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**Review of implementation of the United Nations
Convention against Corruption**

Executive summaries

Note by the Secretariat

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I. Introduction

1. The present document of the Implementation Review Group is made available in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex).
2. The executive summaries contained herein correspond to country reviews conducted in the first year of the first review cycle. Other executive summaries pertaining to the same year of the same cycle will be issued as addenda to the present note.

II. Executive summaries

Finland

Legal system

When the Finnish Parliament adopts an Act on an international agreement, this latter assumes the force of law. Duly ratified international treaties form an integral part of the country's domestic legal system and find themselves on the same level as any other legislative Act: below constitutional norms and above decisions of the Council of State.

The incorporation of the United Nations Convention against Corruption (UNCAC) into the Finnish legal system was ensured by the adoption of Act No.466/2006 and Decree No. 605/2006. In principle, therefore, the Finnish competent authorities are in a position to directly apply UNCAC-based provisions.

Overall findings

In Finland there is general consensus about the very low level of corruption in the country, which is explained by a combination of social, cultural and institutional factors. The current debate focuses among others on the extent to which actions by public officials are influenced by a less manifest and blatant behaviour known as the "old boys' network", where favours are exchanged on the basis of informal relationships.

Additionally, over the last few years some indications emerged of a rise in reported corruption cases. A number of allegations are currently being investigated. At the end of January 2011, a Member of Parliament who also served as a public official was indicted on charges of aggravated acceptance of bribes, and further prosecutorial decisions regarding at least two other members of Parliament are expected. Recent alleged cases share certain features, primarily associated with lobbying by business people providing campaign financing to politicians in municipal or national elections, or offering various forms of hospitality to public officials (trips, hospitality at restaurants, opera tickets, etc.). In 2009, the laws on campaign financing were tightened. In general, there are signs that the Finnish

public (and the media) have become more critical of politicians and public officials who accept gifts.

Overall, the domestic institutions in Finland function substantially well and the main challenge for the next few years is to ensure that this situation continues.

In 2002, the Ministry of Justice established an Anti-Corruption Cooperation Network, which brings together the key Governmental authorities as well as other stakeholders (representing the private sector, civil society and the research community) with a view to ensure inter-institutional coordination and awareness-raising. It is hoped that this Network will provide the driving force behind future efforts to fine-tune Finland's legal and institutional anti-corruption machinery.

Criminalization and law enforcement

Criminalization

UNCAC-based offences are all criminalized in the Criminal Code, mostly under Chapter 16 (Offences against public authorities), Chapter 30 (Business Offences), Chapter 32 (receiving and money laundering offences), and Chapter 40 (Offences in office).

The scope of some offences goes beyond the minimum required by UNCAC. The offence of passive bribery, for example, covers the solicitation or acceptance of a benefit that does not necessarily involve an official acting or refraining from acting in the exercise of his or her official duties. It is sufficient, for the offence to be committed, that the official's behaviour might weaken public confidence in the impartiality of the conduct by public authorities.

Similarly, offences relating to bribery in the private sector go further than the Convention, in that a breach of duty is not a constituent element. It suffices that the recipient "favours" the briber or another person in his or her function or duties. The criminalization therefore is aimed both at protecting the relation of trust between employer and employee and protecting free competition.

Also, in Finland any offence can be a predicate offence to money laundering, including offences committed abroad, thus going beyond UNCAC requirements that predicate offences include, as a minimum, those set forth in the Convention itself.

Among the non-compulsory conducts set forth in UNCAC, only trading in influence and illicit enrichment have not been established as offences, although due consideration was given towards criminalizing them. As to trading in influence, although some Governmental authorities expressed support for its introduction, overall the concept was deemed to be overly vague. As to the latter, the control system in place on the income and assets of public officials was deemed sufficiently stringent.

A whole chapter of the Criminal Code regulates the liability of legal persons. Finland has adopted a comprehensive model of corporate liability which is primarily based on criminal law. This model is mostly in accordance with UNCAC requirements, even though Finland does not hold legal persons liable under criminal law for passive bribery of public officials, embezzlement in the public and private sector, abuse of functions, and obstruction of justice. How the Finnish model is

applied in practice still has to be seen, as issues of corporate liability for corruption related offences are only now being considered in two court cases.

