



SPAIN: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

MARCH 2015

This report, submitted by Spain provides information on the progress made by Spain in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 9 March 2015.

The Phase 3 report evaluated Spain's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

TABLE OF CONTENTS

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY	4
PHASE 3 WRITTEN FOLLOW-UP REPORT – SPAIN.....	7
PART I: RECOMMENDATIONS FOR ACTION	8
PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP	44
ANNEX 1: ADDITIONAL INFORMATION - PHASE WRITTEN FOLLOW-UP REPORT OF SPAIN – DECEMBER 2014	51

SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of findings

1. In December 2014, Spain presented its Written Follow-Up Report to the Working Group on Bribery (Working Group). Spain's report responded to the recommendations and follow-up issues identified in the Phase 3 evaluation adopted by the Working Group in December 2012. The Working Group is concerned that Spain has fully implemented only 4 recommendations. Ten recommendations have been partially implemented and 21 recommendations have not been implemented.

2. Since the entry into force of the Convention in Spain in 2000, no cases of foreign bribery have been finalised or given rise to prosecution. Spain has 3 ongoing foreign bribery investigations, 1 of which is at the initial prosecutorial investigation stage and 2 of which are at the judicial investigation stage.

3. The Working Group continues to have concerns about the low level of foreign bribery enforcement in Spain and the lack of implementation of the enforcement-related recommendations. Spain has not reviewed its overall approach to enforcement (*recommendation 1*). Further, Spain has not enhanced its proactivity in detection and investigation, has not given adequate priority to combating foreign bribery, has not ensured that the terms of any cases resolved by settlement are made public, and has provided only limited training to police, prosecutors and magistrates on detecting, investigating and prosecuting foreign bribery (*recommendations 5a, 5e and 5g*). While the Working Group is encouraged by progress made in the ongoing investigations, Spain must take further steps to improve coordination between enforcement authorities and ensure investigations are not prematurely closed (*recommendations 5b and 5c*). The Working Group has agreed to conduct a targeted, technical mission to Spain to assist implementation of these enforcement-related recommendations and enhance Spain's enforcement.

4. In addition, Spain has not taken steps to ensure that bribery-related accounting offences are effectively investigated and prosecuted (*recommendation 13a*).

5. A majority of the recommendations that Spain has not implemented (12) are related to technical deficiencies in Spain's Penal Code, which Spain committed to reform during Phase 3. The weaknesses relate to the scope of Spain's foreign bribery offences, the regime of liability of legal persons for foreign bribery, the adequacy of sanctions for natural persons, measures for confiscation of the proceeds of bribery, and investigative hurdles such as the statute of limitations (*recommendations 1, 2a, 2b, 2c, 2d, 3a, 3b, 4a, 4b, 4e, 5d and 5g*).

6. A Bill to reform the Penal Code was submitted to the Spanish Parliament in September 2013, but has not been passed and remains under consideration. The Working Group's preliminary assessment suggests the Bill would address, or at least partially address, the technical deficiencies in Spain's Penal Code. However, Spain's progress to reform the Penal Code has been slow despite Spain's high-level commitment of December 2012 to expedite the reforms and the Working Group's June 2014 public statement calling on Spain to urgently strengthen its legal framework. Spain's progress is of significant concern to the Working Group, which has agreed to conduct a high-level mission to Spain to encourage the adoption of the Bill (in addition to the technical mission mentioned above). However, the Working Group is encouraged by Spain's indication that the Bill will be adopted by 31 March 2015 and that special Parliamentary sittings have been approved to help accommodate the passage of the Bill. The high-level mission would be unnecessary if this were to occur.

7. Areas of weakness remain with regard to Spain's sanctions and confiscation regimes. Spain has not developed guidelines to help investigators and prosecutors calculate the profit derived from bribery (*recommendation 4c*). Such guidelines would assist law enforcement to apply confiscation measures and to

assess the appropriate level of fine under the Spanish sanctions regime. Further, Spain does not compile statistics on the criminal, civil and administrative sanctions imposed for domestic and foreign bribery (*recommendation 4d*), making it difficult to assess the adequacy of sanctions imposed in practice.

8. Limited steps have been taken to improve international cooperation. Although the Working Group is encouraged by Spain's use of mutual legal assistance (MLA) in recent foreign bribery investigations, Spain could be more proactive in seeking MLA or other forms of international cooperation (*recommendation 6*). Regarding extradition, Spain has not taken steps to assure extradition in foreign bribery cases or prosecution in the absence of extradition (*recommendation 7*).

9. Spain has improved tax, anti-money laundering and auditing measures to combat foreign bribery, but further steps are required. The Basque and Navarra tax authorities have prohibited tax deductions for foreign bribery (*recommendation 8b*). Spain should raise awareness of the prohibition, provide more training to tax officials on reporting suspicions of foreign bribery to law enforcement and ensure tax officials routinely analyse all suspicious expenses (*recommendations 8a, 8c and 8d*). Spain's financial intelligence unit (FIU) has intensified supervision of reporting entities and continued efforts to detect money laundering linked to foreign bribery. However, measures have not been taken to ensure prosecution authorities provide feedback to the FIU on cases assisted by FIU information (*recommendation 12*). The Working Group commends Spain for clarifying the reporting obligations of auditors but urges Spain to raise awareness of these obligations among auditors (*recommendation 13b*).

10. Spain has not fully implemented recommendations related to raising awareness and providing training on the liability of legal persons. No efforts have been taken to raise awareness among prosecuting authorities about the liability of legal persons for foreign bribery (*recommendation 3c*). Regarding the private sector, Spain is asked to take additional steps to raise awareness among the private sector of the risk of corporate liability and the need for effective anti-corruption compliance programs (*recommendations 9 and 14*).

11. The Working Group is encouraged by improved procedures for reporting suspicions of foreign bribery to law enforcement authorities (*recommendation 10*), but is concerned by the absence of adequate public and private sector whistleblower protections (*recommendation 11*). Spain's Ministry of Justice has encouraged reporting and promoted awareness of the foreign bribery offence, and Spain's Ministry of Foreign Affairs has established an internal reporting procedure and informed Spanish embassies about reporting obligations. However, improved protections for whistleblowers are still needed.

12. Finally, the Working Group is encouraged by the measures Spain has taken to strengthen its public advantages and export credit frameworks (*recommendation 15a and 15b*). The reporting processes in place in Spain's export credit agency and development finance agency have been enhanced. Authorisations for exporters of military equipment and dual-use goods are now subject to anti-bribery measures, including suspension or disqualification of enterprises convicted of foreign bribery.

Conclusions of the Working Group on Bribery

13. The Working Group concludes that Spain has fully implemented *recommendations 8b, 10, 15a and 15b*, partially implemented *recommendations 5a, 5b, 5c, 6, 8a, 8d, 9, 12, 13b and 14*, and not implemented *recommendations 1, 2a, 2b, 2c, 2d, 3a, 3b, 3c, 4a, 4b, 4c, 4d, 4e, 5d, 5e, 5f, 5g, 7, 8c, 11 and 13a*. In the absence of case law and practice, *follow-up items 16(a) to (l)* continue to require follow-up by the Working Group.

14. The Working Group agreed to conduct a high-level mission to Spain in the second quarter of 2015 to encourage Spain to urgently address the gaps in its Penal Code. The high-level mission will be

unnecessary if the current Bill amending the Penal Code is passed into law by the end of March 2015, as foreseen by the Spanish authorities. The Working Group also agreed to conduct a targeted, technical mission to Spain in the second quarter of 2015 focusing on enforcement of foreign bribery, particularly with regard to the measures identified in recommendations 1 and 5. Further, Spain was invited to provide a written report to the Working Group in three months, i.e. in March 2015, on the progress of the proposed reforms to the Penal Code and Spain's enforcement activity with regard to foreign bribery.

PHASE 3 WRITTEN FOLLOW-UP REPORT – SPAIN

Name of country: SPAIN
Date of approval of Phase 3 evaluation report: 14 December 2012
Date of information: 11 November 2014

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 3 Evaluation Procedure [DAF/INV/BR(2008)25/FINAL, paragraphs 55-67].

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 7 November 2014**.*

As a starting point and before introducing the actions taken in the past two years, Spain would like to reiterate the strong commitment of the Spanish Government towards the adoption of the ongoing reform of the Penal Code with a view to meet the recommendations put forward in the phase 3 report on implementing the OECD anti-bribery Convention in Spain.

It can also be recalled that further to the resignation of Mr Ruiz Gallardón as the Spanish Minister of Justice on September 23, Mr Catalá Polo took office on September 29. Needless to say that this change has had an impact on the speed at which the reform is moving.

Despite this circumstance Minister Catalá Polo fully echoes the pledge put forward by the former Minister of Justice in December 2012 with regards to the adoption of the reform of the Penal Code before the end of the first quarter of 2015.

In Spain, prominent corruption cases investigated in the recent years have raised awareness of potential corruption risks, thus increasing public authorities focus on the need to strengthen anti-corruption and integrity-related policies. Therefore anti-corruption and integrity-related policies have moved to the forefront of the political debate:

Firstly, Law 19/2013, 9 December, on transparency, access to information and good governance was published in the Official Journal on 10 December 2013.

Secondly, and in addition to the ongoing reform of the Penal Code, two other bills have been submitted to Parliament: one on supervision of party funding (draft Organic Law on the control of financial and economic activity of political parties that modifies Organic Law 8/2007, of 4 July, on Political Parties Funding, Organic Law 6/2002, of 27 June, on Political Parties and Organic Law 2/1982, of 12 May, on the Court of Audit), and another one on accountability of high rank officials.

We are confident that once the bill amending the Penal Code – which is now before Congress – is adopted, the recommendations on the legal framework will be achieved. On the enforcement side, developments are explained in annex I.

PART I: RECOMMENDATIONS FOR ACTION

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

Text of recommendation:

1. Review its overall approach to enforcement in order to effectively combat international bribery of foreign public officials. [Convention, Article 1, 2009 Recommendation, V.]

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

In order to combat the foreign bribery phenomenon, the Spanish legal system counts on a range of measures of both substantive and procedural nature.

On the one hand, on the 20th of September 2013, the Spanish Council of Ministers approved the submission to Parliament of the draft Organic Law modifying Organic Act 10/1995, of November 23, of the Penal Code. It takes into consideration the recommendations made for Spain in the framework of the phase 3 evaluation procedure on the application of the convention on combating bribery of public foreign officials in international business transactions.

Article 445 of the Penal Code (PC) will be repealed and a new article 286ter enacted with the following wording:

“1. Whoever, through offers, promises or granting of any undue benefit or advantage, either pecuniary or of any other kind, bribes or tries to bribe, whether directly or through intermediaries, an authority or public official, for their benefit or for the benefit of a third party, or whoever agrees with their demands in that respect, so that they act or refrain from acting in relation to the performance of official duties in order to obtain or retain a contract, business or other competitive advantage in the conduct of international business, shall be sanctioned, except if already punished with a more severe penalty under another precept of this Code, with three to six years’ imprisonment and fine from twelve to twenty-four months, unless the benefit obtained exceeds the resulting sum, in which case the fine will be from one to three times the value the profit obtained.

Besides the aforementioned penalties, the liable person shall be punished with debarment from future contracts with Public Administration, from the possibility of receiving subsidies and public aids and from the right to enjoy tax and National Insurance benefits and incentives, as well as from taking part in commercial transactions of public interest for a period from seven to twelve years.

2. For the purposes of this article public official shall be considered those mentioned under Articles 24 and 427”.

On the other hand, in our current procedural system there is, together with the judicial investigation, the investigating activity of the Prosecutor not regarded as an alternative to pre-trial proceedings, but as a possibility prior to that one, that does not replace it but that can simplify and smooth it. This system comes from the consideration that the Prosecutor is the promoter of the performance of Justice in defence of the society and the citizens' rights.

The setting up of the Prosecutor as a proactive body for the prosecution of crime is particularly reflected on the Prosecutor at the Special Prosecutor's Office against Corruption and Organised Crime (ACPO) who, through inquiries ("diligencias de investigación"), will try to discover whether a certain reported known fact is of criminal relevance.

The processing of these investigative inquiries shall be governed by the principles of legality and impartiality.

The way a "notitia criminis" is received by the Prosecutor, will be that of a prior complaint or the Prosecutor's direct knowledge.

