OECD Anti-Bribery Convention Phase 4 Report on Colombia

Implementing the Convention and Related Legal Instruments

OECD

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Abbreviations and acronyms

AGR	Office of the Auditor General of the Republic	MFA	Ministry of Foreign Affairs
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism	MoF	Ministry of Finance
APC	Agencia Presidencial de Cooperación Internacional de Colombia	MoJ	Ministry of Justice
ARO	Asset Recovery Office	NRA	National Risk Assessment
Art.	Article (of a legal provision)	NTR	Non-trial resolution
CC	Criminal Code	ODA	Official development assistance
COP	Colombian Pesos	PEP	Politically exposed person
CPC	Criminal Procedure Code	PGO	The Prosecutor General's Office of the Nation (*Fiscalía General de la Nación*)
DECLA	Special Directorate against Money Laundering (*Dirección Especializada contra el Lavado de Activos*)	SAR	Suspicious activity report
EUR	Euro	SDC	Single Disciplinary Code
FATF	Financial Action Task Force	SME	Small and medium-sized enterprise
FDI	Foreign direct investment	SOE	State owned or controlled enterprise
GBP	Great British Pounds	UIAF	Financial Intelligence Unit
IFI	International Financial Institution	USD	United States Dollar
MLA	Mutual legal assistance	WGB	Working Group on Bribery

Executive summary

This Phase 4 report by the OECD Working Group on Bribery in International Business Transactions evaluates and makes recommendations on Colombia's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report details Colombia's achievements and challenges, including in enforcing its foreign bribery offence, as well as progress made since its 2019 Phase 3 evaluation.

While Colombia has successfully imposed its second administrative sanction against a legal person for foreign bribery since its ratification of the Convention in 2012, it has yet to attempt the prosecution of a natural person for foreign bribery, even though its framework for doing so appears compliant on paper. Disappointingly, the two successful administrative measures indicate ineffective sanctions and an inability to apply confiscation measures, particularly against legal persons.

Significantly contributing to Colombia's poor enforcement record is the inadequate acknowledgement of foreign bribery risks and, consequently, insufficient prioritisation by the authorities. The majority of potential sources of detection are underutilised, and Colombia does not proactively explore all credible allegations of foreign bribery.

While Colombian authorities have access to adequate investigative tools and information sources, information sharing between agencies remains inadequate, with enforcement of the foreign bribery offence being significantly impeded by the limited internal cooperation among the relevant agencies. The Financial Intelligence Unit (UIAF) can only share intelligence with the Prosecutor General's Office (PGO); by law, UIAF is prohibited from sharing information pertaining to potential foreign bribery incidences with the Superintendency of Corporations. This situation is made all the more serious given representatives of PGO openly stating that they would not proactively pass information to the Superintendency, even when such information might relate to a Colombian legal person.

To strengthen its fight against foreign bribery, Colombia must undertake both legislative and institutional reforms. In particular, Colombia must, as a matter of urgency, respond to repeated and long-outstanding recommendations to implement a comprehensive system of protection for whistleblowers, who are still exposed to serious dangers including to their physical safety. Colombia should ensure this whistleblower protection framework provides real and effective protections from the full range of potential retaliations for those who report foreign bribery and enable those who experience such retaliation to obtain effective remedies.

Regrettably, Colombia has not addressed further concerns raised in Phase 3 in relation to the sanctions imposed against legal persons in practice, including the ability to require forfeiture of the proceeds of bribery, or to extend the statutory time during which a tax return may be re-examined to effectively determine whether bribes have been deducted. Nor has Colombia taken any steps to address issues dating back to Phase 2 regarding the lack of clear safeguards against political interference in foreign bribery cases.

The report and its recommendations reflect the conclusions of experts from Chile and Spain, as adopted by the Working Group on 11 December 2025. It is based on materials provided by Colombia, as well as

research by the evaluation team. Information was also obtained during a May 2025 on-site visit to Colombia, during which the evaluation team spoke with panellists from the public and private sectors, judiciary, media, and civil society. Colombia will report in writing in two years on the implementation of all recommendations and on its enforcement efforts, and provide an additional written report in one year with an action plan to implement five high-priority recommendations.

Introduction

1. In December 2025, the Working Group on Bribery in International Business Transactions (Working Group or WGB) concluded its fourth evaluation of Colombia's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention), the 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation) and related instruments.

Previous evaluations of Colombia by the Working Group on Bribery

2. The Working Group, composed of the 46 countries Party to the OECD Anti-Bribery Convention,[1] conducts successive phases of peer-review evaluations to monitor all Parties' implementation and enforcement of the Convention and related instruments. Since Phase 2, evaluations have included an on-site visit to obtain governmental and non-government views in the evaluated country. The evaluated country may comment on but not veto the evaluation report and recommendations. Evaluation reports are published on the OECD website.

Previous WGB Evaluations of Colombia

Phase 1 (2012): Report

Phase 2 (2015): Report, 2Y WFU

Phase 3 (2019): Report, 2Y WFU

Figure 1. Colombia's implementation of Phase 3 recommendations

Colombia's economy and foreign bribery risks

Economic background

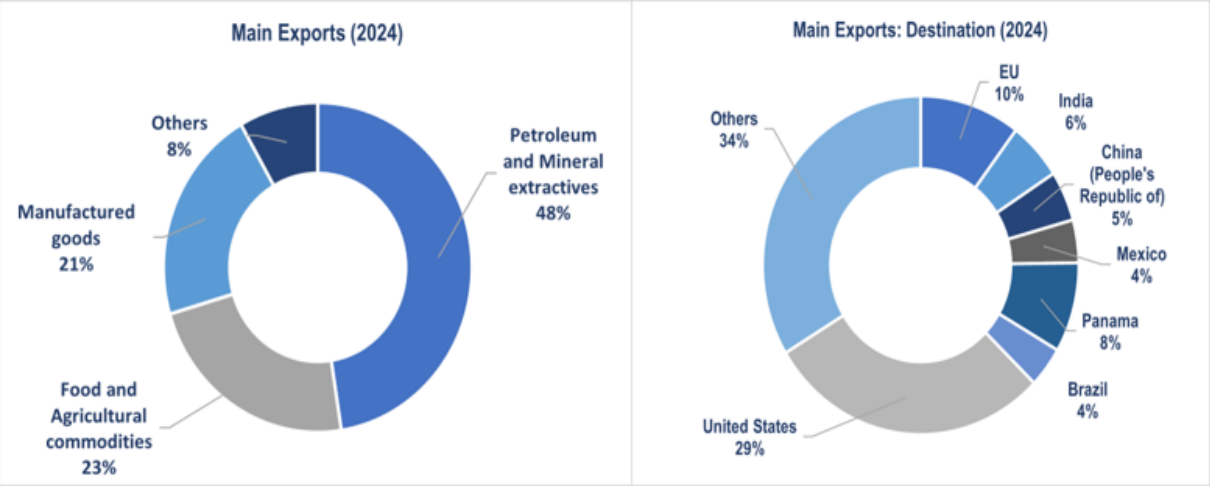
3. Colombia is a unitary state in Latin America with a population of 52.9 million. It is an upper middle-income economy with a strong prospect of economic growth. As of 2024, Colombia had a GDP of USD 418 billion (International Monetary Fund, 2025[1]), making it the 26th highest GDP of the 46 Working

Group countries and 4th largest economy in Latin America after Brazil, Mexico, and Argentina (UNCTAD, 2025[2]).

4. According to the National Administrative Department of Statistics, Colombia's export values, from January to November 2024, amounted to USD 45 billion; approximately 10% of its total GDP. Its main exports comprise petroleum and mineral extractives (47.6%), food and agricultural commodities (22.9%), manufactured goods (21.3%) and others (8.3%) (Departamento Administrativo Nacional de Estadística, 2025[3]). Imports, which were USD 53 billion, were led by manufactured goods (74.3%) including vehicles and transports (10.4%), food and agricultural commodities (14.6%), petroleum and mineral extractives (11%) and others (0.2%).

5. United States (29.1%) and European Union (10.3%) were the top destinations for Colombian exports in 2024, followed by Panama (8.6%), India (5.6%), the People's Republic of China (hereafter 'China') (4.8%), Mexico (4.1%) and Brazil (3.9%). Colombia's main import partners in 2023 were United States (26%), China (22%), Brazil (6.6%), and Mexico (5.1%). As of 2024, Colombia had 17 trade agreements – both bilateral and multilateral – with different countries and economic zones (International Trade Administration, 2023[4]). Colombia is part of eight bilateral investment treaties in force with France, Japan, United Kingdom, India, China, Peru, Switzerland and Spain.

Figure 2. Exports by main goods and destination



Source: UN Comtrade Data, SITC Rev. 4 commodity codes, exports and imports of goods, year 2022.

6. In 2024, Colombia was ranked 26th among Working Group members in outward Foreign Direct Investment (FDI) flows (UNCTAD, 2025[2]). In 2024, its outward FDI was 18.7% of its GDP and the inward FDI was 64.1% of its GDP (OECD, October 2025[5]).

7. In light of its growing market and economy, Colombia has initiated multiple legal reforms to build a more stable business environment. These reforms, in areas such as property rights, labour laws, and commercial regulations, aim to foster a more predictable and transparent legal environment, enhancing investor confidence and increasing economic activity, and are expected to attract more foreign investments by simplifying business operations (Generis Global, 2024[6]).

8. According to the OECD's 2024 Economic Survey, the first foreign asset disclosure programme organised by Colombian tax authorities revealed assets hidden abroad, either for tax evasion purposes or due to being the proceeds of illicit activities, worth almost 2% of Colombian GDP (OECD, 2024[7]).

Foreign bribery risks

9. Colombia's National Strategy for International Cooperation identifies the fight against corruption as a means of strengthening institutional capacities for international cooperation management, which falls under Sustainable Development Goal 16 and 17 (APC Colombia, 2023[8]). Despite this, as was the situation in Phase 3, it appears that Colombia's focus is overwhelmingly on domestic corruption. Notably, several participants at the on-site visit (including government officials) seemed confused about the distinction between domestic and foreign bribery and repeatedly offered domestic examples when attempting to illustrate efforts undertaken to combat foreign bribery.

10. Colombia's key industries include extractives, textiles and tourism, with approximately 60% of its GDP deriving from service sectors such as tourism and professional services (Lloyd's Bank, 2025[9]). The extractives industry, which comprises half of Colombia's export revenues, is among the highest risk sectors, accounting for one in five cases of transnational bribery globally (OECD, 2016[10]).

11. Colombia has 1.7 million formally registered companies. Of these, 92% are micro-enterprises with less than 10 employees and 6.4% are small- or medium-sized enterprises (SMEs), which combined represent 79% of total employment and contribute 40% of Colombia's total GDP (BBVA Research, 2024[11]). Colombia has a huge share of population working in the informal sector; while the government has promoted employment formalisation through measures such as the adoption of single tax system and social security reform (ECLAC, 2022[12]), the rate of informal employment is still high and persistent (OECD, 2022[13]).

12. Colombia's state involvement in business operations remained above the OECD average, particularly in energy, transportation, and telecommunications (OECD, 2024[7]). As of 2022, Colombia had 141 state-owned enterprises (SOEs) (100 wholly owned and 40 partially owned), with an approximately combined value of USD 20 billion. As of 2024, Colombia had 73 state owned enterprises (30 majority owned and 43 partially owned) (Hacienda, 2025[14]). Ecopetrol (Colombia's majority state-owned and privately-run oil company) and ISA (an electricity distribution company purchased by Ecopetrol in 2021) are two of the few large formal SOEs that produce considerable value in Colombian economy; In 2024, Ecopetrol generated USD 3.6 billion profit (Ecopetrol Group, 2024[15]).

13. Employees of SOEs are more likely to have promised or given foreign bribes of a higher financial values, especially in mining and extractive industries, with SOE officials being more prone to passive bribery (OECD, 2014[16]). These risks increase in public procurement when the participating vendors offer bribes to secure a contract. Indeed, Ecopetrol officials have been involved or implicated in several significant corruption scandals in relation to services contracts (Reuters, 2015[17]) (Veitch, 2019[18]).

Foreign bribery enforcement in Colombia

Important note on terminology and naming of institutions

To avoid confusion and due to their different nature, the enforcement for natural persons according to the criminal justice framework (Prosecutor General's Office) and the enforcement for legal persons under administrative law (Superintendency of Corporations) must be treated strictly separately for every aspect of the analysis (legal foundation, procedure, sanctions, international cooperation, independence, etc.).

For consistency with previous reports, the Fiscalia General de la Nación, in charge of criminal proceedings against natural persons is translated as the Prosecutor General's Office (PGO). The Procuraduría General de la Nación, in charge of supervising the public sector for transparency and integrity, is translated as Inspector General's Office.

Figure 3. Colombia's foreign bribery cases since Phase 3

14. Colombia's framework for the liability of natural persons and legal persons for foreign bribery and related offences are strictly separated. Natural persons may be held criminally liable under criminal procedure by PGO, while legal persons may be found administratively liable under administrative procedure by Superintendency of Corporations (Superintendency).

15. Colombia has yet to prosecute a natural person for foreign bribery since its ratification of the Anti-Bribery Convention in 2012, despite a number of allegations that have come to light and investigations that remain ongoing. However, no investigations have resulted in the pressing of charges, let alone the filing of an indictment. As such, Colombia is also yet to reach the threshold of charging a natural person with foreign bribery.

16. At the time of the Phase 3 evaluation in 2019, Colombia had just achieved its first administrative sanction of a legal person for foreign bribery (the ***Water Utility Company*** case in 2018). At that time, the Working Group noted positive developments as 19 cases were under investigation, albeit all at preliminary stages. Since Phase 3, Colombia has successfully sanctioned a second legal person for foreign bribery (the ***Reinsurance Company*** case in 2024).

17. However, the overall investigative landscape as it relates to legal persons has declined, with the Superintendency of Corporations opening only 10 investigations since Phase 3, of which all but one have been closed without sanctions imposed.

Colombia's engagement with the Working Group on Bribery

18. At Phase 3, the Working Group noted with concern the decreased engagement of a number of key Colombian government agencies with responsibility for foreign bribery, as well as the progressive disengagement of Colombia with the WGB. Disappointingly, and despite assurances at that time from Colombia that the level of commitment would improve, the situation has remained the same.

19. The Working Group regrets that Colombia did not sufficiently engage with the Phase 4 evaluation process at its outset. Colombia submitted its responses to the Phase 4 questionnaires over a month late, and its answers to many of the questions either did not provide adequate information or were entirely blank. Information about actual practice was largely missing and almost all questions about enforcement actions were unanswered.

20. These inadequate questionnaire responses deprived the evaluation team of the opportunity to review important information prior to the on-site visit. Such preparation would have made the discussions at the on-site visit more in-depth, fruitful, and efficient.

21. Additionally, key institutions (such as the financial intelligence unit) provided no input to the questionnaire and were unaware of its existence when asked at the on-site. Colombia stated it was under the impression it was not able to share the questionnaire wider than the three main coordinating agencies (Transparency Secretariat, Prosecutor General's Office, and Superintendency of Corporations); no explanation was offered as to where this impression came from or why Colombia did not seek clarification on this point of process.

22. Further, it was clear that these three key agencies were not aligned or cooperating between themselves; indeed, at the on-site the Transparency Secretariat advised that PGO, citing confidentiality, refused to provide some information to the Transparency Secretariat as lead coordinating agency and would have to provide separate responses to information requests. Some of the missing information was provided following the on-site visit, but was largely untranslated and still incomplete, meaning some matters could not be considered fully.

23. This internal disorganisation has also resulted in confusion with the collection of enforcement data, which the Working Group agreed to resume collecting and publishing in December 2024. During this exercise Colombia has provided information that contradicts both itself and the information provided as part of the Phase 4 evaluation. For example, in its enforcement data response Colombia reported that a natural person had been sanctioned with a prison sentence for foreign bribery, a claim entirely novel to the evaluation team. However, in that same response, Colombia also reported that no natural persons have been criminally convicted and sanctioned for foreign bribery. While this discrepancy has since been resolved, other inconsistencies (including a lack of clarity regarding the total number of foreign bribery investigations) remain uncorrected, further pointing to the disorganised system of recording information and lack of coordination between agencies.

24. In a separate matter, Colombia served as one of the lead examining countries (alongside the United Kingdom) for the Phase 4 evaluation of Brazil, with the on-site visit to Brasilia and São Paulo scheduled from 15 to 19 May 2023. One working day before this on-site visit Colombia removed one of its nominated lead examiners with no explanation, causing significant stress for that evaluation team. When questioned about this at its own Phase 4 on-site visit, Colombia stated that internal government regulations determining which officials were permitted to undertake international travel meant that the nominated lead

examiner was not senior enough to be sent to the on-site, a fact that was apparently only discovered immediately prior to the visit, which was scheduled months in advance.

25. Lastly, while acknowledging the travel restrictions in place during the COVID-19 pandemic, Colombia has not sent a delegation to a WGB meeting since December 2019 (the plenary at which its Phase 3 Report was adopted). This is despite the WGB long having resumed a hybrid meeting format and makes Colombia one of the few delegations to have not attended a WGB meeting in-person following the easing of global travel limitations. Similarly, no Colombian prosecutors have attended the Informal Meeting of Law Enforcement Officials (LEO) since it resumed in-person attendance.

26. In the same regard, the Working Group was extremely disappointed with Colombia's level of engagement during the process of adopting this Report. Neither the Transparency Secretariat nor the Superintendency of Corporations – two of Colombia's three main coordinating agencies – were present in-person for the discussion of the report, citing "budgetary constraints". Colombia's inability to ensure effective in-person representation for the discussion and adoption of its own evaluation report represents a significant departure from usual process, further demonstrating Colombia's complete lack of prioritisation for its international commitments with respect to foreign bribery.

Commentary

The lead examiners commend Colombia for the progress made in foreign bribery enforcement since Phase 3, notably for achieving its second administrative sanction of a legal person for foreign bribery.

Despite this positive step, however, the state of foreign bribery enforcement in Colombia raises serious concerns. As analysed further in the sections below, inadequate dedicated investigative energy for foreign bribery cases, as well as lax prosecutorial practices in foreign bribery proceedings, has resulted in the vast majority of investigations being closed without any attempt at either prosecution or the imposition of administrative sanctions.

Due to the very limited investigation and prosecution case information provided by Colombian authorities, the lead examiners were unable to identify precisely the reasons for this low level of enforcement, including whether investigations are being closed for technical reasons, or whether cases are not being proactively opened, investigated, or prosecuted due to issues obtaining evidence located abroad or domestically. However, what is clear is that Colombia does not prioritise the detection, investigation, or prosecution of foreign bribery; agencies are legislatively siloed and uncooperative, seemingly more concerned with protecting their remit than working collaboratively.

The lead examiners regret the continued absence of whistleblower protection legislation in Colombia, noting that repeated efforts to pass such legislation have failed, indicating a resistance to reform at the highest political levels. This, along with the lack of visibility and accessibility of public channels for reporting foreign bribery, constitute significant obstacles to the detection of foreign bribery.

Colombia must urgently undertake comprehensive reforms to its legal framework to remedy this long outstanding issue. While updates to legislation are certainly necessary, these will need to be accompanied by significant efforts to support implementation and enforcement, and to raise awareness to counter the complacency and lack of concern for foreign bribery risks.

Finally, the lead examiners reiterate the Phase 3 recommendation that Colombia reengage with the Working Group on Bribery by ensuring regular attendance at the meetings of the Working Group and engagement as appropriate in its work, including where foreign bribery enforcement is concerned.

A. Prevention, detection and reporting of the foreign bribery offence

27. Colombia did not provide information that would indicate it undertakes any proactive measures to detect foreign bribery. Representatives of the Superintendency and PGO met on-site appeared both knowledgeable of the offence and willing to act on allegations of foreign bribery that might arise within their remit. Despite this, in general, the priority given to detecting (and then investigating) foreign bribery, both at the operational and policy level, appears low.

28. Colombian public agencies do not systematically track information on the origin of reports of potential foreign bribery that are transmitted to law enforcement, making it difficult to assess the efficiency of reporting mechanisms or how these reports are handled by law enforcement. This lack of data limits the assessment of the particular challenges encountered by stakeholders in the public and private sector that may be in a position to detect and report suspicions of foreign bribery and related offences.

Commentary

The lead examiners are very concerned about the very low number of foreign bribery allegations detected by Colombia, which appears inconsistent with the country's foreign bribery risk profile. They are further concerned that Colombian agencies with a potential role in detecting foreign bribery do not collect data on relevant reports received and transmitted to law enforcement authorities. They therefore recommend that the relevant Colombian agencies and Ministries systematically collect, maintain, and consider publishing, data on foreign bribery reports, with a view to allowing for an assessment of the effectiveness of the various reporting channels.

A.1. Detecting and reporting foreign bribery by Colombian public officials

A.1.1. Reporting obligation

29. The Anti-Bribery Recommendation XXI(iii) recommends that Member countries ensure that "appropriate measures are in place to allow public officials to report or bring to the attention of competent authorities suspected acts of foreign bribery and related offences detected in the course of their work, in particular for officials in public agencies that interact with, or that are exposed to information regarding companies operating abroad, including foreign representations, financial intelligence units, tax authorities, trade promotion authorities, relevant securities and financial market regulators, anti-corruption agencies and procurement authorities".

30. Article 417 of the Criminal Code (CC) and Art. 38 of the Single Disciplinary Code (SDC) impose a specific duty on public officials to report criminal acts. Public servants are required to immediately bring such matters to the attention of the competent authorities such as PGO and the Superintendency. Detection by tax authorities is discussed in section D.1.2.

31. Article 417 of the CC imposes a general reporting obligation on the public official who has a knowledge of the commission of a punishable conduct requiring investigation by criminalising failure to

report as a form of abuse of authority. A failure to report would incur a fine, loss of employment and a removal from office, or, depending on the nature of the punishable conduct, subject to an imprisonment of 32 to 72 months.

32. Article 38 of the SDC outlines one of the duties of public officials as reporting crimes, violations and disciplinary infractions of which they are aware. These general duties would apply to all public officials and anyone who exercise public functions on a permanent or temporary basis, who manage public resources (such as, but not limited to, administrative assistants, accountants, and auditors), who perform supervision or oversight tasks in state contracts and judicial assistants, except in cases defined by law.

33. In addition, Art. 67 of the Criminal Procedure Code (CPC) prescribes the general duty to report for every person, public servant or civilian, who has knowledge of offences that should be investigated *ex officio*. Article 67 is, however, silent on the consequences for a failure to report.

34. Exceptions are defined in Art. 68 of the CPC, which provides that "No one is obliged to file a complaint against himself, his spouse, permanent partner or his relatives within the fourth degree of consanguinity or civil, or second degree of affinity, or to report when professional secrecy is involved". Colombia asserts that Art. 68 of the CPC should be construed so that the exception for professional secrecy is not read as permitting the concealment of offenses. For public officials, the duty to report prevails, and professional secrecy does not bar them from reporting serious offenses.

35. At the on-site, Colombian officials did not seem to be aware of the exceptions to the reporting obligation and maintained that all officials, including overseas missions, are bound by this duty to report any crimes they become aware of. Colombia was unable to provide any evidence of Art. 68 of the CPC being interpreted and applied in practice.

36. Colombia explained that PGO has made various means available to allow public officials to fulfil their duty to report (see section A.10). However, Colombia indicated that no public officials or those performing equivalent functions have made reports of foreign bribery or have been sanctioned for failure to report. Colombia was also unable to explain how sanctions would be determined in case of a failure to report suspicions of foreign bribery. At the onsite, it appeared that this duty to report, at least in respect of foreign bribery, is merely a paper rule and is not enforced nor applied in practice.

A.1.2. Awareness-raising to encourage reporting by public officials

37. Following Phase 3, Colombia made several efforts to encourage reporting by public officials and those subject to reporting obligations. Fourteen awareness raising activities on foreign bribery red flags targeting the private and public sectors were conducted by the Superintendency of Corporations between the time of the Phase 3 Report in 2019 and the Phase 3 Two-Year Written Follow-Up Report (2Y WFU) in 2021.

38. The Superintendency reported that they have not undertaken any awareness-raising activities relating to the prevention and detection of foreign bribery for public officials since then. In April 2025, Superintendency published a new guideline document, "*Practical guide for understanding the fight against transnational bribery and corruption in Colombia*" for the public, including public officials. This guideline outlines foreign bribery red flags and identifies key actors in foreign bribery detection and investigations. However, this guide is designed for the general public, not for the public officials, and does not discuss the course of actions the public and public officials could take upon identifying foreign bribery red flags, such as describing the currently available reporting channels or the available protections for those who make a report.

39. PGO did not report providing any trainings, either for public officials or more broadly. No other Colombian public agency reported having undertaken any awareness-raising activities or training for public officials on foreign bribery red flags, channels of reporting, or public officials' obligations to report.

Commentary

The lead examiners acknowledge that public officials, in general, appear to be aware of their obligation to report corruption. However, noting that no foreign bribery report has ever been made by a public official or those assuming equivalent public functions, they are concerned that this obligation is not being enforced or applied in practice, at least in respect of the foreign bribery offence.

They therefore recommend that Colombia ensure that public officials proactively report incidences of corruption by issuing comprehensive anti-corruption guidelines and providing training for public officials, including on their reporting obligations and the reporting channels available. Noting that PGO is the competent law enforcement authority for criminal investigations and prosecutions against natural persons, while the Superintendency is the competent administrative agency for investigating and sanctioning legal persons on foreign bribery matters, the training provided to the public officials should point to the available reporting channels accordingly.

These guidelines should further include, *inter alia*, detailed information on types of offences that public officials may encounter, where and how the public officials could detect them, the course of actions to be taken when they become aware of them, and the protections available to those making such reports, noting that a system for such protections is not currently in place in Colombia (see section A.10 for further recommendations in this regard).

A.2. Detection through international cooperation

40. International cooperation constitutes an effective detection tool. Up to 2017, 7% of bribery schemes resulting in sanctions have been detected through MLA requests (OECD, 2017[19]). In addition to incoming MLA requests, Section XIX.B.iv. of the Anti-Bribery Recommendation recommends that countries "promptly investigate credible allegations of bribery of foreign public officials referred to them by international governmental organisations, such as the multilateral and regional development banks."

41. At Phase 3, the Working Group was concerned that, despite an apparently sound framework for MLA, in practice, Colombia's efforts were hindered by a lack of clarity by the respective agencies of where responsibilities lay, insufficient record-keeping in relation to requests made or received, and a general lack of internal coordination when seeking or providing international cooperation.

42. Colombia has never initiated a criminal or administrative proceeding based on information received via an MLA request. The evaluation team was deeply concerned to hear, at the on-site visit, representatives of PGO's Directorate of International Affairs state that, according to their interpretation, PGO cannot initiate a criminal proceeding on the basis of information contained in incoming MLA requests. When pressed on this matter, participants confirmed their belief that, even if an MLA request issued by the competent authority of a foreign jurisdiction contained information suggesting the involvement of Colombian natural or legal persons in criminal conduct, including foreign bribery, Colombian law enforcement would be unable to initiate an investigation.

43. Rather, they stated that PGO would be required to request authorisation from the *requesting* jurisdiction to use the information and send another separate MLA request through official channels seeking the same information that was already held within PGO. Prosecutors stated that this is because incoming MLA requests "serve a different purpose" other than detection.

44. Colombia further noted their understanding that such limitation to using the information contained in the incoming MLA requests stems from the restrictions on the use of MLA information as per Article 7 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and Article 25 of the Inter-American Convention on Mutual Assistance in Criminal Matters. Contrary to the

Colombia's assertion, these provisions prevent the *requesting* jurisdiction from using the information and evidence obtained through MLA for purposes other than those the MLA was based on. The *requested* jurisdiction, in this case, Colombia, is not bound by this limitation in its ability to initiate its own investigations.

45. Colombia seemed unconcerned at the suggestion that this process might cause unnecessary delays that could damage or thwart an effective investigation. This prosecutorial practice both contradicts the principle of legality contained in Art. 205 of the CPC, which states that investigations must be promptly initiated upon complaints, reports, or other information being received, and severely undermines the detection of foreign bribery based on information from the most reliable and accessible potential source and, at a minimum, impedes the timely initiation of a domestic investigation.

46. At the on-site PGO mentioned an internal "*Manual on International Cooperation in Criminal Matters*" that includes information on MLA procedures and instruments. According to the brief description provided by PGO, the manual includes information on both the national and international legal frameworks, the principles guiding their interpretations, and different mechanisms that may be used to request judicial assistance. PGO insisted that the manual cannot be shared due to the parameters established by the Entity's Quality Management System as it is deemed to be an internal document and, as such, is confidential. The evaluation team, therefore, could not verify the legal basis for this narrow interpretation on the use of MLA information, if any exists.

A.2.1. Information sharing between PGO and the Superintendency in practice appears limited

47. During the onsite, Colombia maintained that the information sharing between PGO and the Superintendency is bound by the inter-institutional agreement between the two agencies rather than by statutory obligation.

48. However, following the on-site, the Superintendency clarified that there does exist a legal duty for these entities to share information. Article 28 of Law 1778 of 2016 stipulates that PGO shall inform the Superintendency any criminal report provisionally classified as foreign bribery immediately after the preliminary inquiry begins. Likewise, the Superintendency shall inform PGO of all investigations conducted under this law. The provision, however, is silent on the extent of information that is to be shared between the agencies. The Superintendency and PGO claim that they maintain structured collaboration under this rule.

49. Nonetheless, the statements made by the representatives of PGO and the Superintendency during the on-site point to limited proactive information sharing from the PGO concerning foreign bribery proceedings. Representatives of PGO openly stated that they would not forward any information to the Superintendency of Corporations, even if the facts described, for example in an MLA request, indicated the involvement of a Colombian legal person in potential foreign bribery. Rather, PGO would decide if – and if so, when – to share information concerning criminal proceedings with the Superintendency. PGO explained that due to confidentiality inherent in criminal investigations, they must determine the appropriate moment to share information either during the investigative phase when proceedings are confidential or at the prosecution stage.

50. Neither PGO nor the Superintendency appeared to see this extreme and anti-cooperative stance as an issue. Moreover, it is unclear why both PGO and the Superintendency maintain throughout the onsite that information sharing between the two agencies is based on agreement, despite the existing statutory obligation.

