-300 for each breach of the WPL, and EUR 300-500 for repeated breaches (AOC Art. 555^1(1)-(2)). Such low fines are unlikely to deter retribution. The remedies under the AOC are also only available against natural and not legal persons. Lithuania refers to higher fines but these only apply for revealing whistleblower's identity, not all types of retributions.

(d) The whistleblower may also bring proceedings under the Labour Code (LC). But unlike the AOC under option (c), the causes of Labour Code actions are limited to matters such as wrongful dismissal and suspensions (LC Art. 218). Many other types of retribution recognised by the WPL are not covered. Moreover, the only available remedies are reinstatement, and compensation for lost wages and damages. Fines and injunctions are not available.

(e) The whistleblower can challenge an administrative act or omission that has negative consequences in accordance with the Administrative Proceedings Law (APL) (WPL Art. 11(5)). However, this option is only available to a whistleblower who has "a service relationship with the institution". The APL also only applies to acts of retribution committed by a Lithuanian official, not an employee of a private company. This remedy is therefore unlikely to be relevant in most foreign bribery cases.

Just before the adoption of this report, Lithuania describes a sixth avenue of redress. The whistleblower could also ask the civil courts to provide compensation under the Civil Procedure Code.

233. A final concern is interim relief pending the resolution of legal proceedings. Lithuania states that such relief is available for APL proceedings (option (e) above). The prosecutor as a competent authority might also be able to act relatively quickly and ask an institution to "eliminate" the "negative impact measure" (option (a)). But the prosecutor's request is not enforceable, as mentioned above. Lithuania states that interim relief is also available under Civil Procedure Code Art. 145. For the other options, interim relief is not available. Proceedings under the AOC (option (c)) can involve an investigation, a court hearing, and multiple levels of appeal. Labour Code proceedings (option (d)) are heard by a labour commission and the courts. When these proceedings become protracted, the lack of interim relief can bring hardship to a whistleblower.

Commentary

The lead examiners commend Lithuania for enacting the Whistleblower Protection Law. Nevertheless, they are concerned about deficiencies in the process for providing remedies to a whistleblower who suffers from retribution. Five avenues of redress are available, each offering remedies of varying effectiveness. (The lead examiners could not consider in detail a sixth avenue of redress described by Lithuania just before the adoption of this report.) An aggrieved whistleblower may thus be forced to pursue multiple options, which is obviously undesirable. Some options are also more time consuming, a concern that is exacerbated by the lack of interim relief measures. Some avenues of redress do not require individuals and companies that retaliate against a whistleblower to be fined or pay compensation. There is therefore insufficient deterrence against reprisals.

The lead examiners therefore recommend that Lithuania (a) make the avenues of redress available under the Whistleblower Protection Law easier to use, (b) ensure that such a process continues to

provide appropriate remedies to whistleblowers to compensate direct and indirect consequences of retaliatory action following a report that qualifies for protection, (c) provide for interim relief pending the resolution of legal proceedings, and (d) provide for effective, proportionate, and dissuasive sanctions for those who retaliate against reporting persons.

iv. Awareness-raising and resources

234. Lithuania has raised awareness of whistleblowing and whistleblower protection. As required by PG Order I-207, the PGO provided over 500 consultations through a hotline and 17 training sessions on the WPL to companies and organisations from the public and private sectors in 2021 and 2022. Additional training was provided to officials responsible for protecting whistleblowers and investigating reports. The STT also trained the public and private sectors. Lithuania plans to launch an awareness-raising campaign in 2023 and to organise further training.[46]

235. Low reporting rates suggest that these initiatives have been unsuccessful. The PGO received just one report of domestic bribery in 2019-2022. For all offence types, the PGO recognised 43 whistleblowers in 2021 leading to 10 pretrial investigations.[47] These figures are the result of an enduring reluctance to report, according to many civil society and private sector representatives. "The law is good but the problem is implementation", says one non-governmental organisation. As mentioned at para. 223, a recent survey indicates that few individuals are inclined to report corruption. Concerns about reprisals was the most cited reason for non-reporting. These fears might not be unfounded. There have been well-publicised cases where the identity of a whistleblower was allegedly revealed, according to representatives of the media and private sector.[48] Another survey found that in 2019 only 16 of the 40 largest companies in Lithuania had a protected internal reporting channel.[49]

236. Concerns about reporting rates are compounded by inadequate resources. The Prosecution Service is charged with receiving and processing whistleblower reports; resolving claims of retribution; and raising awareness and providing training on the WPL. Just 4.5 staff members are responsible for all these tasks. As mentioned in section B.5.h at p. 27, the Prosecution Service's financial resources are already strained. In her plea for more resources, the Prosecutor General specifically referred to "the necessity to allocate additional funds for this [whistleblowing-related] function of the prosecutor's office".

Commentary

The lead examiners are seriously concerned about the poor rates of whistleblowing and a reluctance to report in Lithuania. The Prosecution Service's lack of resources also undermines the implementation of whistleblowing regime. The lead examiners therefore recommend that Lithuania (a) make greater efforts to raise awareness of the WPL in the public and private sectors, including SMEs, in particular with regard to the incentives, protection and remedies available; and (b) provide the Prosecution Service with sufficient resources to exercise its role as a competent authority under the WPL.

[46] STT webpage on "Raising anti-corruption awareness in the public sector" and Schedule of lectures and practical seminars for the second semester of 2023.
[47] European Commission (2022), Rule of Law Report, Country chapter on the rule of law situation in Lithuania, p. 13.
[48] For example, see LRT (28 Jan. 2022), "*Po LRT tyrimo apie naudotus karstus – pasipiktinusių bažnyčios įmonės klientų skundai ir prabilusių darbuotojų „medžioklė“*"; LRT (26 Aug. 2022), "*Po tyrimo. Bažnyčios įmonė atsikrato darbuotojų, padėjusių atskleisti naudotų karstų aferą*"; LRT (2 Mar. 2023), "*Metai po LRT tyrimo: iš Bažnyčios įmonės išvaikyti apie karstų aferą žinantys darbuotojai, už mobingą – baudos*".
[49] National Anti-Corruption Agenda for 2022-2033, para. 86.

d. Overseas embassies and missions

237. This section considers the role of overseas embassies and missions in reporting and raising awareness of foreign bribery. The monitoring of the local media for foreign bribery allegations is described at section B.5.b.i at p. 17. Awareness-raising in the private sector is covered in section B.10.e at p. 53.

