



SPAIN: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS ON THE APPLICATIONS OF THE CONVENTION AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 24 March 2006.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of findings

1. Spain presented its Written Follow-up Report, outlining its response to the recommendations and follow-up issues identified by the Working Group in Phase 2, at the June 2008 meeting of the Working Group on Bribery. Spain has taken some steps to implement the Phase 2 recommendations made in June 2006. However, Spain implemented satisfactorily only a few of the recommendations issued in Phase 2.

2. In December 2006, the Spanish authorities undertook a major legislative initiative to implement eleven of the recommendations made to Spain, on foreign bribery offence, the liability of legal persons, the available sanctions and related statute of limitations, and on removing the uncertainty concerning which courts are competent to hear foreign bribery cases. However, this initiative aborted with the dissolution of Parliament in January 2008. The Working Group urged Spain to resubmit the Bill amending the Penal Code and will review the new provisions once adopted. (Recommendations 3c, 3d, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 6c and 6d)

3. Because this major Bill has not been adopted yet, awareness-raising activities have been limited. Notably, the Spanish export credit agency adopted a new anti-bribery policy and organised internal meetings to present the new policy to its staff. Exporters must now declare that neither they nor anyone acting on their behalf have failed to comply with the Convention or any related Spanish laws. Proven acts of bribery entail the denial of official support. On its side, the Ministry of Industry continues to provide information and training to personnel posted in embassies abroad. It also developed together with the Ministry of Justice an informative brochure that is being distributed through Spanish business organisations. However, because the above-mentioned Bill has not been adopted yet, the brochure does not detail the Spanish legislation. The Lead Examiners therefore suggested that the brochure be revised once the Bill is adopted. They also expect training activities targeting the police, prosecutors and the judiciary, lawyers and the private sector to be developed once the amendments to the Penal Code are adopted. Meanwhile, Spain should continue its awareness-raising efforts. (Recommendations 1a, 1b and 1c)

4. An important issue identified in the Phase 2 evaluation is the need to clarify and publicise the extent of the obligation of all public officials to report foreign bribery offences of which they become aware to law enforcement authorities. Staff in embassies received a reminder on the detection and reporting of suspicions of foreign bribery. However, the letter, dated June 2008, has been sent only to commercial offices, does not refer to press as a possible source of allegations and does not specify the procedure to be followed, except the reporting to the “central services” in Spain. It is silent on the obligation to report suspicions to law enforcement authorities. (Recommendation 2a)

5. To publish and clarify the effect of the reporting obligation of article 262 of the Criminal Procedure Law, Spain just modified the web page of the Public Prosecutor General’s office. Spain has taken no action so far to ensure protection of whistleblowers. (Recommendation 2b)

6. The Accounting and Auditing Institute (ICAC) and representatives of auditors’ corporations joined efforts to raise awareness in the accounting and auditing professions, and to continue improving

applicable measures to require auditors to report all suspicions of foreign bribery they may have. They produced an Explanatory Public Note. However, no clarification has been introduced in the law or in the ICAC Technical Standards, and contradictions remain therein, notably on the breach of secrecy duty. Similarly, procedures to follow in cases of inaction after appropriate disclosure within the company have not been addressed. (Recommendation 2c)

7. With regard to money laundering, Spain has introduced a mandatory annual audit of every financial and non financial institution by an external expert on measures taken on the prevention of money laundering, including measures related to politically exposed persons. However, the Guidelines on Money Laundering issued by the Ministry of Economy and Finance have not been amended concerning politically exposed persons. Personnel dedicated to investigating and prosecuting money laundering has been significantly increased. (Recommendation 2d)

8. Spain has taken measures to enhance the institutional framework for the enforcement of the foreign bribery offence. The Public Prosecutor's Office against Corruption and Organised Crime has now the power to investigate and prosecute all significant foreign bribery cases without the intervention of the Prosecutor General for a case-specific determination of the special significance criteria. (Recommendation 3a) However, since these new rules have not been tested in practice and because of the expected amendments to the offence, the Working Group will follow up this recommendation. The clarification of competence of the special prosecutor's office entails that the initial investigations in serious foreign bribery cases will last one year (rather than six months for investigations carried out by normal prosecutors). This extended period lessens the concern expressed in Phase 2 that the rule requiring that the suspect be informed during the initial investigation might interfere with the effectiveness of the investigation. (Recommendation 3b) Finally, Spain has taken measures to improve the collection of statistical information relevant to evaluating the fight against foreign bribery. (Recommendation 3e)

9. The Working Group noted that there has not been any progress regarding Recommendation 6e on practical measures to improve the flow of information from the judiciary to the authorities responsible for the administrative sanctions system. Spain still needs to address this recommendation.

10. With regard to the non tax deductibility of bribes, the Ministry of Economy and Finance published, on 5 March 2007, an Instruction which states that bribes to foreign public officials (as defined in Art. 445 of the Penal Code) are not tax-deductible for companies. In addition to this Instruction, measures have been taken to improve the awareness and training on foreign bribery. However, the lead examiners expressed the view that the information on the prohibition of the deduction of bribes for tax purposes should also be conveyed to the tax payers. This issue should therefore be followed up. (Recommendation 7)

11. Spain has not recorded any prosecutions or convictions for bribery of foreign public officials. Spain was therefore not in a position to effectively address Follow-up Issues 8a and 8c contained in the Phase 2 Report of Spain. As concerns Follow-up Issue 8b, Spain explained that the clarification of the competence of the Public Prosecutor's Office against Corruption and Organised Crime on all significant cases of foreign bribery and the related 1-year period for initial investigations lessens the role of the Prosecutor general with regard to the prosecution of foreign bribery cases. In addition, Spain stated that the Prosecutor General never denied any requests for extension of the initial investigation, including as concerns the first foreign bribery investigation opened in Spain (which has been extended several times). Finally, the independence of the Prosecutor General increased in 2007 with the creation of criteria for his/her dismissal.

b) Conclusions

12. Based on the findings of the Working Group with respect to Spain's implementation of the Phase 2 recommendations, the Working Group reached the overall conclusion that Recommendations 2d, 3a, 3b, 3e and 7 have been implemented satisfactorily. Recommendations 1a, 1b, 1c and 2a have been partially implemented. Recommendations 2b, 2c, 3c, 3d, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 6c, 6d and 6e have not been implemented.