A common feature of the Finnish criminal justice system is the use of relatively mild sanctions compared with other European countries, with an emphasis on fines. The penalties for corruption-related offences are no exception to this general trend. Imprisonment is rarely used and judges have a tendency to apply sentences towards the bottom end of the penal scales established in statutes. Interestingly, statistics and criminological studies provide strong evidence that the low level of punitive sanctions of the criminal justice system in Finland has not lead to an increase in the commission of offences. It was pointed out that this may be the positive effect of the efficient functioning of a criminal justice system whereby individuals have little incentives to commit crimes due to the high risk of being prosecuted and of losing profits stemming from criminal behaviours.

While noting Finland's high level of compliance with UNCAC in the criminalisation area, the reviewers identified some scope for improvement as follows:

- Extend the scope of active and passive bribery of members of Parliament by covering cases where the bribe is intended to induce them to act in ways that might breach their duties, and not necessarily involving a parliamentary vote as is currently the case. However, Finland reported that on 15 March 2011, Parliament adopted amendments to this effect which still needed the signature of the President to enter into force.
- Provide for an aggravated form of bribery in respect of Parliamentarians (which currently carries a lower minimum sentence than the offence of aggravated bribery). However, Finland reported that on 15 March 2011, Parliament adopted amendments to this effect which still needed the signature of the President to enter into force
- Consider, when appropriate, exploring the possibility of constitutional changes that introduce a system for the automatic dismissal of members of Parliament in certain cases, e.g. when they are convicted for aggravated bribery.
- Ensure that the definition of "foreign official" explicitly include persons exercising a public function for a "public enterprise", thus removing possible uncertainties.
- In view of rising perceptions of instances of undue influence and connections between public official and the business community, re-consider the possibility to introduce the offence of trading in influence by examining the way in which countries with similar legal systems have criminalized such conduct.
- Consider ways to criminalize the offence of "abuse of functions" when committed by members of Parliament (this does not seem to be the case since, in Finland, members of Parliament are not considered public officials).
- Continue to support discussion within the established Working Group on whether or not the criminalisation of "self-laundering" would be compatible with fundamental principles of Finnish law.

- Consider criminalizing instances of obstruction of justice when the use of corrupt means, violence or threats is meant to interfere with the production of non-oral evidence (although such instances may fall under general threat offences, they carry a lower sanction than the existing offence dealing with the production of oral evidence).
- Explore the possibility of increasing the level of monetary sanctions against legal persons and add non-monetary sanctions to the list of possible penalties.

Law enforcement

In Finland, the investigation and prosecution of corruption-related crimes follow the rules and procedures applicable to the commission of any other offence. Relevant legal texts are the Criminal Procedure Act, the Pre-Trial Investigation Act, and the Coercive Measures Act.

The basic investigative functions are fulfilled by the police in a decentralized manner: the country is divided into 24 police districts, which, according to the State under review, are well capable of investigating most large and complex criminal cases, included corruption-related ones. The Finnish police are trusted by the general public. An independent survey revealed that almost all of the respondents in Finland had confidence in the police, which carry out their investigations independently of the Public Prosecutors. Only some of the most serious and complex crimes, and some cases with an international connection, would generally be transferred to a special police authority, the National Bureau of Investigation, where investigators specialize in, among others, financial and economic offences. The Finnish Financial Intelligence Unit is part of the National Bureau of Investigation.

The prosecutorial service, whose task is to present criminal cases before the courts, is an independent institution under the national Office of the Prosecutor-General. Most prosecutions are conducted on the local level, but cases of bribery and other forms of corruption can be transferred to be the responsibility of State Prosecutors working in the Office of the Prosecutor-General. One of the State Prosecutors specializes, among others, in corruption cases.

Finland's criminal justice system is based on the principle of mandatory prosecution. Discretionary powers can be exercised, but only *vis-à-vis* petty offences or where prosecution would appear unreasonable. In practice, given the important public interests at stake, it would be very unlikely that prosecution would be waived in corruption-related cases.

Under the Public Officials Act, public officials suspected of an offence may be suspended from office if the investigations are deemed to influence their ability to perform their duties. Furthermore, a public official, a person elected to a public office or a person who exercises public authority shall be dismissed from office upon conviction for aggravated bribery. For lesser offences, the court has some discretion in respect of dismissal.

Regarding members of Parliament, Finnish law does not provide for the forfeiture of their seats in case of conviction for a corruption-related offence, either automatically or following court order. A special procedure under the Constitution

exists, however, whereby parliamentarians may be dismissed in the event that they have been sentenced to imprisonment for a deliberate crime and the offence is such that the accused does not command the trust and respect necessary for his or her office.

