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

Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Slovakia

1. Introduction

1.1. Overview of the legal and institutional framework of Slovakia in the context of implementation of the United Nations Convention against Corruption

Slovakia signed the United Nations Convention against Corruption Convention on 9 December 2003 and following agreement of the National Council in accordance with Article 7(4) of the Constitution, the President ratified the Convention on 25 April 2006. Slovakia deposited its instrument of ratification with the Secretary-General on 16 June 2006 and the Convention entered into force domestically on 1 July 2006.

The Constitution, which entered into force on 1st October 1992, represents the supreme law of Slovakia. Article 124 of the Constitution establishes the Constitutional Court as an independent judicial authority vested with the mandate to protect the Constitution. In doing so, the Court is responsible for deciding on the conformity of domestic laws with the Constitution, constitutional laws and international treaties which have been ratified by Slovakia.

The Office of Public Prosecution, headed by the Attorney General, is established as an independent and uniform system and is mandated to pursue criminal proceedings on behalf of the State against any individual suspected of having committed a crime. Prosecutors are obliged to use all statutory means available to them with a view to ensuring the protection of the rights guaranteed by law to individuals, legal entities and the State.

Slovakia has in recent years developed an integrated system of investigative, prosecutorial and judicial bodies specialized in combating corruption and other serious economic crimes.

The Anti-Corruption Bureau

The Anti-Corruption Bureau, established in January 2004, has exclusive jurisdiction over the investigation of criminal offences under the substantive jurisdiction of the Special Criminal Court (see below) including corruption and serious economic crime offences, and is also responsible for international cooperation in relation to such investigations. The Bureau operates under the authority of the President of the Police force and under the supervision of prosecutorial authorities but is functionally independent from other parts of the police.

The Special Prosecution Office

The Special Prosecution Office, established in September 2004, has exclusive jurisdiction over the prosecution of corruption and serious economic crime offences. Acting under the authority of the Attorney General, the Special Prosecution is technically part of, but functionally independent from, the General Prosecution Office.

The Specialized Penal Court

The Specialised Penal Court, established in July 2009, has exclusive jurisdiction in relation to mainstream corruption offences and other serious economic crimes. The Specialized Court also has exclusive criminal jurisdiction in relation to cases involving members of parliament and other senior public officials.

The Financial Intelligence Unit

The Financial Intelligence Unit (FIU), established in 1996, is the primary body responsible for enforcing the requirements of Slovakia's anti-money laundering legislation. In doing so, the FIU receives, analyses and processes unusual transaction reports (UTRs) received from financial institutions, transfers information to relevant law enforcement authorities where they consider a criminal offence may have been committed and facilitates international cooperation regarding information held by financial institutions. The FIU also contains the central Asset Recovery Office.

Offences established under the United Nations Convention against Corruption are predominately criminalized in the Criminal Code, Act No. 300/2005 Coll. of 1 January 2006 ("Criminal Code") and the Code of Criminal Procedure, Act No. 301/2005 Coll. of 1 January 2006 ("Code of Criminal Procedure").

The *lex generalis* of the Criminal Code and the Criminal Procedure Code, is supplemented by a number of *lex specialis* instruments, including the Act of 4 March 2010 on the Proof of Origin of Property, No. 101/2010 Coll. ("Proof of Origin Act") and Act No. 297/2008 Coll. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing ("the Anti-Money Laundering Act").

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

Sections 332 and 333 of the Criminal Code criminalize active bribery both in the public and private sector. In practice, however, section 333 is used for prosecutions in relation to bribery in the public sector, while section 332 is used in relation to bribery in the private sector. This is due to the additional requirement under section 333 that the act of bribery take place in relation to the "procurement of a thing of general interest", meaning that the act of bribery was in some way contrary to the public interest. This requirement is more likely to be satisfied in the context of the bribery of public officials than private individuals.

Articles 328 and 329 of the Criminal Code criminalize passive bribery when committed either directly or through an intermediary. As in the case of active bribery, while both provisions could technically be used to prosecute passive bribery in both the public and private sector, in practice prosecutors will use article 329 to prosecute public officials due to its requirement that the act of bribery relates to the "procurement of a thing of general interest".

Active bribery of foreign public officials and officials of international organizations is criminalized under articles 334 and 335 the Criminal Code, with articles 330

and 331 criminalizing passive bribery by such officials. However, to date, no prosecutions have been brought under these provisions.

Increased penalties are applicable where the act of bribery has been committed by a public official. The definition of 'public official' is provided in a listed format under section 128 of the Criminal Code, but case-law indicates that the courts take a narrow approach when considering whether a public official is acting "in the exercise of his/her official duties".

