



ESTONIA: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 5 October 2010.

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SUMMARY AND CONCLUSIONS OF WORKING GROUP ON BRIBERY

a) Summary of Findings

1. Estonia has taken additional steps to implement the OECD Anti-Bribery Convention since its Phase 2 examination in June 2008. The Working Group notes favourably that Estonia has implemented a number of recommendations in the Phase 2 report, though more efforts are needed in several areas such as awareness-raising, training, and the statute of limitations for foreign bribery.

2. Concerning awareness-raising in the public sector, Estonia circulated an information bulletin to diplomatic personnel informing them of the offence of foreign bribery, their duty to report such crimes, and international co-operation in anti-corruption. The bulletin is on the Intranet website of the Ministry of Foreign Affairs. An extended version of the bulletin was sent to judges, prosecutors, and officials in the Ministries of Foreign Affairs, Justice, Internal Affairs, Finance (including tax officials), and Economic Affairs and Communications. Nevertheless, Estonia should engage in more awareness-raising activities. Hence, Recommendation 1(a) is only partially implemented.

3. Regarding training in the public sector, foreign bribery was specifically covered in two seminars for the economic crime police in 2009 and in courses for diplomats in 2009 and 2010. The basic qualification test for tax officials now includes questions on foreign bribery. Additional training initiatives for law enforcement, prosecutors, judges and tax officials covered domestic corruption or economic crime generally but not foreign bribery specifically. In the Working Group's view, Estonia should provide more focused training on foreign bribery. Recommendation 1(b) is therefore only partially implemented.

4. To raise awareness in the private sector, the Ministry of Justice and the Estonian Chamber of Commerce and Industry (ECCI) posted information on foreign bribery on their websites. The ECCI published an article in a 2009 periodical on foreign bribery and the OECD's work in this area. An information bulletin on foreign bribery was sent to businesses and published on the Internet. Several seminars and conferences in 2009 and 2010 on business ethics covered foreign bribery. However, less has been done concerning accountants and auditors. An information bulletin was sent to members of the Estonian Association of Accounting, but not all accountants in Estonia are members of the Association. For auditors, "serial training on new professional standards" has been on-going since Fall 2009. How much of this training is devoted to foreign bribery is unclear. The new Auditing Act entered into force in March 2010 and requires each auditor to receive 40 hours of continuing education annually. Yet, it has not been decided that this training would specifically address foreign bribery. Recommendation 2(a) is thus only partially implemented. There was no information on whether Estonia has taken steps to help the business community to prevent and detect foreign bribery, such as by developing tools for these purposes. It therefore has not implemented Recommendation 2(b).

5. Concerning whistleblowing, there remains no specific law on this subject in Estonia. A draft Anti-Corruption Act before Parliament, if passed, would legally require whistleblower reports to be kept confidential, and provide whistleblowers with a civil remedy for discrimination. Nevertheless, since the Act has not become law, Recommendation 3 is not yet implemented.

6. Regarding the reporting of foreign bribery, Estonia did not provide information on steps taken to ensure that suspicions of foreign bribery detected by Kredex employees are reported to law enforcement. Recommendation 4(a) is therefore not implemented. Auditors continue to be prohibited from reporting foreign bribery directly to law enforcement. However, beginning in 2011, the new Auditing Act and the International Standards of Auditing will require an auditor to report suspicions of bribery to a client

company's management or supervisory board. If the management or board does not deal with the suspicions, then the auditor must resign and advise the Auditor's Public Oversight Board of the reasons. The Board then has a duty to notify the authorities. This fully implements Recommendation 4(b).

7. In the area of official development assistance (ODA), as mentioned above, Estonia issued an information bulletin to diplomats on foreign bribery. Staff of overseas diplomatic representations attended regular seminars covering foreign bribery in 2009. The standard contract for ODA-funded projects now contains an anti-bribery declaration. A contractor must declare that no person has accepted, offered or arranged bribes in connection with the execution of the ODA-financed project. Breach of this provision requires the contractor to return all ODA support that he/she has received and to compensate the government for any losses. Recommendations 5(a) and 5(b) are therefore fully implemented.

8. In the area of tax, Estonia has introduced questions on foreign bribery in the basic qualification test for tax officials. Tax officials receive regular training on anti-corruption measures, but this training does not specifically address foreign bribery. The OECD Bribery Awareness Handbook (in Estonian) continues to be available for consultation by tax officials. However, Estonia has not made proactive efforts to draw tax officials' attention to this publication, to encourage its use by officials, or to integrate it into training programmes. Hence, Recommendation 6 is only partially implemented.

9. Estonia has provided only some training on investigation and prosecution of foreign bribery. As noted above, Estonia has trained law enforcement, prosecutors, and judges on domestic corruption or economic crime generally, but not specifically on foreign bribery. Prosecutors received training on corporate liability in 2009. Similar training has not been provided to police officers, and is scheduled for judges only in 2011. Overall, Recommendation 7(a) is partially implemented.

