

Annex I

State Measures for Strengthening Business Integrity

The secretariat is seeking information from States parties to the United Nations Convention against corruption on good practices, practical examples and lessons learned from engaging the private sector and using sanctions and incentives to strengthen business integrity in the last decade. This is in line with relevant resolutions of the Conference of the States Parties to the United Nations Convention against Corruption, including, resolutions 5/6, 6/5, 9/6 and 9/8, as well as the commitments made by Member States in the political declaration entitled “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation”, adopted by the General Assembly at its special session against corruption held in 2021. The answers provided by States parties will be used to update the 2013 UNODC publication “A Resource Guide on State Measures for Strengthening Corporate Integrity” (English - Spanish - Russian) with contributions from relevant international organizations and to develop an e-learning tool that will further support States parties’ efforts to strengthen business integrity.

The Resource Guide provides a catalogue of measures that States parties can adopt to promote business integrity and the reporting of corruption involving the private sector. The Resource Guide features three chapters: i) The United Nations Convention against Corruption and the private sector, which describes the articles of the Convention that frame State interaction with the private sector; ii) Engaging the private sector, which outlines the business case for countering corruption with emphasis on governance and other factors that can drive business integrity; and iii) Using sanctions and incentives, which describes the range of sanctions and incentives that have been developed to prevent and address corruption involving the private sector.

The secretariat invites States parties to disseminate this questionnaire among relevant stakeholders, with a view to identifying internal measures adopted by private sector entities to prevent and counter corruption. Respondents may choose to answer the whole questionnaire or only sections that are applicable and relevant to a State party. The secretariat would especially welcome the provision of illustrative examples.

Respondents’ contact details will be kept confidential. The secretariat may contact a respondent to seek additional information. Unless a State party requests otherwise when providing the relevant information, the secretariat may make the submissions publicly available, including through the UNODC Business Integrity Portal.

The Government may wish to provide relevant information by completing the online questionnaire or by submitting its answers to the questionnaire (attached) to the secretariat by email to uncac@un.org at its earliest convenience but no later than **19 May 2023**.

Questionnaire

Chapter 1 – The United Nations Convention against Corruption (UNCAC) and the private sector

Background: It is important that States' legislative and other measures contain sufficient detail to inform the private sector of their requirements and scope of application. In line with the principle of legal certainty, it is important to have clear provisions outlining prohibited conducts and consequences to the private sector.

1(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote business integrity and/or reporting of corruption in the private sector in line with the United Nations Convention against Corruption.

- Measures to prevent corruption and conflicts of interest

Civil servants and persons occupying senior public office are obliged to submit declarations of property and interests under Art. 35 of the Law on Combating Corruption and Confiscation of Illegally Acquired Property (LCCCIAP).

The employees holding senior public positions, within the meaning of article 6, paragraph 1, items 1-50 of the LCCCIAP, shall submit the declarations of assets and interests to the LCCCIAP and the other employees shall submit them to the selection or appointment authority.

In addition to their own property and income, the civil servants and the persons occupying a senior public office shall declare the property and the income of their spouses or the people cohabitating with them and also of their minor children and shall not declare the property and the income of their spouses in case of a factual separation and their minor children if they do not exercise any parental rights.

- Measures to prevent conflicts of interest

The Law on Combating Corruption and Confiscation of Illegally Acquired Property includes measures against conflicts of interest with regard to former senior public officials in private entities. The law provides for a cooling-off period of one year for former senior public officials to accept employment in the private sector. Within this time interval they are not allowed to conclude employment contracts, contracts for consulting services or other contracts for the performance of managerial or control functions with commercial companies, sole traders, cooperatives or non-profit legal entities, with reference to which, in the last year of the execution of their powers or duties, the persons have conducted actions related to the disposition, regulation or control or has concluded contracts with them, and also to be a partner, to hold shares or stocks, to be a manager or a member of a body of management or control of such companies, cooperatives or non-profit legal entities (Article 68, paragraph 1 of the LCCCIAP).

