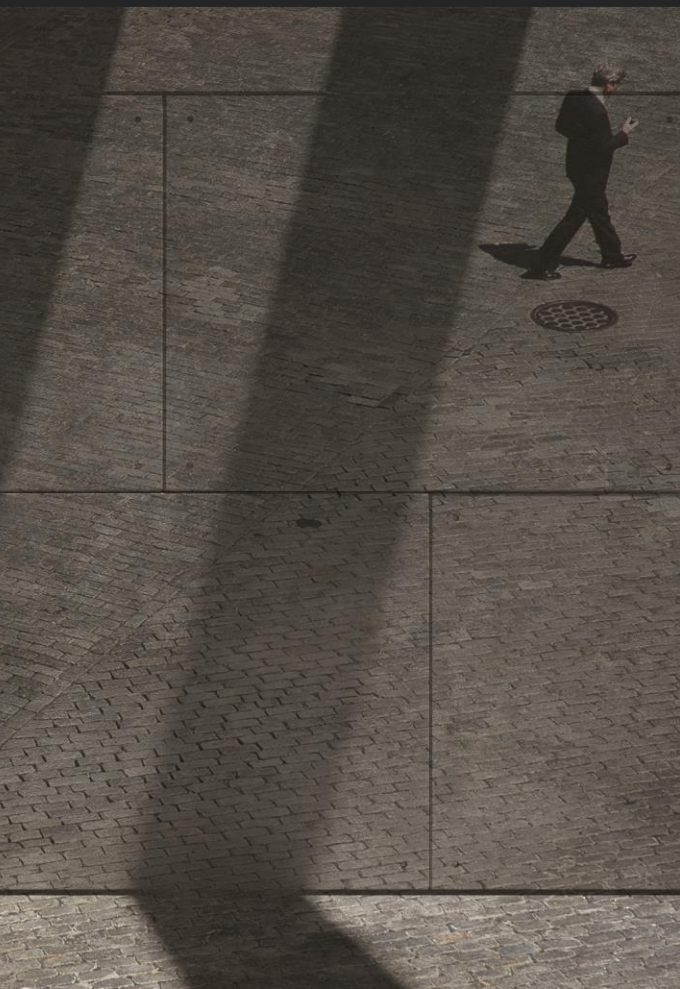




# IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION



## PHASE 4 REPORT: **Finland**

This Phase 4 Report on Finland by the OECD Working Group on Bribery evaluates and makes recommendations on Finland'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. It was adopted by the 44 members of the OECD Working Group on Bribery on 16 March 2017.

The report is part of the OECD Working Group on Bribery's fourth phase of monitoring, launched in 2016. Phase 4 looks at the evaluated country's particular challenges and positive achievements. It also explores issues such as detection, enforcement, corporate liability, and international cooperation, as well as covering unresolved issues from prior reports.

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.

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## EXECUTIVE SUMMARY

This Phase 4 report by the OECD Working Group on Bribery evaluates and makes recommendations on Finland's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report details Finland's particular achievements and challenges in this regard, as well as the progress Finland has made since its Phase 3 evaluation in 2010.

Finland has been active in enforcing its foreign bribery laws, particularly in light of the size of its economy. Of nine foreign bribery allegations, Finland has opened seven investigations. These have been actively and independently pursued by the National Bureau of Investigation (NBI), which has used the full range of available investigative tools including mutual legal assistance and joint investigation teams. Prosecutors have been involved in these investigations from the early stages, including through the agreement of compulsory and detailed investigation plans with the NBI. From the seven investigations, five have progressed to prosecution. All five have resulted in the acquittal of all parties for foreign bribery; the sole conviction obtained by Finland in one of these cases was for charges of false accounting. The recommendations in this report identify steps Finland should take to tackle this discouragingly high acquittal rate. In particular, the Working Group has serious concerns regarding the Finnish courts' interpretation and application of the foreign bribery offence and considers that Finland could benefit from assigning foreign bribery cases to courts or judges with specialised skills and experience. The Working Group also recommends that Finland provide detailed information and training to law enforcement and the judiciary on the foreign bribery offence and its application, including the possible use of additional sanctions and confiscation.

Finland has demonstrated its ability to effectively detect foreign bribery allegations involving Finnish individuals and companies; all nine of its allegations have been independently detected through the use of a wide range of detection sources. The Lead Examiners are also impressed with the range of steps Finland has taken to mitigate the risk of corruption when providing aid to developing countries and to promote detection by accountants and auditors. However, as in Phase 3, the Working Group remains concerned that Finland's detection efforts might be hampered by the lack of clear, comprehensive protection for whistleblowers.

The report and its recommendations reflect the findings of experts from Luxembourg and the Netherlands and were adopted by the Working Group on 16 March 2017. The report is based on legislation and other materials provided by Finland and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its on-site visit to Helsinki in October 2016, during which the team met representatives of Finland's public and private sectors, media, and civil society. Finland will submit a written report to the Working Group in two years on the implementation of all recommendations and its enforcement efforts.

## INTRODUCTION

1. In March 2017, the Working Group on Bribery (Working Group) completed its fourth evaluation of Finland's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention), the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation) and other related instruments.

### Previous Evaluations of Finland by the Working Group on Bribery

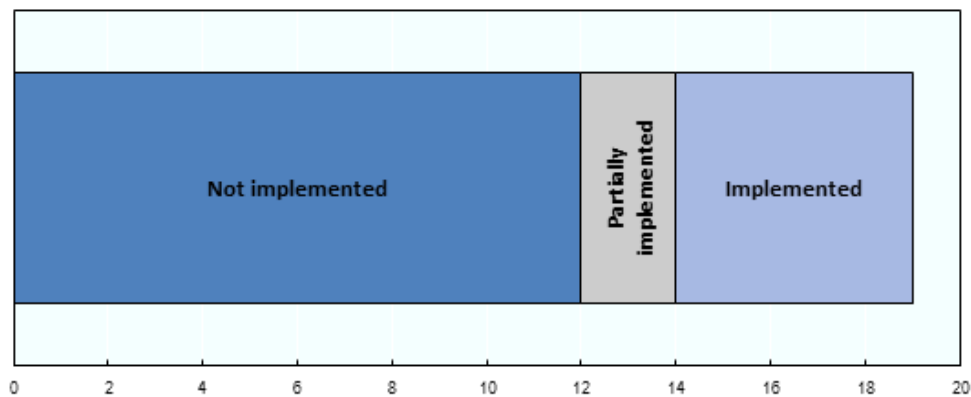
2. Monitoring of Working Group members' implementation and enforcement of the Convention and related instruments takes place in successive phases through a rigorous peer-review system. The monitoring process is subject to specific, agreed-upon principles. The process is compulsory for all Parties and provides for on-site visits (as of Phase 2) including meetings with non-government actors. The evaluated country has no right to veto the final report or recommendations. All of the OECD Working Group on Bribery evaluation reports and recommendations are systematically published on the OECD website.

3. Finland's last full evaluation - Phase 3 - dates back to October 2010. The Working Group first evaluated Finland's implementation of its Phase 3 recommendations in 2012. At that time, the Working Group concluded that 5 of Finland's 19 Phase 3 recommendations had been implemented, 2 were partially implemented, and 12 were not implemented (see Figure 1 and Annex 2). As a result of the low level of implementation, Finland was asked to report back to the Group in 2013, 2014, and 2015. The Working Group also sent letters to the Finnish Prime Minister in 2012 and 2015, and in 2016, the Group issued a public statement on Finland's low level of implementation.

#### Box 1. Previous Working Group on Bribery evaluations of Finland

- 2016:** [Public statement](#)
- 2015:** Two additional reports (June and December) ; letter to Prime Minister
- 2014:** Additional report
- 2013:** Additional report
- 2012:** [Follow-up to Phase 3 report](#); letter to Prime Minister
- 2010:** [Phase 3 report](#)
- 2006:** [Follow-up to Phase 2 report](#)
- 2002:** [Phase 2 report](#)
- 1999:** [Phase 1 report](#)

**Figure 1. Finland's Implementation of Phase 3 Recommendations**  
(as at October 2012 Two-year Follow-up Report)



### Phase 4 Process and Site Visit

4. Phase 4 evaluations focus on three key cross-cutting issues – enforcement, detection, and corporate liability. They also address progress made in implementing outstanding recommendations from previous phases, as well as any issues raised by changes to domestic legislation or the institutional framework.<sup>1</sup> Phase 4 takes a tailor-based approach, considering each country's unique situation and challenges, and reflecting positive achievements and good practices. For this reason, issues which were not deemed problematic in previous phases or which have not arisen as such in the course of this evaluation may not have been fully re-assessed at the on-site visit and may thus not be reflected in this report.

5. The evaluation team for Finland's Phase 4 evaluation was composed of lead examiners from Luxembourg and the Netherlands, as well as members of the OECD Anti-Corruption Division.<sup>2</sup> Pursuant to the Working Group's Phase 4 evaluation procedures, after receiving Finland's responses to the Phase 4 questionnaire and supplementary questions, the evaluation team conducted an on-site visit to Helsinki on 11-13 October 2016. The team met with representatives of the Finnish public sector, including government agencies, law enforcement authorities, and the judiciary; the private sector, including business organisations, companies, and lawyers; and civil society, including non-governmental organisations, academia, and the media.<sup>3</sup> The evaluation team expresses its appreciation to these participants, in particular, for their openness during discussions. The evaluation team is also grateful to the Finnish Government, particularly the Ministry of Justice, the National Bureau of Investigation, and the General Prosecutor's Office, for the high degree of openness and cooperation displayed throughout the evaluation, the organisation of a well-attended on-site visit, and the provision of additional information.

<sup>1</sup> See [Phase 4 Evaluation Procedures](#).

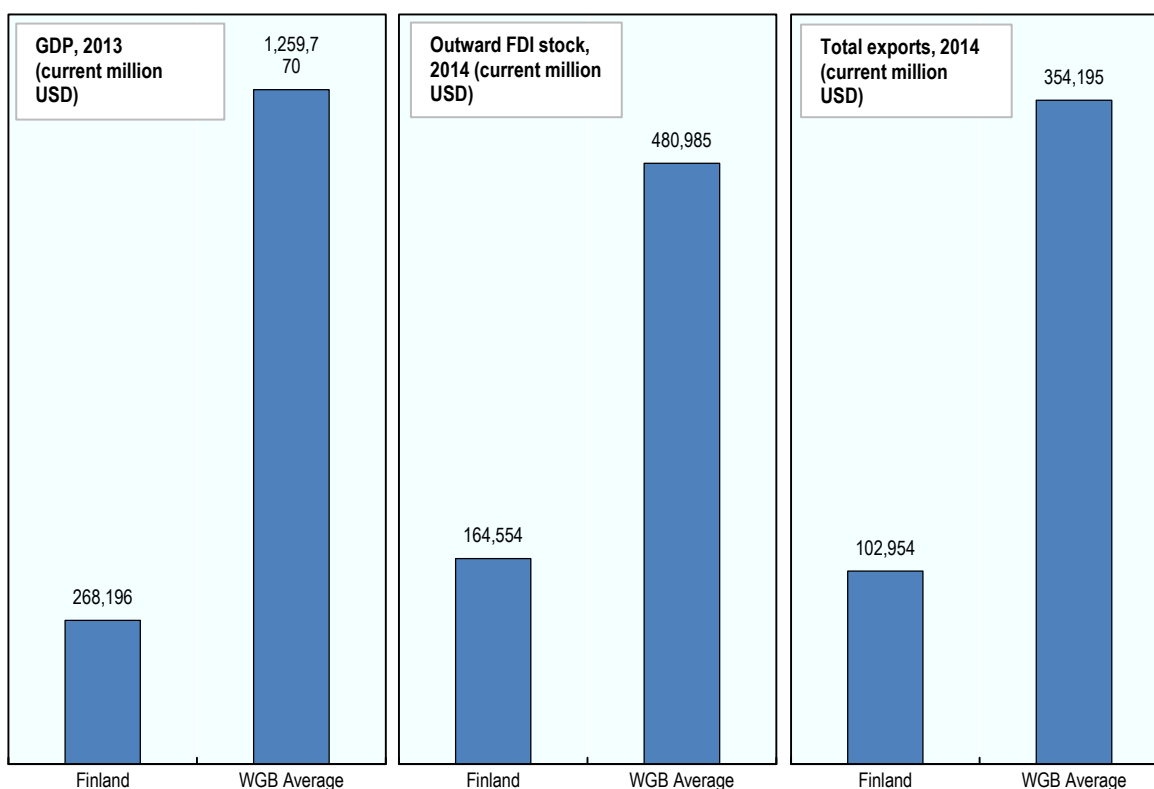
<sup>2</sup> [Luxembourg](#) was represented by: Mr Christian Steichen from the Police Grand-Ducale and Mr Laurent Thyès from the Ministère de la Justice. The [Netherlands](#) was represented by: Mrs Daniëlle Goudriaan from the National Prosecutor's Office and Mr Bart Runneboom from the Ministry of Security and Justice. The [OECD Anti-Corruption Division](#) was represented by Ms. Sandrine Hannedouche-Leric, Coordinator of the Phase 4 Evaluation of Finland and Senior Legal Analyst; Ms. Liz Owen, Legal Analyst; and Ms. Emma Scott, Legal Analyst, all from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

<sup>3</sup> See Annex 4 for a list of participants.

## Finland's Foreign Bribery Risk in light of its Economic Situation and Trade Profile

6. Based on Finland's economic data,<sup>4</sup> Finland's foreign bribery risk is relatively low compared to other Working Group members. Finland is well below the Working Group average in gross domestic product (GDP), total exports, and outward foreign direct investment (FDI) stock (see Figure 2 below).

**Figure 2. Comparison of Finland's economic data against Working Group average**



Source: UNCTAD.

7. Finland accounted for only 0.4% of world exports in 2015. Its trade with high-risk jurisdictions is relatively limited with its export and FDI sectors focusing mainly on the European Union. However, high-risk jurisdictions do feature in its major import/export partners. Finland's trade in high-risk industries is similarly limited,<sup>5</sup> though transport features in its major export sectors (see Table 1). While defence exports remain minor overall, arms exports are increasing.<sup>6</sup>

<sup>4</sup> The data included in this report represents the most recent available data at the time of the evaluation.

<sup>5</sup> Based on the OECD (2014) [Foreign Bribery Report](#), high risk industries include: extractive; construction; transportations and storage; information and communications; manufacturing; human health; and electricity and gas.

<sup>6</sup> YLE (29 July 2016) "[Finland beefs up arms exports to Middle East](#)"; Finland Times (26 October 2015) "[Finnish arms export to Middle East on rise](#)".



**Table 1. Finland's trade partners and sectors**

<b>Export partners</b>	Germany (13.6%) Sweden (10.1%) United States (6.7%) Netherlands (6.4%) Russia (5.8%)	<b>Import partners</b>	Germany (15.0%) Sweden (11.2%) Russia (11.0%) China (7.3%) Netherlands (5.3%)
<b>Export partners</b>	Electrical and optical equipment; machinery; transport equipment; paper and pulp; chemicals	<b>Import commodities</b>	Foodstuffs; petroleum and petroleum products; chemicals; transport equipment; iron and steel
<b>Outward FDI partners</b>	Ireland, Netherlands, Sweden, Germany, United Kingdom	<b>Inward FDI partners</b>	Netherlands, Sweden, United Kingdom, Japan, Denmark

Note: All data is for 2014.

Source: OECD; World Bank; World Trade Organisation; UNCTAD; CIA World Factbook.

8. Finland's awareness of its corruption risks appears to have improved since Phase 3. Finland has had an impressive record in Transparency International's [Corruption Perceptions Index](#), consistently ranking in the top three countries over the past five years. This can lead to complacency and a denial of a country's corruption risks, as was the situation in Finland at the time of Phase 3. However, during the Phase 4 on-site visit, panellists seemed more aware of Finland's corruption risks, both at home and abroad. Multiple panellists referred to the risk of corruption stemming from Finland's 'old boys' network', an informal network of individuals whose relationships may create real or apparent conflicts of interest. This risk has also been identified by those outside Finland, including in a report by the European Commission.<sup>7</sup> Panellists further recognised the challenge presented by Finland's geographical location and the increased risk of corruption in certain neighbouring trading partners.

9. The government's commitment to combatting corruption, including foreign bribery, has improved since Phase 3. The government has initiated a number of projects which may support foreign bribery enforcement, including a draft Anti-Corruption Strategy which was released for comment in autumn 2016. The draft Strategy specifically identifies foreign bribery as a focus area and commits to continued implementation of the Working Group's Phase 3 recommendations. The Phase 4 recommendations may also be incorporated into the Strategy as it is implemented. Finland has also issued a 2016 National Strategy and Action Plan for Tackling the Shadow Economy and Economic Crime. Improving the prevention and detection of corruption is a goal of the plan. While foreign bribery is not specifically mentioned, Finland stresses that it is included within the scope of the plan's focus on better detecting and enforcing corruption offences. Nonetheless, to effectively fight foreign bribery, Finland also needs to take urgent steps to address the current 100% acquittal rate in foreign bribery cases. .

10. In the private sector, despite a lack of awareness-raising by the government, large companies appear to recognise the risk of foreign bribery. However, it is unclear if this awareness extends to small or medium-sized enterprises (SMEs) as the evaluation team did not have the opportunity to meet with any SMEs during the on-site visit. The government's lack of engagement is particularly disappointing given that the Finnish Federation of Enterprises estimates that 20% of Finnish SMEs (approximately 56 000 companies) are engaged in exporting. It is therefore important that Finnish SMEs are aware of foreign bribery and the associated risks.

<sup>7</sup> European Commission (2014), [EU Anti-Corruption Report: Annex on Finland](#), European Commission, Brussels.

## Commentary

*The lead examiners are encouraged by Finland's draft Anti-Corruption Strategy and hope to see it finalised and implemented. However, they note that to effectively fight foreign bribery, Finland also needs to take urgent steps to combat its high acquittal rate. Therefore, they encourage Finland to implement the recommendations contained in this report that target this issue. Finland could consider integrating its Phase 4 recommendations into the Strategy before it is finalised.*

## Allegations and Cases of Foreign Bribery in Finland

11. Annex 1 contains summaries of Finland's enforcement actions. At the time of Finland's Phase 3 Report, it had six foreign bribery cases.<sup>8</sup> Since Phase 3, four new foreign bribery allegations have arisen, two of which are currently under investigation. Finland's progress on enforcement is summarised in Figure 3 below.