10. Estonia has taken some measures concerning investigations and prosecutions of foreign bribery. The Phase 2 Report noted that Section 204 of the Criminal Procedure Code could be used to terminate foreign bribery cases on grounds that are prohibited by Article 5 of the Anti-Bribery Convention. Estonia has since amended the provision to expressly prohibit the termination of criminal proceedings on grounds of national economic interests, foreign policy interests, or any other ground, if termination would contradict an international treaty binding on Estonia. This amendment, if rigorously applied, would address the Phase 2 Report's concerns. Estonia has not, however, taken any steps regarding plea bargaining. It also has not taken steps to ensure prosecutorial independence, though it plans to amend legislation to fix prosecutors' salaries, reorganise the disciplinary process for prosecutors, and require prosecutors to report to the legislature. On the whole, Recommendation 7(b) is only partially implemented.

11. Two other recommendations concerning prosecution and investigation remain outstanding. Special investigative techniques continue to be unavailable for the offence of "arranging a bribe", though the draft Anti-Corruption Act, if enacted, could remedy this situation. Estonia has not taken steps to ensure that its authorities will spontaneously transmit to a foreign state information relevant to a foreign bribery investigation in that state. Recommendations 7(c) and 7(d) are thus not implemented.

12. Penal Code amendments in July 2008 have largely addressed the Working Group's concerns regarding Estonia's foreign bribery offence. The offence is now autonomous. It expressly covers foreign officials who perform legislative functions, and all cases in which an official receives a bribe in order to act outside his/her authorised competence. Recommendations 8(a)-(c) are therefore fully implemented.

13. Regarding corporate liability, Estonia fully implemented Recommendation 9(b) by amending the Penal Code to provide nationality jurisdiction to prosecute legal persons for foreign bribery. The Phase 2 Report also recommended that Estonia broaden the criteria for corporate liability. The amended Penal Code now allows liability to be imposed for bribery committed by a company's "authorised representative"

and a member of a company's body (e.g. board of directors). "Authorised representative" is not defined. Estonia asserts that this term includes any person who acts for, in the name of, or for the benefit of a legal person, but this has yet to be confirmed by case law. In addition, liability continues to arise only for bribery committed "in the interest of a company". However, recent court practice showed that this concept covers any direct or circumstantial, moral or monetary profit. As well, practice, doctrine and a new commentary on the Penal Code indicate that a company could be liable not only if an authorised representative etc. commits an offence intentionally, but also if such a person foresees and tacitly accepts that a crime may occur. Collectively, these developments fully implement Recommendation 9(a). However, the application in practice of the entire corporate liability regime in foreign bribery cases should be further examined in Estonia's Phase 3 evaluation.

14. Two other areas saw no legislative developments. The statute of limitations for prosecuting non-aggravated foreign bribery in Estonia continues to be five years. More importantly, the statute is not suspended by outstanding requests for mutual legal assistance, which the Working Group considers to be a serious deficiency. Estonia acknowledged that it needs to analyse this issue further. It also has not amended its Penal Code false accounting offences, or taken steps to ensure that sanctions for false accounting are effective, proportionate and dissuasive. Recommendations 10 and 12 are therefore not implemented.

15. In the area of money laundering, Estonia has examined why it has a low number of convictions for bribery-related money laundering. It concluded that offenders are often apprehended red-handed in undercover operations and hence do not have an opportunity to launder the proceeds. Case law and a legislative amendment confirmed that Estonia's money laundering offence covers foreign predicate offences and the laundering of a bribe. Recommendations 11(a) and 11(b) are therefore fully implemented.

16. As for sanctions, when foreign bribery is committed through an intermediary, the intermediary is guilty of "arranging a bribe or gratuity", which is punishable by imprisonment of only one year. Estonia has not increased the maximum sanctions for this offence. Whether the draft Anti-Corruption Act (if enacted) would rectify this situation remains to be seen. In the meantime, Recommendation 13(a) has not been implemented. Estonia has produced a written policy for denying ODA contracts to legal and natural persons who have been convicted of foreign bribery. There is no similar written policy for export credit support, and hence Recommendation 13(b) is only partially implemented.

17. The Working Group also recommended that Estonia maintain additional and more consistent statistics on various offences, including foreign bribery. In 2009, some databases for the police, prosecutors and courts were consolidated. A new statistics system will be implemented in 2011. In the meantime, Recommendations 14(a) and (b) are only partially implemented.

18. Finally, the Working Group will continue to monitor Follow-up Issues 15(a)-(i) since there have not been foreign bribery cases or other relevant developments since Phase 2.

b) Conclusion

19. Based on these findings, the Working Group concludes that Estonia has fully implemented Recommendations 4(b), 5(a), 5(b), 8(a)-(c), 9(a), 9(b), 11(a), 11(b); partially implemented Recommendations 1(a), 1(b), 2(a), 6, 7(a), 7(b), 13(b), 14(a), 14(b); and not implemented Recommendations 2(b), 3, 4(a), 7(c), 7(d), 10, 12, 13(a). Follow-up Issues 15(a)-(i) remain outstanding. The Working Group will revisit these follow-up issues and the outstanding recommendations during Estonia's Phase 3 evaluation.

