

Foreign Bribery Offence and its Enforcement in Eastern Europe and Central Asia

**OECD Anti-Corruption Network for Eastern Europe
and Central Asia**

Foreign Bribery Offence
and its Enforcement in Eastern
Europe and Central Asia



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About the thematic studies on criminalisation of corruption and law-enforcement in Eastern Europe and Central Asia

The ACN Work Programme for 2013–2015 included a thematic cross-country study (review) on the criminalisation of corruption and effective law enforcement. The first topic selected for the thematic study was the liability of legal persons for corruption. This second thematic study concerns foreign bribery. The third study will be on international co-operation in corruption cases. The objectives of the studies are (1) to analyse the state of play in the relevant area, in order to identify common problems and best practices (in particular, by using case studies from selected countries) and to develop regional recommendations, and (2) to identify capacity-building and training needs for law enforcement authorities and the judiciary.

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Foreword

This cross-country report analyses the legislation on foreign bribery and its enforcement in Eastern Europe and Central Asia. While the report focuses on 25 countries participating in the Anti-Corruption Network for Eastern Europe and Central Asia (ACN), it also includes examples from OECD countries. The report is based on data provided by the ACN governments in the form of replies to questionnaires as well as additional desk research. It also reflects discussions and examples of good practices that were presented during the ACN meetings. The report was prepared in 2015.

The purpose of this report is to review trends in introducing and enforcing foreign bribery offences, as well as to highlight national practices that may be promoted as good practice. It serves as a valuable reference point for legal reforms and reviews in this region, as well as for other parts of the world.

The report has been prepared as a part of the OECD Anti-Corruption Network for Eastern Europe and Central Asia Work Programme for 2013–2015. The topic of this report is part of a cross-country study on law enforcement and criminalisation of corruption—one of three cross-country studies that are part of the 2013–2015 Work Programme. The two other cross-country studies deal with (i) prevention of corruption in the public sector and (ii) business integrity.

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Acronyms

ACN	OECD Anti-Corruption Network for Eastern Europe and Central Asia
BIH	Bosnia and Herzegovina
CC	Criminal Code
CCP	Code of Criminal Procedure
CL	Criminal Law
COE	Council of Europe
CPC	Criminal Procedure Code <i>or</i> the Slovenian Commission for the Prevention of Corruption
CPCCOC	Bulgarian Centre for the Prevention and Fight with Corruption and Organized Crime
CPL	Criminal Procedure Law
DACI	Montenegrin Directorate for Anti-Corruption Initiative
FYRM	Former Yugoslav Republic of Macedonia
GRECO	Group of States against Corruption
HJPC	BIH High Judicial and Prosecutorial Council
KNAB	Latvian Corruption Prevention and Combating Bureau
GRECO	Group of States against Corruption
IAP	Istanbul Anti-Corruption Action Plan
LP	legal person
OECD	Organisation for Economic Co-operation and Development
PC	Penal Code
SOL	statute of limitations
SPPO	Montenegrin Special Public Prosecutor's Office
STT	Special Investigation Service of the Republic of Lithuania
UNCAC	United Nations Convention against Corruption
WGB	OECD Working Group on Bribery in International Business Transactions

About the thematic study

The OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is a regional anti-corruption programme established in 1998 under the OECD Working Group on Bribery and open to the countries of the region.¹ At its meeting on 11 December 2012, the ACN's Steering Group adopted the new ACN Work Programme for 2013–2015.² The latter, in addition to peer review programme under the Istanbul Action Plan, included three thematic cross-country studies. One of them is under a general topic of criminalisation of corruption and law enforcement and includes three separate studies to be explored consecutively: (i) liability of legal persons for corruption; (ii) foreign bribery; (iii) international co-operation in corruption cases.

The objective of the studies is to (1) analyse state of play in the relevant areas, identify good practices and common problems (including through case studies of good practice in selected countries), and develop regional recommendations and (2) identify capacity building and training needs for the law enforcement authorities and judiciary.

The first thematic study, *Liability of Legal Persons for Corruption Offences*, was conducted in 2014 and approved in March 2015.³ The current study constitutes the second of these studies.

In preparation for the thematic study on Foreign Bribery, the ACN Secretariat conducted initial research of available materials and prepared a thematic questionnaire (with input from the OECD Anti-Corruption Division and the UN Office on Drugs and Crime). The questionnaire was sent to the ACN governments in February 2015, with a request for replies and up-to-date texts of relevant legal provisions. Responses were received from the following countries: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina (BIH), Croatia, the Former Yugoslavia Republic of Macedonia (FYRM), Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Montenegro, Romania, and Serbia.

On the basis of these responses, along with additional desk research, Ms. Melanie Reed (OECD consultant) prepared the study under direction and coordination by Mr. Dmytro Kotlyar (OECD/ACN Secretariat). In order to verify information and validate the findings the draft study was presented to the Advisory Group (composed of representatives from selected governments and experts on a voluntary basis) and ACN countries from August to September 2015 and was discussed during the ACN plenary meeting on 8–9 October 2015 in Paris and the ACN Law Enforcement Network meeting on 7 December 2015 in Paris. The study was finalised on the basis of these discussions.

This report aims not only to discuss the legal provisions in place in the countries reviewed, but also to examine the enforcement tools available to each jurisdiction. The study indicates areas where the expertise and capacity of public officials and institutions may need to be strengthened. Depending on available funds, technical peer learning seminars may be organised to provide training to law enforcement practitioners, judges, and policy-makers and to promote the use of good practice on selected topics.

¹ The ACN is open for all countries in Eastern Europe and Central Asia, including Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, FYRM, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Montenegro, Romania, Russia, Serbia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. OECD countries participate in the ACN as partners or donors. The ACN is open for participation by international organisations, such as the Council of Europe and its Group of States against Corruption (GRECO), the Organisation for Security and Cooperation in Europe (OSCE), the UN Office on Drugs and Crime, and the UN Development Programme, as well as multi-lateral development banks, such as the Asian Development Bank, Council of Europe Investment Bank, EBRD, and the World Bank. The ACN is also open for participation by non-governmental partners, including Transparency International and other non-governmental and business associations.

² Available at <http://goo.gl/anlm1R>.

³ Available at <http://goo.gl/FjipaF>.

Introduction

Foreign bribery—that is, the bribery of a foreign official—has become an increasingly important topic as the world economy has expanded and more and more business transactions occur across borders. Several international instruments now require state parties to criminalise bribery of foreign government officials, including the following:

- 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Article 1),
- 1999 Council of Europe Criminal Law Convention on Corruption (Article 5), and
- 2003 United Nations Convention against Corruption (Article 16).⁴

At the same time, foreign bribery is an extremely difficult crime to investigate and prosecute. Like other forms of corruption, foreign bribery is a covert act that often remains hidden. Foreign bribery is especially difficult to detect because the individuals, companies, and officials involved are across borders. In addition, funds used to provide foreign bribes may be channelled through offshore bank accounts or delivered to third parties (often in different jurisdictions). Thus, foreign bribery may involve actors not only from the country of the company that provides a bribe and the country of the official who receives the bribe, but also from third countries where consultants, agents, or shell companies are located. Furthermore, documents regarding the bribery may be in a variety of languages. A jurisdiction that wishes to investigate or prosecute a foreign bribery case is often reliant upon the good graces of other countries in providing necessary mutual legal assistance, extraditing defendants, or assisting in obtaining documents or the assistance of witnesses.

This study examines the varying frameworks for criminalising foreign bribery and enforcing such laws throughout ACN countries. It focuses on the countries that submitted responses to the questionnaire distributed in advance of this study, although it also draws upon publicly available information regarding other ACN countries. Most of the countries that submitted responses to the questionnaire have a foreign bribery offence, as do a number of other ACN countries. In addition, all of the countries that submitted responses are engaging in efforts aimed at educating the public sector (and in a few cases even the private sector) about corruption risks, although those efforts tend to be focused on corruption generally (particularly domestic corruption) rather than on foreign bribery specifically. The countries that submitted responses to the questionnaire also all have institutions in place to investigate cases of suspected foreign bribery.

Only one ACN country (Bulgaria) has issued sanctions in a foreign bribery case, and only one other country (Romania) has brought a foreign bribery case to trial. Accordingly, this study focuses on the frameworks in places for trying cases that may be brought in the future. However, the strength of these countries' legal institutions will only be tested once cases are brought and tried.

⁴ See Annex 1 for the full foreign bribery provisions in these international instruments.

1 Scope of foreign bribery offence

1.1 Active foreign bribery offence

Active bribery refers to providing a bribe to a foreign official. Key international instruments dealing with foreign bribery set forth the following mandatory elements as part of the active foreign bribery offence:

- 1) the promise, offer, or giving of an undue advantage,
- 2) committed either directly or indirectly, and
- 3) provided to the official himself or third party beneficiary.⁵

The idea behind these elements is that bribery should include not only providing an actual bribe but also promising or offering a bribe; that is, the offence occurs even if the official does not accept or receive the bribe. Acts of promising or offering a bribe should, therefore, be treated as autonomous offences and trigger full criminal liability. All international monitoring mechanisms in the anti-corruption area confirm that treating the promise or offer of a bribe as an inchoate offence (e.g., attempt or preparation to a crime) is not functionally equivalent to criminalisation as a complete offence (see OECD/ACN 2013, 52–53).

The term “bribe” should include not only money promised, offered, or provided to a foreign official, but also any other thing of value—such as gifts, travel, employment opportunities, and any other tangible or intangible, pecuniary or non-pecuniary benefits. It also includes undue advantages when offered or provided through an intermediary, such as a consultant, agent, or customs broker, as well as items offered or provided to persons affiliated to a foreign official, such as a family member or business entity in which the official has an interest.⁶ In this way, the offence is meant to cover any possible value provided to an official.

All of the countries that responded to the questionnaire, except for Kazakhstan and Kyrgyzstan, reported that their active foreign bribery offences include each of these elements.

Box 1. Active foreign bribery under Montenegrin law

Montenegro’s active bribery offence is as follows (CC Article 424(1)):

Anyone who directly or indirectly gives, offers or promises a bribe to a public official for himself or for another person for agreeing to perform an official or other act he must not perform or not to perform an official or other act he must perform or anyone who intercedes in bribing a public official in the manner described above shall be punished by a prison term from one to eight years.

Applying the elements outlined above, the crime applies regardless of whether one actually gives the bribe, or merely offers or promises the bribe. Furthermore, the crime applies to both direct and indirect gifts. The reference “to a public official for himself or *for another person*” (emphasis added) shows that the crime applies even when provided to a third party beneficiary.

Not all countries’ laws are as clear as Montenegro’s law, however. For example, BIH’s active foreign bribery law would not appear to refer on its face to indirect bribes or bribes offered to a third party (CC 218(1)):

⁵ See Council of Europe Criminal Law Convention against Corruption (COE Convention), 1999, Articles 2 and 5; United Nations Convention against Corruption (UNCAC), 2003, Article 16; OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention), 1997, Article 1.

⁶ Throughout this report, the term “bribe” refers to any item of value, whether direct or indirect, or provided to the official or a third party.

Whoever gives or promises a gift or any other benefit to an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, in order that he performs within the scope of his official powers of an act, which ought not to be performed by him, or abstains from performing of an act which ought to be performed by him, or whoever mediates in such bribing of the official or responsible person, shall be punished by imprisonment for a term between six months and five years.

Even though BIH authorities have indicated that the law would nevertheless apply to indirect gifts and promises, this assertion will only be tested once the country begins trying foreign bribery cases. Such uncertainties in the written law, especially with regard to indirect bribes and bribes provided to third party beneficiaries, are endemic throughout the ACN countries, even where they have a foreign bribery offence.

Box 2. Indirect bribes and offers/promises of bribes under Russian law

Russia's foreign bribery law does not explicitly refer to indirect bribes, such as those made through intermediaries, a point that has been raised by the OECD Working Group on Bribery (OECD WGB 2013, 65, 68–69). Rather, a separate law deals with “mediation in bribery,” which is defined as “direct transfer of a bribe on the instructions of the bribe giver or bribe taker or other kind of assistance to the bribe giver and/or bribe taker in achieving or implementing of an agreement between them on taking or giving a bribe. . . .” (CC Article 291.1). Mediation is subject to somewhat different sanctions than the bribery itself.

Russia's law also does not explicitly refer to offering or promising a foreign bribe. Rather, Russian authorities rely on provisions of the code dealing with preparation and attempt. Importantly, however, the sanctions for preparation and attempt are far less severe than the sanctions for a completed crime: Furthermore, no criminal liability is available for preparation of a crime that is not “grave” or “especially grave,” that is, bribes less than RUB 150 000 (approximately EUR 2 407) or not involving aggravating factors (*ibid.*, Article 30). The WGB pointed this out with concern in its last evaluation of Russia's foreign bribery laws (OECD WGB 2013, 64–66).⁷

In some instances, case law regarding domestic bribery cases may provide guidance in foreign bribery cases. For example, court cases on domestic bribery in Estonia and Moldova suggest that indirect bribes would be covered by the anti-corruption laws of those countries (GRECO 2008a, 6; 2011a, 7). Nonetheless, an explicit reference to indirect bribes or bribes to third party beneficiaries makes the issue even more clear. Accordingly, in view of such a recommendation from GRECO, Moldova amended its bribery law to explicitly capture indirect offences (GRECO 2013, 6).

Box 3. Amendments to clarify Albania's foreign bribery law

The importance of having a clear law on foreign bribery cannot be overstated. In 2009, GRECO noted that Albania's criminal code did not expressly reference bribery of foreign officials. State authorities claimed that foreign officials were considered “persons exercising public functions” or “high State officials” under the country's domestic bribery laws (GRECO 2009a, 7). Nonetheless, in 2013, Albania amended its code to include explicit provisions dealing with active and passive corruption of “foreign public employees” (CC Articles 244/a, 259/a, 319/b, 219/c, 319/dh, and 319/e).

The offence of foreign bribery may be a specific crime set forth in the law. Alternatively, the crime may come into being based on how the term “official” is defined under more general anti-corruption laws.

⁷ Uzbek law is similar to Russian law, both with regard to mediation of bribery and with regard to preparation and attempt.

Box 4. Croatia's extension of its bribery law to foreign officials

Croatia's laws regarding active and passive bribery do not explicitly refer to a "foreign official"; they refer to a "public official or responsible person" (CC Articles 293–294). Elsewhere in the code, the term "official person" is defined to apply to foreign officials (ibid., Article 89(3)):

An *official person* shall also mean a person who in the European Union, another state, international organisation of which the Republic of Croatia is a member, international tribunal or arbitration board the jurisdiction of which the Republic of Croatia accepts, performs the duties confided to persons listed in the previous sentence.

It is unclear whether "public official or responsible person" is the same as "official person," however.

Some countries (e.g., Mongolia and Tajikistan) do not appear to have any active foreign offence, although domestic officials of those countries could be prosecuted for passive foreign bribery under the countries' domestic bribery laws.

Most of the countries that responded to the questionnaire extend liability for active foreign bribery to both individuals and legal persons—whether on a criminal, quasi-criminal, or administrative basis. The exceptions are Armenia, Kyrgyzstan, and Kazakhstan, which do not yet extend criminal or any equivalent responsibility for criminal acts to legal persons. This topic is discussed further in a companion report to this study, *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia*, which was published in June 2015 (OECD/ACN 2015).

1.2 Passive foreign bribery offence

Passive bribery refers to an official's acceptance of a bribe or of its promise or offer. It includes the following elements:

- 1) acceptance of promise or offer of an undue advantage, or
- 2) receiving of an undue advantage, or
- 3) solicitation (request) of an undue advantage,
- 4) when committed directly or indirectly,
- 5) for the official himself or third party beneficiary.

Most of the countries that submitted responses to the questionnaire reported that their passive foreign bribery offences include all of these elements.

Again, Montenegro's law is a good example (CC Article 423(1)):

A public official who directly or indirectly solicits or receives a bribe, or who accepts a promise of a bribe for himself or for another person for agreeing to perform an official or other act which he must not perform, or not to perform an official or other act which he must perform shall be punished by a prison term from two to twelve years.

As indicated in the previous section, BIH's law does not expressly include indirect gifts and offers (CC 217(1)):

An official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit in order to perform within the scope of his official powers an act, which ought not to be performed by him, or for the omission of an act, which ought to be performed by him, shall be punished by imprisonment for a term between one and ten years.

BIH authorities have asserted that they would be covered, although this remains to be seen in case practice.

1.3 Limitations of offence

Obtaining or retaining business

The UNCAC and the OECD Convention both apply the foreign bribery offence only to instances where the purpose of the bribe is to obtain or retain business or another undue advantage.⁸ The Council of Europe Criminal Law Convention against Corruption (COE Convention) does not include such a limitation. Most of the countries reviewed as part of this study are parties to the COE Convention and, accordingly, they do not have such a limitation in their written law.⁹ Applying such a limitation to parties of the COE Convention may even be considered as inconsistent with the Convention's requirements by setting a narrow definition of the offence.

For example, Serbia's law broadly covers bribes provided or solicited in relation to an official performing an official act that should not be performed or not performing an official act that should be performed (see CC Articles 367 and 368). None of the other ACN countries that have foreign bribery offences appear to include a limitation based on the bribe's relationship to business activities.

Undue advantage

It is not always clear whether foreign bribery laws apply to both tangible and intangible benefits (including non-pecuniary advantages, i.e., those that do not relate to or consist of money). Most countries rely on the courts to interpret their laws in this way. In some countries, the court has clearly ruled on the issue.

Box 5. The types of undue advantages covered under Latvian law

Latvia's law covers bribes that are "material values, properties or benefits of other nature" (CL sections 320 and 323). The term "material values" can include benefits that can be expressed in monetary terms, for example, property, jewellery, real estate, and vehicles. "Properties" covers property of any description. "Benefits of another nature" covers immaterial advantages of a social, economic, or political nature.

In a 2008 ruling, the Latvian Supreme Court found that "benefits of other nature" could include advantages such as a position on a hospital board or city council. Other decisions have found that bribes can include "money, securities, food products, non-consumable goods, service of a different nature, rights to property, deposits in the name of a bribe taker, processing of fictitious contracts, payment of unwarranted bonuses or allowances, intentional gambling losses in favour of the bribe taker, gifts for the bribe taker's family members or friends, involvement in a profitable job, etc." (response to questionnaire), as well as honorific distinctions, promise of a prestigious office, placement in a prestigious school or society, exemption from otherwise mandatory conditions, or a promise to support nomination to public office.

In other countries, authorities may believe that intangible benefits are covered, but the issue remains to be tested in court. This creates the potential for uncertainty regarding whether certain advantages would be considered bribes.

⁸ See UNCAC Article 16 (2003); OECD Convention Article 1 (1997).

⁹ Kazakhstan, Kyrgyzstan, and Mongolia are not members of GRECO.

Box 6. Money and other benefits under Romanian law

The term used in Romanian law is “money and other benefits.” Romanian authorities have indicated that the term “other benefits” would include “any kind of material advantages, other than money (goods, commissions, loans, selling or buying, postponing or cancelling debts, performing free services or in advantageous conditions, etc.), as well as the non-patrimonial advantages, the moral advantages (awarding some academic, university, scientific, cultural, artistic, sportive titles, awarding medals, distinctions, military ranks, etc.)” (response to questionnaire). However, this has not been addressed in court.

In the case of one country, the fact that the active and passive bribery laws do not include intangible, or “non-proprietary,” benefits conflicts with other anti-corruption laws that *do* apply to intangible benefits.

Box 7. Non-proprietary benefits under Ukrainian law

The concept of a bribe has not been defined explicitly in the Ukrainian law until recently. In 2011, GRECO concluded, “[S]ervices, privileges and benefits that are not of a proprietary nature . . . can not be recognised as a bribe” under the country’s foreign bribery laws (GRECO 2011d, 8). By contrast, the laws regarding administrative corruption, private sector bribery, and trading in influence include the more expansive idea of “illegal benefits” (ibid.). The OECD/ACN monitoring report on Ukraine contained similar conclusions.

Following a number of revisions in 2013 and 2014, the Ukrainian Criminal Code was finally fully aligned with relevant international standards in February 2015 when the definition of “undue benefit” was amended to include “monetary funds or other property, advantages, privileges, services, intangible assets, *any other benefits of non-tangible or non-pecuniary character*, being offered, promised, given or received without legitimate grounds therefor” (CC 354 note 2, emphasis added).

2 Jurisdiction

Broadly speaking, most countries will assert jurisdiction over offences that occur in their territory or by their nationals (which is often defined to include permanent residents). Asserting jurisdiction over foreign nationals who perform outside a country is a trickier issue, although many of the countries reviewed allow for jurisdiction over such persons under certain circumstances.

2.1 Territoriality

All countries with a foreign bribery offence would assert jurisdiction over a person who commits a foreign bribery offence in the territory of the country, even if the person committing the offence was not a national of the country. However, as illustrated in the box below, this may be subject to limitations that have yet to be explored in court cases.

Box 8. Territoriality as the basis for jurisdiction in the Russian Federation

As a member of the OECD's Working Group on Bribery (WGB), the Russian Federation is subject to the evaluation process set forth by the OECD Convention. During its Phase 2 evaluation in 2013, the WGB expressed concern that Russia's written law appears to require a crime to be both started and completed in the country in order for territorial jurisdiction to apply (OECD 2013, 55–56). Prosecutors interviewed as part of the on-site visit connected to that evaluation explained that jurisdiction would be present if an offence was started in Russia but completed elsewhere. Nonetheless, this still raises a question about crimes started outside of Russia, when an action in furtherance of the crime occurs in Russia.

In response to questions about the jurisdictional basis for prosecuting foreign bribery offences in Russia, the WGB decided to follow up on “[w]hether the current bases for jurisdiction, both territorial and nationality, governing natural and legal persons are sufficiently broad, particularly as applicable to bribing through intermediaries and the determination of nationality of legal persons” (ibid., 98).

2.2 Nationality

ACN countries with foreign bribery offences would also assert jurisdiction over nationals in cases of foreign bribery committed abroad. Latvia's law, for example, allows for the exercise of jurisdiction regardless of whether the act would be recognised as a crime where committed. In contrast, Lithuania's law allows jurisdiction for a crime committed abroad only if the crime is addressed in a relevant treaty (this would be the case for bribery, trading in influence, and graft).

For some countries, the exercise of jurisdiction over acts occurring outside the country would depend on the law of the foreign state. For instance, Azerbaijan's law applies to citizens and residents who commit a crime abroad only if the act is a crime both in Azerbaijan and in the country where committed. Armenia's law is similar to that of Azerbaijan, but includes a condition that any punishment imposed may not exceed the upper threshold of punishment provided for by the law of the foreign state where the offence was committed.

In general, the term “national” appears to extend to both citizens and permanent residents (see, e.g., Latvia's law). Interestingly, Montenegro and Serbia's criminal code would allow for jurisdiction over nationals even for crimes committed prior to their nationalisation (see, e.g., Serbia CL Article 8).

Box 9. Nationality jurisdiction in Azerbaijan

Under the criminal code of Azerbaijan, citizens and noncitizens constantly living in Azerbaijan who commit a crime outside of Azerbaijan can be subject to criminal liability if (i) the action is recognised as a crime both in Azerbaijan and in the foreign state or territory where it was committed and (ii) the individual was not convicted in the foreign state (CC Article 12.1).

2.3 Foreign nationals and stateless persons

Countries vary widely in their willingness to extend jurisdiction over crimes not committed in their territory or by their national. The availability of jurisdiction in such cases may depend on the nature of the offence or whether the defendant or the crime has some other relationship to the country pursuing the case. Below are a few reasons the countries reviewed in this study might extend jurisdiction over foreign nationals in foreign bribery cases committed abroad:

- **Crimes covered by international law.** A number of states provide that a foreigner can be tried in their courts if the crime committed is covered by an international agreement binding upon the state (e.g., Armenia, BIH, Georgia, Latvia, Lithuania, Moldova, Romania, Serbia, and Ukraine). Generally, the foreign national must be found in the country trying the case (and not be extradited to the foreign state). Serbia also allows for the prosecution of a criminal offence under “general principles of international law,” so long as approved by the republic public prosecutor (regardless of the law of the country where the offence was committed) (CC Article 10).
- **Serious offences.** In Serbia, a foreigner can be subject to criminal liability for offences punishable by at least five years imprisonment (under the laws of the state where committed), if the person is found in Serbia and not extradited (CC Article 9). However, the punishment cannot exceed that which could have been imposed under the law of the country where the offence was committed. The laws of BIH and Montenegro have similar provisions.
- **Persons located in the state.** Under Romanian law, a noncitizen can be tried for foreign bribery committed abroad if the person is located on Romanian territory and extradition or surrender of the individual has been requested and denied (CC Article 11(1)).
- **National of the country prosecuting the case involved.** A foreign national may be subject to criminal liability for bribery in Montenegro if a Montenegrin national was involved in any way in committing the offence, so long as the foreign national is either caught in or extradited to Montenegro. The Montenegrin court could pronounce a punishment more severe than the punishment provided for by the law of the country where the offence was committed (CC Article 137).
- **Crimes directed against the state trying the case.** Several states also provide that a foreigner can be tried for crimes directed against the state (e.g., Albania, Armenia, BIH, and Latvia). Albania’s law specifically refers to “[t]he crime of corruption in the public or private sector, as well as the impact of the illegal conduct” (CC Article 7). In other countries, a provision would seem at least to apply to instances where the country’s officials engaged in passive foreign bribery by receiving a bribe from a foreign business.
- **Defendant performs a public function for the state.** Regardless of the individual’s nationality or residence, any person who performs a public function for Georgia can be tried for either active or passive bribery (CC Article 5(5)).

2.4 Legal persons

In general, liability over a legal person would be subject to the principles of territoriality and nationality discussed above.¹⁰ A legal person that commits a crime of foreign bribery in a country’s territory could be tried in that country, as could a legal person established in that country. For example, BIH law allows for

¹⁰ This assumes, of course, that the country’s laws allow for a legal person to be held liable for criminal acts. For example, Armenia has not yet established a principle of criminal liability of legal persons.

jurisdiction over a legal person that has its seat in or carries out activities in the territory of BIH, if the offence committed abroad is perpetrated against the integrity of BIH or the offence is covered by an international treaty (CC Article 12).

Under certain conditions, a country may also be able to exert jurisdiction over a legal person in a case where a non-national working for the company has committed an act of foreign bribery abroad. For instance, Latvian law provides that a legal person registered in Latvia can be considered responsible for a criminal offence in these circumstances if the individual committed the offence in the interests of the legal person, for the benefit of the legal person, or as a result of insufficient supervision or control. It does not matter whether the action is considered an offence or punishable where it was committed.

Some countries also would exert jurisdiction over a legal person for acts undertaken by its foreign subsidiaries abroad (e.g., Latvia and Serbia). Other countries would consider the two companies to have distinct legal personalities and would analyse each company's criminal responsibility separately (see, e.g., Romania's Law of the Companies no. 31/1990, Article 42).

Box 10. Liability for acts undertaken on behalf of a legal person under Serbian and Georgia law

Serbia's law sets forth clear liability in over acts by a subsidiary or employee undertaken for the parent company's benefit:

A legal person shall be held accountable for criminal offences which have been committed for the benefit of the legal person by a responsible person within the remit, that is, powers thereof. (Article 6, Law on the Liability of Legal Entities)

Georgia's law (CC Article 1071(2)) similarly provides,

A legal person shall be imposed the criminal liability for a criminal offence prescribed by the present Code, which is committed on behalf of the legal person or by means of the legal person or in its favour, by a responsible officer of the legal person.

The term "responsible officer" refers to a person entitled to direct, represent a legal person and take decisions on its behalf as well as a member of a supervisory, oversight or auditing body" (Article 1071(3)). These provisions apply even if the person who actually committed the criminal offence cannot be identified and in cases where the offence arose out of improper supervision and oversight (Article 1071(4)–(4.1)). The legal person can be tried, even if the responsible officer is not individually tried, and vice versa (Article 1071(5)–(6)).

Note, however, that none of these concepts of liability extend universally to all ACN countries. In addition, because no foreign bribery cases have been concluded against legal persons in any ACN country, definitive answers on questions of jurisdiction over legal persons for acts committed on their behalf will not be available until cases are brought in the courts of ACN countries. As illustrated in the box below, liability over legal persons raises a number of thorny issues.

Box 11. Liability of foreign subsidiaries under Russian law

During the OECD WGB's evaluation of Russia's foreign bribery law, Russian judges generally agreed that whether a Russian company could be held accountable for the acts of its foreign subsidiary would depend on factors such as "the level of the subsidiary's independence and its relationship to the Russian parent company" (2013, 56–57). For example, they explained that an independent foreign subsidiary with Russian shareholders would probably not lead to liability of the Russian parent. However, the WGB's report also discussed the extensive debate amongst the judges present during the on-site visit about the circumstances under which Russian courts could assert jurisdiction, highlighting the potential for uncertainty in application of the law to both Russian parents and foreign subsidiaries (ibid.).

2.5 Jurisdiction over foreign officials who accept bribes (passive bribery)

Most countries would assert jurisdiction over a foreign official in the same way they would assert jurisdiction over any other foreign national (e.g., Armenia, Georgia, Lithuania, and Romania). However, two important exceptions were identified during the review.

First, BIH's criminal code expressly provides for jurisdiction over foreign officials who accept bribes (see box below).

Box 12. Jurisdiction over foreign officials who accept bribes under BIH law

BIH's criminal code expressly applies to foreign officials (CC Article 217, emphasis added):

- (1) An official or responsible person in the institutions of Bosnia and Herzegovina *including also a foreign official person*, who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit in order to perform within the scope of his official powers an act, which ought not to be performed by him, or for the omission of an act, which ought to be performed by him, shall be punished by imprisonment for a term between one and ten years.
- (2) An official or responsible person in the institutions of Bosnia and Herzegovina *including also a foreign official person*, who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit in order to perform within the scope of his official powers an act, which ought to be performed by him, or for the omission of an act, which ought not to be performed by him, shall be punished by imprisonment for a term between six months and five years.
- (3) The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person in the institutions of Bosnia and Herzegovina *including also a foreign official person*, who demands or accepts a gift or any other benefit following the performance or omission of an official act referred to in paragraphs 1 and 2 of this Article and in relation to it.
- (4) The gifts or any other benefits shall be forfeited.

Second, Latvian authorities have explained that a foreign official can be tried in Latvian courts if “the other party in the offence [that is, the bribe giver] would have relation to Latvia under territorial or nationality jurisdiction” (response to questionnaire).

3 Definition of “foreign official”

3.1 Types of officials covered

International instruments dealing with foreign bribery define the term “foreign official” to include the following groups:

1. Persons holding legislative, administrative, or judicial office in a foreign country (regardless of whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of seniority);¹¹
2. Officials and agents of public international organisations (including those authorised by such organisations to act on their behalf);¹² and
3. Persons who perform public functions (such as for a public agency or enterprise);¹³
4. Members of parliamentary assemblies of international and supranational organisations of which the country is a member;¹⁴
5. Holders of judicial office or officials of an international court whose jurisdiction is accepted by the country;¹⁵
6. Persons who provide a public service (such as a notary, attorney, or auditor);¹⁶
7. Domestic and foreign arbitrators;¹⁷ and
8. Jurors in the judicial system of another country.¹⁸

All of the countries with foreign bribery offences appear to consider the individuals in groups 1, 2, 4, and 5 above to be foreign officials for purposes of their foreign bribery laws. In fact, some countries would even interpret the term a bit more broadly: Azerbaijan and Lithuania would consider official candidates for office as officials, and Lithuania would include candidates for positions at international organisations as well. Albania’s law does not include a requirement that Albania be a member of a particular international organisation in order for its law to apply to bribes given to officials of that organisation.