13. The Working Group invites the Spanish authorities to report orally on the implementation of Recommendations 1a, 1b, 1c, 2a, 2b, 2c, 3c, 3d, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 6c, 6d, and 6e within one year, i.e. by June 2009. Because of insufficient practice and delayed adoption of the expected Bill amending the Penal Code, the Working Group will follow up Recommendations 3a and 7 as part of its future activities to monitor the implementation of the Convention. The Follow-up Issues identified in the Phase 2 report remain largely outstanding and will continue to be monitored.

14. The Working Group will review the Bill amending the Penal Code once adopted, through a Phase 1bis evaluation.

WRITTEN FOLLOW-UP TO PHASE 2 REPORTS

Name of country: Spain

Date of approval of Phase 2 Report: 24 March 2006

Date of information: 23 May 2008

Part I. Recommendations for Action

Text of recommendation:

1. With respect to **awareness raising and prevention-related** activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Spain:

- a) take additional measures, including further training, to raise the level of awareness of the foreign bribery offence within the public administration and among those agencies that interact with Spanish companies active in foreign markets, including trade promotion, export credit and development aid agencies and ensure that declarations required from applicants for support from CESCE provide for an undertaking that applies to bribery by persons acting on behalf of the applicant and/or exporter (Revised Recommendation, Paragraph I);

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

Compulsory workshops offered after entry exams for public servants in the Commerce Department in the **Ministry of Industry, Tourism and Trade** include specific sessions on foreign bribery.

Since 2006 **CESCE** has thoroughly reviewed its anti-bribery policy.

To do so, it has taken into account the recommendations made by the OECD Working Group on Bribery during phase 2 examination, as well as the new terms incorporated by the 2006 Recommendation on Bribery and Export Credits agreed by the Export Credit Group.

As a result, **CESCE** has introduced the following changes into its anti bribery policy:

First, **CESCE** has modified the text of the undertaking (Declaration) which exporters are required to submit with every new application. According to the new text, the exporter must state to be aware of the Anti-bribery Convention as well as of the Spanish laws approved in application of the former. The

exporter must declare that neither himself nor anyone acting on his behalf, in relation with the export transaction for which official support has been requested, has failed to fulfil the Convention or any of the related Spanish laws (the underlined text has been included following the recommendation 176 a) by the Working Group on Bribery). Furthermore, the Declaration must include the exporter's PRIOR commitment to provide CESCE with detailed information on agents' commissions, upon demand. CESCE's anti-bribery policy is now applicable to all insurance programmes, including short term. If, after credit, bribery (as defined in article 445 of Spanish Civil Code) is proven, official support will be denied. This is applicable to all cases where the insured has committed the crime. If a third party (i.e. a bank) is the insured, and bribery is committed by the exporter, actions will be directed towards the exporter.

CESCE has developed all necessary procedures to notify law enforcing authorities (*Fiscalía Anticorrupción/Dirección General de Policía*) in case of credible evidence of bribery.

To increase awareness, CESCE has launched a new communication procedure, including direct contact with Medium and Long Term clients, through a new massive mailing, explaining changes introduced in CESCE's anti-bribery policy. A copy of the Anti-Bribery Convention has been included in the mailing. This communication strategy is continued in an on-going basis since all new applicants, who have not previously received this communication, receive a copy upon receipt of the application.

Text of recommendation:

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Spain:

- b) take action to improve awareness among business organisations and companies of the legislation regarding foreign bribery and of the intention to enforce it, including promoting better coordination between Ministries and agencies responsible for legal and economic affairs for purposes of producing explanatory materials relating to foreign bribery (Revised Recommendation, Paragraph I);

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

The **Ministry of Industry, Tourism and Commerce** has produced, in collaboration with the **Ministry of Justice**, a brochure on the offence of bribery of foreign public officials (annex A). At present it is being edited and will be directly distributed to business organisations and Chambers of Commerce. It will be also sent to Commercial Offices abroad and Regional and Provincial Directorates for Commerce in Spain, and to CESCE (Spanish Export Credit Agency) and COFIDES (Spanish Company for Development Finance) to be distributed by them to companies requesting any kind of information on business and/or investment transactions abroad.

Text of recommendation:

1. With respect to awareness raising and prevention-related activities to promote the implementation of the Convention and the Revised Recommendation, the Working Group recommends that Spain:

- c) work with the accounting, auditing and legal professions to raise awareness of the foreign bribery offence and its status as a predicate offence for money laundering, and encourage those professions to develop specific training on foreign bribery in the framework of their professional education and training systems (Revised Recommendation, Paragraph I).

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

The following actions have been taken by the *Accounting and Auditing Institute (ICAC)* to comply with these recommendations:

1. Two meetings have been held between the Institute and the Working Group in charge of the preparing and the proposal of the Technical Standards on Auditing.

The Working Group includes representatives of the Auditors Corporations (*Consejo General de Colegios de Economistas de España, Consejo Superior de Colegios Oficiales de Titulados Mercantiles de España* and *Instituto de Censores Jurados de Cuentas de España*) and of this Institute.

The issue has been included in the Agenda for both meetings. ICAC has informed the Auditors Corporations of both the concerns raised by the OECD Working Group and its recommendations in this regard. ICAC has pointed out the need to clarify doubts that auditors may have regarding their obligation to report this kind of crimes to different authorities (i.e. to judicial or monitoring authorities, or to governing bodies of the audited entity), as well as possible misunderstandings about whether this communication might imply a breaking of the secrecy rule of auditors established in article 13 of the Act on Auditing.

The conclusion of the Technical Standards on Auditing Working Group is that there is no doubt about the obligation for auditors to inform about crimes detected during the audit of financial statements, including bribery of foreign public officials.

In addition, the Group has concluded that the fulfilment of this obligation does not imply the breaking of the secrecy duty applicable to auditors, as this obligation of communication is clearly established in Article 262 of the Act on Criminal Judgement of Spain's applicable legislation, which states the obligation for auditors, as well as for any other citizen, to immediately inform the competent judicial authority about any public crime detected during the audit of the financial statements. Such public crimes include the bribery of foreign public officials as well as other "economic nature" crimes such as racketeering, bribery or money laundering.