i. Reporting foreign bribery

238. Lithuania's Ministry of Foreign Affairs (MFA) requires its staff to report foreign bribery allegations to the STT but has set out inconsistent reporting channels. In Phase 2 (para. 47), the MFA issued an instruction in 2017 to diplomats to report such information to the STT. A second instruction to the same effect was issued in 2019 when the reporting obligation in the Corruption Prevention Law (CPL) was enacted (see para. 217). In this evaluation, Lithuania's questionnaire responses state that MFA staff reports such information to the Ministry's General Inspectorate which forwards the report to the STT. The MFA reiterates this view initially at the on-site visit. It later states that MFA staff may report either to the General Inspectorate or STT. These positions contradict the 2017 and 2019 instructions which do not refer to the General Inspectorate. They are also inconsistent with the CPL, which requires reporting to the Prosecution Service, STT or another pretrial investigation institution. The MFA later also argues that reporting to the General Inspectorate is consistent with the Whistleblower Protection Law (WPL). But the WPL is relevant to an MFA official who reports corruption committed by another MFA official, not foreign bribery committed by a Lithuanian company.

Commentary

The lead examiners are concerned about Lithuania's inconsistent channels for MFA staff to report foreign bribery. Lithuania's current position that MFA staff report to the STT or General Inspectorate is inconsistent with earlier MFA instructions and the CPL. Moreover, the General Inspectorate is responsible for dealing with cases of corruption committed by MFA officials. Its role in receiving reports of corruption committed by foreign officials is therefore dubious. The lead examiners therefore recommend that Lithuania clarify that MFA staff should report foreign bribery to the STT, and recommunicate this obligation to staff in embassies and overseas missions.

ii. Responding to Lithuanian companies seeking assistance with bribe solicitation

239. There is similar confusion about how embassies and overseas missions should respond to a Lithuanian company seeking assistance with bribe solicitation. The 2017 and 2019 instructions asked MFA staff to inform the company that bribing a foreign official "will entail the same responsibility as analogous activities in Lithuania". In addition, "legal coercive measures may be applied to a legal person for a criminal act committed by a natural person". But in this evaluation, Lithuania merely refers again to the MFA General Inspectorate which "checks and evaluates the activities in the political, economic, consular, cultural, information-communication, and other areas of competence of the Ministry". The General Inspectorate also "reviews complaints from citizens and individuals regarding possible cases of corruption in the Ministry and diplomatic missions". Lithuania does not explain what would actually be communicated to Lithuanian companies seeking assistance.

240. Lithuania provides some clarity after reviewing a draft of this report. It states that in 2021 the STT and MFA prepared and disseminated a recommendation for businesses on foreign bribery. Companies are asked to report corruption to the STT, foreign anti-corruption agencies, law enforcement and Lithuanian diplomatic representations. MFA staff are invited to use this recommendation when communicating with Lithuanian companies operating abroad. In 2022, Lithuanian diplomatic representations were reminded of this recommendation and to publish it on their website. They were also encouraged to co-operate with the STT when planning public campaigns.

iii. Training and awareness of foreign bribery among MFA and embassy officials

241. In 2019, 320 diplomats participated in five training sessions organised by the MFA with the participation of the STT. Since then, the MFA organised four training sessions for "diplomats, special attachés and officials". These training sessions covered the "obligation" for diplomatic missions to inform Lithuanian businesses and their representatives operating abroad on the prevention of foreign bribery, and the need to encourage reporting through available channels. The STT participated in three of these training sessions. In total, more than 500 officials and diplomats have received training since 2017.

e. Raising awareness of foreign bribery in the private sector

242. Two Working Group recommendations on awareness-raising remain outstanding from Phase 2. The Working Group encouraged Lithuanian agencies working with business, especially SOEs and SMEs, to increase their efforts to raise awareness of the foreign bribery offence (recommendation 1(a)). The Working Group also asked Lithuania to continue awareness-raising efforts underway by the STT, business organisations and NGOs, and monitor and evaluate the impact they are having on prevention and detection of foreign bribery (recommendation 1(b)). The promotion of corporate compliance programmes is discussed in section B.7.c at p. 39.

i. Raising awareness among Lithuanian officials

243. Actual awareness of foreign bribery among Lithuanian officials is poor. The STT provides training on foreign bribery and had two courses on this topic in the first half of 2023.[50] It also has an e-training platform on which foreign bribery is one of the topics. The MFA made additional efforts (see para. 241). Despite these efforts, the level of awareness is very low. According to the STT's annual survey in 2022,[51] only 14% of officials have heard of the risk of foreign bribery, and 18% were aware of measures to fight this crime. The STT acknowledges that it is only "at the beginning of a journey".

ii. Raising awareness among individuals and companies

244. The STT continues to lead foreign bribery awareness-raising efforts. It has a webpage, an online video, an e-learning platform, and on-request training. Its Recommendations for Lithuanian Business Entities Operating in Foreign Countries provide information on how to recognise corruption and foreign bribery. Companies are advised to report foreign bribery to the STT; the anti-corruption institution or law enforcement authority of a foreign country; or Lithuania's embassy or consular office. Recent Guidelines for Creating an Anti-Corruption Environment for Business recommend companies operating abroad to address foreign bribery in their anti-corruption programmes (p. 9). The STT intends to co-ordinate the parties to the Foreign Bribery Co-operation Agreement (see para. 94) in a social media campaign about foreign bribery.

245. The MFA engaged in some additional awareness-raising. The MFA and STT issued recommendations available online and organised one training session for Lithuanian business enterprises operating abroad. The MFA and STT presented the Recommendations for Lithuanian Business Entities Operating in Foreign Countries at a meeting of the Integrity Academy.[52] The Academy is an STT-led initiative that brings together experts to share their experience with public and private sector organisations. In 2021 and 2022, the MFA instructed its overseas missions to publish these recommendations on their websites and share them with the business community. Lithuania indicates that banners were embedded on all its diplomatic missions' website homepages.

246. Other government bodies have been more passive. The Ministry of the Economy and Innovation (MOEI) has a webpage on the Convention, and a downloadable Factsheet on OECD Public and Private

[50] See STT's schedule of lectures and practical seminars for the first semester of 2023.
[51] Corruption Map of Lithuania 2022-2023, Slides 146-158.
[52] See STT's press release of the event on 28 Oct. 2021.

