

SLOVAKIA

Little or no enforcement

0.4% of global exports

Investigations and cases

In the period 2016-2019, Slovakia opened an unknown number of investigations, commenced no cases and concluded no cases.

Recent developments

A new Whistleblowing Act was adopted in 2019, with effect as of 1 March 2019, replacing previous legislation.¹ One major change is the establishment of the Whistleblower Protection Office, which will take over the responsibilities of labour inspectorates in the field of whistleblower protection and oversee compliance with obligations under the Act.² The office is expected to commence operations in 2020. The Act also increased the scope of notifiable offences, to include criminal offences of legal persons, and administrative offences, punishable by a fine of up to €30,000 (US\$35,000).³ The responsible person in charge of reviewing the merits of whistleblower notifications must meet “professional requirements”. These are not defined, although the office will provide specific training to responsible persons in order to ensure due fulfilment of their obligations. The Act also extends the protection of whistleblowers, including by

extending their rights within criminal proceedings and those for administrative offences.

In June 2020, the European Commission announced that it had initiated infringement proceedings against Slovakia due to incompleteness of its transposition measures for implementation of the 4th and 5th EU Anti-Money Laundering Directives.⁴

Transparency of enforcement information

The National Crime Agency (NCA) publishes in its annual reports statistics from its Anti-Corruption Unit on the number of criminal investigations and prosecutions, and the number of individuals charged with corruption offences.⁵ In addition, the Ministry of the Interior publishes online monthly crime statistics⁶ and the General Prosecutor’s Office publishes some statistics online.⁷ As there has been no foreign bribery enforcement, there is no published data on foreign bribery investigations. Official public sources provide general statistics regarding requests for mutual legal assistance (MLA) and for such requests within the European Judicial Network. Slovakia does not systematically collect data on incoming and outgoing MLA requests for foreign bribery.

All court decisions are published in anonymised form online.⁸

Beneficial ownership transparency

Slovakia has a central register of beneficial ownership information, but it is not accessible to the public, only to enforcement authorities and persons with a legitimate interest.

¹ Act no. 54/2019 coll., on the protection of whistleblowers. The Whistleblowing Act replaced the former act no. 307/2014 coll., on some measures related to the reporting of anti-social activities. As it was implemented prior to the EU Whistleblower Protection Directive, it does not meet all the directive’s requirements.

² As of August 2020, the Chairman had not yet been elected by the National Council.

³ Formerly, a higher threshold of €50,000 (US\$59,000) was applicable.

⁴ https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status_en

⁵ As of April 2020, the latest annual report published relate to 2016, https://www.minv.sk/swift_data/source/policia/naka_opr/opr/inf_o_cinnosti_naka/Informacia%20o%20cinnosti%20NAKA%20P%20PZ%20za%20rok%202016%20public.pdf

⁶ <https://www.minv.sk/?statistika-kriminality-v-slovenskej-republike-csv>

⁷ <https://www.genpro.gov.sk/statistika-12c1.html>. These statistics should cover all crimes. Various distinctions are available, e.g. nature of the crime by reference to the chapter of criminal code, composition of the offenders (e.g. sex, age, foreigners), information about the outcome of the prosecution (e.g. cancellation, postponement, conviction).

⁸ As per Section 82a, para 3 of the Act No. 757/2004 Coll. on Courts as amended, <https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie>

Legal entities are required to include information about their beneficial owners in their registration.⁹ Such entities include companies registered in the commercial register, non-investment funds, non-profit organisations and foundations. The information is collected in the Register of Legal Entities, Entrepreneurs and Governmental Bodies, maintained by the Statistical Office.

There is also a Register of Public Sector Partners (PSP Register) administered by the Statistical Office.¹⁰ Individuals and entities that do business with the state or enterprises it owns or controls, or who benefit from public funds or property, are obliged to register and provide information about their ownership and corporate structure, if certain criteria (such as financial thresholds) are met. The PSP Register aims to address the participation of “letterbox” firms in public tenders and in all business activities with state bodies, and includes enhanced disclosure of beneficial owners.

Trusts are not recognised under Slovak law, and cannot therefore be established. The closest equivalent is “property association”, for which there is no need to register the beneficial owners in any central register. Foreign trusts are legally recognised, but are not required to register their beneficial owners.

Information about beneficial owners is not publicly available.¹¹ The Statistical Office is obliged to disclose information on beneficial owners to certain public authorities, such as the courts, authorities involved in criminal investigations, tax administrators and the Financial Police. It must also disclose the information to specified banks, financial institutions, auditors, advocates, accountants and other relevant entities that require this information

for fulfilment of their duties under anti-money laundering legislation.