In relation to money laundering, the Act 19/1993, of 28th December on prevention of money laundering, expressly establishes the obligation for auditors to communicate directly to the administrative competent authority the facts and operations, both alleged or certain, related to this offence.

- Regarding the legislation on audit activity, all Technical Standards, and in particular the one on "errors and irregularities" and on "compliance with the applicable legislation to the audited entity", set the procedure auditors must follow when they detect "errors", "irregularities" or "lack of compliance with the legislation" committed by the audited entity itself or by any of its members in the name of the entity.

The procedure includes:

First, auditors are required to inform about facts in the audit report which are significant for the true image of the financial statements.

Second, auditors must inform the governing bodies of the entity when they detect irregularities or lack of compliance with the legislation. Such communication must take place whether or not the irregularity or lack of compliance is significant for the true image of the financial statements, according to paragraph 20 of the Technical Standard on errors and irregularities.

Third, auditors of public interest, financial and listed entities, must inform the oversight public authority according to Final Provision One of the Act 19/1988, of 12th July, on Auditing.

Finally auditors must review and evaluate whether the internal control system established by the audited entity provides a reliable basis to determine the scope and nature of the audit procedures, and they must inform the governing bodies of the entity about the significant weaknesses detected in that control system.

- Regarding the secrecy duty established in article 13 of the Act on Auditing, it has been considered that it would not be broken by the auditors when they fulfill the reporting obligations legally imposed on them. Since the secrecy rule fades before what is established in special regulations such as the Act on Criminal Judgement or the legislation on prevention of money laundering, it does not prevent auditors from reporting to judicial or administrative authorities legally competent on this matter, as expressly established in article 14.2.e) of the Act 19/1988, of 12th July, on Auditing and in article 4 of the Act 13/1993 for money laundering crimes.

2. Explanatory Public Note:

Despite the fact that these obligations are clearly established in the Spanish legal framework and the legislation on auditing, the Technical Standards on Auditing Working Group has considered it appropriate to publish a note to remind auditors of their duty to inform the relevant authorities about the “economic nature public crimes” that they might detect during the audit of the financial statements (annex B).

This note has also been published in order to clarify the fact that the fulfilment of those requirements would not imply in any case the breaking of the secrecy duty applicable to auditors.

The note, available in the website of the Institute, has been published in number 69 of the Institute’s Official Bulletin, the instrument legally established to inform on relevant subjects on accounting and auditing.

Ministry of Justice through Directorate General of International Legal Cooperation, has addressed to Spain’s most important institutions, public and private, as the Centre of Legal Studies, General Council of the Judiciary, General Council of Notaries, and General Council of Lawyers, in order to inform the collectives of professionals of legal matters and make them aware of crimes of bribery of foreign public agent and its singular status as crime related with money laundering, at the same time they have been encouraged to include within their respective training programs the corresponding specific courses to divulge and to study in depth this kind of crimes. (ANNEX I)

Text of recommendation:

2. With respect to the **detection and reporting** of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Spain:

- a) issue regular guidance to staff in Spanish embassies and commercial offices concerning

the steps that should be taken where credible allegations arise, in the foreign press or elsewhere, that a Spanish company or individual has engaged in foreign bribery, and take measures to ensure the effective transmission of suspicions to prosecutors in Spain (Revised Recommendation, Paragraph I);

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

The **Ministry of Industry, Tourism and Commerce** continues to provide information to counsellors in its Commercial Offices abroad on bribery of foreign public officials. The counsellors must report to the central services of the Ministry on any credible information released by the media of their service area on alleged bribery by Spanish natural or legal persons.

Text of recommendation:

2. With respect to the **detection and reporting** of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Spain:

- b) facilitate the reporting of suspicions of foreign bribery to prosecutors, including by clarifying and publicizing the effect of art. 262 LECrim and considering steps to better protect from retaliatory action employees who make reports in good faith (Revised Recommendation, Paragraph I);

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

Public Prosecutor General's Office has modified its web home page www.fiscal.es publishing and clarifying the effects of article 262 of the Law of Criminal Procedure. (*contacte con la fiscalia* on the right, top)

Text of recommendation:

2. With respect to the **detection and reporting** of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Spain:

- c) continue to improve the applicable measures to require auditors to report all suspicions of bribery by any employee or agent of the company to management and, as appropriate, to corporate monitoring bodies, and consider more effective measures than art. 262 LECrim to require auditors, in the face of inaction after appropriate disclosure within the company, to report all such suspicions to the competent law enforcement authorities (Revised Recommendation, Paragraph V.B);

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

To answer this Recommendation we refer to our answer to Recommendation 1c).

Text of recommendation:

2. With respect to the **detection and reporting** of the offence of bribing a foreign public official and related offences to the competent authorities, the Working Group recommends that Spain:

- d) modify and expand the treatment of politically exposed persons (PEPs) in the current money laundering prevention guidelines for credit institutions and in other relevant guidelines as appropriate, and ensure that the money laundering authorities have adequate resources to carry out their expanded duties effectively (Revised Recommendation, Paragraph I).

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

With regard to treatment of the Politically Exposed Persons (PEPs):

According to the Spanish AML Law and to article 11.7 of its implementing Regulation approved by Royal Decree 925/1995, the internal control and reporting procedures and units established and developed by all obliged entities - financial and non financial- for the prevention of money laundering shall be subjected to an annual audit by an outside expert. The results of this audit shall be written up in a confidential report which details the internal control measures in place, assesses their operational efficiency and proposes changes or improvements as required. This report shall be available for consultation by the **Executive Service** (Spanish UIF) during a period of six years from the date of writing.

This obligation has been developed in 2007 by Ministerial Order EHA/2444/2007 of 31 July 2007, which develops the Regulation approved by Royal Decree 925/1995 of 9 June 1995, in relation to the external expert's report on internal control and reporting procedures and bodies established to prevent money laundering sets out the model report form, which is contained in the Ministerial Order annex. This model report form sets out the minimum information to be provided in the external expert's report. The external expert must audit and the model report form shall contain the measures related to PEPS established by the obliged entities (financial and non financial).

