



PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN THE SLOVAK REPUBLIC

June 2012

This Phase 3 Report on the Slovak Republic by the OECD Working Group on Bribery evaluates and makes recommendations on the Slovak Republic's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 15 June 2012.

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EXECUTIVE SUMMARY

1. The Phase 3 report on The Slovak Republic by the OECD Working Group on Bribery evaluates and makes recommendations on the Slovak Republic's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. It focuses on horizontal issues, which concern the Working Group as a whole, particularly enforcement, and also considers country-specific (vertical) issues arising from progress made since the Slovak Republic's Phase 2 evaluation in December 2005, taking into account progress observed in Slovak Republic's written follow-up report in January 2008.

2. The Slovak Republic has recently amended its legislative framework to fight foreign bribery and hence clarified a number of issues raised in Phase 2 concerning certain elements of the offence. The Working Group was also encouraged by the clarification of the role of the bodies in charge of the investigation and prosecution of corruption -- although further efforts to fully staff the relevant teams remain to be made -- as well as by the creation of a Specialised Criminal Court, which has exclusive jurisdiction over corruption cases. However, the legislation in force at the time of this report remains vague and there are loopholes with regard to the foreign bribery offence. The main concern of the Working Group is the continued lack of liability of legal persons, which has still not been established 12 years after the entry into force of the Convention in the Slovak Republic, and the lack of adequate confiscation. These shortcomings, in addition to a general lack of awareness among the private and public sectors of the specificities of the foreign bribery offence, could help explain the absence of enforcement of the foreign bribery offence and related money laundering and accounting and auditing offences. Despite the Slovak Republic's growing exposure to foreign bribery -- notably through foreign-owned enterprises operating in and exporting from the Slovak Republic and an increasing number of Slovak-based enterprises doing business outside Slovak borders -- there has been only one investigation, which has been stopped, against a Slovak citizen allegedly involved in the bribery of a Caribbean high level official. Therefore, the Working Group has serious concerns that the Slovak Republic has still not fully completed the transposition of the Convention into its legislation and does not appear to be actively enforcing its foreign bribery offence.

3. The Slovak Republic must, as a matter of priority, establish the liability of legal persons, to ensure that legal persons can be held liable for the offence of bribery of a foreign public official, including through intermediaries, and that the system thus established takes one of the approaches described in Annex I to the 2009 Recommendation.¹ The Working Group acknowledges indications by the Slovak Republic that these legislative changes appear on the Governmental Action Plan against Fraud, approved on 31 May 2012. In two years, the Working Group will revisit this issue and determine whether the Slovak Republic has completed its reform in this regard. The Slovak Republic must also take urgent steps to revisit the enforceability and proportionality of the sanctions provisions (including confiscation) available for legal and natural persons.

4. The Working Group believes that, once there is enforcement of the foreign bribery offence by Slovak authorities, the recent decision that all judgements should be published online, including on plea bargaining, could enhance the deterrent effect of such settlements and related sanctions. The recent

1. In June 2010, the Slovak Republic introduced initial reforms to address Phase 2 recommendations that the Slovak Republic establish corporate liability of foreign bribery. At the request of the Slovak Republic, the introduction of these reforms was acknowledged in an OECD press release (http://www.oecd.org/document/33/0,3746,en_2649_34859_45521313_1_1_1_1,00.html). The Working Group did not conduct a Phase 1bis evaluation of these new provisions at the time. This Phase 3 evaluation is thus the Working Group's first opportunity to examine in-depth these provisions.

introduction of a legal requirement for external auditors to report possible illegal acts to law enforcement authorities should increase reports of allegations of foreign bribery. However, there is still an urgent need to provide guidance to auditors and tax examiners to facilitate the identification and reporting of suspicious transactions. The Working Group also encourages the Slovak Republic to urgently pass a whistleblower protection law and to be more proactive about following up on MLA requests and executing incoming MLA requests in foreign bribery matters.

5. The report and its recommendations reflect findings of experts from Norway and Turkey and were adopted by the OECD Working Group on Bribery. It is based on legislation and other materials provided by the Slovak Republic, as well as information obtained by the evaluation team during its three-day on-site visit to the Slovak Republic on 7-9 February 2012, during which the team met representatives of the Slovak Republic's public administration, judiciary, private sector and civil society. The Working Group invited the Slovak Republic to submit a written report in six months on progress in establishing the liability of legal persons with regard to cases of foreign bribery and every six months thereafter, if needed. According to regular Phase 3 procedures, within one year of the Working Group's approval of the report, the Slovak Republic will make an oral follow-up report on its implementation of certain recommendations. It will further submit a written report on the implementation of all recommendations within two years. If, by the time of this written follow up, the Slovak Republic has not completed the reform it has initiated to establish the liability of legal persons with regard to cases of foreign bribery, the Working Group will undertake additional follow-up measures to the Phase 3 evaluation of the Slovak Republic.

A. INTRODUCTION

1. The on-site visit

6. From 7 to 9 February 2012, a team from the OECD Working Group on Bribery in International Business Transactions (the Working Group²) visited Bratislava as part of the Phase 3 peer evaluation of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention or Convention), the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (the 2009 Recommendation) and the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (the 2009 Tax Recommendation). The purpose of the visit was to evaluate the implementation and enforcement by the Slovak Republic of the Anti-Bribery Convention and the 2009 Recommendations.

7. The previous Phase 2 evaluation of the Slovak Republic occurred in December 2005,³ and the Slovak Republic's written follow-up to Phase 2 was presented in January 2008.⁴ The Phase 3 on-site visit therefore focused on developments in the Slovak Republic's implementation of the Convention and related instruments since 2005.

8. The evaluation team was composed of lead examiners from Norway and Turkey as well as members of the OECD Secretariat.⁵ Prior to the visit, the Slovak Republic responded to the Phase 3 general questionnaire and supplementary questions. The Slovak Republic also provided translations of some relevant legislation and documents. During the visit, the evaluation team met with representatives of the Slovak public and private sectors and civil society.⁶ The evaluation team was grateful for the efforts made by the Slovak Republic to secure the participation of a wide range of individuals from both the public and private sectors, as well as for the time taken by the Minister of Justice to meet the evaluators. The team expresses its appreciation of the Slovak Republic's co-operation throughout the evaluation process and notes that Slovak officials absented themselves from the panel with civil society, lawyers, academics and the media.

2. Outline of the report

2. At the time of writing, the Working Group was made up of the 39 State Parties to the OECD Anti-Bribery Convention plus Colombia, which was in the process of acceding to the Anti-Bribery Convention.

3. See the [Phase 2 Report](#) on the Slovak Republic on the OECD website.

4. See the Slovak Republic's [Written Follow-Up Report to Phase 2](#) on the OECD website.

5. Norway was represented by: Mr. Arnt Angell and Mr. Gunnar Fjæra, National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM). Turkey was represented by: Mr. Hasan Aykın, Ministry of Finance, and Mr. Mehmet Arı, Ministry of Justice. OECD Secretariat was represented by: Ms. Sandrine Hannedouche-Leric, Co-ordinator of the Phase 3 evaluation of the Slovak Republic and Senior Legal Expert in the Anti-Corruption Division, Ms. Nancy Potts, Policy Analyst in the Anti-Corruption Division and Ms. Mary Crane-Charef, Communications Officer in the Anti-Corruption Division.

6. See Annex 2 for a list of participants.

9. This report is structured as follows: Part B examines the Slovak Republic's efforts to implement and enforce the Anti-Bribery Convention and the 2009 Recommendations having regard to Working Group-wide (horizontal) issues for evaluation in Phase 3, with particular attention on enforcement efforts and results, as well as country-specific (vertical) issues arising from progress made by the Slovak Republic on weaknesses identified in Phase 2, or issues raised by changes in the domestic legislation or institutional framework of the Slovak Republic. Part C sets out the Working Group's recommendations and issues for follow-up.

3. Economic Background

10. The Slovak Republic is the seventh-smallest economy in the OECD, in terms of GDP per capita.⁷ As of April 2012, it ranks 36th out of the 40 Working Group in terms of total foreign direct investment outflows.⁸ On 1 January 2009, the Slovak Republic adopted the euro and thus became the 16th member state of the Euro Area. The official exchange rate has been set at 30.1260 SKK/EUR.

11. Until the global economic crisis, the Slovak Republic enjoyed sustained high economic growth. In 2008, the Slovak Republic had a GDP growth of 6.4 percent, which was the second-highest in the European Union (EU). Due to the global economic crisis, GDP growth in 2009 slowed to -4.7 percent, due to its trade links with western European countries, notably Germany, and its reliance on demand for the goods it specialises in producing and exporting, namely cars and consumer electronics. By 2010, the Slovak economy recorded 4 percent GDP growth, one of the highest in the EU.⁹ Real GDP growth is forecast to average 2.3 percent per year in 2012-16, which is much lower than in 2004-07.¹⁰ Total Slovak exports in 2011 were EUR 56.4 billion¹¹.

12. During this time period, 86.6 percent of Slovak exports went to OECD countries, highest among them: Germany (20.4 percent), the Czech Republic (14.2 percent), Poland (7.3 percent), Austria (7 percent), and Hungary (7.1 percent). Exports to non-OECD countries from the Slovak Republic are increasing, including exports to the Russian Federation (up 7.8 percent in 2011 over 2010) and China (up 53.5 percent in 2011), though the percentage of all exports to these countries remains relatively low (Russia, 3.6 percent; China, 2.5 percent).¹² Total exports have increased 27 percent since 2002.¹³ The

7. OECD, *Economic Policy Reforms: Going for Growth 2011*, April 2011 (http://www.oecd.org/document/15/0,3746,en_2649_37443_47448207_1_1_1_37443,00.html)

8. Source: OECD and International Monetary Fund (IMF) data for 2011, during which total foreign direct outflows for the Slovak Republic were USD 491 million.

9. Slovak Investment and Trade Agency (SARIO), *Macroeconomics Overview* (http://www.sario.sk/userfiles/file/Ensario/PZI/why/macroeconomics_overview_2011.pdf);

OECD, *OECD Economic Surveys: Slovak Republic*, November 2010 (<http://www.oecd.org/dataoecd/4/8/46478358.pdf>)

10. Economist Intelligence Unit (EIU), Slovakia country report (<http://country.eiu.com/Slovakia>)

11. Statistical Office of the Slovak Republic, <http://portal.statistics.sk/showdoc.do?docid=21859>

12. Statistical Office of the Slovak Republic, <http://portal.statistics.sk/showdoc.do?docid=44492>

13. Statistical Office of the Slovak Republic, <http://portal.statistics.sk/showdoc.do?docid=21859>, and SARIO, *Trade with Slovakia* (<http://www.sario.sk/userfiles/file/sario/agenturasario/marketing/publikacie/TradewithSlovakiaaugust2011.pdf>)

biggest industries in the Slovak republic are the automotive and electronics, as well as machinery, chemical industry and IT services.¹⁴

4. Bribery of foreign public officials

a) *The Slovak Republic's exposure to bribery of foreign public officials*

13. Individuals and companies remain largely unaware of the Slovak foreign bribery offence and underestimate the Slovak Republic's exposure to this crime. Domestic corruption remains a top priority in the current Slovak political context. In addition, there is the perception that few Slovak enterprises are operating outside the Slovak Republic. Finally, as described in greater detail in Section B.5 on investigations and prosecutions, there is the perception among Slovak law enforcement that foreign bribery is a crime that is nearly impossible to detect.

14. These perceptions could have a negative impact on the prevention, detection, investigation and prosecution of foreign bribery in the Slovak Republic. This is all the more a concern that in contrast, Slovak natural and legal persons could be increasingly exposed to the risk of foreign bribery, given the growing role Slovak companies are playing in international supply chains and the significant increase in exports from the Slovak Republic by business entities owned by major multinational enterprises. Since 2000, there has been an increased effort to promote exports out of the Slovak Republic, focused on the export mainly of machinery and equipment (54.8 percent of total goods exports in 2010), manufactured materials (18.7 percent of total goods exports), and chemicals (4.6 percent of total goods exports). Statistics show that the largest, most profitable companies – and those most likely to export out of the Slovak Republic – are controlled by foreign investors: According to Eurostat figures, while only 5.6 percent of businesses operating in the Slovak Republic are foreign-owned, these enterprises accounted for 53 percent of total turnover generated in the Slovak Republic in 2009.¹⁵ Of the 20 top Slovak exporters in 2009,¹⁶ at least 15 are wholly or majority foreign-owned.¹⁷ Private-sector representatives participating in the on-site visit even indicated that they view the vast majority of larger enterprises operating in the Slovak Republic as foreign-owned or controlled. The Slovak Republic may attract foreign direct investment (FDI) because of the facility with which businesses can be set up in the Slovak Republic, the low cost of skilled labour (average monthly salary: EUR 769), a flat 'business-friendly' corporate and income tax rate of 19 percent (set in 2004), and government subsidies for investment in the Slovak Republic under the 2007 Act on Investment Aid (which can only be disbursed to legal or natural persons with a registered office in the Slovak Republic).^{18,19}

14. SARIO, *Macroeconomics Overview*

15. Eurostat figures on foreign control of enterprises in the Slovak Republic, 2009.

16. These companies include: 1. Samsung Electronics Slovakia, 2. Volkswagen Slovakia, 3. Slovnaft, 4. PCA Slovakia, 5. Kia Motors Slovakia, 6. U.S. Steel Košice, 7. Foxconn Slovakia, 8. SPP, 9. Slovenské elektrárne, 10. Mondi SCP, 11. Železiarne Podbrezová, 12. Whirlpool Slovakia, 13. Tatragónka, 14. INA Kysuce, 15. Duslo, 16. Slovalco, 17. Continental Matador Truck Tires, 18. Vaillant Industrial Slovakia, 19. SES, and 10. INA Skalica.

17. SARIO, *Invest in Slovakia*, 2011

(<http://www.sario.sk/userfiles/file/sario/agenturasario/marketing/publikacie/InvestinSlovakiaaugust2011.pdf>)

18. SARIO, *Why Slovakia?*

(<http://www.sario.sk/userfiles/file/sario/agenturasario/marketing/publikacie/WhySlovakia.pdf>)

19. ACT 561/2007 Coll., Act on Investment Aid

(http://www.sario.sk/userfiles/file/Ensario/PZI/state/Investment%20Aid%20Act_eng.pdf)

15. In addition, the scale of capital inflows could increase the opportunities for funds of doubtful origin to find their way into Slovak markets or for such funds to be laundered via Slovak entities, further exposing the Slovak Republic to the risks of foreign bribery. Inward FDI in 2008, the latest year for which figures are available, totalled EUR 952 million, up from EUR 617 million in 1998—a 35 percent increase.²⁰ This risk was highlighted during the on-site visit in repeated references by government, business and civil society representatives’ to the increasing number and financial power of Slovak-based private equity companies, which are more frequently investing outside Slovak borders.

16. Finally, given that domestic bribery remains a challenge for the Slovak Government, foreign-owned companies operating in the Slovak Republic could be exposed to situations where a bribe might be paid to a Slovak public official, thereby possibly triggering prosecution under the anti-bribery laws of the parent company’s government if that government is a Party to the Anti-Bribery Convention.

b) *The Slovak Republic’s approach to cases of foreign bribery*

17. There has not been one concluded foreign bribery case in the Slovak Republic as of the time of this report. There is one ongoing foreign bribery case related to the alleged bribery by a Slovak citizen of a high-level foreign public official of a Caribbean country (hereinafter, the “Caribbean case”). The Caribbean case alleges that, between 2005 and 2008, the Slovak citizen offered more than USD 6 million to the Caribbean official in return for the right—and on favourable terms—to commercially develop an island within the Caribbean country’s jurisdiction. Slovak authorities opened an investigation in 2009. During the investigation, it was confirmed that the foreign public official received a USD 6 million loan from a financial institution, registered in the Czech Republic, as well as a payment “personally confirmed” by the Slovak citizen of USD 100 000 to the foreign public official’s political party. In 2011, the Slovak Republic reported that it could not bring a charge against the Slovak citizen because of a lack of relevant legislation from the Caribbean country regarding the criminalization of payments of bribes to political parties and their leaders. The Slovak Republic further stated that they could not prove that the foreign public official had granted any advantages to the Slovak citizen in return for the USD 100 000 payment to the foreign public official’s political party. At the time of this report, the Slovak Republic had stopped its investigation. It could reopen the case if new serious evidence is provided by the Caribbean government. The Slovak Republic reported that its request for MLA will not be answered until the Caribbean authorities have completed their own investigation. If the MLA request is answered and new evidence warrants the reopening of the case, there are concerns that it may then be statute barred (see section B.5.e on statute of limitations).

18. Just prior to the on-site visit, media reports of a high-profile domestic bribery case had raised greater awareness of the issue of bribery and the problem of domestic corruption in the Slovak Republic. The media reports concern a 2005-2006 wiretapping operation codenamed ‘Gorilla’. According to media reports since December 2011, release of information from the leaked secret-service file have led to allegations that millions of Euros in bribes were paid to officials from four political parties (forming the government coalition in power from 1998 to 2006) to win various public procurement and privatisation contracts involving former ministers, representatives from multinational companies at home and abroad, and a major Slovak financial investment firm.²¹ On 30 January 2012, 3500 anti-corruption demonstrators protested in SNP Square in Bratislava. Large-scale demonstrations were also held in March, influencing the 10 March 2012 parliamentary elections. During the on-site visit, a representative of the law enforcement authorities indicated that investigations had been opened several times on this case, but were

20. National Bank of Slovakia FDI statistics (<http://www.nbs.sk/en/statistics/balance-of-payments-statistics/foreign-direct-investment>)

21. *Economist*, ‘Scandal in Slovakia: The multi-million euro gorilla’, 27 January 2012 (<http://www.economist.com/blogs/easternapproaches/2012/01/scandal-slovakia>)

closed for lack of evidence. The Slovak Republic reported at the time of this report's adoption that the investigation into this case had again been re-opened and is ongoing.

B. IMPLEMENTATION AND APPLICATION BY THE SLOVAK REPUBLIC OF THE CONVENTION AND THE 2009 RECOMMENDATIONS

19. This part of the report considers the approach of the Slovak Republic to key Group-wide, cross cutting issues identified by the WGB for the evaluation of all Parties subject to Phase 3. Where applicable, consideration is also given to vertical (country-specific) issues arising from progress made by the Slovak Republic on weaknesses identified in Phase 2, or issues raised by changes in the domestic legislation or institutional framework of the Slovak Republic.

1. Foreign bribery offence

a) Current state of the law

20. The bribery of foreign public officials is criminalised under sections 334 and 335 of the Slovak Criminal Code (hereinafter CC). At the time of Phase 2, these offences were covered by Sections 161(b) and 161(c) CC, which were amended in 2009. Section 334 CC generally applies to the bribery of foreign public officials, whereas section 335 CC establishes an additional offence of bribery of members of foreign parliamentary assemblies, international judicial institutions or international organisations. In Phase 2, the Slovak Republic explained that the reason for the establishment of the two separate offences was to implement – and accordingly track the language of – two international obligations. The former (334) was intended to implement the Anti-Bribery Convention, whereas the latter (335) was intended to implement anti-corruption instruments of the European Union. During the on-site visit, there was generally a lack of clear understanding on the part of the Slovak authorities that section 335 is a foreign bribery offence with provisions that have a bearing on the implementation of the Anti-Bribery Convention and should therefore be aligned accordingly. Minor differences in the drafting between the new and old offences²² are further discussed below.

b) Recent amendments

21. Section 128(2) CC was introduced in 2005 and further amended in 2011 and provides a definition of “foreign public official” (See Annex 2). This definition appears to cover the Convention requirements of persons holding legislative, administrative or judicial office. The Slovak authorities and prosecutors met on-site confirmed that the definition of foreign public officials under section 128(2) covers persons exercising a public function, that it applies to all levels and subdivisions of government, from national to local, and that it is intended to cover persons working in a public agency or enterprise,²³ as required by the

22 . Full text of the offences is provided in Annex 2.