Commentary

The lead examiners are extremely concerned at PGO's self-imposed inability to open investigations based on the information contained in an incoming MLA request. This not only discourages the

prosecutors from proactively seeking for foreign bribery red flags in the incoming MLA requests but further impedes Colombia's ability to respond promptly to the foreign bribery allegations. The lead examiners recommend that Colombia, by legislative means, if necessary, (i) oblige prosecutors to proactively evaluate incoming MLA requests to detect foreign bribery allegations and (ii) ensure that prosecutors open foreign bribery investigations based on information from incoming MLA requests without the need of sending a formal request to the requesting country.

Furthermore, the lead examiners recommend that Colombia, by legislative means, if necessary, ensure that PGO shares at the earliest possible time information received through international cooperation including incoming MLA requests with the Superintendency where these concern potential instances of foreign bribery benefiting a Colombian legal person.

Lastly, the lead examiners recommend that PGO maintain statistics on how many incoming and outgoing MLA requests pertain to foreign bribery, as well as the treatment of these requests.

A.3. Detecting and reporting foreign bribery through embassies and diplomatic missions

51. As noted in Anti-Bribery Recommendation XXI, embassies and diplomatic missions have an important role to play in enhancing awareness of companies that seek advice when investing or exporting abroad. Diplomatic missions also have a strategic role to play in the detection and reporting of foreign bribery. Officials posted abroad are well positioned to detect and report foreign bribery to law enforcement authorities in their home country, in particular because of their knowledge of the business opportunities in the host countries and their familiarity with the local environment, including local media.

52. In Phase 3, the Working Group noted the lack of detection and awareness-raising efforts on foreign bribery by diplomatic missions. At that time, the Ministry of Foreign Affairs (MFA) reported that they had issued a circular for all diplomatic missions highlighting key features of the implementation of the Anti-Bribery Convention in Colombian law and recalling the reporting obligations for officials when they detect foreign bribery. The Phase 3 evaluation team was not provided with a copy of the circular, and it was assessed that no positive results were yielded from this effort.

A.3.1. Reporting obligation of the diplomatic missions

53. Officials of Colombian diplomatic missions are bound by the same reporting obligations as Colombian public officials generally. Officials are therefore obligated to report any crime they become aware of, whether in the course of their official duties or outside of them, regardless of whether these were committed within or outside the national territory.

54. MFA reports that, before deployment, staff of diplomatic missions attend mandatory induction programmes which introduce, *inter alia*, the Anti-Bribery Convention and MFA's general anti-corruption policies. This is a one-off training; officials of diplomatic missions are not regularly provided additional training that could include topics on prevention and detection of foreign bribery. An untranslated version of the induction programme provided to the evaluation team did mention the United Nation Convention against Corruption (UNCAC), and the *Practical guide for understanding the fight against transnational bribery and corruption in Colombia* prepared by the Superintendency. However, information on foreign bribery and the specific reference to Anti-Bribery Convention could not be located, nor was there detailed information on corruption scenarios that staff of diplomatic missions could encounter during their deployment and corruption prevention and detection.

55. At the on-site, MFA representatives were unable to advise whether staff of diplomatic missions would file reports of potential foreign bribery directly to the respective Colombian law enforcement agencies

or internally through their respective embassies. While Colombian companies operating abroad can reach out to the embassy and ask for advice concerning foreign bribery, throughout the on-site discussions MFA maintained that their mandate does not include detecting or preventing foreign bribery.

56. Acknowledging the risk of bribe solicitation initiated by foreign public officials in the course of international business transactions, Section XII of the Anti-Bribery Recommendation recommends the states to provide training to their public officials posted abroad on information and steps to be taken to assist enterprises confronted with bribe solicitation, where appropriate, and provide clear instructions on the authorities to whom allegations of solicitation and foreign bribery should be reported. MFA did indicate that diplomatic missions are provided with guidelines for how to deal with private sector companies seeking such support. After the on-site, MFA clarified that the guideline referred by their representatives during the on-site is the *Practical guide for understanding the fight against transnational bribery and corruption in Colombia*, referenced above. However, this guide is prepared for the general public and does not contain instructions on the steps that staff of Colombian diplomatic missions would be expected to take when approached by private sector companies confronted with bribe solicitation. In fact, the advice on reporting to the Superintendency and implementing the business ethics programmes does not appear to be appropriate advice that staff of diplomatic missions could give to private sector companies who may be solicited to pay bribes.

57. MFA has an email address by which members of the public can report acts of corruption by public officials; however, this channel is designed for receiving reports of misconduct by Colombian public officials (i.e., MFA staff) and therefore would not receive reports of misconduct by Colombian private companies committing bribery abroad.

58. While MFA does provide training to diplomatic missions on its own code of ethics for public officials, it does not undertake any awareness raising initiatives or provide guidance to facilitate or encourage proactive detection and reporting of foreign bribery.

A.3.2. Monitoring of foreign media

59. At the on-site, MFA representatives stated that diplomatic missions "regularly" monitor the local media, based on a circular outlining their duty in this regard. However, in information provided following the on-site, MFA then denied that diplomatic missions carry out media monitoring to detect foreign bribery and confirmed that no such circular exists. According to this more recent information, the MFA's press office in Bogotá is the only one that does media monitoring, with their scope of monitoring limited to domestic and international news relevant to the MFA's work, which would not necessarily include news on foreign bribery.

60. As such, it seems there are no policies or procedures in place to encourage proactive detection by MFA officials through media monitoring and alerts of foreign bribery instances that might implicate Colombian natural or legal persons. Colombia does not indicate that any reports of foreign bribery have been received from diplomatic missions.

Commentary

Recalling that diplomatic missions are well placed to detect foreign bribery committed by Colombian natural or legal persons abroad, the lead examiners recommend that Colombia provide detailed guidance and regular training to the officials of its overseas diplomatic missions on the foreign bribery offence and what steps should be taken if foreign bribery is detected, including reporting channels and their obligation to report.

The lead examiners also recommend that Colombia ensure that MFA (i) issue clear written guidance and provide training to diplomatic missions as to what assistance they can provide to Colombian natural or legal persons who may be solicited for bribery in the course of international business

transactions and (ii) establish a system of proactive detection by diplomatic missions through media monitoring concerning acts of foreign bribery.

A.4. Detecting and reporting foreign bribery through export credits

61. Export credit agencies (ECAs) deal with companies that are active in international business; as noted in Anti-Bribery Recommendation XXI.vi., they thus have an important role in preventing, detecting, and reporting potential foreign bribery allegations involving these companies. ECAs can also sanction individuals and companies that have committed foreign bribery by denying them support. Measures that ECAs can take are described in Sections IV-VIII of the 2019 Recommendation of the Council on Bribery and Officially Supported Export Credits (Export Credit Recommendation).

62. Colombia does not provide officially supported export credits falling under the scope of the Arrangement on Officially Supported Export Credits. Even so, Bancóldex, which is Colombia's state-owned business development bank, applies the provisions of the Export Credit Recommendation and participates actively in bribery-related discussions within the Working Party on Export Credits and Credit Guarantees (ECG). Bancóldex has traditionally provided its products and services as a second-tier bank in the form of on-lending to private financial institutions, instead of direct financing to companies. In Phase 4, Bancóldex reported that its direct clients include both the financial intermediaries and the companies, some of which are exporters.

63. In Phase 3, the Working Group recommended Bancóldex require these intermediary banks, and other clients as appropriate, to undertake that neither they nor anyone acting on their behalf have engaged or will engage in bribery, and disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge or, within a five-year period preceding the application, have been convicted for foreign bribery.

64. At the time of Colombia's Phase 3 2Y WFU, Bancóldex reported that it continues to request its foreign counterparts in due diligence processes to deliver the Wolfsberg Questionnaire, which includes a chapter on anti-bribery and corruption (Wolfsberg Group, 2023[20]). However, the questions focus primarily on the existence of compliance programmes as well as awareness-raising activities for employees on the prevention and detection of bribery and corruption and do not require respondents to disclose whether they, or anyone acting on their behalf in connection with the transaction, are currently under charge or have been convicted for foreign bribery within a five-year period preceding the application. As such, the Phase 3 recommendation remained only partially implemented.

65. In material submitted following the Phase 4 on-site, Bancóldex advised that it now includes a representation and warranty clause in its credit agreements requiring their clients to declare that they are not being investigated for foreign bribery nor have been investigated or convicted for foreign bribery in the past five years. Bancóldex further stated that "any omission, inaccuracy, or falsehood therein is considered an event of default/misrepresentation and results in the immediate termination of the contractual relationship" and the repayment of the loans.

66. Bancóldex explained that the termination clause has an extended effect on the final beneficiary of the loan in case the rediscount agreement is entered through the intermediary banks. Where the anti-corruption declaration pertaining to the final beneficiary of the loan turns out to be incorrect, Bancóldex may enforce the termination clause against both obligated parties (the rediscount beneficiary and the financial intermediary), including their related parties and ultimate beneficial owners.

67. Acknowledging the risks of potentially financing the exporters previously convicted of or currently under investigation for committing foreign bribery, Bancóldex implemented an Anti-Money Laundering/Anti-Terrorist Financing/Anti-Bribery and Corruption Compliance (AML/CFT/ABC) screening mechanism where the final beneficiaries of on-lending funds are screened against multilateral debarment

lists as well as media sources in order to mitigate the risks of them indirectly financing the exporters involved in foreign bribery.

68. Additionally, in 2024, Bancóldex provided training to 329 banks and companies on anti-bribery and corruption risk management, which included topics on anti-bribery and corruption compliance, Transparency International's Corruption Perception Index, and corruption red flags. Bancóldex's stated position is that while they provide training to the private sector entities, including banks and companies, who are their direct clients, providing training to private sector companies who are not their direct clients rest within the authority of the Superintendency.

A.4.1. Reporting obligation of Bancóldex employees

69. Bancóldex employees are subject to the general reporting obligation for public officials under Art. 417 of the CC and the general obligation under Art. 67 of the CPC, as well as obligations contained in the Bancóldex Code of Ethics. Although this Code of Ethics encourages Bancóldex employees not to engage in bribery themselves, it does not appear to encourage proactive reporting by its employees where they detect potential instances of foreign bribery or other corruption offences in the course of their work. Instead, Bancóldex referred to Art. 67 of the CPC as the legal basis for reporting practices by its employees. That is, if a Bancóldex employee believes that a transaction may constitute a crime of foreign bribery they must file a criminal complaint, either individually or with the support of the institution.

70. Bancóldex also has an internal reporting mechanism, which allows its staff or any other interested person to report potential irregularities and suspicions of wrongdoing, including foreign bribery, with regard to the bank, intermediary banks, clients, or third parties. Such reports can be made confidentially or anonymously and are handled by an independent committee. These reports will only be referred to the relevant law enforcement authorities if criminal misconduct is identified. However, at the on-site, Bancóldex representatives acknowledged it was unlikely they would receive such reports. Since 2024, Bancóldex has not received any complaints related to foreign bribery.

71. Bancóldex carries out mandatory trainings for all employees on ethics, fraud, and corruption, which it states includes content on foreign bribery. Bancóldex refused to share any specific details regarding the substance of the training with the evaluation team for assessment, citing business confidentiality.

Commentary

The lead examiners welcome the steps taken by Bancóldex to require the intermediary banks, as well as other clients, to provide an anti-corruption declaration when entering on-lending agreements. They are also pleased that the default clause pertaining to the anti-corruption declaration has an extended effect on the final beneficiaries of the on-lending loan.

The lead examiners recommend that Bancóldex continue providing sufficient guidance and training to its employees on foreign bribery red flags, steps to take if foreign bribery is detected in the course of their work, and the internal and external channels Bancóldex employees could use to file reports.

The lead examiners further recommend that Colombia provide periodic training on foreign bribery red flags and anti-bribery and corruption screening procedures to private financial institutions most likely to interact with the Colombian companies doing business abroad.

A.5. Detecting and reporting foreign bribery through foreign aid

72. The OECD's Development Assistance Committee (DAC) lists Colombia as an upper-middle income Official Development Aid (ODA) recipient country. Colombia has bilateral ODA relationships with

26 countries, all of which are WGB member states except the United Arab Emirates. Between 2022-2023, Colombia received bilateral ODAs totalling to USD 887 million, with the biggest donors being the United States (73.2%) followed by the European Union (9.4%), Switzerland (4%), and Spain (3.1%) (APC Colombia, 2023[21]).

73. Since 1996, Colombia has been leveraging South-South cooperation via a Fund for International Cooperation and Assistance (FOCAI), which allocates its resources to support foreign humanitarian aid and knowledge-exchange initiatives. Colombia's leading agency for international cooperation development is the Agencia Presidencia de Cooperación Internacional de Colombia (APC). APC manages both ODA and FOCAI-related projects.

74. One of the four policy objectives of Colombia's National Strategy for International Cooperation 2023-2026 is to strengthen institutional capacities for international cooperation management (APC Colombia, 2023[8]). This includes a strategic line on building citizens' trust in institutions, which encompasses the fight against corruption in national and regional public entities, compliance, public procurement oversight, and whistleblower protection. However, the Strategy does not specifically address foreign bribery or related offenses.

75. In response to the Phase 4 questionnaire, Colombia stated that its own public officials involved in ODA or other foreign aid are subject to the general duty to report under the CC and SDC. However, Colombia did not clarify whether contractors, suppliers, and local employees are also obliged to report potential allegations of foreign bribery.

76. At the on-site, APC representatives stated that no private sector entities nor private sector suppliers or contractors are engaged in providing aid for FOCAI funded projects or any South-South cooperation projects. When questioned, APC was not able to explain how FOCAI funds are used, nor how the goods and resources used for delivering aid are secured without private sector engagement.

77. In materials provided following the on-site, APC clarified that the provision of logistical services may be performed by private companies contracted through either an inter-administrative agreement or a public bidding process (see section A.6 for information on modalities of public procurement process). APC further advised that, when providing aid to other countries, it does not contract local suppliers in the countries except those intended for humanitarian assistance. In such cases, APC reported that they mitigate the risks of corruption by entering into international transactions exclusively through verified government accounts.

78. It was not explained how the use of verified government accounts necessarily contributes to alleviating the risk of entering into contracts with entities convicted of or being investigated for committing foreign bribery. Contracts financed with FOCAI resources do not include a separate anti-corruption clause.

Commentary

The lead examiners regret that Colombia's development cooperation processes remain underutilised for the purposes of detecting and sanctioning foreign bribery. They therefore recommend that Colombia provide training and information to APC employees, including written guidelines and awareness-raising activities, on detection and reporting of suspicions of foreign bribery. They further recommend that Colombia take the necessary steps to (i) ensure that APC systematically and effectively verify the absence of convictions for corruption by applicants, including by checking the debarment lists of international financial institutions and (ii) incorporate the anti-corruption clause in contracts financed with FOCAI resources.

A.6. Detecting and reporting foreign bribery through public procurement

79. Pursuant to Anti-Bribery Recommendation XXIV, member countries should permit government agencies to debar and disqualify natural and legal persons that have committed foreign bribery from participating in public procurement as a form of civil or administrative sanction. Furthermore, member countries are encouraged to consider internal controls and compliance measures of the companies with a view to preventing and detecting foreign bribery in their decisions to grant public advantages.

80. As of 2022, 133 827 international contracts were awarded, amounting to a value of USD 6.8 trillion. While the number of international procurement contract award was half of domestic contract award, the value of the former was 1500 times higher than that of the latter (World Bank, 2022[22]). The average value of each procurement contract awarded to foreign companies is significantly higher than the average value of contract awarded to Colombian persons. The lucrative nature of procurement contracts involving foreign companies points to a heightened risk of foreign bribery committed throughout the public procurement process. Therefore, the assessment of Colombia's public procurement framework is crucial to understanding whether Colombian government agencies can effectively disqualify and debar natural and legal persons committing or having convicted of foreign bribery from participating in public procurement and further detect foreign bribery throughout their decision-making process.

A.6.1. Colombia's public procurement framework

81. Public procurement in Colombia is governed primarily through Law 80 of 1993 and Law 1150 of 2007. The central agency, Compra Eficiente, does not have central purchasing and contracting functions but is responsible for formulating public procurement policies and publishing standardised bidding documents in sectors such as agriculture, education, energy, extractives, communications, public administrations, transportation, water, waste, and social protection. The legal framework outlines both the rights and obligations of state agencies and the contractors and the modalities of public procurement contracts, with a preferential condition in favour of the supply of goods and services produced by SMEs.

82. In general, public procurement must undergo public bidding if the contract is worth more than COP 398 million (USD 99 484) (Functión Pública, 2025[23]). However, as provided by Art. 2 of Law 1150 of 2007, where (i) standard products and services are acquired (ii) the contracting value is small compared to the annual budget of the procuring agencies, (iii) the contracts are for the commercial and industrial activities of SOEs, or (iv) goods and services acquired for national defence and security except in cases requiring confidentiality, agencies go through a simplified process. A detailed procedure for this simplified selection was not explained. In some circumstances (such as cases of emergency, national defence industry requiring confidentiality, and contracts with specific entities identified by law), direct contracting without competitive bidding is also available.

83. Of note, the OECD has identified the aerospace and defence related industries as being particularly vulnerable to corruption risks, especially when public procurement and investment are involved (OECD, 2017[24]). In 2020, Transparency International's Global Defence Integrity Index identified Colombia as having a high risk of corruption in its defence sector due, in part, to a lack of transparency in its procurement process (Transparency International, 2020[25]). The absence of a monetary threshold triggering a public bidding process renders the procurement process less transparent and increases the risk of corruption where the value of the contract is high.

84. Concerningly, the number of contracts entered into without competitive process in both 2023 and 2024 was high. In 2023, a total of 855 020 contracts, the value of which amounted to COP 59 trillion (USD 14.79 billion), were entered into without competitive process. In 2024, a total of 915 211 contracts, the value of which amounted to COP 60 trillion (USD 15.08 billion), were entered into through direct

contracting. The number or value of contracts that were entered through the simplified selection process was not provided to the evaluation team.

Use of anti-corruption clauses in procurement contracts remains optional

85. There is no statutory obligation to incorporate an anti-corruption clause in procurement contracts. While Colombia does not have a standardised contract that is applied universally to public procurement contracts, Compra Eficiente has issued standard contracting documents for the transportation infrastructure, drinking water and basic sanitation, and social sectors, noting that any procurement contracts based on these standard contracting documents would automatically include anti-corruption clause. However, these documents were not provided to the evaluation team; regardless, it is clear that terms and conditions vary depending on the contracting sector.

86. The criteria for assessing the suitability of the suppliers would depend on the modality of the project involved and the contracting entities. State entities are not legally obliged to consider whether the bidder has an anti-corruption program when determining their suitability for a public procurement contract.

87. Colombia reports nothing to indicate that it provides any training or guidance on foreign bribery risks and prevention to suppliers or contractors in public procurement processes.

Commentary

The lead examiners recommend that Colombia require anti-corruption clauses in procurement contracts irrespective of the modality of the selection process.

In light of the high risk of corruption faced in procurement by the Colombian defence and security industries, the lead examiners recommend that the Ministry of Defence incorporate anti-corruption declarations as part of their terms of reference, with a view to ensuring that bidders are not subject to an ongoing investigation or do not have a prior conviction relating to foreign bribery.

A.6.2. Grounds of disqualification from a public procurement contract

88. Article 8j of Law 80 of 1993 stipulates that natural persons who have been criminally convicted of corruption offences (including foreign bribery) and legal persons held administratively liable for foreign bribery are disqualified from participating in tenders or competitions for five years and cannot enter into contracts with state entities. Such disqualification applies irrespective of the modality of contracting and extends to legal persons where a convicted natural person is a director, legal representative, or a member of the board to the legal person, its parent companies or subordinates. The law also prevents persons with close familial ties with the high-ranking officers in the contracting state entities from entering the bid or contract.

89. The legal person's disqualification is contingent upon the presence of the natural person in the company. That is, if a natural person A commits foreign bribery as a director of Company B and then later moves to Company C, then Company C will be disqualified from the public tender, not Company B. Company B could be disqualified upon an additional administrative action by the Superintendency of Corporations to disqualify the involved company.

90. Compra Eficiente stated that public entities involved in public procurement processes must undertake due diligence to ensure that legal or natural persons previously convicted of foreign bribery would not secure the contract and must debar or exclude bids or proposals of such persons. One of the means of doing so is through the Single Information System of Ineligibility (SIRI), which contains information on the history of convictions against natural persons and administrative sanctions against legal persons for foreign bribery (see section A.6.4). The procuring agents shall check the fiscal, disciplinary and criminal records of the natural and legal persons to verify whether the bidders are subject to any

disqualification and to exclude persons convicted of foreign bribery from the procurement process. It must, however, be noted that disqualification is not an automatic process; procuring agencies must proactively identify and exclude those bidders.

91. Despite this claim, Colombia did not provide any information to indicate that Compra Eficiente has its own policies addressing foreign bribery. As noted in Section A.6.2, Compra Eficiente itself reported that state entities would not review the bidder's anti-corruption and compliance programme throughout the bidding process. At the on-site, the representatives of Compra Eficiente commented that the agency does not have the resources or capacity to detect foreign bribery red flags.

A.6.3. Possibility of terminating an active procurement contract upon the commission of foreign bribery offence

92. Compra Eficiente's contracting manual states that including an anti-corruption declaration in contracts is considered best practice in public procurement and that the failure to comply with such a declaration may be a ground for unilateral or early termination of the contract. Despite this, incorporating an anti-corruption declaration in procurement contracts appears to be a recommendation rather than an obligation, and there seems to be no legal mechanism in force to obligate procuring agencies to obtain anti-corruption declaration from the contractors

93. Under Art. 17 of Law 80 of 1993, involvement in foreign bribery or any other corruption offences during the period of contractual performance is not a ground for unilateral termination of the contract. Compra Eficiente clarified that, in such instances, instead of terminating the ongoing contract, the contracting entity will unilaterally reassign the contract to another contractor under Art. 9 of Law 80 of 1993. They further explained that this is to ensure that the provision of public services or the supply of goods is not interrupted and to allow the contracting entity to continue contract execution with a new contractor. If the contracting entity fails to find a new contractor, they could then terminate the contract. Article 9 of Law 80 of 1993 warrants a termination of the contract where the contractors are convicted for corruption offences that are irrelevant to the ongoing procurement contract. Colombia did not provide examples of such unilateral reassignment of contracts due to the contractor being held administratively liable for corruption offences. To date, no procurement contracts have been terminated due to foreign bribery.

94. It must be noted that being subject to investigation for corruption offences, including foreign bribery, is not a ground for either the disqualification from entering into a procurement contract with the state entities or the unilateral reassignment of the ongoing contract. A final criminal or administrative decision against the natural or legal persons must be made for the disqualification or the termination or unilateral reassignment of the contract.

95. At the on-site, Compra Eficiente stated that all public entities have an obligation to appoint a regulator responsible for the execution of the public procurement contract. Throughout the contractual performance, these regulators regularly check the criminal convictions and administrative sanctions imposed on the natural or legal person supplier. No legal basis for this requirement or evidence to support its occurrence in practice was provided.

A.6.4. Single Information System of Ineligibility (SIRI)

96. The Inspector General's Office manages the Single Information System of Ineligibility (SIRI) where the convictions of natural persons and sanctions against legal persons for foreign bribery are registered. Natural and legal persons wishing to participate in competitions for public contracts must provide a certificate of eligibility issued by SIRI. Failing to produce this certificate results in ineligibility to participate in the tender.

97. Colombia insisted that all judicial and administrative authorities are required by law to report any disciplinary, administrative, or criminal sanctions issued. For example, PGO stated that Art. 38 of Law 2195 of 2022 imposes an obligation to "inform the Legal Directorate of the Office of the Inspector General about the fines to be collected, the procedures carried out, and the amounts recovered, in order to enable monitoring and oversight of the resources referred to in this Article". However, this provision pertains to the obligation by each state entity to report the fines to be collected by the Inspector General's Office in cases where public officials from the respective entities have been subject to disciplinary penalties. Nowhere in this provision is it required or suggested that a final decision pertaining to foreign bribery (or any other corruption offence) must be communicated to the Inspector General's Office.

98. Similarly, the Superintendency stated that Art. 18 of Law 1778 of 2016 imposes a duty to report to the Inspector General's Office where final administrative sanctions are imposed. However, it appears that the Superintendency would communicate their decisions to the Inspector General's Office only when the facts of the case involved a disciplinary offence. It would be too far-fetched to assume that this is equivalent to reporting all final decisions involving foreign bribery.

99. Furthermore, Colombia reported that to date, no sanctions have been submitted for registration in SIRI that pertain to cases of transnational bribery. This demonstrates that, in practice, not all final judicial or administrative foreign bribery decisions would be registered (as the Superintendency have issued two sanctions against legal persons). Ensuring such registration was a recommendation from Phase 3 that remains partially implemented.

100. As the sanctioning authorities do not have obligations to report foreign bribery convictions and sanctions to the Inspector General's Office, some individuals or entities who have been convicted or sanctioned for foreign bribery may still participate in public bidding or any other government procurement contracts. To date, Colombia has not reported any cases of debarment of natural or legal persons due to involvement in foreign bribery.

101. At the onsite, the representatives of Compra Eficiente noted that under the current framework, there is no mechanism to sanction natural or legal persons for failure to declare a history of misconduct. After the on-site, Colombia has stated that this statement is untrue; however, no substantiating legal basis or explanations were given to support this subsequent assertion.

Commentary

The lead examiners recommend that Colombia ensure, by legislative means, if necessary, that the sanctioning authorities – the courts and the Superintendency of Corporations – notify the Inspector General's Office of any convictions or sanctions imposed on natural or legal persons with a view to considering debarment of the natural or legal persons convicted or held administratively liable for foreign bribery from securing a public procurement contract.

A.6.5. Routine checking of the debarment list

102. In Phase 3, contracting authorities in Colombia did not report that they routinely checked the debarment lists of multilateral financial institutions in the context of public procurement contracting. In Phase 4, Compra Eficiente confirmed that this is still the case, i.e., contracting authorities still do not routinely check the debarment lists of multilateral financial institutions in the context of public procurement contracting.

103. Procuring agencies could choose to consult the debarment lists of multilateral financial institutions in ensuring whether the bidders are eligible to enter into public procurement contract; however, this is not obliged.

Commentary

The lead examiners recommend that Colombia ensure that the procuring agencies and Compra Eficiente routinely check the debarment lists of multilateral financial institutions in the context of public procurement contracting.

The lead examiners recommend that Colombia undertake to raise awareness of the suppliers and contractors of the foreign bribery offence and incentivise proposed suppliers to have anti-bribery internal controls, ethics and compliance measures to combat foreign bribery in place, including whistleblower protection policies. They further recommend that Colombia provide guidance and training to relevant government agencies on such suspension and debarment measures applicable to companies determined to have bribed foreign public officials and on remedial measures which may be adopted by companies, including internal controls, ethics and compliance programmes or measures, which may be taken into consideration.

A.7. Detecting and reporting foreign bribery through anti-money laundering measures

A.7.1. UIAF and Intelligence Sharing

104. Colombia's Financial Intelligence Unit, the Financial Information and Analysis Unit (UIAF), is a special administrative unit within the Ministry of Finance and Public Credit and is a centre for receiving and analysing Suspicious Activity Report (SAR) and other relevant information related to money laundering and its predicate offences. As of 2025, no investigations of foreign bribery have been opened based on information received from UIAF.

105. According to UIAF, the National Risk Assessment 2025-2026 (NRA), as a policy tool, is aimed at expanding the identification of money laundering-related vulnerabilities and threats. Foreign bribery is not one of the specified predicate offences associated with money laundering. However, the offences listed in the section of the CC as crimes against the public administration, which includes foreign bribery (see section B.1), are identified as a high risk predicate offence of money laundering. Regardless, UIAF stated that foreign bribery is a part of its strategic focus in the context where it occurs as a predicate offence to money laundering. UIAF representatives at the on-site visit reiterated this policy but were not able to explain how this manifests in practice.

106. While its institutional strategic plan includes reference to the detection of transnational corruption, such as the identification of suspicious transactions to foreign officials, as well as the development of interagency cooperation and international cooperation to track bribes paid to and/or from Colombia, in practice UIAF does not appear to give any particular priority to detecting foreign bribery.

UAIF has a limited detection capacity and does not undertake training in respect of foreign bribery

107. Colombia has not undertaken any awareness-raising or training to support UIAF's capacity to proactively detect indicators of foreign bribery in SARs and refer such reports to PGO. UIAF does not undertake any specific training on red flags, indicators, or typology studies relating to foreign bribery.

108. At the on-site, UIAF officials noted that there are specialised officers who are trained to detect foreign bribery and money laundering based on SARs. However, while they refer cases of irregularities to PGO, they are not responsible for analysing and identifying the specific economic crimes from these SARs. They stated that, for that reason, they could not pinpoint how many foreign bribery cases they have identified or referred to PGO. It is unclear if UIAF officials would be able to detect foreign bribery red flags

and indicators from a SAR of their own volition even if such information was present. In Colombia's Phase 3 2Y WFU, UIAF reported that they had developed Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) typologies which included typologies of foreign bribery.

109. The list of red flags and typologies used by UIAF for detecting "crimes against the public administration", while potentially useful in detection of domestic embezzlement, tax fraud, abuse of office, etc., neglects the special nature of foreign bribery and its different *modus operandi*. It is doubtful whether the UIAF officials and reporting entities would be able to identify foreign bribery red flags with this typology. Furthermore, it is unclear why the same red flags are used for a broad category of crimes with different nature, including improper use of public function, improper use of public information, tax evasion, domestic corruption, and influence peddling.

Interagency intelligence sharing could be reinforced

110. UIAF has agreements with other state agencies for information sharing purposes. Notably, UIAF has an agreement with the Superintendency to cooperate in preventing foreign bribery and reports an active relationship with PGO.

111. Despite their MoU, information sharing between UIAF and the Superintendency is restricted to general information and risk indicators, rather than specific operational intelligence. This is because, unlike PGO, the Superintendency is an administrative body without the status of a competent law enforcement authority, and as such is not entitled to receive the result of UIAF's analytical work.

112. Indeed, UIAF indicated that they are allowed to share intelligence information with PGO only on request and only insofar as such information pertains to a suspicion of a crime or ongoing criminal investigation. It is unclear whether UIAF shares all intelligence information that indicates foreign bribery red flags or only those that are specifically requested by PGO.

113. Should there be intelligence on a legal person's liability, UIAF would refer the case to PGO if requested, who would then consider whether the information should be forwarded to the Superintendency. There is no requirement that all information concerning legal persons that UIAF deems relevant and refers to PGO would ultimately be shared with the Superintendency, especially in cases when no investigation was initiated against a natural person. Regrettably, the very limited extent of information sharing among UIAF, PGO, and the Superintendency renders the identification of potential foreign bribery from financial intelligence ineffective.