WRITTEN FOLLOW UP TO PHASE 2 REPORT - ESTONIA

Name of country: Estonia

Date of approval of Phase 2 Report: 20 June 2008

Date of information: 18 May 2010

Note: For ease of reference, Recommendation 1 of this report corresponds to Paragraph 1 on page 52 of the Phase 2 Report and so on.

Part I: Recommendations for Action

Text of recommendation 1(a):

1. Regarding awareness-raising in the public sector, the Working Group recommends that Estonia take steps to:

- (a) Raise the level of awareness of the Convention and foreign bribery within overseas diplomatic representations, law enforcement, prosecutor's offices, the judiciary, as well as the Ministries of Justice, Internal Affairs, Finance (including tax officials), and Economic Affairs and Communications,

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

Diplomatic personnel: in 2008, an information bulletin has been addressed to diplomats acting in the area of economics and foreign trade; the diplomats have been informed about corruption in general, duty to report incidents of corruption known to diplomats, and international cooperation in the field of fighting corruption. The bulletin has been updated and it is available to all diplomats in the Intranet of the Ministry of Foreign Affairs. Every diplomat active in the area of economics and foreign trade has the duty to be informed about its content.

Ministries, prosecutors, judges: in 2009, all officials of the Ministries of Foreign Affairs, Justice, Internal Affairs, Finance (including tax officials), and Economic Affairs and Communications, as well as members of judiciary and prosecution service have been addressed an information bulletin dealing with the Convention and foreign bribery; the information bulletin is an extended version of the bulletin addressed to diplomats in 2008.

If no action has been taken to implement recommendation 1(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: N/A

Text of recommendation 1(b):

1. Regarding awareness-raising in the public sector, the Working Group recommends that Estonia take steps to:

(b) Provide training to personnel in these bodies on relevant issues where appropriate (Revised Recommendation I).

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

Diplomatic personnel: in 2009, staff of overseas diplomatic representations has had a regular training seminar where the topic of foreign bribery has been addressed by a presentation and following discussion. A similar event has taken place in 2010, where diplomats acting in the area of economics and foreign trade participated.

Law enforcement: in 2009, police officials investigating economic crimes have had a training seminar where the topic of foreign bribery has been addressed by a presentation and following discussion. In May 2009 another seminar for police officials investigating economic crimes has taken place; topics covered included anti-corruption measures and foreign bribery. In 2010 there has been a training with the participation of the National Audit Office, and a training for law enforcement officers investigating economic crimes. Although the latter events have not been focused on the foreign bribery, the general investigative methods may be used also while investigating this specific offence.

Prosecutors: in April 2010 there has been and in October 2010 there will be a “Round Table” training for prosecutors investigating economic crimes, including bribery. In October 2009 the prosecutors have had a two day training focusing on the offences committed by legal persons. Due to the budgetary cuts in 2009 the resources for prosecutorial training has diminished by fifteen per cent (training budgets of other executive institutions have diminished similarly).

Judiciary: in 2010, there have been training seminars in the fields of economic crime, including bribery, and offences by officials. In 2008/2009 there has been a training for judges (as well as for prosecutors and police officers) in the area of money laundering, asset recovery and confiscation of proceeds of crime.

Tax officials: tax officials undergo regular training also in the area of anti-corruption measures. Into the basic qualification test for tax officials, also questions concerning foreign bribery have been included.

If no action has been taken to implement recommendation 1(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:

Judiciary: In the training schedule for judges for 2011 training on corporate responsibility and breach of trust have been provided.

Tax officials: Estonian tax authorities have decided not to participate in a special training in the USA, concerning the discovery and investigation of foreign bribery by tax officials, because of high costs.

Text of recommendation 2(a):

2. Regarding measures in the private sector, the Working Group recommends that Estonia:
 - (a) Raise awareness of the Convention and foreign bribery among the public generally, as well as specifically within the business sector, and the accounting and auditing professions (Revised Recommendation I).

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

The anti-corruption website administered by the Ministry of Justice has been updated in order to include more general information concerning the unlawfulness of foreign bribery and the international commitments of Estonia in the field of fighting corruption. The website of the Estonian Chamber of Commerce and Industry has also information on the unlawfulness of foreign bribery.

An information bulletin has been addressed to the business sector (also available online in English and in Russian), auditors (via the Board of Auditors – a legal person in public law) and accountants (via the Estonian Association of Accounting, a professional voluntary organisation).

In 2009, an article has been published by a high-level diplomat in the periodical of the Estonian Chamber of Commerce and Industry, covering also the offence of foreign bribery and fight against it by the OECD.

The public has been informed about seminars organised by Transparency International, the Estonian Chamber of Commerce and Industry and the Ministry of Justice which address the ethical aspects of doing business, and among them, the unlawfulness of foreign bribery; access to the seminars is free and they have been well publicised.