These investigative proceedings are governed by the "ex officio enhancement" principle, that is why the Prosecutor must be proactive in preventing the stay of proceedings through the periodical monitoring of their state and through checking whether the said proceedings agreed upon by the Prosecutor have been carried out or not.

Within the framework of these investigative proceedings, the Prosecutor may summon the defendant who shall make a statement assisted by his Lawyer and shall decide on the inquiries to substantiate facts deemed appropriated, such as identification parades, witnesses statements The Prosecutor may also carry out patrimonial assets investigations with the support of the relevant authorities (Tax Inspectors, specialized police forces ...) as well as request data from banks or through the direct access to official registries. He can, on his own, take certain precautionary measures such as the detention of the suspect and the seizure of the proceeds of crime.

The investigative proceedings of the ACPO shall last for a maximum of 12 months, - term that can be extended by the State Prosecutor General- to further decide whether the case must be brought before a Judge; therefore neither negligence nor laxity on the part of the Prosecutor is allowed as his performance is subject to strict control.

Whenever the Prosecutor deems appropriate to criminalize the investigation he will file a lawsuit or complaint before the Examining Magistrate's Court. On the contrary, if he comes to the conclusion that a relevant criminal action has been committed but the perpetrator cannot be identified or if the investigated actions do not constitute an offence, or despite a thorough investigation no clear evidence can be found, the Prosecutor shall file the proceedings.

If facts do not constitute an offence but reveal the probable commission of an administrative infringement, the Prosecutor shall file the investigative proceedings and submit the actions taken to the relevant administrative authority.

If no action has been taken to implement recommendation 1, 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. Regarding the foreign bribery offence, the Working Group recommends that Spain proceed, as a matter of priority with the legislative changes announced on 4 December 2012 and, in particular, amend the current statutory framework to consolidate or harmonise the offence under art. 427 PC with the one under art. 445 PC, to remove inconsistencies between the two offences which could provide obstacles to the effective implementation of the Convention, including:

- a) by clarifying that the definition of a foreign public official encompasses “officers of the European Union or civil servants who are nationals of another Member State of the Union”, that this definition is in all cases autonomous; and that characterisation of the expected acts of foreign officials does not require recourse to foreign law in order to establish the offence;

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

As already said article 445 PC will be repealed and article 286 ter enacted.

At present, Title XIX of the Penal Code “Felonies against Public Administration” includes the foreign bribery crime within Chapter X on “Corruption offences in international business transactions”.

It is now considered more appropriate to include in the PC reform the said conduct in Section 4th “Corruption in business” of Chapter XI “Felonies related to the intellectual and industrial property, the market and the consumers” of Title XIII “Felonies against property and against social-economic order”.

The future article 286 ter regulates the conduct of foreign bribery defining as recipient of the benefit or advantage the authority or public official and, when defining the concept of public official, it refers to the provisions of article 24 PC (Spanish public official) and article 427 PC. The latter shall be drafted as follows:

“The provisions set forth in previous articles shall also apply when facts are alleged against or affect:

- a. Any person holding, either by appointment or by election, a legislative, administrative or judicial job or position in a country of the European Union or in any other foreign country.
- b. Any person exercising a public function for a country of the European Union or for any other foreign country, including a public organisation or public company, for the European Union or for any other international public organisation.
- c. Any official or agent of the European Union or of an international public organisation.”

As stated above, no recourse to foreign law in order to establish the offence is now required.

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. Regarding the foreign bribery offence, the Working Group recommends that Spain proceed, as a matter of priority with the legislative changes announced on 4 December 2012 and, in particular, amend the current statutory framework to consolidate or harmonise the offence under art. 427 PC with the one under art. 445 PC, to remove inconsistencies between the two offences which could provide obstacles to the effective implementation of the Convention, including:

- b) by clarifying that all bribes to a foreign public official to affect the official's exercise of discretion, including where the act induced by the bribe is in accordance with the official's duties would constitute the basis for a foreign bribery offence, regardless of whether the Company could properly have been awarded the business and whether the benefit obtained is "irregular";

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

New article 286 ter PC expressly states that the conduct subject to sanction may include that the authority or public official "...act or refrain from acting in relation to the performance of official duties (...) in the conduct of international business...": the conduct of the authority or of the public official as regards bribery shall refer to their own sphere of duties and competences.

On the other hand, the wording is wide: "...to obtain or retain a contract, business or other competitive advantage in the conduct of international business...". Thus, the crime does not depend on the fact that the benefited Company could have obtained the business or not, without bribery and, it is possible that bribery is committed in order to preserve the lawfully obtained contract.

Finally, this provision makes no reference to the profit derived from the fraudulent business, so the crime shall not depend on whether the benefit is regular or not.

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:

Text of recommendation :

2. Regarding the foreign bribery offence, the Working Group recommends that Spain proceed, as a matter of priority with the legislative changes announced on 4 December 2012 and, in particular, amend the current statutory framework to consolidate or harmonise the offence under art. 427 PC with the one under art. 445 PC, to remove inconsistencies between the two offences which could provide obstacles to the effective implementation of the Convention, including:

- c) by ensuring that the promise of a bribe; the use of intermediaries and bribes paid to a third party are covered in all cases of bribery of a foreign public official; and

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

New article 286 ter PC takes up the following wording:

- a) Regarding the promise of benefits or advantages: “Whoever, through offers, promises or granting of any undue benefit or advantage...”
- b) Regarding the use of intermediaries: “...bribes or tries to bribe, whether directly or through intermediaries...”
- c) As regards the payment to a public official or to a third party: “...for their benefit or for the benefit of a third party...”

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

Text of recommendation :

2. Regarding the foreign bribery offence, the Working Group recommends that Spain proceed, as a matter of priority with the legislative changes announced on 4 December 2012 and, in particular, amend the current statutory framework to consolidate or harmonise the offence under art. 427 PC with the one under art. 445 PC, to remove inconsistencies between the two offences which could provide obstacles to the effective implementation of the Convention, including:

- d) by clarifying that the defence under art. 426 PC in cases of corruption offences reported to law enforcement authorities (tantamount to “effective regret”) does not apply to the foreign bribery offences, including the offence under art. 427 PC. [Convention, Article 1, 2009 Recommendation, III ii) and V, Phase 2 recommendations 4a. and 4b.]

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

As article 445 PC on foreign bribery will be repealed and replaced by article 286 ter PC that has been systematically included in Chapter XI, “Corruption in Business”, of Title XIII, “Felonies against Property and Socio-Economic Order”, the exemption from liability foreseen in article 426 PC shall not apply to foreign bribery. The said exemption clause foreseen in article 426 is systematically included in Chapter V, regulating bribery, of Title XIX, on Crimes against the Public Administration.

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

Text of recommendation :

3. Regarding the responsibility of legal persons, the Working Group recommends that, as part of the legislative reform announced by Spain in its letter to the Group dated 4 December 2012, Spain:

- a) Amend the Penal Code to ensure that State-owned and State-controlled enterprises can also be held liable for bribery of foreign public officials under art 31bis PC; [Convention, Article 2, Article 5 and 2009 Recommendation III ii), V, Annex I(D), and Phase 2 recommendation 5a.]

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

The criminal liability of a legal person can be declared regardless of whether it is possible to individualize the criminal liability of a natural person.

The proposed reform of the Penal Code includes in the criminal liability regime of the legal persons public corporations that implement public policies or provide services of general economic interest.

The new article 31 quinquies PC shall have the following wording:

“1. The provisions related to the criminal liability of legal persons shall not be applicable to the State, to the territorial and institutional Public Administrations, to the Regulatory Bodies, the Public Agencies and Public Corporate Entities, to organizations under Public International Law, or to others that exercise public powers of sovereignty or administration.

2. In the case of Public Corporations that implement public policies or provide services of general economic interest, only the penalties foreseen in letters a) to g) of paragraph 7, article 33, shall be imposed. This restraint shall not apply when the Judge of the Court considers that it is a legal form created by the promoters, founders, managers or representatives in order to avoid eventual criminal liability”

This amendment is linked to the reform carried out by Organic Act 7/2012, of December 27, amending the Penal Code, which included political parties and trade unions within the general regime of liability of legal persons.

It should be highlighted that all “public corporations” - and not only “State” societies - are included. This also allows the inclusion of the wide public economic sector of the Autonomous Regions and of the corporations that local entities may constitute. With the new regulation, all public corporations, whether state, regional or local, shall be subject to criminal liability.

The provisions of article 31 quinquies PC foresee three groups of cases:

- a) State Administration, that is to say, bodies that exercise public powers of sovereignty or administration, as well as International Organizations that are excluded from the criminal liability regime: the State cannot exercise the *ius puniendi* on itself.

- b) Public corporations that develop public policies or provide services of general economic interest. In this case, a criminal liability regime is foreseen, though some sanctions not compatible with its nature are excluded from it.

- c) Other public corporations.

Only Public Administrations are out of the scope of the criminal liability, due to the obvious fact that the State cannot punish itself. For this reason the foreseen regulation establishes a clear difference between, on one hand, the State and Public Administration - entities that exercise “public powers of sovereignty or administration”- and, on the other hand, enterprises or corporations owned or controlled by the State. In the first case, the possible criminal liability is excluded -paragraph 1 of Article 31 quinquies- (the State cannot exercise its power of sanctioning -ius puniendi- on itself); on the contrary, in the second case a criminal liability regime is established (paragraph 2 of article 31 quinquies PC).

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

3. Regarding the responsibility of legal persons, the Working Group recommends that, as part of the legislative reform announced by Spain in its letter to the Group dated 4 December 2012, Spain:

- b) Ensure by any appropriate means that the criteria of “due control” as well as the onus and level of proof of this standard of liability be specified with a view to ensure coverage of the full range of situations required in Annex I to the 2009 Recommendation, in particular under its subsection B) b) and that the implementation of compliance programs and internal controls by a legal person cannot be used as a defence to avoid liability; [Convention, Article 2, 2009 Recommendation V, III ii), Annex I(B) and Phase 2 recommendation 5a.]

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

To implement this recommendation, article 31 bis PC has been redrafted with the aim of minimizing the cases of exemption from liability for legal persons. Thus, the exemption is only and exclusively foreseen in article 31bis PC, when all four circumstances of paragraph 2 are jointly met, which means that the administration body has adopted or effectively implemented, before the crime was committed, some organizational and management models including surveillance and monitoring measures suited to prevent crimes of the same nature; that a body of the legal person with autonomous powers of initiative and control has been entrusted with the monitoring of the operation and enforcement of the prevention model introduced; that the individual actors (natural persons) have committed an offence fraudulently avoiding the organizational and prevention models and that there is no omission nor insufficient exercise of the monitoring, surveillance and control functions on the part of the body in charge of them.

Likewise, as provided for in the Annex I to the 2009 Recommendation, paragraph B), the sanction does not depend on the fact the legal person has been convicted for, not even that action has been brought against the legal person that actually performs the act (carries out criminal activity). Thus, article 31 ter included in the Penal Code reform indicates that legal persons shall be held criminally liable whenever there is evidence that a criminal offence has been committed by a natural person who hold positions or functions mentioned in article 31 bis “...even though a particular natural responsible person has not been individualized or it has not been possible to bring action against such person...” Finally, as regards the omission of the “due control”, the new article 286 seis PC shall punish the legal representatives or administrators, de iure or de facto, of legal persons or of those entities without legal personality that fail to take surveillance and monitoring measures which are needed to prevent the breach of duties or

dangerous conducts typified as crimes. This conduct shall be punished whether it is a reckless or wilful misconduct.

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

Text of recommendation :

3. Regarding the responsibility of legal persons, the Working Group recommends that, as part of the legislative reform announced by Spain in its letter to the Group dated 4 December 2012, Spain:

- c) Take steps to increase the effectiveness of the liability of legal persons in foreign bribery cases, including through raising awareness among prosecuting authorities throughout the country to ensure that the new range of possibilities available under the law for holding legal persons liable for foreign bribery is understood and applied consistently and diligently, with a view to more effectively enforcing the new corporate liability regime. [Convention, Article 2, 2009 Recommendation V, III ii), Annex I(B) and Phase 2 recommendation 5a.]