23 . According to the official commentaries to Section 128(2) CC (submitted to the Slovak Parliament together with the new bill), “persons exercising a public function for a public enterprise” (Article 1 of the Convention) are covered under section 128(2)(b)CC, which specifies that a foreign public official means “a person holding an office in a legal entity in which a foreign country exercises a decisive influence”. The Slovak authorities hold that, although the notion of “decisive influence” is not defined in the Criminal Code, provisions in the Commercial Code (section 66(a)), the Acts on Competition and Public

Convention. However, in the official commentaries to the Criminal Code (provided after the on-site visit), it is specified that the wording under section 128(2) requiring that the criminal offence be committed in connection with “such competencies” for running public affairs implies the “use of vested powers arising from the specific function and that the offence has to be “in relation with these powers.” These commentaries, to which the representatives of the legal professions currently refer when interpreting the legislation, narrow the scope of the offence. The interpretation thus provided is not in line with the requirements of the Convention, which requires the coverage of bribery in relation to any use of the public official’s position, whether or not it is within the official’s authorised competence.

Commentary:

Concerning the requirement under section 128(2) CC that the offence be committed in connection with the public official’s “competencies for running public affairs”, the lead examiners recommend that the Slovak authorities clarify as soon as possible, by any appropriate means, that, as it applies to foreign bribery, any use of the public official’s position, whether or not it is within the official’s authorised competence, must be covered.

c) New and outstanding issues raised in Phase 2 concerning certain elements of the offence

(i) Coverage of “any official or agent of a public international organisation”

22. In Phase 2, the lead examiners raised concerns over the narrow language applied under section 335 CC (then section 161(c) CC): “judge or official of an international judicial institution *recognised by the Slovak Republic*” and “representative or employee of an international, supranational, intergovernmental organisation or institution of which the Slovak Republic is a member or *with which the Slovak Republic has a contractual relationship*” (emphasis added).²⁴ The Slovak Republic maintains that this section is subsumed in the general foreign bribery offence under section 334 CC (then section 161(b) CC), and that in the case where section 335 *lex specialis* may not apply, the authorities would revert to section 334 *lex generalis*.

23. The lead examiners found that this position had merit, but nevertheless recommend that the Working Group follow up on whether the Criminal Code covers the bribery of (1) a judge or an official of an international judicial institution that is *not accepted* by the Slovak Republic, and (2) an official or agent of a public international organisations of which the Slovak Republic is not a member and with which it does *not have a “conventional relationship”*.

24. In the Phase 2 Written Follow-up Report, the Slovak Republic stated that the Criminal Code covers these categories of public officials, but provided no textual references. In their responses to the Phase 3 Questionnaires, they referred to the definition of “foreign public officials” under section 128 CC. As this definition applies to the section 334 offence, it implies that section 334 would cover these categories of public officials.²⁵ In these conditions, having a narrower provision under section 335 covering

Procurement (respectively Act No. 475/2004 Coll., section 9(4) and Act No. 25/2006 Coll., section 8(1)), all concur to define it along the lines set in Commentary 14 on the Convention.

24. In Phase 2, the language provided under the then Section 161(c) offence was “accepted” and “conventional”, whereas the translated provisions of the Section 335 offence provided by the Slovak authorities apply the language “recognised” and “contractual”. The Slovak authorities have clarified that this is a translation discrepancy.

25. Section 128(2) CC provides that “For the purposes of this Act, foreign public officials shall mean any person holding an office: (a) within the legislative power, a judicial authority or an arbitration authority, in non-legislative assembly or in the public administration authority of a foreign country including the head of

only one part of these categories of public officials does not appear to serve any other purpose than implementing – and accordingly tracking the language of – two international obligations. Given that, according to general principles of criminal law, a *lex specialis* supersedes the *lex generalis*, especially when it is more favourable to the defendant, it appears that keeping a narrower provision for these categories of foreign public officials may not only be a source of confusion but may carry the risk that foreign public officials in international organisations that the Slovak Republic does not recognise or with which the Country has no contractual relationship may not be covered under Slovak law.

Commentary:

For the purpose of legal clarity and certainty, the lead examiners recommend that the Slovak authorities amend the wording of section 335 CC to align it to the broader definition of a foreign public official provided under section 128 CC and hence ensure the coverage of “any officials or agent of a public international organisation” in the definition of the foreign bribery offence.

(ii) *Bribes to Third Parties*

25. In Phase 2, the Working Group acknowledged that the Slovak Republic had addressed a concern raised in Phase 1 that bribes offered, promised or given to third parties be covered by the foreign bribery offence. However, while former sections 161(b) and 161(c) CC expressly covered third party beneficiaries, this element of the offence is now stated less clearly under the sections 334 and 335 CC offences. During the on-site visit, the Slovak authorities confirmed that the notion of third party beneficiaries is covered by the language “to another person” and “to a third party for the same reason” respectively under sections 334 CC and 335 CC. Summaries of cases of domestic bribery were provided in support of this assertion.

(iii) *Definition of “bribe” and “undue advantage”*

26. Instead of referring to the offer, promise or giving of an “undue pecuniary or other advantage” as under Article 1 of the Convention, or to “a bribe or another advantage” as under former provisions of the Slovak Criminal Code, sections 334(1) and 335(1) CC merely refer to “a bribe”. Section 131(3) CC provides that “a bribe shall mean a thing or other performance of material or non-material nature to which there is no legal entitlement”. Non-monetary bribes would thus be covered. In turn, section 131(1) and (2) CC provide for a broad definition of “a thing”. In Phase 1, the Slovak authorities indicated that they intended to introduce a definition of “undue advantage” in the Criminal Code. This has not been done, but the Slovak authorities did report to the Working Group in 2011²⁶ that “a thing” under section 131(1) and (2) CC covers “any kind of thing or performance of property or non-property nature to which there is no legal entitlement.” The Slovak authorities contend that the term “bribe” implies in itself that what was offered promised or given was “undue”.

d) Defences and exemptions from prosecution

(i) *Small facilitation payments and socially accepted gifts*

27. Small facilitation payments are not permitted under Slovak law, as per section 131(3)CC, which provides for the definition of a bribe. Section 131(3) defines a bribe as “a thing or other performance of material or non-material nature to which there is no legal entitlement”. The Slovak Republic reported to the

State, or (b) in a legal entity in which a foreign country exercises a decisive influence or in the international organisation established by States or another subjects of public international law.”

26. Steps taken to implement and enforce the OECD Anti-Bribery Convention, submission by Slovak Republic, 17 May 2011.

Working Group and reiterated during the on-site visit that this covers “any kind of thing and thus allows no exception, such as small facilitation payments.”²⁷ Law enforcement authorities confirmed that no prosecutorial discretion applies in practice in cases of small facilitation payments and that there is a zero tolerance for such payments.

28. Along similar lines, in Phase 2, the Working Group recommended that the application of the defence of socially acceptable gifts in foreign bribery cases be followed-up as practice develops. In the responses to the Phase 3 Questionnaires, the Slovak Republic indicates that there is no longer a defence for socially acceptable gifts under current Slovak law. It was further asserted that “Slovak law enforcement bodies prosecute all kinds of bribery irrespective of the value of the gift.” It was confirmed on-site with the judges that this defence no longer applies under Slovak law.

29. Slovak authorities point to a number of court decisions where small monetary payments and non-monetary gifts (e.g. a box of apples or chocolates) were deemed as domestic bribery.²⁸ Monetary payments as small as EUR 1 or EUR 2 have given rise to deferred prison sentences of 6 months.

(ii) *Defence of “effective regret”*

30. Section 86 CC provides the defence of effective regret. This defence provides immunity from prosecution for a person who bribes if (1) the official solicited the bribe, and (2) the briber reported the matter “voluntarily without delay to the prosecutor, investigator or police.” In Phase 1, the Working Group noted that such a defence presents a “potential for misuse” and that its application “may lead to a loophole in the implementation of the Convention.”²⁹ In Phase 2, the Working Group recommended that the Slovak Republic amend its legislation to exclude the defence of effective regret from the offence of foreign bribery.³⁰ The Slovak responses to the Phase 3 Questionnaires indicate that as of 1 September 2009, the effective regret defence no longer applies in cases of foreign bribery.

31. In fact, while the effective regret defence no longer applies to section 334 CC (reference to this section of the code has been deleted from section 86 CC), the foreign bribery offence under section 335 remains within the scope of its application. As discussed in Section B.1.a, 335 is also a foreign bribery offence that falls within the ambit of the Anti-Bribery Convention. Furthermore, as was confirmed by panellists during the on-site visit, the defence of effective regret remains in force for legal persons, as per sections 83(a)(2) and 83(b)(2) CC, where it is expressly provided that “the punishability of the criminal offence (...) becomes extinct upon the expiry of the limitation period *or on the basis of the effective regret*” (emphasis added). Representatives of the Ministry of Justice admitted that these loopholes remain and indicated their intention to amend relevant sections of the Criminal Code to exclude the defence of effective regret from the offence of foreign bribery under section 335 CC and from the provisions applying to legal persons.

Commentary:

The lead examiners were reassured by the clarification that the defence of effective regrets should also be excluded from the offence of foreign bribery under section 335 CC and from the provisions applying to legal persons under sections 83(a)(2) and 83(b)(2) CC. They encourage the Slovak

27 . *Ibid.*

28 . Summaries of 14 Court decisions in domestic bribery cases where provided by the Slovak authorities after the on-site visit.

29 . Slovak Republic Phase 1 Report, at pp. 22-23. See also Slovak Republic Phase 2 Report, paras. 150 – 152.

30 . Slovak Republic Phase 2 Report, Recommendation 8(a).

Republic to proceed promptly with the amendment of these sections of the Criminal Code in this regard.

(iii) *Immunity from Prosecution for Co-operating Offenders*

32. The Slovak Criminal Code provides immunity from prosecution for cooperating offenders. This is covered under Sections 86(f) and 215(3) CC. In Phase 2, concerns were raised over the granting of immunity to cooperating offenders. In particular, the Group noted that the tests for staying prosecutions and granting immunity are unclear, as the government had not issued guidelines to explain certain key concepts, such as “significant contribution to clarifying a case of corruption.”³¹ Accordingly, the Group recommended that the Slovak Republic ensure that the granting of immunity to cooperating offenders is not an impediment to the effective enforcement of the foreign bribery offence.³² They also decided to follow up its application in foreign bribery cases as practice develops.³³

33. In the Phase 2 Follow-up Report, the Slovak authorities indicated that due to the absence of foreign bribery cases, the adoption of new measures in this regard was considered unnecessary. They further indicated that the application of immunity is considered on a case-by-case basis, and the Special Prosecution Office has advised its prosecutors to thoroughly assess proposals to grant immunity to cooperating offenders in foreign bribery cases. In the Phase 2 Follow-up, the Working Group found Recommendation 8(b) to be implemented.

34. Nevertheless, this remained a follow-up issue at the time of the Phase 2 Follow-up, requiring attention in Phase 3. In this regard, it is worth noting the Slovak responses to the Phase 3 Questionnaires state that the benefits of using cooperating offenders in domestic bribery cases are no different to foreign bribery cases. The same assertion was reiterated by different panellists on-site, and a representative of the Slovak authorities even explained that this immunity could usefully apply if the briber in the Slovak Republic acts as a witness to the prosecution of the foreign public official and helps convict the offender on the passive side abroad. No guidelines to clarify the application of immunity to cooperating offenders have been issued. This conception of the immunity is a concern, as while one of the main policy rationales for granting immunity to cooperating offenders in domestic bribery cases is to punish the domestic public official who accepted the bribe, there is no guarantee that the foreign official who has taken the bribe will be prosecuted, in which case the immunity serves no purpose.

35. Discussions on this topic during the on-site visit brought to light an even more serious concern, when a law enforcement representative indicated that this provision could be used to help convict the recipient of the bribe in a foreign country, would the briber cooperate and become a witness to the prosecution abroad, through Mutual Legal Assistance. This reaction further underlines the low level of awareness of the foreign bribery offence and a misconception of the Slovak Republic’s role in the fight against transnational bribery, which cannot be limited to providing Mutual Legal Assistance to foreign countries prosecuting their own domestic officials.

Commentary:

The lead examiners were concerned by the continued lack of priority granted to the prosecution of the author of a bribe paid to a foreign public official, as understood from discussions with Slovak authorities on the possibility of granting immunity to cooperating offenders in foreign bribery cases. They recommend that the Slovak Republic ensure that guidelines are issued by the appropriate authorities to explain certain key concepts, such as “significant contribution to

31 . Slovak Republic Phase 2 Report, paras. 168 and 169.

32 . Slovak Republic Phase 2 Report, Recommendation 8(b).

33 . Slovak Republic Phase 2 Report, response to Follow-up Issue 14(b).

clarifying a case of corruption” and urgently take the necessary steps to ensure that the granting of immunity to cooperating offenders is not an impediment to the effective enforcement of the foreign bribery offence.

2. Responsibility of legal persons

36. This section focuses on the requirement to establish liability of legal persons for the bribery of foreign public officials, while sanctions applicable to legal persons are discussed under section 3 below. During Phase 1, the Working Group found that the Slovak Republic “does not know the concept of criminal responsibility of legal persons” and concluded that this situation fell short of the requirement of the Anti-Bribery Convention (Article 2). At the time of Phase 2, the Working Group strongly recommended that the Slovak Republic establish liability of legal persons for the bribery of foreign public officials without delay and put in place sanctions that are effective, proportionate and dissuasive (Recommendation 10).³⁴ The recommendation had not been implemented at the time of the Phase 2 written follow-up in 2008.³⁵ In June 2010, the Slovak Republic reported to the Working Group on Bribery that it amended its Criminal Code on 27 April 2010³⁶ to introduce corporate liability for foreign bribery. At the request of the Slovak Republic, the introduction of this amendment was acknowledged in an OECD Press Release.³⁷

37. The Working Group did not conduct a Phase 1bis evaluation of these new provisions at the time. This Phase 3 evaluation is thus the Working Group’s first opportunity to examine in-depth these provisions. Sections 83a and 83b provide, respectively, for the confiscation of a sum of money or property from a legal person if the criminal offence (including foreign bribery) was committed by a natural person in connection with: a) Exercising the right to represent that legal person; b) Exercising the right to make decisions in the name of that legal person; c) Exercising the right to carry out the control within that legal person, or d) Negligence concerning the supervision or due diligence within that legal person.

a) Standard of liability

38. It quickly emerged from the information gathered in the context of this Phase 3 evaluation that the new provisions regarding legal persons, under sections 83a and 83b CC, have established sanctions (so-

³⁴ In 2005, Slovakia’s plans to introduce criminal liability of legal persons failed and provisions on liability of legal persons had to be withdrawn from the bill on the new Criminal Code because of the numerous amendments suggested by the legislature. Most of the legal professions met at the on-site visit opposed the government’s proposal of creating criminal liability of legal persons. Most believed that the concept contradicts a basic principle of Slovak criminal law, namely that criminal liability derives from the fault of an individual, not a legal person. Some thought that the proposed sanctions, such as the dissolution of a company included in the draft bill, would have been too draconian. An academic expressed the view that the draft bill did not adequately protect the interests of third parties (*e.g.* shareholders and employees of the legal person). See Phase 2 report para. 182-188.

³⁵ Due to the non-implementation of the recommendation, the Working Group decided during the plenary in June 2009 that the Slovak Republic was obliged to inform regularly at each plenary about the development of this issue and about adopted measures with regard to the introduction of corporate liability to the Slovak legal system until the Group decides that the recommendation has been implemented in a satisfactory manner. At the plenary in December 2009, the Working Group decided to publish a statement concerning the issue. The statement was published on 18 January 2010. OECD, ‘OECD Demands the Slovak Republic establish corporate liability for foreign bribery’, 18 January 2010 (http://www.oecd.org/document/61/0,3746,en_21571361_44315115_44419261_1_1_1_1,00.html)

³⁶ Act N° 224/2010 Coll.

³⁷ http://www.oecd.org/document/33/0,3746,en_2649_34859_45521313_1_1_1_1,00.html

called “protective measures”) in the form of confiscation of money or property from legal persons. However, no other provision in a separate statute establishes (criminal or non-criminal) corporate liability as per Article 2 and Commentary 20 of the Anti-Bribery Convention. An analysis of the Slovak responses to the Phase 3 Questionnaires, the revised CC provisions, and on-site visit discussions—described in greater detail below—lead to the conclusion that Sections 83a and 83b CC, on their own, do not effectively establish criminal corporate liability for foreign bribery.

(i) *The concept of corporate liability in the Slovak Criminal Code*

39. The Slovak responses to the Phase 3 Questionnaires state that “the Criminal Code does not formally and legally recognise the criminal liability of legal persons.” The responses further describe the regime of liability of legal persons as “indirect (or pseudo) criminal liability”. In this sense, therefore, criminal liability for foreign bribery applies only to natural persons.

40. In addition, an explanatory report from the Ministry of Justice introducing the amendments to the Criminal Code (provided to the evaluation team after the on-site visit) provides a number of reasons for not introducing the criminal liability of legal persons within the Slovak legal system, including the absence of “will” of a legal entity. The report, in particular, points out that protective measures may be imposed on legal persons as a result, not of their own criminal liability (which does not need to be established), but of the criminal liability of a natural person. The report also refers to the “collateral effects” of the offence committed by the natural person.

41. A number of on-site visit panellists – including prosecutors, defence lawyers, legal academics and a Ministry of Justice drafting legislation specialist – admitted that, despite the introduction of sections 83a and 83b CC, the Slovak Republic has not yet adopted the principle of criminal liability of legal persons. Panellists explained that this is due to the legislature’s opposition to a first bill to this effect. The Slovak authorities pointed out that this was not the first attempt to introduce corporate liability and that the current text has so far been the only politically acceptable approach. A representative from the judiciary expressed the view that the current text is the result of a “not-very-fortunate” compromise and the Minister of Justice even admitted that the establishment of the liability of legal persons within the Slovak legislation is one of the problems that the government in place at the time of the on-site visit could not resolve under this legislature.

(ii) *Link with the responsibility of the natural person(s) involved*

42. The link between the offence of the natural person and the confiscation of the property or a sum of money from the legal person, which, in other legal systems, would take the form of the liability of legal persons, has not been established in the Slovak Criminal Code. No other provision in a separate Slovak statute establishes criminal or non-criminal corporate liability as per Article 2 and Commentary 20 of the Convention. The Criminal Code only establishes the possibility to confiscate a sum of money or a property from a legal person (sections 83a and 83b CC) where a natural person is responsible of a crime. Under current Slovak law, the focus thus remains on the natural person involved in a foreign bribery offence as the only responsibility that has to be demonstrated is the liability of this natural person. The fact that criminal sanctions (in the form of confiscation of property of a sum of money under sections 83a and 83b CC) are available against legal persons, but that these are not supported by the establishment of the principle of the liability of legal persons (and may hence be automatically imposed as a result of the liability of the natural person only), also raises a more general concern that the current law may fall afoul of the legality principle pursuant to which there is no crime and therefore no criminal sanction without law (*nullum crimen et nulla poene sine lege*). This raises serious questions with regard to the possibility for a court to apply these sanctions for foreign bribery to corporations in the Slovak Republic without being challenged at a higher level on constitutional grounds.

43. The proceedings in relation to the natural person (as discussed under subsection below) also emphasise the confusion surrounding the establishment of a link between the natural person's responsibility and the imposition of the confiscation measures provided by sections 83a and 83b CC.