In April 2009, the Estonian Chapter of Transparency International/Corruption-Free Estonia (with partners) has organised an international conference „With Business Ethics Against Corruption“ which was part of the same series of seminars and this time was concentrated to development of corporative ethic codes and their implementation.

In February 2010, the Estonian Chamber of Commerce and Industry and the Ministry of Justice have organised a joint seminar for entrepreneurs in the series „Honest Business Environment“ which was this time focused to the fight against foreign bribery. The presentations were made by the State Chief Prosecutor, a diplomat, a businessman, the President of the Chamber, and a representative from the OECD Anti-Corruption Division (<http://www.korruptsioon.ee/40461>).

In March 2010, the Ministry of Foreign Affairs and the Ministry of Economic Affairs and Communication have organised a seminar on responsible business ethics, with the cooperation of the Forum of Responsible Entrepreneurship, Tallink and Coca Cola Hellenic. The participants included representatives of Microsoft, Swedbank, Toyota Baltic, Philip Morris. Although the purpose of the seminar was not focused solely to the offence of foreign bribery, also this topic has been discussed. The participants expressed a need for a follow-up seminar.

Regarding auditing profession, training in the area of foreign bribery has been agreed to be part of a serial training of new professional standards, to take place from autumn 2009 to autumn 2010. The training for auditing profession taking place in 2009 and 2010 is a training and examination cycle that is obligatory to pass by the end of 2010 to all auditors in Estonia. Further, with the new draft Auditing Act (in force since March 2010), all auditors would have to carry out continuing education requirement of 40 hours of training within one year. It is also set in the Auditing Act that the auditors have to participate for 16 hours out of 40 in the trainings of the Estonian Board of Auditors; therefore, it is possible to train the auditors on issues of foreign bribery in cooperation with the Board at their training events.

If no action has been taken to implement recommendation 2(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:

Text of recommendation 2(b):

2. Regarding measures in the private sector, the Working Group recommends that Estonia:
 - (b) Take steps to assist the business community to prevent and detect foreign bribery, including by developing tools to that end (Revised Recommendation I).

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

The seminars organised by the Ministry of Justice, TI and the ECCI mentioned above are continued and the Ministry is cooperating with other organisations to promote honest business.

If no action has been taken to implement recommendation 2(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: N/A

Text of recommendation 3:

3. Regarding whistleblower protection, the Working Group recommends that Estonia strengthen measures for protecting whistleblowers, in order to encourage public and private sector employees to report acts of foreign bribery without fear of reprisals or dismissal (Revised Recommendation I).

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

In 2010, an amendment of the Code of Criminal Procedure has entered into force, providing that a copy of the primary documents used by the law enforcement authorities in order to commence a crime investigation shall not be annexed to the indictment bill if confidentiality is guaranteed to the informer according to law (§ 226(4)); it includes also whistleblowers.

In the draft Anti-Corruption Act which is in the Parliament procedure and is envisaged to Enter into Force in 2011, the whistleblowers acting in good faith have been guaranteed with confidentiality of the fact of whistleblowing and civil law remedies in case of discrimination due to whistleblowing, with reversed burden of proof.

If no action has been taken to implement recommendation 3, 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:

In co-operation with foreign experts, third sector and academics a study has been carried out on the whistleblowers protection in private sphere. It is however not clear whether or how the proposals should be reflected in the legislation.

Text of recommendation 4(a):

4. Regarding the reporting of foreign bribery, the Working Group recommends that Estonia:
 - (a) Ensure that suspicions of foreign bribery detected by employees of KredEx are reported to law enforcement (Revised Recommendation I).

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

If no action has been taken to implement recommendation 4(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:

No changes have been envisaged. If information of alleged (foreign) bribery by an applicant or a contractor has reached the board of KredEx as a case involving potential risk, the Board members who are officials have the duty not to hide it. Secondly, it would constitute a loss of trust and KredEx would be entitled to terminate the contract, or if a contract has not been made, to proceed with the application.

Text of recommendation 4(b):

4. Regarding the reporting of foreign bribery, the Working Group recommends that Estonia:
 - (b) Require auditors to report indications of a possible illegal act of bribery to management and corporate monitoring bodies, and consider requiring auditors to report such indications to the competent authorities (Revised Recommendation V.B.iii and iv).

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

Under the International Standards of Auditing (ISA), an auditor will have to inform management or supervisory board of suspicions of corruption by an entity, and will be obliged to resign if no steps are taken by management or supervisory board. According to new Auditing Act, the auditor who resigns from the audit engagement would have to notify Auditor's Public Oversight Board of the reasons behind the resignation (§ 57(3)). If information concerning an offence comes into attention of the Oversight Board, it is their duty to notify appropriate authorities (§ 122).

The ISA will enter into force for Estonia in 2011. Thus, the ISA will apply to reports for the year 2010 onwards.