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

The criminal liability of legal person -introduced by the reform of the Penal Code carried out by Organic Act 5/2010- is of mandatory application for all bodies in charge of prosecuting crimes. Authorities responsible for the prosecution of crimes, Judges and Prosecutors, as well as the police, know the legislation and specifically the provisions of the Penal Code, which are of mandatory application against all conducts that may be qualified as offences.

In order to improve the awareness of authorities in charge of prosecuting crimes, it should be highlighted that the of leadership of the ACPO has risen with nationwide competence and is increasingly proactive to combat bribery offences, in general, and foreign bribery, in particular.

Thus, ACPO has become an indispensable element in the fight against large-scale economic crime and bribery-related crimes. To perform its functions, ACPO counts on two Special Judicial Police Units, formed by members of the National Police Force and the Civil Guard, and on the experts of the Support Unit for the State Tax Administration Agency and of the Support Unit for the General Intervention Board of the State Administration.

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

Text of recommendation :

4. Regarding sanctions, the Working Group recommends that Spain:

- a) Harmonise the regime of sanctions (both criminal and administrative) for bribery of European officials with the one available for bribery of other foreign public officials (under art. 445 PC) for both natural and legal persons to ensure effective, proportionate and dissuasive sanctions in all cases, including for bribery to obtain a favourable exercise of discretion; [Convention, Article 3; 2009 Recommendation V and Phase 2 recommendation 6a.i)]

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

Further to new article 427 PC, the sanction regimen is harmonized because it includes both European and other foreign public officials.

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:

Text of recommendation :

4. Regarding sanctions, the Working Group recommends that Spain:

- b) Increase available sanctions for natural persons in foreign bribery cases involving significant amounts of money in order to achieve sanctions proportionate to those available for similar economic crimes; [Convention, Article 3; 2009 Recommendation V and Phase 2 recommendation 6b.];

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

As regards the basic case of foreign bribery, new article 286 ter PC includes a prison sentence of a minimum of three to a maximum of six years, and a fine from twelve to twenty four months. Our legal system foresees fines according to a day-fine system with a minimum term of ten days and a maximum term of two years (article 50 PC). In this case, the higher range has been considered with a clear dissuasive purpose. The daily quota (to be established by the judicial body that passes a sentence after evaluating the economic capacity of the offender) will be of a minimum of 2€ and a maximum of 400 €, for natural persons.

However, should the fine imposed according to the day-fine system result in an amount that is lower than the benefit obtained, then a proportional fine will be imposed. According to the proportional fine system, the amount to be paid by the offender shall be up to three times the benefit obtained.

Concerning especially serious cases, new article 286 quater PC increases the penalty established by the previous article: “When the facts to which the previous articles refer are particularly serious, the

penalty shall be imposed in its upper half, and even a more severe penalty may be imposed.

The facts shall, in any event, be considered particularly serious when:

- a) the benefit or advantage is of a particularly high value,
- b) the action of the offender is not merely occasional,
- c) the facts are committed within a criminal group or organization, or
- d) the object of the transaction involves humanitarian goods or services or any other basic necessities.”

Thus, the penalty of imprisonment that in the basic case goes from three to six years, will be from four and half years to six years (penalty in its upper half) being even possible, if the seriousness of the case requires it, to impose a penalty of imprisonment going from six years and one day to nine years (penalty higher in degree). The fine will go from eighteen to twenty-four months (penalty in its upper half), or even in especially serious cases, from twenty-four months and one day to thirty-six months (penalty higher in degree).

It can also be observed the proportionality of such sanctions with other offences of similar economic nature. For example, bribery committed by a public authority or civil servant, in its different forms, be it to carry out an action contrary to the duties of their position, not to carry out or delay unjustifiably the duty to be done (article 419 PC) or to perform an action inherent to their competences (article 420 PC) or that the receiving or request of the benefice would be before committing the indictable behavior or after having committed it, the foreseen fine penalty will be the same as the one established for foreign bribery, i.e. fine going from twelve to twenty-four months. The same fine will be imposed in the cases when the active subject of the bribery is an individual.

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:

Text of recommendation :

4. Regarding sanctions, the Working Group recommends that Spain:

- c) Develop guidelines on how to calculate the proceeds of bribery to individuals and/or companies who have benefited from corrupt transactions to ensure effectiveness and consistency in the calculation of the fine available under art. 445 PC, which level depends on the size of the profit; [Convention, Article 3; 2009 Recommendation V]

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

If no action has been taken to implement recommendation 4(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 our legal system, when Judges and Courts impose penalties they act under the free evaluation of the evidence principle, and the rules of proportionality. They have to justify the reasons that have led them to establish a certain duration of a fine penalty, and not another, always within the minimum and maximum limits set by the law. Furthermore, Judges and Courts will take into account, in the specific case, the presence of certain circumstances that could imply an aggravation or, on the contrary, a mitigation of the penalty.

Therefore, as set out in the previous paragraph, the extent of the fine penalty goes from twelve to twenty-four months (or a fine proportionate to the obtained benefit) within which the sentencing body is free to impose the penalty in question, and in all cases the criteria taken into account in order to quantify the penalty should be explained in the sentence.

In the case of proportional fines, when the evidence at the oral trial shows that the benefit obtained through the fraudulent international transaction is higher than the one resulting from the rules of the fine through the system of fine-days, the judge will be again free to establish the proportional fine either of the same amount than the benefit obtained or sought, or of any other amount that, overcoming this benefit, does not exceed its triple.

Again, the quantification of the penalty must be sufficiently reasoned in the sentence which will explain the legal grounds that, resulting from the evidence at the trial, have led the Court to impose that penalty and not another one within the legal range.

Text of recommendation :

4. Regarding sanctions, the Working Group recommends that Spain:

- d) Compile statistics on the criminal, civil and administrative sanctions imposed for domestic and foreign bribery in order to assess whether they are effective, proportionate and dissuasive; [Convention, Article 3; 2009 Recommendation V]

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

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

The criminal records registry contains data on the persons convicted for all crimes -bribery included- and the penalties imposed:

http://www.mjusticia.gob.es/cs/Satellite/es/1215197983369/Estructura_P/1288781229521/Detalle.html

Text of recommendation :

4. Regarding sanctions, the Working Group recommends that Spain:

- e) With regard to confiscation, (i) clarify, by any appropriate means, that confiscation in all foreign bribery cases is governed by art. 127 PC and that the limitations under art. 431 PC do not apply; (ii) also clarify that legal persons can be subject to confiscation measures on the same basis as natural persons; (iii) take steps to ensure that law enforcement authorities and prosecutors seek confiscation in corruption cases, whenever appropriate; (iv) provide training and guidance on the practical aspects of the confiscation of the proceeds of bribes and their quantification; and (v) make the Asset Recovery Office operational as a matter of priority. [Convention, Article 3.3].

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

As article 431 PC is expressly repealed, any possible doubt regarding the application of general rules to foreign bribery is removed.

The Single Repeal Provision of the Organic Law modifying the Penal Code will repeal article 431 PC and confiscation in cases of foreign bribery will be ruled by the provision of articles 127, 127 bis, 127 ter, 127 quater, 127 quinquies and 127 seis in the new wording.

Article 127 is modified with the following wording:

“1. All penalties imposed for an intentional (means rea) crime shall lead to the loss of the assets obtained therefrom and of the goods, means or instrumentalities used to prepare or to commit it, as well as the profits from crime, whatever the transformations they may have undergone.

2. In cases in which the Law foresees imposing a sentence of imprisonment exceeding one year for committing a reckless crime, the Judge or Court of Law may order the loss of the assets obtained therefrom and of the goods, means or instrumentalities with which this has been prepared or committed, as well as the profits from crime, whatever the transformations they may have undergone.

3. If, for any circumstance, it were not possible to seize the goods stated in the preceding sections of this article, the confiscation of other goods for an equivalent value and of the gains obtained from them shall be ordered. The same shall apply to the confiscation of goods, assets or gains ordered by the court but at a lower value than their acquisition value.”

Further to the reform in progress of the PC, the regulation of confiscation is being revised aiming at providing legal instruments that are more effective in the recovery of assets coming from the crime and in their economic management.

The regulation of extended confiscation encompasses activities such as foreign bribery from which significant economic benefits can derive. It is regulated in article 127 bis PC which establishes the offense of foreign bribery as one of the grounds for the application of the extended confiscation and it also includes a list of founded indications on the illicit origin of the seized property. This implies that a reversal of the burden of proof and the offender has to prove that such goods have a licit origin.

Article 127 ter PC regulates confiscation without trial for cases where the defendant has not been

convicted for being exempt from criminal liability, for being in contempt or for suffering from a chronic illness that prevents prosecution or for being his criminal liability extinguished.

In order to increase the effectiveness of the new regulation, this expressly includes the possibility that, in all those cases where the confiscation of assets of crime proceeds is not possible totally or partially (because it is not possible to locate them, they are out of reach of Courts, have been destroyed, their value has declined relative to the one they had at the moment of being incorporated to the individual's assets, or due to any other circumstance), the Judge or Court can, through the estimation and evaluation of the activity carried out, establish the amount up to which the confiscation of goods shall be authorized. Also, in order to improve the management of the confiscated assets, the regulation contained in the Criminal Procedure Code is revised and an Asset Management Office is set up which shall be in charge of carrying out the necessary actions to manage, in the economically most efficient way, the upkeep, realization or use of the confiscated assets. The reform, puts an end to the double regime of confiscation (depending on whether the offences are against public health or of different nature) that existed so far.

The second and the fourth final Provisions of the mentioned bill amending the Penal Code contain these improvements for the management and administration of the seized assets, as well as the creation of an Asset Management Office, specifying the authorization to the Government to regulate its structure, organization and running by June 30, 2015.

Information on training is provided under recommendation 5 a).

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

5. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Spain take the necessary steps to:

- a) Ensure (i) that the police forces and magistrates, in particular in the Central Investigating Magistrate Court, receive adequate training on the specific elements of the foreign bribery offences; on the investigative techniques adapted to this offence; and more generally, about the need to more actively and pro-actively detect, investigate and prosecute the offence of bribery of foreign public officials by both individuals and companies; and (ii) that the ACPO, including the specialised agents attached to it, receive specific training to update their knowledge on the above mentioned topics, in particular with regard to the revised foreign bribery offences in the Penal Code; [Convention, Article 5 and 2009 Recommendation III i), Annex I(D)]

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

1. Judiciary training activities:

2013

1) Training workshop for judges and prosecutors “Foreign Bribery and Corruption: Training Conference for Investigators and Prosecutors” (Washington, 11-13 of February of 2013).

2) “Meeting of Judges and Economists: Study of economic offences”, 17-19/04/2013.

4) “Corruption in the political management”, 17-19/06/2013.

5) Conference on the private sector and the fight against corruption. Regional Latin American Meeting, promoted by the Government of Colombia and the OECD (Bogotá, 7-8 of March of 2013).

6) “Public Corruption. An approach from a transnational perspective”, Judiciary School headquarters, in Barcelona, 19-20 of June 2013.

7) “Economic crime. Approach to Economic and Financial Criminal Law”, 24-25/06/2013

8) “Corruption and institutional crisis. Solutions against corruption”, 25-28/06/2013.

2014

1. “The offences linked to corruption. Problems in the pre-trial and trial proceedings”, 21-23/05/2014.

2. “Economic crime. Approach to Economic and Financial Criminal Law”, 16-18/06/2014.

Prosecutor and Police training activities:

2013

“Money laundering”: specialized training for Judicial Police and Civil Guard, 6 courses on different dates in Madrid, Avila and El Escorial.

2. “Offences of corruption and financial investigation”, specialized training for the Judicial Police, 2 courses on different dates in Avila.

3. Meetings “Judges and economists: study of economic offences”, for prosecutors, in Granada, 17-19.4.2013

4. “Offences against the Public Treasury”, for prosecutors, the Judicial Police and the Civil Guard, in Madrid, 27.5.2013.

5. “Economic crime. Approach to the criminal, economic and financial law”, for prosecutors, in Madrid, 24-25.6.2013.

6. “Fraudulent operations through companies”, for prosecutors, in Madrid, 12-13.9.2013.

7. “The criminal prosecution of corruption, obtaining and examination of evidence”, for prosecutors,

in Madrid, 17-18.10.2013.

8. “Fraud in International Transactions”, organized by the Centre for Legal Studies and the State Prosecution Service, in Madrid, 24.10.2013.