Determining whether an individual is a foreign official becomes more difficult when considering government agents, employees of state-owned enterprises, and other individuals who perform public functions. The state of law with regard to these individuals varies quite a bit among the ACN countries. Most countries would include persons exercising public functions in a foreign country, for example, persons working for public agencies and enterprises. Serbia and Albania are notable exceptions, and the law is unclear in a number of other countries, including Croatia, Estonia, and Slovenia. In Ukraine the criminal code explicitly covers “persons who perform functions of the state for the foreign state, in particular for a state authority or a state enterprise” (CC Article 364 note 2).

¹¹ OECD Convention Article 1.4(a); COE Convention Articles 1 and 6, Explanatory Report para. 28; UNCAC Article 2(a)(i), (b).

¹² OECD Convention Article 1.4(a); UNCAC Article 2(c).

¹³ OECD Convention Article 1.4(a); UNCAC Article 2(a)(ii), (b).

¹⁴ COE Convention Article 10.

¹⁵ *Ibid.*, Article 11, Explanatory Report para. 63.

¹⁶ UNCAC Article 2(a)(ii). Note that the idea of a person performing a “public service” being a public official is part of UNCAC’s definition of “public official,” but not an express part of UNCAC’s definition of “foreign public official.”

¹⁷ COE Additional Protocol Articles 1, 2, and 4, Explanatory Report para. 9.

¹⁸ *Ibid.*, Article 6, Explanatory Report para. 37. See generally *The Istanbul Action Plan: Progress and Challenges* (OECD 2008).

Only a few countries would consider a person who merely provides public services in a foreign country to be a foreign official.¹⁹ Romania would only consider such individuals as foreign officials if considered as such by the law of the foreign state. A number of countries would consider international arbitrators to be foreign officials,²⁰ and several countries would apply the definition to jurors in the judicial system of another country.²¹

Authorities from most of the countries with a foreign bribery offence who responded to the questionnaire confirmed that their countries' definitions of foreign official would cover officials at any level of a foreign government (e.g., national, state, municipal, and regional), even if the law itself did not specify a level of government. Albania was an exception to this, however, as it noted that its law is not specific in this area, but did not indicate that officials at every level of government would automatically be covered.

None of the countries indicated any difficulties with interpreting the definition of foreign official. Although none of the countries have concluded a foreign bribery case, they may have experience interpreting similar definitions that pertain to domestic officials.

3.2 Autonomous definition

A few countries—such as Albania, Armenia, and BIH—have definitions of the term “foreign official” that are not autonomous, that is, determining whether an individual is a foreign official depends on an outside legal source (such as proof of law of the foreign official’s country). For example, Armenian authorities explained that under its law “foreign officials are persons performing functions of public official of a foreign state in accordance with the internal law of the state concerned, as well as members of legislative or other representative body of a foreign state exercising administrative authorities” (CC Article 308).

On the other hand, Azerbaijan, Georgia, Latvia, Lithuania, Montenegro, Romania, and Serbia have all asserted that their countries' definitions of a foreign official are autonomous. Even so, it remains to be seen how such assertions will hold up in practice. For example, Romanian authorities explained in response to the questionnaire circulated in preparation of this report that a person who performs a public service in a foreign country is only considered a foreign official if considered as such by the law of his or her own country, suggesting that—at least with regard to individuals performing public services—the definition may not be completely autonomous.

Box 13. Definition of foreign officials in Kazakhstan

The definition of “foreign public official” in Kazakhstan’s law was reviewed as part of the monitoring process under the OECD/ACN Istanbul Anti-Corruption Action Plan. The Second Monitoring Round (OECD/ACN 2014a) reported that in 2007 a note was added to Article 311 of the then applicable CC to indicate that the term “official” in the bribery crimes also includes officials of foreign states or international organisations. No further details were provided. The report deemed this insufficient several reasons. First, in the bribery offences “officials” were subjects only of qualified (aggravated) offences; other offences in those articles referred to other subjects (e.g., “a person authorized to perform public functions or a person equated to them” or “a person holding a responsible public office”). Second, the term was not defined according to international standards (ibid., 38).

This was partly resolved with adoption of a new Criminal Code of Kazakhstan in 2014. However, the new code did not define the term “official of a foreign state or international organization” either. The general definition of “official” (“a person who permanently, temporarily or under special authorisation carries out functions of the power representative or carries out organisational and managerial or administrative and economic functions in state agencies, bodies of local self-government, as well as in the Armed Forces of Kazakhstan, other military formations of Kazakhstan”) concerns only national employees, as is clear from the definition itself (OECD/ACN 2014c, 51).

¹⁹ These countries include Armenia, Azerbaijan, Latvia, Lithuania, and the FYRM.

²⁰ This includes at least 12 countries: Albania, Armenia, Azerbaijan, Estonia, the FYRM, Georgia, Latvia, Lithuania, Moldova, Russia, Slovenia, and Ukraine.

²¹ This includes at least 10 countries: Albania, Armenia, Azerbaijan, Estonia, Georgia, Latvia, Lithuania, Russia, Slovenia, and Ukraine.

4 Defences and exceptions

4.1 Facilitation payments

“Facilitation payments” are small payments to officials to induce them to perform nondiscretionary routine tasks such as issuing licences or permits. The UNCAC does not include any express exception for such payments, although they are permitted under the OECD Anti-Bribery Convention.²² Such payments are often illegal under the laws of the countries where made. No country reviewed as part of this study provides an exception for facilitation payments in its foreign bribery law.

ACN countries also generally do not provide any threshold value of a gift or item of value in order to be a bribe when given to a foreign official (e.g., Armenia, Latvia, Lithuania, Montenegro, Romania, and Serbia). BIH explained that under its conflict of interest laws pertaining to *domestic* officials, an item is not a gift if it is (i) received from a family member or (ii) valued at less than 200 convertible marks (Law on conflict of interest in governmental institutions of Bosnia and Herzegovina, Article 3). In some countries, however, the amount of a bribe could constitute an aggravating circumstance.

Box 14. No liability for low bribe amounts under Russian law

In Russia, the crime of “preparation” of a bribe (see part 1.1 above) is not subject to liability if the bribe prepared was less than RUB 150 000 (approximately EUR 2 407). Thus, preparing a facilitating payment might not lead to criminal liability (even if actually paying it would).

4.2 Solicitation and extortion

Some countries provide that the person who paid a bribe is exempt from liability if the foreign official solicited (that is, requested) the bribe or promise or offer of a bribe. Others exempt a person who was solicited for a bribe only if the solicitation reaches the level of extortion. Croatia is the only ACN country with a foreign bribery offence that appears to allow a defence for solicitation, but this defence only applies if the bribe giver reports the bribe before it has been discovered (or at least before the offender learns that the offence has been discovered) (CC Article 294(3)).

A large number of countries allow an exception once the solicitation becomes an extortion, however.²³ For example, under Romanian law (CC Article 290(2)), a bribe giver is not liable if he or she was constrained by any means by the bribe taker. Similarly, Armenian law (CC Article 312(4)) provides that the person who gave a bribe is exempted from criminal liability if he or she was subjected to extortion, or if this person voluntarily informed the law enforcement bodies about giving the bribe.

Box 15. Extortion under Serbian law

Serbian law provides the following (CC Article 21):

- (1) An act committed under irresistible force is not a criminal offence.
- (2) If a criminal offence is committed under force which is not irresistible or under threat, the offender may be punished more leniently.
- (3) In case referred to in para. 1 of this Article, the person using irresistible force shall be considered perpetrator of the criminal offence.

²² See OECD Convention, Commentaries, para. 9.

²³ These countries include Armenia, Azerbaijan, Bulgaria, Moldova, Montenegro, Romania, Russia, Serbia, and Ukraine.

The line between a solicitation and extortion can be a fine one, however, even when set forth by statute. For instance, Latvian law expressly refers only to extortion (not to solicitation) but defines the term broadly in a way that it could include solicitations, since a mere demand would generally not rise to the level of extortion (CL Article 324(2)):

Extortion of a bribe shall be understood to be the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person.

Similarly, Lithuanian law refers to being “demanded or provoked to giving a bribe” (CC Article 227(5)). However, Lithuanian authorities explained that solicitation and extortion do not alone absolutely exempt an offender from liability. Rather, they should go together with effective regret (see below), and a report of the bribe should be done as soon as possible before the suspect is recognised. A court will assess all of the circumstances when deciding whether an offender should be released from liability.

In some countries, the defence of extortion is only available if the bribe giver voluntarily reports the bribe prior to the investigation being initiated and/or assists with the criminal proceedings.²⁴ The defence also may not be a complete one; it may be that the offender is still considered guilty, but is merely exempted from punishment (e.g., in Slovenia; see GRECO 2007, 17).

4.3 Effective regret

Effective regret allows an individual who offered, promised, or paid a bribe to avoid punishment by reporting this fact to law enforcement authorities before the bribe is discovered. The purpose behind such a defence is to assist law enforcement officials in prosecuting government officials who abuse their office by giving bribe gives an incentive to report the bribes they pay. However, this purpose is less relevant in the case of foreign bribery because there is no guarantee that the foreign official who was given a bribe will be prosecuted if the bribe giver comes forward. Often that official is in a different country from the bribe giver and the country that would be in a position to assert jurisdiction over the bribe giver may not be able or willing to prosecute the bribe recipient. This may be why, for example, Bulgaria only allows such a defence in domestic bribery cases (not foreign bribery cases). The OECD WGB and ACN have expressed concern about application of this defence in foreign bribery cases (see, e.g., OECD WGB 2013, 74 (Russia); ACN 2013, 38 (Azerbaijan)).

Nonetheless, a large number of ACN countries allow persons who commit the offence of foreign bribery to assert an effective regret defence if they report the bribery. This may be set forth as a defence from liability (e.g. in Moldova) or merely a way to avoid punishment (e.g., in Serbia).²⁵

Box 16. “Active repentance” in Armenia

Armenian law (CC Article 72) exempts a defendant from criminal liability in the event of “active repentance”:

A person having committed a criminal offence of minor or medium gravity for the first time may be released from criminal liability where, following the committal of an offence, he or she has voluntarily surrendered by acknowledging guilt, has assisted in disclosing the crime, has compensated or otherwise settled the damage caused as a result of the crime.

The defence may be somewhat less problematic if its application is discretionary, as in Georgia, since the peculiar facts of a foreign bribery incident can then be considered. Nonetheless, the better option would be not to allow such a defence at all in foreign bribery cases.²⁶

²⁴ This is the case, for example, in Bulgaria, Moldova, Russia, and Ukraine.

²⁵ These include Albania, Armenia, Azerbaijan, FYRM, Georgia, Latvia, Lithuania, Romania, Russia and Slovenia.

Box 17. Discretion in applying the defence of effective regret in Georgia

Notes to several articles of Georgia's criminal code foresee the possibility of effective regret as a defence to criminal prosecution (see notes to CC Articles 221 (active commercial bribery), 339 (active bribery of public officials), and 339 (active trading in influence)). The defence is not automatic, however; the agency conducting the criminal proceedings decides whether to allow the defence. If allowed, the prosecutor will issue a written ruling on non-initiation or termination of prosecution that will explain the reasoning of the decision. A decision not to prosecute can be appealed to a superior prosecutor.

At least one ACN state has introduced amendments to its law in an attempt to rectify the issue of a bribe giver evading consequences for foreign bribery due to effective regret.

Box 18. Amendments to Lithuania's foreign bribery offence to counteract the consequences of effective regret

In order to become a member of the OECD and to ratify the OECD Anti-Bribery Convention, the Lithuanian Ministry of Justice has registered a draft law in parliament to remove possibility of release from criminal liability for bribery of a foreign officials, even in the event where the person was demanded or provoked to give the bribe or the person notifies a law enforcement institution after giving the bribe (and before a notice of suspicion is raised against the person).

²⁶ In its Phase 3 review of Slovenia's implementation of the OECD Convention, the WGB expressed concern about whether a similar level of discretion given to Slovenian prosecutors with regard to the application of the defence of effective regret to foreign bribery cases would be effective (OECD WGB 2014, 15).

5 Enforcement

5.1 Enforcement institutions

A number of ACN countries have specialised units that investigate corruption offences, including foreign bribery. In most cases, the prosecutor is involved during the investigation stage, and often the prosecutor is required to lead the investigation. Following are some examples:

- **Albania:** Joint Investigation Units that include both prosecutors and police officers deal with tracking corruption offences. Some of the prosecutors and police officers in these units specialize in the field of economic crimes and corruption.
- **Armenia:** Investigators from the Investigation Committee conduct investigations in corruption cases. However, other bodies may assist in these investigations, including the Division of Investigation of Corruption and Organised Crimes at the Special Investigation Service of Armenia and the Division of Corruption Cases and Crimes against Economy at the General Prosecutor's Office.
- **Azerbaijan:** The Prosecutor General Office's Anticorruption Directorate investigates and tries corruption cases.
- **BIH:** Prosecutors are responsible for both investigating and prosecuting criminal offences. The Prosecutor's Office has a Special Department for War Crimes and a Special Department for Organised Crime, Economic Crime and Corruption. The Prosecutor's Office also works in special teams, often with other government agencies. For example, the State Investigation and Protection Agency (SIPA), the Border Police, or the Indirect Tax Authority may assist with investigations, and the Ministry of Interior, the Ministry of Security, and the Directorate for Coordination of Police Bodies may assist in obtaining international legal assistance.
- **Georgia:** The Investigative Division of the Prosecution Service investigates and prosecutes corruption-related crimes, and it supervises corruption investigations of other competent bodies. The Ministry of Finance and Ministry of Internal Affairs assist in investigations. The Ministry of Internal Affairs has an Anti-Corruption Department that engages in measures to prevent, detect, and suppress conflict of interests and corruption in the public sector.
- **Latvia:** The Corruption Prevention and Combating Bureau (KNAB) is authorised to investigate corruption offences (CPL section 387(6); Law on Corruption Prevention and Combating Bureau section 8(1)2)), and the Division for Investigation of Especially Serious Cases of the Criminal Law Department of the Prosecutor General's Office tries such cases. A prosecutor is assigned to the case at the time the investigation is opened.
- **Lithuania:** General provisions of the code of criminal procedure apply to corruption cases. The prosecutor leads the pre-trial investigation and tries the case. At the pre-trial phase the prosecutor may choose to work with other agencies, including the Special Investigation Service (STT), which is a law enforcement agency with specialisation in investigating corruption-related crimes (including foreign bribery) that reports to the president and parliament.
- **Montenegro:** In February 2015, Montenegro adopted the Law on the Special Public Prosecutor's Office, which established the Special Public Prosecutor's Office (SPPO) as the agency tasked with fighting organized crime and corruption. The SPPO is based in Podgorica and takes all actions within its jurisdiction before the Special Division of the High Court in Podgorica. The SPPO is responsible for prosecuting perpetrators of the following criminal offences: certain corruption crimes by public officials, corruption by others when the material benefit of the offence exceeds 40 000 EUR, money laundering, organised crime, terrorism, and war crimes.

- **Romania:** The National Anti-Corruption Directorate, which is an office within the Prosecutor's Office Attached to the High Court of Cassation and Justice, has exclusive national jurisdiction for investigating and prosecuting foreign bribery offences (Emergency Ordinance 43 of 2002, Article 13). The law specifically requires that a prosecutor conduct the criminal investigation in all cases of corruption (CCP Article 56(3)), although the prosecutor may delegate law enforcement agencies to perform certain investigative tasks.
- **Serbia:** Both the police and public prosecutor have the power to act at the pre-investigation and investigation stages. The public prosecutor also has power to act at the charging stage and to conduct the prosecution. The police are accountable in accordance with the Law on the Police, and the public prosecutor is accountable to the immediately higher public prosecutor. Special units for prosecuting corruption related offences have been established in the Republic Public Prosecutor's Office, appellate prosecutor's offices, and higher public prosecutor's offices in Belgrade, Novi Sad, Kragujevac, and Nis.
- **Ukraine:** Exclusive jurisdiction to investigate foreign bribery and active trafficking in influence has been assigned to the newly established National Anti-Corruption Bureau. This new investigative agency was established by a special law enacted in January 2015, and the Bureau started functioning in December 2015. Amendments to the Criminal Procedure Code (Article 216.5) provide that corruption cases are under the exclusive investigative jurisdiction of this Bureau (see OECD/ACN 2015, 80–85). Cases under the Bureau's jurisdiction must be prosecuted by a Specialised Anti-Corruption Prosecutor's Office that was established according to a new Law on Prosecutor's Office of Ukraine (enacted in July 2015).

Box 19. The respective roles of KNAB and the Prosecutor General's Office in Latvia

KNAB's Division of Investigations is responsible for investigating domestic and foreign bribery. The division has 16 investigators, along with the division's head and deputy head. KNAB has the following powers:

- to conduct investigations;
- to perform operational activities;
- to request and to receive information from state agencies and local government institutions, companies, organisations, officials and other persons, and credit institutions;
- to have free access to information stored in registered databases (regardless of ownership); and
- upon presenting identification, to freely visit state administration and local government institutions, manufacturing premises, warehouses, trade, and other commercial premises located in the territory of Latvia owned or used by legal or natural persons.

KNAB submits general work reports to the government and parliament twice a year.

The Division for Investigation of Especially Serious Cases of the Criminal Law Department of the Prosecutor General's Office is responsible for prosecuting cases investigated by KNAB. This division has 12 specialised prosecutors and is managed by the Chief Prosecutor of the Division. The Prosecutor General and the Chief Prosecutor of the Criminal Law Department may also instruct this division's prosecutors to take over proceedings regarding criminal offences committed by high-ranking state officials, such as members of parliament, judges, and heads of major state companies, that have been initiated by other investigating authorities. Prosecutors in this division increase their knowledge on a regular basis by attending seminars, receiving training, and participating in conferences.

The Prosecutor General or the Chief Prosecutor of the Criminal Law Department assigns a prosecutor to the case from the moment it is opened by KNAB, and this prosecutor stays on the case until innocence or guilt is ascertained. The prosecutor is to provide guidance to the investigator regarding the selection of the type of proceedings, the direction of the investigation, and the performance of investigative actions (so long as this helps ensure a targeted investigation and does not cause unjustifiable delay). The supervising prosecutor may also ask for substitution of the investigator if the given instructions are not followed or violations in the criminal proceedings jeopardise the course of the investigation.

In the course of the investigation, the prosecutor has the following rights:

- to request and receive regulatory enactments, documents, and other information from state administrative institutions, banks, the State Audit Office, local governments, companies, authorities, and organisations, as well as to enter the premises of such institutions;
- to assign heads and other officials of companies, institutions, and organisations to carry out examinations or audits, to submit opinions, and to provide the assistance of specialists to the prosecutor; and
- to obtain explanations of the violation of law from other persons.

This said, it is clear that enforcement institutions in some ACN countries still require strengthening. For example, during the OECD WGB's last evaluation of Bulgaria's enforcement of its foreign bribery offence, the WGB pointed out that Bulgaria's law enforcement institutions are not sufficiently focused on foreign bribery and do not have the necessary resources or capacity to conduct complex financial investigations (OECD WGB 2011, 7–8, 15, 23). For example, Bulgaria does not have a special investigative or prosecutorial unit tasked with handling foreign bribery cases. Instead, foreign bribery investigations are carried out by police officers or investigators under the supervision of district prosecutors. Bulgaria's Centre for the Prevention and Fight with Corruption and Organized Crime (CPCCOC) has asserted that no special unit is necessary because the current framework allows for "qualitative and prompt" investigation. Nonetheless, CPCCOC also explained that the country is taking steps to enhance the qualifications of judges, prosecutors, investigators, and investigative bodies involved in corruption cases (although no centralised mechanism for evaluating these efforts has been created as of yet).

5.2 Prosecutorial discretion and national economic interest

Prosecutorial discretion, that is, the power to decide whether or not to pursue criminal proceedings, is considered "to be an important instrument to guarantee the prosecutor's autonomy and independence" (Martini 2013, 2). However, it varies quite a bit among the ACN countries. For example, BIH and Azerbaijan employ a "legality" principle: a prosecutor may only decline to bring charges in a corruption case if there is no legal basis for the charges. If facts showing corruption exist, the prosecutor is required to prosecute. Lithuania also allows for prosecutorial discretion only under very limited circumstances; in nearly all cases, a prosecutor would be required to bring a corruption case.

Other countries follow an "opportunity" principle and grant public prosecutors broad power to decide whether or not to indict. For example, under the principle of diversion in Georgia, a prosecutor may decide to begin or terminate a case, based on public interest. As discussed in the box below, in Serbia a prosecutor may defer prosecution under certain circumstances. In addition, in some cases a foreign bribery offence might be considered an "offence of minor significance" that is not subject to prosecution (CC Article 18).

Some countries fall in between these two extremes and base the availability of prosecutorial discretion on the severity of the offence or other factors. For example, in Romania a prosecutor has discretion to drop charges for active foreign bribery, but not for passive foreign bribery, based on the public interest in trying the case (CCP Article 318). The difference between active and passive bribery is based on the length of the prison term available for each offence.²⁷ "Public interest" depends on the facts of the offence and how it was conducted, the goal of the offence, the consequences that occurred or could have occurred, and the defendant's conduct previous to the defence, as well as efforts undertaken to minimise the consequences of the offence.

Although Latvian law generally mandates that criminal proceedings be initiated in each case where the reason and grounds for initiating criminal proceedings have become known (CPL section 6), the law also

²⁷ Active bribery is punishable by 2 to 7 years of imprisonment, while passive bribery is punishable by 3 to 7 years imprisonment. Only charges for crimes punishable by up to 7 years of imprisonment may be dropped (CCP Article 318).

sets forth a few circumstances in which this is not required. For example, an investigator may obtain the consent of a public prosecutor to refuse to initiate proceedings if the criminal offence has not caused harm warranting criminal punishment or the information provided to the investigator is insufficient (CPL section 373). In such a case, the official who decides not to initiate the proceedings must notify the person who submitted information about the crime, and that person has an opportunity to appeal the decision (ibid.).

Box 20. Deferring a criminal prosecution under Serbian law

Serbia's criminal procedure code (Article 283) allows a prosecutor to defer prosecution of an offence of *giving* a foreign bribe if the suspect agrees to certain conditions, such as agreeing to rectify the damages caused by the crime, paying a certain amount of money to charity, and/or observing other obligations or court restrictions. This is because the crime is only punishable by a fine or a prison term of up to 5 years. If the suspect fulfils the obligations within the prescribed time limit (which may not exceed a year), the public prosecutor will dismiss the criminal complaint.

In addition, Serbian law provides that an offence carrying a potential prison sentence of up to 5 years (including foreign bribery) may be considered not to be a punishable criminal offence if it is an "offence of minor significance," defined as one "in which the degree of the offender's responsibility is low, if harmful consequences are absent or insignificant, and where the general purpose of imposing criminal sanctions does not require sanctioning" (CC Article 18).

In and of itself, there is nothing inherently better or worse about the existence of prosecutorial discretion. On the one hand, giving prosecutors discretion over which cases to pursue allows them to effectively utilise limited resources and bring cases most implicating the public interest to justice. On the other hand, requiring prosecutors to pursue all cases presenting evidence of a crime helps to avoid unjust or biased choices regarding which cases to pursue.

The important point is that the decision to pursue one case over another should not be motivated by political considerations, such as the country's national economic interests, the potential effect of a criminal proceeding's relations with another country, or the identity of the natural or legal persons involved. Several countries responded to the questionnaire that these factors would not influence a foreign bribery case.²⁸ It is very difficult in practice to determine whether this actually occurs, however, since decisions to prosecute are made confidentially. Until more cases are brought in ACN countries, it may be difficult to determine to what extent political considerations influence choices about which cases to bring.

5.3 Independence and autonomy

Prosecutorial independence is critical to ensuring that prosecutors are not influenced by the political concerns noted above when deciding whether to bring a case. In several cases, prosecutorial independence and autonomy is protected by constitutional safeguards as well as legislation (e.g., in Azerbaijan, Lithuania, Montenegro, Romania, and Serbia). In other countries independence is guaranteed by legislation only (e.g., Armenia, Georgia, Latvia, and Ukraine).

Box 21. Constitutional and statutory guarantees of prosecutorial independence in Montenegro

Montenegro's constitution (Article 134) provides, "The State Prosecution shall be a unique and independent state authority that performs the affairs of prosecution of the perpetrators of criminal offences and other punishable acts who are prosecuted *ex officio*."

To strengthen the position of state prosecutors with regard to how they carry out their responsibilities, the constitution also provides the State Prosecutor and Deputy State Prosecutor with "functional immunity," that is, that they "shall not be held responsible for the expressed opinion or decision made in the performance of the duties thereof, unless this represents a criminal offence" (Article 137).

²⁸ The countries were Armenia, BIH, Georgia, Latvia, Lithuania, Montenegro, Romania, and Serbia.

The Law on Public Prosecution Office further provides, “The Public Prosecution Office shall not act under anybody’s influence and the Public Prosecution Office shall not be influenced by anybody in the exercise their office” (Article 3).

Special bodies, such as the High Judicial and Prosecutorial Council in BiH, may also play an important role in strengthening the independence of officials who try corruption cases.

Box 22. The High Judicial and Prosecutorial Council in BiH

The High Judicial and Prosecutorial Council (HJPC) is a body in BiH specifically created to consolidate and strengthen the independence of the judiciary. This body was established in 2004 through an agreement between the prime ministers of the Federation of Bosnia and Herzegovina and the Republika Srpska and the Bosnia and Herzegovina Minister for Justice. Parliament then adopted the corresponding law on the HJPC; this law is currently being revised.

Since its creation in 2004, the HJPC has played an important role in strengthening the independence of the judiciary and in furthering contacts and cooperation among judges and prosecutors. It consists of 15 individual members recruited from among judges, prosecutors, and other legal professionals. The HJPC appoints judges and prosecutors pursuant to criteria that it sets, monitors the activities of judges and prosecutors, and, if necessary, conducts disciplinary proceedings against them.

The judiciary in BiH has generally considered the HJPC’s performance to be positive. In particular, they have indicated that the HJPC had helped increase the judiciary’s institutional independence by introducing and applying more transparent criteria for appointing judges and prosecutors as well as by helping modernise the judiciary through new means of communication and the automatic selection of cases.

5.4 Capacity and training

Capacity

Foreign bribery cases are extremely complex, as the crime is committed covertly and across borders. Investigators and prosecutors may be required to access witnesses, documents, and bank accounts in multiple jurisdictions and governed by multiple laws. Mutual legal assistance and technical expertise is nearly always essential to a successful prosecution. Not only must personnel working on these cases have know-how in criminal investigations generally, but they also may need to have expertise in accounting, auditing, foreign languages, or the peculiarities of the particular industry sector where the bribery occurred.

Resource allocation to law enforcement may be stipulated by statute (e.g., Serbia) or allocated through the annual budget of the public prosecutor’s office (e.g., Montenegro). Regardless of how the funds and other resources are allocated, though, they also must be protected. For example, even where the budget of the public prosecutor’s office is independent from the rest of the state budget (as in Lithuania, for instance), could parliament change this budget at the end of the fiscal year if it is unhappy with the outcome of a particular case or investigation? Insufficient information was provided by the ACN countries that responded to the questionnaire to fully evaluate the issue of resource independence of investigators and prosecutors. Nonetheless, it is clear that resource capacity is an issue in ACN countries, as noted in WGB reports (see OECD WGB 2013, 5, 11–12, 46–47 (Russia); 2014, 31–34 (Slovenia)). This topic should be followed as practice develops.

Even where the fiscal situation of investigators and prosecutors gives them true independence, it takes time to develop law enforcement’s capacity to investigate and try these complex cases. For example, one country (Armenia) acknowledged that its Investigation Committee—newly established in 2014—lacks some technical and human resources, although it is in the process of building these. Training of law enforcement personnel is a critical element of building capacity and is discussed in the next section below.

Box 23. Funding for Joint Investigative Units in Albania

Given the specificity of the issues they cover, the prosecutors and police officers who are part of Albania's Joint Investigative Units receive an additional 20% salary payment. In addition, the directors of the General Prosecutor Office and the Department of Human Resources consistently convey requests for funding to the Finance and Budget Department in order to strengthen the capacity of human and material resources.

Training of law enforcement personnel

Several countries reported on anti-corruption training provided to law enforcement personnel. Examples of such training include the following:

- Prosecutors in Montenegro receive trainings with regard to combating bribery as part of their continuing legal education obligations.
- In 2015, Lithuania's anti-corruption agency (STT) hosted a technical workshop to help Lithuanian officers understand how to combat foreign bribery. OECD representatives and others participated to share hands-on experience regarding investigating and prosecuting such offences.
- With the assistance of Switzerland, Romania has engaged in a project to strengthen the capacity of Romanian judges and prosecutors in the fight against corruption and economic and financial crime. Twenty-five training sessions, involving over 500 individuals in total, have been held. In addition, in 2014, experts from the Centre for Asset Recovery of the Basel Institute organised a training session for 20 staff members of Romania's National Anti-Corruption Directorate on advanced financial investigations (including the identification of assets).
- Seminars in Serbia dealing with the detection of corruption-related crimes have touched upon the liability of foreign officials for corruption offences. These seminars have been conducted within the Judicial Academy, as well under the auspices of the OSCE Mission to Serbia, the Council of Europe, US Embassy in Belgrade, and other international partners. The attendance of public prosecutors is mandatory.
- Latvia's Judicial Training Centre (LJTC), with support from the European Commission, has launched a series of workshops for judges, prosecutors, attorneys, and financial police on preventing and combating corruption. Topics have included identifying corruption risks, offences in the public service, conflicts of interest, and anti-corruption measures for the judiciary.

For the most part, these trainings appear to be focused primarily on domestic corruption, or at least they do not seem to focus specifically on foreign bribery. Given the complex cross-border nature of the foreign bribery offence, providing practical and technical training on the peculiarities of investigating and trying foreign bribery cases is important and should be added to these curriculums.

Box 24. Anti-corruption education for law enforcement in Armenia

Armenia's School of Prosecution has developed guidelines on a number of corruption-related topics, such as money laundering. Anti-corruption trainings for prosecutors include special sections on foreign bribery.

The 2015 professional educational program for candidates for prosecutors and judges foresees an independent 10 credit hour course on "Contemporary issues in the fight against corruption in the public service." The course will deal with corruption involving Armenia's public service, the status of the fight against such corruption (including measures undertaken by the state, NGOs, and mass media), and domestic and international requirements (including the recommendations of GRECO and the COE Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)).

Candidates for employment in the Investigative Committee take a special educational program at the Academy of Justice. One course offered as part of this program is called "Criminal and criminological analysis of the main types of official crimes" and contains a special chapter concerning the investigation of corruption offences.