Issues of freezing and confiscation are regulated in a methodical manner, and consistently with most UNCAC requirements. Confiscation, in particular, is a mandatory measure applicable to both proceeds and instruments of crime. It can be ordered for any criminal offence, including when the offender is not convicted as a result of lack of criminal capacity or is exempt from criminal liability. Value confiscation is also possible if property has been hidden or is otherwise inaccessible, and can extend to persons to whom property has been conveyed. Value confiscation is not permitted, however, if it is shown that property has been destroyed or consumed. As to pre-trial measures aimed to “safeguard” property with a view to possible confiscation, they have never been applied for any of the offences covered by UNCAC, nor have there been any other coercive measures directed against the assets of suspected persons or corporate bodies.

Investigations into economic crimes do not appear to be hindered by bank secrecy laws. Under the Police Act, police officers have extensive powers to request “any information necessary to prevent or investigate an offence, notwithstanding business, banking or insurance secrecy”(Sec.36).

Finland does not have a witness protection programme as such. Nevertheless, a certain degree of witness protection can be afforded by relying on the non-disclosure of information concerning the identity and the whereabouts of witnesses to be heard during pre-trial investigations and in court. As a relatively small and homogenous country with an extensive degree of transparency and high technology, a witness relocation programme would be very difficult to implement. In general, a pressing need for a relocation programme has not yet arisen – albeit there have been discussions about its introduction based on the identification of good practices in the EU.

The State under review is currently considering the adoption of an obligation for public officials to report corruption offences, or even a more general obligation to cover all offences. More generally, no specific whistleblower protection system is in place. To protect persons reporting offences from retaliation, Finnish authorities rely on the few provisions concerning victims and witnesses as well as provisions of administrative and labour law.

Overall, with regard to the UNCAC requirements in the area of law enforcement, the following additional observations are made:

- Consider strengthening measures for the management of frozen/seized assets in order to regulate the process more methodically and not limiting it to cases where the property is perishable and its value may rapidly depreciate.
- Strengthen measures to protect the identity of informants in order to alleviate concerns that the names of witnesses can be traced.
- Explore the possibility of establishing a comprehensive system for the protection of whistle blowers.

- Increase manpower and resources for training and capacity-building for strengthening the (currently one-man) unit of the National Bureau of Investigation in charge of detecting corruption and supporting other law enforcement personnel in identifying, detecting and investigating corruption-related offences.
- Consider providing for the possibility of non-punishment of perpetrators of corruption offences who spontaneously and actively cooperate with law enforcement authorities.
- Consider expanding the scope of the domestic legislation on the mitigation of punishment for perpetrators of corruption offences who provide spontaneous and substantial assistance to law enforcement authorities in investigating, and collecting evidence for, offences committed by other persons involved in the same case.
- Consider introducing an obligation for public officials to report suspected corruption offences to law enforcement authorities.

International cooperation

While UNCAC enjoys direct applicability in Finland some concern about the “non-self executing” provisions of the treaty remain. In this regard, Finland should continue assessing whether some UNCAC provisions require implementing legislation to make them fully operational.

Extradition

The conditions and procedures regulating extradition to and from Finland are found in the Extradition Act (456/1970). Another relevant law is the Act on International Cooperation in the Enforcement of Certain Penal Sanctions (21/1987). This latter, however, could not be properly assessed due to its unavailability in English.

Extradition from Finland is only possible if the conduct in question is an offence in Finland. Nationals of Finland cannot be extradited. Their surrender is only permissible within the EU and within the framework of the European Arrest Warrant.

In practice, extradition requests are rarely received. Specifically, no extradition case involving corruption-related offences has been handled by Finland’s Ministry of Justice which serves as the Central Authority.

Whenever a rejection occurred, it was normally due to procedural reasons, or to the fact that the evidence provided by the requesting State was not sufficient to prove that the sought person had committed the offence on “probable cause”. This evidentiary standard compares with the one needed for prosecutors to bring a case to court and might place too high a burden on requesting States, potentially leading to the rejection of a substantial number of requests.

While Finland does not make extradition dependant on the existence of a treaty, it is bound by the 1957 Council of Europe Extradition Convention and the multilateral agreement on extradition between Nordic countries. Currently, it is not in the process of negotiating any new extradition arrangements.