44. Would the principle of the liability of legal persons be established in the Slovak Criminal Code, it emerged from the on-site discussions that it would still remain unclear, whether the level of authority and acts of the natural persons whose conduct could trigger the liability of legal persons (as currently listed under sections 83a and 83b CC) would cover the situations described under Annex I to the 2009 Recommendation.³⁸

b) *Responsibility of legal persons in practice*

45. The Slovak Republic has not investigated, prosecuted or sentenced any legal persons since the April 2010 entry into force of Sections 83a and 83b CC, all offences confounded. The Slovak responses to the Phase 3 Questionnaires also note that no investigations have been initiated against any legal person in relation to corrupt behaviour, despite 160 convictions of natural persons for domestic bribery in 2010, 133 indictments of natural persons for domestic bribery in 2010, and 137 indictments of natural persons in 2011. Private sector representatives participating in the on-site visit discussions noted that only with enforcement of Sections 83a and 83b “can companies really be aware that this is an issue that they need to be concerned about.”

c) *Investigation and prosecution of legal persons*

(i) *Proceedings in relation to the natural person*

46. It is unclear whether there must be a link with the responsibility of the natural person or persons involved for “protective measures” (the general term used for “confiscations” under sections 83a and b CC) to be applied against a legal person.

47. The Slovak responses to the Phase 3 Questionnaires state that it is possible to order “protective measures” (the general term used for “confiscations” under sections 83a and b CC) against a legal person without indicting a natural person. Further, Section 7a CC, “Jurisdiction to impose protective measures”, states that “protective measures shall be applied even if the offender, otherwise punishable, is not criminally liable (...)”.

48. However, it is also unclear from the responses to the Phase 3 Questionnaires, as well as from discussions with investigators, prosecutors, and members of the judiciary as to what happens where a natural person is not found guilty or where no individual perpetrator has been identified. This confusion raised questions as to, for example, what would happen if the Slovak Republic did not have jurisdiction over the natural person(s) who committed the offence, or if the natural person(s) had been granted immunity, whether due to cooperation or the application of effective regret.

49. Discussion on-site also did not clarify whether prosecution of legal persons is mandatory (as for natural persons) or subject to prosecutorial discretion. The total lack of investigations, prosecution or convictions of any legal person in relation to corrupt behaviour tends to show a certain level of discretion at least.

(ii) *Investigative techniques and Criminal proceedings*

³⁸ Annex I: Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

50. No specific regulation applies to legal persons in terms of investigation procedures (including preliminary measures) and the Code of Criminal Procedures (hereinafter CCP) shall apply *mutatis mutandis* to legal persons. According to Slovak law enforcement representatives, investigative techniques should also be similar to those applicable to natural persons. Norms of criminal law should be used in criminal proceedings against legal persons, although the legal person would not be considered as the perpetrator of the legal offence and would only participate in the proceedings under the status of “participating person” (pursuant to section 45(1) CC). The rights of the participating person are, according to the Slovak Republic, “identical” to the procedural rights of the accused, i.e. the natural person. The responses to the Phase 3 Questionnaires also indicate that the decision to impose/not impose the protective measure on a legal person is taken by the court in the public session, either in the context of the public hearing against the natural person or separately. It takes the form of a resolution of the court, which may be appealed. The protective measure can also be imposed on the legal person in the context of summary criminal proceedings on the basis of a criminal order. Absent any investigation started against a legal person to date, this discussion remains purely theoretical.

Commentary:

The lead examiners are very concerned about continuing non-compliance with Article 2 of the Convention over 12 years after the ratification of the Convention by the Slovak Republic and about the level of uncertainty and confusion created by the introduction of a system of criminal sanctions/confiscation applicable to legal persons in the absence of corporate criminal liability. They recommend that the Slovak Republic, as a matter of priority, establish the liability of legal persons, to ensure that legal persons can be held liable for the offence of bribery of a foreign public official, including when using intermediaries, and that the system thus established take one of the approaches described in Annex 1 B to the 2009 Recommendation.

If such reform has not been completed by the time of the two-year written follow-up to the Slovak Phase 3 evaluation, the lead examiners recommend that the Working Group consider undertaking additional follow-up measures to the Phase 3 evaluation of the Slovak Republic. In the meantime, the lead examiners suggest the Working Group consider constructive and proactive ways to share best practices of other Parties’ implementation of Article 2 to raise awareness and better understanding of the need for effective corporate liability for the crime of foreign bribery in the public and private sectors. The Lead examiners note the Slovak Republic’s indication that legislative changes to introduce corporate liability are on the Governmental Action Plan against Fraud adopted on 31 May 2012.

3. Sanctions

51. In Phase 2, the Working Group recommended that the Slovak Republic continue to compile statistics on the criminal, civil and administrative sanctions (including confiscation) for domestic and foreign bribery, money laundering and false accounting (particularly those under the Act on Accounting), with a view to determining whether the sanctions regime in the Slovak Republic is effective, proportionate and dissuasive, as required under Article 3 of the Convention. This recommendation was deemed fully implemented during the Phase 2 follow-up. In Phase 2, the Working Group further determined that it would follow up, as case law develops, on the topic of sanctions.

52. Because there have been no concluded foreign bribery cases in the Slovak Republic, there is no practice that allows assessment of whether actual sanctions in such cases are effective, proportionate, and dissuasive.

a) Sanctions for natural persons

(i) *Imprisonment*

53. As was anticipated in the Phase 2 report, in January 2006, the Slovak Republic's new Criminal Code (sections 334 and 335 CC) increased the custodial punishment for non-aggravated foreign bribery from imprisonment from six months to three years, to imprisonment of two to five years. The new Criminal Code also increased the range of imprisonment applicable to the offence of aggravated foreign bribery from one to five years, to five to twelve years. This change brought the maximum jail penalty for aggravated foreign bribery closer to those for other economic crimes.³⁹ The new prison ranges are similar to the ranges of imprisonment applicable to domestic bribery and other forms of corruption, but not quite as high as the maximum of fifteen years that applies to some of those other offences, such as aggravated receipt of a bribe by a foreign public official or in connection with "procurement of a thing of general interest".⁴⁰

54. Aggravated foreign bribery covers offences committed "at a large scale" (sections 334 and 335 CC). "A large scale" is defined as a damage which is at least five hundred times higher than EUR 266, i.e. (Section 125 CC).⁴¹ This amount is also used to determine the amount of the benefit and the scope of the offence. More generally, "damage" is broadly defined as also covering an advantage gained from the perpetration of the criminal offence (section 124 CC). The way these provisions will be applied in practice remains to be followed up as case law develops.

(ii) *Fines*

55. When the Criminal Code was revised, an express reference to the potential imposition of a fine was eliminated from the provisions defining the foreign bribery offence.⁴² However, according to a representative of the Ministry of Justice who participated in the on-site visit, courts may still impose a fine for the offence of foreign bribery under the general pecuniary penalty provision in the Criminal Code (Section 56 CC). Under that provision, the applicable fine range for non-aggravated and aggravated foreign bribery is EUR 160 to EUR 331 930.

56. The fine is an optional part of the sentence. The statute uses the term "may", a non-mandatory word, when setting forth what fine the judge is able to impose (section 56(1) CC). Additionally, in order for a fine to be imposed, the prosecution must prove that the offender "gained or tried to gain a property benefit" (section 56(1) CC). This language suggests that if a bribe was paid to a foreign public official in order to gain an improved competitive situation or to benefit a related company (such as a subsidiary), as opposed to gaining a benefit, a fine could not be imposed. There is an exception to this evidentiary hurdle

39 . The punishment for theft, embezzlement, and fraud increases with the amount of damage caused by the offence, and for the most aggravated offences, the maximum punishment is fifteen years imprisonment (sections 212, 213, and 221CC).

40 . See sections 329(1) and (3), 330(2), and 331(2)CC. Notably, the list of offences to which the fifteen year maximum applies includes the *passive* side of the foreign bribery offence. See Criminal Code section 330.

41 . Panellists explained that EUR 266 used to be the minimum salary at time of legislation drafting.

42 . Former section 161(b)(1) CC used to provide that an individual convicted for foreign bribery "shall be punished by the imprisonment of up to two years *or a monetary sanction*" (emphasis added). Current section 334(1) now provides that such an individual "shall be punished by imprisonment for a term of two to five years." Similarly, while former section 161(c)(1) used to provide for imprisonment or a monetary sanction, current section 335(1) provides only for imprisonment for a bribe to a member of a foreign parliamentary assembly, judge or official of an international judicial institution recognised by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organisation or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual relationship.

only in the case of a “minor offence”, i.e. in a non aggravated foreign bribery offence.⁴³ In the case of such a minor offence, if the prosecution cannot prove that the offender tried to gain a property benefit, the court is permitted to impose a fine, but only if the court is not also imposing a custodial penalty (section 56(2) CC).

57. In setting the amount of the fine, a judge is required to take into account “the personal and property situation of the offender”, and it must not impose a fine if it is “obvious” that a fine would be uncollectible (section 57(1) CC).

(iii) *Forfeiture*

58. Forfeiture is another component of the sanctions for natural persons. While ordinarily forfeiture would be discussed in the section of the report dealing with confiscation of the bribe and proceeds of the bribe, in the case of the Slovak Republic, the concept of confiscation and the concept of imposing pecuniary penalties merge in the Criminal Code and will therefore also be discussed under this section.

59. For the offence of aggravated foreign bribery, the Criminal Code provides that it is *mandatory* for the court to order forfeiture of *all* property belonging to the offender (section 58(3) CC). The lead examiners were informed that this provision meant what it said, and that all but a few necessary personal items belonging to the individual would be forfeited to the state. The mandatory forfeiture provision applies to several other types of corruption offences in the Slovak Republic, yet between 2006 and 2011, it has not been applied in any corruption cases. This raises serious doubts about the proportionality and enforceability of the mandatory forfeiture. First, it could be disproportionately harsh compared to the offence because it results in state seizure of all assets belonging to the offender, without regard to the personal benefit to the offender or the relative seriousness of the offence. Second, it does not appear that judges are applying it in other types of cases where it is seemingly mandatory.

60. For the offence of non-aggravated foreign bribery, the court is to impose forfeiture of “a thing”: (1) used or intended to be used to commit a criminal offence; (2) obtained by means of a criminal offence, or as remuneration for committing a criminal offence; (3) obtained by the offender in exchange for those things mentioned in number 2, above; and (4) constituting proceeds of crime, as well as profits, interests, and other benefits arising from proceeds (section 60 CC). This type of forfeiture is mandatory unless the court finds that it would interfere with victim restitution, the value of the thing to be forfeited is “prima facie disproportionate” to the gravity of the minor offence, or the court waives the punishment.⁴⁴ If the item to be forfeited has become inaccessible or unidentifiable, then the court may order the forfeiture of a thing of equal value.

(iv) *Additional sanctions*

61. Natural persons may also be barred from undertaking certain activities, such as holding certain jobs, during a specific period of time following sentencing. The prohibition may be applied if the offence was committed in connection with the activities at issue, and the prohibition may last up to ten years (section 61 CC).

62. Another sentencing component that may be applied in the case of foreign bribery is expulsion. A natural person who is not a Slovak national, a citizen of a member state of the European Union, a citizen of

⁴³ Section 10 CC provides that a minor offence is an offence liable of a maximum custodial penalty of no more than five years.

⁴⁴ The punishment may be waived for minor offences only in the circumstances described under section 40 of the Criminal Code.

a state in the European Economic Area, or a person granted asylum in the Slovak Republic may be expelled from the Slovak Republic for one to fifteen years.

(v) *Sanctions in the context of plea bargaining*

63. Prosecutors also have authority to enter into the equivalent of a deferred prosecution agreement, also referred to as “plea bargaining”, with the defendant. Sanctions agreed in this context may be lowered up to a third (Section 39 CC). This is further discussed under Section 5.

Commentary:

With regard to natural persons, the lead examiners commend the Slovak Republic for bringing the imprisonment sanctions applicable to the active side of the foreign bribery offence, including foreign bribery, mostly in line with those that apply to other forms of corruption penalised in the Criminal Code. The determination of aggravated and non aggravated foreign bribery and the application of corresponding level of sentences should be followed up as case law develops.

However, the lead examiners have concerns over the enforceability in practice of the sanctions options available in law against natural persons for foreign bribery. They recommend that the Slovak Republic take steps to ensure that the sanctions available under Slovak legislation are effective, proportionate and dissuasive in all foreign bribery cases, including through (i) continuing to raise awareness amongst the prosecutors and judges of the availability of fines as an optional part of the sentence, although it was deleted from the new text of the offence under section 334 and 335; (ii) eliminating the requirement that the offender “gained or tried to gain a property benefit” in order for a fine to be imposed; and (iii) reconsidering the enforceability and proportionality of mandatory forfeiture for aggravated foreign bribery offences.

b) *Sanctions for legal persons*

64. The Slovak Republic takes the position that two provisions of its Criminal Code create “sanctions” that may be imposed against legal persons for the foreign bribery offence. These two provisions are in Sections 83a and 83b (also discussed in Section 2 above). The sanctions, or “protective measures” provided by Sections 83a and 83b have not yet been entered against any legal person in any case in the Slovak Republic. At the time of the on-site visit, there were no open investigations involving legal persons and therefore the imposition of protective measures against a legal person were not anticipated any time in the near future.

(i) *Type of sanctions available against a legal person*

65. Sections 83a and 83b provide respectively for confiscation of a sum of money or property from a legal person. As was unanimously confirmed by all panellists during the on-site visit, like with the mandatory forfeiture that applies to natural persons for an aggravated foreign bribery offence, confiscation of property under section 83b results in confiscation of *all assets of the legal person and forced bankruptcy*. If the court does not impose confiscation of all property of the legal person under section 83b, then it “must” impose confiscation of a sum of money under section 83a. The confiscation order must be between EUR 800 and EUR 1 660 000. The court may not impose confiscation under both 83a and 83b.

66. Liability under section 83b, the confiscation of property, also depends on whether a legal person benefits from the crime. Under section 83b, the offence must be committed and the legal person must have “gained the property or its part by a crime or from proceeds of a crime” (emphasis added). However, the same condition does not exist under section 83a. These criteria would limit the availability of confiscation of all assets, as it would not apply to situations where a principal offender bribes to the advantage of a

subsidiary (or *vice versa*) or when an indirect advantage, such as an improved competitive situation, results from bribery (and not a gained property).

(ii) *Sanctions available against a legal person only as a consequence of the liability of a natural person*

67. As discussed above under section 2, absent a system of corporate criminal liability in the Slovak Republic, it appears that criminal sanctions against legal persons can only be imposed on a legal person as the indirect consequence of the liability of a natural person, i.e. if an offence (including foreign bribery) was committed by a natural person, in a number of circumstances listed under section 2.

68. A member of the judiciary who participated in the on-site visit explained that the purpose of the confiscation provisions in 83a and 83b is to forfeit ill-gotten gains that have made their way from the hands of the natural person to a legal person. This explanation may support the confiscation of a sum of money under section 83a. The condition in section 83b that “the legal person gained the property or part of it by the crime or from proceeds of the crime” committed by the natural person appears to also support this view. However, this explanation of provisions 83a and 83b still does not seem to justify the confiscation of all assets of the legal person and forced bankruptcy under 83b.

(iii) *Scope and conditions for the application of sanctions against legal persons - Exclusion of State-owned enterprises*

69. There is no definition of a legal person under the Slovak Criminal Code, where the term “legal person” only appears under sections 83a and 83b. In their responses to the Phase 3 Questionnaires, the Slovak authorities refer to the definition of legal persons in their Civil Code (Law 40/1964 Coll. Art. 18. 2), pursuant to which legal persons are: a) associations of natural or legal persons, b) associations of property for certain purpose, c) units of territorial self-government, d) other subjects determined by the law. While this appears relatively broad, it should be read together with sections 83a and 83b, which exclude a number of legal persons from their scope of application. In particular, pursuant to the latter, a court may not impose confiscation “if a property of the State or the European Union would be affected by the exercising of the protective measure.” This creates a serious loophole as it implies that Slovak State owned enterprises, and possibly State controlled enterprises, cannot face sanctions for foreign bribery.

(iv) *Defence of effective regret*

70. Whereas the effective regret defence no longer applies to section 334 CC (as of 1 September 2009) on the general offence of foreign bribery, the defence remains in force against legal persons as per both section 83(a)(2) and 83(b)(2), where it is expressly contemplated. This raises a concern as to the effectiveness of the withdrawal of the defence under section 334 CC and as to the coherence of the whole system of liability for the foreign bribery offence. As stated above, under section 1, the Slovak Authorities have indicated their intention to delete this defence from these provisions as well.

(v) *Considerations of “consequences for the legal person”, of “an important public interest” and of “the protection of the society”*

71. Section 83b(3) provides that the sanction: “shall not be imposed” in view of considerations including “consequences for the legal person”, “an important public interest” and “the protection of the society”. Given the broadness and vagueness of these considerations, there is a concern that these may cover factors forbidden under Article 5 of the Convention. However, section 83a does not include these considerations.

(vi) *Requirement that the legal person be subject to bankruptcy proceedings*

72. The requirement that the legal person be subject to bankruptcy proceedings appears to have been introduced to address one of the concerns raised by panellists in Phase 2 that a regime of liability of legal persons needs to protect the interests of third parties (*e.g.* shareholders and employees of the legal person). The Slovak responses to the Phase 3 Questionnaires specify that, when applying the protective measures of confiscation in respect of section 83b, the court has to declare bankruptcy proceedings (*ex officio*). Section 83b(2) and (4) thus limits the extent to which the confiscation of property can be exercised to the property belonging to the legal person “after the completion of bankruptcy proceedings”. The decision to declare the company bankrupt for the purpose of applying confiscation of a sum of money under section 83a will also be imposed where this is necessary to enforce the sentence.

(vii) *Effectiveness and proportionality of the confiscation provisions*

73. There are grave concerns about the enforceability and proportionality of the confiscation provisions related to legal persons. The fact that there are not any ongoing investigations in which confiscation is contemplated, for any type of offence, more generally appears to demonstrate the amount of uncertainty about the application of the confiscation provisions in Sections 83a and 83b. A great deal of confusion was expressed by investigative, prosecution, and judicial officials during the on-site visit about the mechanics of the provisions, which raises additional concerns about the clarity of these provisions.

74. Section 83b appears to impose an impossibly high hurdle on the prosecutor of proving that there are no other circumstances that would assure protection of society aside from confiscating all of the assets of the legal person. The proportionality concerns about section 83b mirror those that apply to the provision in the Criminal Code that imposes mandatory forfeiture of all assets on the natural person for aggravated foreign bribery (Section 58(3) CC). Confiscation of all assets of the legal person would be an extreme result. According to one investigator who participated in the on-site visit, the “protection of society” requirement of section 83b (see paragraph above concerning the requirements of 83a) will serve to limit its application in practice to extremely serious cases only, and section 83a will be more commonly applied. Although it is not clear from the statutory provisions that it will only be applied in the most extreme cases, in the absence of implementation of these provisions to either for natural or legal persons (see above subsection for natural persons), the argument appears convincing. The option of closing down a company may indeed not be realistic sanction in most foreign bribery cases.

75. With the alternative confiscation provision in 83a, the lead examiners believe that this provision sets out a more practical and realistic approach to “sanction” a legal person. In setting the amount of money to be confiscated, the court is to consider a number of factors (also discussed above under (i) scope of sanctions), such as the seriousness of the offence, the benefit gained, the damage caused, the circumstances of the offence and the consequences for the legal person. Nonetheless, the confiscation amount ceiling of 1 660 000 € remains relatively low especially in the absence of other confiscation or sanction’s options available to judges.

