



BULGARIA: PHASE 3

REPORT ON THE APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 2009 REVISED RECOMMENDATION ON COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

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EXECUTIVE SUMMARY

The Phase 3 Report on Bulgaria by the OECD Working Group on Bribery evaluates and makes recommendations on Bulgaria's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. As well as focusing on key Group-wide (horizontal) issues, particularly enforcement, consideration is also given to country-specific (vertical) issues arising from progress made since Bulgaria's Phase 2 evaluation in 2003, or issues raised, for instance, by changes in the domestic legislation or institutional framework of Bulgaria.

Fighting domestic bribery, organised crime and fraud with EU funds are the Bulgarian government's political priorities. This has led Bulgaria to reform its judiciary, law enforcement system and many of its laws. However, Bulgaria has given much lower priority to fighting the bribery of foreign public officials.

The Working Group notes with concern that there is a general lack of awareness in Bulgaria of the risks of foreign bribery. As a result, very low priority is given to the prevention, detection, investigation and prosecution of this crime. The Working Group therefore recommends that Bulgaria raise awareness of the risks of and responsibility for foreign bribery among the relevant public institutions and the private sector. Bulgaria needs to provide adequate resources and training to judges, prosecutors and investigators on investigations and prosecutions of legal persons and complex financial cases. It should also ensure that such investigations are conducted whenever appropriate.

In addition, Bulgaria needs to address several shortcomings in its laws. The Working Group recommends that Bulgaria improve its foreign bribery offence, and substantially amend its current law on the liability of legal persons to eliminate many legislative deficiencies. The legal framework on confiscation should be streamlined, and also modified to address certain deficiencies. As well, Bulgaria does not expressly prohibit the tax deduction of bribes, despite a recommendation in Phase 2. The Working Group welcomes Bulgaria's commitment to rectify this shortcoming.

The report also notes favourably that Bulgaria has one conviction for foreign bribery and an investigation in a second case. Wiretap evidence is now directly admissible at trial after a recent legislative amendment. A constitutional amendment took effect in 2007 and reduced judicial immunity, thereby implementing the Working Group's Phase 2 recommendation on this issue.

The report and its recommendations reflect findings of experts from Chile and Poland and were adopted by the OECD Working Group on Bribery. Within one year of the Group's approval of the report, Bulgaria will make an oral follow-up report on its implementation of certain recommendations. It will further submit a written report within two years. The Report is based on the laws, regulations and other materials supplied by Bulgaria, and information obtained by the evaluation team during its three-day on-site visit to Sofia on 26-28 October 2010, during which the team met representatives of Bulgaria's public administration, judiciary, private sector and civil society.

A. INTRODUCTION

1. The on-site visit

1. From 26 to 28 October 2010, a team from the OECD Working Group on Bribery in International Business Transactions (Working Group) visited Sofia 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 (Convention), the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation) and the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation). The purpose of the visit was to evaluate the implementation and enforcement by Bulgaria of these instruments.

2. The evaluation team was composed of lead examiners from Chile and Poland as well as members of the OECD Secretariat.¹ Prior to the visit, Bulgaria responded to the Phase 3 Questionnaire and supplementary questions. It also provided translations of relevant legislation, documents and case law. During the visit, the evaluation team met representatives of the Bulgarian public and private sectors and civil society.² The on-site visit was well-attended by Bulgarian officials. However, the evaluation team noted the absence of the invited members of parliament. The team was grateful for the time taken by the Deputy Minister of Justice to meet the evaluators. It expresses its appreciation of Bulgaria's co-operation throughout the evaluation process and notes that Bulgarian officials absented themselves from panels with the business sector, civil society, lawyers and academics.³ The evaluation team is grateful to all the participants at the on-site visit for their collaboration and openness during the discussions.

2. Outline of the report

3. This report is structured as follows: Part B examines Bulgaria's efforts to implement and enforce the 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 Bulgaria on weaknesses identified in Phase 2, or issues raised by changes in the domestic legislation or institutional framework of Bulgaria; and Part C sets out the Working Group's recommendations and issues for follow-up.

3. Cases involving the bribery of foreign public officials

4. Bulgaria is a small but relatively open economy. In terms of GDP, it ranks 34th among 38 members of the Working Group.⁴ Export of goods and services accounts for around 60% of Bulgaria's

¹ Chile was represented by: Valentina Monasterio Gálvez, Ministry of Foreign Affairs, and Paulina Hernandez, Ministry of Finance. Poland was represented by: Adam Ożarowski, Ministry of Justice; Jacek Łazarowicz, Office of the Prosecutor General, and Miłosz Sulima-Kotarski, Ministry of Finance. The OECD Secretariat was represented by: Olga Savran, William Loo and Tanya Khavanska, Anti-Corruption Division.

² See Annex 2 for a list of participants.

³ See paragraph 26 of the [Phase 3 Procedure](#), which provides that an evaluated country may attend, but should not intervene, in non-government panels.

⁴ International Monetary Fund, World Economic Database, April 2009, based on purchasing-power parity in the USD billions for 2007/2008.

GDP, which is high for OECD members, but typical for open transition economies.⁵ Small and medium-sized enterprises (SMEs) represent 99.5% of all Bulgarian companies, and contribute around 30% of GDP. Only 5% of SMEs are thought to be oriented to foreign markets.⁶ Principal merchandise exports include clothing and footwear (13.4%), metals (11.2%), petroleum products (11.1%), iron and steel (7%), and machines and equipment (4.7%).⁷ Main export destinations in order of importance are Germany, Turkey, Greece, Italy and Romania, followed by Serbia, France, Russia, Belgium and Spain.⁸ Bulgaria is not a member of the OECD.

5. Bulgaria has limited experience with investigations or prosecutions of bribery of foreign public officials. It described six foreign bribery investigations, four of which were discontinued at an early stage due to the lack of information or other reasons. Proceedings advanced or were completed in two cases:⁹

- (a) Bribery of the Secretary of the Ministry of Health in Zambia involving a bribe of USD 270 000 in 2000. The alleged briber was the manager of a company “Boutique – Angel Yotzov”. The Zambian official was convicted in 2007 and sentenced to 5 years’ imprisonment. Bulgaria commenced a preliminary inquiry in 2007 and sent an MLA request to Zambia. Pre-trial proceedings against the alleged bribery began in 2008. The case was in limbo, pending Zambia’s response to an MLA request, when the alleged briber died in June 2009. The proceedings were terminated in November 2010.
- (b) In Bulgaria’s only foreign bribery conviction, the briber Lionov drove a truck registered in the name of “Mont Trans Ltd.” and was stopped by Slovenian border guards because the truck was in poor condition. Lionov offered a bribe of EUR 20 to a Slovenian official, who reported him to the law enforcement authorities. The court convicted Lionov of foreign bribery and fined him BGN 200 (approximately EUR 102). The court decision entered into force in July 2004.

6. In respect of cases, the Working Group notes that foreign bribery is not perceived by Bulgarian public officials, the private sector and civil society as an area of high risk for Bulgarian business. As a result, little attention is paid by the government and law enforcement to foreign bribery risks. No special resources are specifically allocated to the prevention, detection, investigation and prosecution of foreign bribery cases. This situation can be attributed to the perceived low level of engagement of Bulgarian companies in foreign markets, and to a higher political priority given to fighting domestic bribery, organised crime and fraud with EU funds,¹⁰ all of which are prevalent crimes. The Government recently took several legislative and institutional measures to improve the effectiveness of criminal investigations; additional measures are under preparation. While these efforts target domestic bribery, they may strengthen

⁵ International Monetary Fund, 2008 (www.imf.org/external/datamapper/index.php).

⁶ Response to Phase 3 Supplementary Questionnaire, Question 50, based on data provided by the Ministry of Economy, Energy and Tourism, Phase 3 Questionnaire, page 189 (www.mee.government.bg/ind/doc_eco/Annual.Report.SMEs.Bulgaria.2008.EN.pdf).

⁷ Response to Phase 3 Supplementary Questionnaire, Question 49, based on data provided by the Bulgarian National Bank (www.bnb.bg/Statistics/index.htm), Phase 3 Questionnaire, page 186.

⁸ *Ibid.*

⁹ Response to Question 3, Phase 3 Questionnaire pages 63-65; Bulgaria’s report to the Working Group *tour de table*, December 2009.

¹⁰ Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for co-operation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0058:0060:EN:PDF).

the overall capacity to enforce anti-corruption laws, and if successful, they could also improve Bulgaria's capacity to address international bribery.

B. IMPLEMENTATION AND APPLICATION BY BULGARIA OF THE CONVENTION AND THE 2009 RECOMMENDATIONS

7. This part of the report considers the approach of Bulgaria to key Group-wide cross-cutting issues identified by the Working Group 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 Bulgaria on weaknesses identified in Phase 2, or issues raised by changes in the domestic legislation or institutional framework of Bulgaria.

1. Foreign bribery offence

8. Bulgaria's foreign bribery offence is in Article 304 of the Penal Code. The offence has not been amended since the Phase 2 evaluation and largely meets the requirements of the Anti-Bribery Convention with a few exceptions. This Phase 3 report will examine issues that remain outstanding from or were not dealt with by the Phase 2 evaluation, as well as some recent developments.

(a) *Bribes of a non-material nature*

9. On its face, Bulgaria's foreign bribery offence covers bribes of both a material and non-material nature. During the Phase 1 evaluation, the Penal Code foreign bribery offence expressly covered bribes in the nature of "a gift or any other material benefit". This led the Working Group to express concerns that the offence did not cover non-material bribes. In response, Bulgaria amended the foreign bribery offence in 2002 to cover a "gift or any other kind of advantage". The Working Group welcomed this development and stated in the 2003 Phase 2 Report (pp. 28-29) that this issue was resolved.

10. Despite this legislative amendment, there is some evidence that in practice Bulgaria's Penal Code bribery offences are only applied to cases involving bribes of a material nature and which have "value" in the legal market. This was the view held by some representatives of the Bulgarian Supreme Court and Supreme Prosecution Office of Cassation, according to a recent report.¹¹ During this Phase 3 evaluation, one Bulgarian official acknowledged that some practitioners continue to believe that the Penal Code prohibits only material bribes. Two legal academics opined that the text of the Penal Code bribery offence is satisfactory but that it would be difficult to prove a non-material bribe in practice.

11. These problems point to a need for greater training and awareness-raising. The earlier version of the bribery offence covering only material bribes was in force for over thirty years until it was amended in 2002. This made it more difficult to change the views of long-time practitioners, according to one Bulgarian official. New judges and prosecutors are subject to examinations that test their knowledge of the current law. Older practitioners, however, may not have been adequately apprised of the 2002 extension of the offence to non-material bribes.

¹¹ Council of Europe – Group of States against Corruption (GRECO) (2010), *Third Evaluation Round Report on Bulgaria – Incriminations (Theme I)*, para. 63.

(b) Third party beneficiaries

12. Unlike Article 1(1) of the Anti-Bribery Convention, Bulgaria's foreign bribery offence does not expressly cover an advantage given to a foreign public official for a third party. The Phase 2 Report (pp. 29-30 and 43) considered this as "an area of uncertainty" and marked the issue for follow-up.

13. One argument that the Phase 2 Report did not address was that Bulgaria's passive (but not active) domestic and foreign bribery offences expressly cover third party beneficiaries. Penal Code Article 303 states that an official shall also be punished for passive bribery "where, with his consent, the gift or material benefit have been offered, promised, or given to another person". The legislature's decision to include "to another person" in this provision arguably suggests that, absent these words, the passive bribery offences would not cover third party beneficiaries. It further suggests that, absent comparable language in Article 304, the active bribery offences do not cover third party beneficiaries.

14. The Bulgarian authorities cite a "mirroring theory" in response to this argument. In their view, the active bribery offences are mirror images of the passive bribery offences. Express coverage of third party beneficiaries by the passive bribery offences would thus imply equal and implicit coverage by the active offences. The most recent case law supporting this position dates from 34 years ago.¹² However, the application of the "mirroring theory" may be questionable in practice. One judge at the on-site visit had not heard of the theory. Another would prefer that the Penal Code be amended to extend the third party beneficiary provision in Article 303 to active bribery. Furthermore, Bulgaria's private sector bribery offence expressly covers third party beneficiaries for both active and passive private sector bribery (Penal Code Article 225c(3)). Bulgaria explains that it was "technically more convenient" to insert an explicit reference to third party beneficiaries in both the active and passive private sector bribery offences when they were enacted in 2002. But in the Working Group's view, if the mirroring theory was well-established, then this reference to third party beneficiaries would not have been necessary.¹³

(c) Act or refrain from acting in relation to the performance of official duties

15. The Anti-Bribery Convention requires coverage of the giving, offering or promise of a bribe "in order that the official act or refrain from acting in relation to the performance of official duties". This phrase "includes any use of the public official's position, whether or not within the official's authorised competence". An example is where an executive of a company gives a bribe to a senior official of a government, in order that this official use his office – though acting outside his competence – to make another official award a contract to that company.¹⁴

16. Bulgaria's foreign bribery offence does not appear to meet this requirement of the Convention. Article 304(1) only covers bribery in order that an official "perform or not to perform an act within the framework of his service, or because he has performed or has not performed such an act". If the official breaches his/her official duty, a heavier maximum penalty applies (Article 304(2)). On its face, Bulgaria's foreign bribery offence would not cover a bribed official who does not breach his/her official duty but nevertheless acts outside his/her authorised competence.

¹² Decision No 847 of the Supreme Court of 4 January 1969 and Decision No. 527 of the Supreme Court of 28 October 1976 (Response to Standard Questionnaire, Question 3.5).

¹³ See also Council of Europe – Group of States against Corruption (GRECO) (2010), *Third Evaluation Round Report on Bulgaria – Incriminations (Theme I)*, para. 61.

¹⁴ Anti-Bribery Convention, Articles 1(1) and 1(4), and Commentary 19.

(d) Offence of unsuccessful intermediation

17. If an intermediary persuades a public official to accept a bribe and facilitates the delivery of the bribe, then one of two offences may apply.¹⁵ If the intermediation is “successful”, i.e. the intermediary actually gives, offers or promises the bribe to the foreign public official, then the intermediary is guilty as an accomplice to foreign bribery. Accomplices are subject to the same maximum penalty as the principal, “with due consideration of the nature and degree of their participation” (Penal Code Articles 20-21). If the intermediation is “unsuccessful”, i.e. the intermediary does not give, offer or promise the bribe to the foreign official for reasons beyond his/her control, then the intermediary is guilty of a separate offence of unsuccessful intermediation in Article 305a and is punishable by three years’ imprisonment and a BGN 5 000 (approximately EUR 2 600) fine. Article 305a thus captures a situation that falls outside Article 1 of the Convention since a bribe is not offered, given or promised to an official.

(e) Defences: small facilitation payments and effective regret

18. Bulgarian law does not provide a defence of small facilitation payments; bribe payments of any value are considered criminal. Bulgaria states that the Penal Code domestic and foreign bribery offences cover bribes even of a very low value (e.g. EUR 5 or less). Bulgaria also provided case law in which persons have been convicted for bribes of low value.