Overall, Finland has put in place most measures required by UNCAC on extradition. However the following steps could further strengthen existing extradition procedures:

- In extradition proceedings, as also highlighted in the OECD Report, May 2002, lower the evidentiary standard based on the “probable cause”.
- While recognizing that Finland does not need a treaty basis in order to provide extradition, continue to explore opportunities to actively engage in bilateral and multilateral extradition arrangements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of extradition.
- Translate the Act on International Cooperation in the Enforcement of Certain Penal Sanctions (21/1987) into English for the purpose of future reviews

Mutual legal assistance

Finland’s Act on International Legal Assistance in Criminal Matters (5 January 1994/4) is the generally applicable law defining conditions and procedures (including the identification of the Ministry of Justice as the Central Authority). The scope of application of the above Act includes any criminal offence, whether the request comes from abroad or is addressed to a foreign country.

In practical terms, the execution of a request for MLA by Finland is easier when it originates from another Nordic country. Among Nordic countries, for example, no obstacles in the admissibility of evidence is encountered. Instead, the prompt and effective execution of requests originating in other countries depends on various factors, including from which country the request emanates, and the specificities of the case. The Finnish authorities, for example, mentioned the exceptionally high level of cooperation with Estonia as a neighbouring country.

Overall, cases of corruption requiring international assistance on the part of Finland have been few. There has only been a small number of requests received which were based on UNCAC, including from non-European countries, and were in most cases executed within a timeframe of one to five months.

In addition to the European Convention on Mutual Assistance in Criminal Matters and the EU legal framework on MLA, Finland is bound by bilateral agreements with Australia, Hungary, Poland, the Russian Federation, Ukraine and the United States of America.

Overall, Finland has in place all measures required by UNCAC for mutual legal assistance. However, Finland may wish to continue exploring further opportunities to actively engage in bilateral and multilateral arrangements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of mutual legal assistance.

Law enforcement cooperation

Finland reported an exceptional high level of cooperation with other Nordic countries based, among others, on the 1972 Agreement on cooperation among Nordic police authorities (revised in 2002). Furthermore, the Nordic police forces

have set up a joint network of liaison officers around the world. A liaison officer for any of the Nordic countries may act on behalf of the police of any of the other Nordic countries.

Outside the EU, cooperation takes place on an ad hoc basis. INTERPOL is used as the main channel. Parallel to this, Memoranda of Understanding have been prepared with the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Russian Federation and Turkey, and are being prepared with China, Serbia and Viet Nam. Finland also considers UNCAC as a possible basis for mutual law enforcement cooperation.

Finnish Police Liaison Officers are posted in various countries and international organizations. In particular: Five liaison officers are posted in the Russian Federation, one each in Estonia, Spain and China, two at Europol (in the Hague) and one at INTERPOL (in Lyon).

Domestically, Finland has developed internationally recognized good practice in the form of cooperation between the police, customs and the border guards. This cooperation is based on the legal powers of the three bodies to act on behalf of one another, and to exchange information with one another.

Finally, Finland is one of the most experienced users of joint investigation teams in the EU. Since 2004, it has taken part in a total of 28 such teams, three of which have been established so far to investigate corruption-related offences.

Finland has thus been found to have successful practices in place in the field of international law enforcement cooperation.

Spain

Legal system

According to the Spanish Constitution treaties ratified by Spain are part of the domestic law and can therefore be applied directly. Spain has a civil law system with a mixed accusatory criminal process. The general rules on criminal law are contained in the Penal Code (Organic Law 10/1995, 23 November) and the Criminal Procedure Code (Royal Decree of 14 September 1882).

Spain signed the United Nations Convention against Corruption (UNCAC) on 16 September 2005 and ratified it by instrument of ratification on 9 June 2006, published in the Official Bulletin on 19 June 2006.

Overall findings

Spain has undergone legal reforms to strengthen its anti-corruption regime. The Criminal Procedure Code has undergone a major reform through Law 38/2002. The Penal Code was amended by Organic Law 5/2010, 22 June, which entered into force on 23 December 2010, with amendments to the corruption offences. In this area the reforms have adapted the Spanish system to the requirements of the EU, OECD, and GRECO.

While Spain can apply UNCAC directly, the practical use of the Convention is limited due to the primary use of European Union instruments and bilateral treaties by Spain, especially in the area of international cooperation.

Criminalization and Law Enforcement

Criminalization

All UNCAC offences are criminalized in the Penal Code. The concept of a public official is established for criminal purposes in article 24.2 of the Penal Code. Based on this provision and case law, the concept of “public official” is broadly defined.