**Figure 3. Progress of Finland's foreign bribery allegations this line.**



## Progress of Finland's Foreign Bribery Allegations

12. The evaluation team is aware of nine allegations of foreign bribery by Finnish individuals or companies that have arisen since the foreign bribery offence was enacted in 1999. Finland has conducted a total of seven investigations, two of which are ongoing. The remaining five investigations all progressed to prosecution. Transparency International's most recent [Exporting Corruption](#) report (2014) classifies Finland as having 'moderate enforcement' (putting it in the top 10 countries out of the 39 countries assessed).

13. However, while Finland has brought charges against 18 natural persons and 4 legal persons in 5 foreign bribery cases, none have resulted in conviction for foreign bribery. Finland's sole conviction in a foreign bribery case was for accounting offences (in the *Patria (Egypt)* case). The Courts have consistently applied an extremely high evidentiary threshold to the foreign bribery offence, appearing to require direct evidence of the defendants' knowledge of all aspects of the crime, including elements outside the scope of the offence. These decisions raise serious concerns about the courts' application of the Finnish offence and the applicable evidentiary threshold. These concerns are discussed in section B.5.a. of this report.

<sup>8</sup> At the time of Phase 3, Finland had three active investigations, one ongoing prosecution, one acquittal (which had been remitted to the District Court for retrial on appeal), and one conviction for tax and accounting offences in a potential foreign bribery case.

14. As set out in Table 2 below, four of Finland's five cases were appealed, one of which was appealed to the Supreme Court (on technical grounds). While lower courts in Finland are not legally bound by the decisions of higher courts (i.e. there is no rule of binding precedent), such rulings may be influential. It is therefore imperative that Finland take urgent steps to prevent continued acquittals and ensure the foreign bribery offence is applied as intended and consistent with Article 1 of the Convention. It is also worth noting the significant monetary cost of appealing four of the five foreign bribery cases. In addition, as a result of the acquittals, Finland was ordered to pay the defendant's legal costs in all five cases. These significant costs come on top of the cost of undertaking a complex investigation and prosecution.

**Table 2. Involvement of higher courts in Finland's foreign bribery cases**

	District Court	Court of Appeal	Supreme Court
Instrumentarium	•		
Patria (Egypt)	•	•	
Patria (Slovenia)	•	•	
Patria (Croatia)	••*	••*	•*
Wärtsilä			

Note: \* The first District Court decision in the *Wärtsilä* case was appealed to the Court of Appeal and then to the Supreme Court on technical grounds relating to the statute of limitations. The case was then remitted back to the District Court for a retrial and subsequently appealed to the Court of Appeal a second time on substantive grounds. A final appeal to the Supreme Court was pursued, but leave to appeal was denied.

15. Notwithstanding the acquittals, investigators and prosecutors appear willing to continue pursuing foreign bribery cases (although the evaluation team has some reservations which are discussed in section B.4.a.). The National Bureau of Investigation (NBI) within the Finnish Police currently has two ongoing investigations into potential foreign bribery by Finnish companies. As both investigations are at a preliminary stage, Finland refrained from sharing specific information to protect the integrity of the cases.

16. The two remaining allegations of foreign bribery involving Finnish individuals or companies have not resulted in any formal investigation. International cooperation has been sought and provided, but no other investigative steps have been taken.

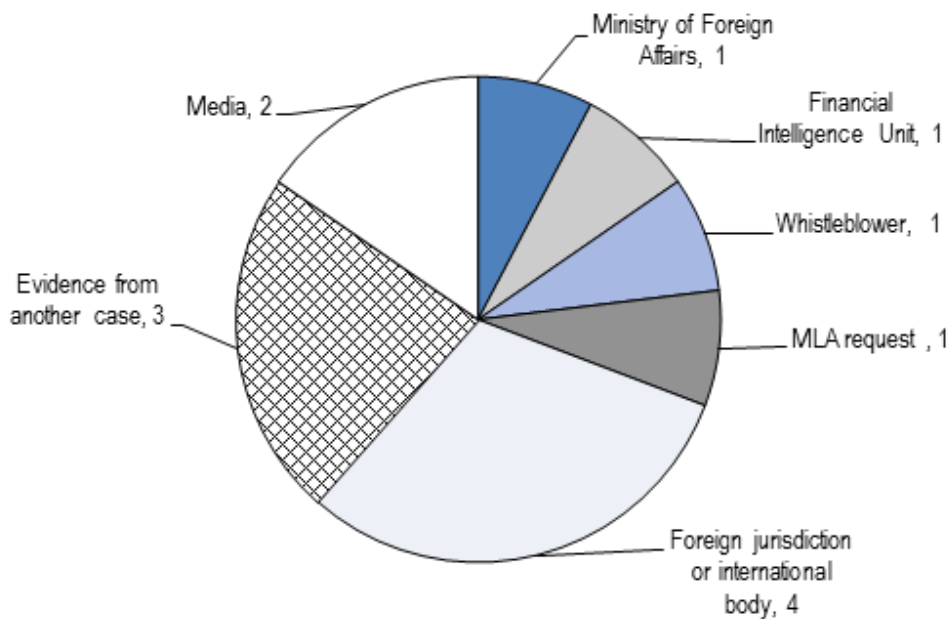
### *Commentary*

*The lead examiners commend Finland for the efforts it has invested in investigating and prosecuting five complex foreign bribery cases. However, they are seriously concerned by the courts' application of the Finnish offence, the applicable evidentiary threshold, and the resulting 100% acquittal rate. This report endeavours to identify the reasons for these acquittals and make recommendations to address this serious concern. The lead examiners encourage Finland to implement these recommendations, and to continue its efforts to steadily investigate and prosecute foreign bribery offences despite the acquittals in foreign bribery cases to date.*

## A. DETECTION OF THE FOREIGN BRIBERY OFFENCE

17. Finland actively uses a range of sources to detect foreign bribery. Encouragingly, Finland has detected all allegations of foreign bribery independently, without relying on information from the Working Group on Bribery. In fact, Finland has detected several allegations which have not been identified by the Working Group. Finland was able to provide information on the detection method for eight of its nine allegations of foreign bribery (information on the final allegation could not be provided due to sensitivities in the ongoing investigation). These eight allegations were detected through a variety of sources (see Figure 4 below). Several cases were detected through more than one source.

Figure 4. Sources of Finland's Foreign Bribery Allegations



Note: The total number of reports in the above figure is 13 as 3 of the 8 allegations reflected in the graph were detected through multiple sources.

### A.1. The Ability of the Ministry of Foreign Affairs (MFA) to Detect and Report Foreign Bribery

18. Finnish MFA officials abroad reportedly have "close contacts with Finnish business and local media, which may provide useful information related to corruption". It is therefore important that MFA officials know when and how to report allegations of foreign bribery to the NBI, which is responsible for investigating foreign bribery within the Finnish Police. The *Instrumentarium* case was detected in part by the MFA in 2005.

19. During Finland's Phase 3 report, the Working Group noted that reporting procedures for posted officials were not clear and recommended that Finland introduce appropriate measures to facilitate reporting (recommendation 6). This recommendation was unimplemented at the time of Finland's 2012 follow-up report. Since 2012, the MFA has modified its document-sharing system to prompt officials to share documents which mention bribery or corruption with the NBI (among other agencies). This is a positive step but its usefulness is limited to allegations recorded in MFA documents, and even then,

there is no requirement that such documents are shared (it is merely a suggestion). This step may be more effective if it is accompanied by a directive to MFA officials on when and how to report foreign bribery. Existing resources are limited to MFA officials working in official development assistance.

### *Commentary*

***The lead examiners recommend that the MFA develop guidance for all officials posted abroad to require the reporting of foreign bribery, explain the reporting channels, and provide advice on how to detect foreign bribery (e.g. through systematic media monitoring and alerts) (recommendation 1a).***

## **A.2. Finland's Capacity to Detect Foreign Bribery through its Anti-Money Laundering (AML) Framework**

20. Pursuant to Finland's AML framework, the Financial Intelligence Unit (FIU), which is located within the NBI but operationally independent, receives reports of suspicious transactions which may indicate foreign bribery. The FIU is therefore well-placed to gather and receive information on foreign bribery. In practice, three of Finland's allegations have been reported to the FIU by its foreign counterparts. The FIU has not detected any foreign bribery allegations through suspicious transaction reports.

21. The FIU expressed doubt over its ability to use suspicious transaction reports to detect foreign bribery. A representative confirmed that financial institutions are well-equipped and conduct good customer due diligence, but noted that detecting foreign bribery requires the institution to assess vast numbers of payments and have an intimate knowledge of a companies' operations.

### *Commentary*

***The lead examiners note that the Working Group is currently conducting a horizontal study on detection and encourage Finland to utilise the findings of this study to improve domestic detection efforts by the FIU. They recommend that the Working Group follow-up on the ability of Finland's FIU to independently detect foreign bribery through suspicious transaction reports (follow-up issue 7a).***

## **A.3. Reports of Foreign Bribery from Whistleblowers and the Adequacy of Finland's Whistleblower Protections**

22. Given the hidden nature of foreign bribery, whistleblowers are a valuable source of detection. It is therefore important that countries ensure whistleblowers are free to report without fear of retaliation. In Phase 3, the Working Group recommended that Finland introduce mechanisms to adequately protect whistleblowers (recommendation 7). This recommendation was not implemented at the time of Finland's 2012 follow-up report. Despite the lack of clear whistleblower protection in Finnish legislation, a whistleblower report was received on the *Patria (Egypt)* case.

23. Finland still does not have a clear legislative framework to protect whistleblowers. Rather, it relies on a suite of instruments, particularly the Constitution which prohibits dismissal without just cause, and the Employment Contracts Act which compensates employees who have suffered 'unequal treatment'. Finland considers that this would cover retaliation in response to a whistleblower report. However, neither instrument contains specific provisions on whistleblower protections nor have they been used for this purpose in practice. Further, the protection they provide is limited; while some public sector employees may be entitled to restitution, private sector employees are entitled only to

compensation. Finland's legislation therefore appears insufficient in terms of the protection available and potentially also in terms of coverage. A fragmented legislative framework also makes it difficult for the public to understand the protections on offer and how to benefit from them.

24. In 2015, following criticism from several groups,<sup>9</sup> Finland established an inter-agency, cross-sector Committee to review whistleblower protection. In March 2016, the Ministry of Justice released the Committee's conclusions. These are summarised in Table 3 below.

**Table 3. Summary of findings of Committee on Whistleblower Protection**

Issue	Key findings	Recommendations
Legislative framework	The framework is "somewhat fragmented and difficult to grasp" but adequate in terms of protection. (The report did not recognise all of the legislative issues identified in para. 24 above.)	None.
Reporting channels	Reporting lines are largely unclear and anonymous or confidential reporting is not always available.	<ul style="list-style-type: none"> <li>• Establish a new external reporting channel to allow for anonymous reporting.</li> <li>• Encourage employers to provide internal whistleblowing channels which allow for confidential or anonymous reporting.</li> </ul>
Awareness	The public has little awareness of how to blow the whistle, and in what circumstances protections will be available.	<ul style="list-style-type: none"> <li>• Undertake awareness-raising activities such as developing a public website containing information on whistleblower protection.</li> <li>• Publish guidance on whistleblowing from agencies which receive reports.</li> <li>• Encourage employers to provide training and guidance to employees on internal whistleblowing systems.</li> </ul>

25. While the Committee makes some positive recommendations, on the whole they are insufficient. The central proposal (the establishment of a new anonymous reporting channel) is focused on reporting and does not address the fundamental lack of clear, comprehensive legislative protection for whistleblowers. Other recommendations rely heavily on voluntary internal measures which depend on the good-will of the private sector and will inevitably not be implemented by all companies.

<sup>9</sup> See UNODC (2011) *Executive Summaries: Finland*; "Country Report: Finland" in European Commission (2012), *Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU*, European Commission, Brussels; and Transparency International (2013) *Whistleblowing in Europe: Legal Protections for Whistleblowers in the EU*.

## Commentary

*The lead examiners welcome the report of the Committee on Whistleblower Protection and encourage Finland to implement the Committee's recommendations. However, they remain concerned that the Committee's recommendations are incomplete and do not address the gaps in Finland's legislative framework. They recommend that Finland amend its legislation to provide clear, comprehensive protection for whistleblowers across the public and private sectors (recommendation 1b). Finland should consider enacting a dedicated whistleblower protection law which applies across the public and private sectors. Information on the new law could then be included in Finland's intended whistleblower protection awareness-raising programmes.*

### A.4. The Ability of Finnish Accountants and Auditors to Detect and Report Foreign Bribery

26. As examiners of companies' financial records, accountants and auditors are uniquely placed to prevent, detect, and report foreign bribery. In Phase 3, the Working Group made several recommendations on accounting and auditing (recommendations 8 a, b and c), all of which were unimplemented at the time of Finland's 2012 follow-up report.

27. At the time of Phase 3, Finland had increased the threshold for a company to undergo an external audit. The Group recommended that Finland ensure that these companies continue to submit to an external audit (recommendation 8(a)). However, Finland currently has the lowest auditing threshold in the EU.<sup>10</sup> Moreover, according to Finland's questionnaire responses, the majority of Finnish companies are "one-person enterprises and 99% are microenterprises". Such companies' foreign bribery risk is low. Therefore, Finland's existing external audit requirements appear justified and the Phase 3 recommendation can be deemed implemented.

28. In Phase 3, the Working Group also expressed concerns that auditors may be prevented from reporting suspicions of foreign bribery. The Working Group recommended that Finland amend the Auditing Act to require external auditors to report suspected foreign bribery to company management (recommendation 8(b)). Finland's Auditing Act was updated in 2016 to require audit firms to permit auditors to anonymously report breaches of the law and to require auditors to report breaches of the law.<sup>11</sup> In addition, International Auditing Standards (ISAs) 240 and 250 require Finnish auditors to report suspicions of fraud or legal violations, including foreign bribery, to company management. On this basis, the Phase 3 recommendation appears to be implemented.

29. Finally, in Phase 3 the Working Group recommended that Finland consider requiring external auditors to report suspected foreign bribery to competent authorities (such as the Police) (recommendation 8(c)). Finland considered this requirement in its update of the Auditing Act, thereby implementing the recommendation. In addition, as noted above, the new Auditing Act provides that audit firms must ensure that auditors have the ability to make anonymous reports.<sup>12</sup> The new Act also permits (but does not oblige) auditors to report breaches of the law to competent authorities.<sup>13</sup>

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<sup>10</sup> An audit must be commissioned if the company has: a balance sheet (i.e. assets and liabilities) worth EUR 100 000 or more; revenue of EUR 200 000 or more; and more than three staff.

<sup>11</sup> Auditing Act, chapter 4, section 13 and chapter 3 section 4(5).

<sup>12</sup> Ibid.

<sup>13</sup> Auditing Act, chapter 4, section 8.

### *Commentary*

*The lead examiners note that Finland has implemented its outstanding recommendations on accounting and auditing. They hope the implementation of these recommendations will improve Finland's ability to detect foreign bribery through accountants and auditors and recommend that the Group follow-up on this in future evaluations (follow-up issue 7b).*

#### **A.5. Restrictions on Reporting Foreign Bribery by Finnish Tax Authorities**

30. In Phase 3, the Working Group raised concerns about the limited circumstances in which tax authorities can report suspicions of foreign bribery to law enforcement. During the on-site visit, tax officials advised that while they are willing to report suspected bribery to the Police, tax legislation often prevents them from doing so. Under the current law, tax authorities can respond to requests for information from law enforcement authorities, but can only report suspected corruption on their own initiative where it relates to a tax or tax related offence (e.g. falsification of taxation-related documents).<sup>14</sup> Reporting is further restricted by the fact that tax offences involving amounts under EUR 10,000 are treated as tax increases and cannot be reported owing to the prohibition on double jeopardy. While authorities can report non-tax related offences to the FIU via suspicious transaction reports; the FIU has never detected foreign bribery in this manner (see section A.2. above).

31. The current restrictions on reporting are of particular concern given Finnish authorities' assertion that the Tax Administration is a valuable source of information in the fight against bribery. Finland's draft Anti-Corruption Strategy 'Plan of Action' proposes legislative amendments to address this. Finland advises that officials are currently discussing the form these amendments could take but have yet to start work on draft legislation.

### *Commentary*

*The lead examiners are concerned about the limited circumstances in which tax authorities can report foreign bribery to law enforcement. In line with the proposal in Finland's draft Anti-Corruption Strategy, they recommend that Finland amend section 18 of the Act on the Public Disclosure and Confidentiality of Tax Information to allow the Tax Administration to report suspected corruption to law enforcement authorities, on its own initiative, notwithstanding legislative restrictions on confidentiality (recommendation 1c).*

#### **A.6. Prevention and Detection of Foreign Bribery by Finland's Public Procurement Authorities**

32. In Phase 3, the Working Group raised a number of concerns about the ability of Finnish authorities to prevent and detect foreign bribery in public procurement contracts (recommendation 12). Finland's Anti-Corruption Strategy recognises public procurement as a high corruption-risk area and at the beginning of 2017, a new Public Procurement Act based on the new EU directives on public procurement entered into force.<sup>15</sup>

33. Under the new law, a foreign bribery conviction remains a mandatory ground for exclusion from public contracts. However, procurement authorities will be better

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<sup>14</sup> Act on the Public Disclosure and Confidentiality of Tax Information, sections 18 and 19.

<sup>15</sup> EUR Directives 2014/24–25/EU.



equipped to enforce this due to a new requirement to demand criminal and other relevant records from all successful tenderers (including senior management and other persons in charge) notwithstanding their confidentiality. Authorities may demand the same information from subcontractors and must also exclude them where a mandatory ground applies. However, the new law does provide tenderers the opportunity to demonstrate that they have remedied the situation that led to their exclusion. During the on-site visit, procurement authorities advised that the types of measures that would be taken into account include, steps taken to improve transparency and culture within an organisation, cooperation with an investigation, and the introduction of compliance procedures.

34. The new law also sees a shift in supervisory function with the Finnish Competition and Consumer Authority (FCCA) assuming responsibility for all complaints of wrongdoing in public procurement contracting. The FCCA will have the power to inform the contracting authority of the wrongdoing. Where the contracting authority has entered into an illegal contract, the FCCA can go to the Finnish Market Court and demand more serious sanctions, including voiding the contract. While the FCCA is not obliged to report suspected bribery to the Police, it is able to do so, and Finland indicated that it has done so on a number of occasions.

35. As in Phase 3, there is still no requirement for contracting authorities to consult international blacklists. Finland maintains its Phase 3 position that such lists should be treated with caution and that authorities must ensure that the lists are up to date and reliable before using them as a basis for exclusion. Its preference is for Finnish authorities to instead rely on domestic registries (e.g. data concerning payment of taxes, social security contributions, and competition records) and relevant registries of other EU member states. While there is no requirement to consult these registries, the new law will require successful bidders to provide a range of information (including criminal records) that would reveal whether any mandatory exclusion grounds apply.