In addition, Armenian investigators and prosecutors have participated in a number of international seminars and conferences on corruption topics. For instance, in 2014, the head of the Division of Corruption Cases and Crimes against Economy at the General Prosecutor's Office participated in a conference on cooperation in struggle against corruption and money laundry offences in Vienna, Austria. The chief prosecutor of this division also participated in the fourth regional seminar of the OECD ACN, held in Paris. A delegation from the prosecutor's office also participated in a seminar on prevention of corruption organised by the OSCE Economic and Environmental Committee and UNODC.

5.5 Statutes of limitations and procedural time limits

Statutes of limitations

Prosecuting a foreign bribery case—as with prosecuting any crime—involves a balance of protecting the defendant's right to a speedy trial and to fair resolution of the case while at the same time providing law enforcement with sufficient time to prepare and bring charges. Limitations periods for bringing charges against defendants are meant to protect defendants from being charged for a crime well after it was committed. However, if the limitations period is too short, law enforcement may not be able to adequately investigate and prepare a case before the period expires, enabling perpetrators of crimes to avoid being held accountable for their actions.

This is an issue of particular concern in enforcing foreign bribery laws. Because foreign bribery is a covert act, it may be difficult to discover that a crime has occurred. In addition, gathering evidence in a foreign bribery investigation can be particularly challenging because of the cross-border nature of the case. Mutual legal assistance requests, for example, can sometimes take years to fulfil. Practical difficulties may also arise, for example, a need to translate foreign language documents or trace funds through jurisdictions with financial control bodies that have differing requirements for access to information.

Statute of limitations periods for foreign bribery offences differ greatly among the countries listed in the Annex 3—from 3 years for certain active foreign bribery offences in FYRM and Serbia to 25 years for certain passive foreign bribery offences in Georgia and Montenegro. The general trend seems to be between 5 and 10 years for active foreign bribery offences and between 10 and 15 years for passive foreign bribery offences. In light of the challenges of investigating and trying foreign bribery cases, a 5 year limitation period seems rather short.²⁹

²⁹ In its summary report for 2009–2013, the OECD/ACN concluded that that a limitations period should be *at least* 5 years long to provide adequate time for the investigation and prosecution of corruption offences (and also that it should provide for the possibility of suspension/interruption in certain situations). In particular, the ACN referred to IAP, GRECO, and OECD WGB findings that statutes of limitations of 2–3 years or less were insufficient. See OECD/ACN 2013, 73–75; see also, e.g., OECD/ACN 2011, 33 (discussing Armenia); GRECO 2008b (discussing Latvia), 2010g (discussing Hungary), 2012 (discussing Russia); OECD WGB 2000 (discussing France), 2005 (discussing Japan), 2006 (discussing Spain).

Georgia uses a special approach to corruption offences and, regardless of sanction, establishes the statute of limitations for bribery and some other corruption offences as 15 years (unless it is an especially grave crime with a maximum sanction of more than 10 years imprisonment, in which case the limitations period is 25 years).

Nearly every country allows the limitations period to be suspended *and restarted* if the offender commits a new offence (in some cases the new offence must be at least as severe as the offence for which the offender is being tried). This may make it possible to prosecute offenders for offences over 5 years old when bribery is on-going. Azerbaijan's CPC provides for suspending the statute of limitations in cases when procedures for lifting immunity are initiated (Article 53). Similarly in Georgia, the statute of limitations is suspended during the time in which a person enjoys immunity (CC Article 71).

Good practice with regard to establishing limitations periods that do not interfere with effective investigation can be found in some ACN and OECD countries. For example, in Croatia, the Czech Republic, Finland, Latvia, the Netherlands, Poland, Slovakia, and some other countries, the limitations time period is interrupted by procedural actions taken in order to institute criminal prosecution (e.g., the decision to prosecute). In Germany, the statute of limitations is interrupted by the following procedures: the first interrogation of the accused, the notice of the initiation of an investigation against him/her, a judicial order of search and seizure, an arrest warrant, a public indictment, the institution of trial proceedings, a judicial request of an investigative act abroad, and others. The limitations time period is renewed after each interruption. However, prosecution is barred by an absolute lapse, which is 10 years for bribery offences (OECD/ACN 2013, 74–75).

A number of jurisdictions have an ultimate limitations period that applies regardless of any tolling of the limitations period that would generally apply to the crime. Further research should be conducted to ensure that defendants and their counsel do not abuse the criminal process by filing frivolous motions in order to reach this ultimate period and avoid punishment.

Annex 3 includes details about statute of limitations periods in the ACN countries.

Time limits for stages of the criminal process

The right to a fair trial within a reasonable time is a fundamental aspect of the law of many countries (see, e.g., Constitution of Romania Article 21(3)). Statutes of limitation are key to protecting this right, but other time limits on the criminal process may also help ensure that a defendant in a foreign bribery case is tried within a reasonable timeframe. For example, some countries impose limits on the time that may be spent on a pre-trial investigation.

Box 25. Time limits for concluding an investigation in Lithuania

Lithuania's code of criminal procedure sets forth the following time limits for pre-trial investigations (CCP Article 176):

1. The pre-trial investigation should be carried out within the shortest possible time, but no more than:
 - 1) For the misdemeanour – three months;
 - 2) For the minor, less serious and negligent crimes – six months;
 - 3) For the serious and grave crimes – nine months.

Foreign bribery (both active and passive) would fall in the categories of less serious or serious crimes, thus subject to a pre-trial investigation period of 6 to 9 months. Normally, this would hardly seem to be enough time to conclude a complex foreign bribery investigation. Nonetheless, the code goes on to provide that the prosecutor leading the pre-trial investigation may obtain approval to extend this time period "because of the complication or high scope of the case or other important circumstances by the resolution" (CCP Article 176). Lithuania's Special Investigative Service has explained that circumstances such as the need for mutual legal assistance or a set of complex facts would be considered sufficient grounds to extend this time period; according to this agency, this ameliorates any potential problems with the short time frame.

Similar provisions apply under the laws of other ACN countries (e.g., Albania, the FYRM, Latvia, and Serbia). For example, under Serbian law, a public prosecutor must notify his or her immediately superior public prosecutor if he or she is unable to conclude a criminal investigation within a specified period of time (between six months and a year). The prosecutor's superior is then required to undertake measures to conclude the investigation (CCP of Serbia Article 310). Armenia's law provides for an extremely short time limit for concluding the investigation—two months. However, this time limit applies to the *preliminary* investigation only and “may be extended by a prosecutor based on the reasoned decision of an investigator.”

Although time limits for preliminary investigations serve an important purpose related to the defendant's fundamental rights, if the time limit is too short, it may hinder the ability of law enforcement authorities to bring foreign bribery cases. For example, during the WGB's last evaluation of the Russian Federation, examiners found that a strict two-month timeline applies to pre-trial investigations under that country's laws (WGB OECD 2013, 50, discussing CCP Article 162). The timeline starts on the day the case is opened and within two months an indictment must be submitted. The timeline may be extended for 3 to 12 months, depending on the complexity of the case, but may be further extended only “in exceptional cases by the Chairman of the Investigative Committee or the Deputy Chairman of the Investigative Committee” (ibid., 50). The lead examiners expressed concern that this timeline might be too short (ibid., 51).

The values of certainty and human dignity would suggest that prosecution should commence shortly after an investigation is completed, rather than being delayed and drawn out. For example, Montenegro's law requires the state prosecutor to bring an indictment within 15 days after an investigation has been completed (CCP Article 290). The time limit is 10 days in Armenia (CCP Article 197).

Box 26. Challenging the duration of a trial

Romanian law does not set forth any specific time limits for criminal procedure. However, any interested party or the prosecutor may challenge the duration of a criminal trial in a court of law, in accordance with its constitutional provisions. If the challenge is considered to be grounded, the court may establish a time lapse for the procedure to be completed. (CCP Article 488).

Latvian law does not set forth specific time limits, but does provide, “The court must take care that the criminal case should be heard during the shortest possible time and should pursue that criminal case should be heard with the smallest number of breaks” (CCP Article 242(1)). Latvian authorities have explained that the “completion of criminal proceedings within a reasonable term is connected with the scope of a case, legal complexity, amount of procedural activities, attitude of persons involved in the proceedings towards fulfilment of duties and other objective conditions” (response to questionnaire).

Because only one ACN country has completed a prosecution for foreign bribery, it is unclear how time limits on investigations and trials might impact cases in practice. Further studies may wish to consider this question in the context of domestic bribery prosecutions.

5.6 Reporting and whistleblowing

Reporting obligations

A number of ACN countries require public servants to report suspected acts of corruption when discovered in the course of performing official duties (e.g., Albania, Armenia, Georgia, Latvia, Montenegro, and Romania). There are some differences in individual reporting obligations, however.

For example, Montenegro's law requires civil servants (including employees of public companies and institutions) to report any suspicion of foreign bribery learned in the performance of his or her duties (CCP Article 254). Natural and legal persons who have certain public powers under the law are also required to report.

Romania's Emergency Ordinance 43/2002 expressly applies only to individuals charged with "control activities." Determining whether a person engages in control activities depends on his or her specific competencies, rather than the hierarchical level. Even so, Romania maintains that other civil servants, regardless of their competency, are also required to report criminal offences they are aware of, which are committed in relation to the office for which the public official works (CC Article 267).

Lithuanian law does not impose any requirement on public officials to report suspected crimes, although Lithuanian authorities explained that any person *may* report corruption to any investigative institution (usually reports are made to the Special Investigation Service). Nonetheless, Lithuania has recently registered a draft law that would require public servants to immediately report corruption-related criminal acts to the Special Investigative Service.

As discussed in the box below, employees of a government agency with special access to information about certain types of criminal activity may be subject to particular reporting requirements.

Box 27. Reporting obligations by Latvia's State Revenue Service and other professionals

In addition to imposing a general obligation upon all citizens to report suspected crimes, Latvia's State Revenue Service (SRS) requires that tax officials who have detected that a company has used funds to bribe public officials, including foreign officials, must report these facts to KNAB within five working days after detection. This is done on a special form "Report on the risks identified, suggesting bribery cases." In addition, in cases where it is established that the state or local government authority has paid a disproportionately high price for a service or product, the State Audit Office must be informed.

In March 2015, the Latvian government adopted amendments to the Law on Sworn Auditors. The new law will introduce a requirement for sworn auditors and commercial companies of sworn auditors to report suspicions of domestic and foreign bribery to KNAB. In order to explain the forthcoming amendments, KNAB brought this issue up during a training session for auditors in November 2014.

A few countries apply reporting requirements even to individuals outside of the public administration (e.g., Georgia, Latvia, Montenegro, and Serbia). For example, Latvia's criminal law (section 315) requires *any* person (including a public official) to report a crime, "if it is known with certainty that preparation for or commission of a serious or especially serious crime is taking place" (response to questionnaire). Given that foreign bribery is considered a serious and especially serious crime, the obligation would presumably apply to this crime. Serbia's reporting obligations apply to an "officer or responsible person," which could potentially include private individuals as well as civil servants (CC Article 332).

Whistleblower protection for public servants

While creating reporting obligations for public servants or private individuals may facilitate law enforcement authorities learning about potential corruption offences, it is important to remember that unless informants receive adequate protection they may find themselves in the difficult position of choosing between filing a report (and risking termination from their job or other retaliation) or breaking the law that requires that they report the suspected offence. This is why whistleblower protection is so critical in relation to corruption offences, including foreign bribery.³⁰

Armenia, BIH, Georgia, Lithuania, Montenegro, Romania, and Serbia have all asserted that their laws protect public servants who are whistleblowers. However, there appears to be some difference in what is meant by "whistleblower protection." Montenegro's Law on Civil Servants and State Employees, for instance, specifically discusses whistleblowing and broadly provides that a public servant may not be fired

³⁰ This is likely a large part of the reason that bribes that are paid are rarely reported. For example, a 2013 UNODC survey, *Business, Corruption and Crime in the Western Balkans* found that only 1.8% of bribes paid by businesses in the western Balkans were reported to official authorities. A further 0.3% of bribes were reported to non-official institutions, such as NGOs or the media (see UNODC 2013).

or otherwise retaliated against for reporting corruption or other unlawful or improper acts to the authorities. Managers are also obliged to protect whistleblowers' confidentiality, and violating these protections can lead to fines of up to 2 000 EUR. Employers must prove that any actions taken against a worker were not based on whistleblowing. In December 2014, Montenegro also adopted the Law on Prevention of Corruption, which provides a comprehensive framework for protecting whistleblowers and comes into force 1 January 2016 (see Articles 44–70).

A whistleblower who suffers damages in relation to whistleblowing can petition for judicial relief under Serbia's 2014 Law on the Protection of Whistleblowers. The defendant in such an action (e.g., an employer who fires an informant) has the burden of proving that the damaging consequences were not the result of whistleblowing.

Romania's law, which specifically covers the reporting of corruption and corruption-related offences, provides that whistleblowers are entitled to a presumption of good faith until proven otherwise. The law sets forth a notification and consultation process if disciplinary proceedings are to be brought by a public agency against a whistleblower following the whistleblowing act. The whistleblower cannot be inequitably sanctioned for other offences in retaliation for whistleblowing, and the court has the right to set aside sanctions against a whistleblower that are viewed as such (Articles 4(h) and 7 of Law 571/2004).

Even when whistleblower protection is available, it might not apply to all reports of suspected bribery. For example, BIH authorities have reported that its whistleblower protection law, which entered into force in January 2014, "protects individuals employed in state-level institutions who in good faith report corruption at work." However, it is unclear whether these protections would extend to reports by individuals who report on corruption they discover outside of the course of their work duties.

Although Lithuania has asserted that its laws protect whistleblowers, the laws it provided in response to the questionnaire appear to focus on witness protection, rather than on whistleblowing per se.³¹ For example, the country's criminal code allows witnesses to request anonymity in investigations. If this is granted, only the prosecutor, pre-trial investigation officer, and judge have the right to know the witness's identity (CC Articles 199–202). It is uncertain, though, what protections a civil servant would have if he or she attempted to report potentially unlawful conduct to his or her supervisors.

Even where the law directly protects whistleblowing, informants may hesitate to come forward when they are required to disclose their identities in order to make a report. For example, Armenia's anti-corruption strategy plan addresses reporting channels and whistleblower protection, but the criminal code does not allow investigations to be opened on the basis of anonymous information.

Box 28. Reporting corruption in Armenia

Armenia's new anti-corruption strategy specifically stipulates channels for reporting corruption and measures for protecting whistleblowers:

Practical measures must be undertaken for increasing and strengthening public confidence in bodies fighting against corruption:

- legally defining that persons submitting reports on corruption crimes equally enjoy special remedies defined by the criminal procedure code for victims, witnesses and experts;
- providing for criminal liability by separate Articles of the Criminal Code of the Republic of Armenia for causing damage to the property and health of or such a threat to a whistleblower

³¹ There are important difference between whistleblower protection and witness protection. Whistleblower protection would generally apply at the time an individual files a report of foreign bribery and protect against any type of retaliation, including termination of employment, discrimination, and so forth. Witness protection generally would apply only once an investigation has been opened and is aimed at encouraging testimony during an investigation and trial.

or his/her affiliated persons for whistle-blowing, as well as for unlawful disclosure of a whistleblower by the representative of a law enforcement body;

- defining that persons engaged in corruption crimes may be released from criminal liability or may expect to be subjected to relatively mild punishment in case of cooperating with law enforcement bodies.

Armenia's criminal procedure code (chapter 12) grants protection to whistleblowers. In fact, according to Armenian authorities, the state will pay financial incentives to individuals who provide information about certain crimes (response to questionnaire).

At the same time, however, Armenian law does not allow for a criminal case to be opened based on an anonymous report. Rather, any protocol of an investigative action or court session should include the witness's full surname, date of birth, home and official address, connection to a crime and source of information, as well as information about identification documents filed by the witness (CC Article 177). Similar provisions apply to reports by legal persons, which are required to be made "in the form of an official letter or a certified telegram, telephone or radio message, e-mail or other common form of communication" (ibid., 178).

Certainly, obtaining the identity of an informant allows for follow up on allegations. As Lithuanian authorities explained, "STT staff has a far greater chance of successful follow up of the reports, if callers provide precise information not only about their concerns, but also identify who they are. This also helps STT to check back with them as follow-up action develops" (response to questionnaire). At the same time, however, some informants may be unwilling to report information if they have to provide any identifying information. ACN countries should consider whether allowing for anonymous reporting of offences would allow for more effective investigation and prosecution of individuals and companies that engage in foreign bribery.

Box 29. Whistleblower protection in the Ukraine's Law on Corruption Prevention

A new comprehensive Law on Corruption Prevention of Ukraine was adopted in October 2014 and enacted in April 2015. It contains a separate Section VIII (albeit with one article only) on whistleblower protection. According to the law, a whistleblower is a person who, having reasonable belief that the information is accurate, reports another person's violation of the requirements of the Law on Corruption Prevention.

The new law provides for various measures to protect whistleblowers. A whistleblower or his or her family member cannot be discharged or forced to resign, disciplined, or subjected to other negative measures (or to the threat of such measures) by a supervisor or employer (e.g., in reassignment, certification, changes to work conditions, denial of appointment, wage cutting, and so forth) in connection with a notification the whistleblower makes about a violation of the law by another person. Information about the whistleblower may be disclosed only upon his or her consent, except in specific cases stipulated by law.

Whistleblower protection for private sector

Private sector whistleblowers do not receive special protection in most countries, although a couple states (Lithuania and Serbia) treat private whistleblowers the same as public whistleblowers. At least one additional state (Montenegro) has separate legal provisions that set forth protections for private sector whistleblowers.

Box 30. Whistleblower protection under Montenegrin law

Montenegro's Labour Law treats private sector whistleblowers similarly to public sector whistleblowers, including by protecting employees' rights and guaranteeing confidentiality (Article 102a). However, at 20 000 EUR, the fine for violating these protections is 10 times that which applies in cases of public sector employees. In addition, since June 2013, it has been a crime under Montenegrin law (punishable by up to three years imprisonment) to break an employment contract of person who has reported corruption to the authorities (CC Article 224, violation of labour rights).

Montenegro also has taken additional steps to spell out how whistleblower protection should be implemented in certain agencies. For example, a 2008, police directive set forth procedures for protecting individuals who report corruption-related offences to the Police Directorate.

Finally, in December 2014, Montenegro adopted the Law on Prevention of Corruption, which sets forth a framework for protecting whistleblowers who report crimes in public institutions as well as in private companies (Articles 44–70). The law will enter into force on 1 January 2016 and defines “whistleblower” to include any natural or legal person who files a report indicating the existence of corruption (Article 4). The law sets forth detailed procedures for handling whistleblower complaints, including requirements to inform the whistleblower on measures taken within 45 days (Articles 48 and 50) and allowing the whistleblower to file a report with the Agency for the Prevention of Corruption if the answer received is not satisfactory (Article 51).³² The law also sets forth in detail how the Agency and the public institution or company involved are to work together to resolve the report.

Whistleblower protection is currently in a state of flux worldwide. A number of states, both in the ACN and elsewhere, are beginning to undertake legal reforms that would provide broader protection to public and private sector whistleblowers. This issue should be monitored as it develops.

Box 31. The development of Latvia’s whistleblower protection laws

Latvia’s Labour Law (section 9) prohibits sanctioning an employee or otherwise “directly or indirectly caus[ing] adverse consequences for him or her” because he or she exercised his or her rights “in a permissible manner, as well as when if he or she informs competent institutions or officials regarding suspicions with respect to the committing of criminal offences or administrative violations in the workplace.”

Any person may provide information about allegedly committed criminal offences—either to an investigating authority, the prosecution office, or a court. Latvian authorities have reported that KNAB has commenced investigations or even started criminal proceedings because company employees or competitors have reported suspected corruption-related crimes. A person may report to KNAB by written report, a free telephone hotline, or e-mail. Importantly, reports may be submitted anonymously. In addition, Latvia’s prosecution office accepts such information in writing, orally, in person, or electronically and does not collect or summarise information on about informants or the criminal offences reported. A person also may report a suspected crime to the Ministry of Interior (in writing, by email, or by phone) or through anonymous hotlines of the State Border Guard or the State Police. The Law on Special Protection of Persons (CPL section 24) provides safeguards for individuals making such reports.

Latvia is currently in the process of further strengthening its whistleblower protection laws. In January 2015, Latvia’s state chancellery, Prosecutor General’s Office, KNAB, and the NGO Delna signed a memorandum of agreement to develop and introduce a new whistleblower protection law in Latvia by the end of 2015.³³ The memorandum affirmed the important role of whistleblowers in the Latvian social and public system and set forth the parties’ commitment to develop the law on the basis of EU member state practices.

³² The whistleblower may also file a report directly with this agency, rather than filing a report first with the institution or company.

³³ Delna is Transparency International’s local entity in Latvia.

6 Sanctions and confiscation

The threat of being caught and facing financial penalties, imprisonment, and a loss of reputation, is a significant deterrent to would-be criminals of all types. To be effective as such, however, sanctions must be effective, proportionate, and dissuasive.³⁴ All of the countries surveyed in this report indicated that they have implemented effective, proportionate, and dissuasive sanctions for foreign bribery offences. However, since no individuals or companies have actually been sanctioned in these countries, it remains to be seen whether this is true in practice.

6.1 Criminal penalties and administrative sanctions

Every country under review provides for imprisonment of individuals as a sanction for engaging in foreign bribery. Several also provide that an individual can be fined for a foreign bribery offence. A number of countries also provide that an individual (especially one receiving a bribe) can be barred from holding certain public offices or from engaging in certain activities. A legal entity may be subject to a fine and in some cases liquidation, termination, or the restriction of its right to engage in its business.

In general, the countries under review impose more severe penalties for passive bribery than for active bribery. Many of the countries also impose more severe penalties when a bribe is offered, promised, or given in order to persuade an official to violate his or her duty by doing something he or she is not allowed to do or not doing something that he or she is required to do—as opposed to being offered, promised, or given a bribe to do something in accordance with his or her official duty. More severe penalties also often apply to larger bribes, bribes involving organised groups (including organised crime groups), and bribes involving extortion (in the case of passive bribery).

The length of prison terms that may apply varies greatly. A potential prison term as short as up to 3 years may apply to certain types of active bribery (e.g., in Armenia, BiH, and Georgia), while a prison term as long as 15 years could apply to certain types of passive bribery (e.g., in Georgia, Montenegro, and Serbia).

A number of countries also provide for civil or administrative sanctions for foreign bribery offences.

- **Ban from engaging in specific employment.** In Serbia, an offender may be prohibited “from practising a particular profession, activity, or all or certain duties related to the disposition, use, management or handling of another’s property or taking care of that property, if it is reasonably believed that his further exercise of that duty would be dangerous” (CC Article 85).
- **Ban from holding certain public offices.** In Latvia, natural persons convicted of aggravated foreign bribery may be banned from holding a specific office for up to 5 years.
- **Ban from procurement contracts.** In Latvia, an enterprise may be debarred from obtaining public procurement contracts if the enterprise, a member of its board or council, or its authorised representative has been convicted of corruption-related offences (Public Procurement Law, section 391(1)). Such a ban also applies in Romania. In Lithuania, this ban is mandatory (Law on Public Procurement, Article 33). In Ukraine, a company is prohibited from public procurement if it was sanctioned with “criminal law measures” under the CC and included in the register of persons/entities that committed corruption offences (Law on State Procurement, Article 17).
- **Ban from concession contests.** In Lithuania, a person found guilty of active or passive bribery must be expelled from the contest of concessions (Law on Concessions, Article 10).

Annex 4 sets forth details about the penalties that apply to foreign bribery cases in a number of ACN countries.

³⁴ COE Convention Article 19; UNCAC Articles 12, 26; OECD Convention Article 3.

Box 32. Sanctioning legal persons under Latvian law

A legal person found liable for foreign bribery may be subject to a variety of sanctions in Latvia. Liquidation applies if the legal person was created especially to commit the criminal offence or if a serious or especially serious crime was committed. "Restriction of rights" is the deprivation of specific rights or permits, for example, preventing a legal person from exercising certain rights, receiving state support, participating in government procurement procedures, or performing certain activities for a period of time. The amount of a monetary levy depends on the seriousness of offence and the financial circumstances of the legal person. It is based on the amount of 10 to 100 000 of the minimum monthly wages specified in Latvia at the time of the rendering of the adjudication.

A court that is sentencing a legal person is required to take the following into account:

- 1) the legal person's actual actions;
- 2) the nature and consequences of those actions;
- 3) the measures the legal person had in place to prevent the offence;
- 4) the legal person's size, activities, and financial circumstances;
- 5) the measures the legal person has undertaken to compensate for the losses or prevent damages from the offence; and
- 6) whether the legal person has reached a settlement with the victim.

6.2 Confiscation

The COE Convention (Article 19), the UNCAC, and the OECD Convention (Article 3(3)) all require confiscation in foreign bribery cases. For example, the COE Convention provides,

Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds.³⁵

As noted, both the instrumentality of the bribe and the proceeds of the bribe should be subject to confiscation. When the instrumentality and/or the proceeds are not readily available, property of equivalent value should be confiscated.

It should be noted that the term "confiscation" can have multiple meanings. It may be imposed as an administrative consequence of a crime (that is, relieving the briber of ill-gotten gains), or it may be imposed as an actual punishment or sanction to a crime (that is, penalizing the briber for the wrongdoing). For example, Latvian law specifically provides for confiscation for two different reasons.³⁶ First, confiscation can be applied in any criminal proceeding and to any person, if the property to be confiscated has been directly or implicitly acquired as a result of the criminal offence (CPL chapters 27 and 59). In these cases, confiscation is not considered a punishment. Confiscation can also be applied as a punishment, but only to convicted persons and only in cases specified by law (CL section 42).

A foreign bribery case may include three types of confiscation: (i) confiscation of the instrumentalities and proceeds of bribery; (ii) value based confiscation, that is, imposition of a pecuniary penalty corresponding to the proceeds of the bribery realisable against any asset of the defendant; and (iii) confiscation of converted or mixed proceeds, along with benefits derived from such proceeds.

³⁵ See also Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, 3 April 2014, <http://goo.gl/PMuZn9>.

³⁶ See Decision no. SKK 306/2013, Supreme Court Department of Criminal Cases Senate, 23 May 2013.

All of the countries that responded to the questionnaire provide for confiscation of the instrumentalities and proceeds of a foreign bribery offence, and all of them—except Azerbaijan—provide for value-based confiscation. For example, Lithuanian authorities have explained,

Where the property or part of the property subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or the confiscation of this property would be inexpedient, a court shall recover from the offender or other persons a sum of money equivalent to the value of the property or part of the property subject to confiscation. (response to questionnaire)

All of the countries that responded to the questionnaire stated that their laws provide for confiscation of converted or mixed proceeds. They also noted that benefits deriving from these proceeds should be covered, with one exception: Lithuania noted that its laws theoretically could apply to benefits of such proceeds, but that application is unclear (responses to questionnaire).

Box 33. Confiscation under Montenegrin law

Montenegro's criminal code provides that in a foreign bribery case, "Money, property of value and any other pecuniary gain originating from a criminal offence shall be confiscated from the perpetrator, and where such confiscation is not possible, the perpetrator shall pay the equivalent amount in money" (Article 113(1)). It goes on to explain that "pecuniary gain" can be confiscated if "there is reasonable suspicion to believe that it originates from criminal activity unless the perpetrator makes it probable to believe that its origin is legitimate (extended confiscation)" (Article 113(2)).

The term "pecuniary gain" includes the gain that results directly from an offence, any property into which that gain is converted, and "any other benefit obtained from the pecuniary gain directly obtained from the criminal offence irrespective of whether it is located in or outside of the territory of Montenegro" (CC Article 142(12)).

The confiscation laws of at least four ACN countries (Albania, Latvia, Montenegro and Serbia) would allow for the reversal of the burden of proof to the alleged offender, that is, requiring the defendant to prove the lawful origin of alleged criminal proceeds.³⁷ Three other countries provide for a shared burden of proof. For example, in BIH, the Law on Amendments to the Criminal Code introduced "extended confiscation of criminal offence," in which the court may, at its discretion confiscate the property gain for which the prosecutor has provided sufficient evidence to reasonably believe that such property gain was obtained through the commission of these offences, if the offender fails to submit evidence that the gain was legally obtained (CC Article 110a). Thus, the burden of proof is shared between the prosecution and the defendant. Similar provisions apply in Lithuania and Romania (CC Article 112(2)). Other countries (e.g., Armenia and Georgia) do not allow for any reversal of the burden of proof. Rather, all unresolved doubts are construed in favour of the accused.

Box 34. Confiscation of unexplained assets in Ukraine

In February 2015 Ukrainian law was amended to introduce civil and criminal conviction-based confiscation of illegal assets. An amendment to CPC Article 100.9 provides that when a court rules on the criminal case it should also order confiscation of assets (money and other assets, including proceeds from them) belonging to a person convicted of corruption offence or money laundering or to a legal entity related to such a convicted person if the legal grounds for acquiring such assets have not been established in the court. Similarly the CPC was supplemented with provisions (new Chapter 9, Section III) on proceedings to recognise assets as unjustified and forfeit them. According to these new provisions, a prosecutor may file a lawsuit with a civil court after the criminal conviction of a public official for corruption or money laundering. The court will recognize assets as unjustified if, based on the evidence submitted, it

³⁷ Under Albanian law, this reversal of the burden of proof only applies to certain crimes (Law 24/2014). The only foreign bribery crime covered is active corruption of foreign officials (art. 244/a). (This reversal of the burden of proof also applies to crimes in articles 164/a, 244, 245, 260, 312, 319 and 319/ç CC, all of which are domestic corruption crimes).

cannot establish that the assets or the money used to acquire the assets was obtained on a legal basis.

6.3 Out of court settlements

In 2014, the OECD reported that the majority of sanctions in foreign bribery cases brought by countries party to the OECD Convention are imposed through settlement procedures (OECD 2014). Settlement is a tool that can facilitate efficiency in the judicial system. A number of ACN countries—Georgia, Latvia, Lithuania, Montenegro, Romania, Russia, and Serbia—allow for out of court settlement of cases of foreign bribery.

In some countries, settlement is only allowed if the perpetrator compensates or eliminates the damage that has occurred (or undertakes to do so) (e.g., Lithuania CCP Article 418). In other countries, the availability of out of court settlement depends on the maximum prison term applicable to the offence (e.g., in Montenegro and Romania). This can create the result that a bribe giver can enter into a plea agreement (that is, for active bribery), but the bribe recipient (that is, the passive briber) cannot (see, e.g., Montenegro CCP Article 300(1); Romania CCP Articles 478–488).

Box 35. Out of court settlement of cases in Latvia

The prosecutor has the power to enter into an agreement for an out of court settlement on his or her own initiative or at the initiative of the accused or his or her defence counsel (CPL chapter 38). This does not apply if there are several accused persons in one criminal proceeding and if an agreement regarding an admission of guilt and a punishment may not be applied to all the accused persons.

In addition, the CPL provides several additional means in which investigators and prosecutors may terminate criminal proceedings with the consent and/or cooperation of an offender. For example, proceedings may be terminated if an offence “has not caused harm that would warrant the application of a criminal punishment,” if the offence is not serious and the offender has reached a settlement with the victim, or if it is not possible to complete the proceedings within a reasonable time (CL section 58; CPL section 379). The prosecutor general may also terminate proceedings if a person substantially assists with the disclosure of serious offences such as foreign bribery (CL section 58(3); CPL section 410).