19. Article 306 provides a blackmail/effective regret defence to bribery. A person who has given a bribe will not be punished if he/she had been blackmailed by the official, and if he/she voluntarily and immediately informs the authorities. In Phase 2, Bulgaria stated that this defence does not apply to foreign bribery cases, since the defence only covers blackmailing by “officials”, not “foreign officials”. In Phase 3, Bulgarian prosecutors and a Supreme Court judge supported this view.

Commentary

Bulgaria’s foreign bribery offence largely meets the requirements of the Anti-Bribery Convention, with two exceptions. First, the offence does not appear to cover all cases of bribery in order that an official act outside his/her authorised competence. Second, the offence does not expressly cover bribes given to third party beneficiaries. The lead examiners note that Bulgaria intends to reform its Penal Code in the near future. They therefore recommend that Bulgaria use this opportunity to amend its foreign bribery offence to expressly cover these two situations. In addition, they also recommend that Bulgaria train and raise awareness among existing practitioners of the Penal Code’s coverage of bribes of a non-material nature.

2. Liability of legal persons

20. To address the Working Group’s concerns, Bulgaria created liability of legal persons for foreign bribery in 2005 after its Phase 2 evaluation by enacting Articles 83a-83f of the Law on Administrative Offences and Sanctions (LAOS). These provisions created administrative and not criminal liability against legal persons for bribery and other selected criminal offences. The resulting regime thus complies with the fundamental Bulgarian legal principle that criminal responsibility must be personal. The Working Group did not conduct a Phase 1bis evaluation of the new provisions when they were enacted. This Phase 3 evaluation is thus the Group’s first opportunity to examine in depth the provisions and their application in practice.

¹⁵ Response to Phase 3 Standard Questionnaire, Question 3.4.

(a) *Legal entities subject to liability for criminal acts*

21. Under LAOS, administrative liability for criminal activity may be imposed against any type of “legal person” (Article 83a). According to an opinion of Bulgarian legal academics provided after the on-site visit, this term includes any entity with legal personality that is created under statute, and includes non-profit legal entities, political parties, companies, ministries, state agencies, executive agencies and state commissions. Bulgaria stated that liability can be imposed against state-owned or controlled enterprises.¹⁶ It also asserted that LAOS further covers certain enterprises with legal personality, such as partnerships and joint ventures. LAOS Article 83a(5) expressly exempts the State, state bodies (*e.g.* ministries and state agencies), local public bodies, and public international organisations from “property sanctions” (essentially a fine) under LAOS.

(b) *Standard of liability*

(i) *Principal offenders covered*

22. Pursuant to Article 83a(1) and (2), a legal person may be liable when foreign bribery is committed by an:

- (a) Individual authorised to formulate the will of the legal person;
- (b) Individual representing the legal person;
- (c) Individual elected to a control or supervisory body of the legal person, or
- (d) Employee to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of this task.
- (e) An individual in the categories (a) to (d) above who instigates or is an accessory to an offence of foreign bribery.

23. Bulgarian authorities confirm that a legal person is liable under LAOS if an intermediary (*e.g.* a representative, employee or officer of a second legal person) commits foreign bribery and the first legal person benefits from the bribery. In such a case, an individual in the first legal person will likely have been an instigator or an accessory of the representative, employee or officer of the second legal person (Article 83a(2)).

(ii) *The interest of the legal persons*

24. A legal person may be liable only if it has or could have enriched itself from foreign bribery committed by one of the individuals described above (LAOS Article 83a(1)). Bulgarian authorities confirm that the legal person need not actually receive any benefit. Liability could arise if the public official refused the bribe and/or did not do anything in favour of the company, according to Bulgaria.

(c) *Proceedings against the legal person*

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

25. A legal person may be held liable under LAOS even if the natural person who committed foreign bribery is not convicted (Article 83a(3)). However, whether *proceedings* against legal persons under LAOS may be commenced could depend on whether criminal proceedings have also been commenced against the natural person (see section below on “Procedural Issues”).

¹⁶ Response to the Supplemental Questionnaire, Question 28.

(ii) *Jurisdiction*

26. Bulgarian authorities state that, pursuant to LAOS Article 4, jurisdiction to prosecute legal persons generally arises if:

- (a) The administrative violation (i.e. foreign bribery) is committed (i) in Bulgarian territory (including on a Bulgarian ship or aircraft), or (ii) by a Bulgarian national; and
- (b) The violation is punishable under Bulgarian national law and affects the interests of the Bulgarian state.

27. This provision raises three issues. First, there is jurisdiction to prosecute only if a case affects “the interests of the Bulgarian state”. This phrase is undefined. Foreign bribery arguably might not affect the interests of the Bulgarian state, given that it is foreign – not Bulgarian – officials taking bribes. Bulgaria argues unconvincingly that foreign bribery affects Bulgarian state interests because (1) the crime involves a Bulgarian company and thus affects the “proper functioning of public institutions and administration”, (2) foreign bribery “affects the rule of law and good governance”, and (3) the foreign bribery offence falls under Chapter 8 of the Penal Code, which is entitled “Crimes against Activities of State Bodies and Public Organisations and Persons Performing Public Functions”. Case law was not provided to support Bulgaria’s position.¹⁷

28. Second, jurisdiction to prosecute a legal person arises only if there is territorial or nationality jurisdiction to prosecute the individual who bribed a foreign public official. There would thus be no jurisdiction if a non-Bulgarian employee or officer of a Bulgarian company bribes a foreign public official while outside Bulgaria. This is a major shortcoming. Bulgaria argues that it could invoke extraterritorial jurisdiction to prosecute these cases. However, such jurisdiction is available only in cases that affect interests of the Bulgarian state (Penal Code Article 5). As noted earlier, foreign bribery cases are unlikely to meet this condition.

29. Third, when assessing the state interest under this provision, there are no safeguards to ensure that the extraneous factors described in Article 5 of the Convention¹⁸ would be disregarded. For example, there are no guidelines instructing prosecutors to disregard Article 5 factors when assessing the state interest requirement. Bulgarian authorities are of the view that the Constitution and relevant statutes adequately guarantee the independence of judges and prosecutors. However, this misses the point since Bulgarian prosecutors acting independently could nevertheless consider Article 5 factors.

Commentary

The lead examiners consider that LAOS does not provide an effective jurisdictional base for prosecuting legal persons for foreign bribery. They therefore recommend that Bulgaria amend its legislation to provide jurisdiction to prosecute Bulgarian companies when a non-Bulgarian national commits foreign bribery outside Bulgaria. They also recommend that Bulgaria take steps to ensure that investigations and prosecutions of legal persons for foreign bribery are not affected by the factors described in Article 5 of the Convention.

¹⁷ Bulgaria cited Supreme Court Decision Nr. 26 from 13 January 1971 on criminal case 726/70. The defendant in this case attempted to enter Bulgaria using a falsified passport. The court held that the case affected Bulgarian state interests in protecting national security and in exercising sovereignty through border control. These state interests are rarely, if ever, involved in foreign bribery cases.

¹⁸ Article 5 of the Convention states that: “Investigation and prosecution of the bribery of a foreign public official [...] shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.”

(iii) *Procedural issues*

30. LAOS includes procedural provisions in addition to those on substantive liability described above. Unfortunately, these procedural provisions do not provide a complete framework, thereby raising important questions concerning the gathering of evidence and the conduct of proceedings. A 2010 Chief Prosecutor instruction on the procedure under LAOS did not completely resolve these issues.

31. The range of investigative tools available in cases against legal persons may be more limited than in cases against natural persons. LAOS Article 84 states that the Criminal Procedure Code (CPC) applies to certain enumerated matters, including “constraint and seizure of effects”, and summoning of witnesses. This does not appear to extend the full panoply of investigative tools available under the CPC (*e.g.* special investigative techniques) to investigations under LAOS. Bulgaria confirmed that special investigative techniques may only be used against natural persons, but argues that these techniques could be used indirectly against legal persons. This is because the facts found by the court in the criminal proceedings against the natural person are binding in the proceedings against the legal person. Even so, this option would not be available if proceedings against the natural person cannot be commenced or was terminated. It would also beg the question of why LAOS Article 84 is necessary. Similarly, the CPC provisions that would allow the seeking of mutual legal assistance (MLA) in the absence of a treaty do not appear to be available in proceedings under LAOS.

32. The *commencement of proceedings* against legal persons is linked to the commencement of criminal proceedings against the natural person perpetrator (LAOS Article 83b(1)) even though the *liability* of the natural and legal persons is not linked (LAOS Article 83a(3); see discussion above). Proceedings against a legal person under LAOS shall be initiated if an indictment has been filed against the natural person who is the perpetrator. They may also be initiated if proceedings against the natural person may not be commenced or are abandoned because (a) the perpetrator has received an amnesty, (b) the statute of limitations has expired, (c) the perpetrator has died, or (d) the perpetrator developed a permanent mental disorder after the crime (Article 83b(1)). Proceedings against a legal person may also be started under the Civil Procedure Code if criminal proceedings against a natural person cannot begin or has been terminated because the identity of the person is not ascertained, or because of other reasons stipulated in the Criminal Procedure Code (LAOS Article 83f and Civil Procedure Code Article 124(5)).

33. This arrangement may unjustifiably preclude proceedings against a legal person from being commenced. For example, Article 83b lists just four situations in which proceedings against a legal person may be started even though the case against the natural person could not proceed. The CPC provides numerous additional grounds upon which a prosecutor may suspend, terminate, or decline to commence proceedings against the perpetrator, *e.g.* if the case is transferred to another state.¹⁹ Termination of proceedings against the natural person based on these additional grounds would prevent proceedings under LAOS against a legal person. Proceedings under the Civil Procedure Code are also unavailable in many of these cases.

34. The regime created by LAOS also contemplates separate proceedings for the natural and legal persons in the same case. A prosecutor must apply to the civil or administrative court (see below) to begin proceedings against a legal person after a natural person has been indicted. If the court grants the application, then it will conduct a separate hearing to determine the liability of the legal person (Articles 83b-83f). The liability of the natural person is determined in separate proceedings in the criminal courts. There is no possibility of combining the two proceedings. Different prosecutors may be in charge of the two proceedings, depending on the workloads of the prosecutor who has conduct of the criminal proceedings and other available prosecutors. According to Bulgaria, the facts found by the court in the

¹⁹ See Criminal Procedure Code Articles 24-26 and 242-244.

criminal proceedings are binding on the court that hears the proceedings under LAOS (Criminal Procedure Code Article 413).

35. Finally, there is also uncertainty over which court has competence over proceedings against legal persons. LAOS Article 83b(1) states that the regional court would hear such proceedings. At the on-site visit, a judge and one legal academic stated that this refers to the criminal division of the regional court, but another academic believed that the civil division would hear these cases. To further confuse matters, the Chief Prosecutor has issued instructions suggesting that both regional and administrative courts are competent to hear proceedings against legal persons under LAOS.²⁰

Commentary

The regime of liability of legal persons under LAOS raises significant procedural uncertainty. The full range of investigative tools in the CPC, including special investigative techniques and MLA, are not directly available in investigations against legal persons. Furthermore, proceedings against a legal person may be precluded if proceedings against a natural person who committed bribery cannot be commenced or are terminated in some cases, e.g. if the proceedings against him/her have been transferred to another state. There is also uncertainty over which court has competence to determine the liability of legal persons. The lead examiners therefore recommend that Bulgaria amend its legislation to clarify these issues and to streamline the procedure for prosecuting legal persons.

(d) Responsibility of legal persons in practice

36. Bulgaria has made no discernable efforts to enforce the regime of liability of legal persons since its introduction in 2005. There have been no investigations or prosecutions of legal persons for any crime, including domestic or foreign bribery, despite 563 convictions of natural persons for domestic bribery from 2005 to the first half of 2010.²¹ Only natural persons were investigated in several cases of corruption and UN sanctions-busting, even though corporate vehicles were involved. Prosecutors and investigators did not receive any information about the new provisions in LAOS or training on corporate investigations. On 22 June 2010, the Chief Prosecutor belatedly issued an instruction clarifying some administrative and procedural issues.

37. Against this backdrop, it is not surprising that the Bulgarian private sector also does not take the relevant provisions in LAOS seriously. The government did not consult the private sector extensively before enacting these provisions, or raise awareness among companies of the new law after its enactment. Several private sector representatives at the on-site visit were unaware of the relevant provisions in LAOS. Others stated that the provisions are not enforced and that there was no real threat of prosecution.

38. Just before the Working Group was to discuss this report in March 2011, Bulgaria provided statistics indicating that 11 notifications had been filed in 2010 for proceedings against legal persons under LAOS. The cases involved fraud and tax offences. All are at the stage of verification and have yet to reach the courts. These belated developments are welcome and promising. Nevertheless, it remains to be seen whether enforcement efforts will be sustained, and whether legal persons can be successfully investigated, prosecuted and sanctioned for intentional crimes, including corruption.

²⁰ Chief Prosecutor's Office (22 June 2010), "Methodical Instructions Re: Activization of the Work of the Prosecutor's Offices as Provided in Article 83a – Article 83e of the Law on Administrative Offences and Sanctions".

²¹ Response to the Standard Questionnaire, Question 3.1(a).

Commentary

The lead examiners are very concerned that Bulgaria has devoted little attention and resources to enforcing liability of legal persons for intentional crimes, including foreign bribery. They therefore recommend that Bulgaria (a) take steps to ensure that prosecutors and investigators apply the regime of liability of legal persons in practice, (b) train judges, prosecutors and law enforcement on investigations of legal persons, and raise their awareness of the applicable legal regime, and (c) allocate adequate human and financial resources to such investigations and prosecutions.

3. Sanctions

39. This section of the report will first consider the sufficiency of sanctions against natural persons in practice, which is a follow-up issue from the Phase 2 evaluation. It will then look at several issues that were not dealt with in Phase 2, namely sanctions for aggravated bribery, intermediaries, and offenders that qualify for an “expedited procedure”. The report will then discuss the sanctions for foreign bribery against legal persons that were enacted in 2005. Administrative sanctions are covered in Section 11 of the report.

(a) Sanctions against natural persons

(i) Sanctions against natural persons in practice

40. The statutory maximum sanctions against natural persons for foreign bribery have not changed since the Phase 2 evaluation. Foreign bribery continues to be punishable by six years’ imprisonment and a fine of BGN 5 000 (approximately EUR 2 600). The same maximum sanctions apply to domestic bribery. In Phase 2 (pp. 22-24), the Working Group noted that “an insignificant number of persons convicted of corruption have actually been sent to prison – less than one percent according to the Interior Ministry”. The Group accordingly decided to follow up this issue as practice developed.

41. While the sanctions “on the books” for foreign bribery appear adequate, the punishment imposed in practice do not. Incarceration remains an unlikely sanction in corruption offences, according to statistics provided by Bulgaria during this Phase 3 evaluation. From 2009 to the first half of 2010, 245 convictions for various domestic and foreign bribery offences yielded only eight prison sentences.²² Most convictions resulted in conditional (i.e. suspended) jail sentences and probation. Fines were imposed in 2010 but there was no information on their size. Other international bodies have observed that the sanctions imposed in practice for corruption are low. Two recent “emblematic” cases involving fraud with EU funds and money laundering resulted in verdicts of 10 and 12 years’ imprisonment, but the court did not impose actual detention orders.²³ There thus remain concerns that actual sanctions imposed for foreign bribery would not be effective, proportionate and dissuasive.