The law also prohibits that a person holding a senior public position who in the last year of the exercising of his/her powers or duties has participated in public procurement procedures or in procedures related to the provision of money belonging to European Union funds or granted by the European Union to Bulgaria, shall not have the right to participate or represent a natural or legal entity in such proceedings before the institution in which he/she has held office or before a legal entity controlled by him/her for a period of one year upon his/her discharge (Article 69, paragraph 1 of the LCCCIAP). The same prohibition for participation in public procurement procedures or in procedures related to the provision of funds belonging to the European Union or provided by the European Union to Bulgaria is

applicable for a legal entity in which the person under Article 69, paragraph 1 has become a partner, holds shares or is a manager or a member of a management or control body after his/her discharge from office.

Non-compliance with these prohibitions is considered an administrative offence punishable with a fine of BGN 5000 (EUR 2500) to BGN 15000 (EUR 7000) (Article 172, paragraph 1 of the LCCCIAP). For a sole trader or a legal entity with whom the former public official has concluded a contract or who is represented or managed by a person under Article 68 or 69, the law has stipulated a respective sanction regime - an administrative penalty consisting of a pecuniary sanction in the amount of BGN 10000 (EUR 5000) to BGN 20000 (EUR 10000) (Article 172, paragraph 3 of the LCCCIAP). More severe sanctions are provided for people who have repeatedly violated the indicated restrictions (Article 172, paragraph 4 of the LCCCIAP).

- Measures to promote cooperation between national authorities and private entities

Example of successful cooperation between the national authorities and private entities is the systemic interaction between the MoI officials and representatives of non-government organizations, civil associations, professional organizations and companies for the purpose of prevention and acquisition of information on risk groups of officials and areas where corruption crimes may be committed. The interaction is carried out by meetings in the course of which interlocutors discuss the possibilities for communication in case of suspicions of abuse of power or corrupt actions in the contacts with municipal or state administration, as well as in the field of private business. The meetings are not time-bound. The police officers analyze the operational situation and decide when and with whom to hold a meeting. The meetings are usually held at the initiative of the police officers, but may also be initiated by representatives of the private sector.

- Measures to ensure that companies have sufficient internal auditing and controls to assist in preventing and detecting acts of corruption

All companies are obliged to publish annual financial statements on a general basis under the Accounting Act. Large enterprises which are public interest enterprises and which, as of 31 December of the reporting period, exceed the criterion of the average number of employees of 500 people during the financial year shall include a non-financial declaration in their management report (Article 41 of the Accountancy Act). The same applies to public interest enterprises, which are parent enterprises in a large group that as of 31 December exceeds, on a consolidated basis, the criterion of average number of employees of 500 people during the financial year. They shall include a consolidated non-financial declaration in the consolidated management report.

The purpose of non-financial reporting is to make companies disclose relevant, useful information that is necessary to understand their development, performance, position and the impact of their activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters with the aim of greater transparency. Greater transparency is expected to make companies more resilient and perform better, both in financial and non-financial terms. In their non-financial statement companies are expected to disclose material information on how they manage anti-corruption and bribery matters and occurrences. They may consider making disclosures on organisation, decisions, management instruments, and on the resources allocated to fighting corruption and bribery. Companies may also consider explaining how they: assess fighting corruption and bribery, take action to prevent or mitigate adverse

impacts, monitor effectiveness, and communicate on the matter internally and externally.

- Legal framework for liability of legal persons

Legal persons can bear administrative liability for offences committed for their benefit under the Law on Administrative Offences and Sanctions (Article 83a - 83g LAOS). The rules of the Criminal Procedure Code (CPC) apply subsidiarily to all matters not covered under LAOS.

Liability of legal persons may be engaged when they have enriched themselves or would enrich themselves from a crime, including corruption crimes, committed by an individual in a certain relation with the legal person (Art. 83a, para 1 LAOS). Legal persons can also be sanctioned in cases of legal succession (merger, acquisition or split). Liability can be sought both from Bulgarian legal entities - for crimes committed abroad, and from foreign companies that do not have their seat in Bulgaria - when the bribery is committed on the territory of the country.