Foreign bribery proceedings may also be terminated conditionally if the accused does not have previous convictions or conditional terminations and substantially assists in the disclosure of other serious offences. If the offender meets the conditions imposed, then the termination becomes final. The decision to terminate conditionally must be taken by a chief prosecutor with the consent of a more senior prosecutor. A person whose rights or lawful interests are affected can appeal the decision to another prosecutor who is more senior than the one who consented to conditional termination (CL section 58; CPL sections 336, 415–419). The outcome of the appeal can be further appealed to more senior prosecutors until the matter reaches the prosecutor general, according to Latvia. Guidelines have not been issued to investigators and prosecutors on the application of these provisions.

7 Statistics and cases

7.1 Completed foreign bribery case

Bulgaria is the only ACN country that has issued sanctions in a foreign bribery case.³⁸ That case involved an individual who offered a bribe of EUR 20 to a Slovenian border guard in order to cross the border with a truck that was in poor condition. In 2004, he was convicted of foreign bribery and fined BGN 200 (approximately EUR 102) (OECD WGB 2011, 7).

7.2 Investigations and on-going cases

During the OECD WGB's last evaluation of Bulgaria's enforcement of its foreign bribery offence, Bulgaria explained that it had engaged in six foreign bribery investigations. Four of these investigations were discontinued at early stages because of a lack of information or for other reasons (2011, 7). Of the proceedings that advanced, one involved bribery of a Zambian official in 2000 and was discontinued following the alleged bribe giver's death in 2009. The other was the sanctioned case discussed above.

In 2014, the WGB described four foreign bribery allegations that had arisen in Slovenia since it became a party to the OECD Convention in 1999 (2014, 9). One case was dismissed following a preliminary investigation because of insufficient evidence for prosecution (*ibid.*, 10). Another set of allegations involving the Slovenian subsidiary of an international pharmaceutical company led to sanctions in another state party to the OECD Convention, but no proceedings were opened in Slovenia. Slovenian authorities explained to WGB examiners that they were unaware of the case, although the WGB pointed out that information regarding the allegations was freely available on the internet and in the news media (*ibid.*).

Two other sets of allegations led to on-going investigations in Slovenia. One case involves a Slovenian company that received export credit support from SID Bank (the Slovenian export credit bank). The bank learned that part of the loan might have been used to pay a bribe to a foreign official responsible for issuing permits, and the bank reported the case to the Slovenian Commission for the Prevention of Corruption (CPC), which then reported the case to the police. In 2014, the case was under investigation by the Slovenian police, but charges for foreign bribery had not yet been brought (*ibid.*). Slovenian prosecutors were not aware of the investigation until the case was brought to their attention during the WGB evaluation.

The final case involves the subsidiary of a Slovenian company that received a permit for public infrastructure installations in a foreign country. According to media reports, irregularities occurred in the award of the permit. For example, the subsidiary had only one employee, was created just shortly before it won a public contract, and had no relevant business experience. In addition, the owner of the Slovenian parent was a close friend of the foreign official who issued the permit. An investigation commenced in the foreign country in 2010, and an indictment was issued in 2013. However, as of 2014, the investigation in Slovenia was still at a preliminary stage and Slovenia had not received any MLA requests in connection with the foreign investigation.

Finally, Romania is in the midst of prosecuting a foreign bribery case, and that case is still pending in the trial court. The defendant in that case is a Romanian citizen who was elected as a member of the European Parliament. He has been accused of accepting the promise of a bribe of 100 000 EUR annually between 2010 and 2011 from the representative of a British company in exchange for proposing certain

³⁸ Albania reported about the 2015 Korca case, where an Albanian citizen attempted to bribe a foreigner who was employed with an Albanian government agency. Although the individual being bribed was a foreign citizen, he/she was actually an Albanian official (that is, working for the Albanian government), not a foreign official. Thus, this appears to be a case of domestic bribery—bribery of an Albanian government employee—not of foreign bribery.

amendments and influencing other members of parliament in proposing and voting for certain amendments and EU directives that would be in the company's interests. The prosecutors learned about the potential offence from the mass media.

Thus far, Romanian law enforcement authorities have taken the following steps:

- 1) waiving the defendant's parliamentary immunity,
- 2) starting a criminal investigation,
- 3) obtaining a search warrant for the defendant's premises,
- 4) sending MLA requests to France and Belgium to execute the search warrant and interview some witnesses,
- 5) transcribing tapped phone call conversations and voice recordings received from the denouncers, and
- 6) interviewing the defendant and witnesses.

Romanian authorities have explained that the main difficulty for the investigators was obtaining the waiver of the defendant's parliamentary immunity. That procedure took about four months. Another difficulty arose in connecting with obtaining and executing a search warrant for the premises of the European Parliament in order to collect evidence.

As illustrated in these cases, enforcement of foreign bribery laws is clearly low in ACN countries. In some instances, it appears that government authorities are not aware of or acting upon publicly available reports of foreign bribery. It also appears that law enforcement bodies may not be sharing information with other enforcement bodies—both in country and abroad—which could lead to more effective investigations and prosecutions, as well as an increase in awareness of the offence among law enforcement authorities. Some countries (e.g., Armenia) do not keep separate records of foreign bribery versus other kinds of corruption cases, which may make understanding the various types of corruption at play in a country difficult.

The poor track record of enforcement actions is not necessarily due to a lack of possible cases or allegations. For example, the two incidents discussed in the box below could have led to the opening of an investigation into foreign bribery.

Box 36. Possible foreign bribery cases under jurisdiction of Ukraine

Case 1. In July 2013 a federal grand jury in Chicago, US, charged six foreign nationals (including a Ukrainian businessman) with conspiracy to engage in international racketeering and money laundering. The scheme involved bribery of officials in India related to obtaining mining licenses. According to the indictment, the scheme began in 2006 and involved at least USD 18.5 million in bribes to state and federal officials. Expected revenues from the project were over USD 500 million annually, based on the sale of titanium products to a Chicago-based company. The Ukrainian national, Dmitry Firtash, was arrested in Austria in March 2014. He was later released on bail, after agreeing to remain in Austria until the end of extradition proceedings.

According to the court documents, Firtash was the leader of the conglomerate of companies that was used to transfer and conceal the bribe payments. He allegedly met with the Indian officials and authorised the bribe payments. Firtash

also allegedly directed others to falsify documents in order to conceal the true nature of the payments. US enforcement authorities opened up an investigation and begin prosecutorial proceedings relating to Firtash and five other individuals. However, Ukraine does not appear to have opened an investigation into the Ukrainian national's involvement in the matter.³⁹

Case 2. In January 2013, two employees of Ukrspetsexport, a Ukrainian state-owned arms export company, were arrested in Kazakhstan on suspicion of giving a USD 200 000 bribe to a high-level official of the Kazakh Ministry of Defence in order to obtain a contract to repair aircrafts. Later that year, they were convicted in Kazakhstan and were each sentenced to six years of imprisonment. A Kazakh Ministry of Defence official was convicted as well and sanctioned with an 11-year prison term. The two Ukrainian nationals were later transferred to Ukraine for execution of their sentences.⁴⁰

³⁹ See US Department of Justice, "Six Defendants Indicted in Alleged Conspiracy to Bribe Government Officials in India to Mine Titanium Minerals," Press Release (2 Apr. 2014), <http://goo.gl/j9DHMr>.

⁴⁰ See "Two high-ranking officials of "Ukrspetsexport" arrested in Kazakhstan," *ZN.UA* (31 Jan. 2013), <http://goo.gl/VHaOrW> (in Russian); "Appellate panel upheld the guilty verdict in the case of convicted 'Ukrspetsexport,'" *News Kazakhstan* (19 Sept. 2013), <http://goo.gl/d8PIUq> (in Russian); "Ukraine has achieved extradition of top management of 'Ukrspetsexport' convicted in Kazakhstan," *ZN.UA* (4 Dec. 2013), <http://goo.gl/oZEFSz> (in Russian).

8 Public awareness

One issue that arose in an OECD WGB evaluation of Bulgaria’s enforcement of its foreign bribery law was that foreign bribery was “not perceived by Bulgarian public officials, the private sector and civil society as an area of high risk for Bulgarian business” (2011, 7). The WGB concluded, “As a result, little attention is paid by the government and law enforcement to foreign bribery risks. No special resources are specifically allocated to the prevention, detection, investigation and prosecution of foreign bribery cases” (ibid.). Given the size of their economies, this is likely to be the case in a number of ACN countries. Nonetheless, turning a blind eye to foreign bribery allows a culture of corruption to perpetuate that can affect not only the way companies do business abroad, but how bribery and other forms of corruption are perceived at home. For this reason, public awareness raising efforts regarding corruption—including foreign bribery—are critical.

8.1 Public outreach generally

Many ACN countries engage in public outreach activities with regard to corruption, but these activities tend to deal with corruption generally, rather than with foreign bribery specifically.

For example, Montenegrin authorities have explained that although its Directorate for Anti-Corruption Initiative (DACI) carries out general anti-corruption public awareness campaigns, the agency has not yet tackled foreign bribery as a separate criminal offence yet (response to questionnaire).

This may be changing, however. For example, in December 2013, DACI organised a round table “Integrity in public and private sectors: achievements and challenges,” in cooperation with the American Chamber of Commerce in Montenegro and the US Embassy in Podgorica. Involving countries already prosecuting foreign bribery cases in discussions such as this allows for learning and exchanges of information.

Box 37. DACI’s “Not a Cent for Bribes” campaign in Montenegro

DACI in Montenegro has been engaging in public awareness with regarding to corruption since 2008. Currently it is involved in the campaign “Not a Cent for Bribes,” the most extensive anti-corruption campaign in Montenegro to date. In the framework of this campaign, which was initially launched in 2012, it has distributed flyers and posters, placed billboards, and broadcast video and audio spots over the mass media. This campaign has resulted in an increase in the number of corruption complaints filed with DACI and other public bodies. Several other state agencies, including the Police Directorate and Customs Administration have also been involved in anti-corruption campaigns.

Box 38. Latvia’s public awareness activities following accession to the OECD Anti-Bribery Convention

Since it acceded to the OECD Anti-Bribery Convention in 2014, Latvia has undertaken a number of efforts to inform the public of the risks of foreign bribery specifically. For example,

- It has translated the *Anti-Corruption Ethics and Compliance Handbook for Business* and made it available on the website of KNAB.
- In January 2015, individuals from professional organisations of accountants, universities with accounting programmes, and the Ministry of Finance participated together in an accounting forum dealing with the Convention and its implementation.
- In March 2015, KNAB consulted with the Confederation of Employers concerning the provisions of the Convention and developed an informal agreement of co-operation to engage in joint awareness raising activities with the Latvian Platform for Development Cooperation (LAPAS), an NGO that subcontracts with the Confederation.

Public anti-corruption institutions are also beginning to make efforts to include business and civil society in their activities. For example, Armenia’s Anti-Corruption Council, which was established in 2004, has

consisted solely of government representatives up until earlier this year. A new government decree, issued in February 2015, added two civil society representatives to the council.

8.2 Making information available to the public

A key to public awareness of foreign bribery is ensuring that the public has information about the crime (see, e.g., UNCAC Article 13). A few ACN countries have undertaken such activities online, in the mass media, and through embassies abroad, although efforts could be improved in the large majority of countries. A few representative examples are listed below:

- **Using online resources to disseminate information.** The Armenian public prosecutor's office publishes information about corruption cases on its website. Authorities encourage whistleblowing and have created a hotline for the public to give information on bribery.

The website of Latvia's Corruption Prevention and Combating Bureau (KNAB) discusses principles of internal control, ethics and compliance. It also includes information about how to report suspected corruption.

The Latvian Guarantee Agency provides information on its website regarding the consequences of foreign bribery for recipients of export credit financing.⁴¹

STT officials in Lithuania publish anti-corruption messages on STT's Facebook page as well as on the STT website.

- **Providing printed materials to the public.** Latvia has created a leaflet regarding foreign bribery risks and how to report such events, which it has distributed to its embassies, overseas development aid missions, and the Confederation of Employers of Latvia.

In 2009, Slovenia's CPC created a leaflet entitled "Corruption in International Business: How to Recognise it and What to Do? Guidelines for Slovene Companies Abroad"; however, the leaflet does not appear to have been widely distributed (OECD WGB 2014, 50).

- **Using the mass media.** In 2014, STT officials in Lithuania informed the public on an on-going basis about current developments in STT and in the anti-corruption arena generally by issuing press releases, disseminating 203 informational notes to the media.

In the second half of 2014, approximately 50 television programs and 30 website or radio programmes in Armenia addressed the fight against corruption have been organised. Lithuania's STT has sought to reach an agreement with its Lithuanian embassies abroad to obtain direct information about media coverage of bribery cases where Lithuanian citizens are involved.

Professional organisations can also play a role in highlighting issues of corruption. For example, the Young Lawyers Association in Armenia has organised an award called "Stop the Corruption Chain." Similarly, the Montenegrin Employers Federation organised a conference on the occasion of the implementation of the project "Corporate Social Responsibility for All" in March 2013. The project

⁴¹ Until 15 April 2015 the Latvian Guarantee Agency Ltd. (Latvijas Garantiju Aģentūra, SIA) Ltd. operated as an independent, full spectrum development financial institution, which helped businesses to attract funding in the event of insufficient collateral with the purpose of facilitating their establishment, the growth and expansion of their operations. On 15 April 2015, as the restructuring process was concluded, the Latvian Guarantee Agency, together with the State Joint Stock Company Latvian Development Financial Institution Altum and the State Joint Stock Company Lauku attīstības fonds (Rural Development Fund) merged into a unified institution—JSC Development Finance Institution Altum. All the shares of unified institution are owned by the state; shareholders are the Ministry of Economics, the Ministry of Finance, and the Ministry of Agriculture Industry.

promoted a socially responsible approach to doing business and aimed at capacity building of employers' associations and companies in terms of corporate social responsibility in Western Balkan countries and Turkey. The project was funded by the EU.

As part of the activities implemented according to the Serbian National Anti-Corruption Strategy, Serbia's Chamber of Commerce and Industry supports and promotes best practice of business entities that have adopted anti-corruption safeguards such as integrity plans, codes of business ethics, or the International Chamber of Commerce Rules on Combating Corruption. In addition, the Chamber of Commerce and Industry displays the ICC Rules on Combating Corruption and its anti-corruption clause on its website, so as to make it available to the members of the Serbian Chamber.

8.3 Developing guidance, policies, procedures and controls for combating corruption

State institutions may adopt internal guidelines for combating corruption, or they may assist private businesses in creating their own anti-corruption guidance. As an example of the first option, Montenegro's Law on Civil Servants and State Employees (Article 68) provides that all state authorities must adopt integrity plans that include measures to prevent and eliminate corruption. So far, 102 institutions have adopted such plans (and plans are underway in 15 additional institutions). In addition, 92 institutions have appointed integrity managers.

A few countries have also undertaken to assist the private sector in adopting appropriate anti-corruption policies and procedures. For example, STT officers from Lithuania have provided advice and contributed to the development of large state-owned enterprises zero-tolerance policies.

Box 39. Efforts to work with the business sector in Romania

In Romania, the Centre for Legal Resources (CLR), in cooperation with the embassies of the United Kingdom and the Romanian Chamber of Commerce and Industry, launched a project "Ethics and conformity in the Romanian business environment" in February 2013. The project aims to raise business environment sensitivity to the standards of business ethics and legal compliance. In May 2014, the Romanian government approved a memorandum aimed at improving good governance in the business sector. One of the main objectives of the document was to enhance cooperation between government and the private sector about good governance issues.

In October 2014, the Romanian Ministry of Justice, in partnership with the prime minister's office, organised its second annual anti-corruption conference, focused on "Best practices in preventing corruption, promoting integrity and transparency." This event, which was funded by the Dutch government, aimed to increase the knowledge and visibility of the measures to prevent corruption and enhance integrity in the public and private sectors. Attendees included representatives from government, business, and civil society. However, it does not appear that the event addressed foreign bribery specifically.

In April 2015, an event "Business Integrity in Romania: challenges, good practices and way forward" occurred in Bucharest. During this event, preliminary findings of the thematic study "Business Integrity in Eastern Europe and Central Asia" were presented. These outcomes are to be used not only to further develop the study, but also to identify concrete proposals for actions at the regional level to increase integrity within private and state-owned companies.

A commitment to assist the private sector in developing tools for fighting corruption may also be a part of a country's national anti-corruption strategy.

For example, in 2012, the Romanian government adopted a National Anticorruption Strategy (SNA) 2012–2015, with a specific objective of promoting a competitive and fair business environment. Among other things, the strategy includes commitments to do the following:

- 1) implement OECD, EU, and UN standards for preventing corruption in the private sector;
- 2) engage in exchanges of best practices between the private and public sector in relation to implementing compliance programmes;

- 3) organise regular public consultations between the public and private sector on the national anti-corruption agenda; and
- 4) disseminate anti-bribery policies and programmes to possible contractors and suppliers.

In relation to implementing this strategy, a business environment platform meets approximately every two months to discuss best practices.

In July 2015 Latvia's government (the Cabinet of Ministers) adopted Corruption Prevention and Combating Guidelines for 2015–2020 that replace the National Anti-Corruption Strategy 2009–2013. These guidelines stipulate the following measures, among other things:

- 1) preparation of a manual for companies addressing issues of corporate social responsibility and internal control measures to prevent bribery; and
- 2) organisation of awareness raising events for entrepreneurs about the consequences of domestic and foreign corruption and promoting implementation of international anti-corruption measures in companies (to be organised by law enforcement institutions in cooperation with organisations representing business interests).

8.4 Training for public and private employees

For public employees

In addition to the training provided to law enforcement personnel discussed above in section 5.4.2, some ACN countries have engaged in training activities for other public employees that may be in a position to detect or prevent foreign bribery or to assist companies in dealing with corruption risks. As a rule, however, these activities have not as yet focused specifically on foreign bribery:

- **Training for diplomats.** Lithuania's STT gives yearly lectures to diplomats regarding the damage and effects caused by corruption, as well as anti-corruption efforts of STT and other institutions.

Latvia's Ministry of Foreign Affairs and KNAB have discussed the role of embassies in countering foreign bribery at the annual meeting of Latvian ambassadors. These agencies have also provided leaflets to embassies and to the Investment and Development Agency of Latvia's (LIAA's) missions abroad to encourage them to provide support to companies that confront bribe solicitations and to discuss Latvia's obligations under the OECD Anti-Bribery Convention, including how to recognise and report cases of foreign bribery and how to raise awareness about the Convention. Starting in 2015, the OECD Convention will become a part of the training components for diplomats.

- **Training for tax and customs officials.** In December 2014, Latvia provided training to tax inspectors on detecting corruption and fraud. In 2015, tax inspectors will attend a training course on bribery detection methods, based on the OECD's *Bribery Awareness Handbook for Tax Examiners* (OECD 2009).
- **Training for auditors.** A new Latvian law passed in March 2015 imposes a requirement on auditors to notify KNAB of suspicions of domestic and foreign bribery. KNAB brought this issue up during a training session for auditors in November 2014.
- **Training for employees of overseas development assistance and export credit agencies.** In November 2014, the heads of several foreign offices of the LIAA convened for a workshop to discuss Latvia's obligations under the OECD Convention. Information was also provided about how to contact KNAB if a bribe request has occurred. In December, KNAB released a leaflet on bribery in private sector and provided printed versions for distribution at the LIAA (as well as the Ministry of Foreign Affairs and Confederation of Employers of Latvia).

- **Public procurement personnel.** Latvian authorities reported that public procurement personnel receive tailor-made training on corruption prevention issues.

A few countries have also leveraged their resources by cooperating with foreign or international institutions to engage in training activities. For instance, Lithuanian STT officials have participated in OECD seminars. STT has also been implementing a joint project “Rising of Anti-Corruption Training System” in co-operation with the Central Anti-Corruption Bureau of the Republic of Poland and the European Commission. This project is aimed at practical cross border co-operation among anti-corruption experts and practitioners, increasing intolerance to corruption, and exchanging best practises acquired by the European Union in the area of fighting corruption. The project has been designated to upgrade the anti-corruption qualifications of private and public sector representatives, provide training to about 4 500 officials from variety of institutions and raise the level of public anti-corruption awareness.

For the public

Fewer efforts have been made to provide training to the private sector on the risks of foreign bribery, and all such efforts have been in connection with accession to the OECD Anti-Bribery Convention.⁴²

For example, Latvia has undertaken the following activities in connection with its accession to the OECD Anti-Bribery Convention:

- During the time of accession to the Convention, the Ministry of Justice informed the public about the Convention’s requirement by providing information to the mass media through press releases and publishing Articles in the country’s legal journal (*Jurista vārdi*).
- In April 2014, LIAA, in cooperation with KNAB and Swedbank, organised a workshop called “Risks of operating in foreign markets” for entrepreneurs trying to enter markets of other countries. Among other things, it addressed issues of foreign bribery, liability for domestic and foreign bribery, and necessary internal control measures for companies.
- At an accounting forum organised by the Ministry of Finance in January 2015, experts from the Ministry of Justice discussed implementation of the OECD Convention. Participants included members of professional organisations of accountants, representatives of universities with accounting programs, and Ministry of Finance officials.

In order to raise awareness among auditing and accounting professionals, Latvian authorities—together with the self-governing professional association the Latvian Association of Sworn Auditors—organised a training for auditors on foreign bribery and Convention in August 2014. KNAB gave another, more detailed presentation during the Latvian Association of Sworn Auditors’ annual meeting in November 2014.

In connection with its desired accession to the OECD Convention, the Lithuanian STT, Ministry of Justice, and Ministry of Foreign Affairs worked with the OECD to arrange a technical seminar “Towards Accession to the OECD Anti-Bribery Convention: Challenges And Best Practices,” which took place in October 2014. At this event, international experts and representatives of the OECD provided hands-on experience about investigating and prosecuting bribery of foreign officials through presentations, case studies, and discussions.

⁴² Bulgaria, Slovenia, Estonia, Russia, and Latvia are the only countries that are part of this study that are also parties to the OECD Anti-Bribery Convention. Bulgaria ratified the Convention in December 1998, Slovenia in September 2001, Estonia in December 2004, Russia in February 2012, and Latvia in March 2014. Lithuania is in the process of ascending to the OECD Working Group on Bribery and becoming a state party to the OECD Anti-Bribery Convention. Romania has also requested to become part of the OECD Working Group on Bribery and a party to the convention.

8.5 Encouraging the reporting of corruption-related offences

In a number of countries (e.g., Armenia), the procedures and mechanisms for reporting suspected acts of foreign bribery are the same as for reporting other crimes. Other countries have special channels for reporting foreign bribery.

Box 40. Reports of corruption-related crimes in Montenegro

Montenegro's Directorate for Anti-Corruption Initiative (DACI) is the main government agency in Montenegro that deals with anti-corruption issues broadly and whistleblowing more specifically. Since 2006, the DACI has operated a system by which employees and citizens can report corruption and other wrongdoing. Individuals can file reports in person or via phone, e-mail, fax, or post. Reports may be made anonymously, but if a person reporting corruption chooses to disclose his or her identity, confidentiality is to be guaranteed. Although the DACI does not have investigative competences, it refers reports to appropriate authorities for follow up.

In addition to the DACI, several other government authorities have procedures and hotlines for whistleblowers and the public at large, including designated staff to receive and act upon disclosures. These include the Customs Administration, Ministry of Healthcare, Police Directorate, Judicial Council, Ministry of Education, Supreme State Prosecutor's Office, Public Procurement Office, Tax Administration, Investment Development Fund, and National Commission for the Monitoring of Implementation of the Strategy for Combating Corruption and Organised Crime.

Box 41. Reports to Lithuania's Special Investigative Service (STT)

Anyone who knows or has a reasonable suspicion about a corruption-related crime that has been or is to be committed may contact the STT, regardless of the informant's citizenship, age, social status, or any other factor. The STT receives reports in a variety of ways:

- By telephone through a 24-hour hotline
- By mail at STT's headquarters or at any field office
- Via STT's website
- In person via appointment or during visiting hours

Although Lithuanian officials have explained that informants "occasionally" prefer to remain anonymous, STT staff prefer to obtain an informant's identity, so they can follow up on have the report. If requested, they will ensure the confidentiality of all details and information provided to them.

Regardless of how reports are made, the public needs to be aware of these potential reporting channels. Accordingly, KNAB in Latvia has prepared informational leaflet that provides information about reporting alleged foreign bribery cases or requests for bribes experienced to KNAB. This leaflet has been distributed to Latvian embassies and is also available on KNAB's website.

8.6 Leveraging international instruments and guidance in public awareness efforts

Although several ACN countries are parties to the COE Criminal Law Convention on Corruption and the UN Convention against Corruption, only three countries (Georgia, Latvia, and Montenegro) appear to be using these instruments as leverage in their public awareness activities.

International instruments and other guidance can be leveraged in a variety of ways. For example, a country may use them directly to help raise awareness about the foreign bribery offence.

Box 42. Disseminating international materials in Latvia to help raise awareness of foreign bribery

KNAB has translated the *Anti-Corruption Ethics and Compliance Handbook for Business*—a joint project by the OECD, World Bank, and UNODC (2013)—into the Latvian language and posted it on its website. In addition, Latvia's national contact point for purposes of adherence to the OECD Guidelines for Multinational Enterprises (which includes a section on foreign bribery) has translated the OECD "Responsible Business Conduct Matters" (which references the need to avoid corruption) into Latvian and it is posted on the website of the Ministry of Foreign Affairs.⁴³

On a more general level countries can use the materials and guidance provided by public international organisations to develop anti-corruption strategies and plans at the domestic level. Doing so gives such plans legitimacy. For example, Georgia used a variety of sources in developing its recent Anti-Corruption Strategy and Action Plan (both of which have preventing private sector corruption and awareness raising as strategic priorities), including the following: UNCAC; COE's Twenty Guiding Principles for the Fight against Corruption (1997); Kuala Lumpur Statement on Anti-Corruption Strategies (UN 2013); GRECO evaluations concerning Georgia; independent research reports of Georgia's anti-corruption efforts; and international surveys (such as Transparency International's Corruption Perceptions Index).⁴⁴

The process of implementing international recommendations in a country can also lead to increased public awareness of the foreign bribery offence.

Box 43. Monitoring the implementation of GRECO recommendations in Montenegro

Montenegro's Directorate for Anti-Corruption Initiative (DACI) is in charge of monitoring implementation of GRECO recommendations, coordinating implementation of UNCAC, cooperating with NGOs and the private sector to combat corruption, and performing other activities that arise from the country's membership in the Regional Cooperation Council of southeastern Europe. Since 2006, DACI has engaged in a number of efforts to raise awareness about corruption-related issues, for example, highlighting International Anti-Corruption Day (9 December), organising round table meetings, and participating in the UNODC's global anti-corruption campaign "Your NO counts."⁴⁵ A page on DACI's website is dedicated solely to relevant international documents.⁴⁶

⁴³ A country adhering to these guidelines is to set up a national contact point to undertake promotional activities, handle enquiries, and contribute to resolving issues that arise in relation to implementing the guidelines.

⁴⁴ Available at <http://goo.gl/N63ne8>.

⁴⁵ DACI's website contains a number of informational resources regarding fighting corruption. See <http://antikorupcija.me/en>.

⁴⁶ This page is at <http://goo.gl/HHrzzc>.

Policy recommendations

ACN countries should undertake the following actions to strengthen their legal frameworks for fighting foreign bribery in line with international instruments, such as the OECD Anti-Bribery Convention, the Council of Europe Criminal Law Convention on Corruption and the UN Convention against Corruption, as well as international best practice:

1. Put in place laws establishing the liability of both natural and legal persons for active foreign bribery, in line with international instruments and best practice. These laws should cover the following:

- a. Promise and offer of an undue advantages, as well as giving of such an undue advantage to a foreign official;
- b. When the undue advantage is promised, offered or given directly or indirectly (such as through an intermediary, agent or other third person); and
- c. Regardless of whether the undue advantage is promised, offered or given to the official himself or to a third party beneficiary.

2. Put in place laws establishing the liability of natural persons for passive foreign bribery, in line with international instruments and best practice. These laws should cover the following:

- a. Accepting a promise or offer of an undue advantage, receiving an undue advantage and soliciting (requesting) an undue advantage by a foreign official;
- b. When the acceptance, receipt or solicitation occurs directly or indirectly; and
- c. Regardless of whether the undue advantage is meant for the official himself or for a third party.

3. Ensure that laws regulating foreign bribery explicitly apply to both tangible and intangible advantages, including non-pecuniary advantages.

4. Ensure that laws regulating foreign bribery apply to legal persons, including in cases where the natural person who engages in the bribery cannot be identified, located or prosecuted/convicted. In this regard, the recommendations of the OECD/ACN study *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia* (2015) should be consulted.

5. Take steps to clarify in the law that all of the following groups are covered by the term “foreign official”:

- a. Persons holding legislative, administrative or judicial office in a foreign country (regardless of whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of seniority);
- b. Officials and agents of public international organisations (including those authorised by such organisations to act on their behalf);
- c. Persons who perform public functions (such as for a public agency or enterprise);
- d. Members of parliamentary assemblies of international and supranational organisations of which the country is a member;

- e. Holders of judicial office or officials of an international court whose jurisdiction is accepted by the country;
 - f. Persons who provide a public service (such as a notary, attorney, or auditor);
 - g. Domestic and foreign arbitrators; and
 - h. Jurors in the judicial system of another country.
5. Clarify that the term “foreign official” is autonomous, that is, determining whether an individual is a foreign official does not depend on an outside legal source (such as proof of law of the foreign official’s country).
6. Ensure that the foreign bribery offence is consistent with all applicable treaties. For example, the offence should not be limited to international business transactions in countries party to an international treaty that requires a broader scope of the offence (e.g. the Council of Europe Criminal Law Convention on Corruption).
7. With regard to defences under foreign bribery laws,
- a. Clarify that facilitation payments—that is, small sum payments to expedite a process—are not allowed under foreign bribery laws.
 - b. Eliminate any defence based on a bribe being solicited from the bribe giver.
 - c. Also eliminate the defence of effective regret, that is, that a bribe giver can escape liability by reporting the bribe paid. The purpose behind this defence is to assist law enforcement officials in prosecuting government officials who abuse their office by giving bribe givers an incentive to report the bribes they pay. However, this purpose is not relevant in the case of foreign bribery because there is no guarantee that the foreign official who was given a bribe will be prosecuted if the bribe giver comes forward.
8. Conduct assessments to determine why foreign bribery cases are not currently being successfully investigated or prosecuted. Based on the recommendations developed from these assessments, consider taking the following steps to improve the framework for investigating and prosecuting foreign bribery cases:
- a. Put in place specialised law enforcement units with responsibility for investigating and/or prosecuting foreign bribery offences. These units should be adequately financed and fully autonomous and independent.
 - b. Provide specialised, technical training to law enforcement officials (including prosecutors) and judges regarding best practices for investigating and prosecuting foreign bribery cases, and how these cases differ from domestic bribery and other corruption cases. Practitioners from other ACN or OECD countries may be invited to assist in this training. Training should be as practical as possible and should target the mechanisms of investigating and trying such cases.
9. Regarding time limits for investigating and trying cases,
- a. Review the limitations periods that apply to foreign bribery offences to determine whether a too-short limitations period is negatively influencing the investigation and prosecution of foreign bribery cases and, if needed, lengthen this period. In general, the limitations period should be at least 5 years long.