(ii) Sanctions under the “expedited procedure”

42. A recent amendment of the Criminal Procedural Code created an expedited procedure under which a defendant may choose to have a preliminary hearing, confess during the hearing to the alleged crime, and agree that the prosecution need not tender additional evidence. In return, the court determines the sentence in the specific case after applying the relevant mitigating and aggravating factors. If the court decides that a jail sentence is warranted, it then reduces the sentence to one-third (Penal Code Article 58a;

²² Response to Phase 3 Standard Questionnaire, Question 5.1(a).

²³ Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism, 20 July 2010, p. 6.

CPC Article 373(2)). (Fine sentences are not reduced.) Efforts to expedite proceedings in Bulgaria's congested justice system are commendable. However, as noted earlier, the sanctions that are imposed in corruption cases may not be effective, proportionate and dissuasive. The expedited procedure could further reduce these sanctions and exacerbate the problem.

(iii) *Sanctions for aggravated bribery*

43. Increased maximum penalties are available for aggravated domestic but not foreign bribery. Bribing a Bulgarian official in order that he/she violate his/her official duties is punishable by eight years' imprisonment and a BGN 7 000 (approximately EUR 3 640) fine. The maximum penalty further increases to ten years' imprisonment and a BGN 15 000 (approximately EUR 7 800) fine if the official is one "in a responsible position, including that of a judge, assessor, prosecutor, or investigator, or of a police body or of an investigating police officer" (Penal Code Articles 304(2) and 304a). These increased penalties are not available for foreign bribery.

44. This differential treatment of domestic and foreign bribery is inconsistent with Article 3(1) of the Anti-Bribery Convention, which requires comparable penalties for both offences. Bulgaria explained that providing aggravated foreign bribery for cases of breach of official duty would require proof of foreign law. Even if this were so, this problem would not arise in cases of bribery of foreign judges, prosecutors and investigators. Furthermore, Bulgarian prosecutors were of the view that whether a foreign public official holds a "responsible position" would be determined by referring to Bulgarian, not foreign, law.

Commentary

The lead examiners have concerns over the sufficiency of the sanctions in practice against natural persons for foreign bribery. Recent statistics indicate that custodial sentences for corruption continue to be rare in Bulgaria. The lead examiners therefore recommend that Bulgaria take steps to ensure that sanctions imposed in practice are effective, proportionate and dissuasive in all foreign bribery cases. They also recommend that Bulgaria enact a provision to sanction aggravated foreign bribery to the same extent as aggravated domestic bribery.

(b) *Sanctions against legal persons*

45. The sanctions against a legal person for foreign bribery depend on the nature of the advantage that it has or would obtain as a result of the crime. If the advantage is in the nature of "property", then the legal person is punishable by a "property sanction" of up to BGN 1 million (approx. EUR 510 000) but not less than the value of the advantage. If the advantage is not in the nature of "property" or if the value of the advantage cannot be ascertained, then the legal person is punishable by a property sanction of BGN 5 000 to 100 000 (approx. EUR 2 600 to 51 000). The advantage is also confiscated but there are concerns over whether confiscation would be imposed in practice (see next section).

Commentary

The maximum available sanctions for foreign bribery against legal persons may not be sufficient when the advantage accruing to the legal person as a result of foreign bribery is not "property", or if the value of the advantage cannot be ascertained. Foreign bribery is frequently committed to obtain non-property advantages, e.g. to expedite goods through customs, or to jump queues in license applications. Legal persons in Bulgaria are punishable in these cases by a maximum monetary sanction of only BGN 100 000 (approx. EUR 51 000), which is not effective, proportionate and dissuasive. The lead examiners therefore recommend that Bulgaria increase the maximum penalty available in these cases.

4. Confiscation of the bribe and the proceeds of bribery

46. Confiscation in foreign bribery cases is available under Penal Code Articles 53 and 307a, and the Law on Forfeiture of Proceeds of Crime (LFPC) which was enacted after Bulgaria's Phase 2 evaluation. Confiscation against legal persons may also be available under LAOS.

47. According to Bulgarian authorities, Penal Code Articles 53(1)(b) and 307a are used in conjunction to confiscate the bribe against a natural person.²⁴ Article 307a was enacted in 1982 and specifically applies to bribery offences. It states that the "object of the crime" in the Penal Code's bribery offences "shall be confiscated in favour of the state and where it is missing, a sum equal to its value shall be adjudged." Article 53(1)(b) allows the confiscation of "objects belonging to the convict, which were subject of intentional crime – in the cases expressly provided in the Special Part of this Code". The word "shall" in the text of the two articles suggest that confiscation is mandatory upon conviction; in practice, courts have discretion over the matter. Value confiscation of the bribe is not expressly provided for in Article 53(1)(b) but is available under Article 307a.

48. Penal Code Article 53(2)(b) permits the confiscation of the proceeds of foreign bribery accruing to the briber. The provision allows confiscation of "objects acquired through the crime, if they do not have to be returned or restored. Where the acquired objects are not available or have been disposed of, an equivalent amount shall be adjudged." This would allow the confiscation of the revenues generated by a contract that was obtained by foreign bribery, according to Bulgarian judges and legal academics at the on-site visit. The provision does not, however, expressly cover both direct and indirect proceeds. Just before the Working Group discussed this report in March 2011, the Bulgarian Ministry of Justice stated that Article 53(2)(b) covered indirect proceeds. However, Bulgarian prosecutors stated that the provision was not entirely clear and would benefit from clearer language. In addition, one legal academic stated at the on-site visit that the provision cannot be used to confiscate proceeds in the possession of third parties. Bulgarian prosecutors stated that value confiscation would be sought in these cases. A 2008 report expressed similar doubts concerning confiscation of indirect proceeds and confiscation of property in the possession of third parties.²⁵

49. The LFPC also allows the confiscation of the bribe in some foreign bribery cases. The Law permits confiscation of property if (a) the property has been acquired "directly or indirectly from criminal activity" and has not been confiscated under another law, (b) the property is of significant value (i.e. over BGN 60 000 (approximately EUR 31 000), and (c) the person who acquired the property has been sentenced for a listed offence (which includes foreign bribery). There are some exceptions to the last requirement, such as when the defendant has died or suffers from a mental disorder, or when criminal proceedings have been suspended. LFPC proceedings are generally heard separately in the civil courts after the criminal proceedings against the natural person have concluded.²⁶

50. In practice, the LFPC may be of limited use in confiscating the bribe. The Law only applies if a person acquires property from foreign bribery and if the person is convicted of that crime. In foreign bribery cases, usually the foreign official acquires the bribe. The bribe would then be confiscated under the LFPC only if Bulgaria convicts the foreign official of receiving a bribe, which is possible (under Penal Code Article 301(5)) but unlikely in practice. Furthermore, measures to trace and freeze assets under the

²⁴ Bulgarian authorities stated that, under Bulgarian law, Penal Code Article 53 and 307a provide for "forfeiture". For the sake of convenience, this report will use "confiscation" for both Articles.

²⁵ MONEYVAL Third Round Evaluation Report, 2008, paras. 233 and 256.

²⁶ LFPC Articles 1(2), 3 and 27-31.

LFPC may begin only after the defendant has been indicted. By that time, the proceeds of crime may be difficult to locate.

51. The LFPC may also be used to confiscate the proceeds of foreign bribery obtained by the briber. Unlike the Penal Code, the LFPC expressly covers both direct and indirect proceeds, and contains provisions dealing with proceeds that have been transferred to third parties.²⁷ As noted earlier, the LFPC applies only to property over BGN 60 000 (approximately EUR 31 000) that has not been confiscated under another law, and if a person has been convicted for a listed crime.

52. Confiscation against legal persons is available under LAOS and, to a limited extent, the LFPC. LAOS Article 83a(4) states that “the benefit or its equivalent shall be confiscated in favour of the state, if not subject to return or restitution, or forfeiture under the procedure of the Criminal Code.” However, this provision does not allow the confiscation of a bribe (as it does not benefit the legal person). According to Bulgarian authorities, the bribe would be confiscated in criminal proceedings against the natural person perpetrator. However, this would not be possible if proceedings against the natural person cannot be commenced, or proceedings were terminated. However, Bulgaria argues that it complies with Article 3(3) of the Anti-Bribery Convention in this respect. LAOS also does not expressly cover indirect proceeds. Under the LFPC, confiscation is only available against a corporate body controlled solely or jointly by the natural person who committed foreign bribery.²⁸ It would not apply, for example, when an employee bribes a foreign public official to obtain a contract for his/her company.

53. Legislative deficiencies aside, the greater challenge in Bulgaria is the application of confiscation in practice. From 2007 to the first half of 2010, confiscation was ordered in only 97 out of 337 cases of convictions for active and passive domestic and foreign bribery under Penal Code Articles 301-307.²⁹ The LFPC was used sparingly in bribery cases. From 2009 to the first half of 2010, LFPC proceedings were commenced against just four persons. At the time of this report, these proceedings were still on-going and no confiscation had been ordered.³⁰ Confiscation in bribery cases had not been sought against legal persons under the LFPC or LAOS.

54. Even when ordered, confiscation likely relates to the bribe but not the proceeds of bribery. Judges and legal academics at the on-site visit stated that the confiscation of the proceeds from a contract obtained by bribery was unheard of since prosecutors do not evaluate such proceeds in an investigation. This corroborates the observation that Bulgarian prosecutors lack the ability and willingness to conduct complex financial investigations (see below). Evidence gathered by such investigations is often vital to tracing, identifying, quantifying, and confiscating proceeds of bribery obtained by a briber. Bulgarian prosecutors also claim that they lack resources for such investigations. Bulgaria should therefore ensure that it has adequate financial and human resources to seek confiscation in bribery cases.

²⁷ LFPC Articles 4(2) and 7-10.

²⁸ LFPC Article 6. See also LFPC section entitled “Additional Provisions”.

²⁹ Response to Phase 3 Standard Questionnaire, Questions 3.1(a) and 5.1(b). Bulgaria could not provide statistics broken down into active and passive domestic and foreign bribery.

³⁰ Response to Phase 3 Standard Questionnaire, Questions 3.1(c) and 6.1(c). The European Commission has similarly observed that confiscation under the LFPC was infrequent in organised crime cases (Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification Mechanism, 20 July 2010, p. 5).

Commentary

A number of statutory provisions govern confiscation in bribery cases in Bulgaria. Two separate provisions, Penal Code Article 307a and Article 53(1)(b), are used in conjunction to confiscate a bribe from an individual. The proceeds of bribery obtained by the briber may be confiscated under Penal Code Article 53(2)(b), but this provision does not expressly cover indirect proceeds or proceeds in the possession of third parties. The LFPC is an additional possibility for confiscation where the property is not otherwise confiscated under other laws such as the Penal Code. It overcomes some of these drawbacks but requires a court in a separate civil proceeding to consider confiscation, which could be duplicative, time-consuming and costly. The LFPC also applies only where the property subject to confiscation exceeds a monetary threshold.. LAOS provides for confiscation against legal persons but does not expressly allow confiscation of indirect proceeds. The bribe also cannot be confiscated against a legal person when proceedings against a natural person cannot be commenced or were terminated. When taken collectively as a whole, the provisions also do not result in a comprehensive, satisfactory and consistent framework for confiscation in bribery cases. The lead examiners therefore recommend that Bulgaria streamline its legislation on confiscation. They also recommend that Bulgaria amend its legislation to expressly cover the confiscation of (a) the bribe from legal persons; and (b) the indirect proceeds of bribery gained by a briber, and property in the hands of third parties, from natural and legal persons.

Of even greater concern is that confiscation is not applied regularly in bribery cases, especially in relation to proceeds obtained by a briber. The examiners thus recommend that Bulgaria take steps to ensure that prosecutors routinely seek confiscation of the bribe and the direct and indirect proceeds of bribery obtained by a briber.

5. Investigation and prosecution of the foreign bribery offence

(a) Conduct of investigations and prosecutions

55. In Bulgaria, pre-trial proceedings must be commenced by a prosecutor if there is a “statutory occasion” and “sufficient information” about a crime (CPC Article 207). A statutory occasion includes a notice sent to pre-trial bodies, a media report, a confession, and a direct discovery of the crime (CPC Article 208). Anonymous notices are not statutory occasions (CPC Article 209(1)). Bulgarian prosecutors stated during the on-site visit that anonymous notices are nevertheless analysed and sent to the administrative head of the relevant district prosecutor’s office who decides whether to take action.

56. Whether there is sufficient information to start pre-trial proceedings depends on whether a reasonable assumption can be made that a crime has been committed (CPC Article 211). When a statutory occasion is not supported by sufficient information, the prosecutor is obliged to conduct preliminary checks, either personally or through the competent authorities. Procedures for preliminary checks are now regulated by a Chief Prosecutor’s Instruction instead of the CPC.³¹ The prosecutor issues a document containing the matters to be verified and the reasons why more information is needed. Verifications are generally required to be completed within 30 days, but may be extended up to six months depending on the complexity and scope of the tasks. On completion of the preliminary checks, the prosecutor again assesses the sufficiency of information to determine whether to initiate pre-trial proceedings.

³¹ Instruction of the Head Prosecutor of Bulgaria N 281/081206 regarding prosecutorial activities in the assignment, execution and completion of the preliminary checks.

57. Once begun, investigations in pre-trial proceedings must be completed within two months, which may be extended by a senior prosecutor to four months or even longer in exceptional cases (CPC Article 234). Bulgarian officials stated that these deadlines do not pose problems for lengthy investigations, including those requiring mutual legal assistance. For instance, the proceedings in the “Yotzov” foreign bribery case took place from 2008 to the defendant’s death in 2009.

58. Upon completing the investigation, the investigative body immediately forwards the file to the prosecutor (CPC 235). To accelerate pre-trial proceedings, the requirement for the investigative body to prepare a formal conclusion on the investigation has been eliminated. The investigator’s right to provide an opinion on the investigation was preserved but without numerous formalities which previously contributed to delay in pre-trial proceedings.³²

59. Upon receipt of the file, the prosecutor shall draw up an indictment if there is sufficient evidence and there are not grounds for terminating or suspending proceedings (CPC Article 246). If the prosecutor discovers considerable violations of procedural rules, he/she shall take (or instruct the investigative body to take) remedial action before filing an indictment (CPC Articles 246 and 242). Alternatively, the prosecutor may decide to terminate the case because the act does not constitute an offence, the limitations period has expired, or the offender is exempt from criminal responsibility (CPC Articles 24(1) and 243). A case cannot be terminated merely because prosecution is not in the public interest.