The Ministerial Order provides in its annex:

“3. Identification and knowledge of the customers

...

“g. Additional measures for identifying and knowing customers that have been established in the most sensitive business areas and activities, with express indication of the internal norm that sets out the measures and their content.

Express reference will be made, inter alia, to the following areas:

...

5º) Other products or customers of greater risk, such as politically exposed persons (PEPs), high-risk geographical zones or others considered as such by the obligor.”

Additionally, it have to be stressed that Spain is in the process of implementing the Third EC Anti Money Laundering Directive (Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing) and its implementing 2006/70/EC Directive of the European Commission. These two Directives contain provisions regarding PEPs. With the implementation of these directives Spain will introduce in its legal framework more explicit and demanding requirements for obliged parties relating to PEPs.

With regard to resources of money laundering authorities:

- From 2006 to 2008 there has been an increase of the personnel in Sepblac's supervision department of 6 people. Currently there are 8 people as of March, 31st, 2008. (In 2005 the staff dedicated to supervision were 2 people)
- In 2007 the number of prosecutors on the *Special Prosecutor's Office for the Prevention and Repression of the Illegal Traffic of Drugs* (in charge of money laundering) has gone up from 9 (in 2005) to 10 prosecutors (in 2008).
- Regarding the other special prosecutor's office, the *Special Prosecutor's Office for the Repression of Economic Crimes related with Corruption*, a new instruction INSTRUCTION 4/2006 has been approved on the powers and organisation of the special prosecutor's office for the repression of economic offences related with bribery and on the role of the specialist prosecutors regarding organised crime. The new Instruction 4/2006 redefines the competences and the organisation of the Special Prosecutor's Office. One area of this new design of the Special Prosecutor's Office is targeted to the figure of its Delegated Prosecutors. The Delegated Prosecutors are designated by the State's General Prosecutor and have a double area of competence: within the Special Prosecutor's Office acting as Delegated Prosecutor and within the regional prosecutor's office in which they are based. Aiming at optimizing the use of the capabilities of the Delegated Prosecutors at the Special Prosecutor's Office, the Instruction provides that they should also take on the position of Expert Prosecutors regarding organised crime at the regional Prosecutor's Office in which they are based. Before 2006 this Special Prosecutors Office employed a chief prosecutor assisted by 1 deputy and 9 additional prosecutors. In 2006, 4 new prosecutors have joined the Special Prosecutor's Office and the State's General Prosecutor has appointed 6 prosecutors as Delegated Prosecutors of the Special Prosecutors Office in 6 regions: Valencia, Murcia, Málaga, Sevilla, Almería y Cádiz.

Text of recommendation:

3. With respect to **the investigation and prosecution** of foreign bribery and related offences, the Working Group recommends that Spain:
 - a) implement the decision of the Spanish authorities to attribute to the Anti-Corruption Prosecution Office (ACPO) the power to investigate and prosecute all foreign bribery cases other than minor cases without the need for a case-specific determination of special significance by the Attorney General of Spain (FGE), take additional measures to ensure that all significant foreign bribery allegations are investigated and continue to provide the necessary resources to investigators and prosecutors (Convention, Article 5; Revised Recommendation, Paragraph 1);

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

As a previous mention, it is fitting to note that on 11 October 2007 entered into force Law 24/2007, of 9 October, that amended Law 50/1981, of 30 December, of Organic Statute of Public Prosecution Service. Among other modifications in relation with this Special Public Prosecutor's Office, as set out below, the amendment gave a new name to Special Prosecution for Financial Crimes connected with Corruption; it was named Public Prosecutor's Office against Corruption and Organised Crime.

1. Spain has implemented the decision to confer the Special Public Prosecutor's Office against Corruption the powers to exert the functions of the Public Prosecution in all relevant cases of bribery of foreign public officials without the Public Prosecutor General having to declare, in each specific case, that the matter is of special significance.

From 12 July 2006, date when Direction 4/2006 of the Office of the Public Prosecutor General came into force, any serious case of bribery of foreign official involving a legal person is competence of the Special Public Prosecutor's Office against Corruption without requiring the intervention of the Public Prosecutor General.

The above Direction specifically sets forth as follows:

- a) The Special Public Prosecutor's Office is competent to deal with offences of bribery of foreign public official of special significance.
- b) Foreign bribery offences are of special significance when they show off the existence of organized criminality.
- c) There is organized criminality when the following elements are present in the facts:
 - Plurality of persons
 - Structure established usually through the existence of a hierarchy and a distribution of functions.
 - Vocation for certain continuity in time.
 - Agreed criminal conduct.
- d) Whenever Special Public Prosecutor's Office gets involved in one of such cases the Public Prosecutor General shall be informed accordingly.

2. Special Public Prosecutor's Office extended and reinforced competences shall, by themselves, provide the means to ensure that all important reports on bribery of foreign public official are investigated.

The full text of Direction 4/2006, as published in the web site of the Office of the Public Prosecutor General (www.fiscal.es), (*Sección Documentos, Circulares, Índice Cronológico, Año 2006*), is attached as Annex II.

3. Besides, the reform of the Organic Statute of the Public Prosecution Service, mentioned in the first lines of this answer has contributed to produce the effect of making sure that all important reports in respect with the bribery of foreign public officials are the object of an effective investigation for the following reasons.

3.1. The general period of time allowed for investigations of the Public Prosecutor against Corruption has been extended to twelve months, and could be extended without limit, This means duplicating the prior term of six months, – Article 5.2, paragraph 4 of the Organic Statute of Public Prosecution Service –.

3.2. The amended Statute has expressly established the competence of the Public Prosecutor against Corruption regarding bribery crimes in international business transactions Article 19.4, ñ) of Organic Statute

3.3. The term for the mandate of Public Prosecutor General has been established in four years. Before this term the mandate may only end for the reasons listed in the law, - Article 31, 1-

Article 31.

1. The Public Prosecutor General's term of office shall be four years. Before said term of office finishes the mandate of the Public Prosecutor General may only be ended due to the following reasons:

- a) at his own request,
- b) due to incurring in any incompatibility or prohibition established herein,
- c) in case of incapacity or illness that render him unfit for the post,
- d) due to serious or repeated breach of his duties,
- e) when the Government that proposed him comes to an end.