If no action has been taken to implement recommendation 4(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:

As it would be contrary to the principle of professional confidentiality towards the customer, auditors are not and will not be required to report occasions of alleged bribery directly to the authorities.

Text of recommendation 5(a):

5. Regarding official development assistance (ODA), the Working Group recommends that Estonia:
- (a) Further raise awareness of foreign bribery among staff and project partners involved in ODA, including by providing training (Revised Recommendation I).

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

In 2008, an information bulletin has been addressed to diplomats acting in the area of economics and foreign trade; the diplomats have been informed about corruption in general, duty to report incidents of corruption known to diplomats, and international cooperation in the field of fighting corruption. In 2009, staff of overseas diplomatic representations have had a regular training seminar where the topic of foreign bribery has been addressed by a presentation and following discussion.

If no action has been taken to implement recommendation 5(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: N/A

Text of recommendation 5(b):

5. Regarding official development assistance (ODA), the Working Group recommends that Estonia:
- (b) Incorporate an anti-bribery declaration in its standard contract for ODA-funded projects (Revised Recommendation I).

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

On 15 February 2010 (Minister of Foreign Affairs Regulation No 1 from 2 February 2010) the anti-bribery declaration has become a part of the standard contract for ODA funded projects. The conditions and application procedure have been provided for by the Government Regulation No 8 from 21 January 2010.

If no action has been taken to implement recommendation 5(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: N/A

Text of recommendation 6:

6. Regarding taxation, the Working Group recommends that Estonia make additional efforts to train tax officials on bribery detection and reporting, and to raise their awareness of foreign bribery (Revised Recommendation I).

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

Tax officials undergo regular training also in the area of anti-corruption measures. Into the basic qualification test for tax officials, also questions concerning foreign bribery have been included. The training materials prepared by the OECD are available in Estonian and they may be consulted by the tax officials if necessary.

Since 1 January 2004 Estonian Income Tax Act explicitly disallows tax deductibility of gratuities and bribes from business income. Denial of tax deductibility is not contingent on the opening of an investigation by the law enforcement authorities or of court proceedings. According to Taxation Act a tax authority may disclose information subject to tax secrecy to preliminary investigators and prosecutors for the purposes of preventing and detecting criminal offences, apprehending criminal offenders, investigating or hearing matters subject to criminal proceedings, preparing the court hearing of matters subject to criminal proceedings, conducting security checks and performing other duties provided for in the Security Authorities Act.

If no action has been taken to implement recommendation 6, 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:

Tax officials: Estonian tax authorities have decided not to participate in a special training in the USA, concerning the discovery and investigation of foreign bribery by tax officials, because of high costs.

Text of recommendation 7(a):

7. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Estonia:

- (a) Train new and practising prosecutors, police officers and judges on the offence of foreign bribery and the investigation of legal persons (particularly in bribery cases) (Convention Article 5; Revised Recommendation I).

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

In 2009, police officials investigating economic crimes have had a training seminar where the topic of foreign bribery has been addressed by a presentation and following discussion. In May 2009 another seminar for police officials investigating economic crimes has taken place; topics covered included anti-corruption measures and foreign bribery. In 2010 there has been a training with the participation of the National Audit Office, and a training for law enforcement officers investigating economic crimes. Although the latter events have not been focused on the foreign bribery, the general investigative methods may be used also while investigating this specific offence.

In April 2010 there has been and in October 2010 there will be a "Round Table" training for prosecutors investigating economic crimes, including bribery. In October 2009 the prosecutors have had a two day training focusing on the offences committed by legal persons. Due to the budgetary cuts in 2009 the resources for prosecutorial training has diminished by fifteen per cent (training budgets of other executive institutions have diminished similarly).

In 2010, there have been training seminars in the fields of economic crime, including bribery, and offences by officials. In 2008/2009 there has been a training for judges (as well as for prosecutors and police officers) in the area of money laundering, asset recovery and confiscation of proceeds of crime.

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:

In the training schedule for judges for 2011 training on corporate responsibility and breach of trust have been provided.

Text of recommendation 7(b):

7. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Estonia:

(b) Take steps to ensure (i) prosecutorial independence in foreign bribery cases, (ii) that terminations of foreign bribery prosecutions under Section 204 of the Criminal Procedure Code are consistent with Article 5 and Commentary 27 of the Convention, and (iii) that plea bargaining and the provision of immunity to co-operating offenders do not impede the effective enforcement of the foreign bribery offence (Convention Article 5).

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

Section 204 of the Criminal Procedure Code has been amended in July 2008 to include the following subsection: (3) Termination of criminal proceedings on the grounds of national economic interests, interests of foreign policy, or on any other grounds is not allowed, if that would contradict an international treaty binding to Estonia.

As regards possible negative impact of plea bargaining and prosecutorial independence the practice from 2009 shows on one hand that prosecutors have commenced procedures against high political officials of the Government party, and on the other hand, court has neglected a plea bargaining agreement reached in a case against a high police official.