Active bribery of a national official is criminalized in article 424 of the Spanish Penal Code. The article explicitly covers a number of the required elements of active bribery, with the exception of indirect bribery through intermediaries. However, case law shows that this is covered through the definition of a “principal” in article 28 of the Penal Code (“principals are those who carry out the act by themselves or by means of another person whom they use as an instrument”).

Further, the concept of “promise” is not explicitly covered; however, cases of a “promise” can be covered by article 424 under the element of “offer”.

According to Spanish legislation, active bribery can only be committed by private persons (natural or legal). In the case of bribery of public officials, the offences of trading in influence (article 428) or abuse of authority (article 404) are applied. However, trading in influence does not specifically criminalize the provision of an undue advantage, and it requires the intention to generate an economic benefit, which is not foreseen by article 15 of UNCAC. Abuse of office requires a substantive decision of the official, which is also not required by UNCAC.

Therefore some cases of bribery by public officials are not regulated by the current provisions of the Penal Code.

Passive bribery of domestic public officials is regulated in the new articles 419 to 422 of the Penal Code.

Article 445 of the Penal Code foresees active bribery of foreign public officials and officials of public international organizations as a stand-alone offence. The recent reform of the Penal Code also explicitly provides for the criminal liability of legal persons for certain crimes, including corruption of foreign public officials. The passive bribery of foreign public officials and officials of public international organizations is covered by a direct application of the broadened definition used in article 445 (article 445.3) to the general provision of passive bribery (article 419 and 420).

Misappropriation and embezzlement are addressed in articles 432 to 435 of the Penal Code.

With regard to active trading in influence (428 and 429 of the Penal Code), Spanish legislation does not require the promise, offer or giving of an undue advantage, and hence in this sense Spanish legislation is broader than article 18 (a) of UNCAC. However, Spanish legislation requires that the conduct is carried out for the purpose of economic benefit, while UNCAC does not require this mental element.

Passive trading in influence is covered by article 430 of the Penal Code.

Spain criminalized the abuse of office in article 404 of its Penal Code.

Among the non-mandatory offences contained in UNCAC, illicit enrichment has not been established as a stand-alone offence in Spain, as it is considered to be inconsistent with the presumption of innocence contained in article 24 of the Spanish Constitution and its interpretation by the Constitutional Court. For the establishment of criminal responsibility it must be proven that the increase in the assets of the public official has been caused through any of the conducts included in the list of offences regulated in the Penal Code.

Spanish legislation limits bribery in the private sector to a breach of obligations “in the purchase or sale of goods or contracting of professional services.” However, other cases of bribery in the private sector could possibly fall under other provisions of the Penal Code, such as corporate crimes, some offences relating to the market and consumers (such as the discovery or disclosure of commercial secrets) or alteration of free market prices resulting from violence, threat or deception, or fraud.

The embezzlement of property in the private sector constitutes either an offence of misappropriation under article 252, or an offence of unfair administration under article 295 of the Penal Code.

With regard to laundering of proceeds of crime, Spain opted for an “all crime approach”. Money-laundering is a stand-alone offence, hence there is no requirement for a conviction for the predicate offence. Concealment is criminalized in the Spanish Penal Code (article 301) with regards to all criminal activities. Furthermore, when referred to the offences covered by the Convention, aggravated modalities are established.

Concealment according to article 24 of UNCAC is regulated in article 451 of the Spanish Penal Code.

Obstruction of justice is not specifically criminalized as in article 25 of the UNCAC, but all elements required in this article are covered by the relevant Spanish legislation (articles 464 and 550 to 552 of the Penal Code).

Spain has civil, administrative and in some cases also penal responsibility of legal persons. Organic Law 5/2010 of June 22, reforming the Penal Code, introduces criminal liability of legal persons for the following offences under the Convention: money-laundering (article 302), bribery (article 427), trading in influence (article 430), corruption of foreign official (article 445) and criminal organizations or groups (article 570 quarter). Criminal liability is accompanied by joint civil liability for damages caused by the principal. The scope of application of the criminal responsibility of legal persons in the public sector is narrowed by an exception for public entities, including publicly owned companies.

Spain has a minimum period for the statute of limitations for the offences established pursuant to the Convention of 5 years, in some cases for 10 years. While 10 years is a sufficiently long time; the appropriateness of a 5 years statute of limitation depends on the possibility of prolongation/suspension of the statute of limitation, and the practical application. Spain does not have any regulation that provides for a longer period or interruption of the statute of limitations when the alleged offender has evaded the administration of justice. In the Spanish legal system, contempt does not interrupt the statute of limitations or extend it.