### *Commentary*

***The lead examiners welcome Finland's new Public Procurement Act which addresses the concerns raised by the Working Group at the time of Phase 3. While there is still no requirement to consult international blacklists, the mandatory exclusion grounds combined with the new requirement to demand criminal records before awarding a contract mitigate this concern.***

## **A.7. Prevention and Detection of Foreign Bribery through Official Development Assistance (ODA)**

36. In Phase 3, the Working Group raised concerns about the level of due diligence applied to outgoing ODA contracts and made a number of recommendations to ensure that they are not tainted by corruption (recommendation 10). The vast majority of Finland's ODA is administered by the MFA. However, Finland also leverages its ODA to support private sector investment in developing countries (and Russia) through Finnfund (a state owned development finance company) and Finnpartnership and Tekes (key private sector instruments that are open to ODA eligible countries).

37. During the on-site visit, officials from the MFA, Finnfund, and Tekes commented that thorough and mandatory due diligence takes place regardless of the instrument through which the ODA is administered. The General Conditions on ODA Contracts provide that all contracts must contain an anti-corruption clause prohibiting contractors and sub-contractors from engaging in bribery. The contracts must also provide for the rejection, suspension, termination, and refund of paid instalments where bribery or similar unlawful activity is deemed to have been involved in the award or implementation of the

contract. Finland provided templates of ODA contracts containing such provisions. ODA applicants are currently required to declare previous convictions for foreign bribery, and as outlined above, under the proposed new Public Procurement Law, successful applicants will be required to provide a copy of their criminal records. All officials agreed that they would not provide aid to anyone that had been convicted of foreign bribery and that funding would be withdrawn where an anti-corruption clause is breached.

38. Where the MFA provides ODA to host country governments, the embassies attend relevant anti-corruption meetings between donors and national anti-corruption agencies, supreme audit institutions, and aid recipients as appropriate. In some partner countries, Finland provides direct support to anti-corruption efforts of the local government institutions and/or non-governmental organisations. Finland also specifies that its embassies have close contacts with Finnish businesses and local media, which may provide useful information related to corruption or alleged fraud and misuse of funds.

39. The MFA has published a guide on preventing the Misuse of Development Funds which covers detection and reporting and the type of risk assessment and due diligence that is needed to prevent cooperation in ODA contracts. Finally, the MFA has a specific anti-corruption team that monitors and handles reports of corruption<sup>7</sup>, provides training, and conducts targeted audits where it suspects corruption is involved in an ODA contract.

### *Commentary*

***The lead examiners are impressed with the range of steps Finland has taken to mitigate the risk of corruption when providing ODA and commend Finland for its outreach work with developing countries.***

## **A.8. Other Sources of Foreign Bribery Allegations**

40. The media is a useful source of foreign bribery allegations. Finland enjoys an extremely free press, having been ranked top of 180 countries in Reporters without Borders' World Press Freedom Index for the past seven years (2009-2016).<sup>16</sup> During the on-site visit, the NBI explained that media reports in and of themselves are insufficient to open a formal investigation; however, they will trigger intelligence work and, if the allegation is verified, a formal investigation can be opened. The *Instrumentarium* case was in part detected through the media.

41. The Finnish Competition and Consumer Authority (FCCA) may receive allegations of bribery (as a form of anti-competitive behaviour) or detect indications of foreign bribery in the course of their own investigations. In practice, the FCCA has detected potential domestic corruption, but not foreign bribery. If a suspicion of foreign bribery arises, the FCCA's internal, written guidance requires it to be reported through the supervisory chain to the Director General who decides whether to inform the Police. As the FCCA is prohibited from disclosing classified information to the Police on its own initiative, its practice is to informally consult the Police, describing the classified information in general terms. The Police can then decide whether to submit a written request for the information.

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<sup>16</sup> Finland Life (2016) "[Finland Top-Rated for Press Freedom](#)".

## *Commentary*

*The lead examiners commend Finland on its detection efforts, particularly its use of a wide variety of detection sources and its capacity to detect allegations independently without reliance on information from the Working Group on Bribery.*

## **B. ENFORCEMENT OF THE FOREIGN BRIBERY OFFENCE**

### **B.1. The Foreign Bribery Offence and Alternative or Additional Offences**

#### *a. Finland's foreign bribery offence deemed in line with Convention*

42. Chapter 16 of Finland's Criminal Code sets out offences of non-aggravated and aggravated active bribery of a "public official". This includes foreign public officials holding administrative or judicial office but not legislative office.<sup>17</sup> The latter is covered in separate offences for the non-aggravated and aggravated bribery of a member of parliament, which includes foreign members of parliament.<sup>18</sup> In Phase 3, the Working Group raised a number of concerns about the scope of these offences, which differ from those applicable to officials holding administrative and judicial office. To address this, the Group recommended that Finland amend its definition of "foreign public official" to specifically include officials holding legislative office (so that bribery of all foreign public officials would fall within the same offence) (recommendation 2).

43. Finland explains that changing the definition of "foreign public official" would require a number of consequential amendments and create inconsistencies between offences for the bribery of domestic and foreign members of parliament. In 2011, Finland instead sought to address this recommendation by amending the offences for non-aggravated and aggravated bribery of members of parliament. While the revised offence for members of parliament contains slightly different elements to the foreign bribery offence for officials holding administrative or judicial office, these do not raise any issues and the offence as a whole appears in line with Article 1 of the Convention.

## *Commentary*

*The lead examiners appreciate the need to align domestic and foreign bribery offences as closely as possible and are satisfied that the revisions to the offence of bribing a member of parliament address the concerns raised by the Working Group in Phase 3.*

#### *b. Level of intent required by the defendant*

44. Under the Criminal Code, a perpetrator acts intentionally where he or she considers the consequences of his or her actions as "certain or quite probable" or where the purpose of the act was to bring about that consequence (i.e. the offence). An offence is also intentional where it is connected to the consequence that the perpetrator aimed for.<sup>19</sup> Each foreign bribery judgment is clear that the Court must prove the defendant's intent with respect to each of the essential elements of the offence. In *Patria (Slovenia)* the

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<sup>17</sup> Criminal Code, chapter 16, sections 13 and 14. The relevant definitions are in chapter 16, section 20(4) and chapter 40, section 11(4).

<sup>18</sup> Criminal Code, chapter 16, sections 13 and 14. The relevant definitions are in chapter 16, section 20(4) and chapter 40, section 11(6).

<sup>19</sup> Criminal Code, chapter 3, section 6.

Court of Appeal cites Supreme Court Judgment 2013:77, which provides that “intent” requires the person committing the act to “be aware” of each of the elements of the offence, or consider them “highly likely.” In *Patria (Egypt)*, the Court (similarly) required the defendant to consider each element of the offence “highly likely” or alternatively that they could be “reasonably expected...to predict [the relevant element].” In each case, the courts’ assessment of the intent requirement was prima facie reasonable. Based on the judgments, it is the unreasonably high degree of evidence required to prove intent (i.e. direct evidence) that is a cause for concern, rather than the courts’ interpretation of the element of intent itself (see the discussion on the reasons for acquittals in section B.5.a. of this report).

***c. Difference between aggravated and non-aggravated foreign bribery***

45. In Phase 3, the Working Group recommended that Finland follow-up on case law concerning the difference between non-aggravated and aggravated foreign bribery and provide regular training and guidance to law enforcement authorities on (among other things) the distinction between these two offences (recommendation 1 and follow-up issue 13a). In 2013, the Finnish State Prosecutor issued a memo stating that an assessment of whether bribery is aggravated must be made on a case by case basis but that a bribe worth EUR 10 000-20 000 would fall within the definition of “aggravated”. The investigators and prosecutors who participated in the on-site visit were aware of this guidance and advised that they would also take into account factors such as the level of planning behind the offence, specific skills required, and use of consultants. They emphasised that foreign bribery would always be (and has always been) treated as aggravated owing to the seriousness nature of this crime. A case study addressing this issue was included in a two day training seminar held jointly by the NBI, Police University College, and National Police Board in November 2016.

***d. Bribes intended to make an official act in service contrary to his or her duties***

46. In Phase 3, the Working Group agreed to follow-up on the requirement in chapter 16, section 14(1) of the Criminal Code that the bribe is intended to make an official act in service contrary to his or duties (follow-up issue 13b). This phrase was not discussed in any of the foreign bribery judgments and does not appear to impact on the autonomy of Finland’s foreign bribery offence in practice.

***Commentary***

***The lead examiners are satisfied that Finnish authorities have a sound understanding of the aggravating features of the foreign bribery offence and that the requirement that the official “act in service contrary to his or her duties” is being applied in a manner consistent with the Convention. They do not consider that these issues warrant further follow-up at this time.***

***e. Finland's access to alternative or related offences in foreign bribery cases***

47. In many foreign bribery cases, the perpetrators will have committed additional offences, such as false accounting or money laundering, in an attempt to conceal their crime. In such cases, prosecutors could bring charges for these offences alongside foreign bribery charges. In Finland, money laundering predicated on foreign bribery is

criminalised in chapter 32 of the Criminal Code.<sup>20</sup> False accounting is also prohibited in chapter 30 of the Criminal Code.<sup>21</sup> Finland has corporate liability for money laundering and is proposing to establish corporate liability for certain accounting offences (see Part C for further discussion of this proposal).

48. Finland's criminal law also contains offences which could be used as an alternative to foreign bribery charges where the prosecutor foresees difficulties in securing a foreign bribery conviction. In 2011, Finland amended chapter 30 of the Criminal Code to introduce an aggravated commercial bribery offence which criminalises the bribery of company employees or agents.<sup>22</sup> Corporate liability applies to this offence.<sup>23</sup> This offence could be used as an alternative charge to foreign bribery in certain cases, for example, where the foreign public official is an employee of a state-owned enterprise (SOE). Finland is also currently considering criminalising trading in influence. If these plans come to fruition, this offence could provide another avenue for alternative charges. Attempted foreign bribery is not an offence in Finland, so cannot be used as an alternative charge (NB: the Convention only requires attempted foreign bribery to be criminalised to the same extent as attempted domestic bribery, which is also not an offence in Finland).

49. While Finland's upmost priority should be the successful prosecution of foreign bribery, given the clear difficulties obtaining convictions, using alternative or additional charges could be particularly useful. The NBI and the prosecution report that they systematically consider alternative charges when developing the 'investigation plan' which sets out the focus and scope of the investigation (for further discussion of the investigation plan, see section B.3.a. of this report). In practice, money laundering has never been lodged as an additional charge. False accounting charges have been pursued alongside foreign bribery once (in the *Patria (Egypt)* case); while the foreign bribery charges resulted in acquittals, the prosecution was successful in securing three convictions for false accounting. This case may demonstrate the potential for Finland to successfully bring alternative charges if such charges are able to be pursued.

## **B.2. Sanctions against Natural Persons for Foreign Bribery**

### ***a. Criminal Sanctions***

50. As outlined in Table 4 below, under the Criminal Code, natural persons convicted of non-aggravated bribery are subject to a fine or up to two years' imprisonment. The fines available for natural persons for non-aggravated bribery are calculated at between one and 120 day-fines, which is calculated at one sixtieth of the average monthly income of the person fined.<sup>24</sup> The availability of fines as an alternative to imprisonment is consistent with the sanctions available for all other non-aggravated offences in the Criminal Code, including domestic bribery.

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<sup>20</sup> Criminal Code, chapter 32, sections 6 to 10.

<sup>21</sup> Criminal Code, chapter 30, sections 9 to 10.

<sup>22</sup> Criminal Code, chapter 30, sections 7 and 7(a).

<sup>23</sup> Criminal Code, chapter 30, section 13.

<sup>24</sup> See Criminal Code, chapter 2(a), section 2 for a more detailed description of how day-fines are calculated.

**Table 4. Sanctions available for foreign bribery under the Criminal Code**

Offence in the Criminal Code	Sanction
Non-aggravated bribery (§16:13 & §16:14(a))	A fine <u>or</u> up to 2 years' imprisonment.
Aggravated bribery (§16:14 & §16:14(b))	4 months to 4 years' imprisonment

51. Aggravated foreign bribery carries a penalty of four months to four years' imprisonment. The Court may also impose a fine as an alternative to imprisonment where there are grounds for a reduced or mitigated sanction, especially if there are weighty reasons for this.<sup>25</sup> Examples include where the offender was pressured or influenced into committing the offence or has taken steps to remedy the effects of the offence. Where the prison sentence is conditional in nature, the court may impose an ancillary fine.<sup>26</sup> While this is consistent with the sanctions available for all aggravated economic offences in the Criminal Code, the Working Group has previously raised concerns in countries where fines are only available in limited circumstances and as an alternative to imprisonment.<sup>27</sup>

*b. Sanctions imposed on natural persons in practice*

52. While Finland has not sanctioned any natural persons for aggravated foreign bribery, the prosecution requested a term of imprisonment in four of the five foreign bribery cases that have gone before the courts and a conditional term of two years' imprisonment in the fifth. The maximum term requested was three years and three months (see Table 5 below for a breakdown of sanctions requested in foreign bribery cases).

**Table 5. Sanctions requested by the prosecution in aggravated foreign bribery cases**

	Amount of bribe paid	Imprisonment requested for natural person	Forfeiture
Wärtsilä	EUR 3 360 000	2 years - conditional	Minimum EUR 3 360 000
Patria (Egypt)	EUR 1 300 000	Minimum 2 years - unconditional	Not sought
Patria (Slovenia)	EUR 2 222 876	2 years - unconditional	Not sought
Patria (Croatia)	EUR 1 597 065	Minimum 3 years and 3 months - unconditional	Not sought
Instrumentarium	USD 1 383 000	Minimum 2 years - unconditional	Not sought

53. The sanctions requested in foreign bribery cases were substantially harsher than those imposed in practice for other aggravated economic offences, the vast majority of which result in conditional terms of imprisonment of less than one year. In all five aggravated domestic bribery cases between 2012 and 2015, the court imposed a sentence of conditional imprisonment, without an ancillary fine. While the lead examiners are encouraged by the prosecution's tendency to treat foreign bribery as serious in nature, it remains to be seen whether the courts would, in practice, impose the sanctions requested upon conviction. Should the courts sanction foreign bribery in line with domestic bribery, this could call into question the effective, proportionate, and dissuasive nature of sanctions available against natural persons.

<sup>25</sup> Criminal Code, chapter 6, section 8(4).

<sup>26</sup> Criminal Code, chapter 6, section 10.

<sup>27</sup> See Phase Reports of Portugal (para. 55), Spain (para. 68) and Greece (para. 47).

### *Commentary*

***In the absence of foreign bribery convictions, it is not possible to determine whether Finland's sanctions regime is in practice effective, proportionate, and dissuasive.***

#### *c. Additional sanction for foreign bribery available under Finnish law*

##### *i. Business Prohibition Orders*

54. The Business Prohibition Act authorises the Court to impose and enforce bans on natural persons from engaging in commercial activities within Finland at the request of the prosecution. Bans of up to seven years may be imposed on conviction. Bans may also be imposed as a temporary pre-trial measure for a maximum period of six months and up to twice in the pre-trial period. Finland provided statistics indicating frequent use of these orders. However, investigators and prosecutors confirmed that they did not consider requesting such a ban in any of the previous foreign bribery cases.

##### *ii. Exclusion from public procurement contracts*

55. Convictions for aggravated and non-aggravated bribery are included in the mandatory criteria for excluding an applicant from tendering for public procurement contracts. This applies to both natural and legal persons.<sup>28</sup> Finland does not have any statistics on the number of exclusions made under these provisions but notes that no court cases or administrative decisions have arisen regarding the exclusion of a foreign tenderer on the basis of a bribery conviction. The proposed changes to the Public Procurement Act requiring contracting authorities to demand criminal records from all successful tenderers should enhance the implementation of this sanction (see discussion on procurement in section A.6. of this report).

### *Commentary*

***In light of the value of additional sanctions for foreign bribery, the lead examiners consider that Finland could make greater efforts to use the sanctions available in law. They therefore recommend that Finland encourage prosecutors to make full use of business prohibition orders in foreign bribery cases (recommendation 5a). They note that the recent amendments to the Public Procurement Act should enhance the implementation of debarment from public procurement contracts.***

## **B.3. Investigative and Prosecutorial Framework**

### *a. Overview of investigative and prosecutorial authorities in charge of foreign bribery enforcement*

#### *i. Enhanced operational capacity within the National Bureau of Investigation*

56. As in Phase 3, foreign bribery investigations are handled by the NBI, a specialised Police unit responsible for the investigation of international, organised, and serious crime. The role of the 11 local police departments in these crimes is limited to the identification of serious offences, which are then handed to the NBI for investigation. The FIU sits within the NBI along with a national Anti-Corruption Coordinator who supports the international exchange of information on corruption offences. The Phase 3 report

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<sup>28</sup> Public Disclosures Act, section 53.

emphasised the NBI's enhanced ability to detect and investigate foreign bribery as well as its independence. In December 2015, the National Police Board created a National Cooperation Network (the Network) of anti-bribery and corruption specialists that sits within the Police. The Network is chaired by the Detective Chief Inspector in charge of anti-corruption coordination in the NBI. Finland emphasises that since 2016, the Network has functioned as an operational cooperation forum and information exchange channel for the Police. It is too early to determine what impact the Network will have on the investigation of foreign bribery in practice.

57. During the on-site visit, representatives of both the NBI and the General Prosecutor's Office (GPO) advised that the current structure enables the effective investigation of complex crimes such as foreign bribery and emphasised that the acquittals were not a result of insufficient specialisation or expertise.

*ii. Specialised financial crimes prosecutors within the local prosecution offices or state prosecutors within the GPO*

58. The Prosecutorial Service is a two-tier structure that consists of the GPO (the central office), and 11 local prosecution offices. Foreign bribery cases are normally assigned to one of the 38 prosecutors specialised in financial crime in the local prosecution offices ("assigned prosecutors").<sup>29</sup> However, the GPO may decide to handle any foreign bribery case it deems important and assign it to a state prosecutor. In practice, *Patria* and *Instrumentarium* were prosecuted by state prosecutors, while *Wärtsilä* was prosecuted by an assigned prosecutor because the procedure was in Swedish.

59. Prosecutors at the on-site described the current system as functional and efficient and did not see a need for a specialised foreign bribery unit given the low number of cases handled each year. It remains to be seen what impact the planned restructure of the prosecution offices will have on the efficiency of the system.