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:

In order to ensure prosecutorial independence from executive authorities and political interests, amendments have been prepared for the Public Prosecutor's Service Act in 2010. The amendment gives the prosecutors the right to address a Parliament's committee when necessary, and obliges the State Chief Prosecutor to give a annual report to the committee, concerning its activities in general and main problems. The amendment also guarantee the public prosecutors with a salary calculated on the basis of the salary of judges, and re-organises the disciplinary responsibility of public prosecutors. The amendment has not yet been circulated for approval.

Text of recommendation 7(c):

7. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Estonia:

(c) Amend its legislation to make special investigative techniques available for all cases of foreign bribery where appropriate (Convention, Article 5; Revised Recommendation I).

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

If no action has been taken to implement recommendation 7(c), 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:

In the draft Anti-Corruption Act the special offences of arranging bribe or gratuity are due to be abrogated. In the future arranging is qualified as aiding in bribe giving, and the same sanctions apply. Then the special investigative techniques shall be available. The amendments are expected to be effective as from 2011.

Text of recommendation 7(d):

7. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Estonia:

(d) Transmit as soon as possible information in foreign bribery cases to the competent authorities in foreign states whenever such information could be relevant to an investigation in that state (Convention, Article 9(1); Revised Recommendation VII.i).

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

No special action has been taken as regards the recommendation. However, Estonia supports actively all kind of formal and informal cooperation between states, including exchange of information.

If no action has been taken to implement recommendation 7(d), 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: N/A

Text of recommendation 8(a):

Regarding the offence of foreign bribery, the Working Group recommends that Estonia:

- (a) Amend its Penal Code to define an autonomous foreign bribery offence that fully complies with the requirements of the Convention (Convention, Article 1).

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

Relevant amendments have been made in July 2008 in the following wording (section 288 PC):

(3) As regards offences mentioned in §§ 293-2981 of the Code, also a foreign official is considered to be an official. A foreign official is a nominated or elected person who has legislative, executive or judicial functions in a foreign country or in an administrative unit of any level thereof, or who performs a public task for a foreign country, an administrative unit thereof, a public agency, or a public enterprise; or an employee or a representative of an organisation of public international law, including a member of an international assembly or court.

If no action has been taken to implement recommendation 8(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: N/A

Text of recommendation 8(b):

8. Regarding the offence of foreign bribery, the Working Group recommends that Estonia:

- (b) Amend its Penal Code to expressly cover bribery of foreign public officials who perform legislative functions (Convention, Article 1).

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

Relevant amendments have been made in July 2008 in the following wording (section 288 PC):

(3) As regards offences mentioned in §§ 293-2981 of the Code, also a foreign official is considered to be an official. A foreign official is a nominated or elected person who has legislative, executive or judicial functions in a foreign country or in an administrative unit of any level thereof, or who performs a public task for a foreign country, an administrative unit thereof, a public agency, or a public enterprise; or an employee or a representative of an organisation of public international law, including a member of an international assembly or court.

If no action has been taken to implement recommendation 8(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: N/A

Text of recommendation 8(c):

8. Regarding the offence of foreign bribery, the Working Group recommends that Estonia:
- (c) Ensure that it covers all acts in relation to the performance of an official's duties, including any use of the public official's position, whether or not within the official's authorised competence (Convention, Article 1).

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

Relevant amendments have been made in July 2008 in the following wording (section 288 PC):

- (4) Misuse of official position by a foreign official shall be an act or failure to act in her/his official capacity, without regard whether the act was in the official's competence.

If no action has been taken to implement recommendation 8(c), 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: N/A

Text of recommendation 9(a):

9. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Estonia:
- (a) Amend its Penal Code to broaden the criteria for the liability of legal persons in order to make prosecution of legal persons that commit foreign bribery more likely and more effective (Convention, Articles 2 and 3(2)).

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

Relevant amendment have been made in July 2008 in the following wording:

(section 14 PC) (1) In the cases provided by law, a legal person shall be held responsible for an act which is committed by a body, a member of a body, senior official or an authorised representative thereof in the interest of the legal person.

(section 7 PC) (2) The penal law of Estonia applies:

- 2) to giving bribe or granting of gratuities to a foreign official, or influence peddling by a foreign official, or any offence connected to these offences, if committed by a citizen of Estonia, or an alien who has been

detained in Estonia and is not extradited, or a legal person registered in Estonia.

Estonia informs the Working Group that according to the practice, doctrine and also the new commentary of the Penal Code, intention of the natural person representing the legal person is a necessary element of the liability of legal person. However, intent is deliberate intent, direct intent or indirect intent; the latter includes cases when the person foresees the occurrence of circumstances which constitute the necessary elements of an offence and tacitly accepts that such circumstance may occur. At the same time, legal person may be held responsible for an intentional omission. Bribe, according to Estonian law, may be promised or given only intentionally (at least indirect intent). Due to the amendment of section 14(1) PC (inclusion of acts committed by an authorised representative), but also taking into account earlier practice of courts, where „senior official“ has been construed very broadly, it is rather impossible that anybody could „represent“ a legal person by giving bribe to foreign official while doing business, without that the legal person could be held criminally responsible for the act.