While noting Spain's high level of compliance with UNCAC in the criminalization area, the reviewers identified some scope for improvement as follows:

- Ensure that cases of "promise" are covered under the concept of "offer". Should the Judiciary not interpret the law accordingly in future cases, legislative clarification may be considered.
- Consider amending relevant legislation to provide clarity with regard to a specific regulation of active bribery by public officials.

Law enforcement

All relevant crimes are punishable by prison sentences, some for several years. In addition, fines and suspension are also provided, as well as, in all cases, the confiscation of profits, even if they have been transformed. The implementation of the new provisions of the Penal Code, however, cannot be considered yet since they only entered into force in December 2010.

The Spanish legal system does not provide jurisdictional privileges for public officials. However, in accordance with the Spanish Constitution, the Legislature must authorize the criminal charge and proceedings of its members, deputies and senators. Case examples showed that the parliamentary practice of granting such authorization was established as a rule.

The prosecution is governed by the principal of legality, so that no discretionary legal powers are foreseen. Parole can only be granted upon completion of three quarters of the sentence, thus taking into account the seriousness of the offences.

Spain has regulations on the suspension of public officials, including temporary suspension pending trial.

The confiscation of proceeds and instrumentalities of all crimes are foreseen, even if they have been transformed into other property. The confiscation of the equivalent amount is foreseen if it is not possible to confiscate the proceeds of crime. Confiscation is conviction-based and considered as an accessory sanction for the crime; however, if no sanction can be imposed, the confiscation can be upheld in the absence of a criminal conviction. The confiscated assets are sold and transferred to a single fund for the administration of assets (see Law 17/2003, 29 May). The investigating judge can freeze and seize the instrumentalities of crime during the investigation with a view to securing the economic benefits arising from the crime. The procedure is regulated based on the civil procedure. Spain is in the process of establishing an Asset Recovery Office pursuant to Council Decision 845/2007.

With regard to bank secrecy in investigation and confiscation procedures, the general principle of duty to cooperate with judicial authorities is applied, which prevails over national legislation on bank secrecy. Account information can be requested in cases of “requirements of the public interest” (*“imperativos de interes publico”*).

The reversal of the burden of proof regarding the lawful origin of alleged proceeds of crime or other property subject to compensation has not been introduced in Spain, it was considered a violation of the principle of the presumption of innocence. However, there is such provision for cases relating to organized crime and related corruption offences.

According to Spain’s witness protection law (Law 19/94), witness protection measures require a judicial decision; they are implemented by the Ministry of Interior, respectively the police forces. The judge can order that the witness or expert participate in the proceedings under reservation of their identity, under visual protection or under registration of the court instead of their residence, and that the police can inhibit that their photos or videos are taken. Further assistance includes police protection, new identities or economic means to initiate a new life at a different place. Spain does not have a specific institutional witness protection programme; the measures are decided upon on a case by case basis. The minimum duration of the measures is the time of the court proceedings, extending as long as necessary. No statistics are kept concerning the number of protected witnesses, neither with regard to the type of offences in which witness protection had to be provided, nor the measures by which witnesses were protected.

There is a legal regime on reports of criminal conduct to the competent authorities and a duty of all citizens to report crimes, which is encouraged by the establishment of hotlines. However, the person reporting criminal conduct has to confirm the report formally afterwards. The fact that there are no specific rules for the protection of whistleblowers in labour and administrative law is a concern.

With regard to the civil consequences and damages of corruption, the Spanish Penal Code (articles 109 et seq) establishes the obligation to repair the damages once there has been a criminal conviction. The annulment of a contract or a concession or other legal instrument is considered part of the reparation of damage.

With regard to law enforcement authorities, the Prosecution Office has constitutional rank; the Prosecutor-General is nominated by the King, on the proposal of the Government, after consultation of the General Council of the Judiciary. The Special Prosecution Office against Corruption and Organized Crime investigates corruption and economic crime cases of particular importance. Within the National Police Corps, there are two units that are mainly in charge of investigating corruption: The Commissioner General of the judicial police and the Central Unit of Fiscal and Economic Crime (UDEF). However, these do not have exclusive responsibilities, all units of the police are authorized to investigate corruption. The Guardia Civil is an armed entity that reports to both the Ministry for Defence and the Ministry of Interior. It has responsibilities of investigations in drug cases, in cybercrime cases, and some authority to conduct under cover investigations. Within the Guardia Civil, investigations on corruption are carried out essentially by the Chief of Judicial Police, as well as central and 54 territorial units.