9. “Judicial ethics, risk prevention corrupting” for prosecutors, Sofia (Bulgaria): first edition, 4-6.11.2013 and second edition, 18-20.11.2013.

10. “Corruption: detection, prevention and suppression”, for prosecutors, in Paris, 9-13.12.2013.

2014

1. “Offences of corruption and financial investigation”, specialized training for the Judicial Police, 2 courses on different dates, in Avila.

2. “Money laundering”, specialized training for the Judicial Police and the Civil Guard, 4 courses on different dates, in Madrid, Avila and El Escorial.

3. “Economic Offences”, for prosecutors, in Madrid, 9.1.2014.

4. “Financial instruments – Stocks, Swaps & Co.”, for prosecutors, in Vienna, 13.3.2014.

5. “Seizure and confiscation”, for prosecutors, in Brussels, 27-28.3.2014.

6. “The offence of money laundering”, for prosecutors, Judicial Police and Civil Guard, 19-20.5.2014.

7. “IGO-IFJ. Case management and the use of UE legislation and tools: key components in the fight against financial crimes”, for prosecutors, in Brussels, 22-23.5.2014.

8. “Economic crime. Approach to criminal, economic and financial law”, for prosecutors, in Madrid, 16-18.6.2014.

9. “The judicial control of administrative sanction and the offences in the European Competition law”, for prosecutors, in Barcelona, 25-27.6.2014.

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:

Text of recommendation :

5. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Spain take the necessary steps to:

- b) (i) Clarify by any appropriate means that the foreign bribery offence under the jurisdiction of the ACPO includes the offences of bribery of an EU official under art. 427 PC; (ii) reinforce the coordination between the SPS and the ACPO and more generally between the relevant authorities in relation to foreign bribery allegations, investigations, prosecutions and

international cooperation and (iii) ensure that the courts and other law enforcement authorities systematically and urgently inform the ACPO of any foreign bribery allegation which comes to their knowledge; [Convention, Article 5 and 4 and 2009 Recommendation, Annex I(D)]

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

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:

According to article 19 of the Organic Statute of the State Prosecution Service, ACPO shall take all the measures provided under Article five of this Law and shall take direct part in criminal proceedings, provided that cases are of particular importance in the opinion of the State Prosecutor General, and, in particular, bribery offences, including the conducts perpetrated by the subjects cited in article 427 PC, according to the wording given by the reform of the Penal Code, as well as foreign bribery offences which shall become regulated under article 286 ter PC.

When ACPO initiates an investigation of its own motion or further to an information received by the Office, or when it is notified on the initiation of proceedings, ACPO shall inform the State Prosecutor General on the initiation of proceedings or on their participation in the process, as well as the Prosecutor's Office with jurisdiction over the territory in question in order to ensure coordination between them.

If the information on the facts was laid in another Prosecutor's Office, the complaint or the actions undertaken shall be sent to the ACPO, or it shall be notified on the existence of proceedings so that it takes on the performance of the functions of the State Prosecution Service.

Should ACPO receive information on facts beyond its jurisdiction under Instruction 4/2006 of the State Prosecution Service or if in the course of an investigation or during criminal proceedings, it appears ACPO is not competent, then ACPO will forward the information or the actions undertaken, to the competent Prosecutor's Office where the crime was committed, informing the State Prosecutor General accordingly, where appropriate.

When from the application of the rules of the two precedent paragraphs any discrepancy turns out on the Prosecutor's Office that has the jurisdiction to exercise the functions of the State Prosecution Service in a particular matter, the Office in disagreement shall communicate the situation to the State Prosecutor General's Office, who will settle the question. The pendency of an internal question on jurisdiction shall not preclude the undertaking of any urgent actions.

Should Prosecutors not part of ACPO, during the course of a case within their respective territories, get to know about facts that might fall under the jurisdiction of ACPO, they shall coordinate with the latter and inform the court so that the rest of proceedings are passed on to the ACPO which shall thereafter take the case on.

Text of recommendation :

5. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Spain take the necessary steps to:

- c) Ensure that foreign bribery allegations are not prematurely closed; [Convention, Article 5 and 2009 Recommendation, Annex I(D)]

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

As it has already been explained, proceedings initiated in view of the investigation of facts that may constitute an offence of foreign bribery can be dealt with by the Anti-corruption Prosecutor at a pre-trial investigation stage (Public Prosecutor's Pre-trial proceedings - "diligencias de investigación") or by the Examining Magistrate (Preliminary Enquiry - "diligencias previas").

In both cases, both the Prosecutor and the Magistrate will be assisted by specialized professionals from the Judicial Police as well as from other organisms that cooperate with the Administration of Justice to elucidate and prosecute these offences.

Therefore, only after an appropriate investigation the decision to close the proceedings can be reached, either because the facts under investigation do not constitute an offence or because the perpetration of the offence or the identity of the offender has not been sufficiently established.

The professionals involved in the investigation of all kinds of offences (including foreign bribery) carry out a comprehensive task following the procedures and regulations established by the law. So, only after completing an exhaustive investigation a decision can be reached on whether a legal action should be initiated in view of obtaining the conviction of the person accused, or where this is not appropriate, to file the case.

In all events, the filing of a case shall be properly motivated explaining the reasons why judicial proceedings should not be continued.

On the other hand and according to the Spanish law, even if the Prosecutor closes the investigation this will not impede the opening of a preliminary enquiry before the Examining Magistrate. Also, in case of dismissal agreed by the Examining Magistrate, the appeals provided for by the law may apply.

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

Text of recommendation :

5. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Spain take the necessary steps to:

- d) Clarify by any appropriate means that foreign bribery cases involving an EU official, as provided under art. 427 and 422 PC, are not subject to the Law on Jury Trials (art. 24(1)); [Convention, Article 5, 2009 Recommendation, Annex I(D)] and Phase 2 recommendation 3d.]

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

Further to new article 286 ter PC, foreign bribery cases involving EU officials are not subject to the Law on Jury Trials.

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

Text of recommendation :

5. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Spain take the necessary steps to:

- e) (i) Use proactive steps to gather information from diverse sources of allegations and enhance investigations (ii) raise awareness at the national level about the need to prioritise the investigation of foreign bribery offences; and (iii) consider the establishment of a national database for all ongoing cases with a view to ensure coordination of foreign bribery investigations, including the offences of bribery of EU officials, nationally and to avoid intelligence gaps; [Convention, Article 5, 2009 Recommendation, Annex I(D) and Phase 2 recommendation 3e.]

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

The Spanish legal system relies on gathering information from different sources on the alleged perpetration of foreign bribery offences. Thus, the investigation on the possible commission of this offence can begin after an information laid by a private person (either before the Prosecutor or a judicial authority), as a result of a police report or because the Prosecutor or the Examining Magistrate has direct knowledge of the facts.

Account should be taken on the fact that the investigation of certain facts apparently criminal can be undertaken following an anonymous complaint.

In practice, it is more and more frequent that a Prosecutor's investigation is initiated after information laid by public authorities or bodies. According to article 262 of the Law of Criminal Procedure: "whoever, on account to his public office, profession or occupation came to know about a

public offence shall be obliged to report it immediately to the State Prosecution Service...” Failure to comply with this requirement may be considered as an offence against Public Administration of article 408 PC which reads: “The authority or public official who, failing in the obligations of his office, intentionally failed to promote the prosecution of the offences that come to his knowledge or of those responsible for them, shall be liable for a penalty of special disqualification from holding public employment or office for a period from six months to two years.”

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

There is a national database within ACPO because of the nationwide competence of this Special Office with regards to foreign bribery, further to article 19.ñ.4) of the Organic Statute of the State Prosecution Service.

Text of recommendation :

5. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Spain take the necessary steps to:

- f) As necessary and in compliance with the relevant rules and procedures, and respecting the fundamental rights of the Defendant, ensure that the decisions published include elements of the arrangements reached through conformidad, when appropriate, such as the terms of the arrangement (in particular, the amount agreed to be paid); [Convention, Article 3 and 2009 Recommendation, Annex I(D)]

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

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

In our legal system, the mechanism of “conformidad” will always be operated during the course of criminal proceedings so it is not an agreement aiming at avoiding criminal proceedings.

The “conformidad” involves that the defendant, once he knows all the terms of the indictment brought against him (the charges, the evidence of the prosecution and the requested sentence), may decide, duly advised by his lawyer, to acknowledge his criminal liability, admit that he has committed an offence and accept the requested sentence.

In this case, in view that before the trial the defendant admits having committed the offence he was charged with, the trial shall not take place, the evidence will not be examined since there has been confession on the part of the defendant, but, nevertheless, the action will end with a conviction.

The sentence will be of conviction (since the defendant acknowledges his criminal liability), shall

reflect the terms of the “conformidad”, both with regard to the offence for which the defendant is convicted and to the sanction to be imposed.

In practice, with the purpose of avoiding the oral trial, the agreement through “conformidad” will be preceded by conversations between the Public Prosecutor and the defendant with his lawyer and the defendant shall be proposed to accept a sentence which, within the legal terms established, implies the acknowledgment of the facts.

This previous agreement between the prosecution and the defence does not mean at all that there will be no conviction. On the contrary, the agreement is precisely based on the acknowledgement of the crime on the part of the defendant and will only be effective as long as this acknowledgement is reflected in the sentence which will always be of conviction.

Therefore, the terms of the agreement must be faithfully reproduced in the sentence of conviction.

Text of recommendation :

5. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Spain take the necessary steps to:

- g) Concerning the statute of limitations, as part of its announced reform of the Penal Code (i) extend the statute of limitations applicable to the offences under art. 420 PC and align it with the period (10 years) for the offences under arts. 419 and 445 PC; (ii) review the possibilities for suspension and interruption of the limitation period with a view to cover, in particular, situations where the accused is out of the country or in hiding; and (iii) clarify the rules governing the statute of limitations applicable to legal persons. [Convention, Article 6]

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

The statute of limitation is 10 years (article 131 PC). The limitation period is established depending on the penalty provided for the offence.

Article 131 of the Penal Code:

“1. Crimes reach their limitation period:

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

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

After 10 years, when the maximum penalty provided by Law is imprisonment or disqualification for more than 5 and less than 10 years.

After 5 years, for the other crimes, except for libel and slander that reach their limitation period after one year.”

The bill amending the Penal Code foresees for all cases of bribery of a foreign public official, the

imposition of prison penalties of up to six years of prison (nine for severe cases) and, in any case, disqualification penalties to receive public subsidies and aids, tax exemptions or incentives or to participate in international business transactions of a public interest for a term up to twelve years (eighteen for serious cases). These penalties determine the existence of limitation periods extraordinarily long that reach, in all cases, a limitation period of fifteen years. It assures the availability of a sufficient term to investigate these offences in case the accused resides abroad or escapes.

Limitation periods are interrupted every time the investigation or the proceedings are conducted against the suspect or the accused. They are particularly interrupted:

- Every time the Examining Judge or the Prosecutor conduct any investigative proceedings to clarify offences a suspect is charged with (Article 132.2 of the Penal Code; settled case-law).

- In cases of escape, the limitation period is interrupted by any investigation action and, in particular, by a decision ordering the detention and/o preventive prison of the suspect who has escaped. It should be added that, in these cases, the detention of the suspect must be compulsory decreed (Article. 490.7 Code of Criminal Procedure).

- The issuing of a European Arrest Warrant and the request for extradition of a suspect traced abroad are actions that stop the limitation period.

The availability of limitation periods enough to enable the prosecution of these bribery offences when committed by legal persons is also guaranteed. The criminal liability of legal persons is autonomous and independent with relation to the responsibility of natural persons and for this reason is subject to its own prescription system: the limitation period in case of offences committed by legal persons is from five to ten years, depending on whether it is or is not one of the serious cases.

In all cases, it should be considered that with the procedural regime introduced for these cases by Act 37/2011, of October 10, the failure to appear or default in appearance of the company or legal person shall not constitute a bar to the proceedings, such as provided in Articles 409 bis, 786 bis and, in particular, 839 bis.4 of the Code of Criminal Procedure, which excludes that the “default in appearance” of the legal person could stop the proceeding.