60. As mentioned in Bulgaria’s Phase 2 report, the courts return a significant number of cases to the pre-trial authorities because of procedural violations, thus causing delay. In this Phase 3 evaluation, judges at the on-site visit stated that cases are returned due to violations of procedural rules and not the quality of indictments. However, prosecutors provided internal statistics showing that at least a minority of cases were returned for non-procedural reasons, including the quality of indictments. Bulgaria provided statistics indicating that the number of returned cases decreased from 9.5% of total cases in 2007 to 7% in 2008 and to 5% in 2010. This improvement is not insignificant, but approximately 3 500 cases were still returned in 2008.³³

61. Bulgaria has addressed a concern raised in Phase 2 on excessive judicial immunity, which impedes corruption investigations. When assessing Bulgaria’s 2006 Phase 2 written follow-up report, the Working Group supported a proposal to amend Article 132 of the Constitution of Bulgaria to reduce immunity to the judiciary. This amendment has since entered into force in 2007.³⁴

(b) Relevant bodies: main agencies responsible for investigation and prosecution, their structure and resources

62. Several prosecutors’ offices may have conduct of a foreign bribery case. Sofia City Prosecution Authority and other larger regional prosecutor’s offices have specialised anti-corruption departments and units, while smaller regional offices have specialised anti-corruption prosecutors. At the on-site visit, Bulgaria stated that the Sofia City Prosecution Authority and other regional prosecutors’ offices would have conduct of foreign bribery investigations “in the first instance”. Department I “Countering corruption, money laundering and other crimes of substantial interest”³⁵ of the Supreme Prosecutor’s Office of Cassation, which specialises in corruption offences, may also have conduct of foreign bribery cases.

³² Response to Phase 3 Standard Questionnaire, Question 2.1(a)

³³ Responses to the Phase 3 Standard and Supplementary Questionnaires, Question 44.

³⁴ PACE Report on the Honouring of Obligations and Commitments by Member States of the Council of Europe - Post-monitoring dialogue with Bulgaria, March 2010.

³⁵ Responses to the Phase 3 Questionnaire and Supplementary Questions pp. 13-14.

Department I prosecutors are responsible for general oversight over the work of subordinate prosecutors, in cases of exceptional complexity they can take over the conduct of a foreign bribery case instead of or jointly with the Sofia City Prosecution Authority or a regional prosecutors' office.

63. Investigative bodies in Bulgaria are subdivided into "investigators", "MoI officers appointed as investigating police officers" and "police authorities within the MoI" (CPC Article 52). "Investigators" are responsible for investigations of criminal offences committed abroad and of factually and legally complex cases (CPC Article 194). Foreign bribery cases would thus usually fall under the jurisdiction of these "investigators". The Law on Judiciary defines "investigators" to include regional investigation departments in each regional prosecutors' office, including the Sofia City Prosecution Authority. Also included is the National Investigation Service (NIS), which is located in the Supreme Prosecutor's Office of Cassation and has a separate department on investigations of crimes of particular legal and factual complexity. Bulgaria stated that the NIS investigators can be assigned to foreign bribery investigations, but it is unclear when such assignments would be made. There does not appear to be a specialised investigatory body for complex economic crimes, such as corruption or foreign bribery.

64. All pre-trial proceedings are assigned to investigators using random case distribution software. While useful for promoting integrity among law enforcement officials, this approach fails to take advantage of the expertise of the investigators. Applying random selection to a pool of investigators with specialised expertise could be a better compromise. The prosecutor in charge of an investigation can draw on outside expertise by establishing a joint investigative team with relevant investigators from different bodies, such as the Ministry of Interior, the State Agency for National Security (SANS) and NIS.

65. Bulgaria, although requested, has not provided information on the human and financial resources available for investigating foreign bribery cases apart from stating that there are 11 prosecutors in the Department I at the Supreme Prosecutor's Office of Cassation, as well as 31 prosecutors in the newly created department on economic crimes of particular legal and factual complexity in the Sofia City Prosecution Office.³⁶

(c) Co-ordination, exchange of information and statistical data

66. To co-ordinate investigations, investigators are required to report the initiation, progress and conclusion of proceedings to their administrative heads monthly. The administrative heads then report to the NIS Director (Deputy Chief Prosecutor) every quarter, who in turn reports to the Chief Prosecutor. Co-ordination among law enforcement agencies is based on numerous co-operation agreements.

67. In Phase 2 (Recommendation 9), the Working Group encouraged Bulgarian law enforcement agencies to provide feedback on reports made by other public institutions, in order to assist them in improving their capabilities to detect and report foreign bribery. At the on-site visit, the NRA representative confirmed receiving such feedback. However, the Financial Intelligence Directorate (Bulgaria's financial intelligence unit) stated at the on-site visit that they did not receive feedback on all reported cases from prosecutors and that full follow-up statistical data was available only on demand and on a case-by-case basis. The representative of the Supreme Prosecutor's Office of Cassation later explained that prosecutors are required by law to notify reporting authorities of decisions not to initiate pre-trial proceedings in the form of the prosecutorial ruling. What happens when proceedings are initiated is unclear.

³⁶ This department has been created in the beginning of 2011 within the Sofia City Prosecution Authority and the lead examiners did not have opportunity to meet its representatives during the on-site visit or prior to the March 2011 Working Group on Bribery meeting.

68. Bulgaria's prosecutor's office has created the Unified Information System for internal use within the prosecution service.. This is commendable, but the system limits the gathering of data only to the prosecution office and is available in full only to the Chief Prosecutor, his deputies, heads of the departments, and administrative heads of the offices and to respective prosecutors on their own cases.³⁷ Funds to extend the system to cover other institutions and develop an Integral Unified Information System for Combating Crime are not available, according to Bulgarian officials. Data provided by Bulgaria during this Phase 3 evaluation was not sufficiently detailed and informative, indicating that further improvements are needed.

(d) Statute of limitations

69. The statute of limitations for the foreign bribery offence in Bulgaria is ten years from the commission of the offence (Penal Code Article 80). The limitation period is interrupted by every act taken for the purposes of prosecution, including the requesting of mutual legal assistance. On its face, such limits should afford adequate time to complete investigations and prosecutions. Unfortunately, a more substantiated assessment could not be made since Bulgaria did not provide statistics on cases that have been "time-barred".

Commentary

The lead examiners welcome Bulgaria's efforts to reduce the number of returned cases. Given the number of cases that continue to be returned, they recommend that the Working Group follow up this matter. The examiners also find that allowing preliminary checks to be completed within six months could cause cases to languish. They therefore also recommend that the Working Group follow up whether such checks are completed within a reasonable time. Bulgaria is requested to provide the data necessary for evaluating these issues.

The lead examiners note Bulgaria's efforts to improve the organisation of the prosecution and investigative bodies, and to strengthen their co-operation. They recommend that Bulgaria issue an official written procedure for assigning foreign bribery cases to the various prosecutorial and investigative bodies. The lead examiners also recommend that Bulgaria fully implement Phase 2 Recommendation 4 (statistics). Bulgaria should also periodically review their enforcement approach for combating foreign bribery (see 2009 Anti-Bribery Recommendation V) and put in place a centralised review and evaluation mechanism referred to in Phase 2 Recommendation 14.

(e) Training

70. The Bulgarian authorities provided a lengthy list of training activities for judges, prosecutors and law enforcement officials that had taken place since Phase 2. Some of these activities covered general areas, such as team investigations and investigative efficiency. Others focused on narrower topics, such as organised crime, money laundering, financial interests of the European Community, tax and technology crimes, and international judicial co-operation.

Commentary

The lead examiners note that Bulgarian judges, prosecutors and law enforcement officials have received a significant amount of training since Bulgaria's Phase 2 evaluation. Some of these training activities, such as those on money laundering, are relevant to the

³⁷ Responses to the Phase 3 Standard and Supplementary Questionnaires, Question 1.1. pp. 3-6.

implementation of the Convention. Nevertheless, Bulgaria should provide more training that directly addresses the core areas of the Convention. The lead examiners therefore recommend that Bulgaria provide additional training to judges, prosecutors and law enforcement officials on the offence of bribery of foreign public officials, corporate liability for such an offence, the investigation of natural and legal persons for such offences, and sanctions for foreign bribery (including confiscation).

(f) Bank secrecy and complex financial investigations

71. Bulgaria's Phase 2 report (pp. 33-34) expressed concerns over significant delays in court applications to lift bank secrecy. Courts had not observed a statutory requirement to decide such applications within 24 hours but had taken up to one week. In Phase 3, estimates on how long the courts took to decide bank secrecy applications ranged from 24 hours to three days.³⁸ Once lifted, banks generally provide the relevant information within one month.³⁹ A prosecutor added that whether a named individual has an account at a particular bank is not considered secret bank information. An inquiry of this nature can thus be made directly to a bank without a court order, which tempers the concerns over court delay. Phase 2 Recommendation 16 has thus been implemented.

72. Of greater concern is the conduct of complex financial investigations generally. Foreign bribery investigations often involve the examination of numerous financial transactions to determine the flow of funds, or to trace and quantify the bribes and the proceeds of bribery. These investigations also often require the gathering of voluminous material, frequently in electronic form. Contrary to its assertions, Bulgaria does not appear to routinely conduct investigations of this nature, nor does it have the capability to do so. Officials at the on-site visit were not aware of the importance of expertise in forensic accounting or information technology in corruption investigations. Naturally, they could not identify prosecutors or investigators with such expertise. Prosecutors also could not provide an example in which such expertise was used in a corruption investigation. A sample case provided after the on-site visit involved multiple instances of tax fraud mainly through falsified documents but did not involve the use of forensic accounting or information technology. Bulgaria also argued that expertise in complex financial investigations is not necessary because it did not have such cases. However, the absence of such investigations could itself be the result of an inability to open these cases.

Commentary

The lead examiners find that Bulgaria does not routinely conduct complex financial investigations in corruption cases, nor does it have the capacity to do so. This could hamper Bulgaria's ability to investigate complex foreign bribery cases in the future. It may also have contributed to the lack of confiscation of the proceeds of bribery as described earlier in this report. The lead examiners therefore recommend that Bulgaria provide training to prosecutors and investigators on how to conduct complex financial investigations, and take steps to ensure that such investigations are conducted whenever appropriate. They also recommend that Bulgaria ensure that adequate resources are available to conduct such investigations, including the availability of expertise in forensic accounting and information technology.

³⁸ Based on information from Bulgaria's regional prosecutor's offices (Response to Supplementary Questionnaire, Question 9), one prosecutor at the on-site visit, and information provided by Bulgaria after the on-site visit in the context of incoming MLA requests.

³⁹ Response to Phase 3 Supplementary Questionnaire, Question 9.

(g) *Special investigative techniques*

73. Similar to the lifting of bank secrecy, the Phase 2 report (pp. 32-33) also raised concerns over delays in court applications for special investigative techniques. The use of such techniques, including in foreign bribery cases, requires a prosecutor to seek prior judicial authorisation, except in urgent cases. Courts were bound to decide applications for authorisations within 24 hours but often took up to one month. In Phase 3, Bulgaria could not provide statistics on the time taken by the courts to process such applications. However, one prosecutor at the on-site visit stated that courts now render their decisions within 24 hours in 99% of cases. The applications are granted in the overwhelming majority of cases.⁴⁰ The Working Group's concerns in Phase 2 have thus been addressed.

74. Pursuant to legislative amendments since Phase 2, evidence gathered through special investigative techniques is now admissible in a court hearing (CPC Article 177). Previously, such evidence could only be used in pre-trial proceedings. Statistics show significant use of special investigative techniques in investigations (of all crimes, not only corruption). Over 7 000 wiretap authorisations were issued in the first half of 2010 alone.⁴¹ As noted earlier, these special techniques do not appear to be available for investigating legal persons.

6. Money laundering

75. Bulgaria's money laundering offence is in Penal Code Articles 253 and 253a. It is an "all-crimes offence". Foreign bribery committed by natural persons qualifies as a predicate offence. Liability of legal persons for money laundering offences is covered under LAOS.⁴²

76. Bulgaria's money laundering law has undergone some amendments since the Phase 2 evaluation. Changes in 2006⁴³ made possible the prosecution of money laundering as a stand-alone offence. Predicate offences committed abroad are now explicitly covered. Bulgarian prosecutors stated that a person may be convicted of money laundering even if a foreign predicate offence was not capable of being prosecuted in Bulgaria. Nor is a prior or simultaneous conviction for the predicate offence required.⁴⁴ In January 2008, the Financial Intelligence Directorate (FID) within SANS became Bulgaria's financial intelligence unit⁴⁵.

77. Money laundering is punishable by imprisonment of 1 to 6 years and 3 to 15 years for an aggravated offence. In theory, the maximum sanctions are thus effective, proportionate and dissuasive. However, it has been reported that the penalties imposed so far have been comparatively low with a large number of postponed and suspended sentences.⁴⁶

78. Money laundering is investigated by the Chief Directorate for Combating Organized Crime within National Police Service and prosecuted by the public prosecution office. Both institutions have

⁴⁰ Response to Phase 3 Supplementary Questionnaire, Question 46.

⁴¹ *Ibid.*

⁴² In MONEYVAL's Third Round Evaluation Report of Bulgaria (2008) at para. 210, it is noted that the extension of the administrative liability to legal persons, while a positive development, is quite limited and that administrative sanctions provided may not necessarily always be dissuasive.

⁴³ 2006 Law on Amendments and Supplements to the Law on Measures against Money Laundering and the Rules on its Implementation.

⁴⁴ MONEYVAL Third Round Evaluation Report, 2008, para. 187.

⁴⁵ Bulgarian Financial Intelligence Unit was subordinated to the Minister of Finance before January 2008.

⁴⁶ MONEYVAL Third Round Evaluation Report, 2008, para. 211.

specialised units of jointly-trained experts in money laundering. However, the number of investigations and convictions remains low compared to the number of STRs submitted to law enforcement agencies. From January to March 2010 583 money laundering-related STRs were recorded by the FID, of which 171 have been referred to competent law enforcement authorities, but only 3 cases were filed with the courts. The number of convictions of money laundering predicated on bribery is likely very low. From 2006 to May 2010, there were only 51 money laundering convictions (for all predicate offences). Furthermore, little effort has been made to address corruption-related money laundering through training, awareness-raising and corruption-related typologies.

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

(a) Accounting requirements and false accounting

79. Company accounting requirements are governed by the 1991 Law On Accountancy. Bulgarian companies are required to follow International Financial Reporting Standards (IFRS). However, small and medium sized enterprises (SMEs), which represent a large share of Bulgarian companies, are exempted. Bulgarian officials and accounting profession interviewed during the on-site visit noted that Bulgaria recently adopted national accounting standards for SMEs. The 2006 Commercial Register Law introduced public disclosure requirements, which oblige all entities registered under commercial legislation to publish information, including financial statements, and annual management and auditor reports (where applicable).

80. The requirements of Article 8 of the Anti-Bribery Convention are met through the Law on Accountancy, Article 46 (1). The use of this Law in the context of prevention and detection of bribery of foreign public officials in international business is difficult to assess because Bulgaria has not provided information on the Law's application. Of special concern is the inadequacy of sanctions for accounting omissions, falsifications and fraud. Legal persons in Bulgaria are punishable in these cases by a maximum monetary sanction of BGN 500 (approx. EUR 255) and a maximum punishment for natural persons at BGN 300 (approx. EUR 153). Such sanctions are not effective, proportionate and dissuasive when the advantage accruing to the persons committing the crime could be much higher.

81. According to the Bulgarian authorities, the requirements of Article 8 of the Anti-Bribery Convention are also met through a number of Penal Code offences.⁴⁷ However, these offences contain extra elements not found in Article 8 of the Convention, *e.g.* some of the offences are limited to falsifying documents for the purposes of tax evasion. One targets false accounting by auditors, not their clients.

(b) External auditing requirements

82. Bulgarian registered auditors are required to apply International Standards on Auditing (Law on Independent Financial Audit). International Standards on Auditing (ISA) 240 provides detailed procedures on an auditor's responsibility to consider fraud in financial statements.