Proceedings against legal persons in Bulgaria may commence upon the submission of a “substantiated proposal” by the prosecutor to the competent court following an indictment against a natural person (article 83b, para 1, item 1 of the LAOS) or, in the absence of an indictment, in enumerated exceptional cases (e.g. amnesty, death, mental disorder) (article 83b, para. 1, item 2 of the LAOS).

1(b) What challenges (if any) did you encounter in developing and/or enforcing such measures?

1(c) Please describe the steps you took to overcome such challenges (if any).

Guidance on 1(a) and 1(b): Measures could, for example, include policies and/or laws and regulations designed to achieve the following:

- Prevent bribery of national public officials, bribery of foreign public officials and officials of public international organizations, and bribery in the private sector
- Promote private sector transparency
- Promote cooperation between law enforcement agencies and private entities
- Promote cooperation between national authorities and private entities
- Prevent trading in influence
- Prevent conflicts of interest
- Prevent embezzlement of property in the private sector
- Promote the development of standards and procedures to safeguard the integrity of companies
- Ensure that companies have sufficient internal auditing and controls to assist in preventing and detecting acts of corruption
- Introduce or strengthen the liability of legal persons
- Promote public-private communication, cooperation and partnership (e.g., with business associations, networks, individual companies, small and medium-sized enterprises)

Chapter 2: Engaging the private sector

Background: Anti-corruption programmes, commonly referred to as compliance programmes, are a primary tool used by companies to advance ethical business practices. They provide a framework for articulating the values, policies and procedures used by a company to educate its employees and to prevent, detect and counter corruption in its business operations.

2(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote integrity through anti-corruption programmes in the private sector.

- Examples of measures for encouraging the private sector to establish anti-corruption policies, procedures and/or programmes

Public companies and other issuers of securities are obliged to apply the corporate governance code approved by the Financial Supervision Commission or another corporate governance code (Art.100m, paragraph 8 Act on Public Offering of Securities).

- Measures to provide appropriate reporting channels

On 27 January 2023 a Law on the Protection of Whistleblowers or Publicly Disclosing Information on Violations was adopted by the Parliament. The law entered into force on 4 May 2023.

The law provides for a comprehensive and streamlined legal framework for whistleblowers' protection and aims to fully implement the Directive of the European Union on the protection of persons who report breaches of Union law (2019/1937/EU).

The purpose of the law is to ensure the protection of persons in the public and private sectors who signal or publicly disclose information about offences of Bulgarian legislation or acts of the European Union, which come to their knowledge during or in connection with the performance of their work or official duties or in other work context. Protection will be granted to any person who discloses information about irregularities that became known to them in a work context. It also covers job applicants, former employees, volunteers, interns as well as people related by to the whistle-blower.

Whistleblower protection refers to the reporting of wrongdoing related to breaches of certain EU legal instruments in the field of tax fraud, money laundering or offences related to public procurement, product and transport safety, environmental protection, public health and consumer and data protection. The scope of the law also extends to reporting of criminal acts including bribery and corruption.

The law provides for a three-tier system for reporting, internal, external and public disclosure. Companies with more than 50 employees, public sector institutions, authorities as well as municipalities with 10,000 or more inhabitants are obliged to set up suitable internal reporting channels. The Commission for Personal Data Protection will serve as an external channel for reporting. The whistleblower can choose whether to report a concern internally within the company or directly to the competent supervisory authority. If nothing happens in response to such a report, or if the whistleblower has reason to believe that it is in the public interest, they can also go directly to the public. They enjoy protection in all cases.

The law affords protection against any form of retaliation. The whistleblowers also have right to supporting measures such as right to information or advice, assistance before public authorities with regard to exercising their right to protection and legal assistance in criminal, civil or administrative proceedings in connection with the whistleblowing.

2(b) Please describe (cite or summarize) good practices and/or examples of measures you have used to encourage transparency, public reporting and/or public participation through your anti-corruption programmes (both for the public and private sectors).