If no action has been taken to implement recommendation 5(g), 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 :

6. Regarding mutual legal assistance, the Working Group recommends that Spain take steps to ensure that its authorities are more proactive in seeking MLA or other forms of international cooperation in possible foreign bribery cases. [Convention Article 9; 2009 Recommendation XIII(i) and (iii)]

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

Spanish authorities are proactive in seeking international cooperation. It can be recalled that three

internal networks have been set up to facilitate international cooperation:

- The Spanish Judicial Network for International Judicial Cooperation (REJUE), composed of judges and coordinated by the General Council of the Judiciary,
- The Network of Prosecutors for International Cooperation, coordinated by the State Prosecutor's Office,
- The Spanish Network of Court clerks for International Cooperation (RESEJ), coordinated by the Ministry of Justice.

The role of these networks as a means of disseminating knowledge and assisting their respective members on questions regarding international cooperation in criminal matters is worth mentioning. There are nominated judges/ prosecutors/ court clerks for each province who are specialists trained in international cooperation and can deal with international rogatory letters. The different networks have annual meetings at which they receive training, share experience, etc. The nominated experts can deal directly with international rogatory letters and also provide advice and guidance to their colleagues.

“Prontuario” (<http://www.prontuario.org/portal/site/prontuario>) is a useful IT tool to investigating judges and other MLA practitioners, providing legal information and technical assistance regarding international cooperation.

For additional information on the OECD anti-bribery Convention:

<http://www.prontuario.org/portal/site/prontuario/menuitem.0158a50e67e0aae3c4f37462555a4ea0/?vgnextoid=33aad8fa3a7f5310VgnVCM1000006f48ac0aRCRD&vgnnextchannel=d43803a4b8e36310VgnVCM10000053a5e40aRCRD&vgnnextfmt=formato1>

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:

Text of recommendation :

7. Regarding extradition, the Working Group recommends that Spain (i) take measures to assure either that it can either extradite or prosecute its nationals for the offence of bribery of foreign public officials; and (ii) raise awareness among its judges, prosecutors and Central Authority of the obligations contained in Article 10 of the Convention and of the legal principle of *aut dedere aut judicare*. [Convention, Articles 6 and 10(3)]

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

Article 13.3 of the Spanish Constitution reads that “extradition shall be granted only in compliance with a treaty or with the law, on the basis of the principle of reciprocity...” The extradition of nationals is conditional on the existence of an extradition treaty. If the treaty allows for the extradition of nationals, Spain will extradite its own nationals on the basis of the said principle of reciprocity. Therefore, in Spain there is no general prohibition with regards to the extradition of its nationals, provided that there is an

extradition treaty and that the requesting State may also surrender its own nationals.

In case the extradition of a Spanish citizen is not granted, the Spanish Government, at the request of the State in which the crime took place, will report the facts that gave rise to the charge to the State Prosecution Service in order for legal action to be taken, if appropriate, against the person charged. The person's nationality status is taken into account by the Court competent to deal with the extradition.

Since 2012 Spain has granted the extradition of 6 Spanish citizens: 3 to Argentina, 2 to Peru and 1 to Israel.

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

Recommendations for ensuring effective prevention, detection, and reporting of foreign bribery

Text of recommendation :

8. Regarding tax measures to combat bribery of foreign public officials, the Working Group recommends that Spain ensure (a) that tax officials are trained on the applicable requirement for reporting suspected offences to law enforcement authorities; (b) that the Basque and Navarra tax authorities take appropriate measures to make explicit the prohibition of the deduction for tax purposes of bribes paid to foreign public officials; (c) that central and regional tax authorities inform both tax officials and tax payers of this prohibition, along with the type of expenses that are deemed to constitute bribes, including gifts and entertainment expenses; and (d) that suspicious expenses, irrespective of their size, are routinely analysed by Spanish tax officials; [2009 Tax Recommendation, I; Phase 2 recommendation 7]

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

Concerning (a) and (c), to increase Tax Inspectors awareness on risks and importance of Bribery, the OECD Bribery Awareness Handbook for Tax Examiners (translated into Spanish) is already available in Corporate intranet to the general knowledge of Tax Examiners. There is also a wide plan to change training programme of School of Public Finance (EHP) to include specific courses on Bribery and Money Laundering as well.

With regard to (b) and (c), tax regulations of the Basque country and Navarra establish plainly the non-deductibility of bribery in their territories:

BASQUE COUNTRY:

Álava:

The FORAL ACT 18/2013, of the 3rd of July, of basic principles and measures against tax evasion and other tax measures included non-deductibility of bribery in the regulation of the Personal Income Tax and Corporate Tax.

Currently article 27 of the FORAL ACT 33/2013, of 27 November, of Personal Income and article

31 of the FORAL ACT 37/2013, of 13 December, of Corporate Tax includes this same rule.

Vizcaya:

The FORAL ACT 3/2013, of 27th of February, of additional measures to strengthen the fight against tax fraud and other tax changes included non-deductibility of bribery in the regulation of the Personal Income Tax and Corporate Tax in this province.

Currently article 27 of the FORAL ACT 13/2013, of 5th of November, of Personal Income and article 31 of the FORAL ACT 11/2013, of 5th of December, of Corporate Tax includes this same rule.

Guipúzcoa:

The FORAL ACT 5/2013, of 17th of July, or measures against tax fraud, of mutual assistance for recovery of credits and other tax changes included non-deductibility of bribery in the regulation of the Personal Income Tax and Corporate Tax in this province.

Currently article 27 of the FORAL ACT 3/2014, of 17th of January, of Personal Income and article 31 of the FORAL ACT 2/2014, of 17th of January, of Corporate Tax includes this same rule.

NAVARRA:

FORAL LAW 38/2013, of 28th of de December, of modification of various taxes and other tax measures included the non-deductibility of bribery in the article 24 of the FORAL LAW 24/1996, of 30th of December, that regulates the Corporate Tax in this region.

If no action has been taken to implement recommendation 8, 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:

On non deductibility for expenses due to bribes, we sustain that it is sufficiently known by officials that such expenses, once known their true illegal origin, cannot be deductible from income of companies and individuals as set out in the Instruction of the Ministry of Economy and Finance (now Ministry of Finance and Public Administrations) dated March 5th 2007 which states that bribes to foreign public officials, as defined in article 445 of the Penal code, are not tax deductible..

Moving one more step towards full transparency and awareness, in a recent project to amend Corporate Income Tax (and subsidiarily in Individual Income Tax) a specific mention regarding non-deductible expenses has been included.

This is the text of the foreseen modification of Corporate Income Tax.

Article 15. Non deductible expenses.

Shall not be deemed to be deductible for tax purposes:

(...)

f) The expenses derived from actions against any Law.

This article, which is currently under legislative procedure, will be directly applicable in All Spanish

Territory except Basque Country and Navarra that have their own regulations. As indicated in the action taken as of the date of the follow-up report, in 2013 the Basque Country and Navarre amended their Tax regulations to specifically introduce the non-deductibility of bribery.

From the relationship between Spanish Tax Agency and Basque country and Navarre Tax Administrations, this relationship is very close and friendly. We exchange lots of information and also experiences and eventually Tax Crime cases. We know that deduction rules for Income tax are quite the same in both Regions than they are in the rest of Regions.

There are some meetings held yearly in which National Tax Agency (AEAT) can introduce this subject to increase their awareness. In next meetings this issue is going to be part of the Agenda.

With respect to recommendation 8(d) see the answer to point 16.j) below.

Text of recommendation :

9. Regarding raising awareness of the foreign bribery offence, the Working Group recommends that Spain raise awareness among companies of all sizes and sectors of the implications of art. 31bis PC and of the risk of corporate liability for bribery of foreign public officials, along with the corresponding need to put in place an effective anti-bribery compliance programme; [2009 Recommendation, Annex II]

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

Since the introduction of the liability of legal persons in the Penal Code (article 31 bis), many public and private entities organised courses and seminars on this concept. We can mention, as an example in the business field, Madrid Chamber of Commerce, which has organised a seminar on the criminal responsibility of legal persons in 2010 Penal Code and in the ongoing reform, as well as a workshop on integrity or compliance programmes linked to the responsibility of the companies.

And CEOE, the Spanish Confederation of Business Organizations that groups small, medium and large companies, has organized a conference on the law of transparency and the reform of the Penal Code where both the introduction of criminal liability of legal persons (art. 31 bis of the PC) and the characteristics of the ongoing reform of the PC were explained.

If no action has been taken to implement recommendation 9, 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 :

10. Regarding reporting suspicions of foreign bribery, the Working Group recommends that Spain (i) create and publicise a clear means by which reports of suspected instances of foreign bribery can be made by both the private sector and general public to law enforcement authorities; (ii) establish an internal reporting procedure within the Ministry of Foreign Affairs and inform officials at Spanish overseas embassies of the obligation to report suspected instances of bribery to Spanish law enforcement authorities; and (iii) consider whether to extend public sector reporting obligations to officials of Spanish

agencies that are not currently covered by these obligations. [2009 Recommendation IX ii); Phase 2 recommendation 2a.]

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

(i) Steps have been taken by the Ministry of Justice to encourage reporting and also providing complete information about the foreign bribery offence within the official website:
http://www.mjusticia.gob.es/cs/Satellite/es/1215198008078/Tematica_C/1215198007704/Detalle.html

The official website of the Secretariat of State for Trade, in the Ministry of Economy and Competitiveness, gives also information about the OECD Convention on Combating Bribery and provides a link to the website of the Ministry of Justice with information about allegations of acts or practices of bribery in international business transactions:
<http://www.comercio.mineco.gob.es/es-ES/inversiones-exteriores/acuerdos-internacionales/convenio-ocde-lucha-contra-conrрупcion/Paginas/convenio-ocde-lucha-contra-conrрупcion.aspx>

(ii) The Ministry of Foreign Affairs and Cooperation sent in October 2013 a circular to all its embassies and consulates stating that all its officers must properly know the legislation on foreign bribery and disclose it amongst institutions and companies that may have any kind of relationship with them (Annexes II and II bis).

These public employees must remain alert for suspicious activity, and if they encounter such activity they should communicate it to their central services in order to automatically inform the General Prosecutor's office or the Special Prosecution Office against Corruption and Organised Crime (ACPO).

A circular from the Ministry of Foreign Affairs signed by the Minister is a direct order with full executive force.

(iii) Spanish agencies abroad have been notified again through Spanish embassies by the new circular from the Ministry of Foreign Affairs and Cooperation to report foreign bribery suspicion.

A new letter to Spanish Commercial Offices abroad was sent by the Ministry of Economy and Competitiveness in July 2014 recalling their obligation to follow any suspicious behaviour of foreign bribery from any Spanish enterprise, and reiterating that any of those practices must be communicated to the Office of the State General Prosecutor or to the Prosecutor's Office against corruption and organized crime (ACPO) as soon as possible (Annex VII).

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:

Text of recommendation :

11. Regarding whistleblower protection, the Working Group recommends that Spain promptly adopt an appropriate regulatory framework to protect public and private sector employees from any discriminatory or disciplinary action when they report suspicions of bribery of foreign public officials in good faith and

on reasonable grounds; [2009 Recommendation IX iii)]

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

If no action has been taken to implement recommendation 11, 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 Spain civil servants are offered a high level of protection by the specific provisions of Act 7/2007 of 12 April, on the Basic Statute of Public Officials. Article 14 of this Law, which establishes the individual rights of public employees, includes as the first right their tenure as civil servants.

As for employees of private companies, there is no explicit provision for the protection of employees who report that the company may be involved in a crime but the labour law grants protection against dismissals based on one of the grounds of discrimination prohibited by the Constitution or by law, or occurring in violation of fundamental rights and freedoms of workers which shall be void. A void dismissal shall entail the immediate reinstatement of the worker, with payment of unpaid wages (article 55 of the Royal Legislative Decree 1/1995 of 24 March, approving the revised text of the Law on the Statute of Workers).

As an example of specific rule, article 18.4 of Act 10/2010, 28 April, on the prevention of money laundering and terrorist financing, can be mentioned in respect to all AML-CFT obliged entities (private sector). Article 23 of this Act foresees an exemption from liability to protect whistleblowers.

A Spanish representative took part in the meeting on the protection of whistleblowers, organized by the Council of Europe in Strasbourg, 30-31 of May of 2013.