Sector Guidelines on Bribery of a Foreign Official. The Ministry, STT and Public Institution Management Co-ordination Centre developed a Guide on the Creation of an Anti-Corruption Environment and Integrity in State- and Municipal-Owned Enterprises. The publication mentions the Convention. However, the document focuses on preventing employees of Lithuanian state-owned enterprises from engaging in corruption, and not the bribery of foreign officials. The Innovation Agency (previously Enterprise Lithuania) is a non-profit agency under the MOEI mandated "to promote entrepreneurship, support business development and foster export". It has not raised awareness of the Convention or foreign bribery.

247. Lithuania has very limited engagement with SMEs in fighting foreign bribery. In 2019, the MFA asked Lithuanian diplomatic missions to disseminate a brochure on Anti-Corruption for SMEs. The STT referred to an e-learning platform and online video but these do not specifically refer to SMEs. It states that its "Guidelines for Creating an Anti-Corruption Environment for Business" applies to all businesses. However, SMEs should have been specifically addressed because they face unique challenges such as their size and limited resources. A Handbook on how SMEs can "create an anti-corruption environment" is under preparation but yet to be published.

248. An even greater concern is actual awareness of foreign bribery. According to the STT's annual survey in 2022,[53] only 32% of companies and 23% of Lithuanian residents have heard of the risk of foreign bribery. Even fewer (24% of companies and 13% of Lithuanian residents) know of measures to fight this crime. Private sector lawyers agreed with these figures, adding that awareness is especially poor among domestic companies (as opposed to local subsidiaries of foreign multinationals). SMEs are even less aware of the risks of foreign bribery and the avenues for seeking advice or reporting the crime. One civil society representative doubts that the government's awareness raising reached its target audience. Another rightly pointed out that the absence of actual enforcement undermines efforts to raise awareness.

Commentary

The lead examiners are concerned that Lithuania's public and private sectors have a low awareness of foreign bribery. The STT was the most active in raising awareness, followed by the MFA, which raised awareness among its embassies. But other relevant government bodies mainly post information on the Internet, which is too passive. Some have not raised awareness at all.

These additional government bodies need to contribute to raising awareness of the private sector, rather than leave the STT alone in this task. Lithuania argues that the STT should take a leading role in educating Lithuanian companies about foreign bribery. Few would disagree. However, other government bodies like the Innovation Agency have constant contact with a wide range of Lithuanian companies. Leveraging their reach in the private sector would make awareness-raising significantly more effective. This may be especially crucial in Lithuania, where private sector awareness of foreign bribery is poor despite the STT's efforts.

For these reasons, the lead examiners reiterate Phase 2 recommendations 1(a)-(b), and recommend that relevant Lithuanian governmental bodies (including the Innovation Agency) more proactively raise awareness of foreign bribery and the Convention among Lithuanian companies, especially internationally active SOEs and SMEs.

11. Public advantages

a. Debarment from public procurement

249. The legislative provisions on debarment in Lithuania have not changed significantly since Phase 2. Public Procurement Law (PPL) Arts. 46(1)-(2) provide for mandatory debarment if a supplier has been convicted of foreign or domestic bribery within the past five years. The same results from the conviction of a supplier's manager; member of its supervisory body; and person who has the right to represent or control

[53] Lithuanian Corruption Map 2022-2023, Slides 146-158.

the supplier, to make a decision or enter into a transaction on its behalf, or to draw up and sign its financial accounting documents. Debarment is for five years from the conviction.

250. Guidance on the PPL contains an inconsistency with these provisions. The Public Procurement Office (*Viešųjų pirkimų tarnyba*, VPT) has issued a Commentary to help the understanding and application of the PPL. The Commentary limits the bribery convictions relevant to debarment to those in Lithuania or another EU country. This is because "most suppliers are in the EU", says the VPT. However, the VPT admits that a bribery conviction from a non-EU country can trigger debarment under PPL Arts. 46(1)-(2).

251. Lithuania hopes to implement a Working Group recommendation on procuring authorities' ability to enforce debarment. The Phase 2 Report (para. 203) noted that suppliers are required to provide a certificate of no-conviction for bribery. However, procuring authorities cannot access a database to verify the certificate without paying. The Working Group accordingly recommended that Lithuania "facilitate direct access by procurement authorities to corruption convictions of natural and legal persons and ensure effective [debarment]" (recommendation 12(b)). A new e-procurement system "SAULE IS" is now expected in the second half of 2023. The new system is expected to draw information from the criminal conviction register, and alert contracting authorities that a supplier may have been debarred.

252. Measures to verify the debarment lists of multilateral development banks (MDBs) are outdated. In Phase 2 (para. 203), the VPT linked its website to an OECD webpage with MDB debarment lists, and issued an information notice encouraging procuring authorities to consult these lists. The link is no longer valid. Furthermore, the page in question on the VPT website is still active but is in the 2017 "news" section. Its visibility today is therefore questionable.

253. Lithuania has not trained procuring authorities on debarment and does not maintain statistics on actual debarment. Procuring authorities are only required to provide "information on the reason for exclusion in general terms", and not whether debarment was imposed due to a bribery conviction.

Commentary

The lead examiners recommend that Lithuania (a) align the PPL Commentary provisions on foreign bribery convictions that can trigger debarment with PPL Art. 46, (b) launch SAULE IS to give government agencies access to information on companies sanctioned for foreign bribery, (c) actively encourage procuring authorities to consult the debarment lists of multilateral development banks, (d) provide guidance and training to relevant government agencies on debarment measures applicable to companies determined to have bribed foreign public officials, and (e) maintain statistics on debarment imposed due to bribery convictions.

b. Officially supported export credits

254. INVEGA (*UAB Investiciju ir verslo garantijos*) is a "National Promotional Institution" that provides export credit guarantees. In Phase 2, the Working Group decided to follow up INVEGA's efforts to prevent, identify and report foreign bribery committed by applicants for, and recipients of, support (follow-up issue 13(b)).