It is important to note that the present Public Prosecutor General for the State was appointed on 9 May 2008, and the system of cessation is the above-cited

Texts of present Article 5.2, fourth paragraph and Article 19.4, ñ) of Organic Statute of Public Prosecution Service, in force since 11 October 2007, are quoted in the answer to the following Recommendation, to which we refer in order to avoid repetitions.

Text of recommendation:

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

- b) reconsider the rule requiring that the suspect be informed during the initial investigation of foreign bribery allegations in light of its likely interference with the effectiveness of the investigation (Convention, Article 5; Revised Recommendation, Paragraph 1);

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

First of all, Spain would like to point out that the obligation to report referred to in this section is only applicable to the investigations carried out by the Public Prosecution Service, and not to those that may be carried out, at their own motion, by other institutions such as the Banco de España or the police.

Equally, Spain would like to stand out that Spanish law does not specify the precise moment when the suspect must be informed he/she is being investigated by the Public Prosecutor's Office so, in the practice, is the prosecutor himself who decides when this is to be done.

Without prejudice to the above clarifications, Spain has reconsidered the principle requiring the suspect to be informed at the initial stage of investigations on alleged offences of bribery of foreign public official, in view of its possible interference in an effective investigation, and has concluded that, when the investigation is carried out by the Public Prosecutor's Office against Corruption, this principle can become more flexible.

For that purpose, a legal reform has been made to extend the period allowed for the investigations carried out by the Public Prosecutor's Office against Corruption, so that the Prosecutors assigned therein have more time to investigate before having to comply with the obligation to inform.

The law in force allows the Public Prosecutor's Office against Corruption to carry out investigations for a period of up to one year – for other prosecutor's offices this period shall continue being of six months – which could be subsequently extended by the Public Prosecutor General as many times as required.

The foregoing results from the present wording of Act 50/1981, of 31 December, regulating the Organic Statute of the Public Prosecution Service, Article 5 point 2, fourth paragraph:

Article 5.

(...)

2. (...)

To that end, the public prosecutor shall take a statement from the suspect, who must be attended by counsel and may peruse the contents of the proceedings thus far. The length of proceedings must be proportionate to the nature of the event under investigation and may be no longer than six months, save when extended under a grounded Decree from the Public Prosecutor General of Spain. Nevertheless, proceedings of investigation in relation with crimes referred to in paragraph 4 of Article 19 of the present Statute, shall have a maximum length of 12 months unless an extension is granted by a grounded decree from the Public Prosecutor General of Spain.

(...)

Article 19,4 defines the competences of the Public Prosecutor's Office against Corruption and, to the effects of this report, it is fitting to note that paragraph ñ) establishes that bribery crimes in international business transactions are competence of this Office in the stated conditions:

Article 19

(...)

4. The Special Public Prosecutor's against Corruption and Organised Crime shall carry out the procedural steps referred to in Article 5 of this Law and shall intervene explicitly in criminal proceedings, in both cases, provided that the case in question is of special significance in the opinion of the Public Prosecutor General, in relation to:

(...)

ñ) Bribery crimes in international business transactions

Text of recommendation:

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

- c) take appropriate measures, such as increasing the applicable sanctions, to ensure that the statute of limitations applicable to all foreign bribery offences extends for an adequate period of time for the investigation and prosecution of the offence (Convention, Art. 6);

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

On 16 December 2006 the Government approved the Draft Bill of Organic Law amending Organic Law 10/1995, of 23 December, of Penal Code, and sent it to "Congreso de los Diputados" for the passage of law. The Draft remained in the Congress until the dissolution of the latter by Royal Decree 33/2008, of 14 January (BOE nº 13, of 15 January).

This Bill of Organic Law made the necessary changes to adapt our criminal law to OCDE Convention

and, consequently, the Bill accomplished the Recommendations now analysed.

Although we do not know yet if the Government will send again this Bill to the “Congreso”, we refer to it in our answers of the Recommendations of the Working Group. Texts of Articles of the Bill of Organic Law are enclosed as Annex III.

In this way in respect of this question, the Bill intended on the one hand to increase penalties for crimes of bribery of a foreign public official, and on the other hand to extend the limitation period.

The foregoing entails a remarkable increase in the limitation period for this crime that extends until ten years.

This is so because the penalty set out for the crime is a serious penalty (Article 33 PC): imprisonment from 2 to 6 years and a fine of 12 to 24 months, save when the benefit obtained is greater than the resulting amount, in this case the fine will be an amount of between the value to twice the value of this benefit (Article 445); and the limitation period for serious penalties not exceeding 10 years imprisonment is ten years (Article 131.1).

Applicable law established in the Bill:

Paragraph 1 of Article 445 of the Penal Code provides:

1. Those that, through offers, promises or granting of any undue benefit, pecuniary or of other kind, bribe or try to bribe, whether directly or through intermediaries, foreign public officials or officials from international organisations to the advantage of them or of a third party or complies with their demands in respect to this, in order that they act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business, will be punished with the penalties of imprisonment from 2 to 6 years and a fine of 12 to 24 months, save when the benefit obtained was greater than the resulting amount, in this case the fine will be an amount of between the value to twice the value of this benefit.

Article 33.1 PC. Penalties are classified in serious, less serious and light, according to their nature and length.

2. Serious penalties are:

a) Imprisonment for more than 5 years.

(...)

Article 131.1. PC. Crimes reach their limitation period:

After 20 years when the maximum penalty provided for the crime is of 15 or more years.

After 15 years, when the maximum penalty provided by Law is for more than 10 years and less than 15 years.

After 10 years, for the rest of crimes to which the Law provides any other serious penalty, as well as for crimes established in articles 305 to 309 of this Code.

After 5 years, for the remaining crimes.

Text of recommendation:

3. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Spain:

- d) clarify the law in order to remove uncertainty about whether foreign bribery cases are subject to trial by jury (Convention, Articles 5, 6; Revised Recommendation, Paragraph 1);

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

In the Bill of amendment of Penal Code, the crime of bribery of a foreign public official was set out as an autonomous crime and there is no need to go to articles 419 to 426 of PC, (dealing with national bribery) to determine the penalty. Consequently, there should be no doubts that said crime is not within the competence of the Jury Court.