Commentary:

With regard to the “sanctions” applicable to legal persons, the lead examiners have the threshold question of whether the confiscation provisions in the Slovak Criminal Code can be called “sanctions” when there is no clear concept of liability of legal persons set forth under Slovak law.

The lead examiners also have grave concerns about the enforceability and proportionality of the confiscation provisions and, in particular, the currently low confiscation amount ceiling in the absence of other confiscation or sanction options. The lead examiners recommend that, in connection with the establishment of the liability of legal persons recommended under Section B.2, above, the Slovak Republic: (i) revisit its current system of “preventive measures of confiscation”

and repeal sections 83a and 83b of its Criminal Code; (ii) introduce in its legal system effective, proportionate and dissuasive sanctions, including monetary sanctions, applicable to legal persons responsible for bribery of foreign officials, pursuant to a clearly established concept of liability for legal persons; (iii) ensure that the concepts of confiscation and pecuniary penalties be separated, in order to comply with Article 3 of the Convention (as discussed in the confiscation section of the report); and (iv) ensure that the range of legal persons subject to sanctions is broad enough to include State owned and State controlled companies.

4. Confiscation of the bribe and the proceeds of bribery

a) Confiscation measures applying to natural persons

76. The provisions of the Slovak Criminal Code that concern confiscation of the bribe and the proceeds of bribery from natural persons (the forfeiture provisions in Criminal Code Sections 58 through 60) are discussed in detail above, in Section B.3. concerning sanctions. These provisions establish a distinction between aggravated and non-aggravated offences.

77. Under section 60 CC, which provides for forfeiture from the natural person for crimes, including both aggravated and non-aggravated foreign bribery, courts have to order the forfeiture (confiscation) of “proceeds of crime” and “profits, interests, or other benefits arising from such proceeds or things.” If the proceeds are inaccessible, the court is supposed to order forfeiture of a thing of equal value. This same forfeiture provision also applies to domestic bribery cases. While such forfeiture is supposed to be mandatory, in practice, it has, to date, been applied only in 227 of the 445 convictions for domestic bribery decided between 2006 and 2010.

78. Confiscation of the bribe and the proceeds of bribery is not taken into account under section 58(3) CC that allow a court to require the forfeiture of *all property* of the offender for certain aggravated offences. Application of this provision results in the mandatory blanket seizure of all assets from the natural person similar to the confiscation provision for legal persons in 83b CC. (See section B.3, above, for more on this subject and on the applicability in practice of these provisions in most foreign bribery cases). Given the extreme nature of this mandatory provision for aggravated foreign bribery, it is questionable whether section 58(3) CC is proportionate and enforceable in foreign bribery cases.

b) Confiscation measures applying to legal persons

79. The provisions of the Slovak Criminal Code that concern confiscation from legal persons (the provisions concerning the protective measure of confiscation in Sections 83a and 83b) are discussed in detail above, in Section B.3. concerning sanctions as there is no distinction in the Slovak Code between sanctions and confiscation applying to legal persons.

80. Under 83a CC (confiscation of a sum of money from legal persons), confiscation of the proceeds of crime is not required. While the “gained benefit” is a consideration (among others) under the “confiscation” provision in Section 83a CC, it is only a consideration in setting the monetary sanction. Confiscation of the bribe and the proceeds of bribery are not separate or essential components of the order that would result under Section 83a CC.

81. Confiscation is also not taken into account under the provision that allows a court to forfeit all property of the legal person, under 83b CC, which results in the mandatory blanket seizure of all assets from the legal person.

82. Not only is there no distinction between sanctions and confiscation measures applicable to legal persons but there is also no distinction between confiscation of the bribe and the proceeds of bribery.

Article 3 of the Convention is therefore not implemented, regarding legal persons, in the Slovak current legislation.

Commentary:

The lead examiners are concerned that the concepts of confiscation (of the bribe and proceeds of bribery) and other pecuniary sanctions are not clearly and consistently delineated as separate components of a sentence under the Criminal Code, and therefore courts may overlook one or the other or both when setting the conditions of a sentence. In case of aggravated offences, the blanket seizure of all assets from a natural person may be unenforceable. The lead examiners recommend that the Slovak Republic revisit the enforceability and proportionality of forfeiture provisions available to natural persons for aggravated offences (section 58(3) CC) as well as to legal persons (83b CC) in accordance with Article 3 of the Convention.

The lead examiners are also concerned that even where confiscation of the bribe and proceeds of bribery are supposed to be mandatory (for natural persons convicted of non-aggravated foreign bribery, as well as many types of domestic bribery, pursuant to section 60 of the Criminal Code), statistics in domestic bribery cases show that confiscation is not universally applied. The lead examiners recommend that the Slovak Republic provide training to judges and prosecutors to encourage them to have greater awareness of this mandatory provision when setting the terms of a sentence. The lead examiners also recommend that the statistics concerning confiscation orders in domestic bribery cases (and foreign, if it becomes applicable as case law develops) continue to be monitored.

5. Investigation and prosecution of the foreign bribery offence

a) Principles of investigation and prosecution, resources and coordination

(i) Police forces

- Organisation and independence

83. According to the Slovak responses to the Phase 3 Questionnaires, the Bureau for the Fight against Corruption of the Police Forces Presidium is responsible for disclosing, documenting and investigating corruption cases; its Director responds directly to the President of the Police Force. The Bureau for the Fight against Corruption is supervised by the Public Prosecutor's Office (hereinafter PPO).

84. Police officers and investigators generally proceed independently with an investigation. However, with regard to corruption cases, the responses to the Phase 3 Questionnaires and discussions with representatives from law enforcement indicate that, when the investigator receives information about a possible corruption offence, he/she contacts the prosecutor in the PPO and consults on the procedure to be followed, including the means of investigations that are to be used in the given case. The prosecutor acts as the guardian of legality over the investigation, as well as a partner in the investigation.

- The duties of the police and investigators

85. The police and investigators have a duty to investigate all of the circumstances of the suspected offence, whether the circumstances are incriminating or exculpatory for the suspect. As long as prior prosecutor approval is not needed,⁴⁵ the police and investigators are responsible for the tactics,

45. A year 2000 list of the techniques that required prosecutorial approval included, among others, requests for data containing bank secrets, seizure orders, non-residential searches, and surveillance.

management, organization, and prioritization of the investigation. A police officer makes the decision to initiate prosecution within 30 days of the criminal complaint or discovery of suspicious acts. In addition to prosecutors, the police and investigators may make the decision that criminal prosecution is warranted or decide that there are not sufficient grounds to file a case in court. However, prosecutors may cancel their decisions (Section 230, para. 2(e) CCP). According to the CCP (Section 231(a) CCP), only prosecutors may bring a criminal charge to Court. Investigators also have the right to give input on pre-trial settlements. Section 119(1) CCP requires that criminal proceedings evidence a number of elements in order to decide whether to prosecute.⁴⁶

86. Where a prosecutor wishes to settle a matter pre-trial, against the wishes of the investigator, the investigator has the right to file written objections. If the prosecutor disagrees with the objections, the investigator has the right to submit the matter to a senior prosecutor, who either invalidates the junior prosecutor's decision or assigns the case to a different investigator. Prosecutors met during the on-site visit were satisfied with this system of checks and balances.

(ii) *Organisation and Independence of the Public Prosecutor's Office*

- Organisation

87. In 2004, the Slovak Republic established the Special Prosecutor's Office (SPO). It has jurisdiction over the same offences as the Specialised Criminal Court, that is, corruption (including foreign bribery), serious economic and terrorist crimes, and serious crimes committed by organized criminal groups. The SPO also has jurisdiction over matters concerning whether certain designated officials committed an offence in connection with their powers and responsibilities, such as Members of Parliament, judges, and prosecutors. The SPO has exclusive jurisdiction to prosecute cases before the Specialised Criminal Court.⁴⁷

88. The SPO is composed of two departments: the Department of Economic Criminality and the Department of General Criminality. The Department of General Criminality consists of the Division of Corruption and the Division of Organised Crime, Terrorism and International Criminality. There is also a separate Division of crimes committed by constitutional officials (members of Parliament, judges, prosecutors, ministers, etc.).

89. At the time of the Phase 2 written follow up, Recommendation 9(a) on the adequate staffing of the Special Court and the SPO to effectively fight foreign bribery remained partially implemented because the SPO remained staffed at roughly two-thirds its target level, despite recruitment efforts. In their responses to the Phase 3 Questionnaires, the Slovak authorities indicate that the SPO should be fully staffed with 25 prosecutors, but that four prosecutors are still missing (although five more prosecutors have been recruited since Phase 2). The Slovak Republic reported that as of June 2012, four vacancy announcements have been published and should be filled by the end of 2012. Nonetheless, the Slovak replies stress that the SPO is overwhelmed and that files cannot be dealt with within the timelines

46 . See full text of section 119(1) CCP under Annex 2.

47 . The SPO is headed by a Special Prosecutor, who is elected by Parliament upon the proposal of the Prosecutor General and serves a five-year term. The SPO is part of the Prosecutor General's Office. Although the SPO is accountable to the Prosecutor General, for matters that are within the specific competence of the SPO, the Prosecutor General is not authorized to render any negative instruction to the office or the prosecutor, conduct any acts on the part of the SPO, or decide that another subordinate prosecutor will undertake such an act. The prosecutors in this office are appointed by the Special Prosecutor with the consent of the Prosecutors' Council. The Prosecutor General is only able to remove a prosecutor in the SPO upon the proposal of the Special Prosecutor.

prescribed by law. This was confirmed by panellists during the on-site visit. However, financial resources appear to be adequate.

- Duties of the prosecutors and principle of mandatory prosecution

90. Prosecutors typically do not carry out investigations.⁴⁸ Their role is more of legal oversight of the investigation. They are responsible for supervising the legality of the measures used by the police and investigators. In this regard, prosecutors can give instructions to the police and investigators. And although prosecutors do not organize or help prioritize investigations, they can have a matter reassigned from one police or investigator to another. At the conclusion of the investigation, prosecutors bring the criminal action in court. When this happens, the criminal proceedings begin. Prosecutors have a duty to prosecute all criminal offences of which they gain knowledge, irrespective of the seriousness of the offences and the identity of the offenders.

91. However, while panellists from academia and civil society commended the Slovak Government for its increased emphasis on fighting corruption in recent years, they expressed concerns that investigations and prosecutions may be influenced by improper considerations. This question may be relevant in the context of the “Gorilla” case (discussed under Section A.4.b above), which involves high-profile political figures and where the press revealed that no investigation was initially started, despite evidence gathered by the intelligence services. The Working Group notes that, if similar concerns were voiced in relation to a foreign bribery case, this would raise Article 5 issues.

- Independence

92. In general, the prosecution service is viewed as being effectively independent from other government bodies. The Prosecutor General is accountable to the Parliament, and the work of the prosecution service is evaluated by the judiciary in the course of criminal proceedings, and the media. Those bodies are viewed as effective checks on prosecutors, and not as sources of interference.

(iii) *The old Special Court and the new Specialised Criminal Court*

93. In 2004, the Slovak Republic created the Special Court, which had exclusive jurisdiction over corruption cases, including domestic and foreign bribery, as well as other serious economic and terrorist crimes, and serious crimes committed by criminal organizations. In 2009, after the Constitutional Court deemed the Special Court unconstitutional, the Slovak Republic dissolved the Special Court and created the new Specialised Criminal Court. The new court, like the old one, has jurisdiction over corruption cases, among numerous other serious crimes. Cases are assigned randomly by use of a case management system. In their replies to the Phase 3 Questionnaires, the Slovak authorities indicate that the SCC is fully staffed with 13 judges.

94. During the on-site visit, it emerged from the discussions with civil society that the Specialised Criminal Court enjoys a steady reputation of independence and integrity, which is particularly notable in a country where media reports and perception indices have regularly emphasised a concerning view of the judiciary, in which corruption is considered to be widely spread.⁴⁹

(iv) *Training*

48. The law does permit a prosecutor to conduct an investigation, but in practice it is rarely done.

49. E.g. *Journal of Academic and Business Ethics, Corruption in Slovakia: ethical issues from a systematic point of view*, Omid Furutan, University of La Verne: <http://www.aabri.com/manuscripts/10533.pdf>

95. At the time of the Phase 2 written follow up, Recommendation 7(a) on training of police officers and 9(b) about training prosecutors and judges on the foreign bribery offence were deemed fully implemented. The responses to the Phase 3 Questionnaires provide little or no information about specific training provided since Phase 2 by the Judicial Academy and the Police Academy. In the absence of prosecutions and sanctions of foreign bribery cases, there is a concern that the level of awareness of the foreign bribery offence and the need to actively detect, investigate and prosecute suspicions of foreign bribery is still lacking.

b) Sources of allegations

96. The sources of allegations are detailed in the Slovak responses to the Phase 3 Questionnaires. These responses indicate that the only foreign bribery case in the Slovak Republic (the the Caribbean case described in section A4.(b)) started on the basis of media allegations. The other sources of allegations referred to in the responses seem relatively theoretical, as was confirmed during the on-site visit. Law enforcement representatives and prosecutors indicated during on-site visit discussions that there is no example of a foreign bribery case that was brought to the attention of law enforcement authorities on the basis of a report by the tax authorities, by staff in foreign embassies, or even by the media, with the exception of the Caribbean case. However, there are domestic corruption cases that have started on the basis of media allegations. This lack of detection of foreign bribery cases is all the more surprising, given that it is mandatory in the Slovak Republic for all Slovak citizens to report information on corruption matters (as further discussed under subsection 10 below).

c) Investigative techniques and resources

97. The Slovak responses to the Phase 3 Questionnaires provide a number of details on the wide range of investigative techniques available to investigators and prosecutors in Slovak Republic. The on-site visit confirmed that these include the possibility to request data containing bank secrets. The cost of the use of certain investigative techniques does not appear to be dissuasive.

98. The reasons for the lack of investigation of foreign bribery cases appears to lie, rather, with the lack of priority put on the detection and investigation of this offence. As foreign bribery is not perceived by Slovak public officials as an area of high risk, it remains a particularly low priority in terms of both detection and investigation. There is the perception among Slovak law enforcement that, since both parties in a foreign bribery transaction are happy (the briber, who wins an undue business advantage for having bribed, and the bribe, who receives the bribe), this is a crime that is nearly impossible to detect, whereas Slovak citizens are more likely to complain for having been unfairly solicited for a bribe by their own public officials. As a result, little attention is paid to foreign bribery risks, sources of allegations and thus to their investigation.

99. It emerged from discussions with the law enforcement authorities and prosecutors met on-site that a very strong emphasis is put on catching bribery offenders red-handed. A large part of the investigative resources and techniques used to combat bribery in the Slovak Republic are dedicated to obtaining this type of evidence. Undercover operations and agents are commonly used in domestic bribery cases. The discussions during the on-site visit also emphasised that a large part of the domestic cases investigated and prosecuted⁵⁰ are small (sometimes even as small as 1 Euro) and that there is no clear prioritisation of investigating serious bribery cases. This may not be appropriate in foreign bribery cases, where a large part of the offence often takes place abroad through complex operations involving a number of foreign agents, intermediaries and subsidiaries, and which may require the implementation of other investigative techniques.

50. From 2006 to 2010, there were approximately 400 domestic corruption prosecutions.

Commentary:

The lead examiners commend the Slovak Republic for its efforts to clarify the role of the bodies in charge of the investigation and prosecution of corruption as well as for the creation of a Specialised Criminal Court.

The lead examiners recommend that the Slovak Republic take the necessary steps:

- a) to increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage, both to increase sources of allegations and enhance investigations;***
- b) to ensure that investigations and prosecutions of foreign bribery cases are not influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved; and***
- c) to ensure that foreign bribery allegations are promptly detected, investigated and prosecuted as appropriate.***

The lead examiners note and recommend the continuation of the efforts made since Phase 2 to ensure that the Special Court and Special Prosecutor's office are adequately staffed. In particular, the lead examiners recommend that the Special Prosecutor's office fill the four remaining prosecutor positions that are still open and to therefore fully implement the Phase 2 recommendation in this regard.

The lead examiners also recommend that the law enforcement authorities and police forces receive adequate training i) on the specificity of the foreign bribery offence, ii) on the investigative techniques adapted to this offence; and more generally iii) about the need to more actively and proactively detect, investigate and prosecute the offence of bribery of foreign public officials by both individuals and companies.

d) *Termination of prosecution and Plea bargaining*

100. Under circumstances defined by law, there are a number of possible ways to resolve a case besides going to trial. Conditional stay of criminal prosecution of a cooperating accused (section 218 CCP) raises serious concerns as it may apply to foreign bribery (as discussed into detail under section 1 of this report). Conditional stay of criminal prosecution typically involves the establishment of a probationary period and conditions of probation, including full compensation for damage caused. If the conditions are not met within the probationary period, prosecution may be continued.

101. Prosecutors also have authority to enter into the equivalent of a deferred prosecution agreement, also referred to as "plea bargaining" with the defendant, before criminal charges are filed in court. This procedure obviously presents the advantage of shortening the length of the process. Pursuant to section 232 to 233 CCP, the indicted person needs to recognize guilt and to agree to the proposed sanctions. Plea bargaining agreements are available for all offences with no limit with regard to the type and level of applicable sentence. Sanctions agreed in this context may be lowered up to a third (section 39 CC). With regard to non-aggravated foreign bribery, a minimum custodial penalty is set at six months. According to Slovak authorities, the maximum reduction of sanctions up to one third is in practice systematically reached.

102. The agreement is submitted to the approval of the Court whose control is limited to verifying the lawfulness of the agreement and the existence of the accused consent to the agreement (Section 334(1) CCP). If the Court does not deem the plea bargain agreement to be fair, it communicates its reservations to

the parties, which may submit a new draft plea bargaining agreement. If the Court does not approve the plea bargaining agreement, the court passes a resolution to return the case to the prosecutor for pre-trial proceedings.

103. Section 332 CC provides that draft plea bargain agreements shall be judged on a public hearing, “unless this act stipulates otherwise”. According to prosecutors and judges met on-site, in practice, plea bargain agreements are always judged in a public hearing. If the Court approves the plea bargain agreement, it pronounces a verdict publicly. Representatives from the judiciary met on-site indicated that court decisions to agree to a plea bargaining agreement are reasoned. Moreover, since January 2012, these decisions as well as all court judgments must be published online.⁵¹ Plea bargaining agreements result in a criminal record for the offender. There is no appeal.

104. The trend to use these arrangements appears to be rising. Statistics provided by the Slovak Republic show that, in 2010, out of 167 cases of bribery and corruption prosecuted, 74 were resolved through a plea bargaining agreement.

e) Statute of Limitations

105. At the time of the Phase 1 Review, the limitation period for foreign bribery was three to five years, depending on the severity of the penalty imposed. The Working Group was concerned that the limitation period was relatively short and recommended that the Slovak Republic consider an extension.⁵² At the time of Phase 2, the Slovak Republic had amended the Criminal Code in this regard. No further amendment has been introduced since then. The limitation periods for non-aggravated and aggravated foreign bribery are five and ten years respectively. The period is suspended if the accused is abroad or cannot be tried because of a legal impediment or if he/she has become a co-operating offender. These amendments were deemed to adequately address the concerns of the Working Group. Provisions on Limitation of Criminal Proceedings are now enshrined in Section 87 CC.

106. The Slovak Republic had also provided statistics on the length of proceedings. In 454 proceedings for various types of domestic corruption (including active and passive bribery) from 2006 to 2010, the average length of a proceeding was under three months (2,8 months).

107. Pursuant to the Slovak replies, and in the continuing absence of corporate liability, no specific regulation was adopted in relation to legal persons and the same statute of limitations hence applies to both natural and legal persons (Section 87 CC).