255. INVEGA's due diligence procedure is in line with the Recommendation of the Council on Bribery and Officially Supported Export Credits. An exporter/applicant's application form must be accompanied by an anti-corruption declaration; confirmation by the State Enterprise Centre of Registers of non-involvement in judicial or arbitral proceedings during the preceding five years; and responses to a "know your customer" questionnaire (see INVEGA website). INVEGA then conducts due diligence and assesses systematic corruption risks, such as by verifying the debarment lists of multilateral development banks; identification of exporters or buyers as politically exposed persons (PEPs); use of intermediaries or agents; and the amount and purpose of agent commissions and fees. Enhanced due diligence would be conducted if there are reasons to believe that bribery may be involved in the transaction. This encompasses the background and suitability of agents, including their experience with similar transactions and potential links to PEPs.

256. If an applicant is involved in foreign bribery or corruption, then INVEGA states that it would deny or cancel support. Repayment would be demanded in case of cancellation. The exporter is denied future support. INVEGA staff must also report corruption (including foreign bribery) to law enforcement as per CPL Art. 9 (see section B.10.b.i at p. 46). INVEGA received six reports of domestic corruption but none of foreign bribery in 2018-2022.

257. The STT and INVEGA's compliance officer provide mandatory training on corruption to INVEGA staff three times per year. Some training sessions have covered foreign bribery and reporting, such as an August 2021 event entitled "How to recognise criminal acts of a corruption nature and how to deal with them".

c. Official development assistance

258. Lithuania's official development assistance (ODA) programme has limited foreign bribery risks. The Ministry of Foreign Affairs and the Central Project Management Agency (CPMA) oversee Lithuania's Development Co-operation and Democracy Promotion Programme. Lithuania states that it provided only EUR 10.20 and 16.32 million of bilateral ODA in 2020 and 2021 respectively. The top recipient countries were Ukraine, Belarus, Moldova, Georgia and Türkiye. In 2022, ODA increased to EUR 231.44 million of which EUR 133.52 million was bilateral. Much of this was for humanitarian and financial support to Ukraine and assistance to Ukrainian refugees in Lithuania. In Phase 2, the Working Group decided to follow up Lithuania's efforts to prevent, detect and report foreign bribery in ODA-funded projects (follow-up issue 13(c)).

259. The CPMA's standard ODA contract contains anti-corruption clauses. A contractor must certify that it is prohibited from engaging in corruption, including foreign bribery (clause 9.2). The contract shall be terminated if the contractor has a conviction, including for bribery, within the past five years (clause 9.1.3). Termination may also result if the contractor engages in corruption during the project (clause 9.1.6). In case of termination, the contractor must repay all funds dispersed (clause 9.3). In practice, no ODA contract has been denied or rescinded to date because of a corruption conviction.

260. Some anti-corruption measures could nevertheless be strengthened. Lithuania states that ODA contractors must sign a declaration of no-conviction for corruption. The declaration is not verified, however. Lithuania argues that verifying the declaration of all applicants would be too onerous. At a minimum, however, it should verify the declaration of its preferred applicant before awarding the contract. Lithuania also does not routinely verify publicly available debarment lists of national and multilateral development banks when awarding an ODA contract. The CPMA only performs such verification if explicitly required by the project selection criteria. The CPMA's standard contract (clause 9.1.4) provides for termination if a contractor is listed on an OECD webpage. But the link to the webpage specified in the contract is no longer valid (see para. 252).

261. ODA officials are subject to the obligation to report corruption under CPL Art. 9 (see section B.10.b.i at p. 46). The CPMA website provides information on reporting channels. The CPMA states that its employees know where to report suspicions of corruption, according to a recent internal survey. To date, there have been reports of conflicts of interest but not foreign bribery or corruption.

262. In terms of training and awareness-raising, Lithuania states that it trains all project implementors annually on ethics, anti-corruption, and the rules and conditions of aid project delivery. The STT further trains CPMA staff annually on corruption detection and prevention. Training has not been provided to project implementing partners. Lithuania has not conducted a systematic assessment and management of corruption risks in recipient countries. It only refers to one instance where the STT performed a risk assessment that was not related to foreign bribery.

Commentary

The lead examiners invite Lithuania to strengthen and raise awareness of its efforts to fight foreign bribery and corruption in its ODA programming. They therefore recommend that Lithuania (a) establish mechanisms to verify the accuracy of information provided by an applicant selected for an ODA-funded project, in particular the applicant's declaration of no-conviction for corruption; (b) verify publicly available debarment lists of national and multilateral development banks during the applicant's selection process, and include such lists as a possible basis of exclusion from application to ODA-funded contracts; and (c) regularly assess and manage corruption risks in the countries to which it provides assistance.

d. Consideration of corporate anti-corruption compliance programmes

263. Anti-Bribery Recommendation XXIII.D.i asks countries to "encourage their government agencies to consider, where international business transactions are concerned and as appropriate, internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery in their decisions to grant public advantages". A similar suggestion is in Recommendation 6.iii of the Council for Development Co-operation Actors on Managing the Risk of Corruption.

264. Lithuania has not implemented these Recommendations. In the area of public procurement, Lithuanian procuring authorities do not consider a supplier's anti-corruption compliance programme. PPL Art. 46(10) requires the consideration of such programmes only if a company has been debarred. In rare cases, a procurement contract might require follow-up on ethical matters. But even then, a compliance programme is examined only after the procurement contract has been awarded. In the area of ODA, Lithuania states that assessments of a project partner's corruption risk management system "is not performed". INVEGA also does not consider an exporter's anti-corruption compliance programme. It reiterates its measures described in para. 255, namely that it requires an exporter to submit an anti-corruption declaration; confirms with the State Enterprise Centre of Registers of the exporter's non-involvement in judicial or arbitral proceedings; and verifies the debarment lists of multilateral development banks. It states that the European Commission confirms that INVEGA meets the Financial Regulation applicable to the EU general budget. However, none of these measures is equivalent to an assessment of an applicant's internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery.

Commentary

The lead examiners recommend that Lithuania (a) encourage its government agencies to consider the adequacy of the anti-corruption compliance programmes of companies that seek public advantages, as per Anti-Bribery Recommendation XXIII.D.i, and (b) provide guidance and training to relevant government agencies on remedial measures which may be adopted by companies, including internal controls, ethics and compliance programmes or measures, which may be taken into consideration.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

265. The Working Group welcomes Lithuania's efforts since Phase 2 to implement the Convention and related instruments. The Phase 2 report on Lithuania adopted in December 2017 included recommendations and issues. Of the Phase 2 recommendations that were outstanding at the time of the 2019 Written Follow-Up Report, Lithuania has fully implemented recommendations 5(c) (money laundering) and 8(b) (judiciary). It has partially implemented recommendations 1(a)-(b) (prevention and awareness-raising), 4(b) (internal company controls), 5(b) (money laundering), 7(b) (investigation and prosecution), and 9(a) (mutual legal assistance). Lithuania has not implemented recommendation 12(b) (sanctions).

