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English - Or. English

15 November 2022

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Phase 4 evaluation of Slovenia: One-year written follow-up report

14-17 June 2022

This document is submitted for discussion under item 9.g of the agenda.

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PHASE 4 EVALUATION OF SLOVENIA: ONE-YEAR WRITTEN FOLLOW-UP REPORT

Instructions

This document seeks to obtain information on the progress that Slovenia has made in implementing a number of recommendations of its Phase 4 evaluation report.

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

Please submit completed answers to the Secretariat on or before 20 May 2022.

Name of country:	Slovenia
Date of approval of Phase 4 evaluation report:	11 March 2021
Date of information:	20 May 2022

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation 7(a):

7. Regarding the offence of bribing a foreign public official, the Working Group recommends that Slovenia:

a) As a priority, take all measures to ensure that the definition of foreign public officials covers, in a manner consistent with the Convention, (i) officials exercising a public function for a foreign country, regardless of whether that person has management powers and responsibilities, (ii) officials of organised foreign areas or entities that do not qualify or are not recognised as States; and (iii) officials of foreign public enterprises [Convention Article 1; Commentary 14 and 18; 2009 Recommendation III.ii and V; Phase 3 Recommendation 1 a. and b];

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

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

AD i):

The definition of a foreign public official according to the Article 99 (sub-paragraphs 6, 7 and 8 of a paragraph 1) of the Criminal Code covers bribery of any person carrying out an official duty, regardless of whether that person has management powers and responsibilities.

Namely, Article 99, sub-paragraph 3 of paragraph 1 refers to two alternatives, a person exercising a public function with management powers and responsibilities or a person carrying out official duties within a state authority or an authority of a self-governing local community or any other entity governed by public law. It follows from the case law that the courts have already considered police officers and various inspectors (without managerial powers) to be official persons since they perform official duties. Some relevant Supreme Court of the Republic of Slovenia judgements: I Ips 14217/2013-174 from September 1st 2016, IV Ips 23/2019 from October 15th 2019, I Ips 452/2007 from January 17th 2008, I Ips 268/2007 from August 30th 2007, I Ips 55384/2011 from May 31st 2018 etc. Therefore, in this part of Article 99, sub-paragraph 3 of paragraph 1 the important circumstance for the definition of an official person is the performance of official duties (and not management powers and responsibilities).

This distinction between the two categories of official persons from Article 99, sub-paragraph 3 of paragraph 1 is also clear from the Commentary to the General Part of the Criminal Code (GV Založba, Ljubljana 2021), which read that the persons exercising a public function with management powers and responsibilities should be treated differently. Their status of an official person derives from the relevant sectoral legislation and therefore it is not required to determine whether they are performing official duties.

It is clear from the above that no amendments to the Criminal Code are needed in this area.

AD ii):

As regards officials of organised foreign areas or entities that do not qualify or are not recognised as States, in addition to what has been written so far, we will examine the question again in the framework of preparation of proposal of amendments to the Criminal Code, which is foreseen for this year.

AD iii):

In addition to what has been written so far, we will examine the question again in the framework of preparation of proposal of amendments to the Criminal Code, which is foreseen for this year.

Text of recommendation 7(b):

7. Regarding the offence of bribing a foreign public official, the Working Group recommends that Slovenia:

- b) Amend relevant legislation to ensure that the defence of effective regret does not apply to natural persons or legal persons in foreign bribery cases. [Convention Articles 1 and 3; 2009 Recommendation III.ii and V; 2009 Recommendation Annex I.A; Phase 3 Recommendation 1. c]

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

Article 242, Paragraph 3 and Article 262, Paragraph 3 of Criminal Code, which determines circumstances of effective regret, they both exclude remission of penalty if it would be contrary to the rules of international law. Convention Articles 1 and 3 are the part of international law. As it was already conveyed to the OECD WGB the whole purpose of the said amendment to the Criminal Code (KZ-1B; Official Gazette of the Republic of Slovenia, No. 91/11) was to satisfy the requirements of the Convention as is explicitly reflected in the *travaux préparatoires* of KZ-1B as the intention of the legislator.

The same follows also from the Commentary to the Special Part of the Criminal Code (GV Založba, Ljubljana 2019), which explicitly states that remission of penalty from Article 262, Paragraph 3 of the Criminal Code is not possible in cases from the Convention.

We estimate that further amendments to the Criminal Code are not needed in this area.

Text of recommendation 8(e):

8. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Slovenia:

- e) Take urgent steps to ensure that sufficient safeguards are in place (i) to secure the independence of police investigations and (ii) regarding the appointment and dismissal of the NBI Director [Convention, Article 5]

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

The General Police Directorate updated the Guidelines and Instructions for the Effective Detection and Investigation of Corruption Crimes, which relate to personnel, organizational and professional measures regarding the investigation of corruption. Based on these Guidelines, all police units that specialize in investigating corruption have established technical plans for the effective detection and investigation of corruption offenses, which include bribery of foreign public officials. On the basis of the updated Guidelines, all Criminal Police Sectors within the Police Administrations must immediately inform the National Bureau of Investigation about the detection or suspicion of international corruption or bribery of foreign public officials. The Director of the National Bureau of Investigation then decides, on the basis of the law and conditions in internal acts, whether or not the Bureau will take over the investigation.

In 2021, the Police also conducted special trainings on the topic of corruption in public procurement procedures, with specific trainings on the issue of foreign bribery and the liability of legal entities in regards to foreign bribery. The two-day training was attended by 26 police officers in charge of investigating corruption criminal offences.