This is so, because in Article 1 paragraph 2 letter g) of Organic Law 5/1995, of 22nd May, on the Jury Court, it is established that bribery is one of the crimes under the jurisdiction of said Court (articles 419 to 426), without any reference to Article 445 of PC regarding the crime of bribery of a foreign public official.

Text of recommendation:

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

- e) take appropriate measures to improve the collection and dissemination of statistical information relevant to evaluating the fight against foreign bribery (Revised Recommendation, Paragraph I)

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

Within the framework of the Spanish Judicial Transparency Plan, on 13 October 2006 was approved the Royal Decree 1184/2006 (published in the Official Gazette of the Spanish State N° 260), by which the structure, organisation and duties of the National Commission for Judicial Statistics is controlled, in order to ensure the constant availability of updated, rigorous and verified information on the activity of every judicial body, service and office of Spain, as well as the statistical characteristics of the matters submitted for their information. Likewise, the Commission should guarantee the citizens complete access to the judicial statistics. (ANNEX IV)

On the other hand the Deputy Directorate General of Judicial Registries of the Ministry of Justice, at the request of the Directorate General of International Legal Cooperation, has approved to include in the Project of Interconnection of Registries the creation of a new specific computer code or crimes of Article 445 of the Penal Code, in order to distinguish in the statistics the registering of all judgments of conviction regarding the commission of a crime of bribery, which will specifically have the number code 9445, besides corruption, bribery or influence peddling by any authority public official or elected post. (ANNEX IV)

Text of recommendation:

4. With respect to the **offence of foreign bribery**, the Working Group recommends that Spain:

- a) amend the law to ensure that the foreign bribery offences do not require recourse to foreign law for their application (Convention, Art. 1);

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

The wording proposed of Article 445, did not require going to foreign law for its application. It was sufficient that activities referred to in article 445 paragraph 1 were carried out

Text of recommendation:

4. With respect to the **offence of foreign bribery**, the Working Group recommends that Spain:
 - b) take all necessary action to ensure that the following would constitute the basis for a foreign bribery offence: (i) all bribes to a foreign public official to affect the official's exercise of discretion; (ii) all bribes for an act or omission in relation to performance of official duties, regardless of whether it is offered to the official "in the exercise of his/her post"; and (iii) all bribes for acts or omissions in accordance with the official's duties other than small facilitation payments (Convention, Art. 1);

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

All activities described in this Recommendation were included in the wording of Article 445:

In this way, paragraph 1 of the article provided:

“1. Those that, through offers, promises or granting of any undue benefit, pecuniary or of other kind, bribe or try to bribe, whether directly or through intermediaries, foreign public officials or officials from international organisations to the advantage of them or of a third party or complies with their demands in respect to this, in order that they act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business, will be punished with the penalties of imprisonment from 2 to 6 years and a fine of 12 to 24 months, save when the benefit obtained was greater than the resulting amount , in this case the fine will be an amount of between the value to twice the value of this benefit.”

Text of recommendation:

4. With respect to the **offence of foreign bribery**, the Working Group recommends that Spain:
 - c) clarify the definition of foreign public official and that art. 427 PC does not apply to the foreign bribery offences, and ensure that the law applies to bribes to foreign public officials composed of non-pecuniary benefits (Convention, Art. 1).

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

The Convention's definition of foreign public official was incorporated in the text of Article 445.

Specifically, paragraph 3 of mentioned Article 445 read:

“3. To the effects of this article a foreign public official is:

- a. Any person holding a position in the legislative, executive or judicial power either by appointment or by election.
- b. Any person performing a public function for a foreign country, including a public organism or a public company.”
- c. Any public official or agent of an international public organisation.”

Moreover, Article 427 PC(*) (which establishes an exemption from penalty for the individual who consents occasionally to the request of a donation or present made by an authority or public official, and who reports this fact to that authority which has the duty to make inquiries, before the commencement of any corresponding procedure, provided that no more than ten days have passed since the date of facts), is not applicable to crimes of bribery of foreign public official in international commercial business, because Article 445 PC does not refer to articles governing national bribery where the described exemption is included.

Finally, Article 445 paragraph 1, clearly stated that this criminal definition is also applied to bribery of international public agents when the bribery does not consist of pecuniary benefits indicating: "Those that, through offers, promises or granting of any undue benefit, pecuniary or of other kind, bribe or try to bribe...”.

(*)(*) <in the Bill of Amendment of Penal Code the content of Article 427 was transferred to article 426>

Text of recommendation:

5. With respect to the **liability of legal persons for foreign bribery**, the Working Group recommends that Spain:

- a) amend the law to ensure that all legal persons can be held directly liable for bribery of foreign public officials (Convention Art. 2);

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

In the Bill of Amendment of Penal Code was expressly provided the criminal liability of legal persons for some offences among which the crime of bribery of foreign public offence is founded.

Specifically, in Article 445 paragraph 2 it was established:

"2. When the crime is committed within the framework or on the occasion of a legal person's business and the declaration of legal person's criminal liability is fitting according to the provisions of Article 31 bis of this Code, the following penalties will be imposed: prohibition of contracting with public administrations and of taking part in commercial transactions with public consequences from 10 to 15 years and a fine of 12 to 24 months save when the benefit obtained was greater than the resulting amount, in this case the fine will be an amount of between twice the value to ten times the value of this benefit

Article 31 bis PC established in a general way the criminal liability of legal persons indicating that:

“1. In the cases foreseen in this Code, legal persons will be criminally liable for the crimes committed, on their behalf or to their benefit, by natural persons having power of direction as representative or authorities of the same, either to take decisions in its name or to control the functioning of the society.

In the same cases, legal persons will be also criminally liable for crimes committed, in the exercise of social activities and on behalf and in benefit of these legal persons, by whoever, being subjected to the authority of the persons mentioned in the prior paragraph, has been able to carry out the facts because the due control over him has not been exerted.