114. The UIAF advised that the original 2016 MoU between itself and the Superintendency was renewed in 2023, but in practice no information has been shared between the authorities to date. Due to the lack of suitable legal basis, the MoU does not seem to have any practical implications.

A.7.2. AML preventive measures and reporting entities

AML preventive measures are largely compliant with FATF standards, but the scope of reporting entities could be expanded

115. In both Phase 2 and Phase 3, the Working Group recommended that Colombia align the scope of professionals covered by AML preventive measures, including in relation to politically exposed persons (PEPs) and beneficial owners, with the FATF standards (FATF recommendation 10 and 12).

116. Decree 830 of 2021, which governs all financial institutions and designated non-financial businesses and professions (DNFBPs), revised the definition of foreign PEPs to include: (i) heads of state, heads of government, ministers, undersecretaries or secretaries of state; (ii) congressmen or parliamentarians; (iii) members of supreme courts, constitutional courts or other high judicial instances whose decisions do not normally allow for appeal, except in exceptional circumstances; (iv) members of

courts or of the boards of directors of central banks; (v) ambassadors, chargés d'affaires senior officers of the armed forces; (vi) members of the administrative, management or supervisory bodies of state-owned enterprises; and (vii) legal representatives, directors, deputy directors and/or members of the boards of directors of international organizations. This definition, unlike the FATF definition of PEP, does not consider the officials of major political parties.

117. Regarding customer due diligence measures on beneficial owners, GAFILAT assessed in 2023 that Colombia has adopted measures to oblige all financial institutions and DNFBPs conduct due diligence on customers to identify and verify beneficial owners who directly or indirectly hold 5% or more of the legal persons.

118. Further to this reinforcement of AML preventive measures, Colombia has expanded the scope of non-financial entities under AML/CFT reporting obligations to the real estate and construction agents, trade of precious metals and stones, legal services, and accounting services sectors (in accordance with the reforms of Chapter X of the Basic Legal Circular of the Superintendency of Corporations). While these steps were deemed positive, the Working Group expressed lingering concerns in terms of the scope of coverage for some individuals (in particular, lawyers and accountants) when they are not registered entities (i.e., the law or accounting firms), given the high money laundering risk by these professions and the very limited scope of "gatekeeper" professionals covered.

Statistical information concerning reporting entities is severely lacking

119. As of April 2025, Colombia had 32 355 entities considered as reporting entities under its AML/CFT regime. According to UIAF's dedicated page on SARs, a SAR must include a description of the predicate offence of the money laundering or financing of terrorism. How foreign bribery would be classified under SAR is unclear.

120. Nevertheless, intentional omission of reporting by the obliged entities on cash transactions, mobilisation or storage of cash is a *sui generis* offence, punishable by imprisonment of 38 to 128 month and a fine between 133.33 to 15 000 of the legal monthly minimum wages (Art. 325A CC). While the severity of these sanctions reflects the intended policy emphasis, it risks resulting in low quality "defensive" reporting by the obliged entities that may impede the effective functioning of the reporting system. No actual case examples were provided to demonstrate application in practice.

Training of reporting entities on foreign bribery is also lacking

121. The UIAF stated that existing e-learning modules aimed at providing knowledge on the fight against money laundering, the financing of terrorism and the proliferation of weapons of mass destruction also address the topic on foreign bribery. The UIAF also claimed that their updated e-learning courses discuss foreign bribery red flags. However, the content of the e-learning modules was not shared rendering the evaluation team unable to verify to what extent information on foreign bribery is present.

122. UIAF has a training platform, available for 31 000 compliance officers and reporting entities, which aims to improve the performance of each actor within the AML/CFT system, including the reporting entities. UIAF did not provide information to allow an assessment of whether the reporting entities are provided with sufficient guidelines and typologies to identify and report foreign bribery indicators.

Commentary

The lead examiners reiterate the recommendations made in Phase 2 and 3 that Colombia align the scope of professionals covered by AML preventive measures, as well as customer due diligence obligations (including in relation to PEPs and beneficial owners), with the FATF Standards.

To date, no foreign bribery case has been detected through Colombia's anti-money laundering system. This can be attributed to the lack of awareness and foreign bribery specific risk

assessment, as well as insufficient training provided to reporting entities to identify and report suspicions of money laundering predicated specifically on foreign bribery to UIAF.

The lead examiners are concerned that UIAF is taking a passive role in detecting foreign bribery and its related offences through SARs despite being well placed to identify foreign bribery red flags concerning financial transactions.

The lead examiners therefore recommend that Colombia (i) revise its National Risk Assessment, taking into consideration foreign bribery and related offences risk, (ii) provide sufficient training on foreign bribery for UIAF staff to guide them in identifying foreign bribery red flags in SARs, and (iii) develop and disseminate respective red flags and typologies to the obliged entities.

Of further concern, the lead examiners consider the overly limited information exchange between the competent authorities a serious deficiency. They therefore reiterate the Phase 3 recommendation that Colombia ensure, by legislative steps, if necessary, that the UIAF, at a minimum, proactively notifies the Superintendency about suspicions concerning legal persons, and further extends this recommendation to include that the UIAF proactively notifies PGO about suspicions concerning natural persons.

A.8. Detecting and reporting foreign bribery through accounting and auditing

123. Article 8 of the Convention and Anti-Bribery Recommendation XXIII aim at ensuring that WGB Members' rules and practices for accounting and auditing are in line with certain principles on accounting requirements and independent external audit, and are used to prevent and detect foreign bribery taking into account, where appropriate, the individual circumstances of a company, including its size, type, legal structure and geographical and industrial sector of operation.

A.8.1. Auditing practice in the public sector

124. Colombian SOEs represent a growing share of the country's exports. For example, since 2022 the largest and primary petroleum SOE has been expanding its regional and international presence through active participation in other countries' infrastructure and procurement projects (Ecopetrol Group, 2022[26]). The growing international exposure of Colombian SOEs, combined with the increasing presence of foreign entities in public procurement, underscores the importance of robust auditing practice in the public sector. In this context, Colombian public auditing agencies are well positioned to identify irregularities and detect potential instances of foreign bribery, particularly in relation to procurement activities and the operations of SOEs.

125. In Colombia, the Office of the Comptroller General of the Republic (OCG) and the Territorial Comptroller Offices, within their respective mandates and jurisdictions, audit activities related to the fiscal management of government authorities and SOEs. The Office of the Auditor General (AGR) is mandated to exercise oversight and control of the fiscal management of all fiscal control bodies, the Superior Audit Institution, OCG, as well as of the departmental, district, and municipal comptroller offices.

126. AGR reported receiving 8 complaints related to corruption cases in 2024. None of these were identified as relating to foreign bribery. Concerns can be raised about the handling of the complaints, however, based on an example provided by Colombia. This case, which AGR closed following internal investigation, involved the allegation of bribery of a Colombian official working within OCG by an employee of the Chamber of Commerce. Upon receiving the complaint, AGR requested OCG to conduct an internal investigation, through which they found that the facts of the misconduct could not be identified. The complainant criticised the outcome, specifically stressing that the case had been closed despite evidence – including payment receipts and communication between the briber and the official – existing. AGR

responded by stating that it does not review the procedural aspects of decisions made by government agencies, nor does it determine disciplinary proceedings against public officials. It further emphasized that requests that do not satisfy a good faith requirement would be rejected. The case was never referred to the Inspector General's Office, which has remit for the disciplinary proceeding of public officials, nor, even more concerningly, to the only authority with competence to handle suspicions of a crime, PGO, even though the allegation clearly raised the suspicion of a serious criminal offence.

127. AGR clarified that the case was referred to OCG (instead of the Inspector General's Office or PGO) as OCG acts as a competent authority with the power of investigating such incidences. They also explained that the disciplinary proceeding against the public official was initiated by OCG's Disciplinary Control Office, stating that this office, which presumably is part of OCG, has jurisdiction over misconduct by OCG officials. Colombia did not explain why OCG was considered the competent authority with the power to investigate an incident of a potential corruption crime committed by its own official.

128. This example paints a concerning picture of a supervisory body that conducts audits of public sector agencies yet does not have any jurisdiction to identify and examine the procedural irregularities that could arise from the agencies' decision-making process. While foreign bribery could arise throughout the entire process of a public agencies' decision-making process, AGR's inability to conduct investigations into an agencies' decision-making process limits their capacity to detect foreign bribery incidences.

129. AGR emphasized that where facts with potential criminal, disciplinary, or fiscal relevance are detected in the course of audits, its officials must refer them to the competent authorities. Given that this case was never referred to any competent authorities, including PGO, there is a question of whether this obligation to report only arises if they identify such red flags in the course of their own auditing practice and not when identified through complaints filed.

130. Moving beyond the content of any specific case, the manner in which this investigation was conducted, combined with AGR's hostile response to their methods being questioned, is disturbing. As it stands, it appears there is little preventing AGR from utilising its internal investigation procedures to obfuscate or even cover up corruption targeted towards public officials.

131. Concerningly, it appears that, in this case, the attitude and the motivation of the complainant played a significant role in AGR's decision to initiate the investigation on the allegation made. Even where the complainant raises issues of procedural unfairness underlying the internal investigation, it appears AGR could treat the criticism as a 'disrespectful' request and then cite this as a ground not to proceed with further investigation. This example illustrates the lack of systematic approach and passivity of AGR towards corruption, as well as the risk that potential instances of foreign bribery may not be adequately investigated or referred to the competent authorities.

132. In 2025, AGR's Action Plan included the improvement of an anti-bribery management system based on ISO 37001 (an international standard for establishing, implementing, and maintaining anti-bribery management systems). The evaluation team received a webpage link from Colombia, reportedly with information on such a system, which could not be accessed. Consequently, the evaluation team was unable to verify the existence of such a system (or its content and operating mechanism).

133. As stated by AGR representatives at the on-site, their training does not contain material relating to foreign bribery and foreign bribery red flags that auditors could use to detect potential foreign bribery.

134. In this context, a statement made at the on-site by a representative of AGR was especially disturbing. When questioned on their understanding of their reporting obligation, this representative responded that they would not report foreign bribery red flags to the appropriate authorities because "it's not like [foreign bribery] is a real crime."

135. Overall, the evaluation team was left with the concerning impression that AGR does not perceive foreign bribery and corruption offences as sufficiently serious to necessitate immediate referral to law

enforcement authorities. This highlights not only the low level of awareness of the foreign bribery offence but the misconception within some public agencies that instances of corruption could be addressed through internal disciplinary proceedings without criminal proceeding.

Commentary

The lead examiners are seriously concerned at the lack of proactivity within AGR towards identifying and reporting corruption allegations. While AGR serves as a central supervisory authority for public sector auditing, its minimal transparency towards internal corruption allegations and understatement of the gravity of the corruption offences are alarming.

The lead examiners recommend that Colombia provide systematic and regular trainings to public audit agencies on the criminal nature of corruption, and specifically the foreign bribery offence, as well as the importance of referring identified foreign bribery incidences to the competent authorities, with a view to ensuring that all foreign bribery allegations are investigated promptly.

A.8.2. Entities under auditing and accounting obligations

136. Companies with assets higher than 5000 legal minimum wages (approximately USD 1.6 million) and/or income higher than 3000 legal minimum wages (approximately USD 981 000), subsidiaries of foreign companies, and stock companies must appoint a statutory auditor called a *revisores fiscales* (Brigard Urrutia, 2023[27]). SOEs with mixed ownership should also have a statutory auditor if incorporated as joint stock companies in accordance with Art. 203 of the Colombian Commercial Code or if its assets of the preceding year exceed 5000 legal minimum wages. Some small and medium sized companies, and most large companies would fall under this requirement. Approximately 54 000 (12%) of Colombia's registered commercial companies and 92% of the companies supervised by the Superintendency have statutory auditors.

137. Concerningly, at the on-site, Superintendency stated that the number of mandatory audits fluctuates yearly depending on the calculation of the company's annual assets. That is, whether a company is subject to mandatory audit depends only on whether the company's assets and income in the preceding year exceeds the aforementioned threshold. This could lead to a situation where companies are able (or incentivised) to manipulate and falsify their books and records to avoid being subject to audit.

138. The standards of accounting are governed by Law 1314 of 2009 for all legal and natural persons who are obliged to keep accounts, public accountants, officials and other persons in charge of the preparation of financial statements and other financial information. These standards apply to:

a. Entities that have securities registered in the national Registry of Securities and Issuers,

b. Entities of public interest, and

c. Entities with staff more than two hundred workers or the total assets in excess of 30 000 current legal monthly minimum wages (approximately USD 9.87 million) that are a subsidiary or a parent of a company that apply full International Financial Reporting Standards (IFRS) or importing or exporting more than 50% of purchases, financial institutions and capitalisation companies.

Full compliance with IFRS standards is required for all publicly listed companies, large subsidiaries of IFRS parent companies, export-import companies, and government owned or controlled companies. SMEs are subject to an SME-specific IFRS, which entails fewer disclosure requirements and allows simplified accounting mechanisms. The specific accounting requirements are not detailed in Colombia's legislation.

139. Rather, the Code of Commerce dictates that the commercial enterprises must register all acts, books and documents in respect of which the law requires such formality in commercial register and keep regular accounts of their businesses. Commercial enterprises include all those that are involved in

production, transformation, circulation, administration, or provision of goods and/or services. The acquisition, transfer, receipt and disposal of assets, securities and monies are considered commercial under the Code.

140. Under Art. 58 of the Commercial Code, companies may be sanctioned with a fine of up to 2000 legal monthly minimum wages (approximately USD 657 980) for natural persons and 100 000 legal minimum monthly wages (approximately USD 33 million) for legal persons upon a failure to keep the books and accounts of the business (see section B.5.2).

141. Article 34 of Law 222 of 1995 further requires companies to disseminate duly certified general purpose financial statements to the Superintendency annually. How the Superintendency assesses the financial statements of the companies was not explained.

A.8.3. Reporting obligations of auditors and accountants

142. Under Art. 7 of Law 1474 of 2011 and Art. 32 of Law 1778 of 2016, statutory auditors must notify the company's management of the facts of the foreign bribery incidence and file the complaint within six months following the first time they discover these facts. In addition, they have an obligation to report to the Superintendency of Corporations all acts of corruption that they have detected in the exercise of their duty. The professional secrecy regime under Art. 63 of Law 32 of 1990 is not applicable where such a report is filed. As provided in Art. 26 of Law 43 of 1990, failure to report is grounds for disqualification of a statutory auditor.

143. While the law specifies this reporting obligation to be applicable only to statutory auditors, auditors and accountants present at the on-site confirmed this obligation to report applies to both statutory and internal auditors and accountants. They also noted that their duty is to report to the company's management prior to reporting to the Superintendency and that they could not report directly to the Superintendency where foreign bribery red flags are identified.

144. Article 27 of Law 1762 of 2015 obliges statutory auditors to also report to the UIAF any relevant information on the management of assets or liabilities or other resources, the amount or characteristics of which are not related to their usual economic activities, or on transactions of its users which the amount transacted may reasonably lead to suspicion that they are using the entity to transfer, handle, or take advantage of resources from criminal activities or intended for their financing.

145. However, despite such an obligation, Colombia was unable to provide the number of reports made by auditors in relation to foreign bribery incidences since Phase 3. Auditors and accountants indicated that there is no actual mechanism to enforce this obligation as it is based mainly on the professional ethics code and internal regulations.

146. Additionally, the lead examiners were deeply concerned to hear several accountants and auditors present at the on-site state that they would not make reports to PGO upon identifying foreign bribery red flags, with one auditor explaining this was due to the perceived lack of efficacy within PGO to respond to foreign bribery allegations. They further noted that the lack of protection hinders active detection and reporting by the auditors, especially when information on the discloser could be easily found.

Commentary

The lead examiners recommend that Colombia ensure that where foreign bribery suspicions arise, auditors and accountants are allowed to report these suspicions directly to PGO and the Superintendency, independent of the company.

The lead examiners further recommend that Colombia ensure that all relevant protections are available to those who may suffer retaliation, including auditors and accountants, with a view to encouraging their active detection and reporting of foreign bribery.

A.8.4. Awareness-raising for accountants and auditors

147. The Superintendency reported that accountants and auditors are provided with relevant educational materials for identifying foreign bribery red flags, such as the guideline "*The role of the Statutory Auditor in the Fight Against Transnational Bribery, Money Laundering and Terrorist Financing*". The guideline touches upon foreign bribery red flags that statutory auditors must look out for when auditing a company's financial transactions and records, as well as red flags inherent in the company's corporate structure and compliance programmes. It also refers to the typologies of bribery and corruption from the *OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors*. The guideline further emphasizes the duty of auditors to report the potential foreign bribery incidences to UIAF and the Superintendency and includes a webpage link where auditors could file a report of foreign bribery. At the on-site, the Superintendency claimed that the guideline is available on the Superintendency's webpage; however, no link was provided, and the evaluation team was not able to locate the page hosting the guideline online.

148. In 2024, the Superintendency held a workshop on self-management of corruption and foreign bribery risks for auditors and accountants; however, neither the content of the workshop or details of attendance were shared with the evaluation team. The Superintendency did not indicate whether any other trainings are provided, either regularly or ad-hoc, to auditors and accountants on foreign bribery detection.

149. The auditors and accountants who participated at the on-site appeared to be well aware of their obligations to report and the available reporting channels. However, little has been done since Phase 3 to train and raise awareness of auditors and accountants on detecting foreign bribery.

150. The Central Board of Accountants, as a disciplinary body for auditors, do not offer training specific to foreign bribery but do provide training on AML/CFT regulations. The representative of the Board present at the on-site clarified that they do not have the ability or resources to train auditors and accountants on prevention and detection of foreign bribery. AGR acknowledged that they do not have a guideline for public auditors to detect foreign bribery and the current training programme for auditors does not include contents on foreign bribery risks. Auditors and accountants present at the on-site admitted that Colombia provides insufficient guidelines for auditors to detect foreign bribery.

151. Given the limited guidelines and trainings provided to the auditors and accountants on foreign bribery detection, it is doubtful whether Colombian auditors and accountants would be able to identify foreign bribery red flags in a company's financial records. This concern seems to have been proven in practice; in the ***Flight Company (South American countries)*** case, PGO claimed that they could not progress the investigation to the next stage because the auditor's report did not identify any irregularities in the company's financial statements. While this may point more to PGO's limited capacity and competence to analyse the existing evidence, it also demonstrates the need to sufficiently train auditors and accountants on foreign bribery red flags with a view to enhancing Colombia's overall foreign bribery detection.

Commentary

The lead examiners recommend that Colombia (i) develop guidelines with detailed information on, *inter alia*, methods of detecting foreign bribery, foreign bribery red flags, the obligation to report, and the scope and channels for reporting, and (ii) conduct regular trainings to raise awareness on the part of auditors and accountants on foreign bribery red flags and risks.

A.9. Detecting foreign bribery through media reports

152. Freedom of the press is critical to fighting foreign bribery; journalists are often the first or secondary source of information for corruption cases, and media reporting is a vital method for informing the public of

instances of corruption, both domestically and internationally. Journalists may be a source of detection, both through their own research and reporting, or if media organisations are approached by potential whistleblowers who may not feel safe or able to utilise internal or governmental whistleblowing channels. The Anti-Bribery Recommendation welcomes the efforts of the media to contribute to the fight against foreign bribery; Recommendation VIII encourages law enforcement authorities to proactively gather information from diverse sources, such as the media, to increase detection of foreign bribery and enhance investigations.

153. In Colombia's responses to the Phase 4 questionnaire, the Superintendency of Corporations reported that, while they periodically review open sources such as media, they do not rely on media to open investigations.

154. PGO stated that the *ex officio* obligation to start an investigation includes allegations of crimes published in the media. In this case the allegation would be assigned to a prosecutor who would then decide on the appropriate course of action. As a general rule, the prosecutor would task the Police with the verification of facts. According to PGO, four of its foreign bribery investigations were started based on media reports, followed up by police verification and subsequent reporting back to the prosecutor. It is not clear whether any of the law enforcement or intelligence agencies conduct systematic media monitoring to detect allegations of crimes, including foreign bribery.

155. Other agencies did not respond questions regarding whether they systematically and proactively monitor media, including foreign media.

156. During the on-site discussion, journalists mentioned multiple facts and allegations they had investigated and reported on relating to potential instances of foreign bribery. None of these cases matched PGO's reported investigations. This would appear to contradict PGO's *ex officio* assertion that all reports made in media would result in an investigation. It also highlights PGO's limited use of media in detecting foreign bribery.

A.9.1. Colombian journalists face significant threats to their safety and security

157. Colombia ranked 115 out of 180 in the 2025 World Press Freedom Index, placing it as one of the most dangerous countries on the continent for journalists (Reporters Without Borders, 2025[28]). Coverage of topics such as corruption or collusion between politicians and organised crime elicits a direct response of systematic harassment, intimidation, and violence. In addition, media in Colombia is highly concentrated, with the most significant outlets being either themselves part of economic conglomerates or having strong ties to powerful economic groups (Global Media Registry, 2024[29]). This results in a media environment where owners' economic interests may limit editorial independence and reinforce self-censorship; for example, of 569 Colombian journalists surveyed, 41% reported that they had omitted to publish information for fear of losing official advertising (Foundation for Press Freedom, 2025[30]).

158. The executive branch has launched several initiatives concerning the information sector, including protection measures for journalists and support for alternative media, the creation of "solidarity" communication networks promoting more inclusive and participatory journalism, and proposals to support media management (Media Landscapes, 2025[31]).

159. Despite this, the Colombian government has faced allegations of using social media to combat criticism from the traditional media, with senior officials accused of vilifying journalists (Civicus Monitor, 2024[32]). While the President has pledged "firm action" on violence against journalists, the number of journalists reporting receiving credible death threats has increased (Reporters Without Borders, 2024[33]). Five journalists have been murdered in Colombia in the last three years (RSF, 2024[34]), with two of these being under state protection at the time of their deaths (RSF, 2024[35]) (RSF, 2024[36]).

160. At the on-site, journalists stated that, in Colombia, it is “more dangerous to investigate political leaders than to investigate the cartels”. They openly described the threats they had experienced, including the risk of being subject to search and seizure from law enforcement authorities upon reporting acts of corruption and instances where, despite constitutionally protected rights, journalists have been threatened with arrest to coerce them to reveal their sources of information.

161. Notwithstanding the difficult circumstances faced by journalists in Colombia, media remain an important source of detection for corruption cases. For example, in its responses to the case-based questionnaire, the only method of detection indicated by Colombia (other than reports from the Judicial Police) was the media.

162. Colombia did not indicate that any measures had been taken to strengthen freedoms of the press, to increase protections for journalists and those reporting on corruption, or to ensure that threats against journalists are treated as credible and properly investigated and sanctioned.

A.9.2. Freedom of information

163. Colombia’s Law of Transparency and right of access to national public information is contained in Law 1712 of 2014. Under Art. 2 of that Law, information held by public entities is presumed to be public unless the disclosure of such information would affect national defence or public security, compromise international relations, jeopardize criminal proceedings, violate judicial secrecy or due process, infringe on the privacy, threaten the life, safety or health of a person, or interfere with administrative proceedings. Despite this, it appears that, in practice, enforcing transparency rules presents a huge task for civil society. For example, panellists described a 3-tiered administrative court procedure, which can result in years of delay in obtaining requested information.

164. At the on-site, journalists described the difficulties they experience in accessing information regarding the use of public funds, especially in public procurement projects. They stated their perception of a general lack of transparency with respect to government activities in Colombia, including legislative consultations. For example, they stated that governmental institutions routinely claim that their procurement contracts pertain to private economic activity or omit relevant details, such as the quality or quantity of procured services, to avoid providing fulsome information. Those present ascribed this lack of transparency, despite the constitutionally protected freedom of information, to a lack of institutional capacity to access the public information.

Commentary

The lead examiners are seriously concerned that a restrictive press freedom environment in Colombia may be hindering the detection of foreign bribery cases. As the Working Group has repeatedly noted, a free press with thriving investigative journalism is invaluable for revealing foreign bribery. In line with Working Group evaluations of other countries,[2] the lead examiners therefore recommend that Colombia ensure that the Constitution and other laws relating to freedom of the press are fully applied in practice so that allegations of foreign bribery can be reported.

A.10. Whistleblower protection

165. Whistleblower protection was one of the key topics addressed by the revision of the 2021 Anti-Bribery Recommendation. Anti-Bribery Recommendation XXII recommends “in view of the essential role that reporting persons can play as a source of detection of foreign bribery cases, that member countries establish, in accordance with their jurisdictional and other basic legal principles, strong and effective legal and institutional frameworks to protect and/or to provide remedy against any retaliatory action to persons

working in the private or public sector who report on reasonable grounds suspected acts of bribery of foreign public officials in international business transactions and related offences in a work-related context."

166. In Phase 3, the Working Group expressed serious concerns about Colombia's lack of progress in adopting legislation that provides clear and comprehensive protection from retaliation to whistleblowers. Throughout three follow-up reports in 2021, 2023 and 2024 respectively, the Working Group continued to monitor Colombia's efforts to implement the recommendation given in respect of this issue; however, despite draft legislation being developed, no such legislation has been adopted.

A.10.1. Current situation

Existing channels for reporting

167. Anti-Bribery Recommendation XXI(ii) recommends that member Parties "provide easily accessible and diversified channels for the reporting of suspected acts of bribery of foreign public officials and related offences and raise awareness of these channels and of the importance of reporting such suspicions, including by providing guidance and follow-up to encourage and support reporting persons."

168. In Colombia, various reporting channels exist within different government agencies. Under the current regime, anonymous reports can be made in writing; the report must allow for the identification of the perpetrator, record the day and time of the crime, and contain a details account of the facts known to the complainant. Article 69 of the CPC provides that anonymous reports that do not meet these criteria would be archived and deemed insufficient to open an investigation. Despite this limitation, Colombia reiterated its position that Anti-Corruption Hotline 157 (see paragraph 171 for details) also enables anonymous verbal reporting.

169. The Superintendency of Corporations has an online foreign bribery reporting channel available to the public, which also includes information on foreign bribery and the consequences of reporting. The Superintendency noted that the Delegation for Economic and Corporate Affairs conducts periodic follow-ups on the measures implemented to review internal procedures and the reporting channels available within the Superintendency. Colombia states that these reviews are publicly available; however, copies of such reviews were not provided to the evaluation team and attempts to locate these by independent research were unsuccessful.

170. PGO has a specialized channel for receiving complaints about criminal conduct, which may include complaints related to potential instances of foreign bribery. Reports may be submitted by either identified or anonymous individuals. Relevant information may also be received through PGO's correspondence office, which handles anonymous complaints, referrals from other entities aware of potentially criminal conduct, as well as data provided by UIAF, the Superintendency of Corporations, the Financial Superintendency, and the National Tax and Customs Directorate (DIAN), among other entities. Disclosers may make a report through PGO's website, telephone lines, mail, and text messages. Colombia did not report whether any reports of foreign bribery have been received through these channels or on efforts to ensure that the public is aware of their availability, nor were they able to provide any aggregate statistics on the use of these channels.

171. In January 2025, the Transparency Secretariat launched Anti-Corruption Hotline 157, a nationwide telephone channel available 24 hours a day, 7 days a week. The technical operations of Hotline 157 are supported by specialized personnel from the Criminal Investigation and Interpol Directorate (DIJIN) of the National Police of Colombia. Colombia reports that these officers have received "comprehensive training" in citizen service via digital channels, risk analysis, interviewing techniques, complaint intake, and the legal framework for corruption-related offenses. Currently, 40 police officers are assigned to operate the hotline from the Command, Control, Communications, and Computing Centre, located in Bogotá.

172. Colombia reported that a total of 2 366 complaints were received through the hotline from January to February 2025. However, Colombia was not able to indicate whether any of these related to foreign bribery, nor how many have been referred to the relevant law enforcement authorities for investigation. Colombia subsequently advised that, as of October 2025, no complaints have been referred to the competent authorities.

173. As concerns the private sector, the Superintendency of Corporations explained that those companies under the supervision of the Superintendency whose gross income or total assets exceed 30 000 monthly legal minimum wage (approximately USD 11 million) must implement an internal reporting channel that guarantees anonymity and prevents retaliation. These companies are also required to promote the reporting channels of the Superintendency among their employees. Given that Colombia's SMEs are defined as those whose gross income is less than 30 000 monthly legal minimum wage, only large companies are subject to these requirements, which is equivalent to less than 1% of Colombian companies.

Attempts at reform have failed repeatedly

174. In 2023, Colombia reported that the House of Representatives issued and were considering Bill No. 291 of 2023: the "Jorge Pizano Bill", named for one of the key witnesses in the ***Odebrecht*** corruption case, who was poisoned with cyanide after blowing the whistle. This Bill aimed to increase protections for individuals reporting alleged acts and/or events of corruption and would have represented Colombia's first ever statutory whistleblower protection framework.

175. However, in June 2025, Colombia advised that, despite the Jorge Pizano Bill being brought before the Senate on multiple occasions, it could not be put to vote due to a lack of quorum within a designated time frame. During the first reading for the adoption of this Report, Colombia advised that the Bill had been recently reintroduced. According to procedure, it must now restart the entire legislative process in the next legislative session of the Congress.

A.10.2. Currently, protection to whistleblowers is practically non-existent

176. Colombia does not have a legal framework for whistleblower protection. PGO has a witness protection program (Law 418 of 1997), which was updated in September 2024 through Resolution O-0205. Since 2022, PGO has had four cases under the protection program linked to corruption offences but could not identify if any of these cases were linked to active foreign bribery investigations.

177. Under this program, witnesses, victims, those involved in the criminal proceedings, and the relevant officials of PGO could benefit from the available protections. The families and relatives of the potential beneficiaries of the program, including partners of the beneficiaries, could also apply.

178. Despite this, only those involved in criminal proceedings are able to access protection as a virtue of being a witness. Further, a whistleblower whose status has not yet converted into a witness or whose report(s) never result in a criminal investigation would not be eligible. Lastly, a whistleblower whose allegation leads to an administrative proceeding would not qualify; the Superintendency of Corporations does not have any programme or mechanism for offering witness protection.

179. Meanwhile, protection would also not be granted to members of the police and military, public defenders and legal representatives, persons whose protection is the responsibility of the national protection unit, to victims and witnesses who are at risk due to their participation in transitional justice processes or to those serving custodial sentences.