Amendments to the Police Organization and Work Act (ZODPol-G) entered into force on 13 November 2021. In accordance with its provisions, the National Bureau of Investigation is an internal organizational unit of the Criminal Police Administration. The amendment to ZODPol-G clarifies that the NBI is autonomous in detecting and investigating criminal offenses, as well as the method of determining which investigations will be undertaken by the NBI. The special provisions on the appointment and dismissal of the Director of the NBI have been deleted, which means that the procedure of appointment/dismissal is the same as for other civil servants. The ZODPol-G amendment also clarifies the situation in which the state prosecutor was informed of a criminal offense but did not take over the direction. In this case, the police officers act independently within the scope of their legal powers and are subject to the supervision of their superiors.

The autonomy of the NBI in detecting and investigating criminal offenses, which is provided in the ZODPol-G, is reflected in practice mainly in the decision of the NBI director to take over investigations (in accordance with the Instructions on Determining Criminal Offenses Investigated by the NBI), autonomous management and consequent organization of the work of the NBI, direct cooperation with the competent state prosecutor's offices and the independence in filing criminal reports to the prosecutor's office. Notwithstanding the above mentioned provisions on the competence of the Minister of the Interior in directing the police in pre-trial proceedings, when the state prosecutor did not take over, it should be emphasized that virtually all pre-trial proceedings conducted by the NBI are directed by the state prosecutor.

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

Text of recommendation 8(f):

8. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Slovenia:

f) Strengthen safeguards and take any other steps, as a matter of urgency, to ensure that prosecutors are not subject to improper influence by concerns of a political nature or factors prohibited by Article 5 of the Convention in deciding whether to pursue an investigation or prosecution. [Convention Article 5; Phase 3 Recommendation 4(c)]

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

Decision of the Constitutional Court No. U-I-214/19, Up-1011/19, dated 8 July 2021

The Constitutional Court decided on a petition and constitutional complaint of the State Prosecutor General, the Supreme State Prosecutor's Office of the Republic of Slovenia, and the Supreme Court against Article 1 of the Parliamentary Investigation Act in conjunction with the Act Ordering a Parliamentary Investigation in the Case of Franc Kangler and Others. The State Prosecutor General and the Supreme State Prosecutor's Office of the Republic of Slovenia also challenged the mentioned Act and the Rules on Parliamentary Investigation because these two acts allegedly failed to regulate an appropriate mechanism by which it would be possible to prevent parliamentary investigations that unconstitutionally interfere with the self-dependence and independence of the performance of the function of the State Prosecutor's Office.

To begin with, the Constitutional Court drew attention to its hitherto case law, in accordance with which the State Prosecutor's Office is part of the executive branch of power, but self-dependent in relation to other authorities of the executive branch of power and independent in relation to the legislative and judicial branches of power. It explained that state prosecutors do not in any way entail a part of the executive branch of power, which could be subject to political supervision and political accountability. On the contrary, the self-dependence and independence of state prosecutors, which follows from the constitutional function of criminal prosecution, prohibit political meddling in the performance of the function of the State Prosecutor's Office in concrete cases. The mentioned constitutional position of the State Prosecutor's Office must also be taken into consideration when ordering and carrying out parliamentary investigations. In the assessment of the Constitutional Court, such does not entail

that the Constitution prohibits any parliamentary investigation that refers to the performance of the function of the State Prosecutor's Office. It entails, however, that it is not admissible to influence, by a parliamentary investigation, the decision of state prosecutors on whether in a certain concrete case they will initiate or discontinue criminal prosecution and how they will conduct the criminal prosecution procedure. If a parliamentary investigation is ordered or requested with the intention of ascertaining the correctness of concrete decisions or actions of state prosecutors that fall within the remit of the function of the State Prosecutor's Office or to assess the liability of state prosecutors for such decisions or actions, the mere ordering of such parliamentary investigation is inconsistent with the constitutionally guaranteed independence of state prosecutors referred to in Article 135 of the Constitution and in the second sentence of the second paragraph of Article 3 of the Constitution.

Further down in the Decision, the Constitutional Court addressed the question of the procedural protection of the independence of the State Prosecutor's Office in a procedure for ordering a parliamentary investigation. It explained that the legislation does not envisage judicial protection, a legal remedy, or any other effective procedure by which it would be possible to prevent parliamentary investigations that unconstitutionally interfere with the independence of state prosecutors, although the existence of such procedures is of key importance for the functioning of a state governed by the rule of law, the protection of human rights, and for independent, impartial, and fair judicial decision-making. The Constitutional Court decided that such a procedure could be introduced in conformity with the constitutional system of the separation of powers and in a manner that would not jeopardise the effective performance of parliamentary investigations. According to the Constitutional Court, the Constitution requires the existence of such a procedure.

In view of the above, the Constitutional Court established that the challenged Parliamentary Investigation Act and the Rules on Parliamentary Investigation are inconsistent with the first paragraph of Article 135 and the second sentence of the second paragraph of Article 3 of the Constitution. Within the framework of the review of the constitutionality of the Act Ordering a Parliamentary Investigation in the Case of Franc Kangler and Others, the Constitutional Court analysed the parts of the Act that refer to the performance of the function of the State Prosecutor's Office and assessed that in this part the investigation refers to the assessment of whether it was lawful to initiate and carry out a criminal prosecution procedure in that concrete case. It concluded that the Act Ordering a Parliamentary Investigation in the Case of Franc Kangler and Others is in this part inconsistent with the independence of state prosecutors, and thus abrogated it to that extent.

The decision of the Constitutional Court concluded the long-lasting debate about political supervision and political accountability of state prosecutors in the Republic of Slovenia and provided clear answers in regards to the independence of state prosecutors.

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