Text of recommendation :

12. Regarding money laundering, the Working Group recommends that Spain (i) ensure that SEPBLAC, reach out to reporting entities subject to AML obligations in a more proactive way, including on their duty to detect possible instances of foreign bribery; (ii) continue its efforts to detect money laundering linked to foreign bribery and, (iii) ensure that the ACPO provide feedback to SEPBLAC about the outcome of specific cases generated or enriched by information transmitted by the FIU. [Convention, Article 7 and 2009 Recommendation, III i)]

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

(i) ensure that SEPBLAC, reach out to reporting entities subject to AML obligations in a more proactive way, including on their duty to detect possible instances of foreign bribery;

SEPBLAC is both the financial intelligence unit (FIU) and the AML supervisor, so it is able to apply the outcomes of its strategic and operational analysis to feedback mechanisms, and take supervisory action, as needed, to address reporting issues.

SEPBLAC takes a highly sophisticated risk-based approach to supervision across different sectors and within each sector and has developed a detailed risk analysis methodology for each sector of obliged entities, drawing on a wide range of information.

Since the last written submission by Spain, in December 2013, SEPBLAC has intensified its supervision over the reporting entities. SEPBLAC's on-site examinations are subject to a risk-based annual Plan approved by the Permanent Committee of the Commission, according to article 44 of the AML Act (Law 10/2010). The Plan includes both general and thematic examinations, the later allowing SEPBLAC to focus on higher-risk activities and to establish cross-comparability between supervised institutions. The annual plan of inspections for September 2013/July 2014 set a total of 102 inspections to reporting entities (52 to financial institutions and 50 to non-financial institutions, also known as Designated Non-Financial Businesses and Professions or DNFBPs). The plan for September 2014/July 2015 foresees a total amount of 100 inspections (43 to financial institutions and 47 to DNFBPs) reporting entities.

Thanks to the examinations, entities have taken actions to improve their AML systems according with comments raised by SEPBLAC.

Sectors seem to have a good understanding of the risks. The banking sector (which sources the majority of STRs) is the key gatekeeper to the financial system in Spain. It seems reasonably well aware of its AML obligations and has a low risk appetite when implementing AML measures.

Consolidation in the banking sector has also resulted in a significant improvement of AML compliance. The financial crisis experienced has provoked that the number of financial institutions have sharply declined in relation to those existing in 2005. Many institutions have been absorbed or acquired by the most solvent ones. This restructuring process determined the need for an intensive control by supervisors in order to ensure that entities' AML procedures had not been affected. Therefore, intensive AML structured inspections, in coordination with Bank of Spain, were conducted in 2012: 15 financial conglomerates were supervised that year. In mid 2013, those conglomerates have been supervised again. It is important to highlight that these conglomerates are controlled by banks and include a wide range of obliged subjects (insurers, securities firms, money remitters, and even DNFBPs as real estate companies). Roughly, about 80 per cent of the total balance of Spanish credit institutions is represented by these conglomerates.

The periodical meetings held by SEPBLAC with different professional associations (jewelers, auction businesses, general counsel of economists, the centralized body of notaries, tax advisers association, real estate association, money remitters, etc.) have substantially increased their members' awareness of risk and their concern of the likelihood of being used for ML.

Moreover, SEPBLAC meets regularly with authorities and obliged entities in order to incorporate the various feedbacks received into its operation.

SEPBLAC issues instructions and recommendation documents to the reporting entities. On April 2013 SEPBLAC issued detailed recommendations on how they must define and implement AML procedures. In addition, SEPBLAC produces monthly a risk map, with a strategic analysis of STRs, which is regularly submitted to obliged entities, together with an assessment of the STRs received, including the destination of every STR and the main underlying crime associated with them. SEPBLAC also returns the STRs if the assessment of the operation has not been deep enough, expressly informing the reason for returning the report, in compliance with Article 18 of the AML Act.

SEPBLAC, on the basis of its experience as Financial Intelligence Unit, actively participates in the elaboration of the so-called Catalogues of Risk Transactions (COR) issued by the Treasury. CORs include an extensive array of risk transactions for money laundering and terrorist financing, including examples specifically aimed at targeting foreign bribery (e.g. see transaction 7 in the COR for credit institutions, which refers to “Persons holding prominent political responsibilities, high positions or similar - Directors of State Companies, etc.”). CORs, which have been distributed to a large number of financial institutions and DNFBPs, have significantly raised awareness and are extensively used by reporting entities in managing its risks.

Article 14 of the AML Act sets that obliged entities shall apply enhanced customer due diligence measures in business relationships or transactions with politically exposed persons. Requirements for foreign PEPs are being implemented without significant problems, although in some cases financial institutions check whether a customer is a PEP only after their acceptance. All financial entities hire external companies that provide consultation services on international PEPs. Once the PEP is detected, entities have a specific procedure for requesting authorisation from higher hierarchical levels, as well as monitoring of operations and frequent updating of information related to their own activity and those of their associates.

(ii) continue its efforts to detect money laundering linked to foreign bribery

On one hand, as stated above, the fact that SEPBLAC regularly meets authorities and obliged entities allows incorporating the various feedbacks received into its operation.

On the other hand, SEPBLAC is able to apply the outcomes of its strategic and operational analysis to feedback mechanisms. On this basis, SEPBLAC conducted in 2013 its own risk assessment, in order to identify the main risks and threats linked to money laundering and the financing of terrorism, drawn from the processing and analysis of SEPBLAC’s information. One of the conclusions of this document was that cases where corruption has been noted as a source of the capital involved in the transactions represents around 3% of the total of suspicious transactions reports (STRs), most of them in relation to foreign bribery, mainly from African countries. In these cases, Spanish banks accounts receive funds from unjustified sources, which are paid on accounts that those authorities or senior officials own in Spain, whose destination is, in most cases, the purchase of houses and other high value items.

Since the last contribution of Spain to the written follow-up report, the total number of Intelligence Reports sent from SEPBLAC to the Special Public Prosecutor’s Office against Corruption and Organised Crime (ACPO) and to other Law Enforcement Authorities (LEAs), in relation to foreign bribery, is the following:

	2012	2013	2014 (until 31/10/2014)
<i>No. of reports sent to the ACPO</i>	34	29	14
<i>No. of reports sent to other LEAs</i>	29	32	27
<i>Amount of reports on foreign bribery</i>	61	61	41

Source: Sepblac

Please, note that due to the fact that SEPBLAC incorporates reports to its statistics once they are closed, several reports currently on the instruction phase will be added to the 2014 figures when they will be finished by 2015.

Finally, SEPBLAC has increased its efforts in the analytical areas by increasing the number of employees devoted to these tasks. While the number of SEPBLAC's employees has remained stable in 80 people, in average, since 2005, in recent years the number of analysts has increased according to the following figures:

<i>Employees</i>	2012	2013	2014 (until 31/10/2014)
<i>Analysts</i>	46	51	52
<i>SEPBLAC's total</i>	73	81	84

Source: Sepblac

Of the people working in SEPBLAC, more than 60% are dedicated to analysis work almost on a full time basis. The FIU is composed of various professional profiles in order to ensure adequate cooperation and exchange of information with other authorities and national and international organizations

(iii) ensure that the ACPO provide feedback to SEPBLAC about the outcome of specific cases generated or enriched by information transmitted by the FIU

As stated above, SEPBLAC regularly exchanges information with investigative bodies and prosecutors.

Furthermore, ACPO provides feedback to SEPBLAC upon request.

The Act 10/2010, of 28th April, on prevention of money laundering and terrorism financing, regulates in its Articles 44 et seq., in relation to the institutional Organization, the Commission for the Prevention of Money Laundering and its institutional organization. In particular, Article 44, paragraph 2.

b) and c), lays down its functions mentioning the collaboration with the Law Enforcement Agencies, the coordination of investigation and prevention activities carried out by the other bodies of the Public Administrations having competence in matters referred to in the preceding letter, and ensures the most effective assistance in these matters to the judicial bodies, the Public Prosecutor's Office and the Judicial Police. With regard to the composition of this Commission, which is chaired by the Secretary of State for Economy, the Public Prosecutor is part of it with the appropriate representation:

“Article 44: Commission for the Prevention of Money Laundering and Monetary Offences.

1. The promotion and coordination of the enforcement of the present Act will fall to the Commission for the Prevention of Money Laundering and Monetary Offences, dependent on the State Department of Economy.

2. The functions of the Commission for the Prevention of Money Laundering and Monetary Offences are as follows:

a) To lead and promote the prevention activities of using the financial system or other sectors of economic activity for money laundering or terrorism financing, as well as the prevention of administrative breaches of the regulations on cross-border economic transactions.

b) To collaborate with the Law Enforcement Agencies, coordinating the activities of investigation and prevention carried out by the other bodies of the Public Administrations having competence in the areas mentioned in the previous letter.

c) To ensure the most effective assistance in these matters to judicial bodies, the Public Prosecutor's Office and the Judicial Police.

.....

3. The Commission for the Prevention of Money Laundering and Monetary Offences will be chaired by the State Secretary of Economy and its composition will be according to the rules established. It will have, in any case, the appropriate representation of the Public Prosecutor's Office, of the Ministries and institutions having competence in the matter, of the supervising bodies of the financial entities, as well as of the Autonomous Regions having competence for the protection of persons and goods, and for the safeguard of public safety.”

The Regulation developing this law was approved by the Royal Decree 304/2014, of 5th May, and it sets out, in its Articles 62 et seq., the composition and functions of the Plenary Session, the Standing Committee and the Committee of Financial Intelligence, inter alia. The Commission's Plenary Meeting for the Prevention of Money Laundering and Monetary Offences includes, among others, the Chief Chamber Prosecutor of the Public Prosecutor's Office against Corruption and Organized Crime, the Chief Chamber Prosecutor of the National High Court and the Chief Chamber Prosecutor of the Anti-drug Public Prosecutor's Office. And, on the other hand, a Prosecutor from the Public Prosecutor's Office against Corruption and Organized Crime is present in the Financial Intelligence Committee of the Commission for the Prevention of Money Laundering and Monetary Offences.

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:

Text of recommendation :

13. Regarding accounting rules and external audit, the Working Group recommends that Spain:

- a) Ensure that accounting offences are effectively investigated and prosecuted, particularly in connection with bribery cases; [Convention, Article 8]

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

See answer under recommendations 1 and 5.

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:

Text of recommendation :

13. Regarding accounting rules and external audit, the Working Group recommends that Spain:

- b) In order to ensure adequate implementation of auditors' obligations to report suspicions of foreign bribery: (i) further publicise this requirement and provide training on the circumstances under which such reporting is required; (ii) pursue the reform of its Technical Standards in order to clarify the requirement to report to management that applies to auditors, and (iii) raise awareness so that auditors know that they should identify, detect and report foreign bribery. [2009 Recommendation X B. iii)]

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

Points (i) and (iii)

The Accounting and Auditing Institute (ICAC) has sent a letter to the Corporations that represent auditors to obtain information regarding the courses that they have organized in order to further publicise the auditor's reporting requirement and to raise awareness so that auditors know that they should report foreign bribery.

We enclose as Annexes VI and VI bis the letter sent to the Corporations that represent auditors, as the entities responsible for organizing the courses for auditors and the answer from the General Director of the "Instituto de Censores Jurados de Cuentas de España".

We would like to remind the Working Group that not only have auditors to attend education courses

to be approved to perform their activity, but they must also complete continuing education.

In this regard, according to article 7.7 of the consolidated text of the Law on Auditing, approved by the Royal Legislative Decree 1/2011, 1 July, “*auditors registered in the Official Register of Auditors, (...), must take courses and complete continuing education programmes, which may be given, according to the method and conditions provided for in regulations, by the corporations that represent auditors, authorised teaching entities or other entities*”; and, according to article 41.3 of the Regulation that develops the consolidated text of the Law on Auditing, approved by Royal Legislative Decree 1517/2011, 31 October, the continuing education programmes have to be organized “*by the corporations that represent auditors. Likewise, they may be organised by Universities and by those centres, institutions, audit firms, or auditors groups with at least fifteen individuals that have been recognised by the Accounting and Auditing Institute.*”

Subsidiarily, the Accounting and Auditing Institute shall be responsible for organising and teaching these programmes”

Point (ii)

The Accounting and Auditing Institute issued, on 15 October 2013, a Resolution to publish the New Technical Standards on Auditing, including ISA 240 “The auditor’s responsibilities relating to fraud in an audit of financial statements” and ISA 250 “Consideration of laws and regulations in an audit of financial statements”, as a result of a revision process to adapt the International Standards on Auditing issued by IAASB to the Spanish circumstances.