- b. Review any time limitations that apply to the pre-trial investigatory period to determine whether this period is sufficient to allow for the investigation of suspected cases of foreign bribery and, if necessary, lengthen this period or put in place clear guidelines allowing for the period to be increased in foreign bribery cases.

10. Regarding reporting suspicions of foreign bribery,

- a. Ensure that the law requires all public employees to report suspicions of foreign bribery to appropriate law enforcement officials.
- b. Create whistleblower protections for both public employees and private individuals that will allow them to report suspected incidents of foreign bribery or other corrupt conduct without fearing reprisal.
- c. Amend the criminal procedure laws to allow for an investigation to be opened upon an anonymous report, rather than requiring individuals to provide their identities when reporting suspicious conduct.
- d. Consider creating and publicising an electronic system (such as an online or telephone system) that public and private individuals can use to report suspicions of foreign bribery and other forms of corruption.

11. Review whether criminal and additional administrative penalties are proportionate, effective, and dissuasive, given the serious nature of foreign bribery, and, if necessary, adjust these penalties accordingly. Also consider putting in place administrative measures, such as bars on procurement, export credit, and other forms of government financing or contracting to further deter individuals and companies from engaging in foreign bribery.

12. Ensure that confiscation applies to both the bribe itself and to any proceeds of the bribe.

13. Take steps to raise awareness of the crime of foreign bribery among the private sector. For example, consider providing guidance to the private sector on steps companies can take to assess their foreign bribery risk and take steps to deal with that risk.

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Annex 1. Provisions on foreign bribery in international legal instruments

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997

Article 1 – The Offence of Bribery of Foreign Public Officials

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.

3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as “bribery of a foreign public official”.

4. For the purpose of this Convention:

a) “foreign public official” means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation;

b) “foreign country” includes all levels and subdivisions of government, from national to local;

c) “act or refrain from acting in relation to the performance of official duties” includes any use of the public official’s position, whether or not within the official’s authorised competence.

Council of Europe Criminal Law Convention on Corruption, 1999

Article 2 – Active bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

Article 3 – Passive bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 4 – Bribery of members of domestic public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers.

Article 5 – Bribery of foreign public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving a public official of any other State.

Article 6 – Bribery of members of foreign public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any public assembly exercising legislative or administrative powers in any other State.

Article 9 – Bribery of officials of international organisations

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any official or other contracted employee, within the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents.

Article 10 – Bribery of members of international parliamentary assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Article 4 when involving any members of parliamentary assemblies of international or supranational organisations of which the Party is a member.

Article 11 – Bribery of judges and officials of international courts

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3 involving any holders of judicial office or officials of any international court whose jurisdiction is accepted by the Party.

United Nations Convention against Corruption, 2003

Article 2. Use of terms

For the purposes of this Convention:

- (a) “Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;
- (b) “Foreign public official” shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;
- (c) “Official of a public international organization” shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;
- (d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in Article 23 of this Convention;

(i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

Article 16. Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Article 18. Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

Annex 2. Provisions on foreign bribery in ACN countries

Albania: Criminal Code

Article 244/a. Active corruption of foreign public officials

The promise, offer, or giving, directly or indirectly, of any kind of undue advantage, for oneself or for other persons, the foreign public officials, officials of an international public organization, members of a foreign public assembly or members of an international parliamentary assembly, for accomplishment or non-accomplishment of an act, related to their duties or positions, is punishable by imprisonment from six months up to three years.

Article 245/2. The exemption from suffering the sentence

The person, who has promised or given reward or other benefits, in accordance with Articles 164/1, 244, 245, 312, 319 and 328 of this Code, may benefit from exemption from the sentence or the reduction of it in compliance provision of Article 28 of this Code, if they do denunciation and give a contribution in the criminal proceeding of these crimes.

In giving this decision the court considers the time when the denunciation is done, the occurrence or not of the consequences of the crime.

Article 259/a. Passive corruption of foreign public employees

The requesting or receiving, directly or indirectly, any kind of undue advantage or promise, for oneself or for other persons, or accepting an offer or promise derived from an undue advantage, by a foreign public official, official of an international public organization, member of a foreign public assembly or member of an international parliamentary assembly, for accomplishment or non-accomplishment of an action, which is related to his duty or function, is punishable from two up to eight years.

Article 319/a. Active corruption of the judge or official of international court

The promise, proposal or provision, directly or indirectly, of any kind of undue benefit, for oneself or for other persons, to the judge or to official of international courts, for accomplishment or non-accomplishment of an action, related to his duty or function, is sentenced by imprisonment from one up to four years.

Article 319/b. Active corruption of foreign and domestic arbiters

Promise, proposal or provision, directly or indirectly, of whatever undue advantage for oneself or for other persons, to domestic or foreign arbiter, for accomplishment or non-accomplishment of an action, which is related to his duty or function, is sentenced by imprisonment from one up to four years.

Article 319/c. Active corruption of members of foreign judicial juries

The promise, proposal or provision, directly or indirectly, of whatever undue advantage for oneself or for other persons, to members of foreign judicial juries, for accomplishment or non-accomplishment of an action, which is related to their duties or functions, is sentenced by imprisonment from one up to four years.

Article 319/d. Passive corruption of the judge or of official of international courts

The request or receiving, directly or indirectly, of whatever undue advantage or suchlike benefit, for oneself or for other persons, or acceptance of an offer or promise derived from undue advantages, by the judge or official of an international court, for accomplishment or non-accomplishment of an action, which is related to his duty or function, is sentenced by imprisonment from three up to ten years.

Article 319/dh. Passive corruption of domestic or foreign arbiters

The request or receiving, directly or indirectly, of whatever undue advantage or suchlike benefit, for oneself or for other persons, or acceptance of an offer or promise derived from undue advantages, by a domestic or foreign arbiter, for accomplishment or non-accomplishment of an action, which is related to his duty or function, is sentenced by imprisonment from two up to eight years.

Article 319/e. Passive corruption of a member of foreign judicial juries

The request or receiving, directly or indirectly, of whatever undue advantage or suchlike benefit, for oneself or for other persons, or acceptance of an offer or promise derived from undue advantages, by a member of foreign judicial juries, for accomplishment or non-accomplishment of an action, which is related to his duty or function, is sentenced by imprisonment from two up to eight years.

Armenia: Criminal Code

Article 72. Exemption from criminal liability in case of repentance

1. The person who committed for the first time a not grave or medium-gravity crime can be exempted from criminal liability, if he, after the committal of the crime, surrendered, assisted in solving the crime of his own accord, compensated or mitigated the inflicted damage in some other way.
2. The person who committed another type of crime, in case of the circumstances mentioned in the first part of this Article, can be exempted from criminal liability only in cases especially envisaged in the Article of the Special Part of this Code.

Article 73. Exemption from criminal liability in case of reconciliation with the aggrieved

The person who committed a not grave crime can be exempted from criminal liability, if he reconciles with the aggrieved, mitigates or compensates the inflicted damage in some other way.

Article 74. Exemption from criminal liability due to change of situation

The person who committed for the first time a not grave or medium-gravity crime can be exempted from criminal liability, if it turns out that as a result of the change of the situation this person or the committed act is no longer dangerous for the society.

Article 200

1. Illegal offer of cash, securities, other property or property services to the administrative employee of a commercial or other organisation, intermediary judge, auditor or lawyer, related to the posts of these persons to act (not act) in favour of the briber, is punished with a fine in the amount of 200 to 400 minimal salaries, or with deprivation of the right to hold certain posts or practice certain activities for up to 2 years, or correctional labour for up 1 year.
2. The same actions committed by a group with prior agreement or by an organised group, are punished with a fine in the amount of 300 to 500 minimal salaries, or correctional labour for up to 2 years, or with imprisonment for the term of 4 years.
3. Accepting cash, securities or other property by the administrative employee of a commercial or other organisation, intermediary judge, auditor or lawyer, related to the posts of these persons, in order to act (not act) in favour of the briber, is punished with a fine in the amount of 200 to 400 minimal salaries, or with deprivation of the right to hold certain posts or practice certain activities for up to 3 years, or correctional labour for the term of up to 2 years, or with imprisonment for the term of 3 years.

4. The action envisaged in part 3 of this Article, committed by extortion, is punished with a fine in the amount of 300 to 500 minimal salaries, or with deprivation of the right to hold certain posts or practice certain activities for up to 5 years, or with imprisonment for the term of 5 years.
5. The employee of a commercial or other organisation, according to this Article, is a person who permanently, temporarily or with special authorisation, performs managerial functions at the commercial organisation, regardless of form of ownership, as well as, in non-commercial organisations which are not state or local self-government bodies, state or local self-government institutions.

Article 308, paragraph 4

With regard to committal of acts provided for in Articles 311, 311.2, 312, 312.2 and 313 of Criminal Code the following persons shall be deemed as officials as well:

1. persons performing functions of public official of a foreign state in accordance with the internal law of the state concerned, as well as members of legislative or other representative body of a foreign state exercising administrative authorities;
2. officials of international or transnational public organisations or bodies or in cases provided for in statutes of those organisations or bodies, contractual employees or other persons, performing functions equal to those performed by similar officials or employees;
3. members of parliamentary assemblies of international or supranational organisations or other bodies performing similar functions;
4. members of or officials performing judicial functions in international courts, jurisdiction of which has been recognised by the Republic of Armenia;
5. jurors of courts of foreign states.

Article 311. Taking bribes

1. Taking bribes by a state official, personally or through a proxy, in the form of money, property right, securities or other property benefits, for implementation or not implementation of actions within his authority, in favour of the briber or briber's representative, by using official position, to commit or not to commit such actions for permission, service favouring or connivance, is punished with a fine in the amount of 300 to 500 minimal salaries, or with imprisonment for the term of up to 5 years, with deprivation of the right to hold certain posts or practice certain activities for up to 3 years.
2. Receipt of a bribe by an official for implementation or not implementation of obviously illegal actions within his authority, in favour of the briber or briber's representative, is punished with imprisonment for 3–7 years, with deprivation of the right to hold certain posts or practice certain activities for up to 3 years.
3. The same action committed:
 - 1) by extortion;
 - 2) by a group of officials by prior agreement;
 - 3) in large amount,is punished with imprisonment for the term of 4 to 10 years, with or without property confiscation.
4. Actions envisaged in parts 1, 2 or 3 of this Article
 - 1) by an organised group;
 - 2) in particularly large amount,
 - 3) by a judge,

is punished with imprisonment for the term of 7 to 12 years, with or without property confiscation.

By large amount in this Chapter we mean an amount (value) not exceeding 200 to 1000 minimal salaries.

By particularly large amount in this chapter we mean an amount (value) exceeding 1000 minimal salaries.

Article 311.1

1. Accepting unlawful remuneration by a public servant, who is not an official, i.e. accepting or request for or promise to accept or acceptance of any offer of money, property, property rights, securities, or any other advantage by a public servant, who is not an official, personally or through an intermediary, for himself or another person, for the purpose of performing or not performing an action by the public servant within the scope of his authorities, in favour of the person giving the remuneration or the person represented by him, or favouring the performance or non-performance of such action by use of his official position, or for the purpose of patronage or connivance shall be punished by a fine of 200-fold to 400-fold of the minimum wage or by imprisonment for a maximum term of three years with deprivation of the right to engage in certain activities for a maximum term of three years.
2. Accepting unlawful remuneration by a public servant who is not an official for his obvious illegal action or inaction, in favour of the person giving the remuneration or the person represented by him, shall be punished by imprisonment for a term of three to five years with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.
3. The same act committed:
 - (1) by extortion;
 - (2) on a large scale;
 - (3) by a group of persons with a prior agreement,shall be punished by imprisonment for a term of four to seven years.
4. The acts provided for in part 1 or 2 or 3 of this Article, committed:
 - (1) by an organised group;
 - (2) on an especially large scale;shall be punished by imprisonment for a term of five to ten years with or without confiscation of property.

In Article 311 and 311.1 CC the extortion is the aggravating circumstance for taking bribe.

5. Persons performing public service shall be considered as public servants in this Chapter, in accordance with the Law of the Republic of Armenia on Public Service.

In this case, the mandatory requirement for extortion is that the official compels the perpetrator to give bribe using his official powers.

Article 312. Giving a bribe

1. Giving a bribe, personally or through a proxy, to a state official, in the form of money, property, property right, securities or other property benefit, so that this state official performs or does not perform actions in favour of this person or the ones he represents, within his authority, or by using one's official position this person would commit or not commit actions favouring or permitting or conniving, is punished with a fine in the amount of 100 to 200 minimal salaries, or correctional labour for 1–2 years, or with arrest for the term of 1–3 months, or with imprisonment for the term of up to 3 years.
2. Giving a bribe in a large amount is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment for the term of up to 5 years.

3. Giving a bribe,
 - 1) in a particularly large amount;
 - 2) by an organised group,is punished with a fine in the amount of 300 to 500 minimal salaries, or with imprisonment for 3–7 years.
4. The person who gave a bribe is exempted from criminal liability, if he was subjected to extortion, or if this person voluntarily informed the law enforcement bodies about giving the bribe.

Azerbaijan: Criminal Code

Article 311. Reception of a bribe

311.1. Reception by official personally or through intermediary of a bribe as money, securities, other property or benefits of property nature on actions (inaction) for the benefit of the briber or person represented by him, if such actions (inaction) are included into service powers of the official or it by virtue of official position can promote such actions (inaction), as well as for the general protection or indifference on service – is punished by imprisonment for the term from two up to seven years with deprivation of the right to hold the certain posts or to engage in the certain activities for the term up to three years or without it.

311.2. Reception by official of a bribe for illegal actions (inaction) – is punished by imprisonment for the term from five up to ten years with deprivation of the right to hold the certain posts or to engage in the certain activities for the term up to three years.

311.3. The acts provided by Articles 311.1 or 311.2 of the present Code, committed: 311.3.1. on preliminary arrangement by group of persons or organised group; 311.3.2. repeatedly; 311.3.3. in the large amount;

311.3.4. with application of threats – is punished by imprisonment for the term from seven up to twelve years with confiscation of property.

Note: The “large amount” bribe is understood as the sum of money, cost of securities, property or benefits of the property nature, exceeding five thousand of nominal financial units.

Article 312. Presentation of a bribe

312.1. The presentation of a bribe to official personally or through the intermediary –

is punished by the penalty at a rate from one up to two thousand of nominal financial unit or imprisonment for the term up to five years with the penalty at a rate from five hundred up to one thousand of nominal financial unit or without it.

312.2. The presentation of a bribe to official for commitment of obviously illegal actions (inaction) by him or repeated presentation of a bribe – is punished by the penalty at a rate of from two up to four thousand of nominal financial unit or imprisonment for the term from three up to eight years with confiscation of property or without it.

Note: The person given a bribe, shall be released from a criminal liability if presentation of a bribe took place by threats of official or if the person has voluntary informed the appropriate state body about a presentation of a bribe.

Bosnia and Herzegovina: Criminal Code

Article 1, chapter 1

* * *

- (5) A responsible person means a person in a business enterprise or other legal person who, in the line of duty or on the basis of specific authorisation, has been entrusted with a portfolio related to the implementation of law or regulations based on law or general act of a business enterprise or other legal person in managing and administrating the property, or is related to managing a productive or other economic process or supervision of such process. Official persons as defined in paragraph 3 of this Article are also considered responsible persons when the actions as whose perpetrator the responsible person has been indicated are at issue, and at the same time are not stipulated as criminal offence by provision of the chapter dealing with criminal offences against official and other responsible duty, or as criminal offences of an official person stipulated under some other chapter of this Code or other laws of Bosnia and Herzegovina.

* * *

- (7) A foreign official person means a member of a legislative, executive, administrative or judicial body of foreign state, a public official person of an international organisation or of its bodies, judge or other official person of an international court, serving in Bosnia and Herzegovina.
- (8) An international officer is a civilian employee who works for an international organisation or agency.

* * *

- (13) A legal person, under this law, is Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, the Republic of Srpska, Brcko District of Bosnia and Herzegovina, canton, city, municipality, local community, any organisational form of a business enterprise and all forms of business organisations, institutions, institutions for crediting and other banking institutions or insurance of property and persons, as well as other financial institutions, funds, political organisations and citizens' associations and other associations that may acquire funds and use them in the same way as any other institution or bodies that acquire and use funds and that are legally recognised as legal persons.

Article 217. Accepting Gifts and Other Forms of Benefits

- (1) An official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit in order to perform within the scope of his official powers an act, which ought not to be performed by him, or for the omission of an act, which ought to be performed by him, shall be punished by imprisonment for a term between one and ten years.
- (2) An official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, who demands or accepts a gift or any other benefit or who accepts a promise of a gift or a benefit in order to perform within the scope of his official powers an act, which ought to be performed by him, or for the omission of an act, which ought not to be performed by him, shall be punished by imprisonment for a term between six months and five years.
- (3) The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, who demands or accepts a gift or any other benefit following the performance or omission of an official act referred to in paragraphs 1 and 2 of this Article and in relation to it.
- (4) The gifts or any other benefits shall be forfeited.

Article 218. Giving gifts and other forms of benefits

- (1) Whoever gives or promises a gift or any other benefit to an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, in order that he performs within the scope of his official powers of an act, which ought not to be performed by him, or abstains from performing of an act which ought to be performed by him, or whoever mediates in such bribing of the official or responsible person, shall be punished by imprisonment for a term between six months and five years.
- (2) Whoever gives or promises a gift or any other benefit to an official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, in order that he performs within the scope of his official powers an act, which ought to be performed by him, or abstains from performing of an act, which ought not to be performed by him, shall be punished by a fine or imprisonment for a term not exceeding three years.
- (3) The perpetrator of the criminal offence referred to in paragraph 1 and 2 of this Article who had given a bribe on request of the official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person, but reported the deed before it being discovered or before knowing that the deed has been discovered, may be released from punishment.
- (4) The gifts or any other benefits shall be forfeited, while in case referred to in paragraph 3 of this Article, they can be returned to the giver.

Article 219. Illegal interceding

- (1) Whoever accepts a reward or any other benefit for interceding that an official act be or not be performed, taking advantage of his official or influential position in the institutions of Bosnia and Herzegovina, shall be punished by a fine or imprisonment for a term not exceeding three years.
- (2) Whoever by taking advantage of his official or influential position in the institutions of Bosnia and Herzegovina, intercedes that an official act be performed, which ought not to be performed, or that an official act be not performed, which ought to be performed, shall be punished by imprisonment for a term between six months and five years.
- (3) If a reward or any other benefit has been received in return for the criminal offence referred to in paragraph 2 of this Article, the perpetrator shall be punished by imprisonment for a term between one and ten years.

Bulgaria: Criminal Code

Article 301. Bribery

- (1) An official who accepts a gift or any other undue benefit, or accepts a proposal or a promise for a gift or benefit, in order to perform or to fail to perform an act connected with his service, or because he has performed or failed to perform such an act, shall be punished for bribery by deprivation of liberty for one to six years.
- (2) If the official has committed any of the acts under par. 1 in order to violate, or for having violated his service, where this violation does not constitute a crime, the punishment shall be deprivation of liberty of up to 8 to eight years and a fine of up to BGN ten thousand.
- (3) If the official has committed any of the acts under paragraph 1 in order to perform or because of having performed another crime in connection with his service, the punishment shall be deprivation of liberty of up to ten years and a fine of up to BGN fifteen thousand.

- (4) (In the cases of the preceding paragraphs, the court shall rule deprivation of the rights under Article 37 (1), sub-paragraphs 6 and 7.
- (5) Punishment under par. 1 shall also be imposed to a foreign official who requests or accepts bribery or accepts a proposal for or a promise of bribery.

Article 302

For bribery committed:

1. by a person holding a responsible official position, including that of a judge, assessor, prosecutor, or investigator, or police authority or the investigating officer.
2. through blackmail with abuse of one's official position;
3. for a second time, and
4. on a large scale, the punishment shall be:
 - a) in the cases of Article 301, paragraphs (1) and (2) – deprivation of liberty for three to ten years, fine of up to BGN twenty thousand, and deprivation of rights under Article 37 (1), sub-paragraphs 6 and 7;
 - b) in the cases of Article 301, paragraph (3) – deprivation of liberty from three to fifteen years, fine of up to BGN twenty-five thousand, and confiscation of up to one half of the culprit's property, and the court shall rule deprivation of rights under Article 37 (1), sub-paragraphs 6 and 7.

Article 302a

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

Article 303

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

Article 304

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

Article 304a

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

Article 304b

- (1) Anyone who requests or accepts a gift, or any undue benefit, or accepts a proposal or promise for a gift or benefit, in order to exert influence over an official or a foreign official in decision-making in

relation to his/her service, shall be punished by deprivation of liberty of up to six years and a fine of up to BGN five thousand.

- (2) Anyone who proposes, promises, or gives a gift or any undue benefit to a person alleging he/she might exert the influence under par. 1, shall be punished by deprivation of liberty of up to three years and a fine of up to BGN three thousand.

Croatia: Criminal Code

Article 293. Taking a Bribe

- (1) A public official or responsible person who demands or takes a bribe, or who accepts an offer or a promise of a bribe for himself/herself or another in return for performing within or without the limits of his/her authority an official or other act which should not be performed, or failing to perform an official or other act which should be performed shall be sentenced to imprisonment for a term of between one and ten years.
- (2) A public official or responsible person who demands or takes a bribe, or who accepts an offer or a promise of a bribe for himself/herself or another in return for performing within or without the limits of his/her authority an official or other act which should be performed, or not performing an official or other act which should not be performed shall be sentenced to imprisonment for a term of between one and eight years.
- (3) A public official or responsible person who after having performed or failed to perform the official or other act referred to in paragraph 1 or 2 of this Article demands or takes a bribe with respect thereto shall be sentenced to imprisonment for a term of up to one year.

Article 294. Giving a Bribe

- (1) Whoever offers, gives or promises a bribe to a public official or responsible person in order that he/she perform, within or beyond the limits of his/her authority, an official or other act which he/she should not perform, or fail to perform an official or other act which he/she should perform, or whoever mediates in such an act of bribery of a public official or responsible person shall be sentenced to imprisonment for a term of between one and eight years.
- (2) Whoever offers, gives or promises a bribe to a public official or responsible person in order that he/she perform, within or beyond the limits of his/her authority, an official or other act which he/she should perform, or fail to perform an official or other act which he/she should not perform, or whoever mediates in such an act of bribery of a public official or responsible person shall be sentenced to imprisonment for a term of between six months and five years.
- (3) The perpetrator of the criminal offence referred to in paragraph 1 or 2 of this Article who gives a bribe at the request of a public official or responsible person and reports the offence before it is discovered or before he/she finds out that the offence has been discovered may have his/her punishment remitted.

Estonia: Penal Code

Section 294. Accepting bribe

- (1) Consent by an official to a promise of property or other advantages to him or her or third persons or acceptance thereof in exchange for using of his or her official position is punishable by a pecuniary punishment or up to five years' imprisonment.
- (2) The same act, if committed:

- 1) at least twice;
- 2) by requesting a bribe;
- 3) by a group; or
- 4) on a large-scale basis;

is punishable by one to ten years' imprisonment.

- (3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.
- (4) For the criminal offence provided in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83(2) of this Code.

Section 296. Arranging of bribe

- (1) Arranging a bribe is punishable by a pecuniary punishment or up to five years' of imprisonment.
- (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

Section 298. Giving of bribe

- (1) Giving or promising a bribe is punishable by a pecuniary punishment or up to five years' imprisonment.
- (2) The same act, if committed:
 - 1) at least twice;
 - 2) by a group; or
 - 3) on a large-scale basis;is punishable by one to ten years' imprisonment.
- (3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

Former Yugoslavia Republic of Macedonia: Criminal Code

Article 8

- (1) It is not a criminal offence an offence which, although labelled as a crime, is an act of minor importance due to the absence or insignificance of the harmful consequences and low degree of criminal responsibility of the offender.
- (2) The provision of paragraph 1 may be applied to a crime that entails a fine or imprisonment up to three years.

Article 122

* * *

- (4) An official person, when designated as an offender of a crime, shall be considered:
 - a) The President of the Republic of Macedonia, the appointed ambassadors and other representatives of the Republic of Macedonia abroad and persons appointed by the President of the Republic of Macedonia, an elected or appointed official in and from the Parliament of the Republic of Macedonia, in the Government of the Republic of Macedonia, in the State administration bodies, in the courts, in the Public Prosecutor's Office, the Judicial Council of the Republic of Macedonia, the Council of Public Prosecutors of the Republic of Macedonia and in other bodies and organisations which perform certain professional, administrative or other activities within the

framework of the rights and duties of the Republic, in the local self-government units, as well as persons who permanently or temporarily perform an official duty in these bodies and organisations,

- b) a civil servant performing professional, normative-legal, executive, administrative-supervisory activities and administrative activities in accordance with the Constitution and a law.
 - c) an authorised person within a legal entity which by law or by some other enacted regulation based on a law is entrusted with performing public duties, when the duty is performed within the framework of those authorities, as well as an authorised person for representation of associations, foundations, unions and organisational types of foreign organisations, sports associations and other legal entities in the field of sports,
 - d) a person performing certain official duties, based on the authorisation given by law or by some other enacted regulations based on a law,
 - e) a military person, when considering crimes in which an official person is pointed out as the offender and
 - f) a representative of a foreign country or an international organisation in the Republic of Macedonia.
- (5) A foreign official, when indicated as perpetrator of a crime, shall be considered a person who in a foreign country, international organisation or public institution, conducts some of the activities or duties specified in items a) to e) from Article 122 paragraph 4.
- (6) A legal entity shall refer to: the Republic of Macedonia, units of the local self-government, political parties, public enterprises, trade companies, institutions, associations, foundations, unions and organisational types of foreign organisations, sports associations and other legal entities in the field of sports, funds, financial organisations, and other organisations specified by law and registered as legal entities and other associations and organisations being recognised the capacity of a legal entity. A foreign legal entity shall refer to: a public enterprise, institution, fund, bank, trade company or any other form of organisation in accordance with the laws of a foreign country pertaining to the performance of economic, financial, banking, trade, service or other activities, with head office in another country or a branch office in the Republic of Macedonia or founded as an international association, fund, bank or institution
- (7) A responsible person within a legal entity shall be considered to be a person within the legal entity, who considering his function or based on special authorisation in the legal entity, is entrusted with a certain circle of matters which concern the execution of legal regulations, or regulations adopted on the basis of a law or a general act of the legal entity in the management, use and disposition of property, the management of the production or some other business venture, or other economic process and their supervision. An official person shall also be considered to be a responsible person, when this concerns crimes where a responsible person is found to be the offender, while the crimes are not foreseen in the chapter on crimes against official duty, i.e. crimes by an official person foreseen in some other chapter of this Code. When this Code specifically stipulates, a responsible person shall also be considered the person who performs a special function or an authorisation or is entrusted to independent performance of certain operations within a foreign legal entity, as well as the person who is a representative of the foreign legal entity within the Republic of Macedonia.

Article 357. Passive bribery

- (1) An official who directly or indirectly asks or receives a gift or other advantage or receives a promise of a gift or other advantage for him/herself or for anyone else so as to perform within his/her official authorisation an official activity which must not be performed or fails to perform an official activity which must be performed, shall be sentenced to imprisonment of four to ten years.

- (2) An official who directly or indirectly asks or receives a gift or other advantage or receives a promise of a gift or other advantage for him/herself or for anyone else as to perform within his/her official authorisation an official activity which must be performed or fails to perform official activity which must not be performed, shall be sentenced to imprisonment of one to five years.
- (3) An official who, following the performance or non-performance of the official action noted in paragraphs 1 and 2, requests or takes a gift or other advantage in connection with this, shall be punished by a prison sentence of three months to three years.
- (4) If a larger property gain has been obtained through the crime, the perpetrator shall be sentenced to imprisonment of at least four years.
- (5) If a significant property gain has been obtained through the crime, the perpetrator shall be sentenced to imprisonment of at least five years.
- (6) The sentence referred to in paragraphs 1, 2 and 3 shall be applied for a responsible person, person who performs activities of public interest, a responsible person in a foreign legal person, as well as a foreign official person if the crime has been performed with violation of his/her authorisation, in relation with the acquisition, exercise or revocation of rights determined by law or for the reason of obtaining gain or inflicting damage on someone else.
- (7) The received gift or property advantage shall be taken away.

Article 358. Active bribery

- (1) A person who directly or indirectly gives, promises or offers a gift or other advantage to an official, for himself or for herself or for anyone else, so that he/she performs an official action which must not be performed or does not perform an official action which must be performed, or a person who acts as intermediary in such process, shall be punished by imprisonment from one to five years.
- (2) A person who directly or indirectly gives, promises or offers a gift or other advantage to an official, for himself or for herself or for anyone else, so that he/she performs an official action which must be performed or does not perform an official action which must not be performed, or a person who acts as intermediary in such process, shall be sentenced to imprisonment of one to three years.
- (3) The court can release from sentence for the offence from the paragraphs (1) and (2) of this Article the person who has given or promised a bribe upon request by an official and has reported it before learning that the offence has been disclosed.
- (4) The provisions of paragraphs (1), (2) and (3) shall also apply when a bribe has been given or promised to a responsible person, a responsible person in a foreign legal entity, a person performing public mandates and a foreign official in connection with the offence of Article 357.
- (5) If the crime stipulated in paragraph (1) is performed by a legal entity, it shall be sentenced with a fine.
- (6) The given gift or property advantage shall be taken away.

Article 358a. Giving a reward for unlawful influence

- (1) Whosoever directly or indirectly gives a reward, gift or another benefit or promises or offers such benefit, personal or for a third party, in order to use its real or supposed influence, official or social position or image to request, intervene, motivate or in any other manner influence the performance of a specific official activity which must be performed, or not to perform an official activity that should not be performed, shall be sentenced to imprisonment of one to three years.
- (2) Whosoever directly or indirectly gives to another the reward, gift or another benefit, the promise or offer for such benefit, so that by using its real or supposed influence, official or social position or image, it requests, intervenes, motivates or in any other manner influences the performance of an

official activity that otherwise should not be performed or does not perform an official duty that otherwise must be performed, shall be sentenced to imprisonment of one to five years.

- (3) If the crime referred to in paragraph (2) of this Article is committed in regard to initiation and conduct of a criminal procedure against a certain person, the offender shall be sentenced to imprisonment of three to five years.
- (4) Whosoever directly or indirectly gives to another a reward, gift or another benefit or promises or offers such benefit, personal or for a third party, in order to use its real or supposed influence, official or social position or image, will request, intervene, motivate or in another manner influence the responsible person, responsible person in a foreign legal entity performing activity in the Republic of Macedonia, or a person performing activities of public interest, to perform or not to perform an activity contrary to its duty, shall be fined or sentenced to imprisonment of up to three years.
- (5) If the crime referred to in paragraphs (1), (2), (3) and (4) of this Article is committed upon a request of a person that shall illegally mediate, and the offender has reported it before it has been detected or before it is found out that it is detected, the offender may be acquitted from the sentence.
- (6) The reward, gift or another benefit shall be taken away.