180. The types of protection available are restricted to where there is a likelihood of physical threat due to the whistleblower's involvement in criminal proceedings. This means that if the retaliation occurs in a

work-related context, or the threat is non-physical, no protection would be available. The retaliating employers would not be subject to any repercussions following their actions against the whistleblowers.

181. In December 2024, Colombia issued Administrative Decree 1600 of 2024, which set up a technical subcommittee for the detection and punishment of acts of corruption under the Transparency Secretariat. The mandate of the technical subcommittee includes proposing guidelines for the detection and punishment of acts of corruption and articulating the necessary mechanisms to ensure timely and efficient whistleblower protections. The Transparency Secretariat stated that the protection described in the decree extends to whistleblowers in foreign bribery cases and that the decree is expected to have a "positive outcome" on the overall whistleblowing practices in Colombia. However, Colombia did not indicate if any guidelines or detailed action plans were adopted to implement these mandates. The practical implication of this decree on the Colombia's whistleblower protection framework, therefore, cannot be assessed.

182. At the on-site, both non-governmental and governmental representatives were ubiquitously of the opinion that the Colombia's current legal framework is woefully insufficient to provide effective protection to the whistleblowers. Participants stated their view that the scope of protection is too narrow and that PGO is unable to properly resource the witness protection programme, citing numerous incidences of whistleblowers being subject to physical violence and retaliation within companies. As mentioned above, auditors commented that the absence of a whistleblower protection framework resulted in a fear of retaliation for reporting, demonstrating the chilling effect on whistleblowing activities by individuals in professions with obligations to report as well as citizens.

183. The Colombian chapter of Transparency International, Transparencia por Colombia, noted that several non-governmental organisations provide protections to whistleblowers. However, such protections cannot and do not substitute a systematic and statutory protection framework and should not be relied on to provide what should be a state-maintained and managed service.

184. Given these substantial gaps, Colombia's current framework for providing protection to whistleblowers falls significantly short of the standards recommended by the WGB. Colombia itself acknowledges the increasing numbers of complaints despite a lack of awareness among citizens on how to file complaints. In the context of regular and realised threats of violence and murder against whistleblowers, this now represents an extremely serious situation that warrants immediate action.

Awareness-raising of making whistleblower reports and protection

185. Anti-Bribery Recommendation XXII calls for member states to raise awareness and provide both training on the design and implementation of the legal and institutional frameworks to protect reporting persons and protections and remedies available.

186. The Transparency Secretariat delivered eight awareness raising sessions targeting citizens. Based on the material provided by the Transparency Secretariat, the training focuses on the various reporting channels that citizens could use to report corruption incidences. However, specific content on foreign bribery nor the red flags for different corruption offences are included.

187. The Transparency Secretariat states it has instructed agencies to conduct further trainings to strengthen the "citizenship oversight". However, they offered no evidence to indicate what was meant by this, to support this statement, or to indicate whether (and, if so, any details such as when, in what format, and to whom) such trainings were conducted. Equally, Colombia did not provide information on any public facing initiatives aiming to raise awareness of existing procedures for handling complaints, or the protections available to whistleblowers.

Commentary

The lead examiners are gravely concerned about the absence of comprehensive protection for whistleblowers, especially in light of the circumstances faced by whistleblowers in Colombia.

Despite the increasing number of corruption cases, this absence of protection is effectively discouraging potential whistleblowers from making reports. Colombian law imposes a general obligation on citizens to report any criminal activity of which they become aware yet offers no protection to those who may be in danger by virtue of fulfilling this obligation; without a robust whistleblower protection framework, this obligation effectively compels individuals to make themselves vulnerable to potential retaliation and harm, thereby placing the burden on citizens at the cost of their own safety.

In the context of these concerns being raised as far back as Phase 2, the lead examiners therefore reiterate, in the strongest possible terms, the Working Group's previous recommendations that Colombia, as a matter of extreme urgency, adopt legislation that provides clear and comprehensive protections from retaliation to whistleblowers across the public and private sectors.

Once such a whistleblower protection framework is established in law and in place, the lead examiners recommend that Colombia undertake significant efforts to raise public awareness of the framework for whistleblower protection, in particular on the reporting channels, the protections afforded to whistleblowers, and the usefulness of whistleblower reports.

A.11. Detection by self-reporting

188. The Working Group has recognised self-reporting (or voluntary disclosure) by companies as an invaluable source of detection of foreign bribery and notes that across the parties to the Convention, self-reporting by companies accounts for approximately a quarter of all foreign bribery cases detected since the entry into force of the Convention. Self-reporting by companies may also lead to the detection of foreign bribery by natural persons that would otherwise not have come to the attention of law enforcement.

189. Colombian law does not contain specific provisions on self-reporting by legal persons. However, the actions of the legal person after the commission of the crime may be taken into account by the Superintendency in determining the nature and quantum of sanctions against a legal person and could therefore be considered an incentive for self-reporting (see section C.2.3 for further discussion on the benefits of collaboration).

190. Despite this, at the on-site, a private sector representative commented that Colombian companies are not incentivised to self-report as, under the administrative liability regime, the maximum benefit that the companies could obtain from self-reporting is a reduction of fines. Another private sector representative explained that if they were to receive a report of an employee's misconduct, they would initially conduct an internal investigation with any uncovered misconduct pertaining to a criminal wrongdoing being referred to PGO and the UIAF, who would in turn open a formal investigation. Interestingly, one of the representatives noted that in this scenario, the company would be considered a victim of the crime, and as such not held liable for the offence committed by the employee.

191. Colombia has not taken any steps to encourage Colombian legal persons to self-report when their employees or agents commit foreign bribery. After the adoption of Law 2195 of 2022, relating to the liability of legal persons for acts of corruption, Decree 390 of 2024 was issued to provide companies a guidance on how to self-report and the benefits accruing from self-reporting. However, this decree does not provide any explanation or guidance as to how the calculation of sanctions would be affected by self-reporting.

192. Notwithstanding the existence of guidance, without a strong enforcement mechanism the company's limited incentive to self-report could create a business environment that fosters the systematic cover-up of foreign bribery cases.

Commentary

Self-reporting, particularly by legal persons, is an important source of detection of foreign bribery cases. The lead examiners therefore recommend that Colombia create a comprehensive and transparent framework for the benefits of self-reporting covering both the criminal and the administrative procedure for foreign bribery.

They further recommend that Colombia ensure, by whatever means necessary, that companies reporting offences conducted by their employees and agents cannot escape administrative liability by being deemed victims in the criminal procedure.

B. Enforcement of the foreign bribery offence

B.1. The foreign bribery offence

193. Colombia's foreign bribery offence (*soborno transnacional*, transnational bribery) is included in Art. 433 of the CC. The article was last amended by Law 1778 of 2016, to implement the Working Group's Phase 1 and 2 recommendations. No changes have been made to Colombia's foreign bribery offence since.

194. During the Phase 3 evaluation, the WGB found that its Phase 2 recommendations in relation to the structure and elements of the offence were fully implemented. The Phase 2 recommendation 8d – concerning the offer of a bribe that does not reach the foreign public official – was converted to a follow-up issue, due to uncertainty of interpretation. Since Colombian practitioners maintained their position, supported by Supreme Court decisions in domestic bribery cases (e.g., judgment CSJ SP203-2023), establishing that the bribery offence is a unilateral act and does not require any action or recognition from the passive side of the bribery, further follow-up on this issue would appear to be unnecessary.

195. As such, when taken in combination with CC articles on complicity, attempt, and liability of intermediaries, Colombia's legal framework meets the criteria of Article 1 of the Convention and related standards, as considered by the Working Group in its previous monitoring reports. Similarly, there are no specific defences applicable to foreign bribery.

196. Two related matters are discussed below; the principle of opportunity and possible negotiations between the prosecutor and the accused that may be applied to natural persons (section B.6.1), and the benefits for cooperation available to legal persons (section C.2.3).

Commentary

The lead examiners consider that the foreign bribery offence is in line with the Convention's standards. This lends support to the overall finding that Colombia's lack of foreign bribery enforcement is due to the application in practice, hampered by various factors, as outlined below.

B.1.1. Jurisdiction over natural persons

197. Colombia's criminal jurisdiction is based on the territoriality principle; nationality alone does not establish jurisdiction. Article 14 of the CC provides that territorial jurisdiction over a punishable conduct can be based on a) where the act has been carried out entirely or partially, b) where an omitted action should have been carried out, and c) where the result occurred or should have been occurred.

198. For crimes committed abroad, only designated offences are covered by Colombia's jurisdiction. The list of these offences is contained in Art. 16 of the CC and includes foreign bribery as it falls into the category of crimes against the public administration. Criminal proceedings may be initiated in Colombia,

regardless of an acquittal or sentencing abroad, including where the penalty is “lesser” than that applicable under Colombian law.

199. A notable exception from the above rules is the treatment of money laundering, where the extraterritoriality rule does not apply (Art. 16.1 CC). Money laundering committed abroad, even by Colombian citizens, does not fall under Colombian jurisdiction. The policy choice behind this exemption is unclear but likely made to lift the burden on the Colombian authorities due to the legality principle-based obligation to act. This creates a loophole where the same conduct (for example, by the intermediary) could be qualified as part of the foreign bribery or part of the money laundering, leading to the potential loss of cases in the latter option. With this exemption Colombia loses the ground to prosecute foreign bribery-related conducts as money laundering if the bribery itself cannot be proven in full.

Commentary

The lead examiners are concerned that, as money laundering is excluded from the list of offences that are covered by Colombian criminal jurisdiction when being committed abroad, Colombia may be unable to prosecute foreign bribery-related money laundering. This shortcoming seriously undermines the enforcement of the foreign bribery offence as well, by creating loopholes that can be exploited to achieve impunity.

Therefore, the lead examiners recommend that Colombia extend its criminal jurisdiction to cover conducts committed abroad that constitute money laundering, so foreign bribery schemes can be effectively investigated and prosecuted.

B.1.2. Statute of limitations

200. Article 83 of the CC contains the general rule that the statute of limitation shall be equal to the maximum penalty established by law. Where the offence was initiated or completed abroad, the statute of the limitation shall increase by half, to a maximum of 20 years. Accordingly, the baseline statute of limitation for foreign bribery is 15 years, and in the very likely case it has been committed abroad, the statute of limitation extends to 20 years.

201. The initiation of the investigation does not interrupt the lapsing of the statute of limitation. However, the legal framework is inconsistent as concerns further interruption(s) of the limitation period. Article 86 of the CC states that the first procedural step interrupting the limitation period is the filing of the indictment (*resolución acusatoria*), while Art. 292 of the CPC states that the communication of the charges (*formulación de la imputación*) is the relevant procedural step in this regard. PGO explained that, according to the provisions in the CC, the indictment is considered to interrupt the statute of limitations.

202. Regardless, upon filing the indictment, the limitation period resets and starts to run again for the half of the baseline term. Consequently, the trial phase in the first and second instance combined can last up to 7.5 years. However, legal practitioners and academics at the on-site visit explained that, in a complex criminal case such as foreign bribery, the second instance phase alone can take 5-6 years. The statute of limitations is interrupted again with the handing down the judgment of second instance and begins to run again for up to 5 years.

203. While these rules provide a timeframe for investigations that would appear long enough, given the complex nature of foreign bribery cases and the litigation capacity of the persons involved, the timeframe for the trial phase is likely inadequate. Based on experiences of WGB members, it is not out of the ordinary that second instance sentencing cannot be reached within 7.5 years from the indictment.

204. An inadequately short trial period can effectively render investigating and prosecuting complex cases futile. Information provided by practitioners and academia concerning the usual length of the trial phase support these concerns about Colombia’s ability to effectively prosecute a foreign bribery case and achieve a final court decision.

Commentary

The lead examiners note with apprehension the apparent lack of clarity about the disruption of the statute of limitations' lapsing in the investigation phase. They also deem the timeframe available to complete both the first and second instances of the trial phase inadequately short and consider that the current rules can easily lead to impunity. This is particularly problematic in light of the international nature of these investigations which often necessitate MLA requests, which may be time consuming. They therefore recommend that Colombia, by legislative means, if necessary, (i) clarify the rules on the interruption of the statute of limitations during the investigations, and (ii) introduce adequately long limitations periods for the trial phase to enable the justice system to effectively deal with complex cases with international elements.

B.2. Investigative and prosecutorial framework

B.2.1. General background

205. Colombia's criminal procedure is governed by the principles of legality and *ex officio* obligation to investigate allegations, enshrined in the CPC. PGO is a part of the judicial branch of powers, and the main actor in criminal investigations. According to Art. 250 of the Constitution of Colombia and Art. 66 of the CPC, PGO is obliged to investigate and prosecute facts that may constitute a crime. Its action can be based on a complaint, special request, or *ex officio*. PGO is in charge of criminal investigations, with its main tasks being directing and coordinating the actions of the Judicial Police, collecting evidence, filing the indictment, closing investigations, and guaranteeing the rights of participants in criminal proceedings.

206. PGO is an objective, impartial actor with the function of guarantor of rights, wielding the power to investigate and prosecute natural persons for offences. It can apply the principle of opportunity if the CPC allows for it. Article 114 provides that a prosecutor:

a. Can order investigative measures, including those that are subject to legality control by a judge.

b. Has the duty to secure evidence and maintain the chain of custody of the evidentiary material.

c. Directs and coordinates the activity of judicial police, regardless of whether these are executed by a prosecutorial unit, the National Police or other designated bodies.

d. Is responsible for the protection of victims, witnesses, and experts they intent to present to the court, and can order provisional arrest of the suspect for up to 36 hours.

e. Presents the indictment and participates in the trial stage.

207. The judicial police function is mainly carried out by the National Police and other law enforcement agencies. Judicial police bodies must comply with the instructions given by the prosecutor in charge of the respective case. Failure to comply gives rise to criminal, administrative, civil, or disciplinary liability (Art. 117 of the CPC). According to Art. 200 of the CPC, "judicial police" is understood not only as an institution but as a function with a general duty to support the criminal investigation overseen by the prosecutor. The CPC lists the entities that can exercise such functions (Art. 202). Alongside police inspectors this includes, for example, transit authorities and mayors. In addition to these, any public body authorised by the prosecutor can perform procedural acts in individual cases.

208. While this broader approach to conducting criminal investigations might be beneficial in small scale cases, foreign bribery investigations require a high level of specialisation and dedicated resources at the judicial police as well as at the prosecutorial level.

B.2.2. Specialisation and available resources

Prosecutors and Police

209. PGO have made significant changes to their internal structure and distribution of tasks since Phase 3. At that time, the Special Directorate for Financial Investigations (*Dirección Especializada de Investigaciones Financieras*) was responsible for foreign bribery. Since 2021, these cases have been handled by the Special Directorate against Money Laundering (*Dirección Especializada contra el Lavado de Activos*, DECLA), which is a part of the Department for Financial Crimes (*Delegada para las Finanzas Criminales*). With the shift of competence, all ongoing foreign bribery investigations have been reassigned to DECLA.

210. Of note, all other corruption cases are dealt with by the Specialised Directorate against Corruption (*Dirección Especializada contra la Corruption*), which is under the Department against Organised Crime (*Delegada contra la Criminalidad Organizada*). The competence of prosecutorial units is defined in internal resolution No. 720 of 2021, which was not provided by Colombia. It is not clear whether and how the special directorates co-operate and co-ordinate their work in cases that include elements of both domestic and foreign bribery along financial offences, as is often the situation in Colombia's cases.

211. Another relevant element of this restructuring was the establishment of strengthened cooperation with DIAN and the establishment of an information sharing agreement with the Superintendency of Corporations. It is not clear if there is a specialised police unit that DECLA specifically works with in foreign bribery cases; its main cooperating partner appears to be the judicial police unit specialised in financial crimes. There are police units specialised in domestic corruption cases, which, DECLA could, in theory, task with foreign bribery investigations. PGO representatives at the on-site claimed that a foreign bribery-specific investigation methodology exists, and police officers are specifically trained to apply it. These statements were not supported by evidence.

212. From the information gathered at the on-site visit, DECLA's main priority and focus is clearly money laundering, of which a total of 2626 investigations leading to 169 natural persons convicted in 94 cases between 2021 and April 2025. DECLA employed 46 prosecutors throughout the above period.

213. It appears that foreign bribery cases are not treated as a priority, with three ongoing investigations, none of which reached indictment, one investigation where the foreign bribery aspect has been dropped for unknown reasons, and four foreign bribery allegations disregarded in favour of the (often less severe) domestic offences (see section B.3.3 for detailed discussion of these investigations).

214. In light of this, the lead examiners have serious concerns whether the redistribution of competences in 2021, i.e., the separation from other corruption cases and the quasi subordination to money laundering, has been a positive step for Colombia in its ability to effectively enforce the foreign bribery offence. The proving of corruption offences differs from that of financial crimes, requiring a different approach and the proactive use of all available investigative measures, including extensive application of special investigative techniques. From the information provided concerning ongoing cases, it is apparent that this is not the current practice for foreign bribery cases in Colombia.

215. Colombia did not provide data on human and financial resources available for foreign bribery investigations. Representatives of the Police present at the on-site felt that analytical work is a bottleneck and explained that they need better tools based on new technologies and specialised anti-corruption analysis training, as well as better forensic auditing and accounting support.

Court structure and competence

216. Colombia's court system is organised in four tiers: Municipal Courts, Circuit Courts, High District Courts, and the Supreme Court of Justice. This structure of ordinary jurisdiction is organised into fields of

specialisation, the criminal law branch of which is competent for foreign bribery cases. During the investigation, the Municipal Courts judges act as a control of guarantees, exercising legality control over investigative steps affecting fundamental rights such as search and seizure and interception of telecommunications. Judges acting in this capacity during the investigation are excluded from adjudicating the merit of the case.

217. The default jurisdiction is the Circuit Court. In addition to the four ordinary types of courts, Art. 35 of the CPC provides for specialised Circuit Courts with competence over serious forms of crime, including money laundering and misappropriation of assets with a low threshold: above 100 minimum monthly wages. Corruption offences, including foreign bribery, are not considered among these. This is regrettable; the proving of corruption offences is amongst the most difficult, requiring the particular knowledge, resources, and experience usually available in specialised courts. Under the current arrangements, PGO would indict a relatively small-scale money laundering case at a specialised Circuit Court, however, any foreign bribery case would be heard at a Circuit Court with general competence. This distribution of court competence has wider implications, including, for example the investigative time limit (see section B.3.2).

218. Given the fact that no foreign bribery case has reached indictment yet, the actual repercussions of the lack of specialisation cannot be assessed. In evaluations of other countries where prioritisation appeared to be problematic, the Working Group has recommended assigning competence for foreign bribery to a specific judicial body.[3]

219. Judicial training in Colombia is managed by the Superior Council of the Judiciary, which provides continuous specialised judicial training, analysis of recent judgments for crimes against the public administration and money laundering, and access to international roundtables to ensure judges have adequate technical expertise in international bribery cases. Courses available include "*Complex Financial and Corruption Crime Case Management*", which addresses the particularities and complexities of transnational bribery, as well as training in tracing illicit financial flows, digital evidence, asset forfeiture, and international corruption.

Civil society perspectives

220. Civil society representatives expressed their opinion that, while the institutional and legal framework is more or less adequate, there is no mechanism or effort to coordinate the work between the authorities. Their perception was that the various agencies with remit for the detection, investigation, prosecution, and sanctioning of foreign bribery all approach their mandate with an extremely siloed and defensive attitude, creating a very fragmented landscape. In addition, the funding of anti-corruption efforts is always uncertain, and the lack of law enforcement capacity is a serious bottleneck. While the central level and bigger units of PGO are perceived as professional and specialised, overall, on-site participants felt that PGO lacks the resources to be able to direct every criminal case effectively.

221. The general consensus was that corruption cases drag on for excessive periods of time and the results are disappointing, sending a clear message that corruption is not punished in Colombia. Non-governmental participants also overwhelmingly expressed the view that the level of transparency in the public sphere depends entirely on the approach taken by the executive of the day, and changes from administration to administration.

Commentary

The lead examiners are concerned about the lack of focus on foreign bribery within PGO and therefore recommend that Colombia ensure that the restructuring of competence for foreign bribery investigations to DECLA does not result in a decrease in the prioritisation of these investigations by providing sufficient human and financial resources to the respective units.

The lead examiners are, relatedly, concerned about the lack of specialisation within the courts. As such, they recommend that Colombia amend the competence rules of courts to ensure that foreign bribery cases are always allocated to the specialised district courts.

B.3. Conducting foreign bribery investigations and prosecutions

B.3.1. Investigative techniques

A broad range of investigative measures and techniques are available to prosecutors

222. Prosecutors have a broad and rather strong toolkit of investigative measures at their disposal. These can be grouped into two categories: actions that do not require prior judicial authorisation (i.e., can be ordered by the prosecutor, even if some require subsequent judicial review) and actions that can only be ordered by a judge.

223. In general, the prosecutor in charge of the investigation wields considerable power, including some more intrusive techniques. For example, no prior authorisation is required to conduct an inspection of the crime scene, the inspection of a corpse, or inspections at places other than the place of the event. The prosecutor in charge of the investigation can order search and seizure if well-founded reasons justify this; that is, if there is an evidentiary basis (Art. 221 CPC). Interception of communications for a maximum of six months is available without judicial authorisation, with only an extension beyond this term requiring the permission of a judge (Art. 235 CPC).

224. The prosecutor can also order surveillance and monitoring of persons and objects for up to one year. In the case of using undercover officers and cooperating private individuals, covert operations, controlled delivery, search in databases comprising confidential information, or DNA testing of the accused person, a judge must review legality of the execution *post factum* (Arts. 239-245 CPC).

225. Upon carrying out the prosecutor's order of search and seizure, withholding of correspondence, interception of communications, or recovery of information resulting from the transmission of data through communications networks, the Judicial Police report to the prosecutor. The prosecutor must request a hearing by the judge for the control of guarantees, who inspects and verifies the legality of the proceedings (Art. 237 CPC).

226. The only actions that require prior authorisation of the judge are bodily inspection and search and obtaining DNA samples from persons other than the accused (Arts. 246-250 CPC).

Seizure and freezing of assets

227. During the investigation, assets subject to confiscation can be seized or the power of disposal over these assets can be suspended (see section B.6.3). Domestic and international postal payments can be suspended by the judge if these are connected to organised criminality. The legality of the prosecutor's order to secure assets subject to confiscation must be reviewed by the judge (Art. 83 CPC). In addition, the judge can order provisional measures on assets of the accused person in order to secure the basis of damage claims and reparation of victims and damaged parties (Art. 92 CPC).

Colombia has established a beneficial ownership registry

228. Chapter III of the Law 2195 of 2022 established the Single Register of Beneficial Owners (RUB) with the primary goal of supporting the AML/CFT regime, but also to support investigations of foreign bribery. The DIAN is responsible for managing the RUB, which contains data on the ultimate beneficiaries and the ownership and control structure of legal entities. However, the RUB contains information on only

a limited number of legal entities; as of August 2025, from about 2 million legal entities registered by DIAN only 830 284 have the obligation to report their beneficial owners. This is a severe limitation that significantly undermines its usefulness. In addition, this limited coverage enables the deliberate establishing of legal entities for the purpose of avoiding transparency of ownership requirements.

229. In addition, access to the RUB is extremely limited. Only seven state authorities, including PGO and the Superintendency as well as DIAN itself, can access the data. Access can only be obtained through specific requests addressed to DIAN. Inter-institutional agreements define the technicalities of such access, either individually or in bulk. It is important to note that from among the entitled entities, the Office of the Inspector General has not entered into such agreements with DIAN since the law has been in force. For individual queries, specific roles are assigned to the officials designated by each entity. For bulk queries, the information is generated and transmitted by DIAN's data processing department according to the parameters defined in the agreement. No companies, financial institutions, or other non-authorised public authorities can access the registry.

230. The RUB is a step in the right direction, even in this very limited form. However, the utility of its current iteration is highly doubtful. While DIAN carries out audit and verification exercises, and obligated legal entities have an express obligation to report changes concerning beneficiaries, the RUB would require significant development to be considered a useful tool for law enforcement purposes.

231. A similar tool that could significantly assist in foreign bribery investigations is also noticeably absent from the enforcement landscape. Colombia has no unified, central bank account registry accessible for the law enforcement agencies to find basic information on account holders. The law enforcement agencies are therefore forced to rely on separate inquiries to the financial institutions, or for UIAF and DIAN to support them with such data.

232. Interestingly, the Bogotá Chamber of Commerce has created and maintains a publicly available, free online registry that works as an alternative beneficial owner registry to meet their need to fulfil due diligence requirements. Private firms are able to access this registry, which contains information provided by the legal representatives of the registered legal persons, including those SOEs which are not 100% owned by the state. While this information is not centrally vetted and therefore may be inaccurate, at this time it remains the only workaround to overcome the limited scope and accessibility of the RUB. Representatives of the private sector expressed a clear need for a reliable, up-to-date, and accessible register of beneficial ownership, with investigative bodies expressing a similar desire for improved access to financial information.

Commentary

The lead examiners are satisfied that Colombian law enforcement authorities have access to a broad range of investigate techniques to conduct foreign bribery investigations. However, Colombia has provided extremely limited information on how these techniques are used in actual cases. Without an understanding of the use of these techniques in concluded cases, and in the absence of information on those used in ongoing cases, the lead examiners are not able to assess the degree to which investigative techniques are being used in practice.

The lead examiners commend Colombia for taking the first step to create a beneficial owner registry. They consider that its current form is limited in scope and accessibility. They therefore recommend that Colombia establish a comprehensive and accessible beneficial owner registry.

The lead examiners also note that Colombian law enforcement authorities face barriers when accessing financial information. They therefore recommend that Colombia ensure that such information is readily available and accessible to law enforcement authorities to facilitate the financial investigations needed to tackle foreign bribery and related offences.

B.3.2. Time limits and termination of investigations

Investigative timeframes for foreign bribery are unclear and likely too short

233. From receiving a complaint or police report, the prosecutor has 36 hours to decide whether to start a criminal investigation and give instructions to the Judicial Police.

234. Concerning the investigation itself, Art. 175 of the CPC provides that, from the receipt of the "*noticia criminis*", the prosecutor has a maximum period of 2 years, or in complex cases 3 years, to reach the accusation (*imputación*). The expression *noticia criminis* refers to the complaint or the police report confirming the simple suspicion of the crime required to start the investigation.

235. However, for offences falling into the jurisdiction of the specialised circuit courts, the maximum period to conduct the investigation extends up to 5 years. As of now, the foreign bribery offence is not amongst these and therefore would most likely fall into the category of a maximum 3-year long investigation.

236. Of serious concern, on the basis of these provisions, all of Colombia's currently active foreign bribery investigations have either already elapsed or are on the verge of elapsing the maximum allowed investigative timeframe. At the on-site visit, representatives of PGO admitted that most of their ongoing foreign bribery cases have already run beyond the available investigative timelines. By way of explanation, they claimed that, based on Constitutional Court rulings (e.g., SU-394 of 2016 and T-099/21) evolving the notion of "reasonable period", further extension is possible in complex cases and in cases where judicial assistance has been requested. This decision lies with the prosecutor in charge of the case. Prosecutors claimed that in these cases the upper limit for conducting investigations is the statute of limitations.

237. These developments appear to render the respective CPC rules moot. There is a risk, however, that a less permissive court interpretation of "reasonable period", that obviously does not automatically equal to the upper limit of the statute of limitations, in concrete cases can lead to termination of prosecutions and thus to effective impunity due to the length of the investigation alone. There is an obvious need to clarify this situation.

238. According to prosecutors, the respective decisions on such extensions in the ongoing foreign bribery cases have been made already. In fact, all of the ongoing foreign bribery investigations (described in detail in section B.3.3) have been started more than 5 years ago.

239. Regardless, it is clear that the time limits provided for in CPC would not allow for an adequate investigation in complex foreign bribery cases requiring extensive international cooperation. The WGB routinely recommends that countries extend restrictive investigative time limits, because these can, in effect, render otherwise adequate statute of limitations periods meaningless. Under the current rules, to enable the maximum investigation limit of 5 years for foreign bribery, as provided in the CPC, would require the foreign bribery offence being elevated to the competence of the specialised circuit courts (see B.2.2). On the other hand, the "reasonable period" extension creates uncertainty and the risk of losing otherwise justified prosecutions.

240. As of now, prosecutors appear to focus on the money laundering angle, to secure more time to investigate these complex cases. This, however, shifts the focus and thus may be detrimental to the investigation of the bribery itself, and may result in the case being outside of Colombia's criminal jurisdiction (see section B.1.1). A corresponding practice can be seen in the ongoing foreign bribery cases.

Timeframe to indict after the communication of charges

241. Another concerning aspect is the current regulation of pressing charges and indictment. Colombia advises that a significant step in the investigation is the pressing of charges (*imputación*) against a concrete person. From this procedural step, however, the prosecutor has only 90 days, or 120 days in complex

cases, to file the indictment (*acusación*) (Art. 175 CPC). Presumably, foreign bribery would fall in the latter category, however this is not certain due to the absence of a completed case.

242. The consequences of missing the deadline for indictment are severe. According to Art. 294 of the CPC, if the prosecutor fails to file the indictment, they cannot continue processing the case and must inform the respective superior. The superior shall then appoint a new prosecutor who must file the indictment within 60 days, or within 90 days in complex cases. Failure to file this indictment would result in the immediate release of the accused, with PGO required to request that the judge terminate the case.

243. The prohibitively short period between the accusation and the indictment has serious repercussions. From the prosecutors' perspective, in practice the accusation must be postponed to the latest possible stage. On the other hand, until this point of the procedure the accused has no knowledge of the investigation and cannot make motions to obtain evidence. If the accused requests additional proving or provides evidence that needs to be verified, especially via international cooperation or by forensic expertise, the likelihood of missing the indictment deadline grows exponentially. The prosecutor must then either risk this or disregard the additional evidence, which in turn leads to not suitably substantiated indictments resulting in an unnecessarily lengthy trial phase. It is also not clear how taking away the case from the prosecutor who presumably knows it, having been in charge of the investigation, and assigning it to another prosecutor and allowing an even shorter period to process and indict the case would lead to better results.

Commentary

The lead examiners are concerned that the actual rules of investigating timeframes are wholly inadequate and opaque, noting the clear uncertainty expressed by practitioners at the on-site as to what the applicable investigative deadlines are and whether these can be extended or not. The lead examiners regret that, applying the narrower approach, every ongoing foreign bribery investigation described in this report would already be time barred because of the expiry of the maximum 5-year time limit for investigations.

As seen in practice, the 120-day timeframe available for prosecutors between pressing charges and filing the indictment is prohibitively short for complex cases such as foreign bribery, disincentivising prosecutors to proceed and leading to the stalling of cases.