*iii. Planned restructure of the Prosecution Service*

60. Finland is in the early planning stage of a restructure that will see the centralisation of the Prosecution Service. Under the proposal, there will be one Central Prosecution Service, managed by the Prosecutor General, and four Regional Units (North, South, West and East) and Åland Islands. The Prosecution Service will predominantly handle human resources and financial management, training and development, and supervision. The Regional Units will be in charge of actual prosecutions. Each region will have specialised prosecutors and line managers who will report to the GPO. Finland emphasises that the structural reform will lighten bureaucracy, harmonise operations across the country, and increase the efficiency. However, it has not provided any details on how this will be achieved and it remains unclear how foreign bribery cases will be assigned under the planned restructure.

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The General Prosecutor's Office (GPO) is grounded in article 104 of the Constitution and headed by the Prosecutor General, who is appointed by the President of the Republic. Rules on the organisation and functioning of the GPO are set out in the Act on the Prosecution Service which came into force on 1 January 2012 and is complemented by the Governmental Decree on the Prosecution Service.



## *Commentary*

*While there is no specialisation in foreign bribery specifically, such cases are assigned to investigators and prosecutors specialised in financial crimes and there is a good level of professionalism and understanding of foreign bribery and related offences. This is supported by the fact that seven of the nine foreign bribery allegations in Finland to date resulted in investigations, five of which proceeded to prosecutions (resulting in five acquittals for foreign bribery and one conviction for false accounting). The lead examiners recommend that Finland ensure that this level of operational organisation continues under the planned restructure of the Prosecution Service and that foreign bribery cases remain under the control of “assigned prosecutors” with sufficient specialisation and expertise (recommendation 2a).*

### *b. Resources, training and guidance*

#### *i. An announced decrease of human and financial resources within the NBI*

61. Finland notes that its current economic situation has resulted in budget cuts across the public sector. However, it provides that these cuts have had no impact on the investigation and prosecution of corruption offences and that all foreign bribery investigations have benefitted from sufficient resources. In 2016, as part of the National Strategy and Action Plan for Tackling the Shadow Economy and Economic Crime, an additional EUR 6.4 million was allocated to the Police to fight the shadow economy, corruption, and economic crime of which 1 million was assigned to the NBI. Finland also emphasises that Joint Investigation Teams (JITs) receive additional funding and are a good tool for ensuring sufficient resources. Nonetheless, Finland advises that the Police budget will decrease by EUR 66 million by 2019 (i.e. EUR 22 million per year) resulting in a personnel reduction of almost 900 over the next three years. In its written responses, Finland acknowledges that “the predicted reduction of police resources by 2019 may have an effect on the overall ability of the police to detect and investigate criminal offences including corruption.” However, Finland indicated that in 2017, the human resources allocated to the NBI to fight financial crime remain the same as in 2016.

#### *ii. Limited prosecutorial resources*

62. During the on-site visit, prosecutors emphasised that general budget cuts have not influenced the investigation and prosecution of corruption offences. However, Finland’s written responses include a clear statement that “all in all the resources available to the prosecution service are too limited, which also weakens the ability of prosecutors to provide sufficiently intensive guidance to the pre-trial investigation of broad and complex criminal cases.” This was confirmed at the on-site visit by an NBI officer who stated that “it seems that [the prosecutors] are struggling with their workload and they are very few.” However, during the on-site visit, the prosecutors noted that while they have general resourcing issues, this does not impact on the prosecution of foreign bribery which is among their priorities. Finland further indicates that the financial resources available depend heavily on the Government Decisions on Preventing Economic Crime and Shadow Economy.

## *Commentary*

*The lead examiners are concerned about the already stretched Prosecution Service’s resources and the announced decrease in NBI resourcing. They recommend that, at a minimum, Finland ensure the NBI continues to have sufficient resources for the investigation of foreign bribery (recommendation 2b). They also recommend that Finland ensure prosecutorial resources are sufficient to facilitate the early involvement*

***of prosecutors in foreign bribery cases (recommendation 2b). The planned restructure of the Prosecution Service could be leveraged for this purpose.***

*iii. Limited specific training and guidance to both the NBI and Prosecutors*

63. In Phase 3, the Working Group recommended that Finland provide training and guidance to law enforcement and prosecutors on, among other things, the distinction between non-aggravated and aggravated bribery and corporate liability (recommendation 1). In 2013, the State Prosecutor issued a Memorandum which addressed these topics in a very succinct way. The recommendation was hence deemed partially implemented by the Working Group. During the on-site visit, prosecutors had a good understanding of the aggravating features of foreign bribery and the evaluation team is of the view that the concerns raised in Phase 3 have been addressed (see section B.1.c.). As outlined below, Finland is planning a range of training sessions that will cover corporate liability for foreign bribery.

64. Finland states that the induction training for new recruits and regular training provided by the Police University College of Finland ensure adequate expertise among law enforcement for the investigation of foreign bribery. In November 2016, the Police University College, the NBI, and the National Police Board held a joint two-day Anti-Corruption Seminar which covered the basics of corruption, cooperation with other actors, and practical examples of corruption investigations. This training did not specifically target the liability of legal persons. Finland advises that it will hold this type of seminar on an annual basis.

65. Finland provides that prosecutors receive regular training on specific types of financial crime that also covers aspects of corporate criminal liability and the aggravating features of an offence. Finland further advises that it has scheduled a three-day generalised training course for prosecutors, police, and judges in April and autumn 2017. A full day will be dedicated to corruption, including foreign bribery and related issues such as asset forfeiture and corporate criminal liability.

66. Regarding guidance, in 2015, the National Police Board issued an instruction to the Police aimed at enhancing expertise in the prevention, detection, and investigation of bribery and other forms of corruption. The instruction provides basic information on corruption and the roles of the different police units and the Network. It does not address the liability of legal persons.

***Commentary***

***The Lead Examiners are encouraged by the level of awareness among investigators and prosecutors regarding the aggravating features of foreign bribery and do not see a need for a further recommendation on this issue.***

***Although training and guidance on corporate liability has been limited, the lead examiners are encouraged by Finland's plans for future training sessions, and more importantly, its active prosecution of corporations for foreign bribery and other related offences.***

## B.4. Conducting a Foreign Bribery Investigation and Prosecution

### *a. Investigation and prosecution, including coordination between relevant agencies*

#### *i. Finland's mandatory investigation regime*

67. Investigation of all suspected crimes is mandatory in Finland. During the on-site visit, investigators confirmed that an investigation would be opened as soon as a suspicion of a crime arises. The threshold for starting an investigation was discussed with panellists and appears to be relatively low, merely requiring “some evidence”.<sup>30</sup> The NBI officers noted that due to the principle of mandatory investigation, the acquittals in foreign bribery cases to date will not impact future decisions to initiate and investigate a foreign bribery allegation. There is no limitation on the duration of an investigation other than the general statute of limitations. Finland emphasises that the time dedicated to an investigation is closely monitored by the National Police Board.

68. The questionnaire responses specify that, in practice, potential foreign bribery cases are jointly assessed by leading investigators and prosecutors (rather than an individual NBI officer). Based on this initial assessment, the GPO assigns a prosecutor who will then be involved in any decision to carry out specific investigative measures from the beginning of the investigation.

#### *ii. Early involvement of prosecutors in investigations*

69. Finland's questionnaire responses emphasise “the great need for pre-trial investigations to involve prosecutors” in light of the high evidentiary thresholds for foreign bribery cases set by Finnish courts. Finland concludes that the pre-trial investigation has to ensure that the constituent elements of the foreign bribery offence are proved to a standard beyond what may be expected in other cases. At the on-site visit, the prosecutors and the NBI indicated that in Finland's foreign bribery investigations, prosecutors have been involved from the commencement of the investigation. This early and close involvement of the assigned prosecutors is all the more important in a context where all five foreign bribery acquittals were based on a failure to meet the high evidentiary threshold set by the courts. Maintaining this approach, including with the planned restructure of the Prosecution Service, may help Finland overcome this particular difficulty.

70. At the conclusion of the pre-trial investigation, the Police provides a report to the assigned prosecutor who has the ability to require the police to undertake further investigations if necessary.<sup>31</sup> The prosecutor will then determine whether criminal charges should be presented to the court. Finland's questionnaire responses state that less than 60% of corruption cases are referred to the assigned prosecutor for consideration of charges. In contrast, all suspected cases of foreign bribery in which a pre-trial investigation has been conducted have been referred for consideration of charges. The threshold for referring a case for consideration of charges is determined in agreement with

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<sup>30</sup> The Pre-Trial Investigation Act (805/2011), provides that “The criminal investigation authority shall conduct an investigation when, on the basis of a report made to it or otherwise, there is reason to suspect that an offence has been committed” (chapter 3, section 3).

<sup>31</sup> The Pre-Trial Investigation Act (805/2011) provides that it is “On the request of the prosecutor [that] the criminal investigation authority shall carry out a pre-trial investigation or further investigations, as well as comply with the instructions issued by the prosecutor for the securing of the objectives of the pre-trial investigation referred to in chapter 5, section 2”.

the assigned prosecutor based on the agreed investigation plan. During the on-site visit, the NBI and GPO explained that this threshold does not raise issues.

*iii. Independent foreign bribery investigators and prosecutors*

71. In Phase 3, the Working Group did not make any recommendations regarding independence or undue influence in foreign bribery cases. The questionnaire responses confirm that since Phase 3, no relevant changes have been made to Finland's legal or institutional framework. During the Phase 4 evaluation, no issues arose regarding the independence of investigations or prosecutions. Panellists at the on-site visit unanimously viewed the Prosecution Service as independent. Finland's enforcement of the foreign bribery offence appears to confirm that factors forbidden under Article 5 of the Convention are not taken into consideration by investigators or prosecutors; for example, a company operating in a sector as sensitive as the defence industry (Patria), has been investigated and indicted in three of the five concluded foreign bribery cases.

*iv. The use of investigation plans as a cooperation and planning tool*

72. Pursuant to an agreement between the National Police Board and the GPO in 2000, a written investigation plan is compulsory for economic crime investigations. The investigation plan is drawn up by the investigation team on a standard electronic form and presented to the prosecutor for comment. It is a tool for planning, for checklist purposes, and for cooperation with the assigned prosecutor. These plans reinforce cooperation between the NBI and the prosecution. NBI officers and prosecutors indicated at the on-site visit that such plans leave enough flexibility to allow investigators and prosecutors to adapt as the investigation progresses.

***Commentary***

***The lead examiners recommend that the Working Group follow-up on whether, once the planned restructure of the Prosecution Service is implemented, the assigned prosecutors continue to be involved early in foreign bribery investigations and participate fully throughout the investigation process, including through regularly reviewing and reassessing the adequacy of the investigation plan (follow-up issue 7c).***

***The lead examiners observe that foreign bribery investigations and prosecutions in Finland to date have reportedly been led with independence and without consideration of factors forbidden under Article 5 of the Convention.***

***Finally, the lead examiners note Finland's broad use of investigation plans, and consider that this could constitute a good practice.***

*v. Potential impact of the high evidentiary threshold set by Finnish Courts on future decisions to lay charges in a foreign bribery case and to appeal a Court decision*

73. There is no mandatory prosecution in Finland. While prosecutorial discretion is clearly limited in respect of natural persons, Chapter 9 of the Criminal Code appears to provide wide prosecutorial discretion in respect of legal persons. At the on-site visit, the evaluation team explored the potential impact of the high evidentiary thresholds set by the Finnish courts on the decision to lay charges in foreign bribery cases. The questionnaire responses raise concerns by stating that the "unreasonably high" evidentiary threshold will have a negative effect on initiating cases, particularly where there is no admission of guilt or an interrupted money trail. However, this was not confirmed on-site visit where prosecutors indicated that they will continue to bring charges and will strive to meet the high evidentiary threshold set by the courts. With only two preliminary ongoing

investigations, it may be some time before the Working Group can assess whether the next foreign bribery case will pass the test.

74. Appeals were not lodged in the first foreign bribery case (*Instrumentarium*). However, Finland has shown a positive inclination to appeal subsequent acquittals. The prosecution appealed *Patria (Croatia)*, *Patria (Slovenia)* and *Patria (Egypt)* to the Court of Appeal, and *Wärtsilä* was appealed by the prosecution to the Court of Appeal twice, and then to the Supreme Court (see Annex 1).

### *Commentary*

***The lead examiners welcome Finland's apparent willingness to prosecute foreign bribery. They are reassured by the prosecutors' unanimous view that the high evidentiary threshold will not deter further prosecutions. They also commend Finland's prosecutors for the positive trend they have demonstrated in appealing foreign bribery acquittals.***

#### *vi. Investigative tools*

75. Major reforms of the Coercive Measures Act were enacted in 2003 and 2009. Furthering this reform, a new Criminal Investigation Act and a new Coercive Measures Act entered into force on 1 January 2014.<sup>32</sup> They provide a wide range of investigation methods and coercive measures, determined by the seriousness of the offence, e.g. secret coercive measures, searches of premises, seizure, hearing of witnesses, mutual legal assistance, bank inquiries and joint investigation teams (see section B.5. for further information on Joint Investigation Teams). With the exception of secret coercive measures, there is no need for a prosecutor or a judge to authorise the use of these investigative techniques, including access to bank information.<sup>33</sup> Access to bank information has been further improved in 2016 through the implementation of a project to establish electronic access to this information. Finland stresses this will affect the rapidity of both access and analysis. Telecommunications interception is available for certain offences, including aggravated bribery, provided a warrant is obtained.<sup>34</sup> Finally, the Tax Administration can provide information where it is requested by the Police or Prosecution Service (Act on the Public Disclosure and Confidentiality of Tax Information, section 19; this issue is further discussed in section A.5.). Prosecutors at the on-site visit insisted that the NBI has good investigation tools available and makes regular use of these.

76. Finland indicates that in the foreign bribery cases that have been investigated so far, documents were obtained, interviews conducted, and forensic audits undertaken. During the on-site visit, NBI officers stated that at the beginning of a foreign bribery investigation, they would raid a company's offices with their accountants, and forensic and IT staff who would seize and copy terabytes of data, including minutes of the administrative board, emails etc.

77. The abstracts of the foreign bribery judgements provided by Finland confirm the investigators' proactivity in conducting foreign bribery investigations, including actively supplementing the information available with evidence from investigations conducted on the passive side abroad. Companies' internal investigations have played no role in foreign bribery investigations to date. This is unlikely to change in the absence of incentives for companies to share this information, such as establishing a plea bargaining regime (see section B.5.d. on plea bargaining).

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<sup>32</sup> Acts number 805/2011 and 806/2011 respectively.

<sup>33</sup> Coercive Measures Act, Chapter 3, section 1.

<sup>34</sup> Coercive Measures Act, Chapter 10, section 3(3).

## *Commentary*

***The Lead Examiners commend Finland for the broad range of investigative techniques and tools available to investigators. They further commend the NBI for its broad use of these tools in foreign bribery cases.***

### ***b. Statute of limitations***

78. In Finland, the right to bring charges is time-barred if not brought within five years for non-aggravated bribery. Concerned that this was insufficient, the Phase 3 report recommended that Finland ensure that its limitation periods are adequate for the investigation and prosecution of foreign bribery (recommendation 3). As outlined earlier, Finland asserts that all foreign bribery cases will be treated as aggravated, meaning they will be subject to a ten year limitation period. This is calculated from the date of the commission of the offence until the defendant receives lawful notice of the summons. It can be extended once by one year where certain criteria are met.<sup>35</sup> There is no possibility to suspend or ‘pause’ the limitation period during certain investigative steps.

79. Finland provides that a Ministry of Justice Working Group convened to assess the Phase 3 recommendations examined this issue and concluded that no amendments were needed. In 2013, the Prosecutor General issued guidance on the prioritisation of charges, stating that cases with an ‘imminent’ period of limitation must be prioritised. During the on-site visit, investigators and prosecutors shared the view that the ten year limitation period in aggravated criminal cases does not pose any issues in practice.

## *Commentary*

***The lead examiners are pleased with the efforts Finland has made to review its statute of limitations and prioritise cases with an ‘imminent’ limitation period. Combined with the feedback received from investigators and prosecutors during the on-site visit, the lead examiners are satisfied that the limitation period applied to foreign bribery cases is adequate.***

## **B.5. Concluding a Foreign Bribery Case**

### ***a. Reasons for acquittals in all foreign bribery cases***

80. As highlighted throughout this report, all of Finland’s foreign bribery cases have resulted in acquittals. During the on-site visit, the evaluation team received mixed accounts of the reasons for these acquittals. Prosecutors and investigators were emphatic that there was sufficient evidence for a conviction in each case and that the acquittals came down to the “unreasonably high level of proof required by the courts.” On the other hand, the judge who participated in the on-site visit provided that, at least in the case he presided over, there simply was not enough evidence for a conviction. The same judge also expressed difficulties understanding the Convention (due to a language barrier) and the complexities of Finland’s foreign bribery offence.

81. Finland provided the examination team with translations of the key extracts from all five foreign bribery judgments. In each case, the defendant was acquitted because the court could not prove the defendant's intent with respect to each of the “essential elements of the offence”. A consistent theme running through the judgments provided was a particularly high evidentiary threshold that appeared to require direct evidence of the defendants’ intent with respect to each element of the offence. In some cases, the court

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<sup>35</sup> See Criminal Code, chapter 8, sections 1-4.

also required evidence of elements outside the scope of the offence. Aspects of the courts' decisions that raise particular concerns are discussed below.

*i. Unreasonably high evidentiary threshold required to prove defendants' intent*

82. As previously noted, Finnish prosecutors and investigators are of the view that the courts have consistently applied an "unreasonably high evidentiary threshold" in foreign bribery cases. During the on-site visit, one investigator stated (in reference to a foreign bribery case) that "anyone looking at the evidence could only come to a conclusion of guilt." Indeed, in the judgments provided by Finland, the courts appear to require direct evidence in support of each element of the offence, and give little or no weight to the combined effect of the circumstantial evidence available. For example, in both *Instrumentarium* and *Patria (Slovenia)*, the Court required proof of a direct connection between the bribe payer and the foreign public official, i.e. the courts appear to require a "smoking gun" to link the principal to the bribe payment. In both cases, the alleged bribes were paid through consulting firms and the Courts found that there was insufficient evidence to prove that the defendants directly controlled the payments. The use of intermediaries such as consulting firms or subsidiary companies is commonplace in foreign bribery cases and very rarely will there be evidence of a direct link between the bribe payer and recipient. In fact, consulting firms are often used for this very reason. Contrary to the written judgments, the judge who participated in the on-site visit was of the view that the Court could convict on the basis of circumstantial evidence, and that there is no need for direct evidence linking the bribe payer and recipient. The Ministry of Justice confirmed this, pointing out that Finland's Criminal Procedure Code does not limit the type of evidence a court can use, provided it is obtained legally. Finland should ensure that this approach is applied in practice, as a requirement for direct evidence creates a grave risk that individuals and companies can simply escape liability by paying bribes through intermediaries.