83. The Commission on Public Oversight over the Registered Auditors was established in 2008 and became operational in 2009. It supervises the Institute of Certified Public Accountants (ICPA) and ensures that the ICPA and auditors comply with the ISA. It can impose sanctions for non-compliance, including fines and cancellation of auditors' registration for two years. The Commission issues recommendations,

⁴⁷ Articles 209-212 (deceit and documentary fraud with the purpose of gaining possession over another person's assets), 255 and 255a (false accounting for tax evasion), 256 and 258 (budgetary funds fraud), 260-262 (fraud by external auditors and company management), 308-311 (forgery of official and private documents) and 313 (provision/submission of false information in written or electronic form to the state).

rules and procedures for quality assurance. In addition, it is responsible for reviewing complaints and considering appeals of ICPA decisions. Representatives of the audit profession at the on-site visit stated that the Commission improved compliance and promoted the acceptance of auditing requirements by client companies.

(c) *Training and Awareness-Raising*

84. In Phase 2 (Recommendation 3), the Working Group recommended that Bulgaria “work proactively with the accounting, auditing and legal professions to establish training and awareness raising activities about the foreign bribery offence in order to maximise the opportunities for prevention and deterrence within the business community”. In Phase 3, Bulgaria reported that its registered auditors must undergo 40 hours of training every year. This annual training has not dealt with corruption-related issues, according to representatives of the accounting and audit profession at the on-site visit. Moreover, these representatives could not name any specific governmental initiatives in regards to domestic or foreign bribery. Accounting and auditing firms provide additional in-house training, but only the major firms cover corruption-related issues such as red-flagging and reporting. The Working Group is concerned that Bulgarian authorities have not taken awareness-raising measures about foreign bribery that specifically target accounting and auditors.

(d) *Internal controls, ethics and compliance programmes*

85. During the on-site visit, representatives of the business sector noted that in Bulgaria only subsidiaries of foreign multinational corporations have internal controls and compliance programmes that deal with bribery. SMEs did not appear to be aware of the need to have similar measures. Since SMEs constitute 99.5% of Bulgarian companies, this issue presents a real concern. Representatives of the business sector did not see the importance of developing ethics and compliance programmes within their businesses. They also noted that there is no government agency responsible for promoting these measures. The Bulgarian authorities did not raise awareness of the measures proposed in the “Good Practice Guidance on Internal Controls, Ethics, and Compliance” found in Annex 2 of the 2009 Anti-Bribery Recommendation. Therefore, Phase 2 Recommendation 5 is not fully implemented.

Commentary

The lead examiners consider that Bulgaria does not meet requirements under paragraph 2 of Article 8 of the Anti-Bribery Convention concerning effectiveness, proportionality and dissuasiveness of the sanctions for false accounting for the purpose of bribing foreign public officials or of hiding such bribery. Administrative sanctions under the Law on Accountancy are very low and existing Penal Code offences, which offer higher penalties, can be applied only to a narrow treatment aimed at other types of misconduct. The lead examiners therefore recommend that Bulgaria introduces adequate sanctions for false accounting offence.

The lead examiners reiterate Recommendation 3 of Phase 2, and recommend that Bulgaria intensify training and awareness-raising in foreign bribery that targets the accounting and auditing profession.

The lead examiners are concerned about the absence of proper internal controls, ethics and compliance programmes among Bulgarian companies that are not subsidiaries of foreign multinationals. The lead examiners therefore reiterate Phase 2 Recommendation 5 and recommend that Bulgaria encourage companies to introduce codes of conduct and compliance programmes. They also recommend that Bulgaria actively promote the implementation of measures in the “Good Practice Guidance on Internal Controls, Ethics, and Compliance” in

Annex 2 of the 2009 Anti-Bribery Recommendation, and ensure that there is a clear allocation of responsibility for the promotion of such measures.

8. Tax measures for combating bribery

(a) Non-deductibility of bribes

86. During Phase 2, the Working Group noted that there was no provision in the Law on Corporate Income Taxation of Bulgaria that would expressly deny the deductibility of bribes paid to foreign public officials, and recommended that Bulgaria consider introducing such express denial (Recommendation 11). At that time, the Bulgarian authorities explained that the established principle of the national legal system did not permit the introduction of an express denial, as it was built on the opposite principle where a list of deductible items was provided. Before the Working Group was to discuss this report in March 2011, the Bulgarian authorities further clarified that the Law on Corporate Income Taxation, which was in force until 2006, provided both explicit identification of deductible expenses, applied only to donations, as well as of non-deductible expenses. A new Law on Corporate Income Taxation was adopted in 2007 and further amended in 2009. The new Law includes both a list of deductible expenses related to donations and a list of expenses unrecognised for tax purposes. However, the Bulgarian authorities maintain that an explicit non-deductibility of bribes in the tax law is not needed. As a result the list of expenses unrecognised for tax purposes does not include bribes paid to foreign public officials.

87. The list of expenses unrecognised for tax purposes is provided in Article 26 of the Law on Corporate Income Taxation, and includes expenses not related to legal business activities, expenses that do not have documentary support and expenses representing hidden distribution of profit. According to the Bulgarian authorities, this provision would cover expenses for bribes, which are not recognised for tax purposes, because they are not linked to legal business activities and do not have documentary support, irrespective of whether a bribed public official is domestic or foreign, and irrespective of the amount of the bribe. The Bulgarian authorities further consider that Article 16 of the Law on Corporate Income Taxation which establishes that transactions made for the purposes of tax evasion and contracts, payments, credits and loans provided at prices below market value or for services which were not delivered, could provide additional safeguard against tax deductibility of foreign bribery.

88. The Working Group is further concerned that Article 31 of the Law on Corporate Income Taxation, which establishes an extensive list of expenses for donation recognised for tax purposes, can be abused for hiding bribes. The Bulgarian authorities claim that Article 31 provides a sufficient protective mechanism against possible abuses, by stipulating that "The entire expenses for the donation shall not be recognised for tax purposes if the donation benefits, directly or indirectly, the managers who make it or those who dispose of the donation, or where there is evidence that the donation has not been received". However, it appears that no training or guidelines are provided to tax inspectors in order to identify such possible abuses in practice.

89. The Working Group considers that the current provisions of the Law on Corporate Income Taxation fall short of the 2009 Anti-Bribery Recommendation and 2009 Tax Recommendation. The lack of expressed non-deductibility of bribes and the low level of awareness of active foreign bribery within the tax administration do not provide sufficient deterrence for tax payers and do not encourage the detection of foreign bribery payments in claimed expenses by Bulgarian tax inspectors. This was confirmed by one official during the on-site visit, who noted that there was a presumption of legality, and there was no reason for tax inspectors to suspect wrongdoings.

90. Immediately before the Working Group was to discuss this report in March 2011, the Bulgarian authorities noted that they were going to review the Law on Corporate Income Taxation in the near future,

and in this process they would be able to address Working Group's concerns and introduce an explicit reference to foreign bribes in the list of non-deductible expenses. They further noted that they would develop training materials and programmes for tax inspectors to raise their awareness and to promote their efforts to detect hidden bribe payments.

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

91. The National Revenue Agency (NRA) has adopted “Internal rules for reporting suspicions of corrupt behaviour of NRA public officials”, which deal with passive bribery of employees of the tax administration. No similar rules were developed concerning active foreign bribery, contrary to Recommendation 11 of Phase 2. General tax examination procedure would apply to such cases: if reported expenses are not justified by documents, the tax authority shall investigate the case, inter alia in order to establish if it constitutes bribery. According to Article 34, paragraph 2 of the Tax Insurance Procedures Code,⁴⁸ if during their investigations tax inspectors obtain information about significant crime, they are obliged to send the materials to the respective prosecutor.⁴⁹ In 2006, the Minister of Finance and the Chief Prosecutor issued an “Instruction on the organisation and the forms of interaction between the Ministry of Finance and the Chief Prosecutor’s Office of the Republic of Bulgaria”, which provides mechanisms for the exchange of information and co-operation between the NRA and the prosecution service in the investigation of tax crimes, fraud and corruption, including the provision of NRA expertise to the pre-trial bodies on an as needed basis. In 2009, the NRA sent 921 notifications of tax fraud to the prosecutors; 46 disciplinary actions were taken against the Bulgarian tax inspectors. However, Bulgarian officials interviewed during the on-site visit could not recall any cases of active bribery which were reported by the Bulgarian tax inspectors. Concerning the feedback from law enforcement bodies to tax and other inspection bodies, as recommended by the Working Group during the Phase 2 examination (Recommendation 9), the NRA confirmed that the prosecutors inform them about cases when information provided in the notifications was not sufficient and the opening of pre-trial investigations was rejected, as well as about charges which were laid in initiated proceedings.

92. The NRA has manuals on the implementation of tax laws, which are annually updated and published on the NRA web site. The manuals draw attention to the methods for determining tax liabilities, issues related to professional risks, including criminal offences applicable to tax inspectors. The NRA provides anti-corruption training to its public officials. During August 2008-May 2009, the NRA organised training courses on the phenomenon of corruption and its prevention, both for the officials in executive positions and regular public officials. There was no information provided by the Bulgarian officials that would indicate that the manuals and trainings provided by the NRA contain specific focus on foreign bribery. In Phase 2 follow-up, Bulgaria reported that the training programme for tax examiners involving the OECD Bribery Awareness Handbook for Tax Examiners was implemented since May 2005. However, in the answers to the Phase 3 questionnaire and during the on-site visit, the Bulgarian authorities could not report about any training activities involving the use of the Handbook.

(c) *Bilateral tax treaties*

93. Bulgaria’s bilateral tax treaties do not include the optional language of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention. Bulgaria stated that its tax authorities were analysing the possibility of including this language during Phase 3, but the outcome of this analysis is not yet available. In order to promote the sharing of information by tax authorities of different jurisdictions, the Working Group considers it important that Bulgaria include the optional language in its bilateral treaties.

⁴⁸ Response to Phase 3 Standard Questionnaire, Question 9.3 (a), p. 112.

⁴⁹ *Ibid.*

94. Before the March 2011 meeting of the Working Group which was to discuss this report, the Bulgarian authorities clarified that language similar to the one used in paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention is contained in article 7, paragraph 3 of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation. This provision is transposed into the Bulgarian legislation with the text of art. 143 k, para.6 of the Tax and Social Insurance Procedure Code, which prescribes for the possibility to use tax information, shared amongst the EU member countries, within criminal proceedings.

Commentary

As recommended by the 2009 Anti-Bribery Recommendation and the 2009 Tax Recommendation, and for the purpose of raising awareness and enhancing the detection and reporting of suspicions of foreign bribery by tax authorities, the lead examiners recommend that Bulgaria implement its declared intention and establish an express legislative provision to prohibit the tax deduction of bribes including those paid to foreign public officials without further delay. Bulgaria should also review its tax law with a view to identifying and removing potential loopholes for hiding foreign bribery as tax-deductible expenses, such as donations. To encourage the detection of foreign bribery, Bulgaria should 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.

9. International co-operation

95. Mutual legal assistance (MLA) and extradition are governed by CPC Chapter 36 and the Law on Extradition and the European Arrest Warrant respectively. Bulgaria may provide extradition and MLA in the absence of a treaty on the basis of reciprocity. The European Arrest Warrant applies to extradition between Bulgaria and EU countries. For extradition in foreign bribery cases, dual criminality (underlying conduct punishable by one year's imprisonment) is required except for extraditions under the European Arrest Warrant. Dual criminality is not required for MLA. Since Phase 2, Bulgaria has signed bilateral extradition and MLA treaties with India, South Korea and the United States. It is party to the European Convention on Mutual Assistance in Criminal Matters and the Second Protocol under the Convention, Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, UN Convention against Corruption (UNCAC), and UN Convention against Transnational Organized Crime. Bulgaria stated that it would provide evidence under these multilateral treaties (and the Anti-Bribery Convention) to foreign authorities for use in administrative or non-criminal matters.

96. Bulgaria provided some general statistics on MLA. In 2007, it sent one MLA request involving foreign bribery to a state that is not party to the Anti-Bribery Convention (more information below). Since 2008, Bulgaria has not sent or received MLA requests involving foreign bribery. Over the same period, Bulgaria has sent and received approximately 35 MLA requests relating to other corruption offences (domestic bribery, embezzlement, money laundering, trading in influence etc.) Incoming MLA requests generally take less than four to six months to execute, and in some cases less than one month. Bank and company records are usually obtained within two days. Outgoing MLA requests often take much longer, though Bulgaria did not provide specific statistics. Bulgaria has not sent or received MLA requests in which the target of the investigation is a legal person. As noted earlier, it is doubtful whether the CPC provisions on MLA are available in investigations of legal persons.

97. The Working Group is unable to fully assess Bulgaria's practice of providing assistance. Bulgaria stated that it had not received any MLA requests in foreign bribery cases, and provided only general data on cases involving other types of crimes. The Working Group also does not have a mechanism to obtain

information from other Parties to the Convention on their experiences in obtaining MLA from Bulgaria. This is a cross-cutting issue requiring the Working Group's further consideration.

98. Bulgaria states that a major challenge in foreign bribery cases is the inability to obtain MLA from countries that are not Parties to the Convention.⁵⁰ For example, in the Yotzov case, the defendant allegedly bribed the Secretary of the Ministry of Health in Zambia in 2000. The Zambian official was convicted in 2007 and sentenced to five years' imprisonment. Bulgaria began a preliminary inquiry in 2007 and sent a non-treaty MLA request to Zambia. Pre-trial proceedings against the alleged briber followed in 2008. The case remained in limbo pending Zambia's response until the defendant's death in June 2009. Another case involving the UN Oil-for-Food Programme was also discontinued because Bulgaria did not receive MLA.

99. Obtaining MLA is a common challenge for Parties to the Convention, though Bulgaria should consider being more proactive when it encounters difficulties. While waiting for MLA in the Yotzov case, the Bulgarian authorities wrote their Zambian counterparts three times through diplomatic channels to inquire about the request. Bulgaria states that it has therefore "properly applied all possible and admissible ways, methods and channels" to seek MLA in this case. In the Working Group's view, however, Bulgaria arguably could have taken additional steps, such as initiating direct contact with the Zambian prosecutors or police, and raising the matter at higher diplomatic levels. Another option may have been to inquire whether the information was publicly available in Zambia, e.g. in the court file or records. Instead of a non-treaty based request, Bulgaria could also have sent an MLA request under UNCAC to which both Bulgaria and Zambia are parties.

100. In 2010, Bulgaria enacted legislation to enforce freezing and confiscation orders from other EU countries.⁵¹ Competent law enforcement authorities are permitted to receive direct requests for freezing and confiscation from foreign authorities, with the Ministry of Justice as a residual central authority for receiving requests. The Commission under the LFPC is considered the asset recovery office.⁵² Bulgarian officials stated that it had received at least two foreign requests to freeze proceeds of crime found in Bulgaria and one request to confiscate proceeds. Most foreign requests relate to proceeds of drug trafficking, not corruption. Bulgaria has also formed joint investigative teams with other EU countries in five cases, none of which involves corruption.