266. Based on the findings in this report, the Working Group makes the recommendations set out in Part 1 and will follow up the issues identified in Part 2. Lithuania is invited to report to the Working Group in writing in December 2025 on its implementation of all recommendations, on its foreign bribery enforcement actions, and on developments related to the follow-up issues.

RECOMMENDATIONS OF THE WORKING GROUP

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

1. Regarding liability of legal persons, the Working Group recommends that Lithuania urgently enact legislation to ensure that its corporate liability regime complies with Convention Art. 2 and Anti-Bribery Recommendation Annex I, including by repealing the consideration of shareholder culpability for corporate liability (Convention Art. 2; Anti-Bribery Recommendation Annex I).
2. Regarding sanctions and confiscation, the Working Group recommends that Lithuania:
   (a) consider enacting legislation or taking other steps to expressly provide that (i) a legal person's anti-corruption internal controls, ethics and compliance programme would be considered when determining sanctions against the legal person for foreign bribery, and (ii) such programmes can be imposed as part of a sentence or non-trial resolution in foreign bribery cases (Convention Art. 3; Anti-Bribery Recommendation XV);
   (b) take steps (such as guidance, training and awareness raising) to ensure that sanctions (including fines) for foreign bribery imposed in practice are effective, proportionate and dissuasive, particularly when penal orders, CC Art. 39^2 or CC Art. 40 is applied (Convention Art. 3; Anti-Bribery Recommendations XV and XVIII.v); and
   (c) take further steps to ensure that law enforcement authorities and prosecutors take into account the value of the bribe and routinely seek confiscation of the proceeds of bribery from the briber in foreign bribery cases (Convention Art. 3; Anti-Bribery Recommendation XVI).
3. Regarding the detection of foreign bribery, the Working Group recommends that Lithuania:
   (a) strengthen its media monitoring of foreign bribery allegations, including by (i) substantially expanding the language and geographical coverage of the monitoring, and (ii) assigning a clear role to the STT in these efforts (Anti-Bribery Recommendations VIII and XXI.iv); and
   (b) consider measures to encourage persons who participated in, or have been associated with, the commission of foreign bribery, to supply information useful to competent authorities for investigating and prosecuting foreign bribery, and ensure that appropriate mechanisms are in place for the application of such measures in foreign bribery investigations and prosecutions (Anti-Bribery Recommendations X.iii and XV.ii).
4. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Lithuania:
   (a) take all necessary measures to ensure that law enforcement authorities act promptly and proactively so that complaints of foreign bribery are seriously investigated by competent authorities (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendations VI.iii, and IX);
   (b) take all necessary measures to ensure that its law enforcement authorities act promptly and proactively so that complaints of foreign bribery are seriously investigated and credible allegations are assessed by competent authorities (Convention Art. 5; Anti-Bribery Recommendation VI.ii);

(c) take steps to ensure that law enforcement authorities take a proactive approach to the investigation and prosecution of foreign bribery, particularly by gathering evidence in Lithuania (Convention Art. 5; Anti-Bribery Recommendations VI.iii, VIII and X.ii); and

(d) take steps to ensure that it considers transmitting information – without prior request, where appropriate and in a manner consistent with national laws and relevant treaties and arrangements – to a competent authority in another Party to the Convention where such information could assist the country in undertaking investigations or successfully concluding foreign bribery proceedings (Convention Art. 5; Anti-Bribery Recommendation XIX.B.ii).

5. Regarding non-trial resolutions, the Working Group recommends that Lithuania:

(a) adopt a clear and transparent framework regarding non-trial resolutions such as penal orders, including (i) whether these resolutions are available to natural and/or legal persons; (ii) what may be negotiated, such as the sentence sought, whether the prosecution would proceed on alternate or lesser charges, or what facts would underpin the penal order; and (iii) the factors that may be taken into account during negotiations, such as voluntary self-disclosure of misconduct, co-operation with law enforcement authorities, and remediation measures (Anti-Bribery Recommendations XVIII.i-iii);

(b) where appropriate and consistent with data protection rules and privacy rights, as applicable, make public elements of non-trial resolutions, including: (i) the main facts and the natural and/or legal persons concerned; (ii) the relevant considerations for resolving the case with a non-trial resolution; (iii) the nature of sanctions imposed and the rationale for applying such sanctions; and (iv) remediation measures, including the adoption or improvement of internal controls and anti-corruption compliance programmes or measures and monitorship (Anti-Bribery Recommendation XVIII.iv); and

(c) consider introducing additional forms of non-trial resolutions, such as deferred and non-prosecution agreements (Anti-Bribery Recommendation XVII).

6. Regarding expertise and resources, the Working Group recommends that Lithuania:

(a) continue to train STT investigators, prosecutors and judges on foreign bribery and corporate investigations (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VI.iii); and

(b) provide adequate resources to permit effective prosecution of foreign bribery, including by ensuring that prosecutor salaries are competitive with those of judges and private sector lawyers (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VII).

7. With respect to investigative and prosecutorial independence, the Working Group recommends that Lithuania raise awareness in the Seimas of the duty to respect the principles in Convention Art. 5 and the independence of the Prosecution Service and STT, including the need to (a) exercise restraint in compelling the attendance of the Prosecution Service and the STT, and (b) refrain from seeking information about ongoing investigations and prosecutions (Convention Art. 5 and Commentary 27).

8. With respect to mutual legal assistance and extradition, the Working Group recommends that Lithuania:

(a) maintain comprehensive statistics on incoming and outgoing mutual legal assistance requests including the foreign country involved, underlying offence, assistance requested, execution time, and grounds for refusal (Convention Art. 9; Anti-Bribery Recommendation XIX); and

(b) maintain comprehensive statistics on incoming and outgoing extradition requests including the foreign country involved, underlying offence, execution time and grounds for refusal (Convention Art. 10; Anti-Bribery Recommendation XIX).