The lead examiners therefore recommend that Colombia ensure, by legislative amendment, if necessary, (i) a sufficient timeframe is available for the effective investigation of foreign bribery and related offences, and (ii) the time available between the pressing of charges and the indictment is sufficient to enable prosecutors to fully investigate and prosecute complex foreign bribery cases.

B.3.3. Investigation of FB cases

244. As described in the Phase 3 report, the ***Odebrecht*** case significantly increased the visibility of foreign bribery in Colombia. However, this was mainly related to the domestic side of the conduct.

245. Throughout the Phase 4 evaluation Colombia provided incomplete and fragmented information on its ongoing foreign bribery investigations and did not acknowledge or answer questions relating to some of the allegations known to the Working Group. The evaluation team was not provided details on investigative measures taken in specific cases or clarification as to why the foreign bribery element was disregarded in some cases. The following descriptions of active cases reflect Colombia's responses complemented with information obtained during on-site visit, as well as the evaluation team's own research.

Current foreign bribery investigations

246. Despite a strong arsenal of traditional and proactive investigative measures available, in most of the ongoing foreign bribery cases prosecutors seem to have applied only the least effective ones.

247. In the ***Public Lighting Procurement (El Salvador)*** case, the alleged acts were committed between 2014 and 2017. The criminal investigation in Colombia started in November 2019, based on media reports. PGO states that searches in public and selected private databases and document analysis have been carried out in Colombia, and, in addition, an MLA request has been sent to the relevant foreign authority. As of May 2025, beyond the collection of contextual information, PGO reports that more direct investigative steps such as witness hearings or searching of premises have not been taken due to the fear of alerting the company involved. In addition, PGO explained that further investigation would require the co-operation of the El Salvadorian authorities as the bribe has been delivered to the foreign public official via a subsidiary incorporated there. It is not clear why the role of the Colombian parent company in paying the bribe was not scrutinised.

248. In the ***Reinsurance Company (Ecuador, Panama)*** case, the alleged bribes were paid between 2014 and 2016. The criminal investigation in Colombia started in July 2020. PGO reported undertaking searches in public and selected private databases, document analysis, information verification, inspection of locations other than the crime scene and MLA requests. Similarly to the previous case, as of May 2025, the investigation has not progressed beyond the collection of information. PGO stated that the data collection is deemed to be complete and the decision on how to progress with the case is pending.

249. The ***Flight Company (South American countries)*** case appears to be an exception concerning investigative steps. In this case the company self-disclosed possible violations of the USA's Foreign Corrupt Practices Act (FCPA), including alleged bribery between 2015 and 2017. According to the self-disclosure, company employees, including members of senior management staff, as well as certain members of the Board of Directors, delivered free or discounted airline tickets to officials from various Latin-American countries.

250. The investigation in Colombia was triggered on 23 January 2020 by the Judicial Police reporting to PGO, based on public media reports. The Superintendency became aware of the self-disclosure around the same time through open sources, corporate records, information shared by the PGO on 3 February 2020, and working meetings with the US SEC, and started a parallel administrative procedure. PGO applied a broader spectrum of investigative measures in this investigation, including inspections of locations other than the crime scene, searches in databases, interviews, forensic imaging, obtaining information from emails and information stored in cloud services, searches of facilities, document analysis, financial and accounting analysis, and an MLA request.

251. Disappointingly, these more direct investigative steps did not yield results, presumably due to the lapse of time, i.e., data was no longer available at the company, key witnesses not remembering their previous statements. In addition, the company refused to provide information requested by the Superintendency in the parallel administrative procedure, claiming sensitivity of data. This led to a search ordered by PGO, with the aim to secure the relevant data and accounting material. Despite this, the sought data was not found at the company when the police attempted to execute the prosecutor's order – an example of how uncoordinated steps can spoil both the criminal investigation and the administrative proceedings.

252. The case was eventually narrowed to the domestic bribery aspect, despite available information showing that, alongside Colombian officials, numerous foreign public officials were provided with free or discounted flight tickets. However, even the domestic bribery element seems to be lingering in the preliminary stage, with no charges pressed as of the on-site visit in May 2025. PGO advised it has already decided to extend the investigative time limit beyond the statutory 5-year maximum.

Foreign bribery allegations not followed up by Colombia

253. In the ***Construction Works (Panama)*** case the ongoing investigation does not seem to include foreign bribery despite allegations of the Colombian company having paid bribes in Panama to obtain public procurement contracts. Prosecutors stated that, while the information contained in the Working Group's own media monitoring exercise would be enough to initiate an investigation, in this case only the allegations concerning domestic offences were followed up.

254. In the ***Water Utility Company (Panama, Ecuador)*** case the allegations pointed at a Colombian company paying bribes to public officials in Panama and Ecuador in exchange for obtaining public tender contracts. It is not clear whether PGO initiated any investigation concerning these allegations. The Superintendency successfully sanctioned the company for the foreign bribery conduct concerning public officials in Ecuador (see C.2.1), while discontinuing the procedure for the alleged bribery in Panama. The criminal law follow-up of the same conduct is inexplicably missing.

255. In the ***Water Utility Company II (Brazil, Dominican Republic, Haiti, Panama, Spain)*** case, PGO's investigation seemingly disregarded the foreign bribery element, focusing solely on other, less severe offences, including falsification of private documents, illicit enrichment, and disloyal administration of domestic public funds. The allegation that Colombian companies obtained tenders in Haiti through the payment of bribes appears to have been ignored.

256. Colombia did not provide any information at all on two foreign bribery cases, both of which have been registered in the Working Group's own media monitoring exercise since 2018:

a. In the ***Construction Company I (Venezuela)*** case, a Colombian company allegedly paid bribes through its Panamanian subsidiary to Venezuelan public officials to obtain a construction tender in the value of USD 6 million. Colombia repeatedly reported this case as an ongoing foreign bribery investigation, only to drop the foreign bribery aspect without explanation.

b. In the ***Construction Company II (Guatemala)*** case it is alleged that companies, including at least one Colombian company, paid bribes between 2012 and 2014 to a high-ranking Guatemalan public official in exchange of awarding contracts. Colombia did not take steps to investigate this allegation.

257. Colombia has not reported any new allegations of foreign bribery since the Phase 3 2Y WFU report in 2021 but indicated one case detected via a domestic investigation. The findings gave rise to allegations that a Costa Rican company paid bribes to Colombian public officials to obtain public tenders. This is a domestic corruption case for Colombia.

258. In short, PGO's approach to investigating foreign bribery cases appears to be utterly ineffective. The sole collection of contextual, mainly publicly available information in these cases is unlikely to yield evidence of bribery. If anything, it usually provides the picture of legitimate business that hides the actual bribery. Moreover, evidence obtained this way can be circumstantial only and with the lapse of time all other potentially available evidence deteriorates and eventually will be lost. As an overarching pattern, none of the more effective and direct investigative steps have been taken – for example, no premises were searched, no emails were seized and analysed, and no witnesses were interviewed (with the only exception being the ***Flight Company (South American countries)*** case). A similar pattern is prevalent in the MLA practice of PGO, discussed further at B.4.1 below.

259. This overtly cautious, passive prosecutorial approach is likely the result of the prosecutors' workload, scarcity of other law enforcement resources, lack of prioritisation of foreign bribery, and the prohibitively short timeframe between charges and indictment along with other obstacles. Prosecutors stated that in cases where the available time is running out, they prefer to discontinue the investigation, with the view of eventually reopening it if new evidence appears. However, prosecutors were unable to

point to any instance where this has occurred in practice, nor could they explain how new evidence would resurface in the absence of investigation.

260. Finally, the lack of meaningful operational co-ordination between PGO and Superintendency aspect is having a significant negative impact on foreign bribery investigations. While both authorities claim to have a seamless cooperation (citing, for example, monthly meetings in ongoing parallel cases, regular two-monthly meetings on general topics, exchange of information and investigative material), these efforts do not seem to materialise in positive outcomes in actual cases. From the available information on the cases, it seems that the Superintendency is usually the first to act on allegations, with the initiation of a criminal investigation occurring only after a considerable delay, if at all. The Superintendency acting first and requesting information from the company involved, however, has the potential to spoil both investigations, as likely occurred in the ***Flight Company (South American countries)*** case. Conversely, PGO's approach could result in the collection and analysis of all circumstantial information, including from abroad, without necessarily alerting the company of the investigation, but causing delays and potential loss of evidence. A meaningful sharing of workload and mutually benefitting from the powers available to them would require a joint, or at least closely co-ordinated action from the PGO and the Superintendency, with the criminal procedure taking priority due to the investigative powers and coercive measures available in a criminal investigation and for admissibility of evidence reasons.

261. Concerning the allegations in the ***Construction Company II (Guatemala)*** case, PGO reported at the Tour de Table that it deems the available information insufficient to start a criminal investigation but requested the Superintendency to transfer any information they might have. This again demonstrates that the co-operation and co-ordination between the two main stakeholders could be improved.

Commentary

Colombia has provided extremely limited information on how investigative techniques are used in actual cases. Without an understanding of the use of these techniques in concluded cases, and in the absence of information on those used in ongoing cases, the lead examiners are not able to assess the degree to which investigative techniques are being used in practice.

In view of the low level of foreign bribery enforcement to date, the lead examiners recommend that Colombia (i) act promptly and proactively so that complaints of bribery of foreign public officials are seriously investigated and credible allegations are assessed by competent authorities, (ii) take a proactive approach to the investigation and prosecution of foreign bribery, (iii) take all necessary measures to ensure that the fullest range of investigative techniques available are being effectively utilised in foreign bribery cases, and (iv) undertake a stocktaking and review exercise of investigative techniques used in foreign bribery cases to date, so as to assess challenges and areas of good practice, with a view to ensuring the effectiveness and efficiency of these techniques.

The lead examiners recommend that the Working Group follow-up on the use of investigative techniques in foreign bribery investigations as practice develops.

The lead examiners further recommend that Colombia review and amend the framework of the co-operation and co-ordination between PGO and the Superintendency with a view to enhance synergies and ensure the complementarity and synchronisation of parallel running criminal and administrative proceedings, and in order to avoid mutually detrimental effects of uncoordinated actions.

B.3.4. Independence of investigations and prosecutions under Article 5 of the Anti-Bribery Convention

262. Article 5 of the Anti-Bribery Convention requires that the investigation and prosecution of foreign bribery are not influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

263. Commentary 27 to the Convention further recognises the need to protect the independence of investigations and prosecutions by ensuring that investigative and prosecutorial discretion is exercised based on professional motives and is not subject to improper influence by concerns of political nature.

264. Article 249 of Colombia's Constitution provides that the Prosecutor General is elected by the Supreme Court of Justice from a list of three candidates submitted by the President of the Republic. The term of the Prosecutor General is four years with no possibility of re-election. This short mandate enables every president to install a Prosecutor General during their term, gaining a potentially decisive influence over criminal justice.

Colombia has long-standing issues concerning the independence of investigations and prosecutions

265. As far back as Phase 2, the WGB has raised concerns about the potential for influence in several elements of Colombia's criminal procedure and appointments processes, as well as the mechanisms for ensuring the independence of investigations for both natural and legal persons. While assurances provided by Colombia at that time assuaged some the process-based concerns (for example, institutional protections against the misuse of the opportunity principle, described in more detail at B.6.1 below), the underlying issues remain unaddressed.

266. During Colombia's Phase 3 evaluation, the Working Group felt that the risk of the process for electing the Prosecutor General, which ultimately constitutes a political appointment, in combination with the Prosecutor General's ability to directly intervene in individual proceedings, could potentially affect the free investigation of foreign bribery cases and enforcement of sanctions. The pivotal role PGO plays in the criminal procedure requires enhanced guarantees of independence and impartiality.

267. The procedure for the appointment of the Prosecutor General had long been the subject of intense debate in Colombia. During the Phase 3 on-site visit, representatives from civil society and the legal profession noted that the appointment procedures did not establish sufficient safeguards for transparency and against politicisation. In addition, a previous Prosecutor General was strongly criticised by civil society for his alleged conflict of interests in the ***Odebrecht*** case. Judges expressed the view that, in practice, individual prosecutors may be subject to political influence through their hierarchical subordination to the Prosecutor General, given the modalities for the appointment. They felt this influence may be exerted through two main mechanisms: technical-legal committees that can intervene in specific cases, and where the office of the Prosecutor General can be represented; and the Prosecutor General's power to allocate or reallocate cases to individual prosecutors.

268. As noted in Phase 3, Colombia also has a long history of political interference in its prosecutorial and judicial system. In 2004, a prosecutor who was investigating a corruption case involving a public official was dismissed from her post for ignoring her superior's orders of premature closure of the case (Open Sociey Justice Initiative, 2020[37]).

269. As such, the Working Group recommended Colombia put in place "clear safeguards against any political interference in foreign bribery cases, with a view to ensuring that foreign bribery investigations and prosecutions cannot be influenced by considerations prohibited under Article 5 of the Convention". At the time of Phase 4, this recommendation remained unimplemented.

Despite Colombia's assurances, issues of independence persist

270. Colombia has continuously questioned the validity of these concerns. However, independent research carried out by the evaluation team suggests that civil society has repeatedly called for reforms to the procedure and criteria for the appointment of the Prosecutor General (Transparecia por Colombia, 2022[38]).

271. Also of note, in May 2023, in the context of a disagreement between the President of the Republic of Colombia and the Prosecutor General over measures to be taken to address organised crime, the former suggested he was the latter's "boss", triggering concerns about his views on the Prosecutor General's independence. In response to this statement, the Prosecutor General and the Supreme Court publicly re-asserted the principle of independence of the Prosecutor General. The President of the Republic later publicly "accepted" the Supreme Court's statement (CNN Colombia, 2023[39]).

272. In February 2024, protests led by supporters of the current President called for the election of a new Prosecutor General, as the then-Prosecutor General was considered to be very close to the former President and was in an open conflict with the current President. In March 2024, the Supreme Court eventually selected an experienced prosecutor – without political ties – as the new Prosecutor General (AP News, 2024[40]). Observers have expressed hope that PGO can now be more independent, especially given that the current government faces multiple corruption allegations. However, according to media and civil society, PGO has not acted against public officials involved in one of the biggest corruption scandals of the actual government (with the exception of two executives from the National Disaster Risk Management Unit (Colorado, 2024[41]) and the President's former advisor, who was sentenced in December 2024 (Finance Colombia, 2025[42])).

273. More recently, the Colombian government has attempted to influence the judiciary through the mobilisation of their supporters and making derogatory comments against both individual judges and the judiciary as an institution (International Bar Association, 2024[43]).

Safeguards of internal independence of prosecutors

274. There are internal regulations that can provide prosecutors with at least some protection to safeguard decision-making on professional criteria. PGO issued Resolutions No. 0-1053 dated 21 March 2017, which internally regulates the technical-legal review committees and situations and cases, and No. 0-0985 of 2018, which establishes the criteria for the distribution of cases, regulates the redistribution of the load, and defines the procedure for special assignment, variation of assignment, and delegation of investigations. However, these Resolutions were not provided to the evaluation team for in-depth analysis.

Phase 4 findings

275. Representatives of the Ministry of Justice stated that no considerations had been given as to how the WGB's Phase 3 recommendation could be implemented. This stance coincides with the position communicated at the Phase 3 2Y WFU report.

276. In contrast, at the on-site visit civil society, academics and legal practitioners were of the view that, in the current system and given the role of the executive in the selection procedure, the Prosecutor General is always exposed to potential executive interference. They stated that the detachment of the mandates of the Prosecutor General and the President of the Republic would be a good initial step to mitigate this vulnerability. They also noted that with every change in the position, the focus of investigations and prosecutions shifts, which necessarily undermines the perception of independence.

277. Nevertheless, PGO claimed that national interest can only lead to discontinuation if the legal requirements for this decision are also met, and there is no other situation when national interest,

diplomatic relations to another country or the identity of the natural or legal persons involved could lead to the discontinuation of an investigation.

Commentary

As noted, as far back as Phase 2, concerns endure regarding the risk of political interference in Colombia. The lead examiners consider that the current trend towards granting greater independence to PGO is at the mercy of political changes, which could well go the other way, since these safeguards are not grounded in law. Thus, there is still room for improvement in Colombian law to strengthen safeguards for the independence of investigations and prosecutions, with a view to avoiding any risk of improper influence by concerns of a political nature or factors prohibited under Article 5 of the Convention.

The lead examiners therefore reiterate, in the strongest possible terms, the Phase 3 recommendation that Colombia, urgently and by whatever means necessary, put in place clear safeguards against any political interference in foreign bribery cases, with a view to ensuring that foreign bribery investigations and prosecutions cannot be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal person involved.

B.4. International co-operation

B.4.1. Mutual legal assistance

The legal and procedural framework for MLA appears sound

278. At the time of the Phase 3 report, the role of the central authority to receive and disseminate MLA requests seemed to be shared between the Ministry of Foreign Affairs and the Ministry of Justice. However, during the Phase 3 on-site visit, there were claims that the Secretariat of Transparency assumed this role. In addition, PGO claimed to be acting as central authority for criminal cases in pre-trial stage.

279. The Phase 3 recommendation on establishing comprehensive statistical data collection on MLA remained partially implemented (recommendation 4e). The Phase 3 follow-up issues concerned the uncertainty of the central authority, steps taken to enhance the Superintendency's capacity to seek international cooperation, and the coordination efforts between PGO and the Superintendency.

280. The legal framework for international cooperation in criminal matters is contained in the CPC. In the present evaluation, it has been clarified that PGO is the central authority for sending and receiving MLA requests in the pre-trial phase of the proceedings, with the Ministry of Justice acting as central authority in the trial phase. Both can request the Ministry of Foreign Affairs to forward a request via diplomatic channels. The Ministry of Foreign Affairs only acts as a central authority for criminal cases if the cooperation is based on reciprocity. For international cooperation in administrative proceedings see section C.1.2 below.

281. As well as the OECD Anti-Bribery Convention, Colombia is a party to the UNCAC, the Inter-American Convention against Corruption, and has multiple bilateral treaties on international cooperation in criminal matters.

Requesting assistance

282. Requesting judicial cooperation from foreign authorities is available to judges, prosecutors, and, interestingly, to the heads of judicial police units (Art. 485 CPC). Requests can be sent directly or through established channels and may seek any type of necessary evidence and investigative steps. The CPC

provides for the possibility of direct communication between the authorities involved in order to discuss the requested measures.

283. As an extension of their powers, during the investigation and trial and within the scope of their competence, judges and prosecutors may directly request diplomatic and consular officials of Colombia abroad to obtain material evidence or to carry out procedures (Art. 486 CPC).

284. The CPC also provides for the legal basis of enhanced international cooperation in cases of transnational offences, whereby PGO may enter international and inter-institutional joint investigations. In addition, PGO may enter into agreements with its counterparts in foreign countries to strengthen judicial cooperation, as was the case in the ***Water Utility Company II (Brazil, Dominican Republic, Haiti, Panama, Spain)*** investigation (Art. 487 CPC).

Providing assistance

285. Concerning providing legal assistance, the legal framework is rather flexible. Colombian authorities are able to render assistance even in the absence of dual criminalisation; grounds for refusal are limited to constitutionally protected values. Foreign decisions concerning confiscation or other means for deprivation of property can be executed but require a judicial decision (Art. 489 CPC).

In practice, MLA (both incoming and outgoing) is not used effectively

286. In Colombia, PGO serves as the central authority for receiving and requesting MLA in criminal matters under different multilateral instruments. In practice, the Anti-Bribery Convention has not been used as a basis for MLA. PGO reported that, between January 2019 and June 2025, they have sent 2 283 and received 3 528 MLA requests. The main legal instruments invoked by Colombia when requesting assistance were the UN conventions. The majority of these MLA requests concerned drug trafficking, failure to provide child support, and falsification of documents. Unfortunately, in June 2025, only about half of the outgoing Colombian MLA requests were executed by the requested countries, with the remaining half pending. The incoming MLA requests show a similar pattern concerning the main offences and legal basis. Of the 3528 incoming requests, Colombia executed 2476 (~70%), with 1052 requests pending.

287. Colombia did not specify which countries were involved, the timeliness of information received or provided, or the reasons for any denials of requests (either incoming or outgoing). Nor was any information provided regarding efforts to review the MLA framework to ensure its fitness for purpose.

288. In response to the Phase 4 questionnaire, PGO claimed to collect data on MLA through its Information System for the Exchange of Evidence with Foreign Authorities (SPRAIN), but did not provide or indicate the existence of any data on foreign bribery cases.

289. According to prosecutors, in situations where foreign partners are not responsive, they would use the following strategy:

- Follow-up and reiteration of submitted requests.
- Coordination and scheduling of meetings with counterpart authorities to clarify and expand on necessary information and to resolve issues or challenges in executing the requests.
- Submission of supplementary requests.
- Use of direct communication channels between competent authorities, as well as inter-institutional cooperation mechanisms.
- Formation of Joint Investigation Teams.

290. In practice, based on the case questionnaire and the information gathered at the on-site visit, in the ongoing foreign bribery investigations only the first of these options (reiteration of requests) has been

used (see in detail below). This is especially concerning given that, with the elapsing of the investigative time limit, Colombian prosecutors are forced to dismiss cases regardless of whether they receive a response or not. However, if the result of the MLA request were to arrive after this point, it could be used as new evidence to request the reopening of the case, within the statute of limitations period.

291. PGO's Directorate of International Affairs maintains the International Criminal Cooperation Manual for prosecutors, an internal, confidential guideline. Lastly, PGO claims to cooperate with Interpol, Europol, and Eurojust on a case-by-case basis. Colombia is currently negotiating a cooperation agreement with Eurojust.

Colombia is not effectively utilising MLA in its foreign bribery investigations

292. Based on Phase 3 findings, international cooperation in some of the high profile domestic and foreign bribery cases involving Colombia has been effective, including the use of joint investigative teams. For example, the 2017 Declaration of Brasilia on International Legal Cooperation against Corruption provided the framework under which the Colombian PGO and its counterparts from Argentina, Brazil, Chile, Ecuador, Mexico, Panama, Peru, Portugal, Dominican Republic, and Venezuela committed to providing the widest, fastest, and most effective MLA contacts in the ***Odebrecht*** **(*Lava Jato*)** cases. Cooperation was also active between Colombian and Spanish prosecutors in the ***Water Utility Company II (Brazil, Dominican Republic, Haiti, Panama, Spain)*** case, facilitated by the signing of a memorandum between the PGOs in 2017, to strengthen judicial cooperation and enable joint investigations.

293. Working Group members who have engaged in receiving or requesting MLA with Colombia reported varied experiences. Generally, WGB members described their engagement with Colombia as "satisfactory", with "cordial" communications and response times ranging from one month to 14 months. However, one WGB member, conducting a pre-trial investigation in late 2023, described waiting almost a year to receive a "partially fulfilled" response, including awaiting documents Colombia reportedly has sent by post. Overall, this WGB member stated that "Informal cooperation cannot be considered successful. Communication has not been refused, but the necessary information has not been provided."

294. Additionally, Colombia's approach to international co-operation in foreign bribery investigations since the Phase 3 report reveals a regrettable pattern.

295. In the ***Public Lighting Procurement (El Salvador)*** case, PGO sent a first MLA request in March 2022. PGO has since reiterated this request five times, to no avail. No further steps were taken to establish direct communication or close cooperation with peers in the requested country. The content of the MLA request is also concerningly limited and unambitious; according to the case questionnaire responses, it entailed:

- asking information about whether there were any investigations conducted in El Salvador in the subject matter,
- if yes, requesting El Salvador hand over the collected evidentiary material,
- obtaining documents pertaining to the contracts and identification of natural and legal persons,
- information on an eventual administrative proceeding, if any, and
- asking for verification if a company with the same name has been incorporated in the requested country.

296. A similar approach is visible in the ***Reinsurance Company (Ecuador, Panama)*** case, with the caveat that PGO was made aware of the investigation by the US authorities. The initial MLA request to the US Department of Justice (DOJ), sent in November 2021, basically requests the disclosure and handing over of their results. A second MLA request sent at the same time to Ecuador, on the other hand, is entirely dependent on whether the requested authority already conducted an investigation. This request:

- asks for information whether the subject matter has been investigated by Ecuadorian authorities,
- if so, request the handing over of the evidentiary material,
- obtaining baseline information of bank account numbers, IDs, confirmation of positions of persons involved, company related documentation, and
- information on an eventual administrative proceeding, if any.

297. Ecuador replied to the MLA request in June 2023 but, according to PGO, the information is not suitable to move the case forward. PGO reiterated the request to the US in February 2023 and August 2024. The requested information was eventually received in April 2025 and was under translation at the time of the on-site visit.

298. In the ***Flight Company (South American countries)*** case it was known that the company self-disclosed possible FCPA violations to the US authorities. Thus, in November 2021, PGO requested the US DOJ to provide information, including the final decision reached in the case, as well as the US Securities and Exchange Commission proceedings.

299. Since in the other potential foreign bribery cases the allegations were not followed up (see B.3.3), Colombia apparently has not undertaken any efforts to obtain other information or evidence from abroad in foreign bribery cases.

300. Despite the limited sample of international co-operation some conclusions can be drawn. Firstly, the content of Colombia's MLA requests appears to rely on whether the requested country already investigated the same allegations. Outside of such circumstances, the requests are limited to obtaining "contextual information", similar to that which would be obtained in a domestic investigation, i.e., information that does not prove the actual occurrence of bribery. That is, the requests do not have a goal of executing investigative steps such as search and seizure or the hearing of witnesses, etc.

301. Secondly, follow-up of sent MLAs is lacklustre. The theoretical sequence of steps to facilitate and further international co-operation have not been taken, even though foreign bribery cases are amongst the most suitable for joint investigations. Contrary to PGO's claims, evidence of proactive communication (that is, PGO reaching out directly to its peers to discuss and clarify the situation) is not present in the actual cases. Notably, the Colombian law enforcement authorities, prosecutors, and investigators do not make use of the possibility to meet and discuss with their counterparts as they do not attend the Working Group's plenary meetings, nor the associated LEO or GLEN meetings.

302. Lastly, the majority of the information Colombia reports requesting via MLA would only require informal, police-to-police level exchange (for example, data stored in registries and the existence of a linked investigation). Direct communication between the prosecutors' offices would likely allow Colombian authorities to obtain information that would then enable a more targeted and evidence-focused MLA request.

Commentary

The lead examiners are concerned about Colombia's overreliance on investigations conducted by other jurisdictions, the delays observed in many cases to follow-up with outgoing MLA requests, and the lack of proactivity in engagement with law enforcement authorities of the requested county. Therefore, they recommend that Colombia establish clear rules and procedures to ensure the prosecutors' proactive approach to international cooperation, including utilising direct and/or informal communication channels with competent authorities and joint action with the requested authorities and timely follow-up of outgoing MLA requests. They also recommend that Colombia ensure that Colombian authorities make systematic use of all available measures to follow up on incoming requests that remain unanswered for a long time. Finally, they recommend that Colombia improve its system to allow disaggregation of requests based on the underlying offence.

B.4.2. Extradition

303. Extradition of Colombian nationals is possible for crimes committed abroad, if dual criminality is present, including in the absence of a treaty, with the exception of political crimes (Art. 18 CC and Art. 490 CPC). Additional requirements for extradition are a minimum of four years of custodial sentence and that the case abroad reached indictment, observing the speciality rule and commutation of death penalty.

304. The Minister of Justice and Law decides on granting extradition but requires the positive opinion of the Supreme Court of Justice. The Ministry submits the incoming extradition request directly to the court. A negative "advisory opinion" (*concepto*) of the court is binding to the government, while a positive advisory opinion allows the government to assess and act "according to national convenience" (Art. 501 CPC). The term of "national convenience", that is, the Government's consideration whether or not to grant the extradition, has the potential to overlap, collude, or otherwise interact with "national interest" according to Article 5 of the Convention with no clear definition attached.

305. According to Art. 16.6.d) of the CC, the Colombian law applies to foreigners who committed a crime abroad and whose extradition has been refused by the Colombian government. In this case criminal proceedings shall be initiated. These provisions, together with Art. 16.1. of the CC (see B.1.1), fulfil the *aut dedere, aut judicare* requirement enshrined in Article 10.3 of the Convention.

306. Colombia reported extraditing one individual to a Working Group member country following an extradition request for a combination of charges including foreign bribery and money laundering, requiring the application of the transnational bribery crime by the Supreme Court of Justice.

Commentary

The lead examiners note that Colombia, under the direction of the President and the Minister of Justice and Law can refuse extradition requests based on the undefined notion of "national convenience". This may undermine international co-operation and enforcement of the foreign bribery offence, if interpreted in a way that is incompatible with Article 5 of the Anti-Bribery Convention.

The lead examiners therefore recommend that Colombia clarify in a binding manner, including by legislative amendment, if necessary, that the criterion of "national convenience" for refusing an extradition request cannot be interpreted as national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved in a foreign bribery case.

B.5. Offences related to foreign bribery

B.5.1. Money laundering offence

307. Article 7 of the Convention requires the Parties that have made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred. According to the Commentary 28, "bribery of its own public official" is intended broadly, so that bribery of a foreign public official is to be made a predicate offence for money laundering legislation on the same terms. Regardless of domestic limitations, the criminalisation of money laundering must include both the active and passive side of foreign bribery.

308. No changes have been made to the money laundering offence (Art. 323 CC) since Phase 3. However, Colombia does not apply the all-crime approach for the definition of predicate offences. The money laundering offence lists specific offences that are considered as its predicates.

309. From the list of offences, the category “Crimes against the public administration” includes foreign bribery, as this designation refers to Title XV of the Criminal Code and its twelve chapters. In particular, the bribery offences are included in Chapter 3 (Arts. 405-407), while the offence of transnational bribery (Art. 433) is found in Chapter 11, under the title “Offences of the improper use of information and influence derived from the exercise of public function”. This placement of the foreign bribery offence in the system of the CC in view of the protected interest is curious, unless the offence aims to protect the public administration of another state. Moreover, the title of the chapter including foreign bribery hints at a misunderstanding concerning the offence’s nature, as the perpetrators of foreign bribery typically do not exercise any public function; rather, they aim to obtain or retain private business goals.

310. As for Columbian jurisdiction over the money laundering offence, only money laundering committed in the territory of Colombia is covered (Art. 16 CC, see in detail in section B.1.1). Of concern, only natural persons may be criminally liable for money laundering; legal persons cannot be held (administratively) liable for money laundering as it is not listed among the material competence of the Superintendency of Corporations (see section C.1.2).