Commentary

Like many Parties to the Convention, Bulgaria has experienced difficulties in obtaining MLA in foreign bribery cases. To address similar difficulties in future foreign bribery cases, the lead examiners recommend that Bulgaria take steps to ensure that its authorities are more proactive when seeking MLA. In addition, the Working Group's lack of a mechanism to obtain information from Parties to the Convention on their experiences in obtaining MLA from Bulgaria is a cross-cutting issue requiring the Group's further consideration.

⁵⁰ Response to Standard Questionnaire, Question 3.1(f)(ii).

⁵¹ Law on Recognition, Execution and Transmission of Confiscation and Seizure Orders and Decisions Imposing Financial Penalties.

⁵² Response to Supplementary Questionnaire, Question 48.

10. Public awareness and the reporting of foreign bribery

(a) *National Anti-Corruption Strategy*

101. The Integrated Strategy for Prevention and Counteraction of Corruption and Organised Crime for 2009-2010 was adopted by the Council of Ministers in November 2009, and its implementation is supported by an Action Plan. The Strategy establishes the fight against domestic corruption, organised crime and misuse of EU funds as key priorities; it does not mention foreign bribery. The Commission for Prevention and Counteraction against Corruption (CPCC), a consultative body chaired by the Deputy Minister of Interior, holds the overall responsibility for the co-ordination of the anti-corruption strategy. The Chief Inspectorate Directorate at the Council of Ministers served as the Secretariat to the Commission, until September 2009. A new body - Centre for Prevention and Counteraction of Corruption and Organised Crime - is expected to take over the secretariat function. The activity of the Centre is guided by the Advisory Council chaired by the Deputy Prime Minister and the Minister of Interior. The Centre was established by the Council of Ministers Decree of 29 July 2010; the regulation for the Centre was adopted on 24 November 2010; technical and logistical preparations necessary for the functioning of the Centre were underway at the time of drafting of this report. During the time of the on-site visit, no institution was responsible for the co-ordination of the anti-corruption strategy; no information was available about the results of the implementation of the previous strategies and progress of implementing the current strategy, or about any considerations to include foreign bribery issues into the strategy.

(b) *Awareness of the Convention and the offence of foreign bribery*

102. The Ministry of Justice provides information about the OECD Convention on its web site, including the text of the Convention, other related instruments, and the Phase 2 report on Bulgaria. The Ministry of Economy, Energy and Tourism (MEET) published the text of the Convention and the 2009 Anti-Bribery Recommendation on its web site, but it does not provide information about the implementation of the Convention by Bulgaria, or the Phase 2 recommendations for Bulgaria. The Public Administration Institute (IPA) provides basic anti-corruption training to civil servants, as well as training for officials working in fields with a high risk of corruption, senior public officials, and officials from the inspectorates of local governing bodies. In 2006, the IPA developed a new training programme; however, this programme contains no references to foreign bribery. The IPA plans to include foreign bribery issues in its curriculum for 2010-2011. The Ministry of Foreign Affairs (MoFA) is aware of the possible corruption risks related to the provision of consular services, procurement by its foreign-based staff and other possible abuses by its officials stationed abroad. However, the MoFA was not concerned about and did not carry out any awareness-raising related to the risks of bribery by Bulgarian nationals of public officials of foreign states. The Working Group notes with concern the lack of proactive measures to raise awareness about the foreign bribery offence among officials in government agencies that could play a role in detecting and reporting, as recommended in Phase 2 (Recommendation 1).

103. The Bulgarian SME Promotion Agency (BSMEPA), which replaced the Bulgarian Trade Promotion Agency, provides information related to the OECD Convention on its web site, but no information is made available about any related instruments or recommendations for Bulgaria. The BSMEPA informed their staff about their liability for corruption, and adopted "Rules for acceptance and reporting signals for corruption and complaints of individual or legal persons". It provides information, such as copies of laws, to companies through electronic communication channels, but has not organised any awareness-raising activities related to foreign bribery. The Working Group is concerned that the role of the BSMEPA in awareness-raising and prevention of foreign bribery is not well developed, as recommended in Phase 2 (Recommendation 2).

104. The private sector representatives interviewed during the on-site visit were not aware of efforts by the Bulgarian government to reach out to companies to raise awareness about the risks of and responsibility for foreign bribery for Bulgarian physical and legal persons under Bulgarian law, or about measures to promote good corporate governance. They noted that Bulgarian subsidiaries of international companies usually learn about the OECD Convention from their parent companies. They further noted the Bulgarian Association of Industrialists and Employers as a useful source of information about new policy and legislative developments relevant for companies; however, this Association has not addressed foreign bribery issues to date. As for the public-private dialogue, private sector representatives confirmed that once a year the business community holds a debate with the government on governance and transparency issues. The private sector representatives interviewed during the on-site visit noted that according to their perception the risk of prosecution for foreign bribery in Bulgaria was not high. The Working Group notes that public-private dialogue in Bulgaria needs to be further developed; measures taken by the government in this context did not contribute to raising awareness about foreign bribery in the private sector so far.

(c) *Duty to report suspicions of foreign bribery*

105. Article 205 of the Criminal Procedure Code obliges citizens and public officials to inform competent authorities about any committed crime, including bribery. Citizens can report corruption cases directly to the police. There are also 24-hour telephone lines and e-mail addresses for reporting signals of corruption involving public officials in each public institution, as well as a central website; there are drop boxes for such reporting in the Bulgarian embassies abroad. According to the Codes of Conduct and the Law on Civil Servants, public officials are obliged to report administrative errors and violations, which create conditions for corruption, fraud and irregularities.⁵³ Inspectors established in all ministries and agencies, according to the Law on the Administration of 2009, have a duty to collect, analyze and investigate signals of conflict of interest and other violations of official duties by public servants. If inspectors discover any data about a committed crime, they are obliged to inform the prosecutor. However, the above obligation and reporting mechanism require Bulgarian public officials to report corruption involving other Bulgarian public officials, and would not require reporting about private citizens engaged in bribery of non-Bulgarian officials. The MoFA representatives interviewed during the meeting could not recall receiving reports about solicitation of or active bribery by Bulgarian nationals abroad and were not aware of the reporting channels which should be used if their foreign offices receive such reports. According to the MoFA representatives, reports about bribe solicitation abroad can be sent from the embassy to headquarters. They believe that headquarters then can report to the Bulgarian, foreign or international competent authorities. The Working Group considers that further efforts are required to implement Recommendation 10 of Phase 2, which invites Bulgaria to provide officials having a role in the detection and reporting of foreign bribery with detailed and regularly updated training and guidance, including in relation to the officials of the MoFA.

(d) *Whistleblower protection*

106. Article 32 of the Law on Prevention and Disclosure of Conflict of Interest establishes provisions for the protection of whistleblowers, which are applicable only in conflict of interest cases in the public sector. This Article obliges persons who examine reports made by whistleblowers to keep their identity and other information confidential and to propose to managers of the respective institutions to take “measures to preserve the dignity of the whistleblower, including measures to prevent any actions whereby the said whistleblower is subjected to mental or physical harassment.” The Article further establishes that the whistleblower “who has been discharged, persecuted or in respect of whom any actions leading to mental or physical harassment have been taken by reason of having submitted a request, shall have the right to

⁵³ Response to Phase 3 Standard Questionnaire, Question 11.4(a)-(c), p. 131.

compensation for the personal injury and damage to property”.⁵⁴ The Working Group commends Bulgaria for the efforts to introduce whistleblower protection, but notes that provisions introduced under the conflict of interest legislation may concern instances of corruption in public administration, but do not extend to corruption offences established under the Penal Code, including the foreign bribery offence. The Working Group further notes that these provisions foresee protection against mental and physical harassment, and against dismissal, but do not cover other discriminatory or disciplinary actions. Finally, these provisions do not provide protection to private sector employees.

107. The Declaration against Corruption contains an appeal to the Bulgarian business “to encourage and to ensure protection of Bulgarian employees and partners who report corruption practices on any level”;⁵⁵ however, this Declaration does not provide a legal source for practical protection of whistleblowers in the private sector. One private sector representative at the on-site visit described one case in which a whistleblower in a consumer goods company reported a bribe solicitation but did not receive any support or protection.

Commentary

In order to raise visibility of Bulgaria’s obligations under the OECD Convention, and to promote their implementation, the lead examiners recommend that Bulgaria explicitly address combating bribery of foreign public officials in international business transactions in its anti-corruption policy.

Concerning measures to raise awareness about foreign bribery, during the Phase 2 follow-up, Recommendation 1 was considered partially implemented, and recommendations 2 and 10 implemented satisfactorily, but no further awareness raising efforts have been made since by the Bulgarian authorities. Reiterating Recommendations 1, 2 and 10, the lead examiners recommend that Bulgaria take active measures to raise the level of awareness of the foreign bribery offence and provide regular training about the content of the offence and about reporting obligations and channels to officials in government agencies that could play a role in detecting and reporting, including the officials of the Ministry of Foreign Affairs. The lead examiners recommend that Bulgaria undertake effective awareness raising activities for the purpose of educating and advising the private sector on the offence, in co-operation with the Bulgarian SME Promotion Agency and private sector associations.

Recently established provision for the protection of whistleblowers who report instances of conflict of interest partially satisfies Recommendation 7 of Phase 2, which invited Bulgaria to consider the introduction of such measures, but it does not cover reporting of other crimes, such as foreign bribery. The lead examiners recommend that Bulgaria further consider extending this provision to cover foreign bribery, or establish another mechanism to ensure that public and private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary actions. They further recommend that Bulgaria implement measures to raise awareness about such mechanisms.

⁵⁴ Article 32 of the Law on Prevention and Disclosure of Conflict of Interest; Response to Phase 3 Standard Questionnaire, Question 11.5, p. 136.

⁵⁵ Response to Phase 3 Standard Questionnaire, Question 11.5, p. 134.

11. Public advantages

(a) Official development assistance

108. Bulgaria has only recently started elaborating its development assistance policy. A Council, composed of 16 other institutions and chaired by the Minister of Foreign Affairs, leads this work; there is also a unit dealing with official development assistance (ODA) in the MoFA. The priority countries for Bulgarian development assistance include six countries in the Balkan and in the Black Sea and Caucasus regions, which coincidentally are regions perceived to have high levels of corruption.⁵⁶ The current ODA budget is limited and involves low-level procurement. While ODA-specific regulations are being developed, the Law on Public Procurement is currently used as a legal basis for implementing ODA. It is foreseen that future ODA-specific regulations will be based on EU practice, and will include criteria for granting ODA and a system to carry out checks on applicants and to ensure that they have not been blacklisted. So far no measures have been taken to raise awareness of foreign bribery risks in ODA or to create channels for reporting suspicions of foreign bribery in this field.

(b) Officially supported export credits

109. Bulgaria is not a participant in or observer to the OECD Working Party on Export Credits and Credit Guarantees; it did not adhere to the related instruments such as the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits. The Bulgarian Export Insurance Agency is a fully state-owned company, which provides export credit insurance. As a commercial entity, the Agency finances the damages from premiums, and the state is obliged to finance the Agency only in a case when the premiums are not sufficient to cover the damages. The Agency believes that it is not subject to the OECD Recommendation because up till now premiums were sufficient to cover all damages, and it has never benefited from state financing in practice. According to the Bulgarian authorities, legal analysis is being carried out in order to evaluate the necessity of introducing the OECD Recommendation on Bribery and Officially Supported Export Credits in the national legislation. The Working Group notes with concern that the Agency does not require any information from the applicants in order to assess the risk of foreign bribery.

(c) Public procurement

110. The Bulgarian authorities took a number of measures to improve transparency in public procurement and to ensure fair competition. The Public Procurement Agency (PPA) organised training with the aim to ensure that public contracts were awarded correctly. Private sector representatives confirmed that there were some improvements in the tender procedures.

111. Article 47 of the Public Procurement Law (PPL) prohibits persons who have been convicted of bribery under Penal Code Articles 301–307 from participating in public procurement. The prohibition also applies to convictions for other crimes against the financial, tax and insurance system, including money laundering. The Article further prohibits the participation of candidates or tenderers if they are related to the contracting authority or a high-ranking official within its structure as defined in the Law on Prevention and Disclosure of Conflict of Interest. This Article, however, does not contain any prohibitions relating to convictions of legal persons under LAOS. Article 16 of the Law on Concessions establishes criteria for exclusion from the concessions of independent participants or companies, if they or members of their managing boards have been convicted of bribery or other economic crimes.

⁵⁶ Transparency International, Global Corruption Barometer, 2009 (www.transparency.org/policy_research/surveys_indices/gcb/2009).

112. Candidates in public procurement tenders are obliged to provide declarations about their lack of a criminal record. According to the Bulgarian authorities, the provision of false information is a criminal offence in Bulgaria, which may provide a deterrent for bidders to provide false information about the lack of a criminal record. While the tender evaluation committees may verify the declared information, in practice there is no procedure to verify these declarations. Natural persons are obliged to provide a certificate of a lack of criminal convictions when signing a contract. The Law on Concessions requires candidates to provide similar certificates at the beginning of the tender procedure; the Concession Commission can verify such certificates. The Executive Director of the PPA maintains a list of persons who have failed to fulfil public procurement contracts, as well as of persons who have committed offences related to the misuse of EU funds but not corruption offences. The list is based on information provided by the contracting authorities based on court rulings which came into force, and as acknowledged by the officials interviewed during the on-site visit, it is incomplete. The Bulgarian authorities further clarified that this list did not contain any information because tenderers preferred to settle disputes out of the court. There is no obligation for the contracting authorities to use this list or lists held by international organisations such as multilateral development banks for debarment purposes.

Commentary

The lead examiners note that ODA policy and procedures in Bulgaria are at an early stage of development and involve small amounts of public funds. They recommend that, in the course of developing these policies and procedures, Bulgaria adopt measures to prevent, detect and report foreign bribery in the award and execution of ODA contacts.

Bulgaria is not compliant with the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits, which is applicable to both export credits and credit guarantees. The lead examiners recommend that the Bulgarian Export Insurance Agency adhere to the Recommendation. They further recommend that the Export Insurance Agency introduce effective measures to inform its clients about the legal consequences of bribery in international business transactions, require clients to provide anti-bribery declarations, and conduct due diligence in the award process (including through the use of available debarment lists). Bulgaria should also ensure that there are effective mechanisms for reporting suspicions of foreign bribery in its export credit operations.

Concerning public procurement, the lead examiners commend efforts made by Bulgaria to improve transparency and legality in public tenders. They note that the Public Procurement Law provides for the possibility of debarment of physical persons convicted of bribery, and the Law on Concessions provides a theoretical possibility to also debar legal persons. However, the lead examiners note that there is no effective system to verify the accuracy of information provided by applicants. They further note that the list maintained by the Public Procurement Agency that could be used for debarment purposes does not contain information about natural or legal persons convicted of bribery, and contracting authorities are not obliged to use this list. The lead examiners recommend that Bulgaria introduce a legal provision to allow debarment of legal persons from public procurement, and strengthen its debarment system by considering maintaining a record of natural and legal persons convicted of bribery which could be consulted by contracting authorities, and by providing guidance to the procurement bodies on due diligence.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

113. Bulgaria has made some efforts to enforce the foreign bribery offence since Phase 2. It obtained one conviction for this offence and prosecuted a second case (though the offender died before the proceedings could be concluded). However, the Working Group notes a lack of awareness of the risks of foreign bribery among public officials and in the private sector, and insufficient priority given to prevention and detection of foreign bribery cases. In addition, although since Phase 2 Bulgaria has enacted legislation creating liability of legal persons for foreign bribery, it has not made any efforts to enforce the law. The Working Group welcomes Bulgaria's commitment to introduce an express denial of the tax deduction of bribes, which will address this serious shortcoming.