While the investigation and prosecution of corruption offences has increased in recent years, less progress had been made in relation to the prosecution of bribery in the private sector.

Trading in influence is criminalized under section 336 of the Criminal Code, but at present does not extend to the trading of "supposed" influence.

Money-laundering, concealment (articles 23, 24)

Slovakia has met the requirements of the Convention in relation to money laundering. Section 233 of the Criminal Code criminalizes a broad range of actions in relation to the proceeds of crime including the transferring, holding, hiding, concealing, using, consuming, destroying or altering of such proceeds with the intention of concealing their criminal origin. The range of predicate offences covered by Section 233 is broad enough as it applies to actions taken in relation to the proceeds of crime derived from any criminal offence.

A conviction under section 233 will result in a minimum term of imprisonment of two to five years, with more severe penalties applicable where the crime is committed as a public official. Statistics provided by Slovakia demonstrated some success in enforcement, with 125 investigations initiated in 2011 leading to 16 successful prosecutions.

The *lex generalis* of the Criminal Code is supplemented by the *lex specialis* of the Anti-Money Laundering Act 297/2008 which defines the Financial Investigation Unit as the responsible body for the area of prevention and detection of money laundering and terrorist financing.

As regards the concealment of property resulting from the commission of corruption offences, Section 231 of the Criminal Code provides that any person who conceals, transfers to himself or another, leases or accepts as a deposit a thing obtained through a criminal offence committed by another person shall be liable to a term of imprisonment of up to three years. Slovakia could not however demonstrate any examples of the enforcement of this provision.

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

Section 213 of the Criminal Code criminalizes embezzlement in both the private and the public sector. However, in order for an individual to be prosecuted under this provision they must have embezzled above a specified minimum amount. Embezzlement is not considered a corruption-related offence in Slovakia and is consequently dealt with by the police and General Prosecution office rather than the specialized anti-corruption bodies outlined above.

Abuse of functions is criminalized under section 326 of the Criminal Code. Slovakia has demonstrated some success in enforcing this domestic provision with 72 officials having been subject to investigation in 2011 and 28 convictions obtained.

As regards illicit enrichment, while no applicable criminal offence is provided, the law on the Proof of Origin of Property provides grounds in civil law on which a prosecutor may submit a petition before the court for a declaration of illicit enrichment on the part of an individual. Where such a declaration is made, property to the value of the amount declared to have been illicitly gained will be confiscated by order of the court.

However, the reviewing experts noted a number of significant hurdles preventing prosecutors from using this legislation effectively. Under section 6(1) of the Act, in order to be able to apply for a declaration of illicit enrichment, a prosecutor must demonstrate that an individual owns property with a value of 1500 times the minimum wage (equivalent to 480,900 Euros), in addition to his regular income. The Financial Intelligence Unit confirmed that five cases in which a substantial amount of unexplained property had been proved to have been obtained by public officials had to be discontinued due to not meeting this requirement. The reviewing experts considered the imposition of such a threshold to be excessive.

Furthermore, under section 4(2) of the law, the value of an individual's property for the purposes of the Act is the value at which it was originally bought. The Financial Investigation Unit indicated that this often meant that individuals were able to hide embezzled funds through fraudulent real estate transactions.

Obstruction of justice (article 25)

Section 344 of the Criminal Code criminalizes the obstruction of justice, covering all of the requirements of Article 25 of the Convention. The national authorities were also able to demonstrate success in the application of this domestic provision, with 57 investigations carried out in 2011 leading to 31 successful convictions.

Liability of legal persons (article 26)

Under section 19 of the Criminal Code, only a natural person may be found guilty of a criminal offence. However, following recent amendments to the Criminal Code, it is now possible under Section 83a and 83b of the Code for a Court to impose protective measures on a legal person (e.g. through the imposition of a fine or the confiscation of property) where the offence has been committed by a natural person in the course of representing the company, taking decisions in the name of the company or otherwise exercising control over the company.

Legal persons are in some circumstances also subject to administrative liability, such as in relation to breach of taxation or company law requirements.

Participation and attempt (article 27)

Slovakia criminalizes aiding, instigating, organizing and assisting the commission of a criminal offence under section 21 of the Criminal Code. Section 20 provides that where a crime is committed by more than one person, each participating individual will have the same criminal liability. An attempt to commit an offence,

whether successful or not, is also criminalized under section 14 of the Criminal Code.