2. Criminal liability of legal persons will not exclude the liability of the natural persons referred to in the prior point, just as liability of individuals will not exclude liability of legal persons. When as consequence of the same facts a penalty of fine is given to both, judges or courts should adapt the respective amounts in such a manner that the resulting sum is proportionate to the seriousness of these facts.

3. When circumstances modifying criminal liability (exculpatory, mitigating or aggravating circumstances) concur in the persons that have materially carried out the actions or in the persons that have made the actions possible for lack of control, these circumstances shall not exclude nor modify the criminal liability of legal persons, without prejudice to the provision of following point n. 4.

4. The following activities, made after the commission of the crime and through their legal representatives, will be mitigating circumstances of criminal liability:

- a) To confess the offence to authorities, before knowing there is a criminal procedure against them.
- b) To collaborate in the investigation of the deed producing, at any time within the proceedings, new evidence that is decisive to declare its liability.
- c) To repair the damage caused by the crime or to diminish its effects during the proceedings at any moment before the oral trial.
- d) To establish, before the beginning of the hearing, effective measures to anticipate and detect crimes that could be committed in the future with the means or under the cover of the legal person.

5. Provisions regarding criminal liability of legal persons shall apply to associations, foundations and companies.”

Text of recommendation:

5. With respect to the **liability of legal persons for foreign bribery**, the Working Group recommends that Spain:

- b) exclude requirements of individual liability as a prerequisite for the liability of the legal person (Convention Art. 2).

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

It was perfectly clear, in Article 31 bis paragraph 2 that to establish the criminal liability of a legal person it is not necessary to previously establish an individual criminal liability.

The text of this provision was:

"Criminal liability of legal persons will not exclude the liability of the natural persons referred to in the prior point, just as liability of individuals will not exclude liability of legal persons. When as consequence of the same facts a penalty of fine is given to both, judges or courts should adapt the

respective amounts in such a manner that the resulting sum is proportionate to the seriousness of these facts."

Text of recommendation:

6. With respect to **sanctions for foreign bribery**, the Working Group recommends that Spain:
- a) increase the criminal sanctions applicable to foreign bribery in order (i) to provide for effective, proportional and dissuasive sanctions in all cases, including in particular for bribery to obtain a favourable exercise of discretion; and (ii) to ensure that effective mutual legal assistance and extradition are not excluded by the level of applicable sanctions in any foreign bribery case (Convention, Art. 3(1));

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

The Bill of Amendment of Penal Code established a remarkable increase in penalties to impose in cases of bribery of a foreign public agent, among these cases it is included the bribery to obtain a favourable decision of the discretion mentioned in the recommendation.

Likewise, as the penalty for the commission of this crime is imprisonment from 2 to 6 years and, in consequence exceeds the minimal limit of one year of deprivation of liberty, legal mutual assistance and extradition remained guaranteed.

Paragraph 1 of Article 445 established:

“1. Those that, through offers, promises or granting of any undue benefit, pecuniary or of other kind, bribe or try to bribe, whether directly or through intermediaries, foreign public officials whether or officials from international organizations to the advantage of them or of a third party or comply with their demands in respect to this, in order that they act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business, will be punished with the penalties of imprisonment from 2 to 6 years and a fine of 12 to 24 months, save when the benefit obtained is greater than the resulting sum, in which case the fine will be an amount of between the value to twice the value of this benefit.

Besides penalties pointed out, the liable person will be punished with prohibition of contracting with public administrations and of taking part in commercial transactions with public consequences from 7 to 12 years.

Penalties foreseen in precedent paragraphs will be imposed in its higher half if the object of business deals with humanitarian goods or services or any other of absolute necessity.”

Text of recommendation:

6. With respect to **sanctions for foreign bribery**, the Working Group recommends that Spain:
- b) consider whether to increase available sanctions for foreign bribery cases involving significant amounts of money in order to achieve sanctions proportional to those for similar economic crime cases (Convention, Art. 3);

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

With the new norms proposed, the financial benefit of bribery is taken into account to fix the fines, this entails that to a greater financial benefit corresponds a greater penalty of fine.

In this sense Article 445 paragraph 1 stated that the penalty of fine for the crime will be of 12 to 24 months, save when the benefit obtained is greater than the resulting sum, in which case the fine will be an amount of between the value to twice the value of this benefit.

It must be outlined that in said article it was established the possibility of imposing penalties, among which the fine, in its higher half if the object of business deals with humanitarian goods or services or any other of absolute necessity

Text of recommendation:

6. With respect to **sanctions for foreign bribery**, the Working Group recommends that Spain:
 - c) eliminate mandatory reductions of sanctions for foreign bribery (i) in cases of solicitation; and (ii) in cases where the foreign public official does not carry out the unjust act (Convention, Art. 3(1));

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

In the Bill of Amendment of Article 445 of Penal Code did not exist any reference to national bribery to complete the legal definition and the establishing of the corresponding penalties. Accordingly there was no possibility of reduction of penalty in the cases mentioned by the recommendation because these reductions were set up for national bribery.

Text of recommendation:

6. With respect to **sanctions for foreign bribery**, the Working Group recommends that Spain:
 - d) amend the law to provide that legal persons shall be subject to effective, proportional and dissuasive sanctions for foreign bribery, including fines or monetary sanctions (Convention Art. 2, 3);

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

To answer this Recommendation we refer to our answer to Recommendation 5 a).

Text of recommendation:

6. With respect to **sanctions for foreign bribery**, the Working Group recommends that Spain:
- e) take practical measures to improve the flow of information to the authorities responsible for the administrative sanctions systems, in particular from the judicial authorities (Convention, Art. 3).

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

Ministry of Justice regarding the application of the Convention on combating Bribery of Foreign Public Officials in International Business Transactions and, as it can be appreciated along to what has been stated in the development of answers to the Recommendations of the present Report on the Evaluation of Spain in Phase 2, not only has intended to improve the flow of information to authorities liable for the system of administrative sanctions but also it has ensured legal and practical solutions to clearly identify this kind of crimes, the incorporation as such in the Spanish legal system, besides trying to alert judicial authorities on the importance of this crime of bribery and facilitate as well efficient legal means for its prosecution.