114. The Phase 2 evaluation report on Bulgaria, adopted in 2003, included recommendations and issues for follow-up (as set out in Annex 1 to this report). Of the recommendations that have been partially implemented or not implemented at the time of Bulgaria's written follow-up report in 2006, the Working Group concludes that: Recommendations 1, 3, 4, 5 and 15 remain partially implemented; and Recommendations 7, 9, and 11 remain not implemented.⁵⁷

115. Against this background, and based on the other findings in this report regarding Bulgaria's implementation of the Convention and 2009 Recommendations, the Working Group: (1) makes the following recommendations to Bulgaria under Part 1; and (2) will follow up the issues in Part 2 when there is sufficient practice. The Working Group invites Bulgaria to report orally on the implementation of Recommendations 2, 7(a), 8 and 11 within one year of this report (i.e. in March 2012). It further invites Bulgaria to submit a written follow-up report on all recommendations and follow-up issues within two years (i.e. in March 2013).

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 Bulgaria:
 - (a) amend its foreign bribery offence to cover all cases of bribery in order that an official act outside his/her authorised competence, and to expressly cover bribes given to third party beneficiaries (Convention Article 1);
 - (b) take steps to ensure that judges, prosecutors and investigators are aware that the Penal Code bribery offences cover bribes of a non-material nature (Convention Article 1; 2009 Recommendation III(i)).
2. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Bulgaria substantially amend the regime in the Law on Administrative Offences and Sanctions (LAOS) to ensure that:
 - (a) there is jurisdiction to prosecute Bulgarian companies when a non-Bulgarian national commits foreign bribery outside Bulgaria (Convention Articles 2 and 4);

⁵⁷ See Annex 1: Phase 2 Recommendations of the Working Group, and Issues for Follow-up.

- (b) investigations and prosecutions of legal persons for foreign bribery are not affected by the factors described in Article 5 of the Convention, and the full range of investigative tools in the Criminal Procedure Code is available in such cases (Convention Articles 2 and 5; 2009 Recommendation IV and Annex I(D));
 - (c) there is a clear procedural framework that identifies the court with competence to hear proceedings against legal persons, and that does not preclude proceedings against legal persons when proceedings against a natural person are terminated or not commenced due to specified grounds in the Criminal Procedural Code (Convention Article 2; 2009 Recommendation IV and Annex I(D)).
3. Regarding sanctions for foreign bribery, the Working Group recommends that Bulgaria:
- (a) ensure that sanctions against natural persons that are imposed in practice are effective, proportionate and dissuasive in all foreign bribery cases (Convention Article 3);
 - (b) enact a provision to sanction aggravated foreign bribery to the same extent as aggravated domestic bribery (Convention Article 3);
 - (c) increase the maximum penalty available against legal persons in cases where the advantage accruing to the legal person as a result of foreign bribery is not “property”, or if the value of the advantage cannot be ascertained (Convention Article 3).
4. Regarding confiscation, the Working Group recommends that Bulgaria:
- (a) streamline its legislation on confiscation, and amend the legislation to expressly cover the confiscation of (i) the bribe from legal persons; and (ii) the indirect proceeds of bribery gained by a briber, and property in the hands of third parties, from natural and legal persons (Convention Article 3).
 - (b) take steps to ensure that prosecutors routinely seek confiscation of the bribe, and the direct and indirect proceeds of bribery obtained by a briber (Convention Article 3).
5. Regarding investigations and prosecutions, the Working Group recommends that Bulgaria:
- (a) allocate adequate human and financial resources to investigations and prosecutions of foreign bribery against natural and legal persons, including the availability of expertise in forensic accounting and information technology (Convention Articles 2 and 3; 2009 Recommendation IV and Annex I(D));
 - (b) train judges, prosecutors and investigators on investigations and prosecutions of legal persons and complex financial cases, and take steps to ensure that such investigations are conducted whenever appropriate (2009 Recommendation III(i), IV and Annex I (A) and (D));
 - (c) take steps to ensure that its authorities are more proactive when seeking mutual legal assistance (Convention Article 9; 2009 Recommendation XIII(i) and (iii));
 - (d) issue an official written procedure for assigning foreign bribery cases to the various prosecutorial and investigative bodies (Convention Article 5);

- (e) maintain statistics as to the number, sources and subsequent processing of foreign bribery allegations and consider ways of publicising information heard by the courts, as described in Phase 2 Recommendation 4 (2009 Anti-Bribery Recommendation III(i)).
- (f) put in place a centralised mechanism for the periodic review and evaluation of the enforcement approach and the effectiveness of the enforcement efforts of the different agencies involved in the fight against foreign bribery, as referred to in Phase 2 Recommendation 14 (Convention Articles 1 and 5; 2009 Anti-Bribery Recommendation V).

Recommendations for ensuring effective prevention and detection of foreign bribery

6. Regarding accounting requirements, external audit, internal controls, ethics and compliance, the Working Group recommends that Bulgaria:

- (a) introduce effective, proportionate and dissuasive sanctions for false accounting offence, and intensify training and awareness-raising in foreign bribery that targets the accounting and auditing profession (reiterates Recommendation 3 of Phase 2) (Convention Article 8; 2009 Recommendation III(i) and X(A(iii)));
- (b) encourage companies to introduce codes of conduct and compliance programmes, as well as to promote the implementation of measures recommended in the “Good Practice Guidance on Internal Controls, Ethics, and Compliance” and clearly allocate responsibility for such promotion (2009 Recommendation X(C) and Annex II).

7. Regarding tax measures, the Working Group recommends that Bulgaria implement its declared intention to:

- (a) establish an express legislative provision to prohibit the tax deduction of bribes including those paid to foreign public officials and review its tax law with a view to identifying and removing potential loopholes for hiding foreign bribery as tax-deductible expenses (2009 Recommendation VIII(i));
- (b) 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)).

8. Regarding awareness-raising, the Working Group recommends that Bulgaria:

- (a) explicitly address combating bribery of foreign public officials in international business transactions in its anti-corruption policy (2009 Recommendation II and III(i));
- (b) raise awareness of the foreign bribery offence among the relevant ministries and provide regular training about the offence and reporting obligations to officials in government agencies that could play a role in detecting and reporting, including the officials of the Ministry of Foreign Affairs (2009 Recommendation III(i) and IX(ii));
- (c) raise awareness among the private sector of the offence, in co-operation with the Bulgarian SME Promotion Agency and business associations (2009 Recommendation III(i)).

9. Regarding whistleblower protection, the Working Group recommends that Bulgaria consider extending the recently established provision for the protection of whistleblowers who report instances of conflict of interests to cover foreign bribery, or establish another mechanism to ensure that public and

private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary actions. The Working Group further recommends that Bulgaria implement measures to raise awareness about such mechanisms (2009 Recommendation IX(iii)).

10. Regarding official development assistance (ODA), the Working Group recommends that Bulgaria, in the course of developing its ODA policies and procedures, adopt measures to prevent, detect and report foreign bribery in the award and execution of ODA contracts (2009 Recommendation II, IX(i) and IX(ii)).

11. Regarding officially supported export credits, the Working Group recommends that the Bulgaria:

- (a) adhere to the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits (2009 Recommendation XII(i));
- (b) introduce measures to inform clients about the legal consequences of foreign bribery, require clients to provide anti-bribery declarations, conduct due diligence in the award process (including through the use of available debarment lists), and report suspicions of foreign bribery in export credit operations (2009 Recommendation XII(i)).

12. Regarding public procurement, the Working Group recommends that Bulgaria introduce a legal provision to allow debarment of legal persons from public procurement, provide guidance to the procurement bodies on due diligence, and consider maintaining a record of natural and legal persons convicted of bribery which could be consulted by contracting authorities. (2009 Recommendation XI).

2. Follow-up by the Working Group

13. The Working Group will follow up the issues below as the case law and practice develop:

- (a) The number of and reasons for cases returned by the courts to the pre-trial authorities (Convention Article 5 and 2009 Recommendation Annex I(D));
- (b) Time taken to conduct preliminary checks when there is sufficient information to commence pre-trial proceedings (Convention Article 5 and 2009 Recommendation Annex I(D)).

**ANNEX 1 PHASE 2 RECOMMENDATIONS OF THE WORKING GROUP
AND ISSUES FOR FOLLOW-UP**

Recommendations in Phase 2

*Written
follow-up**

Recommendations for awareness raising

The Working Group recommends that Bulgaria:

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| 1. | Take measures to raise the level of awareness of the foreign bribery offence among officials in government agencies that could play a role in detecting and reporting it and undertake effective public awareness activities for the purpose of educating and advising the private sector on the offence. (Revised Recommendation, Article I) | <i>Partially
implemented</i> |
| 2. | Develop the role of the Bulgarian Trade Promotion Agency in awareness-raising and in deterrence, by considering measures which prevent public funds being spent on assistance, or official support given, to companies involved in foreign bribery. (Revised Recommendation, Article I) | <i>Satisfactorily
implemented</i> |
| 3. | Work proactively with the accounting, auditing and legal professions to establish training and awareness-raising activities about the foreign bribery offence in order to maximise the opportunities for prevention and deterrence within the business community. (Revised Recommendation, Article I). | <i>Partially
implemented</i> |
| 4. | Maintain statistics as to the number, sources and subsequent processing of allegations of violations of the laws against foreign bribery and consider ways of making sufficient information available as a matter of public record on cases of bribery heard by the courts, including acquittals, convictions and interpretations of the law, to meet the needs of judges, lawyers and those engaged in research, as well as the media and the public. (Revised Recommendation, Article I). | <i>Partially
implemented</i> |

Recommendations for preventive measures

The Working Group recommends that Bulgaria:

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| 5. | Encourage the introduction of codes of conduct and compliance policies in corporations. (Revised Recommendation, Article VI). | <i>Partially
implemented</i> |
| 6. | Consider operating a policy of excluding any individuals, or any entities whose directors or officers have been found to have been involved in foreign bribery from eligibility for government contracts (Convention, Article 3; Revised Recommendation, Article VI). | <i>Satisfactorily
implemented</i> |

Recommendations for reporting of foreign bribery

The Working Group recommends that Bulgaria:

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| 7. | Consider the introduction of measures of whistleblower protection sufficient to protect employees, both in the public and private sectors, from dismissal in order to | <i>Required
further</i> |
|----|---|-----------------------------|

* This column sets out the Working Group's findings on Bulgaria's January 2006 Phase 2 written follow-up report to.

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| encourage individuals to report suspected cases of foreign bribery without fear of retaliation. (Convention, Article 5). | <i>consideration</i> |
| 8. Bearing in mind the vital role of accountants in uncovering and reporting foreign bribery, consider measures designed to encourage increased reporting by members of the profession; and consider requiring auditors to report indications of possible illegal bribery to the competent authorities. (Convention, Article 8, Revised Recommendation, Article V B 4). | <i>Satisfactorily implemented</i> |
| 9. Encourage the enforcement agencies to provide appropriate feedback on reports that are made, in order to assist the tax and other authorities in improving their detection and reporting capabilities with regard to foreign bribery. (Revised Recommendation, Articles I and II (ii)). | <i>Not implemented</i> |

Recommendations for detection

The Working Group recommends that Bulgaria

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| 10. Provide all officials having a role in the detection, reporting and enforcement of the foreign bribery offence with detailed and regularly updated training about the content of the offence, and guidance, in the form of guidelines or typologies where appropriate, on the circumstances in which it occurs and how to recognise it. (Revised Recommendation, Article I) | <i>Satisfactorily implemented</i> |
| 11. Establish clear guidelines for the tax authorities to encourage the detection of foreign bribery, and consider introducing an express denial of deductibility in order to strengthen the mechanisms available for detecting and deterring the offence. (Revised Recommendation, Article IV). | <i>Required further consideration</i> |
| 12. Take steps to ensure that the officials responsible for processing requests for information under the Access to Public Information Act are properly trained so that information necessary for the detection and reporting of foreign bribery is available to the fullest extent allowed by that statute. (Revised Recommendation, Article I). | <i>Satisfactorily implemented</i> |

Recommendations for ensuring adequate mechanisms for the effective prosecution of foreign bribery offences and the related money laundering offences

The Working Group recommends that Bulgaria

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| 13. The Working Group noted Bulgaria's non-compliance with Article 2 of the Convention and therefore encourages it to proceed diligently with the recently instituted measures aimed at fulfilling the requirements of the Convention by establishing the liability of legal persons for the bribery of a foreign public official, and put in place sanctions that are effective, proportionate and dissuasive, including, in particular, confiscation in cases where the proceeds or assets are in the hands of a legal entity. (Convention, Articles 2, 3). | <i>Satisfactorily implemented</i> |
| 14. Consider putting in place a centralised mechanism for the periodic review and evaluation of the effectiveness of the enforcement efforts of the different agencies involved in the fight against foreign bribery. (Convention, Article 5). | <i>Satisfactorily implemented</i> |
| 15. Employ special investigative techniques in respect of the foreign bribery offence where needed, and: (i) ensure that they are available in cases involving requests to lift judicial immunity and (ii) clarify the procedures for applying for authorisation to use such techniques, in order to ensure that these are consistently applied and the time-limits respected. (Convention, Article 5). | <i>Partially implemented</i> |
| 16. Examine the rules applicable to the lifting of bank secrecy in the course of financial | <i>Not</i> |

investigations and the manner in which they are currently applied, to ensure that the process is simple and consistently implemented. (Convention, Articles 5, 9). *implemented*

17. Consider, within the constitutional principles of the State, measures that may be taken in order to ensure that judicial immunity does not impede effective investigation, prosecution and adjudication in foreign bribery cases. (Convention, Article 5). *Satisfactorily implemented*

Follow-up by the Working Group

The Working Group will follow up on the issues below, as the case-law on the foreign bribery offence develops, to assess:

18. The application of sanctions, in particular the fines now available under Articles 304 and 305a of the Penal Code, in order to determine whether they are sufficiently effective, proportionate and dissuasive to deter and penalise the offence of foreign bribery. (Convention, Article 3).
19. Whether the existing language defining the elements of the offence of foreign bribery is sufficiently clear to be used in practice in cases where a benefit is directed to a third party. (Convention, Article 1).

The Working Group will furthermore monitor developments in the following area:

20. Whether the proposed Law on the Amendment and Supplements to the Law on Measures Against Money Laundering is passed by the National Assembly (Convention, Article 8).