Commentary:

The lead examiners recognise the value and flexibility provided by the availability of the plea bargaining procedure under section 232 CCP that has enabled the Slovak republic to sanction individuals in domestic bribery cases.

51. Publication of judicial decision: by the Supreme Court of the Slovak Republic: <http://www.nssr.gov.sk/rozhodnutia/>; by other courts: <http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutia.aspx>; by the Constitutional Court of the Slovak Republic: http://www.concourt.sk/search.do?id_submenu=d; by the General Prosecution Office of the Slovak Republic (decisions of prosecutors): <http://www.genpro.gov.sk/dokumenty/pravoplatne-uznesenia-prokuratora-ktorymi-sa-skoncilo-trestnie-stihanie-vedene-proti-urcitej-2f09.html>

52. See Phase 1 report, at p. 23.

They commend the Slovak Republic for the recent decision that all court judgements, including on plea bargaining, must be published online. They believe that this important step will enhance the deterrent effect of such settlements and sanctions. They recommend that the Working Group follows up as case law develops that the decisions published include elements of the arrangements reached through plea bargaining agreements, when appropriate, such as the reasons why such a plea bargain was deemed appropriate in a specific case and the terms of the arrangement (in particular, the amount agreed to be paid), as this would add accountability, raise awareness, and enhance public confidence in the enforcement of the anti-corruption legislation in the Slovak Republic. The lead examiners encourage the Slovak Republic to make full use of this flexible tool to settle foreign bribery cases, including with legal persons, once corporate liability will have been established.

The lead examiners also note the current statute of limitations for aggravated and non aggravated foreign bribery. In the absence of practice, and noting that this is also a horizontal issue, the lead examiners recommend following up the application of the statute of limitations, to ensure that it allows an adequate period of time for the investigation and prosecution of the foreign bribery offence.

6. Money laundering

108. Money laundering is criminalised in the Slovak Republic under section 233CC. Both domestic and foreign bribery are predicate offences to money laundering. At the time of the Phase 1 examination, there was a requirement that the laundered money had to exceed a “minor value”, but this requirement has since been eliminated.

a) Increasing the level of reporting

109. In Phase 2, the Working Group recommended that the Slovak Republic provide better guidance to entities that are required to report suspicious transactions, for instance, by providing typologies on money laundering where the predicate offence is bribery. During the Phase 2 follow-up, the Working Group determined that this recommendation had only been partially implemented. The Slovak Republic has now made substantial efforts to implement this recommendation.

110. The Phase 2 Follow-Up Report noted that, among other efforts the country had made to provide better guidance to reporting entities, the Slovak Republic had a new draft law that would specify eleven indicators of suspicion. The Working Group wished to monitor the enactment of this law. On 1 September 2008, the Act No. 297/2008 Coll. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing came into effect. It includes a sample list of ten “unusual transactions”, which indicate that their execution may enable “legalization” (which includes what is commonly considered money laundering, as well as other criminal conduct) and terrorist financing.⁵³ While the language of the above-quoted statute is focused on detecting money laundering and related conduct, as well as terrorist financing, the representatives of the reporting entities who participated in the on-site visit assured the lead examiners that, because the statute is partially aimed at detecting legalization, in practice it is being applied broadly to indicate any type of crime that might produce proceeds, such as foreign bribery.

111. Among the representatives of reporting entities who participated in the on-site visit, there appeared to be a significant level of awareness about this new law and the illustrative list of unusual transactions, as well as the law’s requirement (under Section 17) for reporting entities to report unusual business transactions to the Financial Intelligence Unit (FIU).

53 . See Annex 2.

112. The FIU has never reported to the police a matter involving a suspicion of money laundering based on the predicate offence of foreign bribery. However, in terms of the overall level of reporting to the FIU of suspicious transaction reports (which relate to both money laundering and terrorist financing), the number of reports has steadily increased in recent years. The overall number has increased from 2,173 reports in 2005 to 2,741 reports in 2009.⁵⁴ In 2011, the FIU reported approximately 155 matters to police involving suspicions of money laundering, up from 124 in 2010 and 85 in 2009. Of the 155 reported in 2011, approximately 87 were reported to the Bureau of Combating Corruption because they fell into that agency's subject matter jurisdiction, and approximately 35 of the 87 matters related to corruption. These numbers show that, although the FIU has not identified suspicions of foreign bribery to date, it has been successful at identifying suspicions of corruption.

113. The FIU has many tools available to it, and the Slovak Republic has made progress in adding to those tools. The FIU uses multiple sources of information, including suspicious transaction reports, media reports, and informers. In 2009, the Slovak Republic created a new analytical department in the FIU, which includes information technology specialists.

b) *Improving enforcement efforts*

114. In Phase 2, the Working Group recommended that the Slovak Republic take appropriate measures to enforce its money laundering offence more effectively, particularly in connection with bribery cases. The Phase 2 Follow-Up Report observed that the number of money laundering convictions relative to bribery convictions was still low and noted that the Phase 2 recommendation concerning money laundering enforcement was only partially implemented. The Working Group stated that it believed that more could be done, including engaging financial institutions and alerting them to corruption-related money laundering issues. It appears that not enough has been done to implement this Phase 2 recommendation.

115. Although the money laundering offence has applied to the predicate of foreign bribery for many years, there have been no money laundering convictions involving the predicate offence of foreign bribery. In fact, from 2006 to 2010, there have been no money laundering prosecutions involving a predicate offence that constituted any form of corruption. This is especially surprising, in light of the fact that during that same time period, 2006 to 2010, there were 445 convictions for domestic bribery.

116. The lead examiners were offered several explanations for this lack of enforcement: Despite significant levels of reporting of suspicions of money laundering by the FIU, investigators focus on the predicate offences and do not follow through on the money laundering offences. Moreover, due to the large number of corruption cases and the limited resources of the investigative and prosecution services, it appears that investigators and prosecutors are focusing their resources on those cases where they can conduct a proactive investigation and catch offenders "red-handed" (see Section 5.c for more on investigative techniques and resources). Cases that would require an investigation of entirely historic events are given low priority because, according to a representative from the prosecutor's office, they are "very difficult" to put together. According to that same representative, most of the Slovak Republic's corruption convictions are for small bribes, and where large bribes are involved, the cases are usually ones where proactive investigations were conducted and the offenders were arrested immediately after accepting the bribe, so that the offenders have no opportunity to launder the funds. These explanations demonstrate that Slovakian investigators and prosecutors are focused on small, "quick hit" corruption cases, rather than larger, more sophisticated corruption cases, which may also include foreign bribery matters.

Commentary:

54 . See Fourth MONEYVAL Mutual Evaluation Report at ¶ 7.

The lead examiners note that the Slovak Republic has enacted Act No. 297/2008 Coll. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing, which provides reporting entities with an illustrative list of unusual transactions to guide them in exercising their reporting responsibilities. The lead examiners also note the Slovak Republic's FIU's efforts to make effective use of multiple sources of information and to generate and pass on to law enforcement authorities a significant number of reports of suspected money laundering. Because of the history of the lack of detection of foreign bribery cases by the FIU, the lead examiners encourage the Slovak Republic to continue to raise awareness in the FIU about the offence of foreign bribery and how to detect it.

However, in spite of the progress made on reporting, the lead examiners are concerned about the continued low level of enforcement of money laundering offences and apparent lack of significant effort by the Slovak authorities to more effectively enforce the money laundering offence, particularly in corruption matters. The lead examiners recommend more training of investigators and prosecutors concerning how to build evidence of money laundering offences in corruption cases. The lead examiners encourage Slovak authorities to examine their investigative and prosecution priorities to determine whether the way they are focusing resources creates an impediment to pursuing money laundering offences and whether more resources are necessary. The lead examiners also recommend that the Working Group continue to monitor and follow-up on the level of enforcement of the money laundering offence in the Slovak Republic.

7. Accounting requirements, external audit, and company compliance and ethics programmes

a) Accounting requirements

(i) Accounting standards generally

117. Accounting requirements in the Slovak Republic are determined by Act 431/2002 Coll. on Accounting, which deals with false accounting. It applies to all legal persons registered in the Slovak Republic, as well as non-residents and natural persons who do business in the Slovak Republic. No major changes have been introduced to the Act on Accounting since the Phase 2 written follow-up report in 2008. To date, the Slovak Republic has not detected foreign bribery through the enforcement of books and records requirements, accounting and auditing standards, and financial statement disclosure requirements.

(ii) Enforcement of the false accounting offence

118. As of its Phase 2 written follow-up report, the Working Group on Bribery decided the Slovak Republic had fully implemented its recommendation to “take appropriate measures to enforce accounting and auditing offences more effectively in connection with bribery cases” after the Government issued guidelines and specifically requested tax examiners to enforce Slovak accounting and auditing offences. The only outstanding recommendation related to the Slovak Republic's accounting and auditing framework recommends that the Slovak Republic “ensure that the sanctions for false accounting in practice are effective, proportionate and dissuasive.”

119. Civil fines for false accounting may be applied under Article 38 of the Act on Accounting. Violations of the Act trigger a fine of 1 percent to 3 percent of the total amount of assets reported. If the total assets of a legal entity cannot be determined, then the maximum fine for violations of the Act is EUR 3 319 391.88; this provision shall be used only when the accounting entity does not disclose any assets for the relevant accounting period. Fines are imposed by the Slovak tax authorities, who review financial statements that must be attached to tax returns. Criminal sanctions may also be imposed by the Public Prosecution Office under Sections 259 and 260 CC, which prohibit the presentation of "false or grossly

distorted data" or concealing "mandatory data concerning important facts in a statement, report, input data entered into the computer or in other documents" which serve for "controlling accounting records." Depending on the circumstances of the violation, a natural person could be sentenced between six months to three years and between three to eight years for false accounting.

120. On average, fines imposed under the Act on Accounting since Phase 2 have been relatively low: According to Slovak Tax Directorate statistics, fines were imposed 655 times in 2010 (totalling EUR 1.2 million, or EUR 1 832 per violation); 1 026 times in 2009 (totalling EUR 1.4 million, or EUR 1 365 per violation); 760 times in 2008 (totalling EUR 932 979, or EUR 1 228 per violation); and 613 times in 2007 (totalling EUR 459 324, or EUR 749 per violation). From 2006 to 2011, criminal sanctions have been imposed for false accounting 61 times under Sections 259 and 260 CC. It is not clear whether these sanctions were applied to accounting offences related to bribery, despite the fact that there were 507 persons accused of bribery from 2009 to 2011 (99 for accepting a bribe and 408 for giving a bribe), according to statistics provided by the Ministry of Interior's Bureau for the Fight against Corruption.

121. A Slovak taxpayer must attach his/her financial statements to their tax returns, which are then examined by a tax examiner. (This is in addition to the review by external auditors of certain companies' financial statements, as described in greater detail in Section 7.b.i below.) As a result, the Slovak tax authorities are responsible for enforcing the accounting standards prescribed in the Act on Accounting. Tax authorities are obliged to report suspicions of criminal offences, including bribery, during the tax controls of financial statements to law enforcement authorities.⁵⁵ In these controls, the tax authorities made 1 921 reports to law enforcement in 2010; 3 353 reports in 2009; 2 476 reports in 2008; and 1 230 reports in 2007. The Slovak authorities state that the majority of these reports relate to false accounting violations under section 259 CC. As noted in the Slovak Phase 2 evaluation,⁵⁶ however, it remains uncertain whether foreign bribery allegations would come to light via the enforcement of the Act on Accounting.

b) External audit requirements

(i) Auditing requirements

122. Since Phase 2, the Act on Accounting has been amended regarding the types of legal entities that must have their financial statements audited. According to Article 19, these entities include:

1. Enterprises that, at the date of submitting its financial statements and for the immediately preceding accounting period, met at least two of the following three requirements in the accounting period: (1) its total assets exceeded EUR 1 000 000; (2) its net turnover exceeded

55. Under Section 5(3f) of the Act No. 479/2009 Coll. on State Administration Authorities in the Area of Taxes and Charges, and in amendments to other acts, Slovak tax authorities are obliged to report suspicions of criminal offences to law enforcement authorities in relation to violations of specific regulations (e.g. the Criminal Code, Act No. 431/2002 on Accounting, Act No. 595/2003 Coll. on Income Tax, and Act No. 297/2008 Coll. on Protection against Legalisation of Proceeds from Criminal Activity and on Protection against Financing of Terrorism). Reporting obligations under Act No. 479/2009 are effective from 1 January 2012. Before 2012, the reporting obligation for the tax authorities was prescribed by Section 3(5e) and 4(3g) of the Act No. 150/2001 Coll. on Tax Authorities and by amendments to Act No. 440/2000 Coll. on Financial Control Administrations, as amended. Further, the duty for all government officials to report suspicions of criminal offences is prescribed by Section 3(2) of the Code of Criminal Procedures (Act No. 301/2005 Coll. as amended). The general duty to report suspicions of bribery is prescribed by Sections 340(1) and 341 (1) of the Criminal Code (Act No. 300/2005 Coll. as amended). See section B.10.b, below, for more on reporting suspected acts of foreign bribery.

56. Slovak Republic Phase 2 Report, par. 203.

EUR 2 000 000; or (3) its average calculated number of employees exceeded 30 in a single accounting period;⁵⁷

2. Enterprises whose securities have been admitted to trading on a regulated market.

123. At the on-site visit, the Auditing Oversight Authority noted that, of the 350 000 to 400 000 companies operating in the Slovak Republic, 10 000 to 12 000 legal entities are required to undergo an external audit. This figure includes public entities, such as municipal government bodies. The Slovak Republic does not have statistics available to concretely determine whether, with the amendments to the Act on Accounting, the number of entities subject to external audits has increased, though “it is assumed that the number has not decreased materially.”

124. Also since Phase 2, the Act on Accounting has introduced under Article 19a a requirement for listed and other public interest companies to establish audit committees. Such committees are required to: “(a) monitor the preparing of the financial statements and observation of the special regulations; (b) monitor the efficiency of internal control and systems of risk management in the accounting entity; (c) monitor the audit of the individual financial statements and audit of the consolidated financial statements; (d) examine and monitor the independency of the auditor, especially services provided by the auditor according to a special regulation; (e) recommend an auditor for appointment for carrying out of audit for the accounting entity; and (f) set a date for an auditor to submit a statutory declaration about his/her independency.”

125. The Act on Accounting has also been amended since Phase 2 to include Article 20, which introduces a requirement for those legal entities that must have their financial statements audited under Article 19 to issue an annual report, which must contain the financial statements and the auditor’s report of the financial statements. Under Article 20.6, listed companies must include in their annual reports their internal controls, ethics, and compliance programmes or measures. To date, no foreign bribery investigations have been triggered by reports from external auditors.

(ii) *Auditing standards*

126. The Act 540/2007 Coll. on Auditors and Audit Oversight, effective from 2008, regulates the terms and conditions for the performance of an audit and the status and activities of auditors and audit firms. It replaces the former Act 466/2002 Coll. on Auditors and the Slovak Chamber of Auditors. Most changes were made to bring the Slovak Republic’s auditing requirements into line with European and international standards, including the International Standards on Auditing 240 and 260, described in more detail in section (iii) below.

127. One of the main changes introduced with the Act is the creation of the Oversight Auditing Authority (Article 46), an independent supervisory body charged with registering and maintaining the national and publicly available register of auditors and audit firms operating in the Slovak Republic and with ensuring compliance with the Act on Auditors and Audit Oversight, international auditing standards, and the Slovak Code of Ethics for Auditors. The Oversight Auditing Authority has 13 employees and, since its establishment in 2008, has conducted an average of 15 to 25 audit performance inspections per

57. As of the Slovak Republic Phase 2 report in 2005, companies that were required to have their financial statements audited had to meet at least two of the following three criteria in the year preceding the relevant accounting period: (1) total assets exceeding SKK 20 million (approx. EUR 520 000), (2) net turnover exceeding SKK 40 million (approx. EUR 1.04 million), and (3) the average number of employees exceeding 20. (See par. 75 of the Phase 2 report.)

year. The Oversight Auditing Authority reports that none of these inspections to date have been related to foreign bribery.

(iii) *Reports by auditors*

128. In addition to the general duty to report a crime under section 340 CC, auditors are required to report, in writing and without delay, suspicions of corruption to law enforcement authorities and the audit committee, if established, under Article 27.3 of the Act on Auditors and Audit Oversight. Likewise, the Slovak Chamber of Auditors Code of Ethics requires an auditor to inform the management, and, upon consideration, those charged with governance of the accounting unit, any and all deficiencies identified with respect to the disclosure of fraud (International Standard on Auditing [ISA] 240 in connection with ISA 260).⁵⁸

129. In discussions with the accounting and auditing profession, it was unclear what specific reporting procedures are followed under Article 27.3 and it was felt greater awareness of this measure, as well as more guidance on how to report suspected corrupt behaviour would be useful, especially for smaller audit firms. The Slovak authorities do not have statistics as to the number of reports that have been made by external auditors under Article 27.3. These reports would not include suspicious transaction reports required under the Slovak money-laundering legislation. (See section B.6 for more information on anti-money laundering efforts in the Slovak Republic.)

130. Article 30 of the Act requires auditors to maintain confidentiality, though paragraphs 4 and 5 state that the confidentiality obligation shall not apply to instances involving a duty imposed by law or the duty to prevent a crime from being committed, as is the case under section 340 CC and Article 27.3 of the Act on Auditors and Audit Oversight. Likewise, while the Slovak Chamber of Auditors Code of Ethics also requires a confidentiality obligation, the confidentiality obligation does not apply if the auditor is obliged to report or prevent a criminal act. The Code further states that, if the auditor suspects, based on audit evidence, that a criminal offence was committed, it is recommended to consider—after consultation with a lawyer—whether the auditor is “obliged” to inform law enforcement authorities.

c) *Company internal controls, ethics and compliance programmes or measures*

131. During the on-site visit, representatives of the accounting and auditing profession and the business sector noted that, in the Slovak Republic, most business entities operate as Slovak subsidiaries of foreign multinational enterprises (MNEs), whose headquarters have imposed internal controls and compliance programmes. (As noted in the Introduction to this report, the perception among the private sector representatives present during the on-site visit is that the vast majority of larger enterprises operating in the Slovak Republic are foreign-owned or controlled. One representative noted that the percentage of foreign-owned enterprises was as high as 95 percent.) The majority of the accounting and auditing and business sector representatives participating in the on-site visit worked for MNEs headquartered in countries that are Party to the Anti-Bribery Convention and therefore had specific measures for preventing bribery in their business dealings in order to comply with legislations such as the U.S. Foreign Corrupt Practices Act (FCPA) or the UK Bribery Act. No small- to medium-sized enterprises (SMEs) participated

58. ISA 240, ‘The Auditor’s Responsibilities Relating to Fraud in an Audit of Financial Statements,’ can be found online here: <http://www.ifac.org/sites/default/files/downloads/a012-2010-iaasb-handbook-isa-240.pdf>. ISA 240 states: ‘Although the auditor’s professional duty to maintain the confidentiality of client information may preclude such reporting, the auditor’s legal responsibilities may override the duty of confidentiality in some circumstances.’