311. Concerning the procedural aspects, the money laundering offence with an amount exceeding 100 legal monthly minimum wages (~EUR 31 000) are heard by specialised circuit criminal court judges, a higher-level court than the one with competence for foreign bribery. This has further consequences on the available investigative time limits (see section B.3.2).

312. Money laundering cases are handled by DECLA at PGO. UIAF states that it refers any suspicion of money laundering directly to DECLA, who decide on whether to initiate a criminal investigation.

B.5.2. False accounting offence

313. Colombia does not have a dedicated false accounting offence. Instead, the CC contains a series of falsification offences that may cover accounting-related conducts:

- Falsification of a public document (Arts. 286-287)
- Falsification of a private document (Art. 289)
- Use of false document (Art. 291)
- Destruction, suppression or concealment of a public document (Art. 292)
- Destruction, suppression or concealment of a private documents (Art. 293)

314. The available sanction for each of the above offences is imprisonment, along with additional disqualification from exercising of public rights and sanctions in the case of public documents. The abstract nature of these offences, in theory, could enable Colombian law enforcement authorities to capture the conducts listed in Article 8 of the Anti-Bribery Convention, such as the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents. Most of these conducts would qualify as falsification of private documents pursuant to Art. 293 of the CC.

315. PGO states that if forgery is connected to more severe offences handled by specialised prosecutorial units, prosecutors are obliged to refer these cases to them. In the case of foreign bribery and money laundering, this referral would be to DECLA. However, there is no information on how many falsification prosecutions were conducted, either in general or specifically in connection to false accounting.

316. In addition, the Junta Central de Contadores (Central Accountants Board) claimed that while they do not have internal guidelines on reporting, they would report to PGO and the Superintendency as these authorities have competence to act upon “irregularities”.

317. Conversely, at the on-site visit, representatives of accounting and auditing stakeholders maintained that their primary way of reporting accounting-related suspicions is tied to the AML/CFT regime, and as such they would report to the UIAF only. It is not clear how in these cases a suspicion of false accounting would reach PGO though, due to the different purpose of UIAF.

Prohibited conducts under the Commercial Code

318. In addition to the CC's provisions, after the Phase 3 evaluation, in 2022 Art. 57 of the Commercial Code was amended to include additional prohibited conducts regarding accounting, by adding paragraphs 6 – 11:

> *ARTICLE 57 – Prohibitions Regarding Accounting Books*
>
> *The following are prohibited in accounting books:*
>
> 1. *Altering the order or date of transactions recorded in the entries;*
> 2. *Leaving blank spaces that may facilitate insertions or additions in the text of the entries or immediately following them;*
> 3. *Making interlineations, erasures, or corrections in the entries. Any error or omission must be corrected by a new entry dated as of the date it is discovered;*
> 4. *Erasing or striking through entries, in whole or in part;*
> 5. *Tearing out pages, altering their order, mutilating the books, or modifying electronic records;*
> 6. *Creating accounts in the accounting books that are not supported by proper documentation and evidence;*
> 7. *Failing to record transactions in the accounting books;*
> 8. *Keeping double books, that is, maintaining two or more sets of books that record the same transactions differently, or retaining separate documentation for the same transactions;*
> 9. *Recording transactions improperly in the accounting books, including non-existent expenses or liabilities that lack proper identification;*
> 10. *Using falsified documents as supporting accounting evidence; and*
> 11. *Failing to disclose items in the financial statements that do not correspond accurately with the entries recorded in the accounting books.*

319. With the same amendment, the respective sanctions for the listed accounting violations have been increased, up to 2 000 current legal monthly minimum wages for natural persons (approximately USD 683 280) and up to 100 000 current legal monthly minimum wages for legal persons (approximately USD 34 million) (Art. 58 of the Commercial Code). The competent authority to conduct administrative sanctioning proceedings for such violations is the Business Requirements Group within the Superintendency of Corporations. Colombia explained that sanctions were applied due to noncompliance with accounting or reporting obligations, such as failure to submit financial statements within the established deadlines, serious accounting irregularities, or failure to properly keep commercial books. The imposed sanctions are enforced through final administrative acts that are subject to compulsory collection. It is not clear how similar conducts by entities not under the supervision of the Superintendency are handled.

320. It is also not clear how criminal liability and liability based on the Commercial Code function alongside each other in practice. At the on-site visit, PGO and the Junta Central de Contadores, which acts as the disciplinary authority for accountants as well as private sector stakeholders, stated that the same conduct can be sanctioned under each legal regime and that there is no hierarchy between criminal, civil, and administrative fields. PGO, however, does not refer cases or forward information to other entities with the aim of initiating either civil or administrative proceedings.

321. This situation again highlights the fragmented nature of Colombia's system and the lack of coordination and cooperation between the agencies. Reporting appears to be a one-way street as only PGO is entitled to receive information of this nature. However, PGO does not seem to disseminate information to other stakeholders to trigger their reaction and/or coordinate the criminal procedure and non-criminal actions.

Commentary

The lead examiners are concerned about the visible overlaps between different legal spheres concerning the framework of offences potentially applicable to a false accounting scenario. This situation negatively impacts both detection and enforcement. The different stakeholders who are best placed to detect false accounting do not have a clear view on when, how, and to whom to report these misconducts. Like in other aspects, there is no coordination between the relevant authorities.

The lead examiners therefore recommend that, to achieve compliance with Article 8 of the Convention, Colombia revise its legal framework and introduce a standalone false accounting offence. In addition, they recommend that Colombia provides training for the relevant stakeholders on the criminal nature of false accounting conducts and the reporting channels available so that suspicions reach PGO.

B.6. Concluding foreign bribery cases

322. As at both Phase 2 and Phase 3, Colombia has yet to conclude a case against a natural person for foreign bribery. No information was provided in response to the Phase 4 questionnaire that would allow for an assessment of how Colombia approaches concluding cases, either by way of closing investigations or by progressing to prosecution.

B.6.1. Discontinuation of proceedings and available non-trial resolutions

323. Investigations can be terminated in case of the death of the accused person, prescription, application of the principle of opportunity, amnesty, oblation, expiry of the complaint, withdrawal, and in the other cases determined by the law. The prosecutor must issue a reasoned order when terminating an investigation. If new evidence emerges, a terminated investigation can be resumed as long as the statute of limitation has not elapsed. The prosecutor's decision to close the investigation has no *res judicata* effect, reopening the investigation requires the decision of the judge of guarantees. PGO must notify the complainants, the victims and the whistleblowers about the discontinuation, as they can seek legal remedy against the prosecutor's decision.

The principle of opportunity

324. Articles 323-324 of the CPC outline cases for application of the principle of opportunity. In effect, this principle allows the prosecutor to suspend, discontinue, or entirely waive criminal prosecution. The situations where such an opportunity is applicable mainly concern offences of lesser gravity or reduced

relevance next to more severe ones. In the foreign bribery context, points 4., 5., and 18. are potentially relevant:

> 4. When the accused or defendant, until before the trial hearing begins, collaborates effectively to prevent the crime from continuing to be carried out, or to prevent others from carrying it out, or when he provides effective information for the dismantling of organised criminal gangs.
>
> 5. When the accused or defendant, until before the trial hearing begins, undertakes to serve as a prosecution witness against the other defendants, under total or partial immunity.
>
> In this event, the effects of the application of the principle of opportunity shall be suspended with respect to the accused witness until he/she complies with the commitment to testify. If at the end of the trial hearing he/she has not done so, the benefit shall be revoked.
>
> 18. When the perpetrator or participant in cases of bribery makes the respective complaint that gives rise to the criminal investigation, accompanied by evidence useful in the trial, and serves as a witness for the prosecution, provided that he voluntarily and comprehensively repairs the damage caused.
>
> The effects of the application of the opportunity principle shall be revoked if the person benefiting from it fails to comply with the obligations at the trial hearing.

325. These opportunity rules, especially point 4, if applied incorrectly in foreign bribery cases, could lead to effective impunity for active bribers while the passive side of bribery remains out of the reach of Colombian criminal justice. On the positive side, points 5 and 18 imply a subsequent prosecution, which mitigates the probability of this situation. PGO acknowledged that these opportunity rules are, in theory, applicable in foreign bribery cases, but advised that existing internal guidelines provide practical guidance on their use; such guidelines were not provided to the evaluation team.

326. PGO further claimed that discontinuation based on the opportunity principle may not be granted for high-ranking officials and specific offences but was unable to point to any legal or policy basis for this statement. Colombia further claimed that, even if the PGO would opt for the application of the opportunity principle, this would not preclude the application of administrative liability of legal entities. No practical examples were provided to support this statement, however.

Pre-agreements and negotiations between the prosecutor and the accused

327. As a basic form of agreement, according to Art. 293 of the CPC, if the accused accepts the charges, they may initiate or agree with the prosecutor to file the accusation as an indictment without further investigations. In this case, the judge will verify whether the agreement was voluntary, free, and spontaneous, then convene a hearing to determine the sanctions.

328. In addition to the above option, Arts. 348-354 of the CPC regulate the procedure to reach a pre-trial agreement that appears potentially applicable to the foreign bribery offence. Such procedure is allowed in cases committed to obtain material gains if at least 50% of the undue benefit has been returned and the collection of the remainder is ensured. It is not clear if direct or indirect benefits of active bribery would fall into this category or, if so, how these would be calculated.

329. Prior to the commencement of the trial, the prosecutor and defendant may reach a pre-agreement on the terms of indictment. The participation of a defence counsel is mandatory. The accused may agree to plead guilty to the charges, or to charges of a related offence with a lesser penalty, in exchange of eliminating grounds for aggravated punishment, a specific charge or a prosecutorial motion that leads to a

reduced sentence. The reduction can go up to the half of the penalty that would be imposed otherwise. The agreement can include reparation to victims.

330. The prosecutor must table the pre-agreement to the trial judge who is bound by its terms, unless it violates fundamental guarantees. If the judge approves the pre-agreement, they then convene a hearing to issue the resulting sentence.

331. Representatives of the private sector mentioned that PGO has stopped using these leniency instruments, to avoid the perception of impunity. However, they considered that the appointment of the new Prosecutor General in March 2024 has reopened the possibility of more frequent use. PGO did not provide any information of a policy change in this respect.

B.6.2. Sanctions against natural persons

332. There have been no changes in the legal framework for sanctions against natural persons since Phase 3. As a result, the available sanctions for natural persons for transnational bribery are as follows:

Offence	Imprisonment	Financial penalty	Additional sanctions
Transnational bribery (Art. 433 CC)	9 to 15 years	650 to 50 000 current minimum legal monthly wages (approximately EUR 200 000 – 15.75 million)	Debarment from the exercise of rights and public functions for the same term
			Debarment from contracting with the State's entities *Article 8 of Law 80 of 1993 (as amended by Law 1474 of 2011)*

333. Colombia is yet to reach a final court decision in a foreign bribery case, thus the sanctions applied to natural persons in practice cannot be evaluated.

334. Legal practitioners, academics, and representatives of civil society expressed the opinion that, in theory, applicable sanctions under criminal law are deterring enough. In general, they were of the view that the issue is the general ineffectiveness of the criminal procedure; that is, either the sanctions actually imposed and enforced are inadequate or the cases don't reach adjudication. Representatives of accounting and auditing stakeholders expressed the same view concerning the protraction and ineffectiveness of the criminal procedure even with respect to false accounting suspicions.

B.6.3. Confiscation

335. Article 82 of the CPC provides that confiscation shall be applicable to assets and resources of the criminally liable person, if these are a direct or indirect product of the offence or used or intended to be used as means or instruments of the commission of the act. For the purpose of confiscation, assets are goods that are susceptible to economic valuation or over which a right of ownership may be vested, whether corporeal or incorporeal, movable or immovable, tangible or intangible, as well as the documents or instruments that show the right over them. Confiscation of estimated value or substitute equivalent value is also (theoretically) possible.

336. According to PGO, both the amount paid as a bribe and the benefits obtained through the bribe are considered when applying seizure of assets for the future confiscation. Confiscated assets are handled by PGO through the Special Fund of Administration of Assets.

337. PGO explained that during the investigation assets of legal persons can also be seized or frozen, if these are the subject of confiscation. However, in effect, the conviction of a natural person is required to execute confiscation on corporate assets. As a result, PGO cannot enforce sanctions applied by the Superintendency as these are outside of the criminal law framework.

338. The legal framework for confiscation remained unchanged since Phase 3. To date, there are no foreign bribery cases in Colombia where assets have been seized or frozen in view of confiscation, nor concluded cases where confiscation has been enforced.

B.6.4. Accessing concluded cases

339. At the on-site visit journalists noted that courts often hear (domestic) corruption cases behind closed doors, claiming national interest. As no cases of foreign bribery concerning natural persons have progressed to prosecution, no comment can be made regarding the accessibility of court decisions in such instances. However, given the high-profile nature of foreign bribery cases, this practice of secrecy is concerning.

340. Resolutions concerning legal persons are freely accessible on the website of the Superintendency of Corporations. No information regarding investigations of legal persons that do not result in sanctions is provided or otherwise made publicly accessible.

Commentary

The lead examiners consider that Colombia's sanctioning framework for foreign bribery in respect of natural persons appears to be adequate, if, regretfully, not tested in practice. Similarly, while the legal framework for confiscation appears to be sound, the general perception of ineffective proceedings raises concerns regarding its practical application.

However, it appears that practice concerning the application of leniency tools is dependent on the Prosecutor General's policy approach at all times, which both underlines the importance of and lends support to the concerns regarding the independence of prosecutors.

Regardless, due to the risk of impunity in the foreign bribery context, the lead examiners consider the lack of foreign bribery-specific guidelines a potential loophole. They therefore recommend that Colombia issue prosecutorial guidelines for the application of the leniency tools and sanctioning concerning the foreign bribery and related offences, including the calculation of the benefits obtained through bribery.

C. Responsibility of legal persons

C.1. Scope of corporate liability for foreign bribery and related offences

341. Article 2 of the Anti-Bribery Convention requires countries to establish liability of legal persons for the foreign bribery offence. Annex I.B. and C. to the Anti-Bribery Recommendation lay out in greater detail the necessary standards for an effective corporate liability regime. After receiving a significant number of recommendations relating to legal persons liability in Phase 2, Colombia passed Law 1778 of 2016, which the Working Group considered at Phase 3 to have brought Colombia's regime for the liability of legal persons largely in line with the Convention.

342. Colombia's corporate liability regime for foreign bribery is administrative in nature. The Superintendency of Corporations is an independent agency with sole responsibility for inspection, oversight, and proceedings against legal persons, who may then be sanctioned by the imposition of fines. The Superintendency's decisions cannot be altered by the government, only judicially reviewed.

343. In accordance with Law 1778 of 2016, the Superintendency has the authority to investigate and sanction legal entities. Therefore, its investigative and sanctioning powers are not subject to the inspection, surveillance, and control framework established in Law 222 of 1995.

C.1.1. Legal persons cannot be liable for money laundering

344. Money laundering in Colombia is criminalised pursuant to Art. 323 of the CC, with the offence remaining unchanged since Phase 2. Article 7 of the Convention requires that the bribery of a foreign public official is a predicate offence for money laundering, without regard to the place where the bribery occurred. Colombia's legal framework for the money laundering offence in respect of natural persons is discussed above (see section B.5.1).

345. As money laundering is a criminal offence, legal persons cannot be held liable. Although corporate liability for money laundering *per se* does not exist in Colombia, Art. 7 of Law 1778 of 2016 provides that the concealment of the offence, benefits or bribes is an aggravating factor when determining sanctions for foreign bribery. However, for administrative purposes related to the conduct, this situation is not directly related to the crime of money laundering, and if it occurs, the Superintendency of Corporations must refer the file to the Prosecutor General's Office for matters within its jurisdiction. Additionally, it must be noted that these are accessory penalties rather than standalone liability, and the provision has never been applied in practice.

346. The Superintendency of Corporations or the Superintendency of Finance may impose sanctions on the legal persons they supervise for breaches of AML preventive measures. Although there were no formal recommendations made in this regard in Colombia's Phase 3 Report, the Working Group agreed to follow up on the application of sanctions against legal persons for money laundering. Unfortunately, such practice has not eventuated.

347. However, the Superintendency reports that, since Phase 3 and to date, 115 sanctions totalling approximately COP 4 billion (approximately EUR 900 000) have been imposed for breaches of AML preventive measures.

Commentary

The lead examiners welcome the efforts made by Colombia to sanction legal persons for breaches of AML preventative measures and encourage them to continue, and, as far as possible, escalate the use of this good practice.

However, they remain deeply concerned that the absence of liability for legal persons for money laundering represents a significant loophole given the frequent use of legal persons in money laundering schemes. They therefore recommend that Colombia take the necessary measures to ensure that offenders cannot escape liability when laundering the proceeds of foreign bribery through legal persons.

C.1.2. The investigative capacity of the Superintendency of Corporations

348. The Superintendency reports opening 10 foreign bribery investigations since Phase 3, of which nine had been closed without sanctions imposed by 2022. One further investigation was concluded in 2024 with sanctions against the company (***Reinsurance Company*** case), Colombia's second administrative sanction to date.

349. The Superintendency has no current active foreign bribery investigations, with no new investigations being opened in the last three years.

350. Colombia's Constitution does not allow administrative authorities to "exercise investigative functions that would interfere with fundamental rights." As a result, the investigative tools available to the Superintendency of Corporations are significantly limited when compared to those available to criminal law enforcement authorities, including, for example, no power to compel the production of information from financial institutions or anti-money laundering (AML) authorities.

351. At Phase 3, the Working Group positively noted the Superintendency's ability to identify companies which could be the subject of administrative visits (*visitas administrativas*) under Art. 20 of Law 1778. The Constitutional Court has confirmed the constitutionality of these powers, in particular as it relates to Law 1778 of 2016, provided such visits are carried out in the context of investigating offences for which the Superintendency has competence.

352. Despite this, Colombia has only conducted three administrative visits since Phase 3 and did not cite such visits as the source of any foreign bribery investigations.

The Superintendency is reliant on PGO for mutual legal assistance

353. Of significant concern is the Superintendency's inability, in practice, to conduct its own MLA. While it has made efforts to conclude memoranda of understanding with several jurisdictions, Colombia did not provide, by the time of this report, any statistical information on the use of such agreements, or provide practical examples of their use in investigations of legal persons for foreign bribery.

354. As of 30 January 2024, with a verbal note added to the UNCAC, the Superintendency of Corporations has become one of Colombia's central authorities for MLA. While this might appear a positive step to improve the Superintendency's ability to undertake formal international cooperation, several contextual matters draw into question the practical impact it could have.

355. Mutual legal assistance is usually a peer-to-peer interaction between judicial authorities of equal standing, such as judges and prosecutors, with very few countries delegating these exchanges to criminal police authorities. Diagonal cooperation – that is, between authorities of different standing – is rarely

accepted in practice. Authorities competent for criminal investigations usually cannot act in their own criminal procedural legal framework upon a request of administrative nature. Further, Article 43(1) of the UNCAC, under which "the States Parties shall consider" providing assistance in civil and administrative matters concerning corruption, does not create a formal obligation to provide such assistance.

356. Consequently, even if such assistance were provided, due to the Superintendency's status as an administrative authority the execution of its MLA requests would fall under the respective administrative procedural rules. This would render any information received pursuant to such requests inadmissible in criminal proceedings which apply higher evidentiary standards and, further, could risk affecting a (potential or actual) criminal case if such requests were not properly coordinated with PGO. This would require a level of alignment and cooperation between the PGO and the Superintendency that does not exist.

357. Cooperation between the Superintendency and PGO (and other agencies) is discussed further in section C.1.3. By way of brief example, in Phase 3 it did not appear that all investigations by the Superintendency have been "mirrored" by investigations by PGO, nor that attempts had been made by either agency to cooperate in ongoing cases. Further complicating matters, it seems that, based on the limited scope of Law 1778 of 2016, the Superintendency may be able to cooperate with some of the authorities in other Working Group countries but not others, including neighbouring countries' authorities.

358. As such, MLA is likely to remain a significant obstacle to the Superintendency's investigative capacity. Additional issues concerning international cooperation are explored in greater detail in section B.4.

Access to financial and other protected information is also limited

359. The Working Group has expressed concerns as far back as Phase 2 regarding the ability for the Superintendency to request information from financial institutions. Article 20 of Law 1778 of 2016 does not address explicitly the right of the Superintendency to access information protected by bank secrecy, instead stating that the Superintendency may "request natural and legal persons to provide data, reports, books and commercial papers that may be required for the clarification of the facts."

360. While representatives of the Superintendency maintain their previously held position that this article provides a sufficient basis to request such information from banks, they were unable to provide any recent examples of such information being successfully requested. Countering this view, during the on-site visit, representatives of the banking sector, the legal profession, and PGO expressed the view that the Superintendency's powers do not allow it to request information covered by bank secrecy, and that any such information would only be provided following a request approved by the judge of guarantees.

361. Similar concerns now arise in the context of beneficial ownership information. Colombia established a beneficial ownership register in 2022, managed and overseen by DIAN (details of the register are discussed in section B.3.1).

362. However, the register is not public and access to the information is tightly restricted. The Superintendency does not have access and so must make requests for information to DIAN as needed; such requests may be declined. Colombia offered no explanation as to why this level of restriction was deemed necessary. DIAN were unable to provide information on how many requests for access have been made, by whom, whether such requests were granted, or, where such requests were denied, the reasons for declining them.

Human and financial resources seem insufficient

363. The Superintendency of Corporations' Transnational Bribery and Other Offences Investigations Group comprises two staff lawyers, two staff economists, a contractor lawyer with a focus on criminal law, and a contractor forensic investigator with experience in investigations of the Colombian military forces.

The Superintendency also has a forensic laboratory that serves to process the information collected in administrative visits, including three systems engineers who accompany investigators conducting administrative visits to assist with the collection of information and preserve the chain of custody of the evidence.

364. At the on-site representatives of the Superintendency indicated that they felt adequately resourced, which the lead examiners found unexpected. The very low number of active foreign bribery cases, aligned with the Superintendency's perception of having sufficient resources, may itself be a symptom of insufficient prioritisation of, and resourcing for, foreign bribery prosecutions.

365. The Superintendency reports that foreign bribery expertise is developed through its training programme, including international peer learning. Information on the content and frequency of such a training programme was not provided to the evaluation team.

366. During the on-site visit, the lead examiners also raised concerns that the Superintendency was not fully pursuing all available avenues against Colombian legal persons, noting the large number of investigations closed without explanation. The Superintendency insisted that the Colombian legal framework is adequate to ensure they can effectively sanction Colombian legal persons for foreign bribery. However, they were unable to explain why they have been unable to do so in the vast majority of cases, nor could they provide any information regarding the investigative measures used in specific cases, or reasons why any individual case had been closed without sanctions imposed.

367. The Superintendency does not report undertaking any reflective analysis or review of its processes, procedures, or case methodologies to further understand how it might be able to strengthen its investigative approach to foreign bribery cases.

Independence of the Superintendency

368. At Phase 2 and Phase 3, the Working Group expressed concerns about the power of the President to remove the Superintendent, who in turn could remove his/her deputies, and recommended that Colombia strengthen safeguards for the independence of the Superintendency of Corporations.

369. The current appointment process is based on professional criteria, and the role is a non-renewable four-year term coinciding with the Presidential mandate. However, since these safeguards are not grounded in law, the current trend towards granting greater independence to the Superintendency is at the mercy of political changes. While Colombia considers that the safeguards currently in place are sufficient, there still exists a risk of improper influence by concerns of a political nature or factors prohibited under Article 5 of the Convention.

Commentary

The lead examiners congratulate Colombia for successfully imposing its second administrative sanction for foreign bribery. Additionally, they reiterate the positive acknowledgement from Phase 3 of the good practice of administrative visits and recommend Colombia increase their use to ensure this powerful investigative tool is utilised to its fullest extent, with the caveat that doing so must be in close alignment with PGO to mitigate any risk of spoiling a criminal investigation.

At the same time, they are deeply concerned that the Superintendency of Corporations is working in an environment of limitation that is significantly constraining its ability to conduct effective investigations.

The lead examiners therefore recommend that Colombia, as a matter of urgency, take immediate steps to increase the ability of the Superintendency to access protected information, including but not limited to the RUB and financial information. Most significantly, they recommend that Colombia ensure, by whatever means necessary, that the Superintendency is able to manage and conduct

its own MLA processes, whether, for example, by entrenching and formalising the relationship between the Superintendency and PGO, elevating the Superintendency to the level of a competent authority in criminal matters, or by any other structural or procedural process change that guarantees this vital process is fully accessible and able to be used effectively by the Superintendency.

Further, in view of the limited foreign bribery enforcement to date, the lead examiners recommend that the Superintendency of Corporations (i) act promptly and proactively so that complaints of bribery of foreign public officials by legal persons are seriously investigated, (ii) take a proactive approach to the investigation of foreign bribery by legal persons, (iii) take all necessary measures to ensure that the fullest range of investigative techniques available are being effectively utilised in foreign bribery investigations, and (iv) undertake a stocktaking and review exercise of investigative techniques used in foreign bribery investigations to date, so as to assess challenges and areas of good practice, with a view to ensuring the effectiveness and efficiency of these techniques.

Finally, in light of long-standing concerns regarding the independence of investigations, the lead examiners reiterate the Phase 3 recommendation that Colombia strengthen safeguards for the independence of the Superintendency in accordance with Article 5 of the Convention.

C.1.3. Cooperation between the Superintendency and PGO

370. Concerns regarding the level and effectiveness of cooperation between the Superintendency and PGO have been raised since Phase 2. At Phase 3, the Working Group found that, despite existing MoUs, in practice, little information was communicated between the agencies. As no changes to the legal framework have been made, Law 1778 of 2016 continues to remain silent on when the Superintendency must report possible offences to PGO (and vice versa), meaning the agencies must rely on extra-legal MoUs to guide information sharing procedures.

371. Unfortunately, discussions during the Phase 4 on-site indicate that little has changed. Although both the Superintendency and PGO stated during the on-site visit that they cooperate fully, practice in actual foreign bribery cases raises questions. Colombia did not provide evidence of any current MoUs between PGO and the Superintendency, and, concerningly, representatives of PGO openly stated that they would not proactively pass information to the Superintendency, even when such information might relate to a Colombian legal person.

372. This lack of coordination between the key investigating, prosecuting, and sanctioning agencies has been the subject of several recommendations at both Phases 2 and 3, some of which remained only partially implemented at the time of the Colombia's final Phase 3 follow-up report.

C.2. Enforcement of corporate liability for foreign bribery

373. Since Phase 3 the Superintendency of Corporations reports opening ten investigations relating to potential acts of foreign bribery by Colombian legal persons. Unfortunately, nine of these investigations have been closed without sanctions imposed; Colombia was unable to provide information, either detailed or aggregate, on the reasons for closing these investigations. The Superintendency currently has no open investigations relating to foreign bribery by Colombian legal persons.

374. Despite this, in the one remaining case the lead examiners are pleased to acknowledge that Colombia has successfully imposed its second administrative sanction of a legal person, in the ***Reinsurance Company*** case. This case concerned the Colombian subsidiary of a UK-based provider of

insurance broking, risk management, and insurance claims services, JLT Specialty Limited (JLT), which is part of the global JLT Group plc (the Group).

375. Between November 2013 and June 2017, JLT was involved in a commission payment arrangement with JLT Re Colombia (a part of the Group) and two other companies. Under this arrangement, JLT paid USD 12.3 million in commission to the parent of JLT Re Colombia, which in turn paid USD 10.8 million to a third-party introducer, which paid USD 3 million to government officials involved in a state-owned insurance company. All of these payments related to the engagement and retention of business for JLT in the United Kingdom.

376. In June 2022, the UK FCA announced a financial penalty of GBP 7.8 million against JLT. This was JLT's second penalty of its kind within a decade, after it received a GBP 1.8 million fine in December 2013 for similar failings in its risk controls relating to overseas introducers.

377. In March 2022 the Superintendency of Corporations released its resolution following investigation into the Colombian subsidiary (CARPENTER - 2022-01-131779-000, referenced here as the ***Reinsurance Company*** case).

C.2.1. Sanctions against legal persons for foreign bribery

378. There have been no changes in the legal framework for sanctions against legal persons since Phase 3, meaning the available sanctions for legal persons committing transnational bribery remain as follows:

Offence	Imprisonment	Financial penalty	Additional sanctions
Transnational bribery (Art. 2 of Law 1778 of 2016)	N/A	Up to 200 000 minimum legal monthly wages (approx. EUR 45 million)	Debarment from public procurement contracting for up to 20 years
			Prohibition of receiving government incentives or subsidies for 5 years
			Publication of sanctions to the media and on the legal entity's website for one year

379. At the time of the Phase 3 Report, Colombia had imposed sanctions against one legal person in the ***Water Utility Company*** case, with the Working Group noting that the procedure for determining the sanctions, as well as the adequacy of the sanctions, could raise some concerns. In that case, the Superintendency imposed an initial sanction of USD 1.7 million based on two charges for foreign bribery, then dropped one of the charges and reduced the sanction to USD 1.3 million on appeal. The Superintendency did not impose debarment from public procurement contracting or prohibition of receiving government incentives or subsidies due to the legal person's collaboration during the investigation. The level of the financial penalty imposed, both initially and after the appeal, was far below the maximum available penalty and lower than the benefit obtained or sought.

380. Law 1778 of 2016 contains criteria for determining the sanctions imposed on a legal person for foreign bribery (Art. 7). These include both mitigating and aggravating factors such as the economic benefit obtained or sought by the legal person, the capacity of the legal person to pay, the reiteration of the conduct, the admission of guilt, the use of an intermediary, the adoption and effectiveness of corporate ethics programmes, self-reporting and the degree of collaboration with the Superintendency of Corporations during the investigation.

381. Questions regarding whether the application of these mitigating factors, including the significant potential benefits of collaboration, could lead to insufficiently effective, proportionate and dissuasive

sanctions against legal persons were raised in Phase 3 in the context of the ***Water Utility Company*** case, as explained above.