Article 359. Accepting a reward for unlawful influence

- (1) Whosoever directly or indirectly receives a reward, gift or some other benefit or promises or offers such personal benefit or benefit for a third party by abusing the real or supposed influence, official or social position and image, will request, intervene, motivate or in any other manner influence the performance of an official activity that must be performed or is not performed and should not be performed, shall be sentenced to imprisonment of one to three years.
- (2) The sentence referred to in paragraph (1) of this Article shall be imposed on whosoever by abusing its real or supposed influence, official or social position and image will request, intervene, motivate or in any other manner will influence the performance of an official activity that otherwise should not be performed or not to perform an official duty that must be performed.
- (3) If the crime referred to in paragraph 2 is committed in regard to initiation or conduct of a criminal procedure against certain person, the offender shall be sentenced to imprisonment of one to five years.
- (4) Whosoever by abusing the real or supposed influence, official or other position, and image requests, intervenes motivates or in any other manner influences the responsible person, responsible person in a foreign legal entity performing an activity in the Republic of Macedonia or a person performing activities of public interest for a reward, gift or other benefit, or promise for such benefit, performs or does not perform an activity contrary to its duty shall be fined or sentenced to imprisonment of up to one year.
- (5) If the consequence from the crime referred to in paragraph 4 is unlawful acquisition or loss of rights, or acquisition of greater property benefit or causing greater damage to another, to a domestic or a foreign legal entity, the offender shall be sentenced to imprisonment of one to five years.
- (6) If the crime referred to in this Article is committed by a legal entity it shall be fined.
- (7) If a reward or some other benefit is received for the mediation referred to in paragraphs 2 and 3, the offender shall be sentenced to imprisonment of one to ten years.
- (8) If the crime referred to in this Article is committed by a legal entity, it shall be fined.

Georgia: Criminal Code

Article 338. Passive bribery

1. Receipt or request by a public official or a person with an equal status directly or indirectly of money, securities, property, material benefit or any other undue advantage, or acceptance of an offer or a promise of such an advantage, for himself or herself or for anyone else, to act or refrain from acting in the course of carrying out his/her official rights and duties, in favour of the bribe giver or other person, as well as use his or her official position for that end or to exercise official patronage, shall be punished by the deprivation of liberty from six to nine years.
2. The same act committed:
 - a) by a state official with political status;
 - b) in respect of a large amount of bribe;
 - c) by a group, due to an agreement in advance,shall be punished by the deprivation of liberty for a term from seven to eleven years.
3. The conduct defined in paragraphs 1 and 2 of the present Article, committed:
 - a) by the person previously convicted for bribery;
 - b) repeatedly;
 - c) through extortion;
 - d) by an organised criminal group;
 - e) in respect of an especially large amount of money,shall be punished by the deprivation of liberty for a term from eleven to fifteen years

Note: For the purposes of this Article a large amount of bribe is money, securities, other property or material benefit above 10,000 GEL and especially large amount of bribe is an amount exceeding 30,000 GEL.

Article 339. Active bribery

1. Promising, offering or giving, directly or indirectly, of money, securities, property, material benefit or any other undue advantage to a public official or a person with an equal status, for himself or herself or for anyone else in order that public official or a person with an equal status to act or to refrain from acting in the course of carrying out his/her official rights and duties, in favour of the bribe giver or a third person, as well as to use his official position for that end or to exercise official patronage, shall be punished by fine or corrective labour for a term of two years or the restriction of liberty for the same term and/or the deprivation of liberty for a term up to three years.
2. Giving bribe to an official or a person with an equal status in exchange of the commission of an illegal act shall be punished by fine or the deprivation of liberty for a term from four to seven years.
3. The conduct defined in paragraphs 1 and 2 of the present Article committed by an organised group, shall be punished with the deprivation of liberty for a term from 5 to 7 years.

Note:

1. *If the briber reports the act of bribery voluntarily to the law enforcement agencies, he/she shall be released from criminal responsibility. Respective decision lies upon the criminal prosecution body.*
2. *For the action foreseen by this Article, a legal person shall be punished by a fine.*

Kazakhstan: Criminal Code

Article 361. Abuse of official powers

1. The use by a person authorised to perform state functions, or a person who is equalled to him, of his service powers contrary to the service interests in order to obtain benefits and advantages for himself or other persons or organisations or to harm other persons or organisations, if it caused substantial damage to rights and legal interests of citizens or organisations or public or state interests protected by law, –

shall be punished with a fine in the amount of up to two thousand monthly estimate indicators⁴⁸ or correctional work in the same amount, or restriction of liberty for the term up to two years, or deprivation of liberty for the same term, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

2. The same act, if committed by an official, –

shall be punished with a fine in the amount of up to four thousand monthly estimate indicators or correctional work in the same amount, or restriction of liberty for the term up to four years, or deprivation of liberty for the same term, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

3. The act, as stipulated in paragraph 1 of this Article, if committed by a person holding a responsible state position, –

shall be punished with a fine in the amount of up to six thousand monthly estimate indicators or correctional work in the same amount, or restriction of liberty for the term up to six years, or deprivation of liberty for the same term, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

4. Acts, as stipulated in paragraphs 1, 2 or 3 of this Article, if they caused grave consequences or were committed in the interests of a criminal group, –

shall be punished with deprivation of liberty for the term from four to eight years with a confiscation of assets and with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

Article 366. Receiving of a bribe

1. Receiving by a person authorised to perform state functions, or a person who is equalled to him, or by a person holding a responsible state position, or by an official, as well as by an official of a foreign state or international organisation, personally or through an intermediary, of a bribe in the form of money, securities, other property, property rights or benefits of material nature, for himself or for other persons, for an action (inaction) in favour of the bribe giver or persons whom the latter represents, if such actions (inaction) lie within the service powers of such person or due to his official position he can facilitate such actions (inaction), as well as for the general patronage or connivance,

shall be punished with a fine in the amount of 50 times the amount of the bribe or deprivation of liberty for the term up to five years, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

2. The same act, if committed in a significant amount, as well as receiving of a bribe for illegal actions (inaction)

⁴⁸ In 2014, one monthly estimate indicator was equal to KZT 1,852 (about EUR 7).

shall be punished with a fine in the amount of 60 times the amount of the bribe or deprivation of liberty for the term from three to seven years, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

3. Actions mentioned in paragraphs 1 or 2 of this Article, if they were committed:

- 1) through extortion;
- 2) by a group of persons or according to a prior collusion;
- 3) in a large amount;
- 4) repeatedly, –

shall be punished with a fine in the amount of 70 times the amount of the bribe or deprivation of liberty for the term from seven to twelve years, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

4. Acts, as stipulated in paragraphs 1, 2 or 3 of this Article, if committed by a criminal group, as well as in an especially large amount, –

shall be punished with a fine in the amount of 80 times the amount of the bribe or deprivation of liberty for the term from ten to fifteen years, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

Note. Should not be considered as a crime due to its little significance and should be pursued in a disciplinary or administrative procedure, receiving for the first time by the person indicated in paragraph 1 of this Article of property, property rights or other material benefit as a gift, when there was no prior agreement for legal actions (inaction) taken before that, if the amount of the gift did not exceed two monthly estimate indicators.

Article 367. Giving of a bribe

1. Giving of a bribe to a person authorised to perform state functions, or a person who is equalled to him, or by a person holding a responsible state position, or by an official, as well as by an official of a foreign state or international organisation, personally or through an intermediary –

shall be punished with a fine in the amount of 20 times the amount of the bribe or deprivation of liberty for the term up to three years, with a confiscation of assets or without it, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

2. The same act, if committed in a significant amount, –

shall be punished with a fine in the amount of 30 times the amount of the bribe or deprivation of liberty for the term up to five years, with a confiscation of assets or without it, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

3. Actions mentioned in paragraphs 1 or 2 of this Article, if they were committed:

- 1) by a group of persons according to a prior collusion;
- 3) in a large amount;
- 4) repeatedly, –

shall be punished with a fine in the amount of 40 times the amount of the bribe or deprivation of liberty for the term from seven to twelve years, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

4. Acts, as stipulated in paragraphs 1, 2 or 3 of this Article, if committed in an especially large amount or by a criminal group, –

shall be punished with a fine in the amount of 50 times the amount of the bribe or deprivation of liberty for the term from ten to fifteen years, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

Notes.

1. The giving for the first time to a person mentioned in paragraph 1 of Article 366 of this Code, for previous legal actions (inaction), of a gift in the amount or of value not exceeding two monthly estimate indicators should not entail the criminal liability, if the actions (inaction) committed by such person were not conditioned by the prior agreement.

2. A person who gave a bribe should be released from the criminal liability, if he was extorted by a person mentioned in paragraph 1 of Article 366 of this Code or if such person voluntarily reported about the bribe giving to the law enforcement or special state authority.

Article 368. Intermediation in bribery

1. Intermediation in bribery, that is a facilitation to the bribe taker and bribe giver in reaching or implementing an agreement between them about receiving and giving of the bribe, –

shall be punished with a fine in the amount of 10 times the amount of the bribe or deprivation of liberty for the term up to two years, with a confiscation of assets or without it, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

2. The same act, if committed repeatedly, or by a criminal group, or by a person with the use of his service position, –

shall be punished with a fine in the amount of 20 times the amount of the bribe or deprivation of liberty for the term up to six years, with a confiscation of assets, with the lifelong deprivation of the right to hold certain positions or conduct certain activity.

Kyrgyzstan: Criminal Code

Article 313-1. Receiving of a bribe

(1) Receiving by an official, by a foreign official or an official of an international organisation, personally or through an intermediary, of a bribe in the form of money, securities, other property or benefits of material nature for an action (inaction) in favour of the bribe giver or persons whom the latter represents, if such action (inaction) lies within the service powers of the official or if he, due to his official position, can facilitate such action (inaction), as well as for general patronage or service-related connivance –

shall be punished with a fine in the amount from three thousand to five thousand estimate indicators⁴⁹ or from five times to ten times the amount of the bribe, or deprivation of liberty for the term from three to five years with the deprivation of the right to hold certain positions or conduct certain activity for the term from three to five years.

(2) Receiving by an official, by a foreign official or an official of an international organisation of a bribe for illegal actions (inaction) –

shall be punished with a fine in the amount from five thousand to ten thousand estimate indicators or from ten times to twelve times the amount of the bribe, or deprivation of liberty for the term from five to eight years.

⁴⁹ This is approximately KGS 100 (about EUR 1.5).

Note:

1. *An especially large amount of bribe in Articles 313-1 and 314 should mean an amount of money, value of securities, other property or benefits of material nature in one thousand and more times more than the estimate indicator, as established by the legislation of the Kyrgyz Republic at the time of the crime.*
2. *A foreign official in articles of this Code should mean any appointed or elected person who holds any office in the legislative, executive, administrative or judicial body of a foreign state, and any person who performs any function for a foreign state, including for a state agency or company.*
3. *An official of an international organisation should mean an international civil servant or any other person who is authorised by such organisation to act on its behalf.*

Article 314. Giving of a bribe

- (1) Providing to an official, a foreign official or an official of an international organisation, personally or through an intermediary, of a bribe in the form of money, securities, other property or benefits of material or non-material nature for the official himself or other natural or legal person in order for that official to commit an action or inaction during performance of his official duties, –

shall be punished with a fine in the amount from two thousand to three thousand estimate indicators or deprivation of liberty for the term from two to three years.

- (2) The same act, if committed:

- 1) in a large amount;
- 2) for commission of a knowingly illegal action (inaction);
- 3) in order to change the owner without his will, –

shall be punished with a fine in the amount from five thousand to ten thousand estimate indicators or deprivation of liberty for the term from three to eight years.

- (3) Acts, as stipulated in paragraphs 1 and 2 of this Article, if they were committed:

- 1) in the interests of an organised criminal group;
- 2) in an especially large amount, –

shall be punished with a fine in the amount from twelve thousand to thirty thousand estimate indicators or deprivation of liberty for the term from eight to ten years.

Note:

* * *

3. *A person who gave a bribe should be released from the criminal liability if the person was extorted by the official or if the person voluntarily informed the agency that has the right to initiate a criminal case about the upcoming bribe giving.*

Latvia: Criminal Law

Section 316. Concept of a Public Official

- (1) Representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service, including in a State or local government capital company, and who has the right to make decisions binding upon other persons, or who has the right to perform any functions regarding supervision, control, investigation, or punishment or to deal

with the property or financial resources of a public person or its capital company, shall be considered to be public officials.

- (2) The President, members of the *Saeima*, the Prime Minister and members of the Cabinet as well as officials of State institutions who are elected, appointed or confirmed by the *Saeima* or the Cabinet, heads of local government, their deputies and executive directors shall be considered to be public officials holding a responsible position.
- (3) Officials or agents of international organisations, international parliamentary assemblies and international courts, as well as any person holding a legislative, administrative or judicial office of a foreign state or of any its administrative unit, whether such appointed or elected, as well as any person exercising a public function for a foreign state, including for any of its administrative units or public agency or public enterprise shall also be considered a public official.

[25 April 2002; 13 December 2012; 15 May 2014]

Section 320. Accepting bribes

- (1) For accepting a bribe, that is, material values, properties or benefits of other nature, committed by a public official personally or through an intermediary, for an already performed lawful or illegal act or permitted omission in the interests of the giver of the bribe, the person offering the bribe or other persons by using his or her official position, irrespective of whether the accepted or offered bribe was meant for this public official or any other person,

the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with deprivation of the right to engage in specific employment or to take up a specific office for a term up to two years.

- (2) For accepting a bribe or the offer of a bribe, committed by a public official personally or through an intermediary, prior to the committing or non-committing of a lawful or illegal act in the interests of the giver of the bribe, the person offering the bribe or other persons by using his or her official position, irrespective of whether the accepted or offered bribe was meant for this public official or any other person,

the applicable punishment is deprivation of liberty for a term up to eight years, with or without the confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term up to five years.

- (3) For a person who commits the acts provided for in Paragraphs one and two of this Section, if they are committed on a large scale or if it has been committed by a group of persons pursuant to prior agreement, or if a bribe has been demanded,

the applicable punishment is deprivation of liberty for a term of two and up to ten years, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term up to five years.

- (4) For a person who commits the acts provided for in Paragraphs one and two of this Section, if they are committed by an organised group or a public official holding a responsible position, or if a bribe has been extorted,

the applicable punishment is deprivation of liberty for a term of three and up to eleven years, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term up to five years and with police supervision for a term up to three years.

[25 April 2002; 19 November 2009; 8 July 2011; 13 December 2012]

Section 323. Giving of bribes

- (1) For a person who commits giving of bribes, that is, the handing over or offering of material values, properties or benefits of other nature in person or through intermediaries to a public official in order that he or she, using his or her official position, performs or fails to perform some act in the interests of the giver or person offering the bribe, or in the interests of other persons, irrespective of whether the bribe offered is for this public official or for any other person,

the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service or a fine.

- (2) For a person who commits the same acts, if commission thereof is on a large scale or if they have been committed by a public official, or also if they have been committed in a group of persons pursuant to prior agreement,

the applicable punishment is deprivation of liberty for a term up to eight years, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term up to five years.

- (3) For the acts provided for in Paragraph one of this Section, if committed in an organised group,

the applicable punishment is deprivation of liberty for a term of two and up to ten years, with or without confiscation of property, with deprivation of the right to engage in specific employment or to take up a specific office for a term up to five years and with police supervision for a term up to three years.

[25 April 2002; 13 December 2007/2; 19 November 2009; 8 July 2011; 13 December 2012]

Lithuania: Criminal Code

Article 37

A person who commits a crime may be released from criminal liability by a court where the act is recognised as being of minor relevance due to the extent of the damage incurred, the object of the crime or other peculiarities of the crime.

Article 39

A person who commits a misdemeanour or a negligent crime may be released from criminal liability by a reasoned decision of a court where:

- 1) he commits the criminal act for the first time, and
- 2) there are at least two mitigating circumstances provided for in Paragraph 1 of Article 59 of this Code, and
- 3) there are no aggravating circumstances.

Article 225. Bribery

1. A civil servant or a person equivalent thereto who, for own benefit or for the benefit of other persons, directly or indirectly promises or agrees to accept a bribe, or accepts a bribe or demands or provokes giving it for a lawful act or inaction in exercising his powers shall be punished by a fine or detention, or by imprisonment for a term of up to five years.
2. A civil servant or a person equivalent thereto who, for own benefit or for the benefit of other persons, directly or indirectly accepts, promises or agrees to accept a bribe, demands or provokes giving it for

an unlawful act or inaction in exercising his/her powers shall be punished by a fine or by imprisonment for a term of up to seven years.

3. A civil servant or a person equivalent thereto who, for own benefit or for the benefit of other persons, directly or indirectly promises or agrees to accept, or demands or provokes giving it, or accepts a bribe in the amount exceeding 250 MSLs (EUR 9500), for a lawful or unlawful act or inaction in exercising his/her powers shall be punished by imprisonment for a term of two up to eight years.
4. A civil servant or a person equivalent thereto who, for own benefit or for the benefit of other persons, directly or indirectly promises or agrees to accept, or demands or provokes giving it, or accepts a bribe in the amount less than 1 MSL (EUR 38), for a lawful or unlawful act or inaction in exercising his/her powers shall be considered to have committed a misdemeanour and shall be punished by a fine or detention.
5. A legal entity shall also be held liable for the acts provided for in this Article.

Article 227. Graft

1. A person who, whether directly or indirectly, offers, promises or agrees to give, or gives a bribe to a public servant or a person equivalent thereto or to a third party for a desired lawful act or inaction of a public servant or a person equivalent thereto in exercising his/her powers shall be punished by a fine or restriction of liberty or by detention or by imprisonment for a term of up to four years.
2. A person who commits the actions provided for in paragraph 1 of this Article by seeking an unlawful act or inaction by a public servant to be bribed or a person equivalent thereto in exercising his powers shall be punished by a fine or detention or imprisonment for a term of up to five years.
3. A person who commits the actions provided for in Paragraph 1 or 2 of this Article by offering, promising, agreeing to give or giving a bribe in the amount more than 250 MSL (EUR 9500) shall be punished by imprisonment for a term of up to seven years.
4. A person who commits the actions provided for in Paragraph 1 or 2 of this Article by offering, promising, agreeing to give or giving a bribe in the amount less than 1 MSL (EUR 38) shall be considered to have committed a misdemeanour and shall be punished by a fine or restriction of liberty, or by detention.
5. A person shall be released from criminal liability for grafting where s/he was demanded or provoked to give a bribe and s/he, upon offering, promising to give or giving the bribe as soon as possible, but in any case before being recognised as a suspect, notifies a law enforcement institution thereof or also in cases where s/he promises to give or gives the bribe with the law enforcement institution being aware thereof.
6. A legal entity shall also be held liable for the acts provided for in paragraphs 1, 2, 3 and 4 of this Article.

Article 230. Interpretation of concepts

1. The civil servants indicated in this Chapter shall be the state politicians, state officials, judges, civil servants according to the Law on Civil Service as well as other persons who, while working or by other grounds provided by law being on the office at state or municipal institutions or agencies, perform the functions of a government representative or hold administrative powers, also official candidates for such office.
2. A person holding appropriate powers at a foreign state or European Union institution or agency, an international public organisation or international or European Union judicial institution, also official candidates for such office shall be held equivalent to a civil servant.

3. Moreover, a person who works or by other grounds provided by law holds office at public or private legal person or other organisation or engages in professional activities and holds appropriate administrative powers or has the right to act on behalf of this legal person or other organisation, or provides public services, also arbitrator or juror shall also be held equivalent to a civil servant.
4. The bribe indicated in this Chapter shall be any property or other personal benefit for himself/herself or another person (tangible or intangible, having economic value in the market or not), expressed in the form of illegal or unjustified reward for desired lawful or unlawful act or inaction of a civil servant or a person equivalent thereto in exercising his/her powers.

Moldova: Criminal Code

Article 123/1 Foreign public persons and international officials

- (1) Foreign public person shall mean any person who is appointed or elected to a legislative, executive, administrative or judicial office in a foreign State; any person who performs a public function in a foreign State, including for a foreign public authority or public undertaking; persons serving as jurors within the judicial system of a foreign State.
- (2) International official shall mean any official of an international or supranational public organization or any person authorized by such an organization to act on its behalf; any member of a parliamentary assembly of an international or supranational organization; or any person who performs judicial functions in an international court, including registry officials.

Article 324. Passive bribery

- (1) Requesting, accepting or receiving, directly or through an intermediary, by a public person or foreign public person, of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, or accepts an offer or promise thereof, in order to perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto,

shall be punishable by imprisonment for 3 to 7 years with a fine of between 4000 and 6000 conventional units and with a disqualification from holding office or from engaging in certain activities for a period of 5 to 10 years.

- (2) The same actions committed:

- a) by international officials;
- b) by two or more persons;
- c) with extortion of goods or services listed in par. (1);
- d) large scale

shall be punished by imprisonment for 5 to 10 years with a fine in the amount of 6000 to 8000 conventional units and with the deprivation of the right to hold certain positions or to practice certain activities for 7 to 10 years. . . .

Article 325. Active bribery

- (1) Promising, offering or giving a bribe, directly or through an intermediary, to a public person or foreign public person, in the form of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, with a view to having him or her perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto,

shall be punishable by imprisonment for up to 6 years with a fine of between 2000 to 4000 conventional units in the case of a natural person, and a fine of between 6000 to 10000 conventional units with disqualification from performing certain activities in the case of a legal person.

(2) The same actions committed:

- b) by two or more persons;
- c) on a large scale

shall be punished by imprisonment from 3 to 7 years with a fine of between 4000 to 6000 conventional units in the case of a natural person, the legal entity shall be punished by a fine of between 10000 to 14000 conventional units with disqualification from performing certain activities.

(3) The actions set forth in par. (1) or (2) committed:

- a) on an especially large scale;
 - a1) with a person holding position of public dignity or international official;
- b) in the interests of organized criminal group or a criminal organization

shall be punished by imprisonment for 6 to 12 years with a fine in the amount of 6000 to 8000 conventional units in the case of a natural person, the legal entity shall be punished by a fine of between 14000 to 18000 conventional units with disqualification from performing certain activities or the dissolution of the legal entity. . . .

Mongolia: Criminal Code

Article 268. Receiving of a bribe

268.1. Receiving of a bribe by an official exclusively in view of his/her official post for a support or connivance in office, a favourable solution of issues within his/her competence, or for a performance or a failure to perform in the interests of the person giving the bribe of any action which this person should have or could have performed using hi/her official post, with or without an advance promise to do so shall be punishable by a fine equal to 51 to 250 amounts of minimum salary or imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years.

Article 269. Giving of a bribe

269.1. Giving of a bribe to an official in person or through an intermediary shall be punishable by a fine equal to 51 to 250 amounts of minimum salary or imprisonment for a term of up to 3 years.

269.2. The same crime committed repeatedly, by a person who previously was sentenced for this crime, by an organised group, or a criminal organisation shall be punishable by imprisonment for a term of more than 5 to 8 years.

Note: A person who voluntarily confesses to a competent authority giving of the bribe shall be released from criminal liability.

Montenegro: Criminal Code

Article 142, paragraphs 3 and 12

(3) Persons in official capacity are deemed to be . . . 5a) a person performing in a foreign state legislative, executive, judicial or another public office for a foreign state, a person who performs official duties in

a foreign country on the basis of laws, regulations adopted in accordance with the laws, contracts or arbitration agreement, a person performing official duty in an international public organisation and a person performing judicial, prosecutorial or another office in an international tribunal.

* * *

- (12) Pecuniary gain originating from a criminal offence is understood to mean pecuniary gain obtained directly from a criminal offence which consists in an increase or prevention of a decrease of the gain resulting from the commission of the crime, the property for which pecuniary gain obtained directly from a criminal offence is replaced or into which it is converted, as well as any other benefit obtained from the pecuniary gain directly obtained from the criminal offence irrespective of whether it is located in or outside of the territory of Montenegro.

Article 324. Release of a giver of a bribe and intermediary from criminal liability

- (1) A person who has given a bribe may be released from criminal liability if this bribe is extorted from this person or if, after the bribe has been given, he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence. A person who has given a bribe may be released from criminal liability if he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence.
- (2) Extortion of a bribe shall be understood to be the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person.
- (3) An intermediary or abettor of a bribe may be released from criminal liability if, after commission of the criminal acts, he or she voluntarily informs of the occurrence and actively furthers the disclosure and investigation of the criminal offence.

Article 423. Passive bribery

- (1) A public official who directly or indirectly solicits or receives a bribe, or who accepts a promise of a bribe for himself or for another person for agreeing to perform an official or other act which he must not perform, or not to perform an official or other act which he must perform shall be punished by a prison term from two to twelve years.
- (2) A public official who directly or indirectly solicits or receives a bribe, or who accepts a promise of a bribe for himself or another person for agreeing to perform an official or other act which he must perform, or not to perform an official or other act which he must not perform shall be punished by a prison term from two to eight years.
- (3) A public official who commits the offences under paras 1 or 2 above in relation to detection of a criminal offence, initiating or conducting of criminal proceedings, pronouncing or enforcing of a criminal sanction shall be punished by a prison term from three to fifteen years.
- (4) A public official who after performing or refraining from performing an official or other act referred to in paragraphs 1, 2 and 3 above, or in conjunction with such act, solicits or receives a bribe shall be punished by a prison term from three months to three years.
- (5) Where a responsible officer or another person in an institution or other non-commercial entity commits any of the offences under paras 1, 2 and 4 above shall be punished by the punishment prescribed for that offence.
- (6) The bribe received shall be confiscated.

Article 424. Active bribery

- (1) Anyone who directly or indirectly gives, offers or promises a bribe to a public official for himself or for another person for agreeing to perform an official or other act he must not perform or not to

perform an official or other act he must perform or anyone who intercedes in bribing a public official in the manner described above shall be punished by a prison term from one to eight years.

- (2) Anyone who directly or indirectly gives, offers or promises a bribe to a public official for himself or for another person for agreeing to perform an official or other act he must perform or not to perform an official or other act he must not perform, or anyone who intercedes in bribing a public official in the manner described above shall be punished by a prison term from six months to five years.
- (3) The punishment may be remitted where a perpetrator of the offences under paras 1 and 2 above had reported the criminal offence before he learned that the crime had been detected.
- (4) The provisions of paragraphs 1, 2 and 3 above shall also apply when a bribe was given, offered or promised to a responsible officer or other person in an institution or another non-commercial entity.

Romania: Criminal Code

Article 289. Taking a bribe

- (1) The action of the public official who, directly or indirectly, for themselves or on behalf of others, solicits or receives money or other undue benefits or accepts a promise of money or benefits, in exchange for performing, not performing, speeding up or delaying the performance of an action which falls under purview of their professional duties or with respect to the performance of an action contrary to their professional duties, constitutes a violation of the law and shall be punishable by no less than 3 and no more than 10 years of imprisonment and the ban from exercising the right to hold a public office or to exercise the profession or the activity in relation to which they committed the violation.
- (2) The action provided under par. (1), committed by one of the persons provided under Article 175 par. (2), shall constitute a criminal offence only when committed in relation with the performance or delaying the performance of an action related to their legal duties or related to the performance of an action contrary to such duties.
- (3) The money, valuables or any other benefits received shall be subject to confiscation, and when such can no longer be located, the confiscation of the equivalent shall be ordered.

Article 290. Giving a bribe

- (1) The promise, the giving or the offering of money or other benefits in the conditions provided under Article 289 shall be punishable by no less than 2 and no more than 7 years of imprisonment.
- (2) The action provided under par. (1) shall not constitute an offence when the bribe giver was constrained by any means by the bribe taker.
- (3) The bribe giver shall not be punishable if he/she reports the action prior to the criminal investigation bodies be notified thereupon.
- (4) The money, valuables or any other assets given shall be given back to the person who gave them in the case provided under par. (2) or given after the denunciation provided under par. (3).
- (5) The money, valuables or any other benefits offered or given shall be subject to forfeiture, and when such cannot be located anymore, the confiscation of the equivalent shall be ordered.

Article 293. Acts committed by members of the courts of arbiters or in connection thereto

The stipulations under Article 289 and Article 290 shall apply accordingly also to persons who, based on an arbitration agreement, are called upon to issue a ruling with respect to a case entrusted to them for settlement by the parties to that agreement, irrespective whether the arbitration proceedings are carried out based on the Romanian law or based on another law.

Article 294. Acts committed by foreign officials or related to them

The stipulations of this Chapter shall apply to the following persons, unless the international agreements that Romania is party to provide otherwise:

- a) officials or persons who carry out their activity based on a labour agreement or other persons with similar duties in an international public organisation that Romania is party to;
- b) members of parliamentary assemblies of international organisations that Romania is party to;
- c) officials or persons who carry out their activities based on a labour agreement or other persons with similar duties within the European Union;
- d) persons who exercise judicial functions within the international courts whose jurisdiction is accepted by Romania, as well as officials working for the registrar's office of such courts;
- e) officials of a foreign state;
- f) members of parliamentary or administrative assemblies of a foreign state;
- g) jurors within foreign courts.

Russian Federation: Criminal Code

Article 290. Bribe-Taking

1. Bribe-taking by a functionary, a foreign functionary or a functionary of a public international organisation in person or through an intermediary, in the form of money, securities or other assets or in the form of unlawful rendering thereto services of property nature, or granting of other property rights, for actions (inaction) in favour of a bribe giver or the persons he/she represents, if such actions (inaction) form part of the functionary's official powers or if the latter, by virtue of his/her official position, may further such actions (inaction), and also for overall patronage or connivance in the civil service, – shall be punishable with a fine in an amount which is from twenty five times to fifty times as much as of the sum of the bribe with disqualification from holding specified offices or engaging in specified activities for a term up to three years, or by compulsory labour for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years, or by deprivation of liberty for a term up to three years accompanied by a fine in the amount which is twenty times as much as the sum of bribe.
2. Taking a bribe by a functionary, a foreign functionary or a functionary of a public international organisation on a considerable scale – shall be punishable with a fine in the amount which is from thirty times to sixty times as much of the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years, or by deprivation of liberty for a term up to six years accompanied by a fine in the amount which is thirty times as much as the sum of the bribe.
3. Taking a bribe by a functionary, a foreign functionary or a functionary of a public international organisation for unlawful actions (inaction) – shall be punishable with a fine in the amount which is from forty times to seventy times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years, or by deprivation of liberty for a term from three to seven years accompanied by a fine in the amount which is forty times as much as the sum of the bribe.
4. The deeds provided for by parts one-three of this Article and committed by a person who holds a government post of the Russian Federation or a government post of a subject of the Russian Federation, as well as by the head of a local self-government body – shall be punishable with a fine in

the amount which is from sixty to eighty times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term of up to three years, or by deprivation of liberty for a term of five to ten years accompanied with a fine in the amount which is fifty times as much as the sum of the bribe.

5. The deeds stipulated in parts one, three and four of this Article, if they have been committed:
 - a) by a group of persons by previous concert, or by an organised group;
 - b) with extortion of a bribe;
 - c) on a large scale –

shall be punishable by a fine in the amount which is from seventy times to ninety times as much as the sum of the bribe or by deprivation of liberty for a term of seven to twelve years with disqualification from holding specific offices or engaging in specified activities for a term of up to three years and with a fine in the amount which is sixty times as much as the sum of the bribe.

6. The deeds provided for by parts one, three, four and Items (a) and (b) of part five of this Article made on an especially large scale – shall be punishable with a fine in the amount which from eight to one hundred times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term of up to three years or by deprivation of liberty for a term from eight to fifteen years accompanied by a fine in the amount which is seventy times as much as the sum of the bribe.

Notes.