83. The courts also appear to have low expectations of the level of due diligence and corporate compliance required by companies. For example, in *Instrumentarium* the alleged bribes were paid into an account in Panama instead of the consultant's Costa Rican account that the company had typically used in the past. The Court appeared to consider it reasonable that the defendant approved the payment without checking the direction or recipient. In *Patria (Croatia)* the Court explicitly stated that "no significance can be attached" to the corruption risk associated with the company's region or sector of operation. The fact that a defendant was operating in a high-risk sector or region is the exact sort of information that should assist an assessment of whether they intended to pay a bribe or should reasonably have known that a bribe was being paid. In each of these cases, the defendants arguably failed to conduct basic due diligence, yet it appears that the Court did not take this into account when determining intent. In a recent Supreme Court judgment (2015:55), the Court concluded that the defendant had the opportunity to find out whether his act was permitted and could not be exempted from liability "on the grounds of mistake as to the unlawfulness of the act." Applying this logic to *Instrumentarium* and *Patria (Croatia)*, the defendants had the opportunity to find out whether their acts were permitted, and this should have factored into the courts' assessment of intent.

*ii. Acquittal based on an error of law*

84. In *Patria (Egypt)*, the Court of Appeal concluded that the defendants did not have the requisite intent because they would not have considered it "highly likely" that the intended bribe recipient was a foreign public official and could not "reasonably be

expected...to predict” this. This assessment was based on the defendant’s assertion that as employees of Finnish state-owned enterprises are not public officials, they could not be expected to know that their counterparts in a foreign country would be considered as such.

85. While the definition of “foreign public official” does not explicitly mention persons working for a state-owned enterprise, the definition is broad and as noted in the judgment, does in fact include such persons. It does not appear that the defendants took any independent steps to either consult the Criminal Code or enquire into the alleged bribe recipient’s status as a public authority. It appears that their defence rests on a mistake of law, which pursuant to the Criminal Code, will only exempt an offender from criminal liability in a very narrow range of circumstances.<sup>36</sup> The fact that the Court acquitted the defendants on this basis alone and without reference to the relevant provision on mistake of law raises serious concerns. A subsequent Supreme Court decision (2015:55) has made it clear that one cannot escape liability based on an “erroneous interpretation of the law”, but the impact that this decision will have on future foreign bribery cases is unclear.

*iii. Requirement that the foreign public official is in fact in a position to influence a decision related to the bribe payment*

86. In both *Wärtsilä* and *Patria (Slovenia)*, the Court concluded that the evidence did not satisfy the elements of the offence because the foreign public official was not in fact in a position to influence the tenders in question. In *Patria (Slovenia)*, the Court provided that “a theoretical opportunity to influence matters, alone, is not sufficient.” In these cases, the Courts were reading into the foreign bribery offence an element that is neither required by the Convention nor explicit in Finnish legislation. This is contrary to Commentary 3 to the Convention which provides that a conviction must not require proof of elements beyond those set out in the Convention. Foreign bribery cases should focus on the briber’s intent in giving, offering, or promising the bribe payment. The recipient’s willingness or ability to accept or respond to the offer should not come into play.

*iv. Requirement that the bribe recipient be aware of the offer or promise of a bribe.*

87. In *Patria (Slovenia)* the Court stated that the prosecution must prove the recipient’s awareness of the “promising or provision of benefit”. During the on-site visit, both investigators and prosecutors agreed a foreign public official must be aware of the bribe. However, there is no such requirement in the Convention or Finland’s legislation and including this as an element of the offence contravenes Commentary 3 to the Convention. There are a number of scenarios where an offer, promise, or gift of a bribe may not ultimately reach its target. Article 1 of the Convention is therefore drafted to ensure that in most circumstances, the offence is complete even if the official is not aware of the bribe. The fact that Finland’s Criminal Code does not recognise attempted foreign bribery exacerbates this issue, as it removes the possibility of pursuing this as an alternate charge.

*v. Inconsistent use of foreign judgments*

88. In *Instrumentarium*, the Court took into account the fact that the bribe-recipients in Costa Rica had been convicted of embezzlement, as opposed to passive bribery.

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<sup>36</sup> A perpetrator is exempt from criminal liability where they make a mistake of law based on (1) the defective or erroneous publication of the law; (2) the particular obtuseness of the contents of the law,(3) erroneous advice by an authority, or (4) another reason comparable to these (Criminal Code, Chapter 4, section 2).



Conversely, in *Patria (Slovenia)*, the Court of Appeal ruled that the bribe recipients' convictions for passive bribery in Slovenia could not be taken into account in the defendant's trial in Finland. The extent to which these decisions influenced the acquittals is unclear. Nonetheless, the inconsistent weight applied to foreign judgments raises more general concerns regarding differences in the admissibility of evidence in foreign bribery cases. While the Convention does not require states to consider foreign judgments on the same matter, they can be a beneficial source of evidence which should be given due consideration.<sup>37</sup> At the very least, the courts should take a consistent approach with respect to their admissibility.

### **Commentary**

*The lead examiners consider that, viewed collectively, the reasons for acquittals call into question the courts' overall application of Finland's foreign bribery offence, and to a lesser extent, investigators' and prosecutors' understanding of the evidence required to prove the offence. Based on the judgments provided and the information received during the on-site visit, the lead examiners are of the view that the evidentiary threshold required to prove a briber's intent seems unreasonably high and that unless this is addressed, foreign bribery cases will continue to result in acquittals. Adding to this concern is the courts' practice of reading additional elements into the offence, a willingness to acquit based on an error of law, and an inconsistent approach with respect to the admissibility foreign judgments as evidence in Finnish courts.*

*The lead examiners recognise that these are complex issues and that there is no one easy way to address the challenges Finland is facing. However, the above-outlined issues appear to emanate primarily from the courts' interpretation of the offence, rather than from issues with the text of the legislation itself. To this end, the lead examiners recommend that Finland provide detailed written information to investigators, prosecutors, and judges (whether separately or collectively) on the requirements of the foreign bribery offence under Article 1 of the Convention. This information should, at a minimum, clarify:*

- a) The type of circumstantial and/or direct evidence required to prove a briber's intent with respect to each element of the offence. This should emphasise that a direct link between a bribe payer and bribe recipient is not required in all cases and that circumstantial evidence is sufficient;*
- b) A mistake of law is only a defence in the limited circumstances set out in chapter 4, section 2 of the Criminal Code.*
- c) The exact elements of the offence that must be proved for a conviction. This should clarify that for the purposes of foreign bribery, it does not matter whether a foreign public official is in fact in a position to influence matter for which the bribe was paid, nor is there a requirement that the bribe recipient be aware of the offer, promise, or gift of a bribe; and*
- d) The admissibility of foreign judgments on the same matter in Finnish foreign bribery cases.*

*Recognising that this information will only be effective where it is used in practice, the lead examiners further recommend that Finland use this information as the basis for training sessions for investigators, prosecutors, and judges on the practical application of the foreign bribery offence (recommendation 3b).*

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See for instance the Working Group's conclusions in [Germany's Phase 3 report](#), para. 34.

***b. Judicial awareness, training and specialisation, which should be addressed to improve foreign bribery enforcement***

89. Finland has taken no specific steps to raise the judiciary's awareness of foreign bribery. Finland's questionnaire responses note that general awareness of bribery and corruption has increased after the Supreme Court issued a judgement in a high profile national bribery case. The case has attracted considerable attention, including in the media. The on-site visit confirmed that the case has raised awareness within the legal professions and has highlighted that Finland is not immune to corruption. This, however, remains very general and does not improve judicial awareness of the specific features and technicalities of the foreign bribery offence or related liability of legal persons.

90. Both the questionnaire responses and panellists from the legal profession and civil society unanimously concur that advanced training should be arranged for judges on general theory, on financial crime, and on bribery offences in particular. Finland states in its questionnaire responses that there is currently no specific training programme which would provide expertise to judges on the complexities of foreign bribery cases and the liability of legal persons. Finland announced future plans to provide training in this area but these were not specific and attendance appears to remain optional for judges. The answers provided by the judge at the on-site visit and the abstracts of Finland's foreign bribery judgements confirm a strong need for judges to be trained on the specific elements of the foreign bribery offence.

91. Finland confirms that there are no specialised courts for the purpose of hearing foreign bribery cases. All cases, including foreign bribery, corruption, and financial crimes are handled in the District Courts, the Courts of Appeal and the Supreme Court. The same judges deal with both civil and criminal cases, including white collar crimes, without any specialisation. However, Finland indicates that, in principle, Parliament can establish special courts for specific matters.<sup>38</sup> The possibility of specialised courts, chambers or judges for economic crime, including foreign bribery, was discussed with panellists. NBI officers, prosecutors, lawyers, and civil society representatives unanimously agreed that specialisation could improve the judges' understanding of the foreign bribery offence and hence its enforcement.

***Commentary***

***The lead examiners are concerned with the limited awareness of the foreign bribery offence within the judiciary, the lack of regular training for judges, and the lack of specialisation of courts and judges. The lead examiners re-iterate that Finland should provide detailed written information and training to the judiciary on the foreign bribery offence and its specific features (see recommendations 3a and 3b; commentary after paragraph 89). The lead examiners further recommend that Finland ensure that foreign bribery cases are heard by judges with specialised skills and experience (recommendation 2c).***

***c. Judicial Independence***

92. The independence of the judiciary in Finland is guaranteed by article 3 of the Constitution. The Constitution also provides that no individual or institution can give

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<sup>38</sup> The Ministry of Justice [website](#) refers to the existence of the following special courts: The Market Court, Labour Court, Insurance Court, and Prison Court (for “repeat offenders”).

instructions to a judge in individual cases.<sup>39</sup> Finland ranked first in the Criminal Justice section of the Rule of Law Index which includes consideration of judicial independence.<sup>40</sup>

93. However, in its 2013 Evaluation Report, GRECO identified a number of weaknesses in respect of judicial independence.<sup>41</sup> These include the involvement of individuals other than professional judges in court decisions. Prosecutors at the on-site visit acknowledged that the involvement of lay judges in court decisions may raise an issue at least in terms of the appearance of independence. Ordinarily, the District Court is comprised of a chairman and two lay judges. However, Finland notes that in practice, more serious or complex cases, including foreign bribery, are heard by a District Court comprised of three professional judges (without the involvement of lay judges). Finland states that all foreign bribery cases to date were heard solely by professional judges in all instances. Nonetheless, the legislative criteria governing the composition of the courts may leave room for the involvement of lay judges in foreign bribery cases.

### *Commentary*

*The lead examiners note that the potential involvement of lay judges in foreign bribery court decisions could give the appearance of a lack of independence. They recommend that the Working Group follow-up on the composition of the courts in future foreign bribery cases to ensure that lay judges are subject to the necessary guarantees of independence and to avoid the appearance of improper influence (follow-up issue 9d).*

#### *d. Introduction of a plea bargaining regime for natural persons*

94. In Phase 3, the Working Group decided to follow-up on the proposal to introduce a system of plea bargaining in Finland (follow-up issue 13(f)). A plea bargaining regime was introduced in 2014.<sup>42</sup> Provisions on plea bargaining are included in the Criminal Procedure Act and Criminal Investigation Act.<sup>43</sup> With the exception of certain offences (e.g. homicide), the provisions are applicable to offences with a maximum sentence of up to six years' imprisonment. The procedure is therefore applicable to the foreign bribery offence. It is available for natural persons only (see discussion below).

95. Finland specifies that the procedure will mainly be used for extensive and complex financial crimes which would otherwise take months or years to process. Prosecutors at the on-site visit confirmed this view. The procedure is initiated by the prosecution at the stage of the pre-trial investigation or the consideration of charges before the court hearing. In the course of negotiating the plea bargain, the prosecutor can make a discretionary decision to restrict the pre-trial investigation or waive some of the charges.

96. To enter a plea bargain, three conditions must be met: the accused must admit guilt; the prosecutor and the accused must agree on the offence; and any victim must agree to the use of a plea bargain. Finland states that the latter criterion does not apply where there is no identifiable victim. Once the plea bargain is negotiated and agreed by the parties, the proposal is submitted to a court alongside a proposal for a judgment (in which the prosecutor proposes a sentence). The sanction applied under a plea bargain must be at least the minimum sentence, and at most, two-thirds of the maximum term of imprisonment or fine. For aggravated foreign bribery this will mean between 2.7 months'

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<sup>39</sup> Constitution, article 21.

<sup>40</sup> World Justice Project, [Rule of Law Index 2016](#).

<sup>41</sup> GRECO (2013) [Fourth Round Evaluation Report: Finland](#).

<sup>42</sup> Acts 670-675/2014.

<sup>43</sup> Criminal Procedure Act, chapter 1, sections 10 and 10(a) and chapter 5(a); Criminal Investigation Act chapter 3, section 10(a).

and 2.7 years' imprisonment or a fine in special circumstances. In determining the sanction, the judge shall take into account the sanction that would have been imposed, had the defendant not had the benefit of a plea bargain. Only the sanction can be altered by the Court during the plea bargain hearing (as opposed to the contents of the charge or related claims such as forfeiture which must be agreed by the parties prior to the court hearing). The proposal for a judgment also includes information on how the bargaining process has progressed before the court hearing. If the suspect withdraws his confession, the case continues as a standard disputed hearing in which the prosecution must prove the elements of the offence. In this case, Finland stresses that "the prosecutor bears the risk associated with excessive lightening of the acquisition of proof during the pre-trial investigation." This risk was confirmed by prosecutors at the on-site visit.

97. A confession in the context of plea bargain hearing is open to the general public. In accordance with the Act on the Publicity of Court Proceedings in General Courts, a plea bargain hearing and the documents considered therein (which should include grounds for entering into a plea bargain) are public unless the court declares otherwise. The decision of the court is also public unless the court decides otherwise.<sup>44</sup> Finland specified that anyone can ask the court to provide the decision against a small fee and that Finnish media have reported plea bargaining decisions in a number of instances. The Court's decision on the plea bargain is open to appeal by both the accused and the prosecutor.

98. The Finnish authorities indicated that plea bargaining applies to individuals only, the main reason being that "a corporation itself is not an offender, but is punished for an offence committed by a natural person (...). Thus, a corporation cannot confess a crime, either." In light of the high evidentiary threshold for foreign bribery that has been set by the courts, plea bargains for legal persons could be a useful tool to allow Finland to effectively enforce the foreign bribery offence. However, in practice, even if plea bargains were available to legal persons, companies are unlikely to utilise the procedure as it requires an admission of guilt, which carries serious consequences for a company (e.g. debarment from public tenders including from international financial institutions). An alternative form of settlement may therefore be preferable. Finland indicates that legal persons can still be held criminally liable where a related natural person enters into a plea bargain. In this situation, the legal person can either appear before the court in the same proceedings as the natural person entering into the plea bargain, or in separate criminal proceedings against the legal person alone.

99. Plea bargains have not yet been used in any foreign bribery cases as all cases predated the introduction of the plea bargaining system.

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Act on the Publicity of Court Proceedings in General Courts, section 23 and 24(2).

## *Commentary*

*The Lead Examiners welcome the introduction of Finland's new plea bargaining regime. However, in a context where the courts' interpretation and application of the foreign bribery offence creates an extremely low likelihood of conviction, they note that there are few incentives for individuals to enter into a plea bargain.*

*The lead examiners note that plea bargaining is not available to legal persons. They recommend that Finland consider introducing a system of settlement for legal persons as part of its efforts to increase enforcement (recommendation 4b).*

*The lead examiners were not able to fully assess Finland's new plea bargaining system in the absence of actual cases. They therefore recommend that the Working Group follow-up on the practical operation of this system in foreign bribery cases, including the waiver of charges and the sanctions applied (follow-up issue 7e).*

### *e. Difficulties in confiscating the proceeds of foreign bribery*

100. Under the Criminal Investigation Act, investigators must consider seizure and confiscation in every case.<sup>45</sup> In foreign bribery cases, the NBI will consult the assigned prosecutor to determine whether to apply for seizure and confiscation, which can apply to both natural and legal persons. While the NBI can apply for seizure, only a prosecutor can seek confiscation in Court. It is the prosecutor's responsibility to calculate the proceeds of crime, with support from the NBI. Investigators and prosecutors can also seek assistance from the Asset Tracing Teams within each Police Department or the Asset Recovery Office within the NBI, which is responsible for international cooperation on asset tracing and recovery. Training and guidance on seizure and confiscation is provided to all Police and NBI staff as well as to all prosecutors.

101. Seizure ("confiscation for security") is provided for in chapter 6 of the Coercive Measures Act, which came into force in 2014. To seize assets from a natural or legal person, a Court must be satisfied that there are "grounds to suspect" the person committed an offence and that "a danger exists" that the person will hide or destroy the property.<sup>46</sup> Confiscation is governed by chapter 10 of the Criminal Code. Pursuant to recent amendments, foreign bribery is now subject to extended confiscation, for which the Court needs only to be satisfied that there is "reason to believe" that the property is of illegal origin.<sup>47</sup>

102. In Phase 3, the Working Group decided to follow-up on Finland's experience in international cooperation on asset recovery (follow-up issue 13(e)). Since Phase 3, Finland has received one MLA request to seize property purchased with bribe money, which Finland executed without issue. In addition, Finland regularly cooperates on asset recovery matters within the EU framework. At the time of Phase 3, the Group also decided to follow-up generally on Finland's seizure and confiscation regime (follow-up issue 13(d)). Finland has yet to exercise seizure in a foreign bribery case, and confiscation was sought in only one case (*Wärtsilä*). Finland's practical application of its seizure and confiscation regime raises two concerns which are discussed in detail below.

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<sup>45</sup> Criminal Investigation Act, chapter 1, section 2.

<sup>46</sup> Coercive Measures Act, chapter 6, section 1.

<sup>47</sup> Criminal Code, chapter 10, section 3.