2(c) What was the impact of the measures described above (2a and 2b)?

2(d) What challenges (if any) did you encounter in implementing the measures above (2a and 2b)?

Guidance on 2(a) and 2(b): Measures and good practices could, for example, include those designed to:

- Raise awareness of business integrity
- Encourage the private sector to establish anti-corruption policies, procedures and/or programmes
- Promote training and education on anti-corruption in the private sector
- Provide trainings or guidance, or develop model anti-corruption programmes or policies for companies to use and adapt
- Provide appropriate reporting channels
- Encourage public reporting of efforts to prevent and counter corruption in the private sector

Chapter 3: Using sanctions and incentives

Background: While effective sanctions for corruption offences are required under the United Nations Convention against Corruption, the Convention also recognizes the essential role of incentives that encourage and reward corporate self-reporting and preventive efforts.

Part A - Sanctions

3(a) Please describe (cite or summarize) good practices and/or examples of sanctions used to strengthen business integrity and/or reduce corruption in the private sector in your country.

- Monetary sanctions for legal persons (companies) liable for the participation in an offence of corruption

When they have enriched themselves or would enrich themselves from a crime, incl. corruption crimes, legal persons are punishable by a sanction of up to BGN 1 million (approx. EUR 500 000) (Art. 83a LAOS).

LAOS sets out specific factors that the courts should take into account when determining the amount of the sanction against a legal person. They include: (i) gravity of the offence, (ii) financial position of the legal person, (iii) assistance rendered for disclosing the offence and for compensating the damages of the offence, (iv) amount of the benefit, and other circumstances.

- Incarceration or other criminal sanction of natural persons (individuals) who have committed an offence of corruption acting on behalf of a company

Bribery of national public officials, bribery of foreign public officials and officials of public international organizations, and bribery in the private sector constitute criminal offences under Art. 225c, 301-307 of the Criminal Code. The sanctions for these offences include imprisonment, imposition of a fine, confiscation of the whole or part of the property of the convicted person, and deprivation of the right to hold a certain state or public office or to exercise a certain profession or activity (for more details see the attached file).

- Confiscation of proceeds of corruption for both companies and individuals who acted on their behalf

The CC also provides for the possibility for the prosecutor to seek confiscation of the assets linked to the crime such as the instrumentalities, the subject of the crime, direct or indirect benefits gained through the crime (Art. 53 of the CC). The latter are considered coercive

measures and not criminal sanctions. No confiscation of assets is possible without conviction for an offence. Under Article 53(2)(b) CC the direct and indirect benefits gained from the offence are also subject to confiscation in favour of the state.

LAOS allows for a confiscation in favour of the state of the direct and indirect benefits gained by the legal person in case the benefits are not subject to return or recovery or confiscation under the CC. Where the property - the object of the offence - is missing or has been alienated, its equivalent is awarded.

- Suspension and/or debarment of contractual partners from government processes

According to the Public Procurement Act (PPA), the conviction of a candidate/participant for a certain types of criminal offences, including active and passive foreign bribery, is a ground for mandatory exclusion from participation in a public procurement procedure. In this way, the provision is indirectly applicable to legal entities, given that the grounds also apply to the exclusion of natural persons who represent the candidate/participant by right or are their proxies, as well as to the members of its management and supervisory bodies, and where these bodies include a legal entity - also the natural persons who represent it (Article 54, para 2-3 PPA).

- Denial of government benefits (fiscal or otherwise)

Corporate Income Tax Code (CITC) explicitly prohibits the recognition of bribes as deductible expenses for tax purposes (Article 26(12)).

Since 2012, the clients of the Bulgarian Export Insurance Agency (BEIA) have to fill in an anti-bribery declaration when applying for insurance coverage for account of the State and prior to signing the insurance policy. The content of the anti-bribery declaration is in conformity with the OECD recommendations in the sphere of export credits. Prior to administering the application for an insurance cover on behalf of the State and assessing the risk of the buyer and all the other relevant details related to obtaining an insurance cover on behalf of the State, a check in the debarment list of the World Bank Group, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter -American Development Bank is being done by the risk assessment expert in BEIA. If the applicant is listed in one of the debarment lists, the application for insurance cover shall be rejected.