ISA 260, ‘Communication with Those Charged with Governance,’ can be found online here: <http://www.ifac.org/sites/default/files/downloads/a014-2010-iaasb-handbook-isa-260.pdf>

in the on-site visit, and so it is difficult to assess their familiarity with, or use of, company internal controls, ethics and compliance programmes or measures. Likewise, private equity firms, which as discussed in Section A.4.a. above are increasingly investing outside Slovak borders, also did not participate. No domestic efforts have been made by the Slovak Government, business organisations or professional associations to raise awareness of the measures proposed in Annex II of the 2009 Anti-Bribery Recommendation, the Good Practice Guidance on Internal Controls, Ethics and Compliance either among MNEs or SMEs. (A representative from the Slovak National Agency for Development of Small and Medium Enterprises noted it focuses on domestic issues, primarily related to public procurement.)

d) Awareness of foreign bribery among accountants and auditors

132. In its assessment of the Slovak written follow-up report, the Working Group noted that the Slovak Republic still needed to raise greater awareness of foreign bribery among accountants and auditors. The awareness of these matters within the Slovak accounting and auditing professions remains low. The professional regulatory bodies have done little to raise awareness of foreign bribery, nor have they included foreign bribery as a component of their training activities. The Slovak Chamber of Auditors organises trainings for auditors and audit assistants and has provided guidance materials on anti-money laundering, but not on foreign bribery, nor the reporting requirements established under Article 27.3 of the Act on Auditors and Audit Oversight. The Ministry of Finance website's "Accounting" section includes information on the general duty on all persons to report corruption under the Criminal Code. The web page also contains the OECD Anti-Bribery Convention and related instruments.⁵⁹

Commentary:

The lead examiners welcome the steps taken by Slovak authorities to address some of the concerns raised by the Working Group in Phase 2 and to bring the Slovak auditing regulations in line with international auditing standards. The lead examiners also commend the Slovak Republic for being one of the few WGB countries to require external auditors to report possible illegal acts to law enforcement authorities.

However, the lead examiners remain concerned that the Slovak Republic is not taking appropriate measures to enforce accounting and auditing offences in connection with bribery cases and that the sanctions for false accounting imposed in practice to date, although numerous, may not reach a sufficient level to be effective, proportionate and dissuasive. Therefore, the lead examiners recommend that the Slovak Republic take measures to ensure that the provisions in Slovak legislation implementing Article 8 of the Convention are fully used to prevent and detect accounting offences linked to corruption cases, in particular foreign bribery. In addition, they reiterate Recommendation 12.b. of Phase 2 to ensure that sanctions for false accounting are effective, proportionate and dissuasive.

The lead examiners also recommend that the Slovak Republic work with the accounting and auditing profession—including the Slovak Chamber of Auditors and the Slovak Chamber of Certified Accountants—to (i) provide training and awareness-raising on foreign bribery targeting the accounting and auditing profession, (ii) to raise awareness of the need for internal controls, ethics and compliance measures, as recommended in the Good Practice Guidance on Internal Controls, Ethics and Compliance, and (iii) provide clearer guidance on reporting requirements introduced under Article 27.3 of the Act on Auditors.

8. Tax measures for combating bribery

59 . <http://www.finance.gov.sk/Default.aspx?CatID=6516> (available in Slovak only)

a) *Non-deductibility of bribes*

133. Although the Slovak Republic claimed at the time of the Phase 2 examination that its laws did not allow for the tax deductibility of bribe payments, the Working Group recommended that the Slovak Republic introduce an express denial of tax deductibility of bribe payments to foreign public officials. During the Phase 2 follow-up, the Working Group noted that the Slovak Republic had done so and determined that this recommendation was fully implemented. Effective 1 January 2006, Subsection 1(c) of section 21 of the Act No. 595/2003 Coll. on Income Tax expressly prohibits tax deductions for the payment of bribes. This law complies with Recommendation I(i) of the 2009 Tax Recommendation (and Recommendation VIII(i) of the 2009 Recommendation) by explicitly disallowing the tax deductibility of bribes to foreign public officials.

b) *Detection and reporting of suspicions of foreign bribery*

134. Recommendations I(ii) and II of the 2009 Tax Recommendation (and Recommendation VIII(i) of the 2009 Recommendation) address the effective detection and reporting by tax authorities of suspicions of foreign bribery. In Phase 2, in order to improve the detection and reporting of suspicions of foreign bribery, the Working Group recommended that the Slovak Republic provide guidelines, instructions and training to tax examiners on detecting foreign bribery during tax audits. During the Phase 2 follow-up, the Working Group noted that the Tax School had added detection of foreign bribery to its curriculum, training on foreign bribery had been given to Tax Administration employees, managers, and new recruits, and the OECD Bribery Awareness Handbook for Tax Examiners was translated into Slovak and posted on the Internet. The Working Group determined that this recommendation had been fully implemented.

135. However, since that time, it appears that very little has been done to implement Recommendations I(ii) and II of the 2009 Tax Recommendation (and Recommendation VIII(i) of the 2009 Recommendation). Training on detecting foreign bribery has not been provided to Tax Directorate employees in recent years, and the employees there admit a lack of experience with international business transactions. Moreover, representatives of the Tax Directorate who participated in the on-site visit advised the lead examiners that while new employees receive training on corruption matters, they are not trained specifically on detecting foreign bribery. The corruption training that has been offered in recent years to Tax Directorate employees has focused on combating corruption *within* the Tax Directorate. The Bribery Awareness Handbook for Tax Examiners is available to employees, but there is no active outreach to employees to assure that they have read or understand it.

136. Slovak tax officials have never reported a suspicion of foreign bribery to law enforcement officials. Tax Directorate employees are subject to the same duty to report suspicions of crime as the general public, and they are aware of that duty. Should a tax examiner detect a suspicion of a crime, the examiner may report it to his or her audit authority, who in turn reports it to law enforcement officials, or the examiner may directly report the information to law enforcement officials. Examiners have made reports to law enforcement officials of suspicions of other crimes. The reporting mechanism appears to be functioning. The lack of any report by a tax examiner of a suspicion of foreign bribery still appears to be an issue of lack of training on detection.

c) *Bilateral and multilateral tax treaties and the sharing of information by tax authorities*

137. During Phase 2, it was noted that Slovak tax authorities may share information with foreign tax authorities, and pursuant to international treaties and special domestic legislation, the general duty of confidentiality does not apply to information provided to foreign tax authorities. Slovak tax authorities may share information with foreign tax authorities voluntarily or on request.

138. Although it was reported during Phase 2 that foreign tax officials who receive information from Slovak tax officials may provide that information to their own law enforcement officials, the basis and authority for such sharing was not noted. There is no clear authority that allows foreign tax authorities to share information received from Slovak tax authorities with their own law enforcement officials.

139. At the time of the Phase 2 report, Slovak authorities expressed an intention to amend the country's bilateral tax treaties to include, and include in future bilateral tax treaties, the optional language of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Treaty, which under certain conditions allows the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters, including corruption. It has not done so. Moreover, the Slovak Republic no longer expresses an intention to do so. Slovak authorities also have not signed the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters, which provides that "information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use."⁶⁰

Commentary:

The lead examiners congratulate the Slovak Republic on adopting an express denial of tax deductibility of bribe payments and coming into compliance with Recommendation I(i) of the 2009 Tax Recommendation (and Recommendation VIII(i) of the 2009 Recommendation).

However, the lead examiners are concerned with the lack of any reports of suspicions of foreign bribery by tax examiners. This does not appear to be an issue caused by tax examiners' lack of awareness of the duty to report crime to law enforcement. It does appear to be an issue caused by lack of awareness of how to detect the crime of foreign bribery during a tax audit. The lead examiners are concerned that there appears to have been very little effort to continue the training of tax examiners or to provide them with any guidance that would facilitate the reporting of suspicious transactions, which is required by Recommendation I(ii) of the 2009 Tax Recommendation. The lead examiners recommend that such training be provided on a continuing basis.

The lead examiners also regret that there has been no follow through by the Slovak Republic with the intention it expressed during the Phase 2 examination to amend the country's tax treaties to include, and include in future tax treaties, the optional language of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Treaty. They encourage the Slovak Republic to move forward with making such amendments to prior treaties and proposals in future treaties, and to consider signing the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters.

9. International cooperation

140. The procedural and operational aspects of mutual legal assistance (MLA) and extradition in the Slovak Republic have not changed since Phase 2. MLA and extradition in the Slovak Republic may be provided on the basis of a treaty, reciprocity, or relevant European Union legal instruments under which the Slovak Republic undertakes judicial cooperation within the EU, including MLA and extradition.⁶¹

60. See article 22.4 at <http://www.oecd.org/dataoecd/11/29/2499078.pdf>.

61. The Slovak Republic specifies that these instruments include applicable EU framework decisions (including Council Framework decisions 2002/584/JHA of 13 June 2002, 2003/577/JHA of 22 July 2003,

141. There have been no outgoing or incoming extradition requests in foreign bribery matters in the Slovak Republic. The Slovak Republic requires both reciprocity and dual criminality for extradition. Due to lack of practical experience, however, it is not clear whether these would pose any impediment to effective extradition in foreign bribery matters.

142. Since Phase 2, Slovak authorities have sent MLA requests to six countries in two foreign bribery matters. During that same time, they received one MLA request in a foreign bribery investigation from one of the countries to which they sent an MLA request in a foreign bribery matter. The Slovak Republic does not have an MLA treaty relationship with four of the six countries to whom it sent the MLA requests. This proved to be a major impediment to the execution of its requests. None of the requests to those countries were executed, and several were simply never met with an answer of any kind. One of the four countries sent its own MLA request to the Slovak Republic in relation to its own foreign bribery investigation (related to the investigation of the Slovak Republic). Although the Slovak Republic is able to execute the request on the basis of reciprocity, at the time of the on-site visit it had not done so, and it is not clear how proactive Slovakian officials have been with this other country in working on getting each country's requests to one another executed.

143. It remains unclear whether, in practice, the Slovak Republic could provide effective MLA in a foreign bribery investigation where the target was a legal person. The Slovak Republic reported during the on-site visit that it has not received any MLA requests for any offense where the target was a legal person. During Phase 2, the Slovak authorities stated they could provide MLA where the target of a foreign bribery investigation was a legal person, even though at that time the Slovak Republic did not impose any sort of criminal liability on legal persons. Even though currently there is a serious lack of clarity about the protective measures that can be imposed against legal persons in the country, the Slovak Republic's ability to provide MLA where the target is a legal person should not be more restrictive than it was in Phase 2, and it should still have the ability to provide MLA where the target is a legal person.

144. More broadly, the Slovak Republic is making efforts to improve international cooperation in corruption cases. The Slovak Republic is one of three countries organizing an international project called the European Anti-Corruption Training ("EACT"), which is aimed at assisting with the investigation and detection of corruption offenses, corruption prevention, and international cooperation in corruption matters. This project is taking place between 2011 and 2013 and will include the anti-corruption units from the members of the European Union, Western Balkan and other European countries. In the end, the goal is to produce a practical manual on investigation, prevention, and international cooperation in corruption matters, which will include case studies.

Commentary:

The absence of a substantial number of foreign bribery cases in the Slovak Republic, as well as of incoming MLA requests relating to foreign bribery cases, makes it difficult to assess the enforcement of international cooperation obligations under the Convention in practice. The lead examiners suggest that this issue be re-visited as practice develops, but also note that the lack of a mechanism by which lead examiners could obtain information from other Parties to the Convention on their experiences in cooperation by the Slovak Republic may makes this difficult to follow-up. They therefore consider that the question of how to assess the practice of Parties in responding to MLA requests is a cross-cutting issue that should be examined by the Working Group.

2005/214/JHA of 24 February 2005, 2008/947/JHA of 27 November 2008, 2009/299/JHA of 26 February 2009, 2008/909/JHA of 27 November 2008, 2005/876/JHA of 21 November 2005) and the May 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

The lead examiners welcome the Slovak Republic's effort to improve international coordination and cooperation in corruption matters through the EACT initiative. The lead examiners encourage Slovakian law enforcement officials to be more proactive about following up on outstanding MLA requests in foreign bribery matters, and make all reasonable efforts to execute incoming MLA requests in foreign bribery matters, even where the request is not based on a treaty but is based on reciprocity. The lead examiners also recommend that the Working Group continue to monitor whether the Slovak Republic is able to provide effective MLA in foreign bribery matters where the target of the foreign investigation is a legal person.

10. Public awareness and the reporting of foreign bribery

a) Awareness of the Convention and of the foreign bribery offence

145. In Phase 2, the Working Group recommended that the Slovak Republic do more to raise awareness in the private sector and among public officials. As of its Phase 2 written follow-up report, the Working Group decided the Slovak Republic had partially implemented its Recommendation to raise awareness, but should do more to raise awareness in the private sector. Following the on-site visit, the lead examiners assessed that, overall, the level of awareness of the Anti-Bribery Convention and the Slovak foreign bribery offence remains low among both the public and private sectors.

146. Since Phase 2, the Slovak Republic has made fighting corruption, albeit domestic corruption, a priority. In August 2011, the Government adopted a "Strategic Plan for Combating Corruption," which aims "to reduce corruption in the Slovak Republic, especially in public life and in the use of public funds and resources, while increasing transparency throughout the country." To monitor implementation of this plan, an inter-departmental group of government experts was organised and includes, as observers, representatives from Transparency International – Slovensko and the Fair Play Alliance. However, the Plan does not mention foreign bribery.

147. Other anti-corruption awareness-raising efforts include updates by the Ministry of Justice to the Prevention of Corruption Handbook, which according to the Slovak Phase 2 follow-up report includes information on the Criminal Code's corruption offences and international anti-corruption instruments, including the Slovak foreign bribery offence and the OECD Convention. The Handbook, which is used to train Ministry of Foreign Affairs officials posted abroad and is posted on the Export-Import bank of the Slovak Republic (EXIMBANKA SR) website, has not been updated to include the 2009 Anti-Bribery Recommendation nor its Annex II, the Good Practice Guidance on Internal Controls, Ethics and Compliance. In 2011, Office of the Government also organised a series of five seminars for public officials on "Increasing the legal awareness of corruption prevention and combating corruption". The trainings did not focus specifically on foreign bribery or the Slovak foreign bribery offence.

148. The Slovak Chamber of Commerce and Industry (SOPK) has made efforts to raise awareness among the private sector, for example by raising awareness of the International Chamber of Commerce's Rules of Conduct to Combat Extortion and Bribery and by recognising ethical enterprises via the annual "Grand Prix of SOPK" competition. To date, 115 businesses have competed for the Grand Prix, which aims to increase the number of clean businesses in the Slovak Republic. In 2008, representatives of the Slovak Financial Intelligence Unit and the Ministry of Interior presented to the SOPK government and supervisory boards on measures taken by the government to comply with the "resolution of the Slovak Government to 'Fight against Bribery in International Business Transactions, against the Legalisation of Proceeds from Crime and against Corruption'".

149. The private sector representatives participating in the on-site visit positively noted government efforts to raise awareness of domestic corruption. These individuals represented Slovak subsidiaries of

multinational entities headquartered in countries Party to the Anti-Bribery Convention, as well as representatives from Slovak business organisations and professional associations. They noted that Slovak subsidiaries of international companies usually learn about the Anti-Bribery Convention from their parent companies. Only one private sector representative was aware that the Slovak Republic specifically criminalises foreign bribery offence; none were aware that, under Slovak law, their companies could be forced into bankruptcy (as contemplated under new section 83(b) CC discussed above under section B.2.). At the same time, representatives noted that Slovak-owned enterprises are increasingly expanding beyond Slovak borders and investing in neighbouring jurisdictions.

b) Reporting suspected acts of foreign bribery

150. Section 340 CC requires all Slovak citizens who obtain trustworthy information about the commission of a crime by another person, carrying a maximum custodial sentence of at least ten years, or one of the corruption offences set forth under Title Three of Chapter Eight of the Special Part of the Criminal Code, to report the information without delay to the appropriate body. In addition to the general obligation to report crime under section 340 CC, “public authorities, higher territorial units, municipalities and other legal entities” must report to law enforcement a crime under section 3.2 CC.

151. To facilitate reporting by the general public, the Slovak Republic has set up “anti-corruption hotlines” at the Ministries of Justice, Interior, Defence, Education, Environment, and Finance, as well as with the Government Office. Reports are referred to the Bureau for the Fight against Corruption of the Police Force Presidium for further investigation. Citizens may also report suspicions via email to the Government Office (bpk@vlada.gov.sk), to the Bureau for the Fight against Corruption of the Police Force Presidium (korupcia@minv.sk), or by anonymously filling out an online form at www.minv.sk.

152. The Ministry of Interior’s Bureau of the Fight against Corruption reports that it regularly receives complaints from Slovak citizens who have been solicited for a bribe by a Slovak official, but there have been no reports of foreign bribery. It should be noted that a 2009 report on whistleblower protections in the Slovak Republic by Transparency International – Slovensko (TI-Slovensko)⁶² states that whistleblowing has a negative connotation in the Slovak republic and that, according to a 2006 TI survey, only 7% of Slovak citizens would notify the police if they were asked to pay a bribe, or if they knew of someone accepting bribes.

153. To date, the Ministry of Foreign Affairs officials posted abroad have not detected allegations of foreign bribery. Should such an allegation arise, MOFA states it would be shared with law enforcement, though there are no specific mechanisms for filing such reports. MOFA officials are provided anti-corruption training that includes reference to the Anti-Bribery Convention.

c) Whistleblower protection

154. According to the Slovak Government, current whistleblower protection legislation is fragmented and does not sufficiently provide guarantees of protection for informers of illegal activities. To address this problem, the Government’s Programme of Work for 2010 – 2014 has included developing new draft Law on Protection of Persons in Detecting the Criminal Offences Involving Bribery and Other Criminal Offences. The draft whistleblower protection law has been developed in consultation with the Ministries of Interior, Justice and Labour and is now under consultation via an inter-ministerial procedure. However,

62. Transparency International – Slovensko, *Whistleblower Protection Assessment – Slovakia*, May 2009 (http://www.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers/assessment_of_whistleblowing_frameworks_in_10_european_countries)

both public and private sector representatives expressed doubt that the draft law would be passed in the near future, given the domestic political situation in the Slovak Republic.

155. Under the draft law, both private- and public-sector whistleblowers who report violations of “criminal offences against property, economic crimes and criminal offences of public officials” are afforded protection. While the text of the draft law was unavailable, the Slovak authorities stated that the legislation would provide protections to those reporting allegations of foreign bribery. The whistleblower seeking protection is guaranteed free legal aid on the basis of Act No. 372/2005 Coll. On Free Legal Aid to Person in Material Need. Finally, violators of whistleblower rights can be “sentenced up to the amount of 10% saved or returned property”, though “this amount cannot exceed 50 times the minimal salary.” The authority entitled to decide the sanction is the Ministry of Justice.

156. There were some developments on the draft law following the on-site visit. In February, the government adopted Resolution 50/2012, which requires that the draft whistleblower law be subject to an inter-ministerial consultation procedure, including review by the Ministries of Interior, Justice, Labour and Finance. In May, Parliament adopted the work programme of the new Slovak administration, which includes reference to strengthening whistleblower protections through the adoption of “new legislative measures”. The Slovak Ministry of Interior will present the draft law for consultation in June 2012.

Commentary:

The lead examiners are concerned with the lack of awareness of the foreign bribery offence in the Slovak Republic almost 13 years after the entry into force of the foreign bribery offence into the Slovak legislation and recommend that the Government actively step up its awareness-raising activities by, among other measures, clearly make fighting foreign bribery a priority by explicitly address foreign bribery in the Strategic Plan for Combating Corruption and by updating the Ministry of Justice Prevention of Corruption Handbook to include the 2009 Anti-Bribery Recommendation and its Annex II. As part of this effort, the lead examiners recommend that the Slovak Republic consider undertaking and publishing a risk assessment of its economy’s exposure to foreign bribery, given the important economic role played by MNEs with Slovak subsidiaries and the increasing number of Slovak enterprises investing abroad.