*i. Direct link required to confiscate the proceeds of foreign bribery*

103. Pursuant to Finland's legislative framework, both the instrument and the proceeds of crime, or assets of equivalent value, can be seized and confiscated.<sup>48</sup> The proceeds of crime must have been "obtained directly through crime".<sup>49</sup> Several Finnish representatives interpret this provision to require that in practice the proceeds had to have been obtained as a direct and immediate result of the offence. For example, if a bribe were paid to obtain a contract, the granting of the contract would be a result of the decision by the tenderee to grant the contract, not a result of the bribe itself (although this may have swayed the decision). Therefore, the profit from the contract would not have been obtained directly through bribery so could not be confiscated. The prosecution reportedly did not seek confiscation in *Patria (Egypt)*, *Patria (Slovenia)*, and *Patria (Croatia)* in part because it shared this interpretation of the law. This is a highly concerning interpretation of Finland's law which clearly prevents Finland from seeking confiscation in foreign bribery cases.

*ii. Finland struggles to quantify the proceeds of foreign bribery*

104. Where Finland has pursued confiscation of the proceeds of bribery, the quantification of the proceeds raises concerns. Confiscation has been sought in only one case (*Wärtsilä*). The prosecution in this case sought confiscation of EUR 3 360 000, an amount which was intended to reflect the proceeds of the bribe. In its questionnaire responses, Finland explained that this amount was calculated based on the size of the bribe itself (EUR 3 360 000) because "the proceeds could not be estimated". During the on-site visit, panellists confirmed that the proceeds could be calculated based on the size of the bribe itself. This view ignores the fact that companies are unlikely to pay a bribe unless the benefit received is greater than the bribe paid (i.e. bribery is unlikely to be a zero-sum game). This suggests that even where investigators and prosecutors consider that it is possible to confiscate the proceeds of bribery, they lack the training and expertise required to quantify the proceeds.

**Commentary**

*The lead examiners are seriously concerned that representatives of the Ministry of Justice, the NBI, and the Prosecution Service consider that they are unable to confiscate the proceeds of bribery. They recommend that Finland take steps, including amending legislation if necessary, to ensure it is able to confiscate the proceeds of bribery, including the profits made from a contract obtained through a bribe (recommendation 6a).*

*Where confiscation is sought, Finland appears to struggle to quantify the proceeds of bribery. The lead examiners therefore recommend that Finland regularly provide detailed written information and training to investigators and prosecutors on how to quantify the proceeds of bribery (recommendation 6b). In this regard, Finland could draw from the Working Group's 2012 typology, "Identification and quantification of the Proceeds of Bribery: A Joint OECD-StAR Analysis".*

## **B.6. Mutual Legal Assistance and Extradition in Foreign Bribery Cases**

105. Finland has been active in seeking MLA in its foreign bribery cases. A total of 24 requests have been made in respect of at least six of its seven cases. Finland also actively uses Joint Investigation Teams (JITs), and has done so in two of its foreign bribery cases:

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<sup>48</sup> Coercive Measures Act, chapter 6; Criminal Code, chapter 10.

<sup>49</sup> Criminal Code, chapter 10, section 2.

*Patria (Croatia)* (JIT between Finland, Croatia, and Austria) and *Patria (Slovenia)* (JIT between Finland, Slovenia, and Austria). Finland's Prosecutor's Memorandum on Foreign Bribery expressly contemplates and encourages the establishment of a JIT in foreign bribery cases. The establishment of Finland's JITs have been facilitated by its membership of the EU and with assistance from Eurojust.

106. Since Phase 3, Finland has received and responded to twelve MLA requests in corruption-related cases. A number of Working Group countries responded to the evaluation team's request for information on cooperation with Finland, five of which had experience cooperating with Finland. Cooperation was described as "very good" and Finland's requests are reportedly "of good quality". Finland reportedly responds to requests "in reasonable time", with an estimated average response time of five months. This aligns with Finland's statement that response times are typically between two weeks and six months. Finland has no experience on extradition in foreign bribery cases; the legal and institutional framework on extradition remains as it was in Phase 3.

### *Commentary*

*The lead examiners welcome Finland's proactivity in seeking international cooperation in foreign bribery cases. In particular, they endorse Finland's use of Joint Investigative Teams. This is a good practice which facilitates foreign bribery investigations and prosecutions.*

*The lead examiners emphasise that those Working Group on Bribery members that responded gave positive feedback on Finland's ability to provide prompt and effective international cooperation.*

## C. RESPONSIBILITY OF LEGAL PERSONS

### C.1. Scope of Corporate Liability for Foreign Bribery and Related Offences

#### *a. Types of offences and entities captured*

107. Chapter 9 of the Criminal Code sets out the scope of "corporate criminal liability" in Finland. It provides that corporations, foundations, and other legal entities (hereafter corporations) can, at the request of the public prosecutor, be sentenced to a corporate fine where such a sanction is provided for in the Code.<sup>50</sup> A corporate fine for foreign bribery results in a criminal record. Finland explains that corporate criminal liability applies to any entity with legal rights and obligations in Finland (and that this does not necessarily require registration). Finland further provides that successor liability is dealt with in the substantive law of the legal entity in question. For example, it is a basic principle under the Limited Liability Companies Act that one cannot avoid corporate fines or other forms of legal liability by reorganising a corporate structure.<sup>51</sup>

108. Corporations can be held criminally liable for all aggravated and non-aggravated forms of bribery and corruption, including domestic and foreign, active and passive, public and private. Corporate liability also applies to aggravated and non-aggravated forms of subsidy fraud and money laundering.

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<sup>50</sup> Criminal Code, chapter 9, section 1.

<sup>51</sup> See Chapter 16 and 17 of Limited Liability Companies Act (624/2006).

109. In Phase 3, the Working Group recommended that Finland expressly provide for corporate liability for accounting and auditing offences (recommendation 4). Finland advises that a Bill extending criminal corporate liability to include aggravated accounting is currently before the Parliamentary Legal Committee and, if enacted, will likely enter into force at the beginning of 2018.<sup>52</sup> The proposal does not however, include offences of non-aggravated accounting, nor the auditing offence (which is also non-aggravated).<sup>53</sup> It is therefore unclear whether corporate liability extends to all conduct prohibited under Article 8 of the Convention. During the on-site visit, the Ministry of Justice explained that it did not extend the Bill to non-aggravated offences because aggravated accounting offences make up 75% of these types of crimes.

### *Commentary*

*The lead examiners welcome Finland's proposal to introduce corporate liability for aggravated accounting. However, this liability does not extend to non-aggravated accounting offences or the auditing offence in the Criminal Code. They therefore recommend that Finland ensure that corporations can be held liable for all conduct prohibited under Article 8 of the Convention (recommendation 7).*

#### *b. Prerequisites for criminal corporate liability*

110. The prerequisites for liability are set out in chapter 9, section 2 of the Criminal Code. It provides that legal entities may be sentenced to a fine if:

- a person who is part of its statutory organ; or other management; or who exercises actual decision-making authority, has been an accomplice in the offence; or
- if such a person allowed the commission of the offence; or
- if the care and due diligence necessary for the prevention of the offence have not been observed in the operations of the corporation.<sup>54</sup>

111. During the on-site visit, prosecutors and investigators advised that if relying on the third prerequisite, the prosecution has the burden of proving that the defendant did not take the care and due diligence necessary to prevent the offence. However, they further advised that it is not a complete defence even if the corporation can show that it did take the necessary care. Rather, this is something that the court would take into account as a mitigating factor in sentencing. Finland has not provided any case law on this point.

#### *c. Level of authority of the natural person whose conduct triggers corporate liability*

112. To hold a corporation liable for foreign bribery, the natural person who perpetrates the offence has to:

- be in management; or a service or employment relationship, or acted on an assignment by a representative of the corporation; and
- have acted on the behalf or for the benefit of the corporation.<sup>55</sup>

113. Finland cited extracts from Supreme Court judgments that demonstrate the broad interpretation the courts take with respect to the second requirement above.<sup>56</sup> More generally, Finland's approach to corporate liability represents a hybrid of the two

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<sup>52</sup> Criminal Code, chapter 30, section 9(a).

<sup>53</sup> Criminal Code, chapter 30, section 9, 10 and 10a.

<sup>54</sup> Criminal Code, chapter 9, section 2.

<sup>55</sup> Criminal Code, chapter 9, section 3.

<sup>56</sup> See Supreme Court Judgments No KKO 2014:20 and No KKO 2008:33.



alternative approaches to corporate liability set out in Annex I B of the 2009 Recommendation. While it is sufficiently flexible to capture the actions of individuals at all levels of the organisation, there is still a requirement that a person of authority is an accomplice in the offence or allows its commission. Alternatively, the prosecution must show that the corporation did not take the necessary steps to prevent the offence (see section C.1.b. above). Nonetheless, this is prima facie in line with the Convention and, as in Phase 3, does not raise any specific concerns for the evaluation team.

## **C.2. Enforcement of Corporate Liability for Foreign Bribery**

### ***a. Overview of enforcement to date***

114. The prosecution requested a corporate fine in four out of the five foreign bribery cases to date. In *Patria (Croatia)*, the District Court imposed a corporate fine of EUR 297 000, however, this was overturned by the Court of Appeal at the same time the defendant was acquitted. In *Wärtsilä*, the request for a corporate fine was dismissed on the basis that the consultancy contract pursuant to which the bribes were paid was signed by *Wärtsilä's* Dutch branch, not the Finnish company. In *Patria (Egypt)* and *Patria (Slovenia)* the District Court and Court of Appeal respectively rejected the prosecution's claim for a corporate fine at the same time the defendants were acquitted.

115. Despite this, investigators and prosecutors at the on-site visit maintained that this history of dismissals would not impact on future decisions to investigate and prosecute corporations for foreign bribery. More generally, representatives of law enforcement and the judiciary that attended the on-site agreed that corporate fines are "quite normal" in Finland. The companies that participated in the on-site visit were unanimous in their view that the risk of corporate sanctions is real and taken seriously by Finnish companies. Statistics provided by Finland show that between 2010 and 2015, fines were imposed in approximately 70% of the 367 corporate criminal prosecutions.

### ***b. Imposition of a corporate fine in the absence of a prosecution or conviction against a natural person***

116. Under the Criminal Code (and in line with the Convention), corporate fines may be imposed even if the offender cannot be identified or is not otherwise punished.<sup>57</sup> In three of the four foreign bribery cases in which corporate fines were sought, the courts dismissed the claim for a corporate fine upon acquittal of the defendant (the sole exception is *Wärtsilä*, as explained above). During the on-site visit, investigators, prosecutors, and the judge advised that this came down to lack of evidence that the substantive offence took place. Investigators added that while it is possible to pursue a corporate fine against a corporation without the prosecution of a natural person, they would be unlikely to do so due to lack of evidence that an offence took place. During the on-site visit, investigators noted that a decision on whether to prosecute the company in addition to natural persons is generally made at quite a late stage in the investigation, once all other evidence has been collected. Investigators and prosecutors noted that this does not impact the investigation as they would still search and seize a company's books and records etc. at an early stage in the investigation.

## ***Commentary***

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<sup>57</sup> See Criminal Code, chapter 9, section 2(2) and Annex I of the Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transaction.

*The lead examiners note that corporate fines have been requested in all but one foreign bribery case to date. However, while corporate fines have been imposed on companies for domestic bribery and related offences, no corporate fines have been imposed for foreign bribery. The Working Group should continue to monitor this situation to ensure that Finland is willing and able to impose corporate fines where the foreign bribery offence is proved.*

### C.3. Sanctions Available for Legal Persons for Foreign Bribery

#### a. Proposed changes to sanctions for legal persons

117. Legal persons are subject to a maximum fine of EUR 850 000 for all criminal offences that attract corporate liability.<sup>58</sup> In Phase 3, the Working Group raised concerns that this was too low to act as a sufficient deterrent. This concern is reinforced in light of the low fines requested by the prosecution in foreign bribery prosecutions (see Figure 10 below). Finland currently has a Bill before Parliament that proposes to increase the corporate fines to EUR 250 000 – 2 500 000. While the proposed increase is welcome, panellists at the on-site visit expressed mixed views on whether the proposed increase is sufficient; with representatives of the GPO and Police Board raising concerns that it is not enough, and members of private sector and civil society suggesting that such fines are sufficiently deterrent. As in many countries, the private sector views the reputational damage associated with a foreign bribery prosecution as a far greater threat than a fine.

118. As outlined in section B.2.c. above, a foreign bribery conviction is included in the mandatory criteria for exclusion from public procurement contracts.

#### Commentary

*To ensure sanctions for legal persons are effective, proportionate, and dissuasive, the lead examiners recommend that Finland pass its draft legislation increasing the maximum fine for criminal corporate liability without delay (recommendation 5c).*

#### b. Sanctions imposed in practice.

119. As outlined in Table 6 below, while Finland has not sanctioned any legal persons for foreign bribery, it requested fines ranging between EUR 100 000 and EUR 500 000 in four of its five foreign bribery cases. Between 2010 and 2015, Finland prosecuted one corporation for non-aggravated and one corporation for aggravated bribery of a domestic public official. Fines of EUR 80 000 and EUR 297 000 were imposed on the legal persons respectively. It should be noted that the corporate fines requested in foreign bribery cases and imposed in domestic bribery cases are substantially higher than the average fine of EUR 64 864 imposed on legal persons for other aggravated economic crimes between 2010 and 2015.

**Table 6. Criminal corporate fine requested by the prosecution in foreign bribery cases**

	Amount of bribe paid	Fine requested for legal person	Forfeiture
Wärtsilä	EUR 3 360 000	Min EUR 500 000	Min EUR 3 360 000
Patria (Egypt)	EUR 1 300 000	EUR 100 000	Not sought
Patria (Slovenia)	EUR 2 222 876	EUR 400 000	Not sought
Patria (Croatia)	EUR 1 597 065	EUR 400 000	Not sought
Instrumentarium	USD 1 383 000	Not requested	Not sought

<sup>58</sup>

This is in line with Article 3 of the Convention which requires the sanctions for foreign bribery to be comparable to those available for domestic bribery.

### c. *Ability to waive corporate punishment*

120. Chapter 9 of the Criminal Code sets out various circumstances under which the court may waive the imposition of a corporate fine.<sup>59</sup> This includes where the court deems the punishment *unreasonable* “taking into consideration the measures taken by the corporation to prevent new offences, to prevent or remedy the effects of the offence, or to further the investigation of the omission or offence”. This raises concerns that the court may waive (rather than simply mitigate) a corporate fine where the company has cooperated with investigating authorities or taken steps to remedy the bribe, for example, by adopting compliance measures. Finland states that this provision is only used in “exceptional cases” and cites an example where the Supreme Court determined that a company had taken adequate steps to remedy its breach, but that a corporate fine was still reasonable in the circumstances.<sup>60</sup> In the past five years, corporate fines were waived in approximately 11% of prosecutions against corporations, though it is unknown how many (if any) waivers were based on this specific provision. As outlined above, a corporate fine was imposed in both prosecutions for active bribery of domestic public officials to date.

#### *Commentary*

*While it has not yet been an issue in practice, the fact that the courts could waive a corporate fine where a defendant has taken steps to remedy the payment of a bribe could prove problematic if applied in a foreign bribery case. The lead examiners therefore recommend that the Working Group follow-up on the courts’ use of waivers under §9:4(2)(2) of the Criminal Code to ensure they are applied to bribery cases in exceptional circumstances only(follow-up issue 9f).*

### C.4. **Engagement with the Private Sector**

121. In Phase 3, the Working Group was concerned about the low level of awareness of Finland’s foreign bribery framework among the private sector and issued Finland a series of recommendations to improve engagement with the private sector (recommendations 5a-5e). Finland advises that since 2012, no measures have been taken to engage with corporations or business and professional associations on issues relating to the foreign bribery offence.

122. During the on-site visit, the evaluation team met with a range of business organisations, representatives of eight large companies with transnational operations, and three state-owned enterprises. No SMEs were present. Despite the lack of government driven measures, there was a good level of awareness of the foreign bribery offence among the private sector participants. Almost all representatives agreed that Finnish companies do not have any specific issues recognising corruption and understand the need to have effective compliance programmes in place. One of the representatives indicated that international compliance instruments have a greater impact than government outreach initiatives. Representatives also agreed that businesses understand the difference between corruption risks faced domestically and abroad and the scope of foreign bribery legislation in Finland, the U.K, and the U.S. Moreover, while some representatives suggested the private sector could benefit from government guidance on bribery more generally and whistleblower protections in particular, the majority did not view the lack of guidance or awareness raising measures as an issue. While SMEs were not represented during the on-site visit, those in attendance did acknowledge that smaller businesses with offshore operations, will have less resources to devote to compliance measures may benefit from

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<sup>59</sup> Criminal Code, chapter 9, section 4.

<sup>60</sup> Supreme Court 2008:61 (regarding a workplace safety offence).

increased government guidance on foreign bribery. This is important given an estimate by the Finnish Federation of Enterprises that 20% of Finnish SMEs (approximately 56 000 companies) have export operations.

### *Commentary*

*The Working Group has consistently recognised the need for countries to raise awareness of foreign bribery among the private sector, in particular SMEs. The lead examiners are concerned that Finland has taken no such measures since 2012 and recommend that Finland develop training and/or guidance on foreign bribery specifically targeted at SMEs (recommendation 8).*

## **CONCLUSION: POSITIVE ACHIEVEMENTS, RECOMMENDATIONS, AND ISSUES FOR FOLLOW-UP**

123. The Working Group notes that Finland's commitment to combatting foreign bribery appears to have increased since Finland's Phase 3 follow-up report. The Group welcomes Finland's recent preliminary steps to improve its anti-foreign bribery framework, including the draft Anti-Corruption Strategy. They hope these projects come to fruition in the coming months. However, the Group has grave concerns about Finland's 100% acquittal rate in foreign bribery cases. The Group urges Finland to take urgent steps, including implementing the Working Group's recommendations, to reduce this acquittal rate and ensure the foreign bribery offence is applied as intended and consistently with Article 1 of the Convention.

124. Regarding outstanding Phase 3 recommendations, Finland has implemented recommendations 1 on training for law enforcement; recommendation 2 on the foreign bribery offence; recommendation 3 on the statute of limitations; recommendations 8a, b, and c on accounting; recommendation 10 on ODA, and recommendation 12 on public advantages. Recommendations 4 on false accounting, recommendations 5(e)-(g) on awareness raising, recommendation 6 on reporting, and recommendation 7 on whistleblower protection remain unimplemented and are reflected below in the Group's Phase 4 recommendations to Finland.

125. In conclusion, based on the findings in this report, the Working Group acknowledges the good practices and positive achievements set out in Part 1 below and makes the recommendations set out in Part 2 below. The Working Group will also follow-up on the issues identified in Part 3 below. The Working Group invited Finland to submit a written report on the implementation of these recommendations and issues for follow-up in two years (i.e. in March 2019). The Working Group also invited Finland to provide detailed information on its foreign-bribery enforcement actions when it submits this report.