- Liability for damages and compensation of victims of corruption

According to the general principle of Art. 45 of the Obligations and Contracts Act (OCA), every person must redress the damage he/she has guiltily caused to another person. In all cases of tort guilt is presumed until proven otherwise. Under Art. 51 of the OCA, compensation shall be due for all damage - material and non-material - which is a direct and immediate consequence of the tort. The amount of the compensation for non-material damage shall be determined by the court while respecting the principles of equity. It may be payable as a lump sum or in regular instalments. If the person suffering the damage has contributed to its occurrence, the compensation may be reduced.

Natural and legal persons may seek compensation for damages in the civil law proceedings on the basis of Art. 124 of the Civil Procedure Code. The civil claim shall be considered in accordance with the general rules of the Civil Procedure Code.

Natural and legal persons (including foreign public institutions and foreign public enterprises) may choose to seek compensation in the criminal proceedings if they have suffered damage from the criminal offence. To this end, they may request to be constituted as civil claimants in accordance with Art. 84 of the Criminal Procedure Code. The request for civil claim shall be filed within seven days of the service of the notice for the date of the operative hearing (Art. 247b, para 4 of the Criminal Procedure Code). It shall indicate: the full name of the author and of the individual against whom the claim is filed; the criminal case in which it is filed; the criminal offence which has caused the damages, as well as the nature and amount of damages for which compensation is claimed.

When the legal person is constituted as civil claimant in the court proceedings it becomes party in the process and together with the prosecutor may take part in the court proceedings; demand security for the civil claim; produce evidence inasmuch as they are needed to substantiate the civil claim, in terms of grounding and amount (Art. 87, para 2 of the Criminal Procedure Code).

In the course of court proceedings, the civil claim shall be examined pursuant to the rules of the Criminal Procedure Code. The provisions of the Civil Procedure Code shall apply in relation to those issues that are not governed by the Criminal Procedure Code.

When deciding on the sentence the court also considers whether to uphold the action brought by the civil claim and to what extent (Art. 301, para 1 of the Criminal Procedure Code). The civil claim is not examined where the court proceedings are terminated. However, the civil claimants may turn their claims to the civil court.

Civil claimants have the right to file appeal against acts of the court, which infringe upon their rights and legal interests.

3(b) What were the main challenges (if any) your country faced in enforcing these sanctions?

3(c) What steps did you take to overcome those challenges (if any)?

Guidance on 3(a): Sanctions could, for example, include any of the following:

- Monetary sanctions for legal persons (companies) liable for the participation in an offence of corruption
- Incarceration or other criminal sanction of natural persons (individuals) who have committed an offence of corruption acting on behalf of a company
- Confiscation of proceeds of corruption for both companies and individuals who acted on their behalf
- Contract remedies and other means to communicate and enforce anti-corruption contractual provisions
- Suspension and/or debarment of contractual partners from government processes
- Denial of government benefits (fiscal or otherwise)
- Liability for damages and compensation of victims of corruption
- Reputational damages to hold wrongdoers publicly accountable
- Any other type of sanctions not listed above

Part B - Incentives

3(d) Please describe (cite or summarize) good practices and/or examples of incentives used to strengthen business integrity and/or reduce corruption in the private sector in your country.

- Penalty mitigation – encourages self-reporting of offences, credits companies' preventive efforts

LAOS sets out specific factors that the courts should take into account when determining the amount of the sanction against a legal person. They include: (i) gravity of the offence, (ii) financial position of the legal person, (iii) assistance rendered for disclosing the offence and for compensating the damages of the offence, (iv) amount of the benefit, and other circumstances.

3(e) What is the main impact of such incentives?