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

9. Regarding money laundering, the Working Group recommends that Lithuania:

   (a) take further measures (such as guidance, training and awareness raising) to enforce the money laundering offence more effectively in connection with foreign bribery cases (Convention Art. 7);

   (b) specifically assess the risk of money laundering predicated on foreign bribery in its national money laundering risk assessment, including by examining examples of whether and how the proceeds of this crime may be laundered (Convention Art. 7; Anti-Bribery Recommendation VIII);

   (c) issue guidance and typologies that specifically address the identification and reporting of money laundering predicated on foreign bribery (Convention Art. 7; Anti-Bribery Recommendation VIII);

   (d) maintain statistics on the sanctions imposed for failure to submit STRs (Convention Art. 7); and

   (e) ensure that the MLPD has sufficient human resources for processing the STRs that it receives (Convention Arts. 5 and 7; Anti-Bribery Recommendation VII).

10. Regarding accounting and external audit, the Working Group recommends that Lithuania:

   (a) encourage companies that receive reports of suspected acts of foreign bribery from an external auditor to actively and effectively respond to such reports (Anti-Bribery Recommendation XXIII.B.iv);

   (b) take further steps (such as guidance, training and awareness raising) to ensure that auditors and audit firms that report foreign bribery are protected from legal action (Anti-Bribery Recommendation XXIII.B.v); and

   (c) disseminate and raise awareness of the Chamber of Auditors' Recommendations 1.4-31.9.7.1.1 and 1.4-31.9.7.1.2 to auditors, especially regarding the red flag indicators of foreign bribery (Anti-Bribery Recommendation IV.ii).

11. With respect to tax-related measures, the Working Group recommends that Lithuania:

   (a) take steps to improve the STI's capacity to detect bribery during tax audits (Anti-Bribery Recommendations IV.i, VI.iii, and XXI.iv); and

   (b) ensure that the STT provides feedback on the reports of bribery received from the STI (Anti-Bribery Recommendation XI).

12. Regarding corporate compliance, internal controls and ethics, the Working Group recommends that Lithuania:

   (a) make greater efforts to encourage and assist large companies, SOEs and SMEs that are internationally active to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance in the Anti-Bribery Recommendation Annex II (Anti-Bribery Recommendations XXIII.C.i-ii and Annex II.B); and

   (b) (i) encourage its government agencies to consider the adequacy of the anti-corruption compliance programmes of companies that seek public advantages, and (ii) provide guidance and training to relevant government agencies on remedial measures which may be adopted by companies, including internal controls, ethics and compliance programmes or measures, which may be taken into consideration (Anti-Bribery Recommendations XXIII.D.i-ii).

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

    (a) assess its foreign bribery risks and its approach to enforcement, and include policies and actions in its national anti-corruption strategy that are commensurate with these risks (Anti-Bribery Recommendations III and IV.i);

    (b) strengthen the obligation on its public officials to report corruption by (i) ensuring all public officials are subject to this obligation, including by eliminating the exception for public officials "holding a post which is not subject to any educational or professional qualification requirements"; and (ii) enforcing the obligation to report and sanctioning breaches of this obligation (Anti-Bribery Recommendations IV.vi and XXI.i,iii,v);

    (c) continue to raise awareness among public officials and private individuals of the importance of reporting foreign bribery, including by training public officials who could play a role in detecting and reporting this crime (Anti-Bribery Recommendations IV.vi and XXI.v-vi);

    (d) clarify that MFA staff should report foreign bribery to the STT, and recommunicate this obligation to staff in embassies and overseas missions (Anti-Bribery Recommendation XXI.vi); and

    (e) encourage that relevant Lithuanian governmental bodies (including the Innovation Agency Enterprise Lithuania) more proactively raise awareness of foreign bribery and the Convention among Lithuanian companies, especially internationally active SOEs and SMEs (Anti-Bribery Recommendation IV.ii, Annex I.A.2-3, B.2).

14. Regarding whistleblower protection, the Working Group recommends that Lithuania:

    (a) make the avenues of redress available under the Whistleblower Protection Law easier to use (Anti-Bribery Recommendation XXII.vii);

    (b) ensure that such a process continues to provide appropriate remedies to whistleblowers to compensate direct and indirect consequences of retaliatory action following a report that qualifies for protection (Anti-Bribery Recommendation XXII.vii);

    (c) provide for interim relief pending the resolution of legal proceedings (Anti-Bribery Recommendation XXII.vii);

    (d) provide for effective, proportionate, and dissuasive sanctions for those who retaliate against reporting persons (Anti-Bribery Recommendation XXII.viii);

    (e) make greater efforts to raise awareness of the Whistleblower Protection Law in the public and private sectors, including SMEs, in particular with regard to the incentives, protection and remedies available (Anti-Bribery Recommendations XXII.xi-xii); and

    (f) provide the Prosecution Service with sufficient resources to exercise its role as a competent authority under the WPL (Anti-Bribery Recommendation XXII.i).

15. Regarding debarment from public procurement, the Working Group recommends that Lithuania:

    (a) align the PPL Commentary provisions on foreign bribery convictions that can trigger debarment with PPL Art. 46 (Anti-Bribery Recommendation XXIV.i);

    (b) launch SAULE IS to give government agencies access to information on companies sanctioned for foreign bribery (Anti-Bribery Recommendation XXIV.ii);

    (c) actively encourage procuring authorities to consult the debarment lists of multilateral development banks (Anti-Bribery Recommendation XXIV.ii);

(d) provide guidance and training to relevant government agencies on debarment measures applicable to companies determined to have bribed foreign public officials (Anti-Bribery Recommendation XXIV.iv); and

(e) maintain statistics on debarment imposed due to bribery convictions (Anti-Bribery Recommendation XXIV).

16. Regarding official development assistance, the Working Group recommends that Lithuania:

(a) establish mechanisms to verify the accuracy of information provided by an applicant selected for an ODA-funded project, in particular the applicant's declaration of no-conviction for corruption (Anti-Bribery Recommendation XXIV; Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption 6.iii);

(b) verify publicly available debarment lists of national and multilateral development banks during the applicant's selection process, and include such lists as a possible basis of exclusion from application to ODA-funded contracts (Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption 6.iv); and

(c) regularly assess and manage corruption risks in the countries to which it provides assistance (Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption 5).