The national authorities were unable to provide any evidence of the actual application of these domestic provisions as current statistics do not differentiate between convictions for committing an offence and those for assisting in, participating in or attempting to carry out such an offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

As regards the penalties applicable to corruption-related offences, it was noted by the reviewing experts that significant penalties apply where individuals are found guilty of such offences. Penalties generally range from the imposition of a substantial fine to imprisonment for a period of up to 10 years, or longer where aggravating circumstances are applicable.

Immunity from prosecution is addressed in various provisions of the Constitution and under sections 8 and 9 of the Criminal Procedure Code. According to these provisions, for prosecution of Members of Parliament to proceed the prior consent of the National Council of Parliament is required. Similar protection is afforded to members of the Constitutional Court. To the knowledge of the representatives of the Slovakian prosecution authorities, there has been no case in which such permission has been denied where required for prosecution to proceed.

Where prosecution proceedings have started in relation to a public official, the Slovakian authorities indicated that the relevant person would, in normal circumstances, be temporarily suspended from their position. The decision as to whether an individual will be so suspended will be left to the specific public administration body in which that person works. Where a member of the judiciary is subject to criminal proceedings, it will be at the discretion of a Minister of government as to whether he will be suspended. Once a three-year period of suspension has passed, the relevant member of the judiciary has the right to return to his position.

It was noted by the reviewing experts that there was not presently any form of common code of conduct or code of ethics applicable to all public officials, meaning that the disciplinary actions taken against officials where they are subject to criminal proceedings is inconsistent between different government departments, leaving a significant amount of discretion to senior members of individual public authorities.

Slovakia confirmed to the reviewing experts that a number of programmes were in place to ensure the reintegration of people into society following a period of imprisonment.

Slovakia has a number of legislative provisions that facilitate the cooperation of offenders in the investigation of corruption offences. Prosecutors may stay or conditionally suspend proceedings against a person who provides information that may help solve a crime. Under section 39 of the Criminal Code, a Court may also reduce custodial sentences below the minimum prescribed by law for any suspect who has assisted in the investigation of an offence of corruption.

Protection of witnesses and reporting persons (articles 32, 33)

Slovakia's legal system provides for numerous forms of protection to witnesses who may be endangered due to their participation in criminal proceedings. Section 134 of the Criminal Code permits the use of audio-visual tools where the examination of the witness in court may cause them to be endangered. Section 136 also allows the withholding of the identity or place of residence of a witness where disclosure would endanger that individual and permits for the voice of the witness to be altered to this end. Authorization for the use of these protection techniques must be given by the judge in the relevant criminal proceedings. It was indicated by Slovakia that such protection is not often required in practice.

Slovakia has entered into 10 bilateral agreements with other States parties, including the Czech Republic and Canada, regarding the relocation of witnesses in order to ensure their protection.

As regards the protection of reporting persons, legislative protection is only provided under Section 13 of the Labour Code, which is restricted in application to the private sector. There are therefore currently no statutory protections in place for public officials who report acts of corruption. In this regard, the reviewing experts noted that a draft Whistleblower Protection Bill was presently being developed and noted the willingness of civil society and other stakeholders to engage in the development of this legislation.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

Section 60(1)(c) of the Criminal Code enables the Court to order the forfeiture of anything obtained by means of a criminal offence, or as remuneration for committing a criminal offence. Furthermore, section 60(1)(d) of the Criminal Code provides that anything obtained by an individual in exchange for the proceeds of crime may also be seized.

In cases where the proceeds have already been disposed of, merged with other property, or can no longer be reached, the Court may order the forfeiture of something else with a similar value. Specific provisions are in place for the confiscation of property obtained as a result of bribery offences under section 58 (2) of the Criminal Code.

There is currently no centralized body responsible for administering property and assets in pursuance of the above provisions. Seized property is administered by whichever public authority was responsible for seizure.

Slovakia has legislative provisions in place allowing law enforcement authorities to obtain information from financial institutions for the purposes of the investigation and prosecution of corruption offences that would otherwise be protected under banking secrecy laws.

Statute of limitations; criminal record (articles 29, 41)

Section 87(1) of the Criminal Code provides that the applicable limitation period is twenty years in the case of a felony for which the maximum custodial penalty is at least 10 years. The limitation period for all other felonies is 10 years and the limitation period for minor offences is five years or three years, depending on the applicable maximum sentencing period.

The applicable limitation period for the majority of corruption offences would be 5 or 10 years, depending on the maximum custodial sentence applicable to each offence. The limitation period begins from the date the offence was committed.

Section 87 (2) of the Criminal Code excludes a range of periods from being counted as part of the limitation period including the time during which an offender cannot be made to stand trial due to legal impediments and the time during which criminal prosecution was interrupted for other reasons.