### **Positive Achievements and Good Practices**

126. This report has identified several good practices and positive achievements by Finland which have proved effective in combating bribery of foreign public officials and

enhancing enforcement.<sup>61</sup> Finland's seven foreign bribery investigations have been actively pursued by the National Bureau of Investigation (NBI) using the full range of available investigative tools. Written investigation plans are a good practice employed by Finland in its investigations. These plans are compulsory for all economic crime investigations and are developed by the investigative team in accordance with a standard form and in consultation with the prosecutor. The plans ensure cooperation and information-sharing between the NBI and the Prosecution Service, as well as ensuring all aspects of an investigation are considered (including, for example, the use of various investigative tools or alternative charges). Joint Investigation Teams (JITs) are another good practice actively used by Finland in several cases. JITs are expressly encouraged in the Prosecutor's Memorandum on Foreign Bribery and are facilitated by Finland's membership of the EU.

127. Further positive achievements include the independence reported in Finland's foreign bribery investigations and prosecutions to date; this is highlighted by the investigation and indictment of a state-owned company in three of the five concluded foreign bribery cases. Finland has also proved its ability to effectively detect foreign bribery allegations involving Finnish individuals and companies. All nine of its allegations have been independently detected through the use of a wide range of detection sources, including reports from the media, foreign representations, whistleblowers, the financial intelligence unit, foreign jurisdictions, and evidence from other cases.

## Recommendations of the Working Group

1. Regarding the detection of foreign bribery, the Working Group recommends that Finland:
  - a. Ensure the MFA develops guidance for all officials posted abroad to require the reporting of foreign bribery, explain the reporting channels, and provide advice on how to detect foreign bribery (e.g. through systematic media monitoring and alerts). [2009 Recommendation III.iv and IX.ii]
  - b. Amend its legislation to provide clear, comprehensive protections for whistleblowers, for example, by enacting a dedicated whistleblower protection law which applies across the public and private sectors. [2009 Recommendation IX.iii; Phase 3 recommendation 7]
  - c. Amend section 18 of the Act on the Public Disclosure and Confidentiality of Tax Information to allow the Tax Administration to report suspected corruption to law enforcement authorities, on its own initiative, notwithstanding legislative restrictions on confidentiality. [2009 Tax Recommendation]
2. Regarding cooperation, resources, and specialisation in foreign bribery cases, the Working Group recommends that Finland:
  - a. Ensure that under the planned restructure of the Prosecution Service, foreign bribery cases continue to be assigned to prosecutors with sufficient specialisation and expertise. [Convention, Article 5; 2009 Recommendation, Annex I.D]
  - b. Ensure that the National Bureau of Investigation (NBI) resources for foreign bribery are maintained and that prosecutorial resources are sufficient to enable the early involvement of prosecutors in foreign bribery cases. [Convention, Article 5; 2009 Recommendation, Annex I.D]

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<sup>61</sup> In defining the parameters for Phase 4, the Working Group agreed that Phase 4 evaluations should also reflect good practices and positive achievements which have proved effective in combating foreign bribery and enhancing enforcement. See [Phase 4 Monitoring Guide](#).

- c. Ensure that foreign bribery cases are heard by judges with specialised skills and experience. [Convention, Article 5; 2009 Recommendation, Annex I.D]
3. Regarding the evidentiary threshold for the foreign bribery offence, the Working Group recommends that Finland:
  - a. Provide detailed written information to investigators, prosecutors, and judges (whether separately or collectively) on the requirements of the foreign bribery offence under Article 1 of the Convention and its commentaries. This information should, at a minimum, clarify:
    - i. the type of evidence (whether circumstantial or direct) required to prove a briber's intent with respect to each element of the offence. This should emphasise that a direct link between a bribe payer and bribe recipient is not required in all cases and that circumstantial evidence should be sufficient;
    - ii. that an error of law is only a defence in the limited circumstances set out in chapter 4, section 2 of the Criminal Code.
    - iii. the exact elements of the offence that must be met to ensure a conviction. This should clarify that for the purposes of foreign bribery, it does not matter whether a foreign public official is in fact in a position to influence matter for which the bribe was paid, nor is there a requirement that the bribe recipient be aware of the offer, promise, or gift of a bribe;
    - iv. the admissibility of foreign judgments on the same matter in Finnish foreign bribery cases. [Convention, Article 1; 2009 Recommendation, Annex I.D; Phase 3 Recommendation 1]
  - b. Use the written information outlined in recommendation 3a as the basis for comprehensive training sessions for investigators, prosecutors, and judges on the application of the foreign bribery offence. [Convention, Article 1; 2009 Recommendation, Annex I.D; Phase 3 Recommendation 1]
4. Regarding sanctions for foreign bribery, the Working Group recommends that Finland:
  - a. Encourage prosecutors to make full use of business prohibition orders in foreign bribery cases. [Convention, Article 3(4); 2009 Recommendation III.ii]
  - b. Consider introducing a system of settlement for legal persons as part of its efforts to increase enforcement.[Convention, Article 3(1); 2009 Recommendation III.ii]
  - c. Enact legislation to increase the maximum criminal corporate fine under chapter 9 of the Criminal Code. [Convention, Article 3(1); 2009 Recommendation III.ii]
5. Regarding confiscation, the Working Group recommends that Finland:
  - a. Take steps, including amending legislation if necessary, to ensure it is able to confiscate the proceeds of bribery, including the profits made from a contract obtained through a bribe. [Convention, Article 3(3)]
  - b. Regularly provide detailed written information and training to investigators and prosecutors on how to quantify the proceeds of bribery. [Convention, Article 3(3)]
6. Regarding false accounting, the Working Group recommends that Finland ensure that corporations can be held liable for all conduct prohibited under Article 8 of the Convention. [Convention, Article 8; 2009 Recommendation X.A.i]
7. Regarding awareness, the Working Group recommends that Finland develop training and/or detailed written information on foreign bribery specifically targeted at SMEs. [2009 Recommendation III.i, X.C.i and Annex II; Phase 3 recommendation 5(c)]

## Follow-up by the Working Group

8. The Working Group will follow-up on the issues below as case law, practice, and legislation develops:
  - a. The ability of Finland's FIU to independently detect foreign bribery through suspicious transaction reports;
  - b. The ability of Finland's accountants and auditors to detect and report foreign bribery;
  - c. Whether, once the planned restructure of the Prosecution Service is implemented, the assigned prosecutors continue to be involved early in foreign bribery investigations and participate fully throughout the investigation process, including through regularly reviewing and assessing the adequacy of the investigation plan;
  - d. The composition of the courts in future foreign bribery cases to ensure that lay judges are subject to the necessary guarantees of independence and to avoid the appearance of improper influence;
  - e. The practical operation of the new plea bargaining system in foreign bribery cases, including the waiver of charges and whether the sanctions applied are effective, proportionate, and dissuasive; and
  - f. The courts' use of waivers under §9:4(2)(2) of the Criminal Code to ensure they are applied to bribery cases in exceptional circumstance only.

## ANNEX 1: FINLAND'S FOREIGN BRIBERY ENFORCEMENT ACTIONS

The following are anonymised descriptions of some of the allegations of foreign bribery involving Finnish nationals or companies. As discussed in this report (see the Introduction), since the enactment of Finland's foreign bribery offence in 1999, eleven allegations of foreign bribery have emerged. Of these, eight have progressed to a formal investigation. Six of these investigations have progressed to prosecution, five for foreign bribery and one for tax and accounting offences. At the on-site visit, Finland informed the evaluation team that two investigations are ongoing, both of which are in the preliminary stage. The remaining three allegations are not being investigated. For reasons of confidentiality and to avoid compromising the integrity of ongoing cases, very little information was available to the evaluation team. Consequently, this Annex does not include full descriptions of all cases.

### 1. Ongoing investigations into potential foreign bribery

Finland has two ongoing investigations into potential bribery of foreign public officials by Finnish companies. Both foreign bribery investigations are at a preliminary stage and the investigations have yet to confirm whether there is evidence of foreign bribery. Consequently, Finland was unable to share detailed information about the cases. Both cases were detected during other investigations. One of these investigations was initially pursued as aggravated tax fraud; however, the prosecutor in the case directed the NBI to obtain further information on the bribe-recipient in order to confirm whether the investigation and prosecution should extend to foreign bribery. MLA has already been sought in one case, and Finland states that it will also soon be sought in the second case.

### 2. Completed cases resulting in acquittal

#### *Instrumentarium*

Instrumentarium, a Finnish medical-supply company, was accused of paying EUR 8.3 million in bribes in 2001-2002 to Costa Rican officials, including a former president, to secure a EUR 35.8 million contract. The bribes were paid as commission payments to an intermediary distributor company. The bribe-recipients were convicted of embezzlement in Costa Rica in 2009 and sentenced to three years' imprisonment (reduced from five years' on appeal in 2011). Finland detected the allegation through a report from the MFA, media reports, and information obtained from Costa Rica. In 2005, Finland opened an investigation. MLA was sought from three countries and investigators travelled to Costa Rica where significant evidence was obtained from the Costa Rican police files. In addition, Finland utilised a broad range of investigative tools, including interception, surveillance, search and seizure, analysis of tax and financial records, and arresting and interviewing suspects and witnesses. In April 2012, aggravated bribery charges were brought against three executives in the District Court of Helsinki. The prosecution did not request a corporate fine for Instrumentarium itself. All were acquitted in 2013. The District Court's decision turned on the level of intent of the defendants. The Court concluded that the circumstantial evidence was insufficient to show that the Finnish defendants knew (or considered it "highly likely") that the commission payments to the intermediary would be used to bribe Costa Rican officials. The Court gave weight to the fact that Instrumentarium had worked with the intermediary distributor company for several decades, and that the commission payments were within the usual range. The documentary evidence was repudiated by the defendants. For example, changes to the



commission payments (allegedly to incorporate the requested bribes) were attributed to logistical costs or difficult negotiations. Oral testimony from the intermediary was deemed unreliable due to inconsistencies in the testimony and in light of contradictory testimony from the defendants' witnesses from Instrumentarium and related companies. The Court did not question the defendants' limited due diligence; for example, certifying invoices without checking the direction of invoice payments or permitting payments to Panama even though in the past the distributor company typically used Costa Rican accounts. The Court also noted that the project was "a success in every respect", including for Costa Rica, and deemed it "significant" that the recipients were convicted only of embezzlement in Costa Rica and that the Finnish parties were not implicated in the Costa Rican case.

### *Patria (Croatia)*

From 2005-2008, Patria allegedly paid EUR 1.6 million in bribes to officials from the Croatian military to obtain a EUR 112 million contract for armoured vehicles. The bribes were paid through an Austrian consulting company using fabricated agreements and false invoices. Finland detected the allegation through evidence obtained in another investigation. In early 2010, the NBI opened an investigation. A JIT was established between Finland, Croatia, and Austria. MLA was also made outside the context of the JIT. In addition, Finland obtained financial and tax records, exercised search and seizure, and questioned witnesses and suspects in all three relevant countries. In June 2013, Finland brought charges of aggravated bribery against Patria and three natural persons in the District Court of Kanta-Häme. Prosecutors sought a corporate fine of EUR 400 000 and unconditional imprisonment of at least three years and three months for the natural persons. No confiscation was sought. In February 2015, the District Court convicted two natural persons (Patria's former Chief Executive and a project manager) of bribery and sentenced them to 1 year, 8 months' conditional imprisonment. The third natural person was acquitted. Patria was fined EUR 300 000. The prosecution appealed in order to seek higher sentences. In 2016, the Court of Appeal dismissed the case and acquitted all natural and legal persons. The case turned on whether the defendants knew (or should have known) of the bribe. The documentary evidence, largely consisting of emails, was dismissed as no messages explicitly mentioned the bribes, and seemingly coded messages were given alternative explanations by the defendants. The Court of Appeal also concluded that "no significance can be attached" to whether the industry or region in which the bribery occurred was high-risk.

### *Patria (Slovenia)*

In the third Patria case, Patria reportedly paid EUR 3 million in bribes from 2005-2007 to the President of Slovenia, a former Prime Minister, and officials from the Slovenian Ministry of Defence in order to secure a EUR 265 million contract for armoured vehicles. As in *Patria (Croatia)*, the bribes were paid through an Austrian consulting company using fabricated agreements and false invoices. Finland detected the case through the FIU, which obtained information from Interpol. In 2008, the NBI opened an investigation. A JIT was established with Finland, Slovenia, and Austria. MLA was sought from six countries. Finland used all available coercive investigative techniques, including search and seizure and the arrest and questioning of suspects. In 2011, aggravated bribery charges were brought in the District Court of Kanta-Häme against Patria and six natural persons. The prosecution sought a corporate fine of EUR 400 000 and unconditional imprisonment for the natural persons. No confiscation was sought. In 2014, all defendants were acquitted. The request for a corporate fine was dismissed at the same time. The prosecution appealed. The Court of Appeal rejected all charges and acquitted the defendants in February 2016. The case focused on the defendants'

knowledge of the bribe, as well as whether the foreign public officials were in fact in a position to influence the tendering of the contract. In both cases, the Court concluded that there was insufficient evidence. The former Prime Minister and several Slovenian officials had been convicted in Slovenia in 2013, but later acquitted following the expiry of the proceedings' limitation period. The Finnish Court noted this, while also stating that "foreign judgments cannot be assigned much importance".

### ***Wärtsilä***

A subsidiary of Wärtsilä, a Finnish energy-related manufacturing company, allegedly paid EUR 3.4 million in bribes to Kenyan officials between 1999 and 2001 to obtain a EUR 14.5 million contract to build a power plant. The bribes were reportedly paid in five parts through an intermediary consulting company pursuant to a consultancy agreement signed by Wärtsilä's Dutch branch. Finland detected the case through information from another country. In 2007, the NBI opened an investigation. MLA was requested from three countries, premises were searched, witnesses and suspects questioned, and financial records obtained. In 2009, aggravated bribery charges were brought in the District Court against Wärtsilä and one executive. The District Court acquitted the defendant based on the finding that the offending predated the foreign bribery offence. The prosecution appealed this finding to the Court of Appeal on the basis that four of the five payments were paid after the enactment of the offence. The Court of Appeal approved the appeal. The defendants subsequently appealed to the Supreme Court which confirmed the Court of Appeal's decision and remitted the case back to the District Court for retrial. Upon retrial in 2013, the District Court convicted the executive of aggravated bribery and sentenced him to 1.5 years' imprisonment. Wärtsilä was acquitted on the basis that the consultancy contract pursuant to which the bribes were paid was signed by Wärtsilä's Dutch branch, not the Finnish company. The prosecution appealed to the Court of Appeal, requesting a corporate fine of EUR 500 000 and confiscation of EUR 3 360 000. On appeal in 2014, the Court of Appeal overruled the verdict and acquitted both the natural and legal person. The judgments were not provided to the evaluation team, but Finland explained that the Court concluded that there was insufficient evidence that the defendants knew that the consulting company paid a bribe, including a lack of knowledge of the bribe-recipient and his status as a public official. The Court of Appeal also reportedly found that there was insufficient proof that the foreign public officials were in fact in a position to influence the tendering of the contract. The prosecution sought leave to appeal to the Supreme Court in 2015, but the application was rejected.

## **3. Completed cases resulting in conviction**

### ***Patria (Egypt)***

Patria, a state-owned Finnish defence company, was accused of paying EUR 1.3 million in bribes between 1999 and 2006 to officials from an Egyptian state-owned military production company to obtain an artillery contract. A whistleblower alerted Finland to the allegation and information implicating Patria was also received through Interpol in the context of another investigation into the company. In August 2007, the NBI opened an investigation into Patria and eight of its employees. MLA was sought from several companies, including Egypt which denied the requests on the grounds of sovereignty. Finland also exercised a variety of investigative techniques, including search and seizure, obtaining financial records, and arresting and questioning witnesses, experts and suspects. In June 2010, aggravated bribery charges were brought against Patria and five of its executives in the District Court of Pirkanmaa. False accounting charges were also pursued against the natural persons. The prosecution sought a corporate fine of EUR

100 000 and unconditional imprisonment for the natural persons. Confiscation was not sought. In 2011, the Court convicted four natural persons of aggravated book-keeping offences, but acquitted all parties of foreign bribery. The defendants appealed to the Court of Appeal in 2013. The Court of Appeal upheld the foreign bribery acquittals, and confirmed the false accounting convictions of three natural persons while acquitting the fourth. The foreign bribery aspect of the case turned on the defendants' knowledge of the bribe-recipients' status as foreign public officials. The Court of Appeal reviewed the Finnish law, the preparatory legislative work, and the Convention, and concluded that the bribe-recipients, as decision-makers exercising a public function in a state-owned enterprise, would fall within the Finnish definition of foreign public official. However, the Court found that the defendants could not reasonably have known this because they performed a similar function for a state-owned company and did not consider themselves public officials (although, as outlined earlier in this report, under Finnish law, the defendants would in fact be considered public officials).

#### **4. Allegations which are not being formally investigated**

##### ***SOE Case***

A company which is jointly state-owned by Finland and another country allegedly paid bribes to foreign officials through a local subsidiary. Finland detected this allegation through an MLA request. Finland has provided significant assistance to other countries, including search and seizure, arranging hearings and obtaining testimony. Finland has also been in communication with the investigating authorities in the foreign country to discuss the evidence. Finland reports that there is not yet sufficient evidence for Finland to open an investigation.

##### ***Manufacturing Case***

A Finnish company allegedly paid bribes to a foreign public official. The allegation was detected by Finland through a media allegation. To verify the allegation, Finland has made informal requests for information to foreign law enforcement authorities and has reportedly also consulted other official sources. However, no evidence of foreign bribery has been found and Finland has been unable to corroborate the media allegation. Consequently, an investigation has not yet been opened.