ANNEX 2 LIST OF PARTICIPANTS IN THE ON-SITE VISIT

Government Ministries and Bodies

- Chief Inspectorate Directorate at the Council of Ministers
- Ministry of Justice
- Ministry of Economy, Energy and Tourism (MEET)
- Ministry of Foreign Affairs
- Public Procurement Agency
- Interdepartmental Council on Issues of the Military Industrial Complex and the Mobilization Readiness of the Country of the Council of Ministers
- Internationally Controlled Trade and Security Directorate, MEET
- National Revenue Agency
- Ministry of Finance
- General Prosecutor's Office
- Sofia City Prosecution Office
- Ministry of Interior
- State Agency for National Security (SANS)
- Commission on finding property acquired through criminal activity
- Audit of EU Funds Executive Agency
- Financial Intelligence Directorate of SANS

Government-Funded Bodies

- Public Administration Institute
- Bulgarian Small and Medium Enterprises Promotion Agency (BSMEPA)
- Export Insurance Agency
- Commission for public oversight of the statutory auditors

Judiciary

- Supreme Court of Cassation
- Sofia City Court
- National Institute of Justice

Private Sector

Private enterprises

- Vazovski Mashinostroitelni Zavodi (VMZ)
- Inatrading Ltd.
- Ficosota Sytez Ltd. and Ital Food Industry JSC
- ABB Bulgaria Ltd.
- Intertex 2000 GCS
- Amann Bulgaria EOOD
- TLB, Textile Logistics Bulgaria

- Siemens Bulgaria
- Eli Lilly (SUISSE) S.A. Representative Office in Bulgaria
- Kolev and Kolev, Bulgarian children food producer
- Astra Zeneca Bulgaria
- A sole entrepreneur

Business associations

- National entrepreneurship and handcrafts chamber
- Bulgarian Chamber of Commerce and Trade
- National Association of SMEs (NASMB)
- Bulgarian Industrial Association/Union of Bulgarian Business (BIA)
- BARDA
- Bulgarian Economic Forum
- Confederation of the Employers and Industrialists in Bulgaria (KRIB), successor of International Business Association (BIBA)
- Bulgarian Association of manufacturers and exporters of textile and clothing

Financial institutions

- Bulgarian Development Bank

Legal profession and academics

- New Bulgarian University
- Bulgarian Academy of Science
- Lecturer in criminal law
- Doctor of constitutional law

Accounting and auditing profession

- Institute of Public Certified Auditors
- Ernst and Young Audit OOD
- Audit Department, Deloitte Audit OOD
- AK Konsult EOOD

Civil Society

- Transparency International Bulgaria
- Center for Liberal Strategies
- Club of Journalists against Corruption
- Darik Radio
- Newspaper SEGA
- Newspaper Monitor
- Newspaper Telegraph
- Newspaper 24 Hours

ANNEX 3 LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

BGN	Bulgarian leva
BSMEPA	The Bulgarian SME Promotion Agency
CPC	Criminal Procedure Code
CPCC	Commission for Prevention and Counteraction against Corruption
EU	European Union
EUR	Euro
FID	Financial Intelligence Directorate
FIU	Financial Intelligence Unit
GDP	Gross domestic product
ICPA	Institute of Certified Public Accountants
IPA	Public Administration Institute
ISA	International Standards on Auditing
LAOS	Law on Administrative Offences and Sanctions
LFPC	Law on Forfeiture of Proceeds of Crime
LMLM	Law Against Money Laundering
MEET	The Ministry of Economy, Energy and Tourism
MLA	Mutual legal assistance
MoFA	The Ministry of Foreign Affairs
MoI	Ministry of Interior
NIS	National Investigation Service
NRA	National Revenue Agency
ODA	Official development assistance
PPA	Public Procurement Agency
PPL	Public Procurement Law
SANS	State Agency for National Security
SME	Small and medium-sized enterprises
STR	Suspicious Transaction Report
UNCAC	United Nations Convention against Corruption
USD	United States dollar

ANNEX 4 EXCERPTS FROM RELEVANT LEGISLATION

Penal Code

Article 53

(1) Notwithstanding the penal responsibility, confiscated in favour of the state shall be:

- (a) property belonging to the convict, which were intended or have served for the perpetration of intentional crime;
- (b) property belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of this Code.

(2) (New, SG No. 28/1982) Confiscated in favour of the state shall also be:

- (a) property, that have been subject or means of the crime, the possession of which is forbidden, and
- (b) property acquired through the crime, if it does not have to be returned or restored. Where the acquired is not available or has been disposed of, an equivalent amount shall be adjudged.

Article 301

(1) An official who requests (solicits) or accepts a gift or any other undue benefit, or accepts a proposal or a promise for a gift or benefit, in order to perform or to fail to perform an act connected with his service, or because he has performed or failed to perform such an act, shall be punished for bribery by deprivation of liberty for one to six years and a fine up to BGN five thousand.

(2) If the official has committed any of the acts under par. 1 in order to violate, or for having violated his service, where this violation does not constitute a crime, the punishment shall be deprivation of liberty of up to 8 to eight years and a fine of up to BGN ten thousand.

(3) If the official has committed any of the acts under paragraph 1 in order to perform or because of having performed another crime in connection with his service, the punishment shall be deprivation of liberty of up to ten years and a fine of up to BGN fifteen thousand.

(4) In the cases of the preceding paragraphs, the court shall rule deprivation of the rights under Article 37 (1), subparagraphs 6 and 7.

(5) The punishment under par. 1 shall also be imposed to a foreign official who requests or accepts a bribe or accepts a proposal for or a promise of bribery.

Article 302

For bribery committed:

1. by a person holding a responsible official position, including that of a judge, assessor, prosecutor, or investigator or of a police body or of an investigating police officer;
2. through blackmail with abuse of one's official position;
3. for a second time, and
4. on a large scale,

the punishment shall be:

- a) in the cases of Article 301, paragraphs (1) and (2) - deprivation of liberty for three to ten years, fine of up to BGN twenty thousand, and deprivation of rights under Article 37 (1), sub-paragraphs 6 and 7;
- b) in the cases of Article 301, paragraph (3) - deprivation of liberty from three to fifteen years, fine of up to BGN twenty-five thousand, and confiscation of up to one half of the culprit's property, and the court shall rule deprivation of rights under Article 37 (1), sub-paragraphs 6 and 7.

Article 302a

For bribery in particularly large amounts, representing a particularly grave case, the punishment shall be deprivation of liberty from ten to thirty years, fine of up to BGN thirty thousand, confiscation of the whole or part of the culprit's property and deprivation of rights under Article 37 (1), sub-paragraphs 6 and 7.

Article 303

In accordance with the differences under the preceding articles, the official shall also be punished where, with his consent, the gift or the benefit have been offered, promised, or given to another person.

Article 304

- (1) A person who offers, promises, or gives a gift or any other undue benefit to an official in order to perform or not to perform an act within the framework of his service, or because he has performed or has not performed such an act, shall be punished by deprivation of liberty for a term of up to six years and a fine of up to BGN five thousand.
- (2) If in connection with such bribe the official has violated his official duties, the punishment shall be deprivation of liberty for a term of up to eight years and a fine of up to BGN seven thousand, where this violation does not constitute a graver punishable crime.
- (3) The punishment as per paragraph (1) above shall be also inflicted on any person who offers, promises or gives a bribe to a foreign public official.

Article 304a

A person who proposes, promises or gives a bribe to an official in a responsible position, including that of a judge, assessor, prosecutor, or investigator, or of a police body or of an investigating police officer, shall be punished by deprivation of liberty for a term of up to ten years and a fine of up to BGN fifteen thousand.

Article 304b

- (1) Anyone who requests or accepts a gift, or any undue benefit, or accepts a proposal or promise for a gift or benefit, in order to exert influence over an official or a foreign official in decision-making in relation to his/her service, shall be punished by deprivation of liberty of up to six years and a fine of up to BGN five thousand.
- (2) Anyone who proposes, promises, or gives a gift or any undue benefit to a person alleging he/she might exert the influence under par. 1, shall be punished by deprivation of liberty of up to three years and a fine of up to BGN three thousand.

Article 305

- (1) The punishments for bribery under the preceding articles shall also be imposed to an arbiter or expert, appointed by a court, institution, enterprise or organisation where they perpetrate such acts in connection with the tasks entrusted to them, as well as on the person who proposes, promises, or gives such a bribe.
- (2) Punishments for bribery under the preceding articles shall be imposed to a defence counsel of any party in judicial proceedings where he/she commits an act, as stated above, to help adjudicate to the benefit of the adversary or to the detriment of their client pending criminal or civil proceedings at stake, as well to the individual who proposes, promises or gives such bribe.

Article 305a

A person who mediates for the commitment of any of the acts under the preceding articles, if the perpetrated act does not represent a graver crime, shall be punished by deprivation of liberty of up to three years and a fine of up to BGN five thousand.

Article 306

A person who has proposed, promised, or given a bribe shall not be punished: if he has been blackmailed by the official, arbiter or by the expert to do so and if of his own accord he has immediately informed the authorities.

Article 307

A person who with premeditation creates a situation or conditions conducive to the offering, giving or receiving of a bribe for the purpose of causing harm to a person who gives or receives the bribe, shall be punished for provocation to give or take bribe by deprivation of liberty for up to three years.

Article 307a

The object of the crime under this section shall be seized in favour of the state and where it is missing, a sum equal to its value shall be adjudged.

Law on Administrative Offences and Sanctions

Article 4

This Act as well as all other acts and decrees wherein administrative sanctions are prescribed shall be applicable to all administrative violations committed upon the territory of the Republic of Bulgaria, aboard any Bulgarian ship or aircraft, and in respect to Bulgarian nationals who have committed administrative violations abroad, provided such violations are punishable under Bulgarian national law and affect the interests of this state.

Article 83a

(1) On a legal person which has obtained or would obtain advantage from the criminal offences specified in articles 108a, 109, 110 (preparation to terrorism), 142-143a, 169-159b, 209-212a, 213a, 214, 215, 225c, 242, 250, 252, 253, 254, 254b, 256, 257, 280, 283, 301 – 307, 319a-319f, 320-321a, 354a -354b of the Criminal Code, as well as from other criminal offences committed on an errand or in fulfilment of a decision of an organised criminal group where committed by:

1. person empowered to form the will of the legal person;
2. person representing the legal person;
3. person elected in control or supervising body of the legal person;
4. worker and servant to whom the legal person has assigned a particular work, where the offence is committed on the occasion of or in performing this work,

monetary sanction shall be imposed at the amount up to 1 000 000 Levs, but not less than the equivalent to such advantage, where the advantage is of property nature, and where the advantage is not of property nature or it's amount cannot be established, the sanction will be from 5 000 to 100 000 Levs.

(2) The monetary sanction shall be imposed also where the natural persons under paragraph 1 (1-3) have been involved as instigators or accessories in the commission of the above criminal offences as well as when such acts have been committed in the phase of an attempt.

(3) The monetary sanction shall be imposed regardless of the criminal responsibility of the perpetrator of the criminal act under paragraph 1.

(4) The advantage or its equivalent shall be forfeited in favour of the State, if it is not subject to return or recovery or to forfeiture under the Criminal Code.

(5) Property sanction under para1 may not be imposed on the State, state bodies and local public bodies, as well as on the international public organizations.

Article 83b

(1) Proceedings against legal persons under article 83a shall be instituted upon a motivated proposal by the respective prosecutor to the regional court:

1. after bringing the indictment before the court;

2. where the criminal proceedings may not be instituted or the instituted proceedings are discontinued because:
 - a) the perpetrator is not criminally liable because of amnesty;
 - b) the criminal liability has been extinguished by prescription;
 - c) the perpetrator has died;
 - d) after the commission of the criminal offence the perpetrator has fallen into continuous mental disorder which excludes sanity.

(2) The proposal shall contain:

1. description of the offence, the circumstances under which it has been committed and the existence of a causal link between the criminal offence and the advantage for the legal person;
2. type and amount of the advantage;
3. designation, subject of activity and address of the legal person;
4. personal data of the persons representing the legal person;
5. personal data of the accused or sentenced persons;
6. list of the written materials or their certified copies which establish the circumstances under p.1 and 2;
7. list of the persons to be summoned;
8. the date and the place of drafting the proposal and the name and official position of the prosecutor.

(3) A copy for the legal person shall be enclosed to the proposal.

Article 83c

The prosecutor may ask the court to take measures for securing the monetary sanction of the legal person under the Civil Procedure Code.

Article 83d

The proposal shall be considered by the court in open session with the participation of the prosecutor.

Article 83e

In the course of the trial the court shall consider the case within the framework of the factual circumstances specified in the proposal and on the basis of the evidence gathered and it shall estimate:

1. whether the legal person has obtained unlawful advantage;
2. whether there is relation between the perpetrator of the criminal act and the legal person;
3. whether there is link between the criminal offence and the advantage for the legal person;
4. the amount of the advantage in case where the advantage is of property nature.

Article 83f

(1) The court shall rule the judgment by which a monetary sanction shall be imposed after the entry into force of the conviction or after the pronouncement of decision under article 124, paragraph 5 of the Civil Procedure Code and where the circumstances under article 83e have been proved.

(2) The judgment shall contain complete data of the legal person, the origin, the type and the amount of the advantage, the amount of the monetary sanction imposed.

(3) On cases, which constitute factual or legal complexity, the motives may be drafted even after the pronouncement of the judgment but not later than fifteen days.

(4) Appeal against the judgment may be lodged before the respective second instance court within fourteen days after the pronouncement of the judgment.

(5) The second instance court shall consider the appeal under the Criminal Procedure Code. The decision is final.

Code of Civil Procedure

Article 124

(5) A claim to ascertain a criminal circumstance of importance to a civil legal relationship or for cancellation of an effective decision shall be admitted in the cases, where the criminal procedure cannot be initiated or is terminated on some of the grounds of Art. 24, Para 1, items 2-5, or is suspended on some of the grounds under Art. 25, item 2 or Art. 26 of the Penal Code, as well as in the cases where the perpetrator of the deed is undetected.

ANNEX 5
SANCTIONS IMPOSED AGAINST NATURAL PERSONS FOR PENAL CODE BRIBERY
OFFENCES (2009 TO FIRST HALF OF 2010)

Sanctions in 2009					
	Life imprisonment	Imprisonment (effective)	Imprisonment (conditional)	Probation	Others
301 passive bribery	0	1	4	7	6
302 aggravated passive bribery	0	0	6	0	2
302a aggravated passive bribery	0	0	0	0	0
303 passive bribery -third party beneficiary	0	0	0	0	0
304 active bribery	0	3	27	58	21
304a aggravated active bribery	0	0	1	2	1
304b trading in influence	0	0	1	0	1
305 bribery of arbiter or expert	0	0	0	0	0
305a mediating bribery	0	0	0	0	0
307 Creating situation conducive to bribery	0	0	0	0	0
Total	0	4	39	67	31

Sanctions in first half of 2010						
	Life imprisonment	Imprisonment (effective)	Imprisonment (conditional)	Probation	Fine	Others
301 passive bribery	0	0	3	7	4	4
302 aggravated passive bribery	0	0	3	0	1	2
302a aggravated passive bribery	0	0	0	0	0	0
303 passive bribery -third party beneficiary	0	0	0	0	0	0
304 active bribery	0	4*	20	39	15	2
304a aggravated active bribery	0	0	0	0	0	0
304b trading in influence	0	0	0	0	0	0
305 bribery of arbiter or expert	0	0	0	0	0	0
305a mediating bribery	0	0	0	0	0	0
307 Creating situation conducive to bribery	0	0	0	0	0	0
Total	0	4	26	46	20	8

* Three sentences were for under 3 years, and one sentence was between 3-5 years