382. Unfortunately, the second application of such benefits, in the ***Reinsurance Company*** case, has not provided assurances. A copy of the resolution sets out the factors for consideration when calculating the sanctions to be imposed, stating the following:

> […] Taking into account the above, the following will be taken into account when calculating the fine to be imposed:
>
> a) The maximum fine to be imposed corresponds to the sum of 200 000 minimum monthly wages, equivalent to COP 200 billion.
>
> b) The Company's equity capacity as of December 31, 2021, which amounts to $53,490,535,000.
>
> c) The value of the transfers made to unauthorized accounts for the sum of USD 4,274,286.86, for the indirect payment of bribes to foreign public officials during the period from 2016 to 2017, according to the orders issued by [name redacted], in accordance with the corruption scheme described.
>
> d) The economic benefit intended and identified in this Resolution.
>
> e) The application of mitigating criteria regarding the imposition of the sanction according to what is contemplated in numbers 1, 2, 6, and 10 of Art. 7 of Law 1778 of 2016; without the aggravating circumstances contemplated in numbers 3, 4, and 5 of the same article occurring; and acknowledging compliance with the provisions regarding the procedure for benefits for collaboration established in article 19 of the aforementioned law, as well as in Resolution 200-000816 of 2018.

383. Based on this, the fine was initially set at COP 16 655 214 996 (EUR 3.56 million). However, the request for benefits for collaboration was then granted at 50%, resulting in a final sanction of COP 8 327 607 498 (EUR 1.78 million). No analysis is presented as to how the reduction of 50% was justified. The resolution was also ordered to be published once in a national newspaper, and on the homepage of the company's website for six months. The resolution then states: "No additional sanctions will be imposed"; the potential for debarment or prohibition of receiving government incentives or subsidies is not discussed.

384. As such, the situation is that in both cases in which administrative sanctions were imposed, the companies submitted requests for cooperation benefits as provided in Art. 19 of Law 1778 of 2016, which resulted in a significant reduction in the sanctions imposed. Colombia did not provide any information explaining the process of evaluating such requests, nor regarding the process for deciding on, for example, whether a request should be denied or granted or the factors that contribute to such a decision.

385. Additionally, since Phase 3 (and following the administrative decision in the ***Reinsurance Company*** case), a new regulation, Decree 390 of March 21, 2024, has further widened the availability for granting cooperation benefits in matters of transnational bribery and administrative liability of legal persons for acts of corruption. This regulation allows for partial or full exemption from sanctions when the company provides relevant and timely information regarding the commission of the offense and the benefits obtained through such illegal schemes.

Commentary

The lead examiners regret that Colombia has not provided detailed information on the method for determining the sanctions imposed against legal persons in foreign bribery cases, and note it is unclear, for example, whether and to what extent sanctions imposed for bribery have taken and would take into account the benefits obtained through the bribery scheme.

They recall the concern expressed in Phase 3 concerning the process for calculating and applying sanctions in Colombia's first foreign bribery sanction against a legal person and note with regret that this concern has not been assuaged in the imposition of Colombia's second administrative sanction. They therefore reiterate the Phase 3 recommendation that Colombia ensure that sanctions imposed in practice against legal persons for foreign bribery are effective, proportionate and dissuasive, including ensuring that sanctions against legal persons take into account the value of the benefits obtained through bribery in foreign bribery cases.

They also reiterate the Phase 3 recommendation that Colombia maintain detailed statistics on the criminal, civil and administrative sanctions imposed for domestic and foreign bribery against legal persons, in order to allow for the assessment of whether they are sufficiently effective, proportionate and dissuasive in practice. Finally, the lead examiners recommend that the WGB continue to follow up on the application of such sanctions in practice.

C.2.2. Confiscation measures against legal persons for foreign bribery

386. At Phase 3 the Working Group recalled a concern raised in Phase 2 that Colombia was unable to enforce confiscation against legal persons in practice because confiscation procedures were dependent on a criminal investigation against, or a criminal conviction of, a natural person. At that time, Colombia's confiscation framework did not provide for monetary sanctions against legal persons with effect comparable to confiscation. The Superintendency can apply financial sanctions against legal persons, which Colombia argued constituted confiscation. However, the Working Group disagreed, stating that these sanctions had the nature of a fine, not confiscation.

387. While the ability to undertake confiscation in rem (asset forfeiture) independent from any criminal procedure against a natural person was introduced in Law 1708 of 2014, in practice, this cannot be enforced against legal persons. This is because the Superintendency does not have the power to request the application of asset forfeiture by a judge, and PGO, which has such power, does not have jurisdiction over legal persons or their assets. This resulted in Colombia receiving a recommendation to introduce legislation to allow the Superintendency of Corporations to request the forfeiture of the bribe and proceeds of foreign bribery, or property the value of which corresponds to that of such proceeds, or introduce monetary sanctions of comparable effect against legal persons, even in the absence of prosecution or conviction of a natural person (Recommendation 2.b.).

388. While Art. 40 of Law 2195 of 2022 amended Art. 5 of Law 1778 of 2016 to introduce a "confiscatory" element to the available "punitive" fines for legal persons, Colombia did not provide any information to explain how, in concrete terms, this creates the required ability for the Superintendency to undertake confiscation in practice.

389. Participants at the on-site seemed confused at the conceptual distinction between the bribe itself and the proceeds of the bribery, and were not able to articulate how they would determine whether confiscation might be appropriate when considering sanctions for legal persons. In practice, it does not appear that Colombia has attempted to apply confiscation measures, and the legal mechanism for the Superintendency's ability to undertake confiscation remains unclear.

Commentary

Regarding confiscation, and as already noted in both Phase 2 and Phase 3, the lead examiners are concerned that confiscation against legal persons cannot be enforced in practice in the absence of prosecution or conviction of a natural person. They therefore reiterate recommendations that Colombia introduce the necessary legislation to allow the Superintendency of Corporations to request the forfeiture of the bribe and proceeds of foreign bribery, or property the value of which corresponds to that of such proceeds, or introduce monetary sanctions of comparable effect against legal persons.

The lead examiners also recommend that Colombia maintain detailed statistics on the use of confiscation against legal persons.

C.2.3. Benefits of collaboration

390. The Phase 3 Report (and the Phase 2 Report) noted that a partial or full exoneration from sanctions may apply to a legal person that self-reports or collaborates with the Superintendency of Corporations (Art. 19 of Law 1778 of 2016), which could result in a possible loophole in the implementation of the Convention.

391. To address these concerns Colombia clarified in Art. 19 of Law 1778 of 2016 that full exoneration can be granted only when the legal person self-reports to the Superintendency prior to the commencement of an administrative action against it and exercises no obligations or rights arising from the contract obtained through a bribe. Resolution 200-000816 of 27 September of 2018, which provided further guidance on the application of Art. 19 of Law 1778 of 2016, was elevated to a Regulatory Decree in 2023, a change that Colombia claimed would "elevate its impact".

392. Article 19 of Law 1778 of 2016 (*Beneficios por la colaboración*) was then amended by Art. 22 of Law 2195 of 2022 to add the two following specific criteria for allowing a full or partial exoneration of sanctions:

a. Uniqueness of information: "The information supplied to the Superintendency of Corporations has not been previously known to it, or has not been disseminated by other means, or the conduct has not been the object of an investigation by other national or foreign authorities" (Art. 19(c)).

b. Remedial actions: The legal person has "adopted the appropriate remedial or corrective measures established by the Superintendency of Corporations" (Art. 19(d)).

393. Despite these positive developments, questions remain. First, Colombia was unable to confirm whether or not, in new Art. 19(c) of Law 1778 of 2016, the three scenarios represent cumulative conditions (that is, that a self-report on information not known to the Superintendency but disseminated in media would not qualify for the benefits of collaboration). Second, when questioned on the apparent contradiction between Art. 19(e), which states "Total exoneration (…) may be granted provided that prior to the initiation of the corresponding administrative action, the legal person: (i) has brought to the attention of the Superintendency the infractions referred to in this law (…)" and new Art. 19(c), the Superintendency was unable to offer an explanation or reconciliation between the sub-articles.

394. The Working Group has noted in several previous follow-up reports that, since full exonerations are still available in foreign bribery cases, the Phase 4 evaluation should analyse in further details how the benefits of collaboration are applied in practice. This matter was raised during the on-site; officials present were not able to explain the process by which the benefits for collaboration would be calculated in several hypothetical situations that were posed to articulate the significance of the timing of the Superintendency becoming aware of the information, nor were they able to reconcile the contradictory Articles.

395. Further, Law of 2195 of 2022 mentions remedial actions of companies as an important factor determining the penalty exemption or reduction but does not specify the types of remedial actions that may be ordered by the Superintendency. Colombia described several such actions that may be considered by the Superintendency of Corporations for companies to qualify for the penalty benefits, including, inter alia, the implementation of a transparency and business ethics program, restructuring of management, and conducting external audit. However, no legal or policy basis was provided for the consideration of these actions, nor did Colombia delineate how the implementation (or non-implementation) of such actions would be assessed for the purposes of determining the exemption from or reduction of a sanction.

396. Similarly, while Law 2195 of 2022 stipulates that total or partial exemption from penalties are available upon voluntary disclosure of foreign bribery, the legislation itself does not clarify how the penalties are calculated and how mitigating factors play role in determining the penalties.

397. As it stands, in both sanctions applied by the Superintendency the companies have received significant discounts for collaboration without clear articulation of how either the original sanctions or the subsequent discounts were calculated.

Commentary

As previously noted, the lead examiners commend Colombia for securing its second administrative sanction of a legal person for foreign bribery.

Despite this, they consider it seems increasingly likely, based on this second experience, that the sanctions being applied to legal persons in practice in foreign bribery cases are not effective, proportionate and dissuasive. In part, this is because the resolutions do not disaggregate what portion of the total fine is attributable to the foreign bribery scheme. The lead examiners recommend that Colombia ensure that all resolutions with legal persons concerning foreign bribery provide enough information to the public so that it is possible to ascertain the amount of the bribes, the proceeds of bribery, and the sanctions imposed in relation to the foreign bribery scheme.

C.3. Engagement with the private sector

398. Countries should, *inter alia*, raise awareness of companies' liability for foreign bribery committed by intermediaries (2021 Recommendation, Annex I.C.2) and of bribe solicitation risks among the private sector (2021 Recommendation XII.i). In Colombia, the Superintendency has the duty of promoting ethics and transparency programmes among companies that are subject to its control and supervision (Art. 23 of Law 1778 of 2016).

399. In its responses to the Phase 4 Questionnaire, Colombia stated that "five legal clinic events were held with the participation of 239 individuals, 14 training events on compliance programs were conducted with 2 819 participants, and 20 training sessions on Report 75 were organized with 7 357 participants". Colombia did not provide any further details on dates, programmes or participants for these trainings, nor information on whether these sessions would cover the need for ethics and compliance measures in the private sector.

400. It was also not apparent at that time what "Report 75" referred to; no other mention was made of this report in Colombia's questionnaire responses, and representatives at the on-site were not aware of it. Following the on-site, Colombia clarified that such reporting relates to regulatory compliance measures undertaken by companies to mitigate money laundering risk, with no reference to foreign bribery.

401. Colombia does not report taking any steps to promote the adoption of effective internal controls, ethics, and compliance measures designed to prevent and detect foreign bribery among Colombian companies active in foreign markets, including SMEs. Colombia does also not appear to have taken any steps to encourage business organisations and professional associations to assist companies in developing such measures.

402. More concerningly, only a very limited number of representatives from the private sector attended the Phase 4 on-site visit. None of these were SMEs, and only one (Bancóldex) is an SOE. This made it particularly difficult to assess Colombia's efforts to raise awareness of foreign bribery in the private sector and promote the adoption of effective internal controls, ethics, and compliance measures designed to prevent and detect foreign bribery. Colombia's incapacity to mobilise the private sector adequately during

the on-site visit supports this section's finding that the authorities engage insufficiently with the private sector in preventing and combating foreign bribery.

403. During the on-site visit, the very limited number of representatives from the private sector expressed the view that companies that do business abroad, at least larger ones, would have anti-corruption compliance procedures in place. However, participants felt that the adoption of compliance systems were driven out of fear of enforcement pursuant to the US FCPA or UK Bribery Act and media investigations, rather than the threat of enforcement by the Colombian authorities.

Commentary

The lead examiners are very disappointed that they were not given the opportunity to meet with an appropriate sample of private sector representatives during the on-site visit. While, for this reason, it is difficult to formulate firm conclusions as to the awareness of foreign bribery and compliance practice in the private sector, there are indications that both are insufficient, in particular in the SME sector, in light of the foreign bribery risks faced by Colombian businesses.

D. Other issues

D.1. Tax measures for fighting foreign bribery

D.1.1. Non-tax-deductibility of bribes

404. Pursuant to Tax Recommendation I(i), countries must explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner. Denial of tax deductibility is not contingent on the opening of an investigation by the law enforcement authorities or on court proceedings. The WGB has also been assessing whether potential tax deductibility of the fines and confiscation measures have had an impact on whether sanctions and confiscation are effective.

405. Colombia's regime of non-tax deductibility of bribes is included in Arts. 105, 107, and 107-1 of the Tax Statute (TS). Arts. 105, 107, and 107-1 of the TS were amended by Laws 1607 of 212 and 1819 of 2016, notably to respond to the Working Group's Recommendations made in Phase 1. These amendments explicitly disallow the tax deductibility of expenses from any civil sanction or criminal conduct, including foreign bribery, thus bringing Colombia in compliance with requirements under the 2009 Tax Recommendation.

The time during which a tax return may be re-examined is still too short

406. At Phase 2 and Phase 3, the Working Group expressed its concern that the three-year limitation period to reopen tax returns may be insufficient to allow tax authorities to effectively make a re-adjustment of taxes when criminal proceedings reveal a foreign bribery offence has occurred in a previously filed tax claim. They therefore recommended that Colombia sufficiently extend the statutory time during which a tax return may be re-examined to effectively determine whether bribes have been deducted.

407. In its Phase 3 2Y WFU Report, Colombia indicated that the statutory time for re-examination of tax returns would not be extended as it would require the revision of the entire system of tax procedure. In the Phase 4 questionnaire, Colombia did not respond to specific questions regarding whether any changes have been made to the statutory time limit for tax re-examination to ensure the non-tax-deductibility of bribes. This recommendation therefore remains unimplemented.

Uncertainty regarding the systematic referral of foreign bribery conviction data to DIAN

408. At the time of Phase 3 the Working Group was also concerned that DIAN was not being systematically informed of foreign bribery convictions and sanctions to enable it to re-examine past tax returns to verify whether bribes were impermissibly deducted. The WGB therefore recommended that Colombia put in place the necessary mechanisms to inform DIAN of foreign bribery-related convictions or administrative sanctions.

409. In 2021, the Superintendency and DIAN signed a framework co-operation MoU relating to digital information exchange. A complementary agreement is pending that will further define the scope of exchange. Furthermore, PGO and DIAN share relevant information of foreign bribery-related convictions

concerning natural persons through periodic working group meetings held between the two entities. Based on this information, this recommendation was assessed as fully implemented.

410. Colombia did not confirm whether this MoU is still in effect, and no information was provided on the number of referrals made by tax authorities in regard to foreign bribery (if any).

411. At the on-site, DIAN representatives confirmed that tax returns can be re-examined for bribes, including in cases where it becomes aware of these through means other than direct notification, such as media reports. As no natural persons have been convicted for foreign bribery in Colombia to date there have been no instances of individual tax returns re-examined for the purposes of determining deduction of bribes. However, DIAN stated that they had undertaken a reaudit procedure following the administrative sanction in the ***Reinsurance Company*** case, which reportedly revealed no matters of concern. They were not aware of any reaudit measures taken following in respect of the ***Water Utility Company*** case.

412. DIAN representatives were also not aware of any MoU that would result in automatic notification in the event of a conviction or administrative sanction for foreign bribery, and they did not report undertaking any systematic auditing of tax returns.

Commentary

As in Phase 2 and Phase 3, the lead examiners remain concerned that the three-year limitation period to reopen tax returns may still be insufficient to allow tax authorities to effectively make a readjustment of taxes when criminal proceedings reveal a foreign bribery offence has occurred in a previously filed tax claim. They therefore reiterate the recommendation that Colombia sufficiently extend the statutory time during which a tax return may be re-examined to effectively determine whether bribes have been deducted.

With a view to enhancing the enforcement of the non-deductibility of bribes and sanctions imposed in practice, the lead examiners reiterate the Phase 2 and Phase 3 recommendation that Colombia establish a formal mechanism, whether legislative or policy-based, to ensure that DIAN is systematically made aware of foreign bribery resolutions, so that it may reaudit the tax returns of natural and legal persons who were sanctioned.

D.1.2. Detection and reporting by tax officials

413. The 2009 Recommendation VIII.i urges countries to, in accordance with their legal systems, “establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities”.

414. According to the OECD’s 2024 Economic Survey, the first foreign asset disclosure programme organised by Colombian tax authorities revealed assets hidden abroad, either for tax evasion purposes or due to being the proceeds of illicit activities, worth almost 2% of Colombian GDP (OECD, 2024[7]).

415. To date, no cases of suspected foreign bribery have been referred by DIAN to law enforcement authorities. As with all public officials, DIAN must report crime, including suspected bribery detected during tax examinations, to law enforcement authorities. However, it is not clear that DIAN officials would have the ability to detect bribes that are disguised as legitimate tax-deductible expenses.

There is a framework for facilitating cooperation with law enforcement agencies

416. In Phase 3, Working Group noted the improved information sharing between DIAN and law enforcement agencies. With a view to further enhancing the detection capacity of DIAN through cooperation, Working Group recommended that Colombia ensure that mechanisms are in place for the effective sharing of information between the tax and law enforcement authorities.

417. In Phase 3 2Y WFU Report, Colombia reported that Decree 1742 of 2020 puts DIAN under an obligation to provide foreign bribery-related information to PGO. In 2022, Colombia revised Art. 22 of Law 1778 of 2016 to have DIAN also provide to the Superintendency any report of suspicious activity or fact that indicates foreign bribery relating to legal persons.

418. Despite this, at Phase 4, Colombia has not provided any information or evidence to indicate how this information sharing and cooperation operates in practice.

Colombia does not report undertaking any awareness-raising and training for tax authorities

419. Recommendation I(ii) of the 2009 Tax Recommendation recommends that Parties to the Convention should assess "whether adequate guidance is provided to taxpayers and tax authorities as to the type of expenses that are deemed to constitute bribes of foreign public officials". A Phase 3 recommendation that Colombia resume efforts to provide training to DIAN officials with a view to enhancing their capacity to detect foreign bribery red flags remains only partially implemented following a minimal number of trainings reported at the Phase 3 2Y WFU.

420. Colombia did not report on any awareness-raising or training on foreign bribery prevention, detection and reporting for tax authorities in Phase 4 questionnaire. Tax auditors at the on-site were unaware of the guidance document "*OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors*"

421. DIAN representatives did mention a training guide for tax auditors they had developed in collaboration with Peru that, purportedly, contains material on foreign bribery red flags. However, despite requests, a translated copy of this training guide was not provided to the evaluation team.

International cooperation

422. Recommendations I(iii) and II of the 2009 Tax Recommendation asks member countries to facilitate detection and investigation of foreign bribery by asking countries to allow sharing of tax information with law enforcement authorities, both domestically and internationally.

423. The OECD 2024 economic survey noted that Colombia fully participates in international information exchange for tax purpose. However, Colombia has not provided any information that would allow an assessment of whether, and if so, how DIAN can share information with foreign law enforcement authorities for use in bribery investigations and prosecutions.

Commentary

The lead examiners welcome improvements in cooperation between tax authorities and law enforcement authorities in Colombia. They are, however, concerned that DIAN have not detected any foreign bribery cases to date.

They therefore recommend that Colombia provide regular training to tax auditors on the detection of bribe payments disguised as legitimate allowable expenses, including by incorporating the "OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors" into the tax authorities' tax audit manual.

Conclusions

424. The Working Group welcomes Colombia's efforts since Phase 3 to implement the Convention and related instruments. However, the Working Group regrets Colombia's increasingly inadequate engagement with the Working Group in the years following its ratification of the Convention, noting that Colombia still faces significant challenges in detecting and enforcing the foreign bribery offence.

425. Based on the findings of the report, the Working Group is seriously concerned at Colombia's limited efforts to raise awareness of public officials on foreign bribery offence and the available reporting channels. The majority of Colombia's public agencies with remit for foreign bribery do not appear to undertake training on either the offence itself or the available reporting channels that their employees could use when they come across potential instances of foreign bribery in the course of their work. Other potential sources of detection are also underutilised.

426. Beyond the detection of foreign bribery, it is apparent that insufficient internal cooperation among the relevant agencies and restrictive interpretations of MLA processes are negatively impacting Colombia's ability to effectively investigate foreign bribery. For example, Colombia asserts that PGO cannot use the information contained in incoming MLA requests that indicate the potential involvement of Colombian natural and legal persons in foreign bribery to open investigations, preventing Colombian law enforcement authorities from responding promptly to such allegations. Furthermore, the Superintendency's inability to undertake its own MLA processes renders the agency entirely reliant on PGO for international cooperation, effectively precluding them from obtaining MLA information on their own accord and in the absence of criminal proceedings.

427. The statutory timeframe available for investigations remains too short, as evidenced by the fact that most of Colombia's foreign bribery investigations have been time-barred at the preliminary inquiry stage. While Colombia has established a beneficial ownership registry, information is only accessible to seven agencies, dependant on approval from the tax authorities. The statutory time for re-examination of tax returns, which remains at three years, needs to be extended with a view to ensuring the effective non-tax deductibility of bribes.

428. Forfeiture of bribes and assets from the legal persons cannot be enforced in practice in the absence of prosecution or conviction of a natural person. Given that PGO has yet to attempt a prosecution of a natural person for foreign bribery, it is imperative the Colombia put in place a mechanism to allow the Superintendency to request the forfeiture of bribes and assets from legal persons in order to make these sanctions effective, proportionate and dissuasive.

429. Despite repeated attempts to introduce legislation, Colombia still does not have a framework for the protection of whistleblowers. The Working Group has recommended that Colombia urgently adopt such a framework since Phase 2. However, there is no indication as to when any enabling legislation will be redeveloped and introduced, if ever.

430. Regarding the implementation of the outstanding Phase 3 recommendations, the WGB considers that, since the Phase 3 2Y WFU, Colombia has fully implemented recommendation 11.b (export credits). There has been limited or no progress in the implementation of the remaining outstanding Phase 3 recommendations, including recommendation 1 (self-reporting by legal persons), 2.a and b (sanctions against legal persons), 3.e (Article 5 considerations), 4.a–e (statistics), 5.a (money laundering), 6.a and b

(accounting requirements), 7.a, c, and d (tax measures), 8.a, c, and d (awareness-raising), 9 (whistleblower protection), and 10.a and b (public advantages). These are therefore incorporated into the WGB's Phase 4 recommendations for Colombia listed below.

431. Colombia will submit a written report to the Working Group in two years (i.e., in December 2027) on its implementation of all recommendations as well as detailed information on its foreign bribery enforcement.

432. In addition, in light of Colombia's continued disengagement with the Working Group and the longstanding concerns relating to essential areas of implementation of the Anti-Bribery Convention, the Working Group invites Colombia to report back in writing in December 2026 with an action plan for the implementation of high-priority recommendations 1, 3, 9, 12.g, and 13. The Working Group further requests Colombia arrange for its Ambassador to the OECD to attend the December 2026 Working Group plenary at the time of this additional written report to discuss the Group's concerns and possible ways forwards.

Part I: Good practices and positive achievements

433. This report has identified several good practices and positive achievements by Colombia for combating foreign bribery.

434. Regarding good practices, the Superintendency of Corporations and the Superintendency of Finance have established a system of AML/CFT compliance checks and have imposed 115 sanctions against private sector entities which have failed to implement AML/CFT preventive measures. While not directly contributing to the detection and enforcement of foreign bribery, such measures indicate an ability and intent to enforce compliance standards, and could, nonetheless, ensure that the private sector entities exercise better due diligence in their operations. Furthermore, increased oversight may improve the likelihood that reporting entities submit the suspicious activities reports diligently, which could lead to an increased detection of foreign bribery through the SAR procedure.

435. Regarding positive achievements, the Working Group commends Colombia for imposing its second administrative sanction against a legal person for foreign bribery. The Working Group further acknowledges that Bancóldex has fully implemented outstanding Phase 3 recommendations requiring the incorporation of anti-corruption clauses in their on-lending agreements and rediscount operations. Bancóldex can now terminate the loan agreements with both the intermediary bank and the final beneficiary of the loan if any of these entities are involved in foreign bribery.

Part II: Recommendations

1. Regarding engagement, the Working Group reiterates the Phase 3 recommendation that Colombia ensure regular attendance at the meetings of the Working Group and engagement as appropriate in its work, including where foreign bribery enforcement is concerned. [Convention Article 12]

Recommendations regarding detection and reporting of foreign bribery

2. Regarding detection of foreign bribery by Colombian public officials, the Working Group recommends that

    a. the relevant Colombian agencies and Ministries systematically collect, maintain, and consider publishing, data on foreign bribery reports, with a view to allowing for an assessment of the effectiveness of the various reporting channels [Anti-Bribery Recommendation XXI.v],

b. Columbia ensure that public officials proactively report incidences of corruption by issuing comprehensive anti-corruption guidelines and providing training for public officials, including on their reporting obligations and the reporting channels available. Noting that PGO is the competent law enforcement authority for criminal investigations and prosecutions against natural persons, while the Superintendency is the competent administrative agency for investigating and sanctioning legal persons on foreign bribery matters, the training provided to the public officials should point to the available reporting channels accordingly. These guidelines should further include, *inter alia*, detailed information on types of offences that public officials may encounter, where and how the public officials could detect them, the course of actions to be taken when they become aware of them, and the protections available to those making such reports, noting that a system for such protections is not currently in place in Colombia.

c. Colombia provide detailed guidance and regular training to the officials of its overseas diplomatic missions on the foreign bribery offence and what steps should be taken if foreign bribery is detected, including reporting channels and their obligation to report [Anti-Bribery Recommendation XXI], and

d. Colombia ensure that MFA (i) issue clear written guidance and provide training to diplomatic missions as to what assistance they can provide to Colombian natural or legal persons who may be solicited for bribery in the course of international business transactions and (ii) establish a system of proactive detection by diplomatic missions through media monitoring concerning acts of foreign bribery [Anti-Bribery Recommendation XII and XXI].

3. Regarding detection of foreign bribery through international co-operation, the Working Group recommends that

a. Colombia, by legislative means, if necessary, (i) oblige prosecutors to proactively evaluate incoming MLA requests to detect foreign bribery allegations and (ii) ensure that prosecutors open foreign bribery investigations based on information from incoming MLA requests without the need of sending a formal request to the requesting country [Convention Article 9; Anti-Bribery Recommendation VI.ii, XIX.A and B],

b. Colombia, by legislative means, if necessary, ensure that PGO shares at the earliest possible time information received through international cooperation including incoming MLA requests with the Superintendency where these concern potential instances of foreign bribery benefiting a Colombian legal person [Anti-Bribery Recommendation IX and XI], and

c. PGO maintain statistics on how many incoming and outgoing MLA requests pertain to foreign bribery, as well as the treatment of these requests [Convention Article 9; Anti-Bribery Recommendation XIX.A.ix].

4. Regarding export credits and official development assistance, the Working Group recommends, that

a. Bancóldex continue providing sufficient guidance and training to its employees on foreign bribery red flags, steps to take if foreign bribery is detected in the course of their work, and the internal and external channels Bancóldex employees could use to file reports [Anti-Bribery Recommendation XXI, XXV; E.C Recommendation IV],

b. Colombia provide periodic training on foreign bribery red flags and anti-bribery and corruption screening procedures to private financial institutions most likely to interact with the Colombian companies doing business abroad [E.C Recommendation IV and V; Anti-Bribery Recommendation Annex.II.A],

c. Colombia provide training and information to APC employees, including written guidelines and awareness-raising activities, on detection and reporting of suspicions of foreign bribery [Anti-Bribery Recommendation XXIV and XXI; ODA III.6 and 7], and

d. Colombia take the necessary steps to (i) ensure that APC systematically and effectively verify the absence of convictions for corruption by applicants, including by checking the debarment lists of international financial institutions and (ii) incorporate the anti-corruption clause in contracts financed with FOCAI resources [Anti-Bribery Recommendation XXIV; ODA III.6].

5. Regarding public procurement, the Working Group recommends that Colombia

a. require anti-corruption clauses in procurement contracts irrespective of the modality of the selection process [Anti-Bribery Recommendation XXIV.i],

b. ensure that the Ministry of Defence incorporate anti-corruption declarations as part of their terms of reference, with a view to ensuring that bidders are not subject to an ongoing investigation or do not have a prior conviction relating to foreign bribery [Anti-Bribery Recommendation XXIV],

c. ensure, by legislative means, if necessary, that the sanctioning authorities – the courts and the Superintendency of Corporations – notify the Inspector General's Office of any convictions or sanctions imposed on natural or legal persons with a view to considering debarment of the natural or legal persons convicted or held administratively liable for foreign bribery from securing a public procurement contract [Anti-Bribery Recommendation XXIV],

d. ensure that the procuring agencies and Compra Eficiente routinely check the debarment lists of multilateral financial institutions in the context of public procurement contracting [Anti-Bribery Recommendation XXIV],

e. undertake to raise awareness of the suppliers and contractors of the foreign bribery offence and incentivise proposed suppliers to have anti-bribery internal controls, ethics and compliance measures to combat foreign bribery in place, including whistleblower protection policies [Anti-Bribery Recommendation IV.ii, XXIII and Annex.II.A], and

f. provide guidance and training to relevant government agencies on such suspension and debarment measures applicable to companies determined to have bribed foreign public officials and on remedial measures which may be adopted by companies, including internal controls, ethics and compliance programmes or measures, which may be taken into consideration [Anti-Bribery Recommendation XXIV.iv].

6. Regarding detection through the anti-money laundering system, the Working Group

a. reiterates the recommendations made in Phase 2 and 3 that Colombia align the scope of professionals covered by AML preventive measures, as well as customer due diligence obligations (including in relation to PEPs and beneficial owners), with the FATF Standards [Convention Article 7; Phase 3 recommendation 5(a)], and

b. reiterates the Phase 3 recommendation that Colombia ensure, by legislative steps, if necessary, that the UIAF, at a minimum, proactively notifies the Superintendency about suspicions concerning legal persons and further extends this recommendation to include that the UIAF proactively notifies PGO about suspicions concerning natural persons. [Convention Article 7; Phase 3 recommendation 3(a)]

The Working Group further recommends that Colombia

c. (i) revise its National Risk Assessment, taking into consideration foreign bribery and related offences risk, (ii) provide sufficient training on foreign bribery for UIAF staff to guide them in identifying foreign bribery red flags in SARs, and (iii) develop and disseminate respective red flags and typologies to the obliged entities [Anti-Bribery Recommendation IV.ii.iii, VIII and XXI].