Inadequacies in legal framework

The Slovak Parliament has not yet implemented the 5th EU Anti-Money Laundering Directive, prompting the European Commission to issue to Slovakia a letter of formal notice in early 2020 – the first step in an infringement procedure.¹²

The Law on the Criminal Liability of Legal Persons, which entered into force in 2016, provides for a maximum financial penalty of €1.6 million (US\$1.9 million), which is insufficient for foreign bribery, especially when committed by large multinational corporations.¹³ The law exempts state bodies, municipalities and certain legal persons unless they hold shares in other legal persons.

Confiscation (in the form of “forfeiture of a thing”) of a bribe and its proceeds is mandatory for non-aggravated foreign bribery. However, imposition of a pecuniary penalty is not mandatory for non-aggravated foreign bribery.

Inadequacies in enforcement system

Progress in fighting corruption remains limited. There are reports of improved efforts to sanction legal persons for corruption offences, although none are related to foreign bribery.

The European Commission’s Country Report Slovakia 2020 noted serious concerns about the independence of the Slovak judiciary, particularly due to increasing evidence of close links between white-collar criminals and the political class, individual judges and prosecutors, including a former General Prosecutor.¹⁴ According to the

⁹ Act No. 272/2015 Coll., on Register of Legal Entities, Entrepreneurs and Public Authorities as amended; Act No. 147/1997 Coll., on Non-Investment Funds as amended; Act No. 213/1997 Coll., on Non-Profit Organisations as amended; Act No. 34/2002 Coll., on Foundations as amended, and Act No. 530/2003 Coll., on Commercial Register as amended, <https://rpo.statistics.sk/rpo/#search>. Legal entities established prior to 31 October 2018 were obliged to submit applications for registrations of their beneficial owners (including the respective source register) by 31 December 2019. Legal entities established after 1 November 2018 are obliged to register their beneficial owners as part of their initial application for registration.

¹⁰ Act No. 315/2016 Coll., Act on Register of Public Sector Partners, as amended, <https://rpvs.gov.sk/rpvs>

¹¹ Act No. 272/2015 Coll., on register of legal entities, entrepreneurs and public authorities, as amended. A draft bill prepared by the former government in 2019 intended to make beneficial ownership information publicly available. The change in government after the 2020 election means this proposed amendment has not been submitted.

¹² <https://www.lusa.pt/article/HhapT3HFk91xFSwiWWwkizMSZM5iuS11/portugal-government-finalising-anti-money-laundering-directive>

¹³ <https://globalcompliance.com/slovakia-criminal-liability-of-legal-persons-introduced/>

¹⁴ https://ec.europa.eu/info/sites/info/files/2020-european_semester_country-report-slovakia_en.pdf?fbclid=IwAR2pRappbHcsBfV9q9lfqNCJDni_j_PoXFRDQenOV3iEjIHocq5-JsSWQ. No specific actions have been taken since then and only limited progress (e.g. prosecution of legal entities) has been reported.

report, Slovakia remains the lowest-ranked EU member regarding the perceived independence of the judiciary.

Concerns remain about prosecutorial independence. Currently, the General Prosecutor is elected by Parliament and appointed by the president. The range of persons entitled to nominate candidates for the position is limited and candidates are not obliged to undergo public hearings. There is no need to achieve a qualified (three-fifths) majority of votes of all parliamentarians to elect the General Prosecutor.

The 2018 report about the activities of the Special Prosecutor's Office noted that police forces are poorly equipped to investigate corruption cases, including foreign bribery. The major problem reported concerns poor recording equipment for making audio and visual records.¹⁵ In Slovakia, corruption cases frequently cannot be concluded because of poor-quality video or audio recordings, which cannot serve as evidence in court proceedings – for example, due to low image resolution.

Recommendations

- Implement the 5th EU Anti-Money Laundering Directive
- Ensure public accessibility of information about beneficial owners of Slovak legal entities
- Amend the Law on the Criminal Liability of Legal Persons, to remove the exemption for state-owned enterprises from criminal liability and increase the upper limit for financial penalties
- Increase the independence and transparency of the judiciary, in particular with regard to the selection procedure and security screening of judges, judicial review and the Judicial Council
- Increase the independence of the General Prosecutor and the transparency of the selection procedure
- Enhance law enforcement capabilities to allow more efficient detection of bribery, and provide law enforcement agencies with better tools to investigate and prosecute bribery cases
- Employ more enforcement staff and provide training for auditors, accountants and tax examiners, to raise awareness of foreign bribery and improve their ability to detect the offence.

¹⁵ <https://www.genpro.gov.sk/extdoc/54764/sprava>