Spain has no explicit policies in place to encourage persons who participate in the commission of a corruption offence to supply information. Partial immunity can be granted in bribery cases. Spanish law does not foresee the possibility to provide lower sanctions to those who provide substantial cooperation in the investigation or prosecution; such measures are only foreseen for those who cooperate in drug trafficking or terrorism cases. The witness protection law does not apply to persons referred to in paragraph 1 of article 32 who cooperate in the way described in article 37 of the Convention.

Spanish law foresees a general obligation of all national institutions to cooperate among each other. The Criminal Procedure Code provides for an obligation of all public officials and professionals to report crimes to a prosecutor or judge, or, by default, to the police. The prosecutor has a coordinating role in respect of bodies of pre-trial investigation. However, no specific regulation exists as to the extent to which cooperation is exercised in practice.

There are no regulations on cooperation with the private sector outside the scope of money-laundering.

Previous convictions in another state cannot be taken into account with regard to corruption, whereas provisions exist in relation to human trafficking, drug trafficking, and acts of terrorism.

Spain established jurisdiction with regard to corruption offences that were committed in its territory and with regard to those offences committed by Spanish officials residing abroad in the exercise of their functions and offences against the Spanish Public Administration; but not the non-mandatory jurisdiction with regard to offences committed against a national of that State Party. Spain does not extradite nationals except when applying international treaties and according to the principle of reciprocity. In case a Spanish national is not extradited for a Convention offence and is present in Spain, jurisdiction is established only if so provided by a treaty or international agreement. However, Spanish authorities stated that UNCAC can be applied directly in such cases.

Overall, with regard to the UNCAC requirements in the area of law enforcement, the following additional observations are made:

- Consider to adopt statistical information tools to monitor the witness protection policy, and, if appropriate, establish a witness protection programme.
- Ensure specific rules for the protection of whistleblowers in labour and administrative law.

International cooperation

In accordance with Article 96 of the Constitution, ratified international instruments constitute part of the national legislation and are directly applicable. Spain is a party to a number of multinational and bilateral treaties and agreements. The great majority of international cooperation cases are based on bilateral treaties. In the absence of a treaty, the principle of reciprocity is applied.

Extradition

Spain does not make extradition conditional on the existence of a treaty. It recognizes all offences as extraditable offences that meet the requirements of dual criminality and have a minimum sanction of 1 year of imprisonment.

Extradition is subject to dual criminality with the exception of surrender procedures on the basis of the European Arrest Warrant applied in relation to EU member States. Active extradition is regulated in articles 824 to 833 of the Criminal Procedure Code. The prosecutor has the right to request the judge or court that they propose to the Government to request the extradition from another State. The extradition is requested following the bilateral or multilateral treaties, the domestic law of the requested State, or reciprocity. The general provisions related to extradition in bilateral agreements are foreseen generally under the same conditions as provided for in CoE Convention of 1957; and the bilateral treaty between the Kingdom of Spain and the Republic of Honduras from 1999 can be considered as a typical extradition treaty. Due to the primary use of bilateral treaties, the practical application of UNCAC is limited, and no practical examples of such use of UNCAC are available. There is also no statistical data available on extradition involving corruption related offences.

Spain applies a concept of simplified extradition, which functions with the consent of the extradited person and allows for the trial stage to be omitted. Some conventions reflect such simplified procedure for extradition. Spain does not make the extradition conditional on the conviction of the judge that the offence was committed and thus evidentiary requirements are not relevant.

Spain does not extradite nationals except when applying international treaties, which foresee this possibility based on the principle of reciprocity. Consequently, the extradition of Spanish nationals is not conditional upon their return, neither in the legislation nor in the treaties.

Spain makes extensive use of the EU judicial cooperation body Eurojust and the European Judicial Network as well as informal networks such as the Ibero-American Legal Assistance Network (IberRed). It is common practice that Spanish judges ask for additional information in order to avoid the refusal of a request for extradition or surrender. Such additional information can involve details concerning the description of the facts of a crime, national legislation related to the statute of

limitation and information relating to guarantees (e.g. with regard to the death penalty, permanent sanctions, amnesties etc).

Overall, Spain has put in place the measures required by UNCAC in its legislative and treaty regime.