Guidance on 3(d): Incentives could, for example, include any of the following:

- Penalty mitigation – encourages self-reporting of offences, credits companies' preventive efforts
- Procurement preference – rewards good practice through procurement preference
- Preferential access to benefits – rewards good practice with preferential access to government benefits and/or services
- Reputational benefits – encourages good practice through public recognition
- Whistle-blower protection and awards – encourages reporting of potential violations by individuals
- Any other types of incentives not listed above

Part C - Additional measures

3(f) Please describe (cite or summarize) good practices and/or examples of any other additional measures used to strengthen business integrity and/or reduce corruption in the private sector in your country.

- Public education – activities that raise public awareness of corruption and its harmful effects

In 2020, a Memorandum of Cooperation was signed between the University of National and World Economy (UNWE), CCCCIAP, the Ombudsman of the Republic of Bulgaria and the Commission for Combating Corruption, Conflict of Interest and Parliamentary Ethics of the National Assembly. With the Memorandum, the parties agree on the development of a joint initiative "Anticorruption Academy" and cooperation in the following areas: cooperation in organizing lectures, events and conferences related to the fight against corruption; providing practical training and attracting student interest in a career in countering corruption; providing student practices and joint internships; cooperation in research projects and in the organization of "Master Classes" for students on current topics related to the fight against corruption. In fulfillment of the Memorandum, an Agreement on student internships was signed between UNWE, CCCCIAP, the Ombudsman of the Republic of Bulgaria and the parliamentary commission. The joint internship program aims to acquaint the students with the activities and functions of each of the institutions, providing opportunities for professional guidance and gaining practical experience. In February 2021, the first internship of students from the "Law", "International Relations" and "Anti-corruption" majors was held at CCCCIAP, during which the students got to know the work of the specialized directorates and the overall activity of the Commission.

In the school year 2020/2021, the training in civil education for the students in XI and XII grade was initiated and the topic of corruption was included in the curriculum. In the XI grade, the topic is included in the section "Citizens, Politics and Democracy". It is intended

to acquaint the students with the concept of corruption in the context of the election process - identifying and assessing the negative impact of corrupt practices in the election process, buying and selling votes, coercion, and manipulation of election documents. The topic of democracy is implicitly included in the curriculum for XII grade: in the section "Citizens and the economy" and more precisely in the topic "Market economy and social policy". The topic of corruption is not explicitly present in the 10th grade philosophy curriculum, but the expected results are included in the section "Political philosophy and philosophy of law" and in particular in the topic "Justice, law, rights and obligations" (assesses the importance of the principle for equality before the law and understanding the relationship between individual rights and legitimate forms of duty), which also relate to the problem of corruption.

The National Strategy for Prevention and Counteraction of Corruption in the Republic of Bulgaria (2021 - 2027), Priority 6. "Creating an environment for public intolerance to corruption", Measure 3. "Organization of communication anti-corruption campaigns" provides for the expansion of the scope of anti-corruption education in schools, including through the inclusion of extracurricular activities and other forms of education. The purpose of this measure is to achieve the moral integrity of the society and foster public intolerance to corruption in order to reduce in the long term the number of the cases of corruption that require the imposition of sanctions.

According to Annex № 5 of Ordinance № 13 on Civil, Health, Environmental and Intercultural Education, it is possible to include anti-corruption education in the extended and additional forms of training, such as the topic "Prevention and counteraction to corruption", which should be studied in V - VII class for 1 hour per year, and in VIII - XII class for 2 hours per year.

Guidance on 3(f): Additional measures could, for example, include any of the following:

- Integrity pacts – written agreements between government agencies and companies to strengthen integrity in public procurement, usually overseen by an independent monitor
- Collective action – collaborative initiatives that bring companies and other relevant stakeholders together to prevent and counter corruption and raise standards of business integrity
- Public sector reform – civil service and/or regulatory reforms that reduce the opportunities for corruption
- Public education – activities that raise public awareness of corruption and its harmful effects

Additional information

Is there any other information that you wish to share which has not been addressed by the previous questions?