Text of recommendation:

7. With respect to **related accounting/auditing, money laundering and tax offences and obligations**, the Working Group recommends that Spain take appropriate measures to make explicit the prohibition of the deduction for tax purposes of bribes paid to foreign public officials, incorporate training with regard to foreign bribery and its tax treatment into the training plan for tax inspectors, and consider adapting existing Spanish translations of the OECD Handbook for Tax Examiners for use in Spain (Revised Recommendation, Paragraphs I, IV);

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

On 5 March 2007, the General Directorate of Taxation of the **Ministry of Economy and Finance** has made explicit the prohibition concerning tax deductibility of foreign bribes by publishing a report which states that offences in Art.445 PC are not deductible in the corporation tax.

This report constitutes the Spanish official approach on this matter and is publicly available at the website of the Ministry of Economy and Finance www.meh.es/Portal/Normativa+y+Doctrina forming part of the Spanish tax doctrine.

On the other hand, some measures have been considered to improve the awareness and training on foreign bribery: The *Escuela de Hacienda Pública* (Public Finance School) has introduced in its program for the new tax inspectors a specific seminar on international and national legislation covering the obligations of member countries regarding the prevention and elimination of the foreign bribery offences. Special attention is given to use of the OECD manual. This new approach is already being implemented for the Tax Inspectors.

Part II. Issues for Follow-up by the Working Group

Text of issue for follow-up:

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- a) the existence of territorial jurisdiction over foreign bribery cases committed partially in Spanish territory, and the interpretation of the notion of the "aggrieved party" in nationality jurisdiction cases (Convention, Art. 4);

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

No important changes happened in this matter since last year's report up to now.

Text of issue for follow-up:

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:
- b) the role of the FGE with regard to the prosecution of foreign bribery cases, including the impact of the rule requiring that the FGE grant extensions for prosecutorial investigations that last more than six months (Convention, Art. 5; Revised Recommendation, Paragraph I);

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

Since the approval of the report corresponding to Phase 2, on 24 March 2006, Spain has taken measures in respect of law and organisation that have affected the role of de Public Prosecutor General of the State (from now on, FGE) in the investigation and prosecution in cases of corruption in international commercial transactions and the impact that the rule that requires the FGE authorise the extension of investigation that lasted more than six months.

All the measures have been previously mentioned in the answers to recommendations 3a) and 3b). Nevertheless their impact on the specific point we are referred to is commented as follows.

1. On 12 July 2006, Direction 4/2006 of Public Prosecutor General's Office came into force, and redefined the competences of Special Public Prosecutor's Office against Corruption. Consequently this public prosecutor's Office is competent to investigate and prosecute any serious case of bribery in international commercial transactions involving a legal person, and there is no need of authorisation of the FGE.

This amendment has increased the autonomy of the Public Prosecutor against Corruption to exert his

functions, also regarding the crime of bribery in international commercial transactions, thus minimising the intervention of FGE in this aspect.

Besides, since 11 October 2007, the attribution of competence to Public Prosecutor against Corruption to investigate and prosecute any serious case of bribery in international commercial transactions of special significance is stated not only in an internal rule of the Public Prosecution Service, as Direction 4/2006, but in a law and therefore with general scope.

This legal acknowledgment reinforces the assignment to Public Prosecutor against Corruption in full exercise of the duties of Public Prosecution in cases of international bribery.

2. Since 11 October 2007, the term to investigate any of crimes within its competence without request an extension to FGE has doubled. The term that was 6 months is now 1 year.

This legal amendment equally reduces the impact of the FGE exercise of legal duties on investigations of Public Prosecutor against Corruption. Even it has been mentioned in other paragraphs of this report, to properly evaluate said impact it is necessary to remember that the law does not establish any limit to the number extensions that can be requested and granted, and that the only legal requirement for the FGE to grant the extension is to declare the reasons of his decision. During the more than 12 years of existence of the Public Prosecutor against Corruption, the FGE has not denied any request of extension.

3. Since 11 October 2007, the Government cannot freely dismiss the FGE. At present the term for the mandate is legally fixed in four years and before this period FGE shall only be removed for the reasons listed in the law, which have been mentioned above. The present FGE has been appointed under this system.

The existence of these rules contributes to increase the independence of FGE and all the Public Prosecution Service, in the exercise of his legal duties, and as a consequence it has been produced a growth of the guarantees of activities of the Public Prosecutor's Office.

Regarding requested statistics, we know that one "Juzgado Central de Instrucción" (Central Preliminary Investigations Court) is handling a procedure of investigation of actions allegedly constituting a crime of bribery in international commercial transactions.

This procedure has been initiated on 23 April 2008 as a consequence of a claim of the Public Prosecutor's Office against Corruption originated in an investigation made by this Office that was extended in several occasions by the FGE.

We point out that whether the investigation of the Public Prosecutor's Office against Corruption as the enquiry the Court is carrying out depend on the relevant information regarding actions from another State. This last State has not sent up to now the required information. It is not possible to give further information regarding the procedure because at this stage the proceedings are not public.

Text of issue for follow-up:

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:
 - c) seizure and confiscation in foreign bribery cases, including any possible limiting effect of art. 431 PC (Convention, Art. 3).

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

No important changes happened in this matter since last year's report up to now.

ANNEXES ¹

- ANNEX A: Brochure on the offence of bribery of foreign public officials (Ministry of Industry, Tourism and Commerce, in collaboration with the Ministry of Justice)
- ANNEX B: Explanatory Public Note on the Act on Auditing (Accounting and Auditing Institute Official Bulletin N°69)
- ANNEX I: Correspondence between the Ministry of Justice and relevant accounting, auditing and legal professions
- ANNEX II: Instruction 4/2006 on the powers and organisation of the special prosecutor's office for the repression of economic offences related with bribery, and the role of the specialised prosecutors regarding organised crime
- ANNEX III: Draft Bill amending the provision of the Penal Code to adapt the Spanish law to the OECD Convention
- ANNEX IV: Royal Decree 1184/2006, of 13 October governing the structure, composition and functions of the National Commission for Judicial Statistics. Ministry of Justice (Spanish Official Gazette N°260 of 31/10/2006)

¹ The Annexes are available in French or English upon request to the Secretariat only [anti-corruption.contact@oecd.org]