FOLLOW-UP BY THE WORKING GROUP

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

(a) the application in practice of CC Art. 230(2) to employees of foreign SOEs (Convention Art. 1; Anti-Bribery Recommendation Annex I.A);

(b) the application of corporate liability for foreign bribery committed via intermediaries (Convention Art. 2; Anti-Bribery Recommendation Annex I.C);

(c) whether liability arises only when an offence's benefit outweighs its damage to the company (Convention Art. 2);

(d) take further steps to ensure that allegations of foreign bribery in incoming MLA requests are assessed with a view to determining whether a domestic investigation should be opened (Convention Art. 5 and Commentary 27; Anti-Bribery Recommendation VI.iii);

(e) future enforcement of sanctions for STR reporting violations (Convention Art. 7);

(f) Lithuania's enforcement of the false accounting offence (Convention Arts. 5 and 8); and

(g) whether Lithuania, after declining a request to extradite a person for foreign bribery solely on the ground that the person is its national, submits the case to its competent authorities for the purpose of prosecution (Convention Art. 10).

ANNEX 1. ON-SITE VISIT PARTICIPANTS

Public Sector

- Ministry of Justice
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Economy
- Ministry of Finance
- Enterprise Lithuania - Innovation Agency Lithuania
- Public Procurement Office
- UAB Investment and Business Guarantees (INVEGA)
- Central Project Management Agency
- State Tax Inspectorate

Law enforcement agencies

- Special Investigation Service (STT)
- Police Department, Ministry of Interior
- Criminal Police Bureau

Judiciary

- Supreme Court
- Court of Appeal
- National Courts Administration

Prosecution Service

- Organised Crime and Corruption Investigation Department
- Criminal Prosecution Department
- Internal Investigation Division

Private Sector

Private Enterprises

- AmberGrid
- Ignitis, AB
- Interlux Group
- Layher Baltic
- Lietuvos geležinkeliai, AB
- Lietuvos pastas, AB
- Luminor
- Orlen Lietuva, AB
- Revolut
- SEB, AB
- Šiaulių bankas, AB
- Swedbank, AB
- Thermo Fisher Scientific
- Vikonda, UAB

Business Associations

- Business Association Investors' Forum
- Innovative Pharmaceutical Industry Association
- Lithuanian Business Confederation

Lawyers and legal academics

- Lithuanian Bar Association
- Ellex Valiūnas & Partners
- Kazimieras Simonavicius University
- Mykolas Romeris University
- Vilnius University

Accounting and auditing profession

- Lithuanian Chamber of Auditors
- Lithuanian Association of Accountants and Auditors
- Deloitte
- Ernst & Young Baltic
- KPMG
- Grant Thornton Baltic UAB
- PwC

Civil Society and media

- Transparency International Lithuanian Chapter (TILS)
- "Baltoji Banga" Initiative
- Lithuanian Association of Young Doctors
- Achema Workers' Trade Union
- Solidarumas
- Lithuanian National Radio and Television
- Lithuanian Union of Journalists

Parliamentarians

- Seimas members

ANNEX 2. LIST OF ABBREVIATIONS AND ACRONYMS

AFSL	Audit of Financial Statements Law
AL	Accountability Law
AML	anti-money laundering
Art.	article
CC	Criminal Code
CCP	Code of Criminal Procedure
CITL	Corporate Income Tax Law
CPL	Corruption Prevention Law
CPMA	Central Project Management Agency (official development assistance)
CAGEL	Consolidated Reporting by Groups of Undertakings Law
DTAs	double taxation agreements
EAW	European Arrest Warrant
ECA	export credit agency
EIO	European Investigation Order
EUR	euro
FAL	Financial Accounting Lawv
FATF	Financial Action Task Force
FCIS	Financial Crime Investigation Service (*Finansinių nusikaltimų tyrimo tarnyba*)
IFRS	International Financial Reporting Standards
INVEGA	*UAB Investiciju ir verslo garantijos* (export credit agency)
ISA	International Standards on Auditing
LEAs	law enforcement agencies
LFRS	Lithuanian Financial Reporting Standards
MAAC	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
MFA	Ministry of Foreign Affairs
MLA	mutual legal assistance
MLPD	Money Laundering Prevention Department (*Pinigų plovimo prevencijos valdyba*)
MOEI	Ministry of the Economy and Innovation
MOJ	Ministry of Justice
OCCI	Department for Investigation of Organised Crime and Corruption (*Organizuotų nusikaltimų ir korupcijos tyrimo skyrius*)
PEP	politically exposed persons
PG	Prosecutor General
PGO	Prosecutor General's Office
PIE	Public Interest Entity (EU Regulation 537/2014)
PITL	Personal Income Tax Law
PPL	Public Procurement Law
PS	Prosecution Service
PSL	Prosecution Service Law
SME	micro, small or medium-sized enterprise
SOE	state-owned or controlled enterprise
STR	suspicious transaction report (money laundering)
STI	State Tax Inspectorate (*Valstybinė Mokesčių Inspekcija*)
STT	Special Investigation Service (*Specialiųjų tyrimų tarnyba*)
STTL	Special Investigation Service Law
TAL	Tax Administration Law
UNCAC	United Nations Convention against Corruption
VPT	Public Procurement Office (*Viešųjų pirkimų tarnyba*)
WPL	Whistleblower Protection Law

ANNEX 3. EXCERPTS OF RELEVANT LEGISLATION

Criminal Code

Article 7 Criminal liability for crimes stipulated in international treaties

Persons are liable in accordance with this Code, regardless of their nationality and place of residence, as well as the place where the crime was committed and whether the act committed is punishable under the laws of the place where the crime was committed, when they commit crimes for which liability is provided on the basis of international treaties:

1) crimes against humanity and war crimes (Articles 99-113 1);

2) human trafficking (Article 147);

3) buying or selling a child (Article 157);

4) production, storage or sale of fake money or securities (Article 213);

5) legalization of criminally obtained property (Article 216);

6) bribery (Article 225);

7) influence trade (Article 226);

8) bribery (Article 227);

9) piracy (Article 251^1);

10) terrorist and terrorist-related crimes (Article 252, paragraphs 1 and 2);

11) illegal handling of nuclear or radioactive materials or other sources of ionizing radiation (Articles 256, 256^1 and 257);

12) crimes related to possession of narcotic or psychotropic, poisonous or powerful substances (Articles 259-269);

13) environmental crimes (270, 270^1, 270^2, 270^3, Articles 271, 272, 274).