These standards are applicable to audits of financial statements corresponding to periods as of 1 January 2014.

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:

Text of recommendation :

14. Regarding company internal controls, ethics and compliance programmes or measures, the Working Group recommends that Spain promote, jointly with the relevant professional associations, internal controls, ethics and compliance programmes or measures in businesses involved in commercial transactions abroad, including SMEs, with reference to *inter alia* Annex 2 of the 2009 Recommendation, Good practice guidance on internal controls, ethics, and compliance. [2009 Recommendation, X. C. i); Annex II]

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

In October 2011, ICAC issued the “Norma de Control de Calidad Interno de los auditores de cuentas y sociedades de auditorías”, which obliges auditors and audit firms to implement a quality control system with appropriate policies and procedures.

This standard is based on ISQC1 whose scope states that “*This International Standard on Quality*

Control (ISQC) deals with a firm's responsibilities for its system of quality control for audits and reviews of financial statements, and other assurance and related services engagements. This ISQC is to be read in conjunction with relevant ethical requirements."

The main objectives of this Standard for the auditors is to establish and maintain a system of quality control to provide them with reasonable assurance that the firm and its personnel comply with professional standards and applicable legal and regulatory requirements; and that the reports issued are appropriate in the circumstances.

According to this ISQC1, *"the (auditor and the audit) firm shall establish and maintain a system of quality control that includes policies and procedures that address each of the following elements:*

(...)

b) Relevant ethical requirements

c) Acceptance and continuance of client relationships and specific engagements

(...)"

"(...)the (auditor and audit) firm shall establish policies and procedures designed to provide it with reasonable assurance that the (auditor and the audit) firm and its personnel comply with relevant ethical requirements." And, in other pages, it states that *"the IFAC Code establishes the fundamental principles of professional ethics, which include:*

a) Integrity

b) Objectivity

c) Professional competence and due care;

d) Confidentiality; and

e) Professional behavior"

These main principles are reinforced in particular by education and training.

One of the requirements mentioned in ISQC1 to undertake or continue relationships and engagements is if the auditor can comply with the ethical requirements and if he/she has considered the integrity of the client, and does not have information that would lead it to conclude that the client lacks integrity. Among others, the auditor has to consider the integrity of the client taking into account the identity and business reputation of the client and the indications that the client might be involved in money laundering or other criminal activities.

Another requirement states that the firm shall establish policies and procedures for the acceptance and continuance of client relationships and specific engagements, designed to provide the firm with reasonable assurance that it will only undertake or continue relationships and engagements where the firm:

(a) Is competent to perform the engagement and has the capabilities, including time and resources, to do so.

Competence can be developed through continuing professional development, including training.

On the other hand, the Ministry of Economy and Competitiveness has spread through the CEOE (Spanish Confederation of Business Organizations) the Annex 2 of the 2009 Recommendation, *Good practice guidance on internal controls, ethics, and compliance* among more than 500 business organizations and companies.

Annex 2 has also been presented at Madrid Chamber of Commerce within a workshop on

international tenders.

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

15. Regarding public advantages and export credit, the Working Group recommends that Spain:

- a) Reinforce the reporting framework in place in CESCE and COFIDES, for example by clarifying the criteria for reporting instances of suspected foreign bribery and training staff accordingly; [2009 Recommendation IX]

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

In 2013 COFIDES approved an internal procedure to clarify and reinforce the reporting of suspected foreign bribery to the ACPO and to the Ministry of Economy and Competitiveness, and to inform its staff on how to act accordingly. These internal guidelines were developed to facilitate accessible channel for the reporting to law enforcement Spanish authorities to possible cases of foreign bribery detected by COFIDES in the course of providing finance in conformity with Spanish jurisdictional and legal principles.

According to recommendations of Phase 3 peer evaluation, CESCE has reviewed the procedures in force at the time we received the visit of the team from the OECD Working Group on Bribery. CESCE has defined the detection of indications of bribery as a specific step of the study of the transactions: risk analyst should check databases and internet looking for news of irregularities as part of the risk analysis of the parties; back-office should check IFI's Debarment Lists every week...

As part of this step, it has been clearly defined what we understand by suspicions of bribery and we have established the channels for reporting to the Environmental and Technical Review Department for a further analysis and, where relevant, an "enhanced due diligence" process. Suspicion of bribery should be reported at any moment in the life of an application.

Following the recommendation, we introduced a new step into our anti-bribery procedures aimed at reinforcing knowledge and control. Since 2013 we gather information on companies' ethical codes and bribery prevention measures, through a questionnaire that we send to all the exporters in our portfolio with an exposure of 10 million or above.

These new procedures have been developed in collaboration with all the different parties involved in the underwriting process (risk analyst, underwriters, legal team, environmental and technical analyst and the back office team)

COFIDES and CESCE new procedures can be found in the Annexes III and IV.

If no action has been taken to implement recommendation 15(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 :

15. Regarding public advantages and export credit, the Working Group recommends that Spain:

- b) Pursue its proposal to modify Royal Decree 2061 in order to ensure that, when authorising exporters of military equipment and dual-use goods, JIMDDU (i) requires an anti-bribery declaration on the part of applicants and considers whether they are the subject of bribery prosecutions or convictions; and (ii) considers the temporary or permanent disqualification of enterprises convicted of bribing foreign public officials from applying for export authorisation. [2009 Recommendation XI i)]

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

The Royal Decree 679/2014 of 1st August approving Regulation on the control of external trade in defence material, other material and dual-use goods and technologies has been published in the Spanish Official Journal on Tuesday, 26th August 2014.

It includes among other amendments the OCDE recommendation on the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, ratified by Spain on the 3rd of January 2000 (BOE, 22nd of February 2000) with regard to defence materials exports. Article 15.7 is amending as follows:

“In issuing its report the JIMDDU must check whether any document exists indicating the participation of the applicant or operator in unlawful activities or whether the operator lacks guarantees of its capacity to effectively control the transfers of the materials, items or technologies included on the registration application, in which case the said application would be denied. In particular, the analysis will be based in determining if enterprises are not condemned for crimes related to the corruption of foreign public officials in international business transactions, for which a declaration is required by the applicant. The temporary or permanent suspension of inscription in the Registry for this reason is foreseen, and it will be communicated to the Deputy Direction of International Trade in Services and Investments, according to the OECD recommendation on implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Moreover, in the event of a change in the initial conditions in the sense just described, the suspension or nullification of a previously approved registration may be proposed.”

(NON OFFICIAL ENGLISH TRANSLATION)

If no action has been taken to implement recommendation 15(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:

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

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

- a) The impact on the scope and effective enforcement of the offence of the use of the term “contract”, instead of “business”, in Spain’s official translation of the Convention and in the foreign bribery offence under art. 445 PC; [Convention, Article 1, 2009 Recommendation, III ii) and V]

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:

The Article 445 of the PC included in Chapter X, «On corruption offences in international business transactions», came to replace the former Article 445 PC, as redrafted by the Organic Act 15/2003, of November 25th, which subsequently amended the said Article 445 bis included by the Organic Act 3/2000, of January 11th, in order to legally define the conducts foreseen in the Organisation for Economic Cooperation and Development Convention (OECD) on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on 17 December 1997 and whose instrument was ratified by Spain on 3 January 2000.

When including this precept in a new Chapter of Title XIX, it is stated that we face a crime affecting the foreign Public Administration, the Public Function as regards its intervention in the economy and the free market.

The Judge of the Barcelona Provincial Court and Associate Professor at the Pompeu Fabra University, D. Carlos Mir Puig, in an article published in the “Diario La Ley”, on April 4th 2011, makes it clear that “this precept includes a specific type of active bribery characterized by being committed when carrying out international business activities”, and that conduct underlying the crime “involves bribing or trying to bribe, personally or through an intermediary, a foreign public official or an official from international organisations, for their benefit or for the benefit of a third party, through offers, promises or granting of any undue benefit or advantage either pecuniary or of any other kind, or agreeing with their demands in that respect, so that they act or refrain from acting in relation to the performance of official duties.”

Text of issue for follow-up:

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

- b) The coverage of non-pecuniary benefits under the new legislation; [Convention, Article 1, 2009 Recommendation, III. ii) and V. and Phase 2 recommendation 4.c.]

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 accordance with the Supreme Court's prevailing doctrine, the gift may have an economic or other type of content: such as an advantage, profit or that may be quantified. This is expressly stated in the sentence given by the Supreme Court on 3 December 1993 (Rec. 1937/1989), and it is underlined by the expressions «offers» or «promises» —the grant of a loan on most favourable terms than the usual ones, in connection with the offer to refrain from acting that the official might have carried out during the performance of official duties (SCS of 8 October 1991) or the granting of a free loan (SCS on 6 November 1993).

Text of issue for follow-up:

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

- c) Whether art. 31bis PC imposes liability on a legal person when a principal offender bribes to the advantage of a subsidiary (or vice versa) or when an indirect advantage, such as an improved competitive situation, results from bribery (given the requirement under art. 31bis PC. that the offence be committed “for the account” and “to the benefit” of the legal person); [Convention, Article 2, 2009 Recommendation V, III ii), Annex I(B), (C) and Phase 2 recommendation 5a.]

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

No specific developments.

Text of issue for follow-up:

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

- d) The level of sanctions imposed against natural and legal persons, including through *conformidad*; are effective, proportionate and dissuasive: in the light of (i) Spain's system of suspending and converting sentences of imprisonment; and (ii) the application of mitigating circumstances, especially in cases of solicitation of bribes by foreign public officials; [Convention, Article 3; 2009 Recommendation V]

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:

See answer to recommendation 5 (f).

Text of issue for follow-up:

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

- e) The use made of administrative sanctions under the conditions set out in art. 66 bis PC; [Convention, Article 3; 2009 Recommendation V]

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

No specific developments.

Text of issue for follow-up:

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

- f) The use made of criminal and administrative penalties for false accounting against natural and legal persons; [Convention, Article 8; 2009 Recommendation X A iii)]

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:

N/A

Text of issue for follow-up:

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

- g) The implementation by the auditing and accounting professions of their obligation to develop specific training on foreign bribery and adopt “red flag indicators” to help detecting foreign bribery in companies’ accounts; [Convention Article 8; 2009 Recommendation III 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:

The Accounting and Auditing Institute issued, on 15 October 2013, a Resolution to publish the New

Technical Standards on Auditing, including ISA 240 “The auditor’s responsibilities relating to fraud in an audit of financial statements” and ISA 250 “Consideration of laws and regulations in an audit of financial statements”, as a result of a revision process to adapt the International Standards on Auditing issued by IAASB to the Spanish circumstances.

These standards are applicable to audits of financial statements corresponding to periods as of 1 January 2014.

ISA 240 as published for its application in Spain contains Appendix 1 that includes Examples of Fraud Risk Factors, Appendix 2 that contains Examples of Possible Audit Procedures to Address the Assessed Risks of Material Misstatement Due to Fraud, and Appendix 3 that contains Examples of Circumstances that Indicate the Possibility of Fraud.

These Appendices are attached to this document as Annex V.

Text of issue for follow-up:

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

- h) The guarantees of independence from the other powers of (i) of the State Prosecutor General (FGE) and indirectly those of the ACPO, as well as those (ii) of the investigating magistrates, with a view to ensure that a potential lack of independence of the prosecution combined with its increasingly prominent role does not lead to the consideration of factors prohibited under Article 5 of the Convention; [Convention, Article 5 and 2009 Recommendation, Annex I(D)]

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:

Articles 117 and 124 of the Spanish Constitution can be recalled.

Text of issue for follow-up:

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

- i) The investigative powers available to the ACPO prosecutors and that the investigation tools available to them in the prosecutorial investigation phase are sufficient and in particular include the possibility to conduct searches and wiretapping (within the limits of its data protection rules and the provisions of its Constitution); [Convention, Article 5 and 2009 Recommendation, Annex I(D)]

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:

See answer to recommendations 1 and 5 (b) (c).

Text of issue for follow-up:

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

- j) Whether the system of risk-based tax audits is adequate in terms of the risks taken into account, including the risk of foreign bribery, when deciding which companies to audit, and how often; [2009 Tax Recommendation, I. ii)]

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:

Currently all risk based system to select cases for Inspection usually includes the parameter of **non justified Expenses**, as well as fake invoicing. Bribery and foreign bribery, as a part of corruption, have been object of attention from selection units. Most of cases related to corruption are started or, more likely, finished as Tax Crime or Administrative assessments, as Corruption cannot be easily proven but Tax fraud is always present.