1. *As a bribe on a considerable scale in this Article, in Articles 291 and 291.1 of this Code shall be deemed the sum of money, the cost of securities, other property, services of property nature, other property rights exceeding twenty five thousand roubles; as a bribe on a large scale shall be deemed those exceeding one hundred and fifty thousand roubles and a bribe on an especially large scale shall be deemed that exceeding one million roubles.*
2. *A foreign functionary in this Article, Articles 291 and 291.1 of this Code means any appointed or elected person holding an office in the legislative, executive, administrative or judicial body of a foreign state, or any person exercising a public function for a foreign state, in particular for a public department or public enterprise; a functionary of a public international organisation means an international civil servant or any person authorised by such organisation to act on behalf of it.*

Article 291. Bribe-giving

1. Giving a bribe to a functionary, a foreign functionary or a functionary of a public international organisation in person or through an intermediary, – shall be punishable with a fine in the amount which is from fifteen times to thirty times as much as the sum of the bribe, or by compulsory labour for a term of up to three years, or with deprivation of liberty for a term up to two years accompanied by a fine in the amount which is ten times as much as the sum of the bribe.
2. Giving a bribe to a functionary, a foreign functionary or a functionary of a public international organisation in person or through an intermediary on a considerable scale – shall be punishable with a fine in the amount which is from twenty times to forty times as much of the sum of the bribe or with deprivation of liberty for a term up to three years accompanied by a fine in the amount which is fifteen times as much as the sum of the bribe.
3. Giving a bribe to a functionary, a foreign functionary or a functionary of a public international organisation in person or through an intermediary for committing wittingly unlawful actions (inaction) – shall be punishable with a fine in the amount which is from thirty times to sixty times as much as the sum of the bribe or with deprivation of liberty for a term up to eight years accompanied by a fine in the amount which is thirty times as much as the sum of the bribe.

4. The deeds stipulated in Parts One to Three of this Article, if they have been committed:

- a) by a group of persons by previous concert, or by an organised group;
- b) on a large scale –

shall be punishable with a fine in the amount which is from sixty times to eighty times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years or with deprivation of liberty for a term of five to ten years accompanied by a fine in the amount which is sixty times as much as the sum of the bribe.

5. The deeds provided for by Parts One to Four of this Article made on an especially large scale – shall be punishable with a fine in the amount which is from seventy times to ninety times as much as the sum of the bribe or with deprivation of liberty for a term from seven to twelve years accompanied by a fine in the amount which is seventy times as much as the sum of the bribe.

Note. A person who has given a bribe shall be relieved from criminal liability if he/she has been active in assisting to the crime's clearing and/or investigation, or this person has been subjected to extortion on the part of an official, or if this person after committing the crime has voluntarily informed the body that has the right to institute criminal proceedings about giving the bribe.

Article 291.1. Mediation in Bribery

1. Mediation in bribery, that is, direct transfer of a bribe on the instructions of the bribe giver or bribe taker or other kind of assistance to the bribe giver and/or bribe taker in achieving or implementing of an agreement between them on taking or giving a bribe on a considerable scale – shall be punishable with a fine in the amount which is from twenty times to forty times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years or with deprivation of liberty for a term up to five years accompanied by a fine in the amount which is twenty times as much as the sum of the bribe.

2. Mediation in bribe taking for committing wittingly unlawful actions (inaction) or by a person using the official position thereof – shall be punishable with a fine in the amount which is from thirty times to sixty times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years or with deprivation of liberty for a term of three to seven years accompanied by a fine in the amount which is thirty times as much as the sum of the bribe.

3. Mediation in bribery effected:

- a) by a group of persons by previous concert, or by an organised group;
- b) on a large scale –

shall be punishable with a fine in the amount which is from sixty times to eighty times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years or by deprivation of liberty for a term of seven to twelve years accompanied by a fine in the amount which is sixty times as much as the sum of the bribe.

4. Mediation in bribery effected on an especially large scale – shall be punishable with a fine in the amount which is from seventy times to ninety times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years or by deprivation of liberty for a term of seven to twelve years accompanied by a fine in the amount which is seventy times as much as the sum of the bribe.

5. A promise or proposal to mediate in bribery – shall be punishable with a fine in the amount which is from fifteen times to seventy times as much as the sum of the bribe with disqualification from holding specific offices or engaging in specified activities for a term up to three years or with a fine in the

amount of twenty five thousand to five hundred million roubles with disqualification from holding specific offices or engaging in specified activities for a term up to three years or with deprivation of liberty for a term up to seven years accompanied by a fine in the amount which is from ten times to sixty times as much as the sum of the bribe.

Note. A person acting as a intermediary in bribery shall be relieved from criminal liability, if he/she after committing the crime has been active in assisting to the crime's clearing and/or suppression, or if this person has been subjected to extortion on the part of an official and has voluntarily informed the body that has the right to institute criminal proceedings about his/her mediation in bribery.

Serbia: Criminal Code

Article 21. Force and threat

- (1) An act committed under irresistible force is not a criminal offence.
- (2) If a criminal offence is committed under force which is not irresistible or under threat, the offender may be punished more leniently.
- (3) In case referred to in para. 1 of this Article, the person using irresistible force shall be considered perpetrator of the criminal offence.

Article 112. Meaning of terms

An official is:

- 1) a person discharging official duties in government authority;
- 2) elected, appointed or assigned person in a government authority, local self-government body or a person permanently or periodically discharging official duty or office in such bodies;
- 3) public notary, executor and arbiter, as well as an officer in an institution, enterprise or other subject, discharging delegated public authority, who decides on rights, obligations or interests of natural persons or legal entities or in respect to public interest;
- 4) an official shall also be a person who is in fact assigned discharge of official duty or tasks;
- 5) a member of the military.

A foreign official shall be understood to mean a person who is a member, official or officer of a legislative or executive body of a foreign state, a person who is a judge, juror, member, an official or an officer of a court of a foreign state, or an international tribunal, a person who is a member, official or officer of an international organisation and its organs, as well as a person who is an arbitrator in a foreign or international arbitration.

Article 367. Soliciting and accepting bribes

- (1) An official who directly or indirectly solicits or accepts a gift or other benefit, or promise of a gift or other benefit for himself or another to perform an official act within his competence or in relation to his/her official powers that should not be performed or not to perform an official act that should be performed, shall be punished by imprisonment of two to twelve years.
- (2) An official who directly or indirectly solicits or accepts a gift or other benefit or a promise of a gift or benefit for himself or another to perform an official act within his competence or in relation to his/her official powers that he is obliged to perform or not to perform an official act that should not be performed, shall be punished by imprisonment of two to eight years.

- (3) An official who commits the offence specified in paragraphs 1 and 2 of this Article in respect of uncovering of a criminal offence, instigating or conducting criminal proceedings, pronouncement or enforcement of criminal sanction, shall be punished by imprisonment of three to fifteen years.
- (4) An official who after performing or failure to perform an official act specified in paragraphs 1, 2 and 3 of this Article solicits or accepts a gift or other benefit in relation thereto, shall be punished by imprisonment of three months to three years.
- (5) A foreign official who commits the offence specified in paragraphs 1 through 4 of this Article shall be punished by the penalty prescribed for that offence.
- (6) A responsible officer in an enterprise, institution or other entity who commits the offence specified in paragraphs 1, 2 and 4 of this Article shall be punished with penalty prescribed for that offence.
- (7) The received gift or material gain shall be seized.

Article 368. Bribery

- (1) Whoever makes, offers or promises a gift or other benefit to an official or another, to within his official competence or in relation to his/her official powers perform an official act that should not be performed or not to perform an official act that should be performed, or who acts as intermediary in such bribing of an official, shall be punished by imprisonment of six months to five years.
- (2) Whoever makes, offers or promises a gift or other benefit to an official or another to, within his official competence or in relation to his/her official powers perform an official act that he is obliged to perform or not to perform an official act that he may not perform or who acts as intermediary in such bribing of an official, shall be punished by imprisonment up to three years.
- (3) Provisions of paragraphs 1 and 2 of this Article shall apply also when a bribe is made, offered or promised to a foreign official.
- (4) The offender specified in paragraphs 1, through 3 of this Article who reports the offence before becoming aware that it has been detected, may be remitted from punishment.
- (5) Provisions of paragraphs 1, 2 and 4 of this Article shall apply also when a bribe is given, offered or promised to a responsible officer in an enterprise, institution or other entity.

Slovenia: Criminal Code

[with amendments entering in force on 20 October 2015]

Article 99. Meaning of Terms of the Penal Code

- (1) For the purpose of this Penal Code the term official shall mean:
 - 1) a member of the National Assembly, a member of the National Council, and a member of a local or regional representative body;
 - 2) a Constitutional Court judge, a judge, a lay judge, state prosecutor, or state defender;
 - 3) a person carrying out official duties or exercising a public function with management powers and responsibilities within a state authority;
 - 4) any other person exercising official duties by authorisation of the law, of by-law or of the contract on arbitration concluded on the basis of the law;
 - 5) military person designated as a such with special regulations in instances, when the act is not already criminalised as a criminal offence against military duty;

- 6) a person in a foreign country carrying out legislative, executive or judicial function, or any other official duty at any level, providing that he/she meets the substantive criteria under points 1, 2, or 3 of this paragraph;
- 7) a person recognised as an official within a public international organisation providing that he/she meets the substantive criteria under points 1, 2, or 3 of this paragraph;
- 8) a person carrying out judicial, prosecutorial or other official function or duty with the international court or tribunal.

Article 261. Acceptance of Bribes

- (1) An official or a public officer who requests or agrees to accept for himself or any third person an award, gift or other property benefit, or a promise or offer for such benefit, in order to perform an official act within the scope of his official duties which should not be performed, or not to perform an official act which should or could be performed, or make other abuse of his position, or whoever serves as an agent for the purpose of bribing an official, shall be sentenced to imprisonment for not less than one and not more than eight years and punished by a fine.
- (2) An official or a public officer who requests or agrees to accept for himself or any third person an award, gift or other property benefit, or a promise or offer for such benefit, in order to perform an official act within the scope of his official duties which should or could be performed, or not to perform an official act which should not be performed, or make other use of his position, or whoever intermediates in such a bribery of the official, shall be sentenced to imprisonment for not less than one and not more than five years and a fine.
- (3) An official or a public officer who requests or accepts an award, gift or other favour with respect to the performance of the official act under preceding paragraphs after the official act is actually performed or omitted, shall be punished by a fine or sentenced to imprisonment for not more than four years and a fine.
- (4) The accepted award, gift and other benefit shall be seized.

Article 262. Giving Bribes

- (1) Whoever promises, offers or gives an award, gift or other benefit to an official or a public officer for him or any third person in order for him either to perform an official act within the scope of his official duties which should not be performed, or not to perform an official act which should or could be performed, or makes other abuse of his position, or whoever serves as an agent for the purpose of bribing an official, shall be sentenced to imprisonment for not less than one and not more than six years and punished by a fine .
- (2) Whoever promises, offers or gives an award, gift or other benefit to an official or a public officer for him or any third person in order for him either to perform an official act within the scope of his official duties which should or could be performed, or not to perform an official act which should not be performed, or makes other use of his position, shall be sentenced to imprisonment for not less than six months and not more than four years and a fine.
- (3) If the perpetrator under the preceding paragraphs who gave the award, gift or other benefit on request of an official or public officer, had declared such an offence before it was detected or he knew it had been detected, his punishment may be remitted.

Tajikistan: Criminal Code

Article 18. Classification of Crimes

- (1) Crimes are classified as petty misdemeanour, misdemeanour, felony and especially grievous crime, which are based on the character and degree of social danger.
- (2) Intentionally committed crimes subject to a sentence of no more than two years of imprisonment, as provided for by the present Code, are considered to be petty misdemeanours.
- (3) Intentionally committed crimes subject to a sentence of no more than five years of imprisonment, as provided for by this Code, are deemed to be misdemeanours.
- (4) Intentionally committed crimes and acts subject to a sentence of no more than twelve years of imprisonment, as provided for by the Code, as well as careless crimes subject to a sentence of more than five years of imprisonment are deemed to be felonies.
- (5) Intentionally committed crimes subject to a sentence of more than twelve years or stricter punishment, as provided for by the Code, are deemed to be especially grievous crimes.

Article 75. Release From Criminal Liability In Consequence of Expiration of the Limitation Period

- (1) An offender may be released from the sentence if from the date of the commitment of the crime, the following time has expired:
 - a) 2 years – for commitment of petty misdemeanours;
 - b) 6 years – for commitment of misdemeanours;
 - c) 10 years – for commitment of felonies;
 - d) 15 years – for commitment of especially grievous crimes.
- (2) The limitation period is determined starting from the date of the commitment of the crime and running until the sentence comes into legal force.
- (3) The running of the limitation period is interrupted if the offender escapes from the investigation or from the Court. In this case, the running of the limitation period is renewed starting from the moment of the seizure of the offender or his surrender.
- (4) If the offender commits another misdemeanour, felony or especially grievous crime before the expiration of the limitation periods indicated in the present Article, calculation of the limitation period begins from the date of the commitment of a felony, but limitation periods shall be calculated separately for each crime.
- (5) Imposition of the limitation period to an offender who has committed a crime for which capital punishment may be imposed, is decided by the Court. If the Court considers it impossible to release the offender from criminal liability in consequence of the expiration of the limitation period, capital punishment is not imposed.
- (6) A limitation period is not applied to a person who has committed a crime against the peace and safety of humankind.

Article 319. Taking a Bribe

- (1) Taking a bribe (money, securities, other property or proprietary advantages) by an official personally or through his mediator in exchange for actions (omission) in favour of a person who offers a bribe, if such actions are within the authorities of the official, or he can take such actions (omission) due to his official position, as well as in exchange for general patronage are punishable by up to 5 years of imprisonment simultaneously with up to 3 years of deprivation of the right to hold certain positions or to be engaged in certain activities or without it.

- (2) Taking a bribe by an official in exchange for illegal actions (omission) is punishable by imprisonment for a period of up to 5 years simultaneously with up to 3 years of deprivation of the right to hold certain positions or to be engaged in certain activities or without it.
- (3) The actions, specified in paragraphs 1 or 2 of the present Article, committed by an individual who occupies an official position of the Republic of Tajikistan, or by a head of local self-administration are punishable by imprisonment for a period of 5 to 10 years simultaneously with up to 5 years of deprivation of the right to hold certain positions or to be engaged in certain activities or without it.
- (4) The actions, specified in paragraphs 1, 2, or 3 of the present Article, if they committed:
 - a) repeatedly;
 - b) by a group of individuals in a conspiracy, or by an organised group;
 - c) along with extortion of a bribe;
 - d) in a large amount, –are punishable by imprisonment for a period of 7 to 12 years simultaneously with confiscation of property, with deprivation of the right to hold certain positions or be engaged in certain activities for up to 5 years .

Note: In Articles 319, 324 and 325 large amount of a bribe means a sum of money, cost of securities, other property or proprietary advantages, which exceed 1000 times the minimum monthly wage.

Article 320. Bribery

- (1) Giving a bribe to an official personally or through a mediator is punishable by imprisonment for a period of 5 to 10 years with confiscation of property.
- (2) Giving a bribe to an official in exchange for committing knowingly illegal actions (omission) by him, or repeatedly is punishable by imprisonment for a period of 10 to 15 years with confiscation of property.

Note: A person who gave a bribe would be released from criminal liability, if there was an extortion of a bribe by an official, and if the person voluntarily informed the organ which is entitled to institute criminal proceedings.

Article 321 Provocation of Bribery

An attempt to give money, securities, other property to an official, or an attempt to render services of proprietary character with the goal of creating artificial evidences of taking a bribe is punishable by imprisonment for a period of 5 to 10 years with confiscation of property.

Ukraine: Criminal Code

Article 354. Bribery of an employee of an enterprise, institution or organization

1. An offer or a promise to an employee of an enterprise, institution or organization, who is not a service person, or to a person who works for the benefit of an enterprise, institution or organization, to provide him/her or a third person with an unlawful benefit, as well as the giving of such benefit for performance or non-performance by the employee of any actions using the position he/she is holding, or by the person who works for the benefit of an enterprise, institution or organization, in the interests of the person who offers, promises or gives such benefit or in the interests of a third person –

shall be punishable by a fine in the amount of one hundred to two hundred and fifty untaxed minimum personal incomes, or by community works for the term of up to one hundred hours, or by correctional labour for the term of up to one year, or by restriction of liberty for the term of up to two years, or by

deprivation of liberty for the same term, with a special confiscation.

2. The same actions committed repeatedly or by a group of persons through a prior conspiracy, – shall be punishable by fine in the amount of two hundred and fifty to five hundred untaxed minimum personal incomes, or by community works for the term of one hundred to two hundred hours, or by correctional labour for the term of up to two years, or by restriction of liberty for the term of up to three years, or by deprivation of liberty for the same term, with a special confiscation.
3. Acceptance of an offer, a promise or receiving by an employee of an enterprise, institution or organization, who is not a service person, or by the person who works for the benefit of an enterprise, institution or organization, of an unlawful benefit, as well as a request to provide such benefit for oneself or a third person, for performance or non-performance of any actions using the position he/she is holding at the enterprise, institution or organization, or in connection with the person's activity for the benefit of an enterprise, institution or organization, in the interests of the person who offers, promises or gives such benefit or in the interests of a third person – shall be punishable by fine in the amount of two hundred and fifty to five hundred untaxed minimum personal incomes, or by community works for the term of one hundred to two hundred hours, or by restriction of liberty for the term of up to two years, or by deprivation of liberty for the same term, with a special confiscation.
4. Actions provided for by paragraph 3 of the present Article, committed repeatedly or by prior conspiracy by a group of persons or combined with extortion of unlawful benefit, – shall be punishable by fine in the amount of five hundred to seven hundred and fifty untaxed minimum personal incomes, or by community works for the term of one hundred and sixty to two hundred and forty hours, or by restriction of liberty for the term of up to three years, or by deprivation of liberty for the same term, with a special confiscation.
5. A person who offered, promised or gave unlawful benefit shall be discharged from criminal liability for a crime provided for in Articles 354, 368³, 368⁴, 369 and 369² of this Code, if after the offer, promise or giving of unlawful benefit such person – before information about this crime was obtained by the agency, whose service person is authorised by law to notify suspicion, from other sources – voluntarily reported about the fact to such agency and actively facilitated solving of the crime committed by person who received unlawful benefit or accepted its offer or promise. Such discharge should not be applied in case where the offer, promise or giving of unlawful benefit was committed with regard to persons specified in Article 18.4 of this Code.⁵⁰

Note.

1. *Person who works for the benefit of an enterprise, institution or organization should mean a person who carries out work or provides service according to an agreement with such enterprise, institution or organization.*
2. *In the present Article unlawful benefit should be understood as monetary funds or other property, advantages, privileges, services, intangible assets, any other benefits of non-tangible or non-pecuniary character, being offered, promised, given or received without legitimate grounds therefor.*
3. *In Articles 354, 368, 368³ to 370 of the present Code, an offer means expressing to the person who is an employee of an enterprise, institution or organization, or a person giving public services, or to a service person of an intention to give unlawful benefit, while a promise means – an expression of such intent with indication of the time, place and manner of giving unlawful benefit.*
4. *In Articles 354, 368, 368³, 368⁴ and 369 of the present Code, a crime shall be considered to be*

⁵⁰ That is, foreign public officials and officials of international organisations.

repeated if committed by a person who had previously committed any of the crimes provided for by these Articles.

5. In Articles 354, 368, 368³ and 368⁴ of this Code an extortion of unlawful benefit should mean a demand to give unlawful benefit with a threat to take actions or omit to act using one's position, authority granted, power, or service position in relation to the person who gives unlawful benefit, or deliberate creation of conditions under which a person is compelled to give unlawful benefit in order to prevent harmful consequences for his/her rights and legitimate interests.

Article 364. Abuse of authority or service position

1. Abuse of authority or office, that is a wilful, for the purpose of obtaining any unlawful benefit for oneself or for other natural or legal person, use of authority or service position contrary to the service interests by a service person, where it caused a significant damage to legally protected rights, freedoms and interests of individual citizens, or state and public interests, or interests of legal entities, –

shall be punishable by arrest for a term up to six months, or restriction of liberty for a term up to three years, or deprivation of liberty for the same term, with the deprivation of the right to occupy certain positions or engage in certain activities for the term up to three years, with a fine from two hundred fifty to seven hundred fifty untaxed minimum personal incomes and with a special confiscation.

2. The same act if it caused grave consequences, –

shall be punishable by deprivation of liberty for a term of three to six years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, with fine from five hundred to one thousand untaxed minimum personal incomes and with special confiscation.

Note.

1. Service persons in Articles 364, 368, 368² and 369 of this Code shall mean persons who permanently, temporary or by special authorisation carry out functions of representative of authority or local self-government, as well as permanently or temporarily occupy in state authorities, local self-government bodies, at the state or municipal enterprises, institutions or organizations positions, which are related to performance of organizational and managerial or administrative and economic functions, or perform such functions upon special authorisation given to the person by authorised state authority, local self-government body, central authority of state governance with special status, authorised body or person of an enterprise, institution or organisation, by court or by law.

For the purposes of Articles 364, 368, 368² and 369 of this Code to state and municipal enterprises shall be equalled legal entities in whose statutory capital the state or a local community-owned share exceeds 50 % or is of such amount that gives the state or the local community a right of decisive influence over the economic activity of such enterprise.

2. Service persons shall also mean officials of foreign states (persons who hold positions in the legislative, executive or judicial authority of a foreign state, in particular jurors, other persons who perform functions of the state for the foreign state, in particular for a state authority or a state enterprise), as well as foreign arbitrators, persons authorised to decide on civil, commercial or labour disputes in the foreign state in proceedings that are alternative to judicial, officials of international organisations (employees of an international organisation or any other persons authorised by such organisation to act on its behalf), members of international parliamentary assemblies, in which Ukraine participates, and judges and officials of international courts.
3. For the purposes of Articles 364, 364¹, 365, 365² and 367, significant damage shall mean such damage that equals or exceeds one hundred untaxed minimum personal incomes.
4. For the purposes of Articles 364 to 367, grave consequences shall mean such consequences that equal or exceed two hundred and fifty untaxed minimum personal incomes.

Article 368. Acceptance of an offer, promise or receiving of an unlawful benefit by a service person

1. Acceptance of an offer, promise or receiving by a service person of an unlawful benefit, as well a request to provide such benefit for oneself or for a third person for the performance or non-performance by such service person of any action in the interests of the person who offers, promises or gives unlawful benefit, or in the interests of a third person, using the authority he/she was provided with or service position, –

shall be punishable by fine in the amount of 1,000 to 1,500 untaxed minimum personal incomes, or by arrest for a term from three to six months, or by deprivation of liberty for a term from two to four years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term of two to three years and with a special confiscation.

2. Act provided for in paragraph 1 of the present Article, the subject of which was unlawful benefit in substantial amount, –

shall be punishable by deprivation of liberty for the term of three to six years, with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years and with special confiscation.

3. Acts provided for in paragraphs 1 or 2 of the present Article, the subject of which was unlawful benefit in a large amount, or when committed by a service person occupying a position of responsibility, or by prior conspiracy by a group of persons, or if repeated, or combined with extortion of unlawful benefit, –

shall be punishable by deprivation of liberty for a term of five to ten years with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years, with special confiscation and confiscation of property.

4. Acts provided for in paragraphs 1, 2 or 3 of the present Article, the subject of which was unlawful advantage in an especially large amount, or when committed by a service person occupying a position of particular responsibility, –

shall be punishable by deprivation of liberty for a term of eight to twelve years with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years, with special confiscation and confiscation of property.

Note.

1. *Unlawful benefit in substantial amount shall mean benefit exceeding one hundred times the untaxed minimum personal income; unlawful benefit in large amount – benefit exceeding two hundred times the untaxed minimum personal income; unlawful benefit in especially large amount – benefit exceeding five hundred times the untaxed minimum personal income.*
2. *In Articles 368, 368², 369 and 382 of the present Code, service persons occupying a position of responsibility shall mean persons specified in paragraph 1 of the Note to Article 364 of this Code, whose positions, in accordance with Article 25 of the Law of Ukraine “On Civil Service,” are classified as belonging to third, fourth, fifth and sixth categories, as well as judges, prosecutors and investigators, and other (except for those mentioned in paragraph 3 of this Note) heads and deputy heads of state authorities, local self-government bodies, their structural units.*
3. *In Articles 368, 368², 369 and 382 of the present Code, service persons occupying a position of particular responsibility shall mean:*
 - 1) *President of Ukraine, Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, people’s deputies of Ukraine, Parliament’s Ombudsman, Director of the National Anti-Corruption Bureau, Prosecutor General of Ukraine, his First Deputy and Deputy, President of the Constitutional Court of Ukraine, his Deputy and Judges of the Constitutional Court of Ukraine,*

President of the Supreme Court of Ukraine, his First Deputy, Deputy and Judges of the Supreme Court of Ukraine, president, deputy presidents and judges of the higher specialised courts, President of the National Bank of Ukraine, his First Deputy and Deputy, Secretary to the National Defence and Security Council, his First Deputy and Deputy;

- 2) *persons whose positions, in accordance with Article 25 of the Law of Ukraine "On Civil Service," are classified as belonging to civil service positions of the first and second categories;*
- 3) *persons whose positions, in accordance with Article 14 of the Law of Ukraine "On Service in the Local Self-Governance Bodies," are classified as belonging to first and second categories of positions in local self-governance bodies.*

Article 369. An offer, promise or giving of an unlawful benefit to a service person

1. An offer or a promise to a service person to give him/her or a third person an unlawful benefit, as well as giving of such benefit, for performance or non-performance by the service person of any action using the authority granted to it or official position in the interests of the person who offers, promises or gives such benefit, or in the interests of a third person, –

shall be punishable by fine in the amount of 500 to 750 untaxed minimum personal incomes, or by restriction of liberty for the term of up to four years, or by deprivation of liberty for the same term, with a special confiscation.

2. Acts provided for in paragraph 1 of the present Article, when committed repeatedly, –

shall be punishable by deprivation of liberty for a term of three to six years with fine in the amount of five hundred to one thousand untaxed minimum personal incomes, with or without confiscation of property and with a special confiscation.

3. Acts provided for in paragraphs 1 or 2 of the present Article, if the unlawful benefit was given to a service person occupying a position of responsibility, or was committed by prior conspiracy by a group of persons, –

shall be punishable by deprivation of liberty for a term of four to eight years, with or without confiscation of property and with a special confiscation.

4. Acts provided for in paragraphs 1, 2 or 3 of the present Article, if the unlawful benefit was given to a service person occupying a position of particular responsibility, or was committed by an organized group of persons or by a member thereof, –

shall be punishable by deprivation of liberty for a term of five to ten years, with or without confiscation of property and with a special confiscation.

Article 369². Abuse of influence

1. An offer, a promise or giving of an unlawful benefit to a person who offers or promises (consents) for such benefit or for giving of such benefit to a third party to influence the adoption of a decision by a person who is authorized to perform state functions, –

shall be punishable by fine in the amount of two hundred to five hundred untaxed minimum personal incomes, or by restriction of liberty for the term of two to five years, or by deprivation of liberty for the term of up to two years, with a special confiscation.

2. Acceptance of an offer, promise or receiving of an unlawful benefit for oneself or for a third party for the influence on the adoption of a decision by a person who is authorized to perform state functions, or an offer or a promise to exert influence for giving of such benefit, –

shall be punishable by fine in the amount of seven hundred and fifty to one thousand five hundred untaxed minimum personal incomes, or by deprivation of liberty for the term of two to five years, with

a special confiscation.

3. Acceptance of an offer, promise or receiving of an unlawful benefit for oneself or for a third party for the influence on the adoption of a decision by a person who is authorized to perform state functions, combined with extortion of such benefit, –

shall be punishable by deprivation of liberty for the term of three to eight years with confiscation of property and with a special confiscation.

Note. Persons authorised to perform state functions shall mean persons defined in subparagraphs 1–3 of paragraph 1 of Article 4 of the Law of Ukraine “On Principles for Preventing and Counteracting Corruption.”

Article 370. Provocation of bribery

1. Provocation of bribery, that is actions of a service person to incite person to offering, promising or giving of an unlawful benefit or acceptance of an offer, promise or receiving of such benefit, in order to subsequently expose the person who offered, promised, gave unlawful benefit or accepted an offer, promise or received such benefit, –

shall be punishable by restriction of liberty for the term of up to five years, or by deprivation of liberty for the term of two to five years, and with a fine in the amount of two hundred and fifty to five hundred untaxed minimum personal incomes.

2. The same act, when committed by a service person of law enforcement agencies, –

shall be punishable by deprivation of liberty for the term of three to seven years, and with a fine in the amount of five hundred to seven hundred and fifty untaxed minimum personal incomes.

Uzbekistan: Criminal Code

Article 210. Acceptance of Bribe

Acceptance of bribe, that is, knowingly illegal acceptance of tangible valuables by an official, personally or through an intermediate person, or acquisition of pecuniary benefit for performance or non-performance of certain action, which he must or could have officially performed, in the interests of the person giving a bribe – shall be punished with fine from one hundred and fifty minimum monthly wages, or imprisonment up to five years and deprivation of certain right up.

Acceptance of a bribe:

- a) repeatedly, by a dangerous recidivist or person who has previously committed crimes punishable under Articles 211 or 212 of this Code;
- b) in large amount;
- c) by extortion;
- d) by previous concert by a group of officials –

shall be punished with imprisonment from five to ten years.

Acceptance of a bribe:

- a) in especially large amount;
- b) by an authorised official;
- c) in the interests of an organised group –

shall be punished with imprisonment from ten to fifteen years.

Article 211. Bribe-giving

Bribe-giving, that is, knowingly illegal provision of tangible valuables to an official, personally or through an intermediate person, or of pecuniary benefit for performance or non-performance of certain action, which the official must or could have officially performed, in the interests of the person giving a bribe – shall be punished with fine up to fifty minimum monthly wages, or correctional labour up to three years, or arrest up to six months, or imprisonment up to three years.

Bribe-giving:

a) repeatedly, by a dangerous recidivist or a person who has previously committed crimes punishable under Articles 210 or 212 of this Code;

b) in large amount –

shall be punished with imprisonment from three to five years.

Bribe-giving:

a) in especially large amount;

b) in the interests of an organised group;

c) by an authorised official –

shall be punished with imprisonment from five to ten years.

The person who has given a bribe shall be discharged from criminal liability in the instance if there was extortion with regard to the person, or he communicated voluntarily about the event of the crime, after having committed criminal actions, repented honestly, and facilitated actively detection of the crime.

Article 212. Intermediation in Bribery

Intermediation in bribery, that is, activity carried out to arrive at an agreement about acceptance of or giving a bribe as well as immediate delivery of a bribe upon instructions of the persons concerned – shall be punished with fine up to fifty minimum monthly wages, or correctional labour up to three years, or arrest up to six months, or imprisonment up to three years.

The same action committed:

a) repeatedly, by a dangerous recidivist or a person who has previously committed crimes punishable under Articles 210 or 211 of this Code;

b) in the instance of acceptance of or giving a bribe in large amount;

c) in the instance of acceptance of a bribe by a group of officials acting by previous concert, which is known to the agent – shall be punished with imprisonment from three to five years.