Slovakia confirmed that there is no prohibition in their domestic legislation on a court taking into consideration a criminal conviction of an individual in another State for the purpose of criminal proceedings. No specific examples, however, could be provided in this regard.

Jurisdiction (article 42)

Articles 3-7 of the Criminal Code allow Slovakia to assert jurisdiction in relation to corruption offences committed on Slovakian territory, by Slovakian nationals abroad and against a Slovakian national abroad. Where an individual plans an offence in a foreign jurisdiction with the intention of carrying it out in Slovakia but ultimately commits the offence in that same foreign jurisdiction, case-law has established that Slovakia can nevertheless assert jurisdiction over the case.

Where jurisdiction is asserted by Slovakia and another European State in relation to a corruption offence, cooperation with the foreign jurisdiction is carried out through the EUROJUST network.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

Civil remedies are available in relation to acts of corruption under Slovakian legislation. In particular, section 442 of the Civil Code provides that any intangible damage that an individual suffers as a result of an act of corruption must be compensated.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

At all stages of the law enforcement process, a specialized body exists to deal specifically with corruption-related offences. Following the establishment of the Anti-Corruption Bureau in 2004, there has been a significant increase in the number of corruption cases brought before the courts.

The investigation and prosecution bodies have made efforts to engage with public officials and thereby encourage reporting of acts of corruption through the provision of ad-hoc training on the anti-corruption legal framework in Slovakia. Public officials, and all Slovakian citizens, are also under an obligation under the Criminal Code to provide information to law enforcement authorities where they believe a corruption offence may have occurred.

As regards cooperation with the private sector, the Slovakian FIU provides training sessions to financial institutions and other private sector bodies regarding their reporting obligations under relevant banking laws.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- Slovakia has established specialised anti-corruption institutions at each stage of the law enforcement process and this has led to a significant increase in prosecutions for corruption offences in recent years.
- Through the Financial Intelligence Unit and other bodies, Slovakia has demonstrated a proactive approach to engaging with the private sector, particularly financial institutions.
- Slovakian legislation provides a range of possibilities for extending the statute of limitations in relation to corruption-related offences.

2.3. Challenges in implementation, where applicable

The following steps could further strengthen existing anti-corruption measures:

- Consider amending the definition of trading in influence so as to ensure that the trading of “supposed influence” is also criminalized;
- Consider reducing the threshold amount required for the prosecution to apply before the court for an asset declaration in cases of suspected illicit enrichment;
- Consider amending section 4(2) of Act 101/2010 in order that the actual rather than the purchase value of property obtained by an individual may be taken into account as part of their estate where the Financial Investigation Unit consider that property may have been obtained as a result of a transaction at an undervalue;
- Continue efforts to reform domestic legislation relating to the protection of whistleblowers and, in doing so, seek to consult with a broad range of stakeholders;
- Consider adopting a broader approach when determining whether a public official is acting in the exercise of his/her official duties;
- Reduce the threshold amount applicable to prosecutions for the embezzlement of public funds; and
- Consider establishing a specialised body responsible for the administration of frozen, seized or confiscated property.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

*Extradition; transfer of sentenced persons; transfer of criminal proceedings
(articles 44, 45, 47)*

Section 478 of the Code of Criminal Procedure (CCP) stipulates that the provisions of the Code on judicial cooperation in criminal matters, including extradition and mutual legal assistance (MLA), shall be applied unless an international treaty states otherwise. The implementation of such a treaty into the national legal order is not

strictly necessary, because it can also be self-executing. The dual criminality requirement is foreseen in the domestic legal order (s. 479, CCP). According to section 499, extradition shall be admissible if the offence for which extradition is sought constitutes a criminal offence under Slovakian law and “is punishable under the same law by a maximum prison sentence of at least one year”. When at least one of the offences indicated in the extradition request meets the requirements set out in section 499, extradition may be granted.

The United Nations Convention against Corruption could be used as a legal basis for extradition requests, but that has not been the case to date. There has been a preference instead to use multilateral instruments such as the European Convention on Extradition and bilateral extradition treaties or agreements. Slovakia is presently negotiating extradition treaties with Australia and Poland. Where such an agreement is absent, the Criminal Code allows for extradition on a case-by-case basis pursuant to the principle of reciprocity, outlined in the CCP. To date, no specific examples of extradition for corruption-related offences could be provided.

Section 490 of the CCP outlines the applicable procedures where Slovakia is the requesting State (active extradition), while section 510 is applicable where Slovakia is the requested State (passive extradition). Pursuant to section 510 of the CCP, the *aut dedere aut judicare* principle is fulfilled.