Mutual legal assistance and transfer of proceedings

When providing mutual legal assistance, Spanish and foreign authorities will usually use the provisions of any bilateral treaty that exists between the parties; however, UNCAC can also be applied directly. With regard to bilateral treaties, mutual legal assistance is provided under bilateral agreements generally under the same conditions as provided for in the CoE Convention of 1959 and its additional protocols. The bilateral treaty between the Kingdom of Spain and the Republic of Brazil from 2008 is a typical mutual legal assistance treaty that would present the general characteristics that Spain follows when negotiating bilateral mutual legal assistance treaties.

In the absence of a treaty, mutual legal assistance is provided on the basis of the principle of reciprocity; in such a case the request should be sent through the diplomatic channel. Spain as an executing state might refuse assistance only in the cases established in article 278 Organic Law 6/1995, 1 July, of the Judiciary. Spain can also apply UNCAC, but there is no case recorded.

Spontaneous information exchange is implemented in daily practice on the basis of all existing instruments used by Spain, including UNCAC.

According to international treaties, Spain requires dual criminality for the provision of mutual legal assistance in cases of coercive measures.

The transfer of a particular person to another state for the purpose of identification, testimony or other assistance is subject to the person's consent. At any moment of the transfer, the person to be transferred can change his or her mind and can oppose the transfer. The transfer is handled by the law enforcement authorities (the police force through their unit of international cooperation and assistance).

The designated central authority in Spain is the Ministry of Justice (Deputy General Directorate of International Legal Cooperation). In urgent circumstances, requests for mutual legal assistance and related communications can be addressed to Spain through the International Criminal Police Organization (INTERPOL) provided the requests are also sent through official channels through the central authorities. As a general rule, requests for mutual legal assistance (MLA) can be submitted to the central authority directly, without a need to be submitted also through the diplomatic channels. Exceptionally some bilateral treaties require that transmission is made through diplomatic channels. The role of the central authority is defined in a formal manner and the Ministry of Justice does not take into account the substance of the request. When the formal analysis is concluded concerning the identification of the executing authority, it is submitted to the responsible judge, respectively to the foreign central authority. All further communications have to be submitted through the central authority.

Spain uses the services and channels of Eurojust, the European Judicial Network and IberRed to speed up the process in an informal way; the request has in the following to be formalized through the central authority. Eurojust is requested to

coordinate execution in complex cases involving several EU member States or those countries having cooperation agreements with Eurojust. Networks are frequently used to informally exchange information that will later be formalized through a MLA request. This informal exchange can also be done in other languages. The formal request is to be submitted in Spanish, however, in urgent cases and on an exceptional basis, as a first step submissions in English are possible. Requests for additional information are processed through the networks and official channels. Such requests are made when the description of a fact is not clear for the body implementing the request, i.e. to clarify the facts described in a request which usually amounts to additional facts.

Grounds for refusal of MLA are established in article 278 Organic Law for the Judiciary, as well as in treaties; regularly they contain the non-contradiction to internal law and reciprocity. The supreme criterion is that MLA provided cannot contradict domestic legislation.

Fiscal matters as a ground for refusal of mutual legal assistance is generally not contained in the bilateral treaties of Spain.

With regard to the transfer of criminal proceedings, Spain has concluded a number of treaties, including the European Convention of 1972 on Transfer of Criminal Proceedings. However, not all European States have ratified the Convention, so that Spain has additionally included the transfer of criminal proceedings in its bilateral MLA agreements, especially with non-European countries.

Overall, Spain has in place all measures required by UNCAC for mutual legal assistance.

Law enforcement cooperation

Spain considers UNCAC as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention. It further ratified a number of bilateral and multilateral agreements and arrangements.

Spanish law enforcement authorities cooperate through Eurojust and a number of informal networks (EJN, CARIN, IberRed) with their international counterparts. The Spanish Commission on Prevention of Money Laundering and Currency Violations exchanges intelligence concerning certain types of transactions and on customers with foreign anti-money-laundering authorities.

Spain has the possibility to establish and use joint investigation teams in the EU. Those investigation teams consist of officials of two or more Member States of the European Union. The negotiation of the arrangements of a joint investigation team lies with the responsible investigation body. Different procedural regulations exist for the cases that joint investigation teams act within or outside of the territory of Spain. Further, Spain has concluded some bilateral agreements on joint investigation teams, such as with Morocco.

In international cooperation, special investigative techniques are used based on the principle of reciprocity. Domestically, Spain has no specific legal basis for the application of special investigative techniques in corruption cases. Internationally, in the absence of the agreement the principle of reciprocity might be applied, as long as actions requested do not contradict Spanish legislation.

Spain has thus been found to have successful practices in place in the field of international law enforcement cooperation.