Intermediation in bribery committed:

a) for remuneration;

b) in the instance of acceptance or giving of a bribe in especially large amount;

c) in the interests of an organised group;

d) by an authorised official –

shall be punished with imprisonment from five to eight years.

The person, who acted as an intermediate person in bribery, shall be discharged from liability in the instance if he communicated voluntarily about the event of the crime, after having committed criminal actions, repented honestly, and facilitated actively detection of the crime.

Annex 3. Limitations periods for foreign bribery offences in selected ACN countries

Country	Statute of limitations (SOL)	Reasons for suspension or interruption
Albania (CC Article 66)	Active bribery: 5 years Passive bribery: 10 years	<ul style="list-style-type: none"> • Unclear
Armenia (CC Article 75)	<p>Active bribery</p> <ul style="list-style-type: none"> • 5 years (medium gravity offences, i.e., subject to up to 5 years imprisonment) • 10 years (grave offences, i.e., subject to up to 10 years imprisonment – those that are particularly large or done by an organised crime group) <p>Passive bribery</p> <ul style="list-style-type: none"> • 5 years (medium gravity offences, i.e., subject to up to 5 years imprisonment) • 10 years (grave offences, i.e., subject to up to 10 years imprisonment) • 15 years (particularly grave offences, i.e., subject to up to 10 years imprisonment) <p>In any case, the SOL expires 10 years after a medium gravity offence or 20 years after a grave or particularly grave offence (so long as the SOL was not disrupted by new crimes)</p>	<ul style="list-style-type: none"> • Offender commits a new crime (SOL begins anew) • Offender avoids investigation or trial
Azerbaijan (CC Article 75)	<p>Active bribery</p> <ul style="list-style-type: none"> • 7 years <p>Passive bribery</p> <ul style="list-style-type: none"> • 15 years 	<ul style="list-style-type: none"> • Offender disappears from investigation or court (SOL renewed) • Offender or whereabouts are unknown, unavailable, or ill • Offender is immune
Bosnia and Herzegovina (CC Articles 14–15)	<p>Active bribery</p> <ul style="list-style-type: none"> • 5 years (for lawful action or inaction) • 10 years (for unlawful action or inaction) <p>Passive bribery</p> <ul style="list-style-type: none"> • 10 years (for lawful action or inaction) • 15 years (for unlawful action or inaction) <p>In any case, the SOL expires when twice the SOL has elapsed (e.g., 10 years in the case of a 5 year SOL)</p>	<ul style="list-style-type: none"> • The prosecution cannot be instituted or continued by reason of a provision of law • Motions relating to the prosecution of the perpetrator • Offender commits a new crime (SOL begins anew)
Bulgaria	<p>Active bribery</p> <ul style="list-style-type: none"> • 5 years (crimes punishable by up to 3 years imprisonment) • 10 years (punishable for more than 3 years) <p>Passive bribery</p> <ul style="list-style-type: none"> • 10 years (punishable by up to 10 years) • 15 years (punishable by more than 10 years) 	<ul style="list-style-type: none"> • Unclear
Croatia (CC Article 19)	<p>Active bribery</p> <ul style="list-style-type: none"> • 10 years (no breach of duty) • 15 years (breach of duty) <p>Passive bribery</p> <ul style="list-style-type: none"> • 3 years (demands or takes bribe after performance) • 15 years (other foreign bribery offences) <p>In any case, the SOL expires when twice the SOL has elapsed</p>	<ul style="list-style-type: none"> • Criminal prosecution cannot be undertaken or continued, pursuant to law • Procedural actions undertaken to institute criminal proceedings • Perpetrator commits equally or more serious offence (SOL begins anew)

Country	Statute of limitations (SOL)	Reasons for suspension or interruption
Estonia (PC sections 4, 81)	<ul style="list-style-type: none"> • 5 years • 10 years (crimes punishable by more than 5 years imprisonment) <p>In any case, the SOL expires after 15 years</p>	<ul style="list-style-type: none"> • Certain procedural acts • Suspect absconds from proceedings
FYRM (CC Articles 107–108)	<p>Active bribery</p> <ul style="list-style-type: none"> • 3 years (for lawful action or inaction) • 5 years (for unlawful action or inaction) <p>Passive bribery</p> <ul style="list-style-type: none"> • 3 years (for requesting/taking the bribe following the act or inaction) • 5 years (for lawful action or inaction) • 10 years (for unlawful action or inaction) • For larger or significant property gains, the SOL is unclear, but could potentially be between 10 and 20 years <p>In any case, the SOL expires when twice the SOL has elapsed</p>	<ul style="list-style-type: none"> • According to the law, the prosecution may not begin or continue • Process actions undertaken to prosecute the offender • Offender commits an equally severe or more severe crime (SOL begins anew)
Georgia (CC Article 71)	<p>Active bribery</p> <ul style="list-style-type: none"> • 6 years (crimes punishable by up to 5 years imprisonment) • 10 years (punishable by up to 10 years) <p>Passive bribery</p> <ul style="list-style-type: none"> • 10 years (punishable by up to 10 years) • 25 years (punishable by more than 10 years) 	<ul style="list-style-type: none"> • Offender eludes investigation or the court (restarts from arrest) • Offender enjoys immunities
Kazakhstan (CC Article 71)	Statute of limitations is not applicable to corruption offences	
Kyrgyzstan (CC Article 67)	<p>Active bribery</p> <ul style="list-style-type: none"> • 3 years (crimes punishable by up to 5 years imprisonment) • 7 years (punishable by up to 10 years) <p>Passive bribery</p> <ul style="list-style-type: none"> • 3 years (punishable by up to 5 years imprisonment) • 7 years (punishable by up to 10 years) 	<ul style="list-style-type: none"> • Offender eludes investigation or the court (restarts from arrest or giving oneself up) • Offender enjoys immunities (if the case was suspended due to immunities)
Latvia (CL section 56)	Active and passive bribery would be considered serious or especially serious offences and therefore would be subject to a 10 to 15 year SOL	<ul style="list-style-type: none"> • Offender commits a new offence (SOL begins anew)
Lithuania (CC Article 95)	<p>For both active and passive bribery:</p> <ul style="list-style-type: none"> • 12 years (crimes punishable by 3–6 years imprisonment) • 15 years (punishable by 3–10 years) <p>In any case, the SOL ends after 25 years if the offender has not committed a new intentional criminal act</p>	<ul style="list-style-type: none"> • Offender commits a new crime (SOL begins anew) • Offender hides from pre-trial investigation or trial • Offender enjoys immunity and there is no consent to prosecute • Court adjourns hearing because of absence of the defendant or council, to obtain expertise or MLA, for procedural steps, or so new defence counsel can become acquainted with the case <p>None of the grounds for suspension can extend the maximum SOL for more than 5 years</p>
Moldova	<ul style="list-style-type: none"> • 5 years (crimes punishable by up to 5 years) 	<ul style="list-style-type: none"> • Offender commits new crime

Country	Statute of limitations (SOL)	Reasons for suspension or interruption
(CC Articles 16, 60)	imprisonment <ul style="list-style-type: none"> 15 years (punishable by up to 12 years) 20 years (punishable by more than 12 years) <p>In any case, the SOL expires after 15 years</p>	punishable by more than 2 years <ul style="list-style-type: none"> Offender avoids criminal investigation or trial
Mongolia (CC Articles 17, 70)	(No active foreign bribery offence) Passive bribery: 5 years (based on domestic bribery law)	<ul style="list-style-type: none"> Offender commits new crime Offender flees during pre-trial or trial stage
Montenegro (CC Article 124)	Active bribery <ul style="list-style-type: none"> 5 years (for lawful act or inaction) 10 years (for unlawful act or inaction) Passive bribery <ul style="list-style-type: none"> 3 years (solicitation/receipt of bribe after engaging in act) 10 years (for lawful act or inaction) 15 years (for unlawful act or inaction or in relation to pronouncing a criminal sanction) 10 years (for grave offences, i.e. punishable by up to 10 years) 25 years (for particularly grave offences, i.e., punishable by more than 10 years) <p>In any case, the SOL expires when twice the SOL has elapsed</p>	<ul style="list-style-type: none"> Prosecution may not commence or be resumed under law Offender is a minor Procedural actions taken in view of detecting offence or discovering and prosecuting the offender (SOL runs anew) Offender commits an equally serious or a more serious criminal offence (SOL runs anew)
Romania (CC Articles 155–156)	<ul style="list-style-type: none"> 8 years (for both active and passive foreign bribery) <p>In any case, the SOL ends after 16 years (double the SOL period)</p>	<ul style="list-style-type: none"> Any step in the lawsuit Legal stipulation or a circumstance that could not be unforeseen or removed prevents initiation or continuation of criminal process
Russian Federation (CC Articles 15, 78)	<ul style="list-style-type: none"> 2 years (crimes punishable by up to 3 years imprisonment) 6 years (punishable by up to 5 years) 10 years (punishable by up to 10 years) 15 years (punishable by more than 10 years) 	<ul style="list-style-type: none"> Offender evades investigation or trial
Serbia (CC Articles 103–104)	Active bribery <ul style="list-style-type: none"> 3 years (crimes punishable by over 1 year imprisonment) 5 years (punishable by over 3 years) Passive bribery <ul style="list-style-type: none"> 5 years (punishable by over 3 years) 10 years (punishable by over 5 years) 15 years (punishable by over 10 years) 	<ul style="list-style-type: none"> By law prosecution may not commence or continue Procedural actions undertaken to uncover or prosecute the offence Offender commits another serious or more serious offence
Slovenia (CC Articles 90–91)	Active bribery <ul style="list-style-type: none"> 10 years (for lawful acts or omissions) 10 years (for unlawful acts or omissions) Passive bribery <ul style="list-style-type: none"> 10 years (accepted after commission of offence) 10 years (for lawful acts or omissions) 10 years (for unlawful acts or omissions) 	<ul style="list-style-type: none"> Prosecution may not be initiated or continued Offender is unreachable for state authorities Offender commits a new crime of the same or greater seriousness
Tajikistan (CC Articles 18, 75)	<ul style="list-style-type: none"> 6 years (crimes punishable by no more than 5 years imprisonment) 10 years (punishable by more than 5, but no more than 12 years) 	<ul style="list-style-type: none"> Offender escapes from investigation or from court Offender commits another crime
Ukraine (CC Articles 12, 49)	Active bribery <ul style="list-style-type: none"> 5 years (crimes punishable by up to 5 years imprisonment) 10 years (punishable by up to 10 years) Passive bribery <ul style="list-style-type: none"> 3 years (punishable by up to 2 years) 	<ul style="list-style-type: none"> Suspended if offender evades investigation or trial (restarts from arrest or giving oneself up) Interrupted if offender commits another crime punishable by over 2 years

Country	Statute of limitations (SOL)	Reasons for suspension or interruption
	<ul style="list-style-type: none"> • 10 years (punishable by up to 10 years) • 15 years (punishable by over 10 years) 	
Uzbekistan (CC Articles 15, 64)	Intermediation in bribery <ul style="list-style-type: none"> • 3 years (punishable by up to 3 years imprisonment) • 5 years (punishable by 3–5 years) • 10 years (punishable by 5–10 years) Passive bribery <ul style="list-style-type: none"> • 5 years (punishable by 3–5 years) • 10 years (punishable by 5–10 years) • 15 years (punishable by over 10 years) <p>In any case, the SOL expires after 25 years</p>	<ul style="list-style-type: none"> • Offender evades investigation and trial • Offender commits a new offence (if original crime was punishable by over 5 years)

Annex 4. Penalties for foreign bribery offences in selected ACN countries

Country (legal provisions)	Active bribery	Passive bribery
Albania (CC Articles 244/a, 259/a, 319/b, 219/c, 319/dh, and 319/e)	<ul style="list-style-type: none"> • 6 months – 3 years (foreign public employees) • 1–4 years (judges or officials of international courts, foreign arbitrators, or foreign jurors) • LPs are subject to fines, termination of the LP, closure of certain activities/structures, public procurement/funding bars, removal of licenses/authorisations/concessions/ subsidies, removal of right to conduct certain activities/operations, and publication of the court decision 	<ul style="list-style-type: none"> • 2–8 years (foreign public employees) • 3–10 years (judges or officials of international courts) • 2–8 years (foreign arbitrators and jurors)
Armenia (CC Articles 311–312)	<ul style="list-style-type: none"> • Fine, 1–2 years correctional labour, 1–3 months arrest, or up to 3 years imprisonment • Fine or up to 5 years imprisonment (for a large bribe) • Fine or 3–7 years imprisonment (for a particularly large bribe or if done by an organised crime group) • No legal liability for LPs 	<ul style="list-style-type: none"> • Up to 5 years imprisonment, fine, or deprivation of right to engage in certain activities for up to 3 years (for lawful action or inaction) • 3–7 years imprisonment, fine, or deprivation of right to hold certain posts or engage in certain activities for up to 3 years (for unlawful action or inaction) • 4–10 years (committed by extortion, by a group of officials by prior agreement, or in a large amount), with or without property confiscation • 7–12 years (by an organised crime group, in a particularly large amount, or by a judge), with or without property confiscation
Azerbaijan (CC Articles 311–312)	<ul style="list-style-type: none"> • 2–3 years imprisonment or a fine (for lawful action or inaction) • 4–8 years imprisonment or a fine (for unlawful action or inaction) • LPs are subject to fines 	<ul style="list-style-type: none"> • 4–8 years imprisonment with deprivation of right to hold certain positions or engage in certain activities for up to 3 years (for lawful action or inaction) • 5–10 years imprisonment with deprivation of right to hold certain positions or engage in certain activities for up to 3 years (for unlawful action or inaction) • 8–12 years imprisonment (if by group, repeatedly, in a large amount, or by threat)
Bosnia and Herzegovina (CC Articles 217–218)	<ul style="list-style-type: none"> • Fine or up to 3 years imprisonment (for lawful action or inaction) • 6 months – 5 years (for unlawful action or inaction) • LPs are subject to fines 	<ul style="list-style-type: none"> • 6 months – 5 years (for unlawful action or inaction) • 1–10 years (for lawful action or inaction)
Bulgaria (CC Articles 301–304b)	<ul style="list-style-type: none"> • Up to 6 years and fine (for lawful action or inaction) • Up to 8 years and fine (for unlawful action or inaction that does not constitute a graver punishable crime) • Up to 10 years and fine (to a judge, assessor, prosecutor, or investigator, but doesn't indicate foreign official) • Up to 3 years and fine (to give a gift to another person alleging he/she might exert influence over 	<ul style="list-style-type: none"> • 1–6 years • Up to 8 years and fine (for violation of service duties, if not otherwise a crime) • Up to 10 years and fine (for engaging in a crime) • 3–10 years, fine, and deprivation of rights (if a judge, assessor, prosecutor, investigator, or police officer commits passive bribery through blackmail,

Country (legal provisions)	Active bribery	Passive bribery
	<p>an official or a foreign official in decision-making in relation to his/her service)</p> <ul style="list-style-type: none"> • LPs are subject to fines and confiscation 	<p>abuse of one's position, for a second time, or on a large scale)</p> <ul style="list-style-type: none"> • 3–15 years, fine, confiscation of ½ of culprit's property, and deprivation of rights (if a judge, assessor, prosecutor, investigator, or police officer commits passive bribery to engage in a crime through blackmail, abuse of one's position, for a second time, or on a large scale) • 10–30 years, fine, confiscation of whole or part of culprit's property, and deprivation of rights (if in particularly large amount, representing a particularly grave case)
Croatia (CC Articles 293–294)	<ul style="list-style-type: none"> • 6 months – 5 years (not involving breach of duty) • 1–8 years (involving breach of duty) • Sanctions for LPs are unclear 	<ul style="list-style-type: none"> • Up to 1 year (bribe demanded or taken after performance) • 1–8 years (not involving breach of duty) • 1–10 years (involving breach of duty)
Estonia (PC sections 294, 296, 298)	<ul style="list-style-type: none"> • Fine or up to 5 years • 1–10 years (if committed at least twice, by a group, or on a large-scale basis) • A person who arranges the receipt of a bribe can also be sanctioned with a fine or up to 5 years imprisonment. 	<ul style="list-style-type: none"> • Fine or up to 5 years • 1–10 years (if committed at least twice, by requesting a bribe, by a group, or on a large-scale basis)
FYRM (CC Articles 357–358)	<ul style="list-style-type: none"> • 1–3 years (for a lawful act or inaction) • 1–5 years (for an unlawful act or inaction) • LPs are subject to fines 	<ul style="list-style-type: none"> • 3 months – 3 years (for requesting/taking the bribe following the act or inaction) • 1–5 years (for a lawful act or inaction) • 4–10 years (for an unlawful act or inaction) • At least 4 years (for larger property gains) • At least 5 years (for significant property gains)
Georgia (CC Articles 338–339)	<ul style="list-style-type: none"> • Fine; corrective labour or restriction of liberty for 2 years; or up to 3 years imprisonment • Fine or 4–7 years (to commit an illegal act) • 5–7 years (committed by an organised criminal group) • LPs are subject to fines 	<ul style="list-style-type: none"> • 6–9 years • 7–11 years (committed by official with political status, by a group, or involving a large sum) • 11–15 years (committed by someone previously convicted, repeatedly, through extortion, by an organised criminal group, or involving an especially large sum)
Kazakhstan (CC Articles 366–367)	<ul style="list-style-type: none"> • Fine (20 times the bribe); or imprisonment up to 3 years; and confiscation or without; and lifelong disqualification from holding certain offices or engaging in certain activities • Fine (30 times the bribe); or imprisonment up to 5 years; and confiscation or without; and lifelong disqualification from holding certain offices or engaging in certain activities (if in a significant amount) • Fine (40 times the bribe); or imprisonment from 7 to 12 years; and confiscation; and lifelong disqualification from holding certain offices or engaging in certain activities (if by a group with 	<ul style="list-style-type: none"> • Fine (50 times the bribe); or imprisonment up to 5 years; and confiscation; and lifelong disqualification from holding certain offices or engaging in certain activities • Fine (60 times the bribe); or imprisonment from 3 to 7 years; and confiscation; and lifelong disqualification from holding certain offices or engaging in certain activities (if in a significant amount; for illegal action) • Fine (70 times the bribe); or imprisonment from 7 to 12 years; and

Country (legal provisions)	Active bribery	Passive bribery
	<ul style="list-style-type: none"> • prior collusion; in a large amount; repeatedly) • Fine (50 times the bribe); or imprisonment from 10 to 15 years; and confiscation; and lifelong disqualification from holding certain offices or engaging in certain activities (if by a criminal group; in an especially large amount) • No liability of LPs 	<ul style="list-style-type: none"> • confiscation; and lifelong disqualification from holding certain offices or engaging in certain activities (if by extortion; by a group with prior collusion; in a large amount; repeatedly) • Fine (80 times the bribe); or imprisonment from 10 to 15 years; and confiscation; and lifelong disqualification from holding certain offices or engaging in certain activities (if by a criminal group; in an especially large amount)
Kyrgyzstan	<ul style="list-style-type: none"> • Fine; or imprisonment from 2 to 3 years • Fine; or imprisonment from 3 to 8 years (if in a large amount; for illegal action; in order to replace a lawful owner) • Fine; or imprisonment from 8 to 10 years (if in interests of an organised criminal group; in an especially large amount) • No liability of LPs 	<ul style="list-style-type: none"> • Fine (fixed amount or 5–10 times the bribe); or imprisonment from 3 to 5 years; and disqualification from holding certain offices or engaging in certain activities from 3 to 5 years • Fine (fixed amount or 10–20 times the bribe); or imprisonment from 5 to 8 years (for illegal action) • Fine (fixed amount); or imprisonment from 8 to 10 years; and confiscation; and disqualification from holding certain offices or engaging in certain activities (for providing an office in the public or municipal service; by a group with prior collusion or by an organised group; in a large amount) • Fine (fixed amount); or imprisonment from 10 to 15 years; and confiscation; and disqualification from holding certain offices or engaging in certain activities (in an especially large amount; by an official holding a responsible office)
Latvia (CL sections 320, 323, 70 ²)	<ul style="list-style-type: none"> • Up to 5 years imprisonment, temporary deprivation of liberty, community service, or a fine • Up to 8 years imprisonment, confiscation, deprivation of right to engage in specific employment or to take up specific office for up to 5 years (if on a large scale, by a public official, or by a group) • 2–10 years imprisonment, confiscation, deprivation of right to engage in specific employment or to take up specific office for up to 5 years, and police supervision for up to 3 year (by an organised group) • LPs are subject to fines, liquidation, confiscation of property and/or restriction of rights 	<ul style="list-style-type: none"> • Up to 5 years imprisonment, community service, fine, deprivation of the right to engage in specific employment or take up specific office for up to 2 years (for an already performed act) • Up to 8 years imprisonment, confiscation, deprivation of right to engage in specific employment or take up specific office for up to 5 years • 2–10 years imprisonment, confiscation, deprivation the right to engage in specific employment or take up specific office for up to 5 years (if on a large scale, by a group, or if bribe is demanded) • 3–11 years imprisonment, confiscation, deprivation of right to engage in specific employment or to take up specific office for up to 5 years, police supervision for up to 3 years (by an organised group, by a state official holding a responsible position, or if extorted)
Lithuania (CL Articles 225, 227)	<ul style="list-style-type: none"> • Fine, restriction of liberty, or detention (bribe less than 1 MSL (38 EUR)) • Up to 4 years (direct or indirect offers, promises, or 	<ul style="list-style-type: none"> • Fine or detention ((bribe less than 1 MSL (EUR 38)) Up to 5 years (for a lawful act or inaction)

Country (legal provisions)	Active bribery	Passive bribery
	<ul style="list-style-type: none"> agreements) Up to 5 years (committing the act) Up to 7 years (bribe greater than 250 MSLs (EUR 9500)) LPs are subject to fines, liquidation, and/or restriction of operations 	<ul style="list-style-type: none"> Up to 7 years (for an unlawful act or inaction) 2–8 years (bribe greater than 250 MSLs (EUR 9500))
Moldova (CC 324–325 ⁵¹)	<ul style="list-style-type: none"> From 3 months to 5 years, fine, and deprivation of right to hold certain positions or practice certain activities for 2–5 years 3–7 years, fine, and deprivation of right to hold certain positions or practice certain activities for 2–5 years (if by 2 or more persons, involving extortion, or on a large scale) 6–12 years, fine, and deprivation of right to hold certain positions or practice certain activities for 3–5 years (if on an especially large scale, or in the interest of an organised crime group) LPs are subject to a fine of 6000 to 18000 conventional units; disqualification from performing certain activities or by the dissolution of the legal entity 	<ul style="list-style-type: none"> 3–7 years, fine, and deprivation of right to hold certain positions or practice certain activities for 2–5 years 5–10 years, fine, deprivation of right to hold certain positions or practice certain activities for 2–5 years (if by 2 or more persons, involving extortion, or on a large scale) 7–15 years, fine, deprivation of right to hold certain positions or practice certain activities for 3–5 years (if by high-ranking official, on an especially large scale, or in the interest of an organised crime group)
Mongolia (CC Article 268)	<ul style="list-style-type: none"> No foreign bribery offence 	<ul style="list-style-type: none"> Up to 5 years or fine, along with deprivation of right to hold specified positions or engage in specified business for up to 3 years (Based on domestic bribery law)
Montenegro (CL Articles 423–424)	<ul style="list-style-type: none"> 6 months – 5 years (for a lawful act or inaction) 1–8 years (for an unlawful act or inaction) LPs are subject to fines and/or security measures 	<ul style="list-style-type: none"> 3 months – 3 years (solicitation or receipt of a bribe after engaging in the act) 2–8 years (for a lawful act or inaction) 2–12 years (for an unlawful act or inaction) 3–15 years (in relation to pronouncing or enforcing a criminal sanction)
Romania (CC Articles 137, 289–290)	<ul style="list-style-type: none"> 2–7 years LPs are subject to fines, dissolution, suspension of certain activities for a specified period, closure of working points for a specified period, prohibition from public procurement for a specified period, judicial supervision, and/or publication of conviction sentence 	<ul style="list-style-type: none"> 3–10 years Ban from holding public office or exercising profession or activity in relation to violation was committed
Russian Federation (CC Articles 290–291.1)	<ul style="list-style-type: none"> Up to 2 years imprisonment and fine; fine; or compulsory labour for up to 3 years Up to 3 years and fine; or fine (if on a considerable scale) Up to 8 years and fine; or a fine (if for unlawful action or inaction) 5–10 years and fine; or disqualification from holding certain offices or engaging in certain activities for up to 3 years and fine (if by a group or on a large scale) 7–12 years and fine or fine alone (if on an especially large scale) LPs are subject to fines 	<ul style="list-style-type: none"> Up to 3 years imprisonment and fine; disqualification from holding certain offices or engaging in certain activities for up to 3 years and fine; or compulsory labour for up to 5 years and disqualification from holding certain offices or engage in certain activities for up to 3 years Up to 6 years and fine; or disqualification from holding certain offices or engaging in certain activities for up to 3 years and fine (if on a considerable scale) 3–7 years and fine; or disqualification

⁵¹ Moldova’s law does not explicitly refer to bribery involving *foreign* officials, although authorities have told GRECO evaluators that its law would cover foreign as well as domestic bribery (GRECO 2011a, 9).

Country (legal provisions)	Active bribery	Passive bribery
	<p>Sanctions for mediation in bribery are as follows (see part 1.1 above):</p> <ul style="list-style-type: none"> • Up to 5 years and fine; or fine and deprivation of right to occupy certain positions or engage in certain activities for up to 3 years • 3–7 years and fine; or fine and deprivation of right to occupy certain positions or engage in certain activities for up to 3 years (for knowingly illegal actions or inaction) • 7–12 years and fine; or fine and deprivation of right to occupy certain positions or engage in certain activities for up to 3 years (by a group or in a large amount or on a very large scale) • Up to 7 years and fine; or fine and deprivation of right to occupy certain positions or engage in certain activities for up to 3 years (for promise or offer of mediation in bribery) <p>Sanctions for preparation and attempt are as follows (see part 1.1 above):</p> <ul style="list-style-type: none"> • Half the punishment for the offence itself (if unfinished) • Three-fourths the punishment (if attempted) 	<p>from holding certain offices or engaging in certain activities for up to 3 years and fine (if for unlawful action or inaction)</p> <ul style="list-style-type: none"> • 5–10 years and fine; or disqualification from holding certain offices or engaging in certain activities for up to 3 years and fine (if offender holds Russian government post) • 7–12 years, disqualification from holding certain offices or engaging in certain activities for up to 3 years, and fine; or fine (if by a group, involving extortion, or on a large scale) • 8–15 years and fine; or fine and disqualification from holding certain offices or engaging in certain activities for up to 3 years (if on an especially large scale)
<p>Serbia (CC Articles 367–368)</p>	<ul style="list-style-type: none"> • 6 months – 5 years (for an unlawful act or inaction) • Up to 3 years (for a lawful act or inaction) • LPs are subject to fines and/or termination of legal status 	<ul style="list-style-type: none"> • 3 months – 3 years (bribe occurs after the act or inaction) • 2–8 years (for a lawful act or inaction) • 2–12 years imprisonment (for an unlawful act or inaction) • 3–15 years (in relation to a criminal investigation or proceedings)
<p>Slovenia (CC Articles 261–262)</p>	<ul style="list-style-type: none"> • 6 months – 4 years and a fine (lawful acts or omissions) • 1–6 years (unlawful acts or omissions) <p>The Liability of Legal Persons for Criminal Offences Act:</p> <p>(1) The fine which may be prescribed may not be less than 10.000 euros or more than 1.000.000 euros.</p> <p>(2) In the case of the legal person's criminal offence caused damage to another's property, or of the legal person having obtained unlawful property benefit, the highest limit of the fine imposed may be 200 (two hundred) times the amount of such damage or benefit.</p> <p>Article 26</p> <p>The following types of punishments may be imposed on legal persons committing the criminal offences under the preceding paragraph:</p> <p>1) For criminal offences for which a punishment of up to three years' imprisonment is prescribed for the perpetrator, a fine of up to 500.000 €, or up to 100 (one hundred) times the amount of damage caused or property benefit obtained through the criminal offence;</p> <p>2) For criminal offences for which a punishment of over three years' imprisonment is prescribed for the perpetrator, a fine of at least 50.000 €, or up to a maximum of 200 (two hundred) times the amount of</p>	<ul style="list-style-type: none"> • Up to 4 years and a fine (accepted after commission of offence) • 1–5 years and a fine (lawful acts or omissions) • 1–8 years (unlawful acts or omissions)

Country (legal provisions)	Active bribery	Passive bribery
	<p>damage caused or unlawful property benefit obtained through the criminal offence.</p> <p>(2) For criminal offences for which a punishment of five years' imprisonment or harsher punishment is prescribed for the perpetrator, a punishment of confiscation of property may be imposed instead of a fine.</p> <p>(3) For criminal offences under the first paragraph of this Article, a punishment of winding up of the legal person may be applied instead of a fine if the conditions under Article 15 of this Act are met.</p>	
<p>Tajikistan (CC Article 319)</p>	<ul style="list-style-type: none"> No foreign bribery offence 	<ul style="list-style-type: none"> Up to 5 years with deprivation of right to hold certain positions or engage in certain activities for up to 3 years 5–10 years with deprivation of right to hold certain positions or engage in certain activities for up to 5 years (if offender is Tajiki official) 7–12 years with confiscation of property and deprivation of right to hold certain positions or engage in certain activities for up to 5 years (if repeatedly, by group, in connection with extortion, or in a large amount) <p>(Based on domestic bribery law)</p>
<p>Ukraine (CC Articles 368–370)</p>	<ul style="list-style-type: none"> 2–5 years or fine 3–8 years with or without forfeiture of property (if repeated) LPs are subject to fines 	<ul style="list-style-type: none"> Up to 2 years or fine, with deprivation of right to occupy certain positions or engage in certain activities for up to 3 years 5–10 years, deprivation of right to occupy certain positions or engage in certain activities for up to 3 years, and forfeiture of property (if in a gross amount by an official in a responsible position, by a group upon prior conspiracy, or accompanied with a request) 8–12 years, deprivation of right to occupy certain positions or engage in certain activities for up to 3 years, and forfeiture of property (if in an especially great amount by an official in a responsible position, by a group upon proceeding conspiracy, or accompanied with extortion) <p>An official who creates the circumstances and conditions causing the bribe can also be sanctioned as follows:</p> <ul style="list-style-type: none"> 2–5 years imprisonment 3–7 years (if a law enforcement official)
<p>Uzbekistan (CC Articles 210, 212)</p>	<ul style="list-style-type: none"> No foreign bribery offence <p>Intermediation in bribery is punishable as follows:</p> <ul style="list-style-type: none"> Up to 3 years imprisonment, up to 6 months arrest, correctional labour up to 3 years, or a fine 3–5 years imprisonment (if repeatedly, in a large amount, or involving a group of officials acting in 	<ul style="list-style-type: none"> Up to 5 years with deprivation of rights or fine 5–10 years (if repeatedly, in a large amount, by extortion, or by a group) 10–15 years (if in especially large amount, by an authorised official, or in the interests of an organised group)

Country (legal provisions)	Active bribery	Passive bribery
	concert) <ul style="list-style-type: none"> • 5–8 years (if for remuneration, in an especially large amount, in the interests of an organised group, or by an authorised official) • No sanctions for LPs. 	(Based on domestic bribery law)