Very well known cases have appeared since revision, including I. Urdangarin case, Pujol case, cases of some majors involved in corruption and so on. Most of these cases under prosecution, have been unveiled by Spanish Tax Agency officials. There are also many cases in which the illegal payment to somebody has been hidden under fake invoicing: for Tax Agency it is not easy to detect who is behind the payments as these were done in cash.

Recently high quality information on a case of bribery coming from National Court has been used by Tax Inspection services to communicate crimes to Court.

Text of issue for follow-up:

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

- k) The impact of the Tax Amnesty Law on the effective prevention, detection and punishment of possible foreign bribery by tax officials; [2009 Recommendation III (iii); 2009 Tax Recommendation II]

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:

We should make clear that the name “Amnesty” has never been given to such a process in Spanish Tax Law or administrative documentation. It is fully a journalist name. As a matter of fact it has not been an Amnesty “properly speaking”. Tax Agency keeps all the information in its Data base and can check up any irregularity. So we would prefer if the Working Group and the Report would not use such ambiguous denomination. The official Spanish wording for the voluntary disclosure program is “Special Tax

Declaration”.

In March 2012, Spain passed legislation that included a special voluntary disclosure program for previously undisclosed foreign and domestic assets. The purpose of this program was to enlarge the tax base and to ensure future compliance - it differed from previous disclosure programs in that it was obligatory to identify the actual ownership of previously undisclosed assets.

The total amount of assets disclosed as a result of this program reached €40,000 million. The direct additional Revenue reached €1,200 million; however, the indirect yield is estimated to be bigger at €500 million per year.

As an important part of the new package aimed at fighting tax fraud, legislation has been passed to oblige all Spanish residents owning real estate or financial assets abroad to declare them on an information tax form to the Spanish Tax Agency. More than 88.000 million Euros have been communicated to Tax Agency and will be taxed in the following years.

All this process has been considered successful from Tax Agency and also from Finance Minister.

Going forward, the concealment of income and assets will be much more difficult in the future due to the importance of the legislative package passed by the Spanish Government as well as the advances in the fight against tax havens and non-cooperative jurisdictions.

Obviously there isn't direct relation between bribery and these declarations but it has been carefully analyzed whether the disclosed incomes or assets are compatible with tax compliance of the people and whether there are Criminal Files among people declaring. In some of these cases Tax controls have been launched and there is a case (you can consult it in press) involving a Union boss of the Region of Asturias which definitely has arisen because of information obtained from such declaration. Now he is facing an accusation of corruption in National Court. Please see:

<http://www.elmundo.es/espana/2014/10/08/543511bfca4741c1258b4582.html>

Official outcomes of the program can be consulted through the Press Note of the Ministry of Finance and Public Administrations dated October 17th 2014 where the Director of the Tax Agency appearing before Congress stated that the Tax Agency launched tax audits in 2013 based on the information provided by the voluntary disclosure program and a risk based profile, highlighting that such voluntary disclosure program cannot be used to cover fraudulent or irregular behaviours. The result of the first semester of the year regarding such control measures has been more than 5.500 million euros collected.

<http://www.meh.age/Documentacion/Publico/GabineteMinistro/Notas%20Prensa/2014/AEAT/17-10-14%20Nota%20DTE.pdf>

Text of issue for follow-up:

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

- 1) The flow of information to the authorities responsible for the administrative sanctions systems, in particular from the judicial authorities. [2009 Recommendation XI i); Phase 2 recommendation 6e]

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

No specific developments.

ANNEX 1: ADDITIONAL INFORMATION - PHASE WRITTEN FOLLOW-UP REPORT OF SPAIN – DECEMBER 2014

Evaluation team's request for further documents, information and clarification from Spain

Cases

1. In relation to the cases numbered 1-4 in Annex 1 of Spain's written follow-up report, please provide further clarification and information. In particular:
 - a. Please specify the precise procedural stage of each of the cases. In this regard, where an investigation is ongoing, please specify whether it is classified as an "initial prosecutorial investigation" (*diligencias informativas*) or a "judicial investigation" (*diligencias previas*) (these classifications were used in Phase 3 – see paragraph 100).
 - b. Please clarify the nature of the lawsuits filed in the *Publishing Companies case* (case 2) and the *UTE case* (case 4). In this regard, please specify whether or not criminal charges (or indictments) alleging foreign bribery have been filed against the natural and legal persons

Case # 1. (Mexico)

The document sent by Mr. G.O. to this Prosecutor's Office was filed by Decision dated 18-9-2014 and this decision was notified to the complainant on date 14-10-2014.

Case # 2. Publishing Companies

Case under Judicial Investigation of the Central Examining Magistrate's Court No 2 of the National High Court (Audiencia Nacional).

By decision dated 6-10-2014, the Examining Magistrate agreed to request the Spanish Ministry of Justice to make all the necessary arrangements so that the authorities of Guinea execute the letters rogatory that was sent by the Court on 16-5-2014. The evaluation team shall be given a copy of the procedural documentation providing evidence of such arrangements.

Within this proceeding charges have been brought for an alleged crime of bribery in international business transactions against three natural and one legal person because, although the complaint was initially directed against two persons, a new accusation was afterwards made.

Case # 3. Sao Paolo Subway

This is Initial Prosecutorial Investigation of the Special Prosecutor's Office. We are at present waiting to receive the information and documentation requested from the Brazilian authority. The evaluation team shall be provided with a copy of the prosecutor's decision involved therein.

Case # 4. UTE (Angola)

Case under Judicial Investigation of the Central Examining Magistrate's Court No 5 of the National High Court (Audiencia Nacional). If the evaluation team deems it as necessary, a copy of Order Commencing Proceedings, dated 25-6-2014, can be provided.

Within this proceeding charges have been brought for an alleged crime of bribery in international business transactions against ten natural and two legal persons.

Nowadays, all the documents seized during the multiple entries and searches carried out are still being analyzed. Besides, there is a separate secret part of proceedings involving letters rogatory in

the course of which, on the 27-11-2014, the Examining Magistrate and the Prosecutor travelled to Geneva (Switzerland) to receive the statement of a witness.

In a recent communication dated 3-12-2014, the Prosecutor's Office of Luxembourg informed the Spanish Prosecutor in this case that they will send their legal proceedings so as to be incorporated into the Spanish proceedings.

Case # 5. (Latvia)

This refers to Initial Prosecutorial Investigation, which has been filed.

During the session of the Bribery Group held on 4-6-2014, Spain committed itself to consider the possibility to re-open the case depending on the new information the Latvian authority might submit concerning the existence of a payment made in the month of November 2009. This payment could have the effect of interrupting the prescription period. However, after contacting with the Latvian prosecutor and having examined the legal proceedings, it has been verified that the above fact was already considered by the Spanish Prosecutor's Office when the decision to file the action was taken on the grounds explained in the report presented for evaluation.

Progress of amendments to the Penal Code

2. Please provide further information regarding the likely progress of the proposed amendments to Spain's Penal Code. In particular, please indicate the expected timeframe for further progress of the Bill up to and including its completion.

The legislative process will move forward as follows:

The amendments phase was closed on November 27. A working schedule has been developed so that parliamentary works will be ongoing during the month of January which is not part of the ordinary periods of sessions that go from September to December and from February to June.

After the bill is passed by the Congress of Deputies, the Speaker will report on it to the Speaker of the Senate most likely by January 19th.

Deliberations in the Senate will last two months.

The bill will be sent back to Congress before the end of March.

It is foreseen that the bill is adopted by March 30th.

Recommendation 1

3. Spain has described some of the procedures involved in its investigative framework. Have any of these procedures been enhanced or otherwise reviewed since Phase 3, specifically with regard to foreign bribery investigations?

No they haven't but a bill revising some elements of the Criminal Procedural Code will be adopted just today by the Council of Ministers. Additional information can be provided at the meeting on Tuesday.

Recommendation 4e(iv)

4. Regarding recommendation 4e(iv), what targeted training or guidance on the practical aspects of confiscation of the proceeds of bribes and quantification has been provided?

For further information on the sole training activity “Seizure and confiscation” for prosecutors, celebrated in Brussels, 27-28.3.2014, see attached document.

Recommendation 5a

5. Of the training sessions listed in Spain’s response, please clarify which sessions specifically discussed foreign bribery in line with recommendation 5a and provide supporting materials (the information can be provided in Spanish with relevant sections highlighted).
6. Please also provide information about the number of persons who attended these specific training sessions.

1) See supporting materials attached for three specific training activities on foreign bribery as follows: Training workshop for judges and prosecutors “Foreign Bribery and Corruption: Training Conference for Investigators and Prosecutors” (Washington, 11-13 of February of 2013).

2) “Public Corruption. An approach from a transnational perspective”, Judiciary School headquarters, in Barcelona, 19-20 of June 2013.

3) “Fraud in International Transactions”, organized by the Centre for Legal Studies and the State Prosecution Service, in Madrid, 24.10.2013.

For additional information about the number of persons who attended every training session please see attached document by the Centre for Legal Studies (2013-2014).

Recommendation 6

7. Please provide any relevant information to demonstrate that Spain has increased its use of seeking MLA or other forms of international cooperation in possible foreign bribery cases.

Recommendation 8b

8. Please provide the laws that implement recommendation 8b (referred to as The FORAL ACT 18/2013 and FORAL LAW 38/2013 in Spain’s response) (the information can be provided in Spanish with relevant sections highlighted).

See the annexes n° 1, 2 and 3.

Recommendation 9

9. Spain has provided examples of awareness-raising conducted by the private sector (a seminar held by the Madrid Chamber of Commerce and another by the Spanish Confederation of Business Organizations). Please provide detailed information of any relevant awareness-raising activities conducted by the Spanish authorities themselves, in line with Recommendation 9.

The Spanish authorities haven’t conducted any activity of this kind.

Recommendation 10

10. Please clarify whether steps have been taken to establish a clear means for the private sector and general public to make reports to law enforcement.
11. Please also clarify whether any consideration has been given to expand the reporting obligations under article 262 of the Code of Criminal Procedure to cover independent statutory authorities.

Recommendation 13a

12. Please clarify whether any of the training activities mentioned in Spain's response to recommendation 5 included training on effectively investigating and prosecuting accounting offences. If so, please detail which training offences covered accounting offences, information on what was covered and who received the training.

No specific information.

Recommendation 13b

13. Please clarify whether the training and awareness-raising activities Spain has taken specifically cover the issues mentioned in recommendations 13b(i) and 13b(iii). Please also provide information on who received the training.

As a complement to the answer to recommendation 13 b), we enclose as annex 4 the courses organized by the "REA- General Council of Economists".

There were 957 participants in the courses taught by the "Instituto de Censores Jurados de Cuentas de España" and 1500 in the "General Council of Economists".

Recommendation 14

14. Please clarify whether Spain has taken any particular measures to target SMEs that operate abroad to promote internal controls etc. and Annex 2.

We have reached the SMEs through CEOE, since that organization includes more than 4,500 associations grouped in 225 federations and confederations, including CEPYME which is the Confederation of small and medium-sized enterprises.

Recommendation 15a

15. Spain reports that in 2013 COFIDES established an internal procedure for reporting suspicions of foreign bribery to ACPO (Special Prosecutors Office) and the Ministry of Economy and Competitiveness, and has taken steps to inform its staff about the procedure. Please provide further details about the extent of the training provided to staff, including the number and regularity of training sessions and the number of staff who have received training.

The procedure was approved in 2013. The staff were informed through the ordinary channels (Board of Directors weekly minutes and intranet). In-house training on Money Laundering and general Anticorruption matters has been already given in 2014 for the whole Company (internal and external staff). New comers during the welcome session have been alerted about the procedures running in the Company. The 2015 Training Plan for the Company is currently being designed and an Anticorruption training related to the OCDE Convention and parallel subjects is planned to be on the agenda.

As on previous occasions, we would like to underline anew that our Company has been adding an OECD Anticorruption Convention clause to the financing investment agreements from the year 2001. Since then, the Company has occasionally received training from our National Contact Point. Therefore, nowadays it is something imbibed daily due to diligence.