As explained by court practice, the concept of „interest of the legal person“ includes every direct or circumstantial, moral or monetary profit which has been obtained or could be obtained by the legal person as a result of the illegal conduct. The concept of „interest“ is more extent than the concept of „profit“ (e.g. if, as a result of the gratuity paid, the positive result for the legal person arrives before than it would have certainly arrived without the gratuity). The act does not have to be “strictly connected” to the legal person’s area of business.

It should also be noted that further legislative amendments in the direction of broadening corporate liability could be possible. It would be premature to make any suggestions as regards the nature of the (possible) amendments.

If no action has been taken to implement recommendation 9(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: N/A

Text of recommendation 9(b):

9. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Estonia:

(b) Establish nationality jurisdiction to prosecute legal persons for foreign bribery (Convention, Articles 2, 3(2) and 4(2)).

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

Relevant amendment have been made in July 2008 in the following wording:

(section 7 PC) (2) The penal law of Estonia applies:

2) to giving bribe or granting of gratuities to a foreign official, or influence peddling by a foreign official, or any offence connected to these offences, if committed by a citizen of Estonia, or an alien who has been detained in Estonia and is not extradited, or a legal person registered in Estonia.

If no action has been taken to implement recommendation 9(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: N/A

Text of recommendation 10:

10. Regarding the limitation period for prosecuting foreign bribery, the Working Group recommends that Estonia consider whether the limitation period allows adequate time for the investigation and prosecution of this offence, especially in light of the fact that the making of an MLA request does not interrupt or suspend the limitation period (Convention, Article 6).

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

If no action has been taken to implement recommendation 10, 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:

No legislative changes are envisaged currently. The issue needs further analysis but it seems that lengthening of the limitation period by a suspension would be contrary to the reasonable time requirement for procedure.

Text of recommendation 11(a):

11. Regarding money laundering, the Working Group recommends that Estonia:

- (a) Examine why it has a low number of convictions for money laundering

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

The low number of cases where bribe had been laundered is due to the fact that many bribery (and gratuity) cases have been detected by surveillance (crime staging), the criminals have been caught in flagrante and there has not been opportunity for money laundering. However, it will be analysed in the next year whether the legislation on confiscation of profits of crime should be changed/broadened.

If no action has been taken to implement recommendation 11(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: N/A

Text of recommendation 11(b):

11. Regarding money laundering, the Working Group recommends that Estonia:

(b) Clarify whether its money laundering offence covers the laundering of a bribe, and whether the predicate offence for money laundering must be a crime at the place where it occurred (Convention, Article 7).

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

According to Estonian legal practice, bribe has been considered to be object of money laundering. An official of the Ministry of Social Affairs has been convicted for taking bribe and laundering it. Similarly, proceeds received as a result of bribe-giving may be object of money laundering. Foreign bribery is prosecuted on the basis of active national jurisdiction (section 7(2) PC). Therefore, foreign bribery by an Estonian national, including legal person, is always a crime under Estonian law, and there is no doubt that laundering the proceeds of this activity constitutes a money laundering offence in Estonia.

If no action has been taken to implement recommendation 11(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: N/A

Text of recommendation 12:

Regarding false accounting, the Working Group recommends that Estonia (a) amend the Penal Code to ensure that the false accounting offences cover all of the activities described in Article 8(1) of the Convention, and (b) take steps to ensure that sanctions for false accounting are effective, proportionate and dissuasive (Convention, Article 8).

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

If no action has been taken to implement recommendation 12, 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:

An analysis, carried through by the Ministries of Finance and of Justice, concerning accounting crimes and other financial offences is envisaged to take place in 2010/2011.

Text of recommendation 13(a):

13. Regarding sanctions for foreign bribery, the Working Group recommends that Estonia:

(a) Take steps to ensure that sanctions for arranging a bribe and arranging a gratuity are effective, proportionate and dissuasive (Convention, Article 3).

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

If no action has been taken to implement recommendation 13(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:

In the draft Anti-Corruption Act the special offences of arranging bribe or gratuity are due to be abrogated. In the future arranging is qualified as aiding in bribe giving, and the same sanctions apply. The amendment is expected to be in force in 2011.

Text of recommendation 13(b):

13. Regarding sanctions for foreign bribery, the Working Group recommends that Estonia:
- (b) Establish formal, written policies for denying ODA contracts and export credit support to legal and natural persons who have been convicted of foreign bribery (Convention, Article 3(4); Revised Recommendation VI).

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

The Government Regulation No 8/21 January 2010, section 19(3), provides that an applicant for an ODA contract may not be a person punished for economic offences or crimes in office. A declaration of similar content has to be submitted to the Ministry of Foreign Affairs.