Article 20 Criminal liability of a legal entity

1. A legal entity shall be held liable solely for the criminal acts the commission whereof is subject to liability of a legal entity as provided for in the Special Part of this Code.

2. A legal entity shall be held liable for the criminal acts committed by a natural person solely where a criminal act was committed for the benefit or in the interests of the legal entity by a natural person acting independently or on behalf of the legal entity, provided that he, while occupying a managing position in the legal entity, was entitled:

1) to represent the legal entity, or
2) to take decisions on behalf of the legal entity, or
3) to control activities of the legal entity.

3. A legal entity may be held liable for criminal acts also where they have been committed for the benefit of the legal entity by an employee or by an authorised representative of the legal entity as instructed or authorised, or as a result of insufficient supervision or control by the person indicated in paragraph 2 of this Article.

4. A legal entity may be held liable for criminal acts where they have been committed under conditions of paragraphs 2 or 3 of this Article by another legal entity controlled by or representing the legal entity, where they have been committed for the benefit of the former legal entity as instructed or authorised, or as a result of insufficient supervision or control by the person occupying a managing position in it or by his representative.

5. Criminal liability of a legal entity shall not release from criminal liability a natural person who has committed, organised, instigated or assisted in commission of the criminal act. Criminal liability of the legal entity for the criminal act committed, organised, instigated or assisted for its benefit or in its interests by a natural person shall not be eliminated by the natural person's criminal liability, as well as by the fact that the natural person is released from criminal liability for this act or is not subject to criminal liability due to other reasons.

6. The State, a municipality, a state and municipal institution and agency as well as international public organisation shall not be held liable under this Code. State and municipal enterprises, as well as the public establishments whose owner or stakeholder is the State or a municipality, and the public and private limited liability companies wherein the State or a municipality holds by the right of ownership all or part of shares shall not be considered to be state and municipal institutions and agencies and shall be held liable under this Code.

Article 227 Bribery

1. A person who directly or indirectly offers, promises or agrees to give or gives a bribe to a civil servant or a person equivalent thereto or a third party in exchange for a desired lawful act or inaction of the civil servant or person equivalent thereto in exercising his powers shall be punished by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to four years.

2. A person who, directly or indirectly by himself or through an intermediary, offered, promised or agreed to give or gave a bribe to a civil servant or a person equivalent thereto or a third party in exchange for illegal act or inaction by the civil servant or person equivalent thereto in exercising his powers shall be punished by a fine or by arrest or by a custodial sentence for a term of up to five years.

3. A person who carries out the actions provided for in paragraph 1 of this Article by offering, promising or agreeing to give or giving a bribe of the value exceeding 250 MSLs shall be punished by a fine or custodial sentence for a term of up to seven years.

4. A person who carries out the actions provided for in paragraph 1 or 2 of this Article by offering, promising or agreeing to give or giving directly or indirectly himself or through an intermediary a bribe of the value lower than 1 MSL shall be considered to have committed a misdemeanour and shall be punished by a fine or by restriction of liberty or by arrest.

5. A person who has committed the actions provided for in part 1, 2, 3 or 4 of this article is liable in accordance with this code for soliciting a bribe both for the specific action or inaction of a civil servant or a person equivalent thereto in the exercise of his powers, as well as for the exceptional situation or the favour of this person, regardless of how his actions were understood by a civil servant or a person equivalent to him.

6. A person shall be released from criminal liability for bribery where he was demanded or provoked to give a bribe and he, upon offering or promising to give or giving directly or indirectly himself or through an intermediary the bribe voluntarily notifies a law enforcement institution thereof within the shortest possible time, but in any case before the delivery of a notice of suspicion raised again him, also where he promises to give or gives the bribe with the law enforcement institution being aware thereof.

7. Paragraph 6 of this Article shall not apply to a person who directly or indirectly himself or through an intermediary offers or promises to give or gives a bribe to a person referred to in Article 230(2) of this Code.

8. A legal entity shall also be held liable for the acts provided for in paragraphs 1, 2, 3 and 4 of this Article.

Article 230. Interpretation of concepts

1. The civil servants referred to in this Chapter shall be state politicians, state officials, judges and civil servants under the Law on Civil Service and other persons who, by way of employment or by holding office on other statutory grounds at state or municipal institutions or agencies, perform the functions of a government representative or have administrative powers, as well as official candidates for such office.

2. A person who, irrespective of his status under the legal acts of a foreign state or an international public organisation, performs the functions of a government representative, including judicial functions, has administrative powers or otherwise ensures the implementation of public interest through employment or by holding office on other grounds at an institution or body of a foreign state or of the European Union, an international public organisation or an international judicial institution or a judicial institution of the European Union or a legal person or another organisation controlled by the foreign state, also official candidates for such office shall be held equivalent to a civil servant. A foreign state shall mean any foreign territory, regardless of its legal status, and includes all levels and subdivisions of government.

3. Moreover, a person who is employed or holds office on other statutory grounds in a public or private legal person or another organisation or is engaged in professional activities and has appropriate administrative powers or is entitled to act on behalf of the legal person or another organisation or provides public services, also an arbitrator or jury shall also be held equivalent to a civil servant.

4. A bribe referred to in this Chapter shall mean an unlawful or unjustified reward expressed in the form of any material or another personal benefit for oneself or for another person (whether tangible or intangible, having or not having economic value in the market) in exchange for a desired lawful or unlawful act or omission of a civil servant or a person equivalent thereto in exercising his powers.

5. The exercise of powers referred to in this Chapter shall mean any use of the position of a civil servant or person equivalent thereto, irrespective whether or not it falls within the authority of the civil servant or the person equivalent thereto as prescribed by the legal acts.

6. For the purposes of application of provisions of Article 72 of this Code, a result of the acts prohibited under paragraphs 1, 3, and 5 Article 226 and under Article 227 of this Chapter shall be property of any form directly or indirectly obtained from these acts, including material advantage that emerged from a desired act or omission of the civil servant or person equivalent thereto in exercising his powers, irrespective of whether it was obtained in the course of activities which in accordance with the procedure established by legal acts may be undertaken legally, or not.