The CCP provides for the transfer of a sentenced person from abroad, as well as the continuation of enforcement of his/ her sentence in Slovakia (ss. 522 and 523). Slovakia is also a State party of the Convention on the Transfer of Sentenced Persons and is seeking to enter into the Inter-American Convention on Serving Criminal Sentences Abroad. Other bilateral treaties also exist. It was noted that the transfer of sentenced persons was not possible on the basis of reciprocity; in order to carry out a transfer, it was necessary to have an explicit agreement in place. Due to a lack of statistics in this area, the number of such transfers is unknown.

Slovakia is a party to the European Convention on the Transfer of Criminal Proceedings (1972) and relevant bilateral treaties. It was confirmed that such transfers have taken place and one example was cited. The relevant provisions of the CCP are those of sections 528 and 529.

Mutual legal assistance (article 46)

Slovakia confirmed that the United Nations Convention against Corruption could be used as a legal basis for MLA requests, but to date there has not been any reported case of such use. There has, instead, been a preference to using specific treaties as a basis (i.e. European Convention on MLA in Criminal Matters) and bilateral treaties are also currently being negotiated with a number of countries, including Australia. Where there is no treaty in place, MLA can be provided on a case-by-case basis pursuant to the principle of reciprocity. The Ministry of Justice acts as the central authority for receipt and further transmission of MLA requests and the acceptable languages are Slovak and English. MLA requests can also be made orally and then followed with a written confirmation. There was a lack of statistics on the number and types of MLA requests both sent and received.

Slovakia has broadly implemented article 46 of the United Nations Convention against Corruption successfully. MLA can be provided in relation to an offence committed by a legal person. Slovakia would also not decline to render MLA on the

ground of bank secrecy or fiscal matters. A prosecutor can postpone an MLA request, if it were to interfere with an ongoing investigation, prosecution or judicial proceeding. The average time for an MLA request to be processed, where a court hearing is in place in the requesting State, is 30 days.

Act No. 650/2005 on the execution of orders freezing property or evidence in the EU has proven to be cumbersome for the provision of MLA and amendments are being considered, also in consultation with the Council of the European Union.

Slovakia noted that the Europol network was often used in relation to MLA requests. Section 484 of the CCP also provides a legal basis for the use of INTERPOL in the transmission and receipt of MLA requests.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

Law enforcement cooperation is afforded by virtue of the Schengen Convention, as well as various multilateral or bilateral agreements (also with non-European Union countries, such as Armenia). Section 478 of the CCP allows for Slovakia to use the United Nations Convention against Corruption as a legal basis for mutual law enforcement cooperation. However, in practice, such cooperation is executed on a more informal basis, through focal points and partner offices, institutions or agencies through the flexible sharing and exchanging of information (i.e. European Partners Against Corruption (EPAC)/ European Anti-Corruption Network (EACN), EUROPOL, INTERPOL, EUROJUST). Law enforcement authorities also use international channels and databases (e.g. Schengen Information System (SIS)). The information exchanged on an informal basis varies (i.e. identity, whereabouts and activities of suspected persons), but for certain types of information (i.e. details from bank accounts), a more formal system would be required (i.e. a Court order). However, neither the Police nor prosecutors found there to be any obstacles in providing cooperation.

Joint investigations are carried out (i.e. with the Czech Republic), pursuant to section 10(9) of the CCP and article 13 of the European Union MLA Convention of 2000. Special investigative techniques (i.e. telephone interception and covert surveillance) were also employed to assist in the gathering of evidence. The Code of Criminal Procedure, covers, inter alia: controlled delivery (s. 111); sham transfers (s. 112); surveillance of persons and items (s. 113); and interception and recording of telecommunications (s. 115).

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the United Nations Convention against Corruption:

- The Anti-Corruption Bureau demonstrated a number of significant successes with regard to cooperation with law enforcement agencies in other States, leading to the prosecution of individuals for corruption offences.
- A flexible approach is also taken by Slovakia with regard to the provision of law enforcement cooperation.

3.3. Challenges in implementation, where applicable

The following points could serve as a framework to strengthen and consolidate the actions taken by Slovakia to combat corruption:

- Consider establishing a means of collecting statistical data on extradition, MLA and transfer of sentenced persons, as well as monitoring the coordination and information-exchange between different national authorities (i.e. case management system); and
- Consider informing the United Nations Secretary-General that Slovakia would consider using the Convention as a legal basis for cooperation on extradition and mutual legal assistance with other States parties.
- Consider amending Act No. 650/2005 on the execution of orders freezing property or evidence in the European Union with a view to rendering it more flexible.