If no action has been taken to implement recommendation 13(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: N/A

Text of recommendation 14(a):

14. Regarding statistics, the Working Group recommends that Estonia:
- (a) Maintain more consistent statistics on investigations, prosecutions, convictions and sanctions involving the money laundering offence, including the identification of predicate offences for money laundering (Convention, Articles 7 and 8).

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

The statistics is constantly under development. Since 2009 police, prosecution and courts databases have been united into a single information system called E-file. This means that the flow of information on one case, offence or person can be traced throughout the entire procedure. The new system for statistical queries and reporting will be implemented by the 2nd quarter of 2011.

If no action has been taken to implement recommendation 14(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:

Text of recommendation 14(b):

14. Regarding statistics, the Working Group recommends that Estonia:

(b) Maintain statistics on the sanctions (including confiscation) imposed against natural and legal persons for false accounting, money laundering, domestic bribery, and foreign bribery (Convention, Article 3).

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

Currently the data may be collected on ad hoc basis, i.e. manually from different databases. The system is constantly under development. Since 2009 police, prosecution and courts databases have been united into a single information system called E-file. This means that the flow of information on one case, offence or person can be traced throughout the entire procedure. The new system for statistical queries and reporting will be implemented by the 2nd quarter of 2011.

If no action has been taken to implement recommendation 14(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: N/A

Part I (b): Issues for Follow-up by the Working Group in Phase 2

Text of issue for follow-up 15(a):

15. The Working Group will follow up the issues below as practice develops:

(a) Termination of proceedings under Section 202 of the Criminal Procedure Code, plea bargaining, and granting immunity to co-operating offenders (Convention, Article 5).

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

As there have been no foreign bribery cases, it is not possible to evaluate the development. In 2008 2 bribery cases with 8 offences have been terminated under Section 202 of the CPC or due to plea bargaining, and granting immunity to co-operating offenders; in 2009 there have been no such cases.

Text of issue for follow-up 15(b):

15. The Working Group will follow up the issues below as practice develops:

- (b) Prosecutorial independence in foreign bribery cases (Convention, Article 5).

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

As there have been no foreign bribery cases, it is not possible to evaluate the development. Above planned amendments concerning prosecutorial independence have been addressed. As ministers, members of Parliament, mayors, judges, influential businessmen and police officers have been investigated and indicted for economic crimes and crimes in office during last years, Estonia does not see a problem with prosecutorial independence.

Text of issue for follow-up 15(c):

15. The Working Group will follow up the issues below as practice develops:

- (c) Whether Estonia considers the factors listed in Article 5 and Commentary 27 of the Convention when denying extradition or MLA (Convention, Article 5).

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

As there have been no foreign bribery cases, it is not possible to evaluate the development. According to the 2008 amendment of the CPC the factors can not be a ground for terminating a procedure.

Text of issue for follow-up 15(d):

15. The Working Group will follow up the issues below as practice develops:

- (d) Impact of cross-references between the foreign bribery offence and other Estonian statutes on the enforcement and visibility of the offence (Convention, Article 1; Revised Recommendation I).

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

According to the 2008 amendment of the PC, the concept of foreign official is exclusively defined in the Code, without reference to other statutes. As defined in section 288(3) and (4), the concept is much broader and more transparent than the concept of domestic public official as defined in section 288(1).

Text of issue for follow-up 15 (e):

15. The Working Group will follow up the issues below as practice develops:

- (e) Dual criminality requirement on nationality jurisdiction to prosecute natural persons for foreign bribery, and the absence of nationality jurisdiction to prosecute legal persons for foreign bribery (Convention, Article 4(2)).

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

According to the 2008 amendment of the PC, nationality jurisdiction is applicable for all cases of active foreign bribery.

Text of issue for follow-up 15 (f):

15. The Working Group will follow up the issues below as practice develops:

- (f) Limitation period for investigating and prosecuting foreign bribery (Convention, Article 6).

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

As there have been no foreign bribery cases, it is not possible to evaluate the development.

Text of issue for follow-up 15 (g):

15. The Working Group will follow up the issues below as practice develops:

- (g) The number of convictions for money laundering (Convention, Article 7).

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

In 2008 11 persons were convicted for money laundering, in 2009 – 14 persons.

Text of issue for follow-up 15 (h):

15. The Working Group will follow up the issues below as practice develops:

- (h) Whether foreign bribery is always a predicate offence to money laundering, without regard to the place where the bribery occurred (Convention, Article 7).

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

According to Estonian penal law, foreign bribery is prosecuted on the basis of active national jurisdiction. Therefore, foreign bribery by an Estonian national, including legal person, is always a crime under Estonian law, and there is no doubt that laundering the proceeds of this activity constitutes a money laundering offence in Estonia.

Text of issue for follow-up 15 (i):

15. The Working Group will follow up the issues below as practice develops:

- (i) Sanctions against natural and legal persons for foreign bribery (Convention Article 3)

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

As there have been no foreign bribery cases, it is not possible to evaluate the development.