7. Regarding accounting and auditing, the Working Group recommends that Colombia

a. provide systematic and regular trainings to public audit agencies on the criminal nature of corruption, and specifically the foreign bribery offence, as well as the importance of referring identified foreign bribery incidences to the competent authorities, with a view to ensuring that all foreign bribery allegations are investigated promptly [Anti-Bribery Recommendation XXI],

b. ensure that, where foreign bribery suspicions arise, auditors and accountants are allowed to report these suspicions directly to PGO and the Superintendency, independent of the company [Anti-Bribery Recommendation XXIII.B.v],

c. ensure that all relevant protections are available to those who may suffer retaliation, including auditors and accountants, with a view to encouraging their active detection and reporting of foreign bribery [Anti-Bribery Recommendation XXII], and

d. (i) develop guidelines with detailed information on, *inter alia*, methods of detecting foreign bribery, foreign bribery red flags, the obligation to report, and the scope and channels for reporting, and (ii) conduct regular trainings to raise awareness on the part of auditors and accountants on foreign bribery red flags and risks [Anti-Bribery Recommendation IV.ii].

8. Regarding media reports, the Working Group recommends that Colombia ensure that the Constitution and other laws relating to freedom of the press are fully applied in practice so that allegations of foreign bribery can be reported [Anti-Bribery Recommendations VIII and XXI.iv].

9. Regarding whistleblower protection and detection through whistleblowing, the Working Group

a. reiterates, in the strongest possible terms, the Working Group's previous recommendations that Colombia, as a matter of extreme urgency, adopt legislation that provides clear and comprehensive protections from retaliation to whistleblowers across the public and private sectors [Anti-Bribery Recommendation XXII; Phase 3 recommendation 9], and

further recommends that, once such a whistleblower protection framework is established in law and in place,

b. Colombia undertake significant efforts to raise public awareness of the framework for whistleblower protection, in particular on the reporting channels, the protections afforded to whistleblowers, and the usefulness of whistleblower reports [Anti-Bribery Recommendation XXI.i.ii].

10. Regarding detection through self-reporting by companies, the Working Group recommends that Colombia

a. create a comprehensive and transparent framework for the benefits of self-reporting covering both the criminal and the administrative procedure for foreign bribery [Anti-Bribery Recommendation VIII and XVIII.iii], and

b. ensure, by whatever means necessary, that companies reporting offences conducted by their employees and agents cannot escape administrative liability by being deemed victims in the criminal procedure [Convention Article 2].

Recommendations to enhance enforcement of the foreign bribery offence and related offences

11. Regarding the foreign bribery offence and defences, the Working Group recommends, that Colombia

    a. extend its criminal jurisdiction to cover conducts committed abroad that constitute money laundering, so foreign bribery schemes can be effectively investigated and prosecuted [Convention Article 7]

    b. by legislative means, if necessary, (i) clarify the rules on the interruption of the statute of limitations during the investigations, and (ii) introduce adequately long limitations periods for the trial phase to enable the justice system to effectively deal with complex cases with international elements [Convention Article 6].

12. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Colombia

    a. ensure that the restructuring of competence for foreign bribery investigations to DECLA does not result in a decrease in the prioritisation of these investigations by providing sufficient human and financial resources to the respective units [Anti-Bribery Recommendation VII],

    b. amend the competence rules of courts to ensure that foreign bribery cases are always allocated to the specialised district courts [Anti-Bribery Recommendation IX],

    c. establish a comprehensive and accessible beneficial owner registry [Anti-Bribery Recommendation X],

    d. ensure that financial information is readily available and accessible to law enforcement authorities to facilitate the financial investigations needed to tackle foreign bribery and related offences [Anti-Bribery Recommendation X],

    e. ensure, by legislative amendment, if necessary, (i) a sufficient timeframe is available for the effective investigation of foreign bribery and related offences, and (ii) the time available between the pressing of charges and the indictment is sufficient to enable prosecutors to fully investigate and prosecute complex foreign bribery cases [Convention Article 6; Anti-Bribery Recommendation VII],

    f. (i) act promptly and proactively so that complaints of bribery of foreign public officials are seriously investigated and credible allegations are assessed by competent authorities, (ii) take a proactive approach to the investigation and prosecution of foreign bribery, (iii) take all necessary measures to ensure that the fullest range of investigative techniques available are being effectively utilised in foreign bribery cases, and (iv) undertake a stocktaking and review exercise of investigative techniques used in foreign bribery cases to date, so as to assess challenges and areas of good practice, with a view to ensuring the effectiveness and efficiency of these techniques [Anti-Bribery Recommendation V, VI, VII and X], and

    g. review and amend the framework of the co-operation and co-ordination between PGO and the Superintendency with a view to enhance synergies and ensure the complementarity and synchronisation of parallel running criminal and administrative proceedings, and in order to avoid mutually detrimental effects of uncoordinated actions [Anti-Bribery Recommendation XI].

13. Regarding independence of investigations and prosecutions, the Working Group reiterates, in the strongest possible terms, the Phase 3 recommendation that Colombia, urgently and by whatever means necessary, put in place clear safeguards against any political interference in foreign bribery cases, with a view to ensuring that foreign bribery investigations and prosecutions cannot be

influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal person involved [Convention Article 5].

14. Regarding international co-operation, the Working Group recommends that Colombia

    a. establish clear rules and procedures to ensure the prosecutors' proactive approach to international cooperation, including utilising direct and/or informal communication channels with competent authorities and joint action with the requested authorities and timely follow-up of outgoing MLA requests [Anti-Bribery Recommendation XIX],

    b. ensure that Colombian authorities make systematic use of all available measures to follow up on incoming requests that remain unanswered for a long time [Anti-Bribery Recommendation XIX.A.ix],

    c. improve its system to allow disaggregation of requests based on the underlying offence [Anti-Bribery Recommendation XIX], and

    d. clarify in a binding manner, including by legislative amendment, if necessary, that the criterion of "national convenience" for refusing an extradition request cannot be interpreted as national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved in a foreign bribery case [Convention Article 10].

15. Regarding offences related to foreign bribery, the Working Group recommends that Colombia

    a. revise its legal framework and introduce a standalone false accounting offence [Convention Article 8; Anti-Bribery Recommendation XXIII.A.iv], and

    b. provide training for the relevant stakeholders on the criminal nature of false accounting conducts and the reporting channels available so that suspicions reach PGO [Convention Article 8].

16. Regarding the conclusion of foreign bribery cases, the Working Group recommends that Colombia issue prosecutorial guidelines for the application of the leniency tools and sanctioning concerning the foreign bribery and related offences, including the calculation of the benefits obtained through bribery [Anti-Bribery Recommendation XV and XVIII].

Recommendations to enhance the liability of, and engagement with legal persons

17. Regarding the liability of legal persons and enforcement of the foreign bribery offence against legal persons, the Working Group recommends that Colombia

    a. take the necessary measures to ensure that offenders cannot escape liability when laundering the proceeds of foreign bribery through legal persons [Convention Article 7],

    b. as a matter of urgency, take immediate steps to increase the ability of the Superintendency to access protected information, including but not limited to the RUB and financial information [Anti-Bribery Recommendation X], and

    c. ensure, by whatever means necessary, that the Superintendency is able to manage and conduct its own MLA processes, whether, for example, by entrenching and formalising the relationship between the Superintendency and PGO, elevating the Superintendency to the level of a competent authority in criminal matters, or by any other structural or procedural process change that guarantees this vital process is fully accessible and able to be used effectively by the Superintendency [Anti-Bribery Recommendation XIX] .

The Working Group further recommends that

d. the Superintendency of Corporations (i) act promptly and proactively so that complaints of bribery of foreign public officials by legal persons are seriously investigated, (ii) take a proactive approach to the investigation of foreign bribery by legal persons, (iii) take all necessary measures to ensure that the fullest range of investigative techniques available are being effectively utilised in foreign bribery investigations, and (iv) undertake a stocktaking and review exercise of investigative techniques used in foreign bribery investigations to date, so as to assess challenges and areas of good practice, with a view to ensuring the effectiveness and efficiency of these techniques [Anti-Bribery Recommendation VI, IX and X].

The Working Group reiterates the Phase 3 recommendation that Colombia

e. strengthen safeguards for the independence of the Superintendency [Convention Article 5].

18. Regarding the sanctions and confiscation against legal persons, the Working Group

a. reiterates the Phase 3 recommendation that Colombia ensure that sanctions imposed in practice against legal persons for foreign bribery are effective, proportionate and dissuasive, including ensuring that sanctions against legal persons take into account the value of the benefits obtained through bribery in foreign bribery cases [Convention Article 3],

b. reiterates the Phase 3 recommendation that Colombia maintain detailed statistics on the criminal, civil and administrative sanctions imposed for domestic and foreign bribery against legal persons, in order to allow for the assessment of whether they are sufficiently effective, proportionate and dissuasive in practice [Convention Article 3; Anti-Bribery Recommendation XV.iii; Phase 3 recommendation 4(a)],

c. reiterates recommendations from Phase 2 and Phase 3 that Colombia introduce the necessary legislation to allow the Superintendency of Corporations to request the forfeiture of the bribe and proceeds of foreign bribery, or property the value of which corresponds to that of such proceeds, or introduce monetary sanctions of comparable effect against legal persons [Convention Article 3; Phase 3 recommendation 2(b)].

The Working Group further recommends that Colombia

d. maintain detailed statistics on the use of confiscation against legal persons [Anti-Bribery Recommendation XV.iii], and

e. ensure that all resolutions with legal persons concerning foreign bribery provide enough information to the public so that it is possible to ascertain the amount of the bribes, the proceeds of bribery, and the sanctions imposed in relation to the foreign bribery scheme [Anti-Bribery Convention XV.iii].

Recommendations regarding non-tax-deductibility of bribes

19. Regarding tax measures for fighting foreign bribery, the Working Group reiterates the Phase 2 and 3 recommendations that Colombia

a. sufficiently extend the statutory time during which a tax return may be re-examined to effectively determine whether bribes have been deducted [Anti-Bribery Recommendation XX; 2009 Recommendation on Tax measures],

b. establish a formal mechanism, whether legislative or policy-based, to ensure that DIAN is systematically made aware of foreign bribery resolutions, so that it may reaudit the tax returns of natural and legal persons who were sanctioned [Anti-Bribery Recommendation XX].

The Working Group further recommends that Colombia

c. provide regular training to tax auditors on the detection of bribe payments disguised as legitimate allowable expenses, including by incorporating the "OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors" into the tax authorities' tax audit manual [Anti-Bribery Recommendation XX].

Part III: Follow-up issues

20. The Working Group will follow-up on, as case law and practice develop, the following issues:

a. the use of investigative techniques in foreign bribery investigations as practice develops,

b. the application of sanctions imposed for domestic and foreign bribery against legal persons in practice.

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Annex A. Phase 3 recommendations and assessment of implementation by the Working Group on Bribery

Phase 3 Recommendation (2019)	*Phase 3 two-year follow-up report (2021)*
Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery	
1. Regarding the liability of legal persons, the Working Group recommends that Colombia clarify that self-reporting:	
(i) is possible only prior to the discovery of the misconduct, by providing original information to the Superintendency of Corporations and	Not Implemented
(ii) should be accompanied by appropriate remedial action by the legal person. [Convention, Article 2].	Not Implemented
2. Regarding sanctions and confiscation, the Working Group recommends that Colombia:	
a) Ensure that sanctions imposed in practice against legal persons for foreign bribery are effective, proportionate and dissuasive [Convention Article 3]; and	Not Implemented
b) Introduce the necessary legislation to allow the Superintendency of Corporations to request the forfeiture of the bribe and proceeds of foreign bribery, or property the value of which corresponds to that of such proceeds, or introduce monetary sanctions of comparable effect against legal persons, even in the absence of prosecution or conviction of a natural person [Convention Article 3.3].	Not Implemented
3. Regarding the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Colombia:	
a) Establish appropriate mechanisms for cooperation and coordination between the Superintendency of Corporations and Colombia's financial intelligence unit (the UIAF) to ensure all suspicions of foreign bribery or related offences can be effectively investigated by the Superintendency [Convention, Articles 2 and 5];	Fully Implemented
b) Provide training to investigators and prosecutors on the specificities of the foreign bribery offence [Convention Article 5 and Commentary 27; 2009 Recommendation II, III(i), V and Annex I.D];	Fully Implemented
c) Take further steps to ensure that the PGO and the Superintendency of Corporations effectively and proactively exchange information in foreign bribery cases [Convention Article 5 and Commentary 27; 2009 Recommendation II, III(i), V and Annex I.D];	Fully Implemented

d) Adequately address foreign bribery issues in law enforcement authorities' anti-corruption policy and strategy documents [Convention Article 5 and Commentary 27; 2009 Recommendation II, III(i), V and Annex I.D]; and	Fully Implemented
e) Establish clear safeguards against any political interference in foreign bribery cases, with a view to ensuring that foreign bribery investigations and prosecutions cannot be influenced by considerations prohibited under Article 5 of the Convention [Convention Article 5 and Commentary 27; 2009 Recommendation II, III(i), V and Annex I.D].	Not Implemented
4. Regarding statistics, the Working Group recommends that Colombia:	
a) Maintain detailed statistics on the criminal, civil and administrative sanctions imposed for domestic and foreign bribery against natural and legal persons in order to assess whether they are sufficiently effective, proportionate and dissuasive [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D];	Partially Implemented
b) Maintain detailed statistics on the use of confiscation against natural and legal persons [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D];	Partially Implemented
c) Maintain detailed statistics on sanctions imposed for foreign bribery-related money laundering [Convention Article 7);	Partially Implemented
d) Maintain detailed statistics on the enforcement of the provisions against false accounting, including sanctions imposed [Convention Article 8]; and	Partially Implemented
e) Collect comprehensive data on MLA, including in relation to foreign bribery cases [Convention Article 9].	Partially Implemented
Recommendations for ensuring effective prevention, detection and reporting of foreign bribery	
5. Regarding money laundering, the Working Group recommends that Colombia:	
a) Align the scope of professionals covered by AML preventive measures, as well as customer due diligence obligations, including in relation to PEPs and beneficial owners, with the Financial Action Task Force Recommendations [Convention Article 7; 2009 Recommendation III(ii)]; and	Partially Implemented
b) Provide adequate guidance and training to reporting entities on identifying and reporting active (foreign) bribery [Convention Article 7; 2009 Recommendation III(ii)].	Fully Implemented
6. Regarding accounting requirements, external audit and internal company controls, the Working Group recommends that Colombia:	
a) Ensure that all omissions and falsifications listed in Article 8.1 of the Convention are subject to effective, proportionate and dissuasive sanctions, including for legal persons [Convention Article 8];	Not Implemented
b) Ensure that auditors making reports under article 32 of Law 1778 of 2016 are protected from legal actions by companies [2009 Recommendation III(v) and X.B]; and	Not Implemented
c) Clarify and promote the reporting role and obligations of auditors, including through training on the detection of foreign bribery red flags [2009 Recommendation III(v), IX and X.B].	Fully Implemented

7. Regarding tax measures for combating bribery, the Working Group recommends that Colombia:	
a) Sufficiently extend the statutory time during which a tax return may be re-examined to effectively determine whether bribes have been deducted;	Not Implemented
b) Put in place the necessary mechanisms to inform promptly DIAN of foreign bribery related convictions so that DIAN may verify whether bribes were impermissibly deducted;	Fully Implemented
c) Resume efforts to provide training to DIAN officials with a view to enhancing their capacity to detect foreign bribery red flags; and	Partially Implemented
d) Ensure that mechanisms are in place for the effective sharing of information between the tax and law enforcement authorities, to ensure that both the PGO and Superintendency of Corporations (i) receive timely and relevant reports from DIAN concerning suspected foreign bribery, and (ii) are able to request information from DIAN in the context of their foreign bribery investigations into natural and legal persons [2009 Recommendation VIII and 2009 Tax Recommendation].	Partially Implemented
8. Regarding awareness-raising and the reporting of foreign bribery, the Working Group recommends that Colombia:	
a) Remobilise key government agencies, in particular the Secretariat of Transparency and the Ministry of Foreign Affairs, and increase efforts to raise awareness within the public sector, in particular among officials in foreign embassies and those in contact with Colombian businesses operating abroad, as well as among the judiciary [2009 Recommendation III(i) and Annex I.A];	Partially Implemented
b) Ensure regular attendance at the meetings of the Working Group and engagement as appropriate in its work, including where foreign bribery enforcement is concerned [Convention Article 12; 2009 Recommendation XIV and XV];	Fully Implemented
c) Undertake targeted awareness-raising and training for relevant public sector officials and private sector professionals on foreign bribery red flags [2009 Recommendation III(i) and Annex I.A]; and	Partially Implemented
d) Promote the awareness and effectiveness of public channels for reporting foreign bribery, including by increasing their visibility and accessibility [2009 Recommendation III(i) and (iv) and Annex I.A].	Partially Implemented
9. Regarding whistleblower protection, the Working Group recommends that Colombia adopt urgently legislation that provides clear and comprehensive protections from retaliation to whistleblowers across the public and private sectors [2009 Recommendation III(iv) and IX(iii)].	Not Implemented
10. Regarding public advantages, the Working Group recommends that Colombia:	
a) Encourage public procurement authorities to (i) routinely check the debarment lists of multilateral financial institutions in the context of public procurement contracting, and (ii) consider, as appropriate, the existence of anti-corruption internal controls, ethics and compliance programmes of companies seeking procurement contracts; and	Not Implemented

b) Take appropriate measure to ensure that all convictions and sanctions in foreign bribery cases are systematically reported and registered in the Single Information System of Ineligibility (SIRI) [Convention Article 3.4; 2009 Recommendation XI(i)]	Partially Implemented
11. Regarding officially supported export credits, the Working Group recommends that Bancóldex adopt without further delay the measures announced, notably:	
a) Raise awareness of the foreign bribery offence among its staff as well as among intermediary banks, and other clients as appropriate, and inform them about the legal consequences of bribery in international business transactions under Colombia's legal system;	Fully Implemented
b) Require intermediary banks, and other clients as appropriate, to undertake that neither they, nor anyone acting on their behalf have engaged or will engage in bribery, and disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge or, within a five-year period preceding the application, have been convicted for foreign bribery;	Partially Implemented
c) Verify routinely the debarment lists of international financial institutions;	Fully Implemented
d) Undertake enhanced due diligence in cases where intermediary banks, and other clients as appropriate, are currently under charge or, within a five-year period preceding the application, have been convicted for foreign bribery, are listed in the debarment lists of international financial institutions, or there are reasons to believe that bribery may be involved in the transaction; and	Fully Implemented
e) Include the standard default clause in all promissory notes concluded by Bancóldex as well as in export credit contracts concluded by intermediary	Fully Implemented

Annex B. On-site visit participants

Public Sector	
• Agencia Presidencial de Cooperación Internacional de Colombia • Bancóldex (Bank of Foreign Trade of Colombia) • Colombia Compra Eficiente • Information and Financial Analysis Unit • Ministry of Finance and Public Credit • Ministry of Foreign Affairs • Ministry of Justice	• Ministry of Trade, Industry and Tourism • National Directorate of Taxes and Customs • Office of the Auditor General of the Republic • Office of the Comptroller General of the Republic • Superintendency of Corporations • Transparency Secretariat
Law Enforcement and Judiciary	
• Criminal Circuit Judges of Bogotá • National Police (Directorate of Criminal Investigation and INTERPOL-DIJIN) • Office of the Prosecutor General	• Superior Council of the Judiciary • Supreme Court of Justice
Private Sector	
Companies • Claro Colombia • Cenit Transport • Grupo Bicentenario • Bogotá Chamber of Commerce Accountants and Auditors • Central Board of Accountants • Deloitte • PricewaterhouseCooper • Ernst & Young	Law firms • Brigard Urrutia • Esguerra JHR • Pinzón Abogados Academics • Universidad Nacional de Colombia • Universidad de El Rosario
Civil Society and Media	
• Transparencia por Colombia • Blu Radio • Red+ Noticias • Cuestión Pública	• Canal Trece • Caracol Radio • Independent journalists

Annex C. Colombia's foreign bribery actions

Natural persons

Ongoing Foreign Bribery Investigations					
Case	**Last procedural step reported**	**Source of detection**	**Parties charged**	**Facts**	**Procedural stage**
Public Lighting Procurement (El Salvador)	2024	Unknown	-	Between 2014 and 2017 a Colombian company allegedly obtained contracts for public lighting projects in cities of El Salvador through bribery. According to the allegations, the tenders concerning these contracts were "tailored" to the Colombian company to prevent any competition.	The investigation is ongoing since 2019.
Flight Company (South American countries)	2022	Unknown	-	Between 2015 and 2017 a Colombian flight company allegedly gave free and discounted tickets and upgrades to government officials of Colombia and other South American countries. In 2017 the company disclosed the result of an internal investigation.	The investigation is ongoing since 2020.
Reinsurance Company (Ecuador, Panama)	2022	Unknown	-	Between 2014 and 2016 the Colombian subsidiary of a UK reinsurance company allegedly paid over USD 6.5 million in bribes to secure contracts between with Ecuador's Ministry of Defence and with an Ecuadorian SOE.	The investigation is ongoing since 2020.

Foreign Bribery Allegations			
Case (alphabetical order)	**Date of alleged facts**	**Facts**	**Procedural stage**
Construction Works (Panama)	2011-2012	A criminal network that included high-level officials of the former Panamanian government (2009-2014) allegedly took bribes worth $40 million from at least seven construction companies, including a Colombian company. Bribes were paid in exchange for public works projects, in the value of 5-10% of the value of the awarded contracts. The illicit money was allegedly sent to an entity known as Blue Apple Services.	No investigation initiated with respect to the foreign bribery aspect.
Construction Company I (Venezuela)	2016	According to the allegations, a Panamanian subsidiary of a Colombian company secured a contract worth USD 6 million in connection to the construction of a baseball stadium in Venezuela, through bribery.	PGO initiated an investigation, but the foreign bribery aspect was dropped during the proceedings.
Water Utility Company (Panama, Ecuador)	2016-2017	According to the allegations, a Colombian company paid bribes to obtain public tenders. In Ecuador bribes were paid to two public officials to expedite the payment of government contracts. In Panama the company gave Panamanian public officials benefits and services to facilitate payments regarding some contracts.	No investigation initiated with respect to the foreign bribery aspect.
Water Utility Company II (Brazil, Dominican Republic, Haiti, Panama, Spain)	2010	After the 2010 earthquake in Haiti, a close collaborator of the former president of the Spanish company paid about EUR 14 000 to the father of the former Spanish ambassador, with the aim to obtain his mediation with the Haitian government and receive contracts concerning the reconstruction works. The Colombian company also involved in the Water Utility Company (Panama, Ecuador) case obtained, via its subsidiary, two contracts totalling EUR 19.4 million.	No investigation initiated with respect to the foreign bribery aspect.
Construction Company II (Guatemala)	2012-2014	According to the allegations, a former Guatemalan minister received USD 10 million in bribes during his mandate from 12 construction companies, including a Colombian one, in exchange for the award of at least 123 construction contracts.	No investigation initiated with respect to the foreign bribery aspect.

Legal persons

Administrative Sanctions for Foreign Bribery				
Case	**Date of alleged facts**	**Source of detection**	**Facts**	**Sanction**
Water Utility Company Case (2018)	2011-2012	Media	A Colombian public water utility company, subsidiary of a Spanish public water company, paid bribes of USD 11 000 to two public officials in Ecuador to expedite the payment of government contracts.	Initial sanction of USD 1.7 million, reduced to USD 1.3 million on appeal. Publication of the sanction was ordered. No debarment from public procurement contracting or prohibition of receiving government incentives or subsidies
Reinsurance Company case (2022)	2016-2017	Unknown	Colombian insurance company JLT paid USD 4.7 million in bribes to public officials of a state insurance company in Ecuador through a complex scheme involving several intermediary companies. JLT also made other entertainment and gift expenses for the benefit of public officials and their families, including travels, tickets to entertainment events, or meals.	Initial sanction of USD 4.4 million, reduced to USD 2.2 million on appeal. Publication of the sanction was ordered. No debarment from public procurement contracting or prohibition of receiving government incentives or subsidies

Annex D. Excerpts of relevant legislation

Criminal Code

Article 323 – Money Laundering

Anyone who acquires, safeguards, invests, transports, transforms, stores, conserves, guards or administers assets that have their mediate or immediate origin in activities of migrant smuggling, trafficking in persons, extortion, illicit enrichment, kidnapping for ransom, rebellion, arms trafficking, trafficking in minors, financing of terrorism and administration of resources related to terrorist activities, trafficking in toxic drugs, narcotics or psychotropic substances, crimes against the financial system, crimes against the public administration, smuggling, smuggling of hydrocarbons or their derivatives, customs fraud or favouring and facilitating smuggling, favouring smuggling of hydrocarbons or their derivatives, in any of its forms, or linked to the proceeds of crimes executed under a conspiracy to commit a crime, or gives the proceeds of such activities the appearance of legality or legalises, conceals or covers up the true nature, origin, location, destination, movement or right over such goods, shall be liable for that conduct alone to imprisonment for a term of ten (10) to thirty (30) years and a fine of one thousand (1,000) to fifty thousand (50,000) legal monthly minimum wages in force.

The same penalty shall apply when the conducts described in the previous paragraph are carried out on assets whose extinction of ownership has been declared.

Money laundering shall be punishable even when the activities from which the assets originate, or the acts punished in the previous paragraphs, have been carried out, in whole or in part, abroad.

The custodial sentences provided for in this Article shall be increased by one-third to one-half when the conduct involved foreign exchange or foreign trade operations, or the introduction of goods into the national territory.

Article 324 – Specific circumstances of aggravation

The custodial sentences provided for in the previous article shall be increased by one third to one half when the conduct is carried out by a member of a legal person, company or organisation dedicated to money laundering and by one half to three quarters when it is carried out by the heads, administrators or managers of the aforementioned legal persons, companies or organisations.

Article 325 – Omission of control

The member of the board of directors, legal representative, administrator or employee of a financial institution or of cooperatives that carry out savings and credit activities who, for the purpose of concealing or covering up the illicit origin of the money, omits to comply with any or all of the control mechanisms established by the legal system for cash transactions shall be liable, for this conduct alone, to imprisonment of thirty-eight (38) to one hundred and twenty-eight (128) months and a fine of one hundred and thirty-three point thirty-three (133.33) to fifteen thousand (15,000) legal monthly minimum wages in force.

Article 325A – Omission of reports on cash transactions, mobilisation or storage of cash

Those subject to the control of the Financial Information and Analysis Unit (UIAF) who deliberately omit to comply with the reports to this entity for cash transactions or for the mobilisation or storage of cash, shall incur, for this conduct alone, imprisonment of thirty eight (38) to one hundred and twenty eight (128) months and a fine of one hundred and thirty three point thirty three (133.33) to fifteen thousand (15.000) legal monthly minimum wages in force. Exempt from the provisions of this Article are those who are members of the board of directors, legal representatives, administrators or employees of financial institutions or cooperatives that carry out savings and credit activities, to whom the provisions of Article 325 of this Chapter shall apply.

Article 433 – Transnational Bribery

Anyone who gives, promises, or offers a foreign public official, for their own benefit or that of a third party, directly or indirectly, sums of money, any object of pecuniary value, or any other benefit or advantage in exchange for the performance, omission, or delay of any act related to the exercise of their functions and in connection with an international business or transaction, shall be subject to imprisonment from nine (9) to fifteen (15) years, disqualification from holding public rights and functions for the same period, and a fine ranging from six hundred fifty (650) to fifty thousand (50,000) current legal monthly minimum wages.

For the purposes of this article, a foreign public official is considered to be any person holding a legislative, administrative, or judicial office in a State, its political subdivisions, or local authorities, or in a foreign jurisdiction, regardless of whether the person was appointed or elected.

The term also applies to any person performing a public function for a State, its political subdivisions, or local authorities, or in a foreign jurisdiction, whether within a public agency, a State-owned company, or an entity whose decision-making power is subject to the control of the State, its political subdivisions, local authorities, or a foreign jurisdiction.

Furthermore, any official or agent of an international public organization is also considered to hold such status.

Law 1778 of 2016 (Liability of legal persons)

Article 2

Legal persons that through one or several of its:

I. Employees,
II. Contractors
III. Directors or
IV. Associates

Whether or not they have authority to bind the legal entity:

I. Give,
II. Offer or
III. Promise

To a foreign public official, directly or indirectly:

I. Amounts of money
II. Any other good which has monetary value, or
III. Any other benefit or other perquisite

In exchange for the foreign public official to;

I. Perform;
II. Omit or
III. Delay

Any action related to the exercise of his powers and in relation to an international business or international transaction.

Such persons will be sanctioned administratively in the terms established in this Law.

Entities classified as parent companies under Law 222 of 1995, or the law that modifies or substitutes it, shall also be liable and shall be subject to administrative penalties in the event in which any of its subsidiaries engages in any of the activities listed in the first section of this article, with the consent or tolerance of the matrix.

For the purposes of this article, a foreign public official shall be any individual who has a legislative, administrative or judicial position either in the government of a State or its political subdivisions or local authorities, or a foreign jurisdiction, regardless of whether the individual was appointed or elected. A foreign public official shall also be any person who performs a public function for a State, its political subdivisions or local authorities, or in a foreign jurisdiction, within a governmental entity, a state-owned enterprise or an entity in which the decision-making power is subject to the government's will, its political subdivisions, local authorities or a foreign jurisdiction. Agents or officials of an international public organisation shall also be considered to be foreign public officials.

The provisions of this law shall also extend to subsidiaries of companies that operate abroad, as well as state owned industrial and commercial enterprises, companies in which the State has a share and mixed companies.

The provisions of this article will not apply when the conduct was performed by a shareholder that does not hold control of the legal person.

Notes

[1] As of June 2025, the Working Group includes the 38 OECD member countries and 8 non-members (Argentina, Brazil, Bulgaria, Croatia, Peru, Romania, Russian Federation, and South Africa).

[2] For example, see Korea Phase 4, Recommendation 3(c); Japan Phase 4, Recommendation 1(g); Bulgaria Phase 4, Recommendation 5(a); Greece Phase 4, Recommendation 3(b); and Israel Phase 2, Recommendation 4(b).

[3] For example, see Israel Phase 3, paras. 54-57 and Recommendation 3(a); Peru Phase 2, paras. 91-93 and Recommendation 9(b); and Greece Phase 4, paras. 104-123 and Recommendation 8(d).