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English only

Implementation Review Group**Second session**

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Item 2 of the provisional agenda**Executive summary: 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 Vietnam. 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.