Given the still-low level of awareness among the private sector of the Slovak foreign bribery offence, the lead examiners also reiterate Recommendation 1.a. to take further action to raise awareness among Slovak businesses. In particular, the Ministry of Justice, the Public Procurement Office, and EXIMBANKA SR, together with business organisations like SARIO and the Slovak Chamber of Commerce and Industry, could play an important role in disseminating information on the risks of foreign bribery and anti-bribery compliance to Slovak companies conducting business abroad, such as the Good Practice Guidance on Internal Controls, Ethics and Compliance. Slovak foreign missions abroad should also play an important role in this regard. The lead examiners recommend that MOFA officials posted at these missions receive specific training on foreign bribery and have a clear mechanism in place for reporting suspicions of foreign bribery.

With regard to whistleblower protection systems in the Slovak Republic, the lead examiners encourage the Government to complete its drafting of whistleblower protection legislation for both public- and private-sector employees, as foreseen in the initial draft law under consultation via an inter-ministerial procedure at the time of the on-site visit. The lead examiners recommend that the Government urgently pass whistleblower protection legislation and, once passed, take steps to raise awareness of these new protections.

11. Public advantages

a) *Officially supported export credits*

157. EXIMBANKA SR⁶³ was established in 1997 to support the export and import activities of exporters and importers by financing export credits, insuring export credits and funding import credits with a view to increasing the competitiveness of domestic products and promoting economic relationships between the Slovak Republic and other countries. Since Phase 2, there are no outstanding recommendations related to the EXIMBANKA SR.

158. EXIMBANKA SR includes on its website (www.eximbanka.sk) the OECD Recommendation on Bribery and Officially Supported Export Credits and the government's Prevention of Corruption Handbook. Application forms for EXIMBANKA SR support comply with the requirements under the OECD Recommendation on Bribery and Officially Supported Export Credits.⁶⁴ In cases when EXIMBANKA SR has reason to believe that bribery may have occurred in an officially supported transaction, all official support procedures would be suspended. In Phase 2, EXIMBANKA SR further noted it will decline an application for support if it has reasonable suspicions that a transaction involves bribery.

159. EXIMBANKA SR has made efforts to raise awareness of the 2009 Anti-Bribery Recommendation by publishing press articles, in dealings with clients and applicants for support, in presentations, and including the Recommendation on its website and in its annual report. For EXIMBANKA SR staff, trainings have included information on money-laundering.

b) *Public procurement*

160. The Public Procurement Office oversees the public procurement process in the Slovak Republic. However, it is the responsibility of each individual government body that conducts a tender to ensure that participants do not have convictions for bribery. The Public Procurement Office becomes involved only when there is a complaint.

161. Act. No. 25/2006 Coll. of Laws on Public Procurement regulates the conditions for the participation in public procurement for both natural and legal persons. Section 26.1 of the Law on Public Procurement outlines the conditions which natural persons must meet in order to qualify for public procurement contracts, including disqualification for those convicted for the offence of corruption or an offence concerning the professional conduct of business. At the on-site visit, the Public Procurement Office stated that, since the Slovak Republic "does not have corporate criminal liability", a legal person would likely be disqualified from public procurement contracting if a natural person associated with that legal person violated section 26.1 of the Law on Public Procurement. There are no specific provisions in the Slovak Republic stipulating that a public procurement contract must be suspended or terminated if the natural or legal person carrying out that contract is convicted for corruption. However, the Public Procurement Office explained that the legal or natural person would be excluded from future contracts.

63. EXIMBANKA SR was established under Act No. 80/1997 Coll. on the Export-Import Bank Slovak Republic (<http://www.eximbanka.sk/buxus/docs/legal/EXIM802009.pdf>).

64. In their responses to the Phase 3 Questionnaires, the Slovak Authorities noted that application forms for export credit support reflect items (a) through (e) under Section 1 of the OECD Export Credit Recommendation. Further, the Secretariat to the Working Party on Export Credits and Credit Guarantees has confirmed that the Slovak Republic largely complies with this Recommendation.

162. Tenderers or candidates for public procurement contracts must prove that they meet the Personal Status requirements under section 26 of the Public Procurement Law by presenting an extract from the Slovak Penal Registry showing all valid convictions that is not older than three months. Government agencies awarding such contracts do not normally consider internal controls, ethics and compliance measures when awarding public procurement contracts.

163. At the on-site visit, the Ministry of Justice noted that the Slovak Republic had newly introduced on 1 January 2011 an obligation on all government agencies to publish public procurement contracts online.⁶⁵ This measure was applauded by both private sector and civil society as a sign of government's efforts to combat domestic corruption.

c) Official development assistance (ODA)

164. To date, no foreign bribery has been detected within the context of the Slovak official development assistance programme. The Slovak authorities explain that this is “due to the nature of projects being implemented and therefore a rather great extent of separation of contractors from foreign government officials that could be bribed in any form. If there had been such a case then it would have to be done by contractors themselves of which the Ministry is not aware”.

165. The Slovak ODA framework is overseen by the Ministry of Foreign Affairs (MoFA) and carried out by the Slovak Agency for International Development. MOFA explains that the procedures for applying for ODA are also subject to the Law on Public Procurement. According to OECD figures, Slovak ODA totalled 0.09 percent of the gross national income in 2011, or EUR 61.9 million.

166. In Phase 2, the Working Group recommended that the Slovak Republic raise greater awareness of foreign bribery. In the Phase 2 follow-up report, the Working Group found this recommendation partially implemented, noting that ODA recipients could especially benefit from awareness-raising efforts by the Government. However, no efforts have been made to raise greater awareness of foreign bribery among ODA recipients. MOFA had not sent information on foreign bribery to its staff and contractors participating in the ODA programme, though as noted above in section 10.b, all MOFA officials are provided anti-corruption training that includes reference to the Anti-Bribery Convention.

Commentary:

The lead examiners reiterate Recommendation 1 of Phase 2 to raise awareness in the private sector, especially among clients and potential clients of EXIMBANKA SR, which provides export credit assistance, and companies and individuals who are involved in projects funded by official development assistance.

The lead examiners commend efforts made by the Slovak Republic to improve transparency in public tenders. To prevent and detect foreign bribery in business transactions supported by Slovak public advantages, the lead examiners recommend that the Public Procurement Office, as well as the Ministry of Foreign Affairs and the Slovak Agency for International Development, actively raise awareness among their employees of the Slovak Republic's obligations under the OECD Anti-Bribery Convention and to work, along with EXIMBANKA SR, to raise awareness and provide notification to clients or applicants on the foreign bribery offence and the legal consequences under Slovak law.

65 . The central contracts registry website can be found online here: <http://crz.gov.sk/>.

On ODA, the lead examiners note that ODA policy and procedures in the Slovak Republic are at an early stage of development and involve small amounts of public funds. They recommend that, as these policies and procedures develop, the Slovak Republic consider systematically including anti-corruption provisions in bilateral aid-funded procurement, as recommended by the 1996 DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

167. The Working Group on Bribery commends the Slovak authorities for their full cooperation, disclosure and openness to the examiners' assessment and Working Group recommendations throughout the Phase 3 process. The Group also notes the efforts made by the Slovak Republic since Phase 2 to adapt a number of aspects of its legislative framework for prosecuting the foreign bribery offence. It is also encouraged by the clarification of the role of the bodies in charge of the investigation and prosecution of corruption and the creation of a Specialised Criminal Court, as well as by the decision to increase awareness and transparency of all judgements including on plea bargaining through their online publication. The Working Group remains, however, concerned that, 12 years after the entry into force of the Convention in the Slovak Republic, the transposition of the Convention into the Slovak legislation remains incomplete, in particular with regard to the introduction of an effective regime of corporate liability, which ensures that legal persons are held liable for the offence of foreign bribery. The Slovak Republic also does not appear to be actively enforcing its foreign bribery offence, with only one case that has so far given rise to an investigation. At the time of this report, the Slovak Republic had stopped its investigation.

168. In addition, the Phase 2 evaluation report on the Slovak Republic adopted in December 2005 included recommendations and issues for follow-up (as set out in Annex 1). Of the recommendations that had not been fully implemented at the time of the Slovak Republic's January 2008 Written Follow-Up Report, the Working Group concludes that recommendation 5 has been implemented, recommendations 1a, 9a, and 11 remain partially implemented and recommendations 8a and 10 remain not implemented.

169. In conclusion, based on the findings in this report, regarding implementation by the Slovak Republic of the Convention and the 2009 Recommendation, the Working Group: (1) makes the following recommendations to enhance implementation of the Convention in Part I; and (2) will follow-up the issues identified in Part II. The Working Group invites the Slovak Republic to report in writing on the implementation of Recommendation 2 within six months of this report (*i.e.* in December 2012) and every six months thereafter, if needed. As well, as part of its regular Phase 3 evaluation process, the Working Group invites the Slovak Republic to report orally on the implementation of recommendations 1, 4 and 9 within one year of this report (*i.e.* in June 2013). It further invites the Slovak Republic to submit a written follow-up report on all recommendations and follow-up issues within two years (*i.e.* in June 2014). If, by the time of this written follow up report, the Slovak Republic has not completed the reform it has initiated to establish the liability of legal persons with regard to cases of foreign bribery, the Working Group will undertake additional follow-up measures to the Phase 3 evaluation of the Slovak Republic. In the meantime, the Working Group will consider constructive and proactive ways, in cooperation with the Slovak Republic, to share best practices of other Parties' implementation of Article 2 and to raise awareness and better understanding of the need for effective corporate liability for the crime of foreign bribery in the Slovak Republic public and private sectors.

1. Recommendations of the Working Group

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

1. Regarding the foreign bribery offence, the Working Group recommends that the Slovak Republic:

- (a) Clarify as soon as possible, by any appropriate means, that the requirement under section 128(2) CC that the offence be committed in connection with the public official's "competencies for running public affairs" shall be interpreted as covering any use of the public official's position whether or not it is within the official's authorised competence [Convention, Article 1, 4 (c)];
- (b) Amend the wording of section 335 CC to align it to the broader definition of a foreign public official provided under section 128 CC and hence ensure the coverage of "any officials or agent of a public international organisation" in the definition of the foreign bribery offence [Convention, Article 1, 4 (a), Phase 2 evaluation, issue for follow up 14 (a)];
- (c) Amend its legislation to exclude the defence of effective regrets from the offence of foreign bribery under section 335 CC and from the provisions applying to legal persons, currently under sections 83(a)(2) and 83(b)(2) CC [Convention, Article 1, 2009 Recommendation III(ii) and V, Phase 2 evaluation, recommendation 8a.]; and
- (d) Urgently take the necessary steps to ensure that the granting of immunity to cooperating offenders is not an impediment to the prosecution of the author of a bribe paid to a foreign public official and hence to the effective enforcement of the foreign bribery offence and that guidelines are issued by the appropriate authorities to explain certain key concepts, such as "significant contribution to clarifying a case of corruption" [Convention, Article 1, 2009 Recommendation III(ii) and V, Phase 2 evaluation, recommendation 8b, follow up issue 14(b)].

2. Regarding the responsibility of legal persons, the Working Group urges the Slovak Republic to, as a matter of priority, establish the liability of legal persons, to ensure that legal persons can be held liable for the offence of bribery of a foreign public official (reiterates Recommendation 10 of Phase 2), including when using intermediaries, and that the system thus established take one of the approaches described in Annex 1 to the 2009 Recommendation. [Convention, Article 2, 2009 Recommendation IV, Phase 2 evaluation, recommendation 10]

3. Regarding sanctions and confiscation, the Working Group recommends that the Slovak Republic:

- (a) Take steps to ensure that the sanctions available under Slovak legislation are effective, proportionate and dissuasive in all foreign bribery cases, including through (i) continuing to raise awareness amongst the prosecutors and judges of the availability of fines as an optional part of the sentence, although it was deleted from the new text of the offence under section 334 and 335; (ii) eliminating the requirement that the offender "gained or tried to gain a property benefit" in order for a fine to be imposed; and (iii) reconsidering the enforceability and proportionality of mandatory forfeiture for aggravated foreign bribery offences [Convention, Article 3, 2009 Recommendation III(ii) and V];
- (b) (i) Revisit its current system of "preventive measures of confiscation" and repeal sections 83a and 83b of its Criminal Code; (ii) introduce in its legal system effective, proportionate and dissuasive sanctions, including monetary sanctions, applicable to legal persons responsible for bribery of foreign officials, pursuant to a clearly established concept of liability for legal persons; (iii) ensure that the concepts of confiscation and pecuniary penalties be separated, in order to comply with Article 3 of the Convention; and (iv) ensure that the range of legal persons subject to sanctions is broad enough to include State owned and State controlled companies [Convention, Article 3, 2009 Recommendation III(ii) and V];

- (c) Provide training to judges and prosecutors to increase their awareness of the mandatory nature of the confiscation of the bribe and the proceeds of bribery for natural persons convicted of non-aggravated foreign bribery, as well as many types of domestic bribery, pursuant to section 60 of the Criminal Code [Convention, Article 3, 3].

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that the Slovak Republic:

- (a) Increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage, both to increase sources of allegations and enhance investigations [Article 5, 2009 Recommendation IX., Annex I, D.];
- (b) Take the necessary steps to ensure that: (i) investigations and prosecutions of foreign bribery cases are not influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or the legal persons involved; and that (ii) foreign bribery allegations are promptly investigated and prosecuted as appropriate [Convention, Article 5];
- (c) Continue the efforts made since Phase 2 to ensure that the Special Court and Special Prosecutor's office are adequately staffed and that the Special Prosecutor's Office fill the four remaining prosecutor positions that are still open and therefore fully implement Phase 2 recommendation 9a.[Convention, Article 5, 2009 Recommendation, Annex I, D]; and
- (d) Provide adequate training to the law enforcement authorities and police forces: (i) on the specificity of the foreign bribery offence; (ii) on the investigative techniques adapted to this offence; and, more generally, (iii) about the need to more actively and proactively detect, investigate and prosecute the offence of bribery of foreign public officials by both individuals and companies [Convention, Article 5, 2009 Recommendation, Annex I, D].

5. Regarding mutual legal assistance (MLA), the Working Group recommends that the Slovak Republic ensure that its authorities are more proactive about following up on outstanding MLA requests and on executing incoming MLA requests in foreign bribery matters [Convention Article 9; 2009 Recommendation XIII].

Recommendations for ensuring effective prevention and detection of foreign bribery

6. Regarding money laundering, the Working Group recommends that the Slovak Republic: (i) take appropriate measures to effectively enforce its money laundering offence, particularly in connection with bribery cases (reiterates Recommendation 11 of Phase 2); (ii) that it take all necessary measures to ensure that all stakeholders involved in fighting money laundering be adequately made aware that the bribery of foreign public officials is a predicate offence to money laundering, including by offering training to investigators and prosecutors concerning how to build evidence of money laundering offences in corruption cases; and (iii) that it examine its investigative and prosecution priorities to determine whether the way resources are focused creates an impediment to pursuing money laundering offences and whether more resources are necessary [Convention, Article 7; 2009 Recommendation III(i, ii)].

7. Regarding accounting requirements, external audit, and corporate compliance, the Working Group recommends that the Slovak Republic:

- a. Ensure that the provisions in Slovak legislation implementing Article 8 of the Convention are fully used to prevent and detect accounting offences linked to corruption cases, in particular foreign bribery, and that the sanctions for false accounting in practice are effective, proportionate and dissuasive (reiterates Recommendation 12.b. of Phase 2) [Convention Article 8; 2009 Recommendation X(A(iii))]; and
 - b. Provide training and awareness-raising in foreign bribery that targets the accounting and auditing profession; raise awareness of the need for internal controls, ethics and compliance measures; and provide clearer guidance on reporting requirements introduced under 27.3 of the Act on Accounting [2009 Recommendation III(i), X.B, X.C].
8. Regarding tax measures, the Working Group recommends that the Slovak Republic:
- (a) Provide guidelines and training to tax inspectors as to the types of expenses that constitute bribes to foreign public officials, using the OECD Bribery Awareness Handbook for Tax Examiners [2009 Recommendation VIII(i); 2009 Tax Recommendation II]; and
 - (b) Consider the inclusion of the optional language in paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention in all future bilateral tax treaties and consider signing the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters [2009 Recommendation VIII (i); 2009 Tax Recommendation I(iii)].
9. With respect to awareness-raising, the Working Group recommends that the Slovak Republic actively step up its awareness-raising activities by, among other measures: (i) clearly making foreign bribery a priority by addressing foreign bribery in its national anti-corruption policy; (ii) including the 2009 Anti-Bribery Recommendation in the Ministry of Justice's Prevention of Corruption Handbook; (iii) considering undertaking and publishing a risk assessment of the Slovak economy's exposure to foreign bribery; (iv) taking further action to raise awareness of the Slovak foreign bribery offence among the private sector (reiterates recommendation 1.a. of Phase 2); and (v) raise awareness of foreign bribery among public officials, particularly those involved in public advantages, of the Slovak Republic's obligations under the Anti-Bribery Convention [2009 Recommendation III(i)].
10. Regarding whistleblower protection, the Working Group recommends that the Slovak Republic urgently pass whistleblower protection legislation and, once passed, take steps to raise awareness of these new protections [2009 Recommendation IX(iii)].
11. Regarding official development assistance, the Working Group recommends that the Slovak Republic consider systematically including anti-corruption provisions in bilateral aid-funding procurement [2009 Recommendation XI(ii)].
- 2. Follow-up by the Working Group**
12. The Working Group will also follow up the issues below as case law and practice develop:

- (a) The determination of aggravated and non aggravated foreign bribery and the application of corresponding level of sentence [Convention, Article 1 and 3];
- (b) The statistics concerning confiscation orders in domestic and foreign bribery cases [Convention, Article 3.3, 2009 Recommendation III(ii)];
- (c) The Court decisions published online include elements of the arrangements reached through plea bargaining agreements, when appropriate, such as the reasons why such a plea bargain was deemed appropriate in a specific case and the terms of the arrangement (in particular, the amount agreed to be paid) to ensure accountability, raise awareness, and enhance public confidence in the enforcement of the anti-corruption legislation in the Slovak Republic [Convention, Article 3];
- (d) The application of the statute of limitations, to ensure that it allows an adequate period of time for the investigation and prosecution of the foreign bribery offence [Convention Article 6];
- (e) The efficiency of mechanisms for incoming and outgoing mutual legal assistance regarding cases of bribing foreign public officials, in particular where the target of the foreign investigation is a legal person [Convention Article 9; 2009 Recommendation XIII];
- (f) The application of the money laundering offence, given the absence of investigations and prosecutions of money laundering based on a predicate offence of foreign bribery [Convention Article 7].