## ANNEX 2: PHASE 3 RECOMMENDATIONS TO FINLAND AND ASSESSMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY IN 2012

### Recommendations of the Working Group in Phase 3: Assessment at time of 2 year-written follow-up\*

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

<p>1. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Finland provide regular training and establish internal guidance for law enforcement authorities and prosecutors concerning the investigation and prosecution of the foreign bribery offence, including on: (i) the distinction between the non-aggravated and aggravated forms of the active bribery offences in the Criminal Code; and (ii) the scope of application of the active bribery offences to legal persons, including the factors that trigger corporate criminal liability (Phase 2 Evaluation, Recommendation 7; 2009 Recommendation II).</p>	<p><b>Partially implemented</b></p>
<p>2. Regarding the offence of foreign bribery, the Working Group recommends that Finland amend the definition of foreign public official in § 40:11(4) of the Criminal Code to include a person holding a legislative office in a foreign country (Convention, Article 1(4)(a)).</p>	<p><b>Not implemented</b></p>
<p>3. Regarding the limitation period, the Working Group recommends that Finland take action to ensure that the overall limitation period applicable to the foreign bribery offence is sufficient to ensure adequate investigation and prosecution, including that mechanisms for extension of the limitation period are sufficient and reasonably available (Convention, Article 6).</p>	<p><b>Not implemented</b></p>
<p>4. Regarding false accounting, the Working Group recommends that Finland amend the Criminal Code to expressly provide for corporate liability in respect of the accounting and auditing offences in Chapter 30, as well as for the accounting offences in the Accounting Act (Convention, Article 8; 2009 Recommendation X.A).</p>	<p><b>Not implemented</b></p>

*Recommendations for ensuring effective prevention and detection of foreign bribery*

5. Regarding awareness-raising, the Working Group recommends that Finland:	
a) Take urgent steps to raise awareness within the public and private sectors that the bribery offences under § 16:13 and § 16:14 of the Criminal Code include: (i) bribery of a foreign public official, including of a person holding a legislative office in a foreign country; and (ii) bribery through an intermediary, including through a related legal person abroad (Convention, Article 1(1) and 1(4)(a); 2009 Recommendation III(i)).	<b>Fully implemented</b>
b) Take concrete steps to raise awareness of the Convention and the foreign bribery offence in key government agencies, including FINNVERA, MFA, and the Tax Administration (2009 Recommendation III(i)).	<b>Fully implemented</b>
c) Take concrete steps to raise awareness of Finland's framework for combating foreign bribery in the private sector, including within high risk sectors such as the defence industry and with SOEs, SMEs and the legal, accounting and auditing professions (2009 Recommendation III(i)).	<b>Partially implemented</b>
d) Take concrete steps to raise awareness of the responsibility of legal persons for the foreign bribery offence, including amongst SOEs and their auditors (Convention, Article 2; 2009 Recommendation III(i)).	<b>Not implemented</b>
e) Promote the Good Practice Guidance in Annex 2 of the 2009 Recommendation to all Finnish enterprises, business organisations and professional associations, including through Finnish missions abroad (2009 Recommendation X.C).	<b>Not implemented</b>
6. Regarding the reporting of foreign bribery, the Working Group recommends that Finland introduce appropriate measures to facilitate reporting by public officials to law enforcement authorities of suspected acts of foreign bribery detected in the course of their work (2009 Recommendation III(iv) and IX(ii)).	<b>Not implemented</b>

<p>7. Regarding whistleblower protection, the Working Group recommends that Finland introduce mechanisms to ensure that public and private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary action, along with appropriate measures for raising awareness of these mechanisms (2009 Recommendation IX(iii)).</p>	<p><b>Not implemented</b></p>
<p>8. Regarding external auditing, the Working Group recommends that Finland:</p>	
<p>a) Take measures to ensure that the significant number of companies released from the obligation to carry out an external audit, following amendments to the Auditing Act, continue to voluntarily submit to an external audit and are aware of the foreign bribery offence and related accounting and auditing offences (Phase 2 Evaluation, Recommendation 5; 2009 Recommendation X.B(i)).</p>	<p><b>Not implemented</b></p>
<p>b) Amend the Auditing Act to require external auditors who discover indications of a suspected act of foreign bribery to report this discovery to management and, as appropriate, to corporate monitoring bodies (Phase 2 Evaluation, Recommendation 3; 2009 Recommendation X.B(iii)).</p>	<p><b>Not implemented</b></p>
<p>c) Consider requiring external auditors who discover indications of a suspected act of foreign bribery to report to competent authorities independent of the company (2009 Recommendation X.B(v)).</p>	<p><b>Not implemented</b></p>
<p>9. Regarding taxation, the Working Group recommends that Finland:</p>	
<p>a) Establish clear guidelines for tax inspectors, particularly concerning: (i) the coverage of bribes to foreign public officials as a form of non-deductible expense under section 16 of the Business Tax Act; (ii) how active bribery investigations should be taken into consideration by the Tax Administration; and (iii) on the obligation of officials in the Tax Administration to report cases of suspected foreign bribery to investigative authorities (Phase 2 Evaluation, Recommendation 3; 2009 Recommendation VIII(i); 2009 Tax Recommendations I(i) and II).</p>	<p><b>Fully implemented</b></p>

<p>b) Provide guidance to taxpayers on the non-deductibility of bribes to foreign public officials, along with the type of expenses that are deemed to constitute bribes, including gifts and entertainment expenses (2009 Recommendation VIII(i); 2009 Tax Recommendation I(ii)).</p>	<p><b>Fully implemented</b></p>
<p>c) Provide guidance to taxpayers on the non-deductibility of bribes to foreign public officials, along with the type of expenses that are deemed to constitute bribes, including gifts and entertainment expenses (2009 Recommendation VIII(i); 2009 Tax Recommendation I(ii)).</p>	<p><b>Fully implemented</b></p>
<p>10. Regarding official development assistance (ODA), the Working Group recommends that Finland take steps to ensure that: (i) persons applying for ODA contracts be required to declare that they have not been convicted of corruption offences; (ii) due diligence is carried out prior to the granting of ODA contracts; (iii) ODA contracts specifically prohibit contractors and partner agencies from engaging in foreign bribery; and (iv) sub-contractors and contracted local agents be bound by the same prohibition (2009 Recommendation XI).</p>	<p><b>Not implemented</b></p>
<p>11. Regarding officially supported export credits, the Working Group Recommends that Finland's export credit agency, FINNVERA, establish formal guidelines concerning: (i) due diligence and enhanced due diligence; (ii) disclosure of credible evidence of bribery to law enforcement authorities; and (iii) the consequences of a client or applicant being the subject of allegations or convictions of bribery, either before or after approving support (2006 Export Credit Recommendation I).</p>	<p><b>Fully implemented</b></p>
<p>12. Regarding other forms of public advantages, the Working Group recommends that Finland issue guidelines to public procurement authorities to: (i) require consideration of international blacklists during the tender process; (ii) include such listing as a possible basis of exclusion from application for public tenders; (iii) establish mechanisms to verify the accuracy of information provided by applicants, along with enhanced due diligence where appropriate; and (iv) include, within public procurement contracts, termination and suspension clauses in the event of the discovery by procurement units that information provided by the applicant was false, or by reason of the contractor subsequently engaging in bribery during the course of the contract (2009 Recommendations II and XI).</p>	<p><b>Not implemented</b></p>

### Follow-up by the Working Group

<p>The Working Group will follow up the issues below as case law and practice develops:</p>
<p>a) Case law concerning the differentiation between aggravated and non-aggravated bribery.</p>
<p>b) The reliance by Finland on the aggravating feature in § 16:14(1) of the Criminal Code (bribes intended to make an official act in service contrary to his or her duties), in particular whether this non-autonomous element of the offence causes difficulties in the investigation and prosecution of the offence.</p>
<p>c) The application of effective, proportionate and dissuasive sanctions against natural and legal persons, in particular concerning: (i) the lapse of sanctions; (ii) the use of provisions on exclusion from competition for public procurement; and (iii) bans on engaging in commercial activities under the Business Prohibition Act.</p>
<p>d) The confiscation of the instrument of the bribe and its proceeds (or their equivalents), including pre-trial seizure and confiscation measures.</p>
<p>e) Experience of cooperation with competent authorities in other countries concerning the identification, freezing, seizure, confiscation or recovery of bribes, and the proceeds of bribes, to foreign public officials.</p>
<p>f) The proposal to introduce a system of plea bargaining in Finland, and any impact this system may have on the investigation and prosecution of foreign bribery cases.</p>
<p>g) The application of money laundering offences in cases where foreign bribery is the predicate offence.</p>
<p>h) The adequacy of the monetary thresholds that determine the application of the HILMA information system to public tenders.</p>



## ANNEX 3: LEGISLATIVE EXTRACTS

### THE CRIMINAL CODE OF FINLAND

#### Chapter 1 - Scope of application of the criminal law of Finland (626/1996)

##### Section 9 - Corporate criminal liability (626/1996)

If, under this Chapter, Finnish law applies to the offence, Finnish law applies also to the determination of corporate criminal liability.

#### Chapter 3 - The general prerequisite of criminal liability (515/2003)

##### Section 6 – Intent (515/2003)

A perpetrator has intentionally caused the consequence described in the statutory definition if the causing of the consequence was the perpetrator's purpose or he or she had considered the consequence as a certain or quite probable result of his or her actions. A consequence has also been intentionally caused if the perpetrator has considered it as certainly connected with the consequence that he or she has aimed for.

#### Chapter 4 – Grounds for exemption from liability (515/2003)

##### Section 2 – Mistake as to the unlawfulness of the act (515/2003)

If the perpetrator errs in regarding his or her act as lawful, he or she is exempt from criminal liability if the mistake is to be deemed manifestly excusable due to the following factors:

- (1) the defective or erroneous publication of the law,
- (2) the particular obtuseness of the contents of the law,
- (3) erroneous advice by an authority, or
- (4) another reason comparable to these.

#### Chapter 8 - Statute of limitations

##### Section 1 – Time-barring of the right to bring charges (297/2003)

...

- (2) The right to bring charges is time-barred if charges have not been brought

...

(2) within ten years, if the most severe penalty is imprisonment for more than two years and at most eight years

(3) within five years, if the most severe penalty is imprisonment for over a year and at most two years ...

##### Section 7 – Time-barring of a request for a corporate fine (297/2003)

The period of limitation for the presentation of a request for a corporate fine is the same as for the bringing of charges for the offence that is the basis for the request. However, the minimum period of limitation is five years.

#### Chapter 9 - Corporate criminal liability (743/1995)

##### Section 1 - Scope of application (61/2003)

(1) A corporation, foundation or other legal entity<sup>1</sup> in the operations of which an offence has been committed shall on the request of the public prosecutor be sentenced to a corporate fine if such a sanction has been provided in this Code for the offence. (441/2011)

(2) The provisions in this Chapter do not apply to offences committed in the exercise of public authority.

#### Section 2 - Prerequisites for liability (61/2003)

(1) A corporation may be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence have not been observed in the operations of the corporation.

(2) A corporate fine may be imposed even if the offender cannot be identified or otherwise is not punished. However, no corporate fine shall be imposed for a complainant offence which is not reported by the injured party so as to have charges brought, unless there is a very important public interest for the bringing of charges.

#### Section 3 - Connection between offender and corporation (743/1995)

(1) The offence is deemed to have been committed in the operations of a corporation if the perpetrator has acted on the behalf or for the benefit of the corporation, and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation.

(2) The corporation does not have the right to compensation from the offender for a corporate fine that it has paid, unless such liability is based on statutes on corporations and foundations.

#### Section 18 - Corporate criminal liability (637/2011)

The provisions on corporate criminal liability apply to the giving of bribes, the aggravated giving of bribes, the giving of bribes to a member of Parliament, and the aggravated giving of bribes to a member of Parliament.

#### Chapter 10 — Forfeiture (875/2001)

##### Section 2 — Forfeiture of the proceeds of crime (875/2001)

(1) The proceeds of crime shall be ordered forfeit to the State. The forfeiture shall be ordered on the perpetrator, a participant or a person on whose behalf or to whose benefit the offence has been committed, where these have benefited from the offence.

(2) If no evidence can be presented as to the amount of the proceeds of crime, or if such evidence can be presented only with difficulty, the proceeds shall be estimated, taking into consideration the nature of the offence, the extent of the criminal activity and the other circumstances. ...

##### Section 4 — Forfeiture of an instrument of crime (875/2001)

...

(2) Also the following may be ordered forfeit to the State:

(1) an object or property that has been used in the commission of an intentional offence, and

(2) an object or property that is closely connected to an intentional offence for which the proceedings have been brought, when it has been obtained or prepared solely or

mainly for the intentional offence or where its characteristics make it especially suitable as an instrument of an intentional offence. ...

#### Chapter 16 - Offences against the public authorities (563/1998)

##### Section 13 – Giving of bribes (604/2002)

(1) A person who promises, offers or gives to a public official in exchange for his or her actions in service a gift or other benefit intended for him or her or for another, that influences or is intended to influence or is conducive to influencing the actions in service of the public official, shall be sentenced for the giving of bribes to a fine or to imprisonment for at most two years.

(2) Also a person who, in exchange for the actions in service of a public official, promises, offers or gives the gift or benefit referred to in subsection 1 shall be sentenced for bribery.

##### Section 14 - Aggravated giving of bribes (563/1998)

###### If in the giving of bribes

(1) the gift or benefit is intended to make the person act in service contrary to his or her duties with the result of considerable benefit to the briber or to another person or of considerable loss or detriment to another person, or

(2) the value of the gift or benefit is considerable

and the bribery is aggravated also when assessed as whole, the offender shall be sentenced for aggravated giving of bribes to imprisonment for at least four months and at most four years.

##### Section 14(a) – Giving of bribes to a member of Parliament (637/2011)

(1) A person who promises, offers or gives a member of Parliament a gift or other benefit that is to be deemed other than customary hospitality, intended for him or her or another person in order to have the member of Parliament act or refrain from acting in his or her parliamentary mandate in a certain manner or as a reward for such action, and the act is conducive towards clearly undermining confidence in the independence of the exercise of the parliamentary mandate, shall be sentenced for giving of bribes to a member of Parliament to a fine or imprisonment for at most two years.

(2) Political campaign financing in accordance with the Act on Financing of Political

Campaigns given to a candidate is not deemed to be the giving of a bribe to a member of Parliament, unless its purpose is to circumvent subsection 1.

##### Section 14(b) – Aggravated giving of bribes to a member of Parliament (637/2011)

###### If in the giving of bribes to a member of Parliament

(1) the gift or benefit is intended to make the person act in his or her parliamentary mandate to the considerable benefit of the briber or another person or to considerable loss or detriment to another person, or

(2) the value of the gift or benefit is considerable

and the giving of a bribe to a member of Parliament is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated giving of bribes to a member of Parliament to imprisonment for at least four months and at most four years.

#### Chapter 40 - Offences in office (604/2002)

##### Section 11 – Definitions (604/2002)

For the purposes of the present law:

...

(4) a foreign public official refers to a person who has been appointed or elected to an administrative or judicial office or position in a body or court of a foreign state or public international organisation, or who otherwise attends to a public function on behalf of a body or court of a foreign state or public international organisation,...

## **CRIMINAL PROCEDURE ACT**

Chapter 5(b) – Proceedings on the basis of a plea of guilty (670/2014)

Section 3 (670/2014)

(1) Unless the court decides otherwise, proceedings on the basis of a plea of guilty consist of the following stages, in the order indicated:

(1) the prosecutor shall clarify the content of the proposal for judgment and the other circumstances connected with it, and present to the necessary extent the criminal investigation material dealing with the case;

(2) the court shall inquire of the defendant, whether or not he or she continues to admit the offence and consents to the consideration of the case in the procedure provided in this Chapter and whether or not he or she understands also in other respects the content and significance of the proposal for judgment, and seek to ensure that the proposal corresponds to the intent of the defendant;

(3) reserve the defendant an opportunity to otherwise comment on the proposal for judgment and the criminal investigation material;

(4) reserve the injured party an opportunity to comment on the proposal for judgment

(5) other claims are heard;

(6) the parties are provided with an opportunity to present their closing statement.

(2) The court shall ensure that the case is dealt with appropriately and that irrelevant matter are not mixed into the case. The court shall use questions to eliminate ambiguities and deficiencies in the statements of the parties.

Section 4 (670/2014)

(1) The court shall issue a judgment according with the proposal for judgment if:

(1) the defendant has made the admission and given the consent referred to in section 3, subsection 1(2);

(2) no reasonable doubt remains regarding the voluntary and valid nature of the admission, taking into consideration also the criminal investigation material concerning the case;

(3) the court convicts in accordance with the proposal for judgment;

(4) there is otherwise no bar to acceptance of the proposal.

(2) The judgment shall contain in addition a decision on the other claims based on the offence and connected with the consideration of the case. The court may also confirm a settlement, through application of the provisions of Chapter 20 of the Code of Judicial Procedure.

## **ANNEX 4: LIST OF PARTICIPANTS IN THE ON-SITE VISIT**

### **Government Ministries and Agencies**

- Finnfund
- Finnish Competition and Consumer Authority
- Finnish Funding Agency for Innovation
- Finnish Tax Administration
- Minister of Justice
- Ministry of Economy, Trade and Industry
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Justice

### **Law Enforcement and the Judiciary**

- Asset Recovery Office
- Court of Appeal Justice
- Financial Intelligence Unit, NBI
- General Prosecutor's Office
- Itä-Uusimaa Prosecutor's Office
- National Bureau of Investigation
- National Police Board

### **Private enterprises**

- Bonava Oy
- Cargotec
- Fira Oy
- Fortum
- Lemminkäinen Oyj
- Metso Corporation
- Neste
- Posti Group
- Stora Enso Oyj
- UPM-Kymmene
- VR Group
- YIT

### **Business organisations and auditing associations**

- Central Organisation of Finnish Trade Unions
- Chamber of Commerce
- Confederation of Finnish Industries
- Finnish Commerce Federation
- Finnish Institute of Authorised Public Accountants
- Finnish Shipowners' Association
- Federation of Finnish Technology Industry

- Institute of Internal Auditors of Finland

### **Legal profession**

- Dittmar & Indrenius
- Hannes Snellman
- Krogerus
- Roschier

### **Civil society and academics**

- Association for Investigative Journalism in Finland
- European Institute for Crime Prevention and Control
- Felm
- Helsingin Sanomat
- Helsinki University
- Police University College
- Transparency Suomi
- University of Lapland
- Yleisradio

## ANNEX 5: LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

### Acronyms

AML	Anti-money laundering
EU	European Union
EUR	Euro (currency)
FCCA	Finnish Competition and Consumer Authority
FDI	Foreign direct investment
FIU	Financial Investigation Unit
GDP	Gross domestic product
GPO	General Prosecutor's Office
GRECO	Council of Europe Group of States against Corruption
ISA	International Standards on Auditing
JIT	Joint investigation team
MFA	Ministry of Foreign Affairs
MLA	Mutual legal assistance
NBI	National Bureau of Investigations
OECD	Organisation for Economic Cooperation and Development
ODA	Official development assistance
PC	Penal Code
SME	Small and medium sized enterprises
SOE	State-owned enterprise
USD	United States dollar
WGB	OECD Working Group on Bribery in International Business Transactions

### Abbreviations

2009 Recommendation: OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009)

Convention: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Working Group: OECD Working Group on Bribery in International Business Transactions<sup>3</sup>

[www.oecd.org/corruption](http://www.oecd.org/corruption)