**ANNEX 1 PHASE 2 RECOMMENDATIONS TO THE SLOVAK REPUBLIC AND
ASSESSMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY**

Recommendations in Phase 2		<i>Written follow-up*</i>
Recommendations concerning Prevention, Detection and Awareness of Foreign Bribery		
Concerning <u>raising awareness</u> of the Convention, the Revised Recommendation and the foreign bribery offence, the Working Group recommends that:		
1a.	Slovakia take further action to raise awareness in the private sector, especially among (1) the private sector and the business community, and particularly those enterprises which operate internationally, (2) the accounting, auditing and legal professions, (3) clients and potential clients of EXIMBANKA SR, and (4) companies and individuals who are involved in projects funded by official development assistance;	<i>Partially Implemented</i>
1b.	Slovakia raise awareness of foreign bribery among public officials, particularly those of (1) EXIMBANKA SR, (2) the Ministry of Foreign Affairs involved in official development assistance, (3) the tax authority, (4) the Supreme Audit Office, and (5) foreign representations, including embassies; and	<i>Fully Implemented</i>
1c.	The Ministry of Justice publish the manual on the Convention at the earliest possible date (Revised Recommendation I).	<i>Fully Implemented</i>
Concerning the prevention and detection of foreign bribery through <u>taxation</u> , the Working Group recommends that Slovakia:		
2a.	Introduce an express denial of tax deductibility of bribe payments to foreign public officials (Revised Recommendation IV); and	<i>Fully Implemented</i>
2b.	Provide guidelines, instructions and training to tax examiners on detecting foreign bribery during tax audits (Revised Recommendation I).	<i>Fully Implemented</i>
Concerning prevention and detection of foreign bribery through <u>export credits</u> the Working Group recommends that:		
3.	EXIMBANKA SR require a client to disclose sufficient information, such as details on agents' commissions, which would enable EXIMBANKA SR to verify whether the client has engaged in foreign bribery (Revised Recommendation	<i>Fully Implemented</i>
Concerning prevention and detection of foreign bribery through <u>accounting and auditing</u> , the Working Group recommends that Slovakia:		
4a.	Ensure that accounting and auditing issues related to bribery are regularly examined in the context of the mandatory training requirements for auditors, including auditors	<i>Fully Implemented</i>

	of the Supreme Audit Office (Revised Recommendation I); and	
4b.	Require external auditors to report indications of a possible illegal act of bribery to internal corporate monitoring bodies as appropriate, and consider requiring external auditors to report such indications to competent authorities (Revised Recommendations V.B.iii and V.B.iv).	<i>Fully Implemented</i>
Concerning prevention and detection of foreign bribery through <u>anti-money laundering measures</u> ,		
5.	the Working Group recommends that Slovakia provide better guidance to entities that are required to report suspicious transactions, for instance, by providing typologies on money laundering where the predicate offence is bribery (Convention, Article 7; Revised Recommendation I).	<i>Partially Implemented</i>
Concerning <u>reporting</u> of foreign bribery cases, the Working Group recommends that Slovakia:		
6a.	Raise the awareness within the private sector and among public officials of the legal obligation under the Slovak Penal Code to report foreign bribery to law enforcement authorities;	<i>Fully Implemented</i>
6b.	Continue its efforts to make whistleblower protection under section 13 of the Labour Code more widely known among companies and the general public;	<i>Fully Implemented</i>
6c.	Maintain statistics as to the number and sources of allegations of bribery (Revised Recommendation I).	<i>Fully Implemented</i>
<i>Recommendations Pertaining to Investigation of Foreign Bribery</i>		
Concerning <u>investigation</u> of foreign bribery, the Working Group recommends that:		
7a.	the Slovak Police Academy continue to train police officers and recruits (including those who are not members of the Bureau of the Fight against Corruption) on investigating foreign bribery, including the practical aspects of bribery investigations;	<i>Fully Implemented</i>
7b.	Slovakia further enhance the co-operation among law enforcement agencies that are involved in combating foreign bribery (Revised Recommendation I).	<i>Fully Implemented</i>
<i>Recommendations Pertaining to Prosecution and Sanctioning of Foreign Bribery and Related Offences</i>		
Concerning the <u>offence of foreign bribery</u> the Working Group recommends that Slovakia :		
8a.	Amend its legislation to exclude the defence of “effective regret” from the offence of foreign bribery	<i>Not Implemented</i>
8b.	Ensure the provision of immunity to co-operating offenders is not an impediment to the effective enforcement of the foreign bribery offence (Convention, Article 1).	<i>Fully Implemented</i>
Concerning <u>prosecution</u> of foreign bribery, the Working Group recommends that:		
9a.	Slovakia ensure that the Special Court and the Office of the Special Prosecutor are effective in the fight against foreign bribery. In particular, they recommend that	<i>Partially Implemented</i>

	Slovakia ensure that these institutions are adequately staffed with prosecutors and judges	
9b.	The Slovak Judicial Academy organise training programmes on foreign bribery for the Special Judges and Special Prosecutors, including new recruits (Revised Recommendation I).	<i>Fully Implemented</i>
Concerning the <u>liability of legal persons</u> for foreign bribery, the Working Group strongly recommends that:		
10	Slovakia establish such liability without delay, and put in place sanctions that are effective, proportionate and dissuasive (Convention, Articles 2 and 3(2)). <i>(After the Written Follow up, Slovak Republic was invited to report within 6 months on the implementation of Recommendation 10)</i>	<i>Not Implemented</i>
Concerning the <u>offence of money laundering</u> , the Working Group recommends that:		
11	Slovakia take appropriate measures to enforce its money laundering offence more effectively, particularly in connection with bribery cases (Convention, Article 7).	<i>Partially Implemented</i>
Concerning the <u>offence of false accounting</u> , the Working Group recommends that Slovakia:		
12a.	Take appropriate measures to enforce accounting and auditing offences more effectively in connection with bribery cases;	<i>Fully Implemented</i>
12b.	Ensure that the sanctions for false accounting in practice are effective, proportionate and dissuasive (Convention, Article 8).	<i>Follow Up</i>
Concerning <u>sanctions</u> , the Working Group recommends that Slovakia:		
13	Continue to compile statistics on the criminal, civil and administrative sanctions (including confiscation) for domestic and foreign bribery, money laundering and false accounting (particularly those under the Act on Accounting) (Convention, Articles 3, 7 and 8(2)).	<i>Fully Implemented</i>

Follow-up by the Working Group

14. The Working Group will follow up the issues below as cases and practice develop in Slovakia:
- (a) whether the Slovak Penal Code covers the bribery of (1) a judge or an official of an international judicial institution that is not accepted by the Slovak Republic, and (2) an official or agent of a public international organisation of which Slovakia is not a member and with which Slovakia does not have a “conventional relationship” (Convention, Article 1);
 - (b) the application of the provision of immunity to co-operating offenders in foreign bribery cases (Convention, Article 1);
 - (c) the application of the defence of socially acceptable gifts in foreign bribery cases (Convention, Article 1); and
 - (d) the application of sanctions under the legislation implementing the Convention (i.e. the foreign bribery, money laundering and false accounting offences) (Convention, Articles 3, 7 and 8(2); Revised Recommendation V.A(iii)).

ANNEX 2 LEGISLATIVE EXTRACTS

Foreign bribery offence

Section 334, Criminal Code

- (1) Any person who gives, offers or promises a bribe to a foreign public official or to another person, either directly or through an intermediary, in connection with the official duties of the foreign public official with the aim to obtain or maintain an undue advantage, shall be punished by imprisonment for a term of two to five years.
- (2) The offender shall be punished by imprisonment for a term of five to twelve years if he commits the criminal offence referred to in paragraph 1 at a large scale.

(Previously Section 161(b))

- (1) Who offers, promises or gives a bribe or other undue advantage, whether directly or through intermediary, to a foreign public official in order that the official act or refrain from acting in relation to the performance of official duties with the intention to obtain or retain business or other improper advantage in the conduct of international business, shall be punished by the imprisonment of up to two years or a monetary sanction.*
- (2) The offender shall be punished by the imprisonment for one to five years, if he commits the offence referred to in para. 1 as the member of an organised group or if he obtains the advantage of large extent through such offence.*

Section 335, Criminal Code

- (1) Any person who, either directly or through an intermediary, gives, offers or promises a bribe to a member of a foreign parliamentary assembly, judge or official of an international judicial institution recognised by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organisation or institution of which the Slovak Republic is a member or with which the Slovak Republic has a contractual relationship, or to a person in a similar position, or gives, offers or promises a bribe to a third party for the same reason, shall be punished by imprisonment of two to five years.
- (2) The offender shall be punished by imprisonment for a term of five to twelve years if he commits the criminal offence referred to in paragraph 1 at a large scale.

(Previously Section 161(c))

- (1) Who, whether directly or through intermediary, to a member of a foreign public assembly, foreign parliamentary assembly, judge or officials of international court whose jurisdiction is accepted by the Slovak Republic or to the representative or employee of intergovernmental organisation or body, the Slovak Republic is a member or has the relationship following from a treaty, or to a person in the similar function, offers or promises the bribe or other undue advantage, to act or refrain from acting in performing his function, shall be punished by the imprisonment up to two years or by the monetary sanction.*
- (2) The offender shall be punished by the imprisonment for one to five years, if he commits the offence referred to in para. 1 as the member of an organised group or if he obtains the advantage of large extent through such offence.*

Definition of 'foreign public official'

Section 128, Criminal Code

- (2) For the purposes of this Act, foreign public officials shall mean any person holding an office
- (a) within the legislative power, a judicial authority or an arbitration authority, in non-legislative assembly or in the public administration authority of a foreign country including the head of State, or
 - (b) in a legal entity in which a foreign country exercises a decisive influence or in the international organisation established by States or another subjects of public international law, if the performance of their office also includes the competencies for running public affairs, and the criminal offence has been committed in connection with such competencies.

Confiscation measures applicable to legal persons

Section 83(a), Confiscation of a sum of money, Criminal Code

- (1) Court may impose the confiscation of a specific sum of money on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence in connection with:
- a) exercising the right to represent that legal person
 - b) exercising the right to make decisions in the name of that legal person
 - c) exercising the right to carry out the control within that legal person, or
 - d) negligence concerning the supervision or due diligence within that legal person
- (2) Protective measure pursuant to paragraph 1 shall not be imposed upon legal persons whose financial status as a debtor shall not be settled under a particular legal norm regulating bankruptcy proceedings, or if a property of the State or the European Union would be affected by the exercising of the protective measure, upon bodies of a foreign State and upon organizations of public international law. Nor shall it be imposed if the punishability of the criminal offence as described in paragraph 1 becomes extinct upon the expiry of the limitation period or on the basis of the effective regret.
- (3) Court may impose the confiscation of a sum of money described in paragraph 1 in amount of 800 Euro up to 1 660 000 Euro. When determining the amount of money to be confiscated the court shall consider seriousness of the committed criminal offence, extent of the offence, gained benefit, caused damage, circumstances of the commission of the criminal offence and consequences for the legal person. Court shall not impose the confiscation of money if, at the same time, it imposes the protective measure of confiscation of a property on the legal person pursuant to Section 83 b.
- (4) In the case of merger, fusion or division of the legal person the court shall impose the protective measure pursuant to paragraph 1 on the legal successor of the legal person which has been wound-up.
- (5) The paid or enforced sum of money escheats to the state unless the court decides otherwise in accordance with international treaty which has been promulgated and is binding on the Slovak Republic.

Section 83(b), Confiscation of a property, Criminal Code

- (1) Court shall impose the confiscation of a property on the legal person if the criminal offence, even as a criminal attempt, was committed or in the case of aiding and abetting a criminal offence as described in Section 58 paragraph 2 and if the legal person gained the property or its part by a crime or from proceeds of a crime, in connection with:
- a) exercising the right to represent that legal person
 - b) exercising the right to make decisions in the name of that legal person
 - c) exercising the right to carry out the control within that legal person, or
 - d) negligence concerning the supervision or due diligence within that legal person
- (2) Protective measure pursuant to paragraph 1 shall not be imposed upon legal persons whose financial status as a debtor shall not be settled under a particular legal norm regulating bankruptcy proceedings, or if a property of the State or the European Union would be affected by the exercising of the protective measure, upon bodies of a foreign State and upon organizations of public international law. Nor shall it be imposed if the punishability of the criminal offence as described in paragraph 1 becomes extinct upon the expiry of the limitation period or on the basis of the effective regret.

Defence of ‘effective regret’

Section 86, Criminal Code

(1) Punishability of the following criminal offences shall also become extinct...

(g) active bribery pursuant to Sections 332, 333 or 335, and trading in influence pursuant to Section 336 par. 2, if the offender provided or promised a bribe only because it was solicited, and he voluntarily and without delay reported this fact to the authorities with competence for criminal proceedings or to the Police Force; members of the armed forces may give such information to their commanding officers or service body, and persons serving their imprisonment sentence or remanded in custody may give such information also to the officer of the Corps of Prison and Court Guard.

Statute of limitations

Section 87, Criminal Code

(1) Punishability of an act shall become statute-barred on the expiry of the limitation period, which is

- a) thirty years in case of a crime, for which this Act allows life imprisonment,
- b) twenty years in case of a crime, for which the Special Part of this Act allows a maximum custodial penalty of at least ten years,
- c) ten years in case of other felonies,
- d) five years in case of a minor offence, for which the Special Part of this Act allows a maximum custodial penalty of at least three years,
- e) three years in case of other minor offences.

(2) The limitation period shall not include

- a) the period, during which the offender could not be made to stand trial because of legal impediments,
- b) the period, during which the offender stayed abroad with the intention to avoid criminal prosecution,
- c) the probationary period, in case of a conditional stay of criminal prosecution,
- d) the period, during which the bringing of indictment was temporarily postponed,
- e) the period, during which the criminal prosecution was interrupted.

(3) Limitation of criminal prosecution shall be interrupted

- a) by the bringing of an indictment for the criminal offence, which is subject to the limitation, and by the subsequent acts of criminal procedure authorities, a judge for pre-trial proceedings, or the court connected with the criminal prosecution of the offender, or
- b) when the offender commits an intentional criminal offence in the course of the limitation period.

(4) A new period of limitation shall commence to run as from the date of interruption of the initial limitation period.

Elements required in order to decide whether to prosecute or not

Section 119, Code of Criminal Proceedings

Para. 1 - in criminal proceedings, evidence shall have to be taken, in particular, on:

- a) whether the act has really occurred and has the elements of a criminal offence,
- b) who committed the act and on what motives,
- c) seriousness of the act including its causation and the conditions under which it was committed,
- d) personal situation of the perpetrator to the extent necessary for making a decision as to the type and length of punishment and the imposition of a protective measure, and for making other decisions,
- e) consequences and the extent of damage caused by a criminal offence,
- f) proceeds of crime and the means intended for the commission of a criminal offence, their location, nature, condition and value.

Definition of unusual transactions

Section 4, Unusual Transaction, Act No. 297/2008 Coll. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing

[U]nusual transaction shall mean especially a transaction:

- a) which with regard to its complexity, unusually high amount of funds or its other nature, goes apparently beyond the common framework or nature of a certain type of transaction or a transaction of a certain customer,
- b) which with regard to its complexity, unusually high amount of funds or its other nature, has no apparent economic purpose or visible lawful purpose,
- c) where the customer refuses to identify himself or to provide the information necessary for the obliged entity to perform customer due diligence under [other sections of this law],
- d) where the customer refuses to provide information of the upcoming transaction or tries to provide as little information as possible or shall provide such information that obliged entity can verify with great difficulty or only with vast expenses,
- e) where the customer demands its execution based on a project which raises doubts,
- f) where money of low nominal value in a considerably high amount are used,
- g) with a customer in whose case it can be presumed that with regard to his occupation, position or other characteristics, he is not or cannot be the owner of the required funds,
- h) where the amount of funds that the customer disposes of is in apparent disproportion to the nature or scope of his business activity or financial status declared by him,
- i) where there is a reasonable assumption that the customer or beneficial owner is a person on whom international sanctions are imposed under a special regulation or a person who might be related to a person on whom international sanctions are imposed under a special regulation or
- j) where there is a reasonable assumption that its subject is or is to be an object or a service that may relate to an object or a service on which international sanctions are imposed under a special regulation.

ANNEX 3 LIST OF PARTICIPANTS IN THE ON-SITE VISIT

<u>Government Ministries and Agencies</u>	
Auditing Oversight Authority	
Export-Import Bank of the Slovak Republic (EXIMBANKA SR)	<ul style="list-style-type: none"> • Division of International Relations and Communication • Legal, Claim Settlement and Debt Recovery Department
Ministry of Economy	<ul style="list-style-type: none"> • Coordination and EU Affairs Department • Division of Business Environment and Risk Capital analysis, National Agency for Development of Small and Medium Enterprises
Ministry of Foreign Affairs	<ul style="list-style-type: none"> • Development Aid Division • Territorial Unit
Ministry of Finance	<ul style="list-style-type: none"> • Banking Department • Department for Accounting Legislation and Methodology • Department of Direct Taxation • Department of Own Resources of State Supervision • Department of Tax Administration and Price Legislation • International Relations Department • Unit of the fight against corruption, Division of the fights against tax fraud, Tax Department • Unit of Internal Control, Division of the fights against tax fraud, Tax Department
Ministry of Justice	<ul style="list-style-type: none"> • Department of European and International Law • Department of Legislation • Division of Civil Law Legislation • Division of Criminal Law Legislation
National Bank of Slovakia	<ul style="list-style-type: none"> • Financial Market Supervision Div., Regulation and Financial Analysis Dept., Section of

	Banking & Payment Services Regulation
Office of the Government	<ul style="list-style-type: none"> • Department of the Control and the Fights against Corruption • Division of Central contact point for control and fight against corruption
Public Procurement Office	<ul style="list-style-type: none"> • Division of Law and Legislation • International Relations and EU Affairs • Methodology Division • Section of Analysis
Slovak Investment and Trade Development Agency (SARIO)	
<u>Law enforcement authorities and Judiciary</u>	
District Prosecutors Office, Bratislava V	
General Prosecutors Office	<ul style="list-style-type: none"> • Division of International Cooperation (MLA) • Economic Crime Division, Office of the Special Prosecutor • Office of the Special Prosecutor, Head of Section of the fight against organised crime, terrorism and international crime • Office of the Special Prosecutor, General Crime Division
Ministry of Interior	<ul style="list-style-type: none"> • Bureau of the Fight against Corruption, Police Corps • Check-up Property Unit, Financial Intelligence Unit, Bureau of Combating Organised Crime • Division of the strategic analysis and international cooperation, Bureau of the Fight against Corruption, Police Corps • Financial Intelligence Unit, Bureau of Combating Organised Crime • Unit of International Cooperation, Financial Intelligence Unit, Bureau of Combating Organised Crime
Special Criminal Court	
<u>Private Sector</u>	
<i>Private enterprises</i>	
<ul style="list-style-type: none"> • Slovenské Elektrárne 	<ul style="list-style-type: none"> • Všeobecná Úverová Banka

<ul style="list-style-type: none"> • Slovenský plynárenský priemysel, a. s. 	
<i>Business associations</i>	
<ul style="list-style-type: none"> • American Chamber of Commerce in the Slovak Republic • National Union of Employers 	<ul style="list-style-type: none"> • Slovak Chamber of Commerce and Industry
<i>Financial institutions</i>	
<ul style="list-style-type: none"> • Bratislava Stock Exchange 	
<i>Legal profession and academics</i>	
<ul style="list-style-type: none"> • Paneuropean University 	<ul style="list-style-type: none"> • Slovak Bar Association
<i>Accounting and auditing profession</i>	
<ul style="list-style-type: none"> • Deloitte Audit s.r.o. • Ernst & Young • KPMG Slovensko 	<ul style="list-style-type: none"> • PricewaterhouseCoopers (PwC) • Slovak Chamber of Auditors (SKAU) • Slovak Chamber of Certified Accountants
<u>Civil Society</u>	
<ul style="list-style-type: none"> • Transparency International Slovensko • Via Iuris 	<ul style="list-style-type: none"> • Fair Play Alliance •
<u>Media</u>	
<ul style="list-style-type: none"> • <i>TREND</i> magazine 	

ANNEX 4 LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

CC	Criminal Code
CCP	Code of Criminal Procedure
EACT	European Anti-Corruption Training
EXIMBANKA SR	Export-Import bank of the Slovak Republic
FDI	Foreign direct investment
FIU	Financial Intelligence Unit
MLA	Mutual legal assistance
MNE	Multinational enterprises
MOFA	Ministry of Foreign Affairs
ODA	Official development assistance
PPO	Public Prosecutor's Office
SDKU-DS	Slovak Democratic and Christian Union-Democratic Party
SKK	Slovak koruna/Slovak crown
Smer-SD	Smer-Social Democracy
SOPK	Slovak Chamber of Commerce and Industry
SPO	Special Prosecutor's Office