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to the United Nations
Convention against Corruption**

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

Summary

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
II. Summary	2
Russian Federation	2



II. Summary

Russian Federation

Comments

1. **Introductory section: Review of the legal and institutional system of the Russian Federation in the context of the implementation of the United Nations Convention against Corruption**

The Russian Federation signed the United Nations Convention against Corruption on 9 December 2003, by Order of the President of the Russian Federation No. 581 of 6 December 2003, and ratified it, with declarations, under Federal Act No. 40 of 8 March 2006. The Russian Federation deposited its document of ratification with the Secretary-General of the United Nations on 9 May 2006.

Under article 15 of the Constitution of the Russian Federation, the universally recognized principles and rules of international law and international treaties entered into by the Russian Federation are an integral part of its legal system. Where an international treaty entered into by the Russian Federation establishes rules other than those provided for under domestic law, the rules of the international treaty apply.

The country's legislation on corruption includes the provisions of the Constitution, the Criminal Code, the Code of Criminal Procedure, the Code of Administrative Offences of the Russian Federation, the Civil Code and the Labour Code, in addition to specific legislation, such as the Federal Anti-corruption Act (2008), the Federal Act on countering the legalization of the proceeds of crime (money-laundering and the financing of terrorism) (2001), the Federal Civil Service Act of the Russian Federation (2004), the Federal Act on the Office of the Procurator of the Russian Federation (1992), the Federal Act on the Investigative Committee of the Russian Federation (2010), the Federal Police Act (2011), the Federal Police Operations Act (1995), the Federal Act on State protection of victims, witnesses or other parties to criminal proceedings (2004, amended 2010) and the Federal Banks and Banking Act (1990). The Russian Federation has also adopted the National Strategy to combat corruption for 2010-2011, approved under Presidential Decree No. 460 of 13 April 2010 (amended 13 March 2012) and the National Plan to combat corruption for 2012-2013, approved under Presidential Decree No. 297 of 13 March 2012.

The country's institutional framework for preventing and combating corruption comprises a number of institutions and bodies responsible for combating corruption, particularly the Council of the President of the Russian Federation for Combating Corruption, the Office of the Procurator, the Investigative Committee of the Russian Federation, the Ministry of Justice, the Ministry of Internal Affairs, the Federal Security Service, the Federal Financial Monitoring Service and various departments of specialist services on the prevention of corruption and other offences set up within each federal State body in accordance with Presidential Decree No. 1065 of 21 September 2009. Moreover, the Bureau of the Council of the President of the Russian Federation for Combating Corruption has set up two working groups: one on cooperation with civil society on questions relating to

combating corruption and another on joint participation by representatives of the business community and State bodies in action against corruption.

International cooperation on criminal proceedings in the Russian Federation is regulated by chapters 53, 54 and 55 of the Code of Criminal Procedure and Presidential Decree No. 1799 of 18 December 2008 on the central agencies of the Russian Federation responsible for implementing the provisions of the United Nations Convention against Corruption relating to mutual legal assistance.

2. Chapter III. Criminalization and law-enforcement activities

2.1 Monitoring the implementation of the articles under consideration

Active and passive bribery — the giving or accepting of bribes — in the public sector is a criminal offence under articles 291 and 290 of the Criminal Code, as amended by the Federal Act of 4 May 2011. Article 291.1 of the Code criminalizes the giving of bribes through an intermediary. The definition of a bribe is set out in the first paragraph of article 290 of the Code and may consist of money, securities and other assets or property-related benefits, or else of services normally subject to payment but provided free of charge. A bribe may comprise either tangible assets or intangible benefits (see also the review of judicial practice in Decision No. 6 of the Plenum of the Supreme Court of the Russian Federation of 10 February 2000).

Both articles use the term “official”, which is defined as “a person who discharges the functions of a representative of Government on a permanent or temporary basis, or by special authority, or who performs organizational or regulatory, administrative or economic functions in State bodies, local self-government bodies, governmental or municipal institutions or in the Armed Forces of the Russian Federation or other forces or military formations of the Russian Federation”. In addition, under Decision No. 6 of the Plenum of the Supreme Court of the Russian Federation of 10 February 2000, on judicial practice in cases of bribery or commercial bribery, “representatives of the executive authorities” comprise persons who discharge legislative, executive or judicial power, or officials of State, supervisory or monitoring bodies discharging leadership functions in accordance with legal procedure in relation to persons not in an employment relationship with them, or having the power to take decisions that must be obeyed by individuals or organizations, regardless of their departmental status.

The experts carrying out the review noted that such elements of the taking of bribes covered by article 15 (a) of the Convention against Corruption as the “offering” or “promise” of an undue advantage were not clearly spelled out in the wording of article 291 of the Criminal Code. The representatives of the Russian Federation pointed out that these elements were set out in the provisions of the general part of the Code relating to attempts at or preparations for committing an offence (Bribe-giving) (art. 30 of the Code). In Russian, the terms “promise” and “offering” constitute the unilateral expression of an intention to do something. According to the Legislative Guide for the Implementation of the United Nations Convention against Corruption, the word “promise” in the Convention implies an agreement on a transfer (taking a bribe). Under Russian law, such an action is termed an “agreement” and is considered a particular instance of preparation. According to the Guide, the term “offer” in the Convention is understood to mean a unilateral intention to do something. Decision No. 6 of the Plenum of the Supreme Court of the Russian Federation of 10 February 2000 establishes that a clearly expressed

intention on the part of a person to give or receive a bribe — in other words, a “promise” — cannot constitute the elements of an attempt to give or receive a bribe. Such an action is described as preparation for committing an offence. The offer of a bribe does not imply an agreement between the parties. Criminal liability for a “promise” as a preparation for committing an offence may be established on the basis of the danger to society and the extent to which such a promise creates the conditions under which an offence may be committed. Extending criminalization beyond this definition could result in excessive punishment and criminal sanctions against private negotiations, which was not the intention of Russian legislators, according to the representatives of the Russian Federation. The representatives also drew attention to the principle contained in article 30, paragraph 9, of the Convention, under which the description of the offences established in accordance with the Convention is reserved to the domestic law of a State party and that such offences are prosecuted and punished in accordance with that law. The experts undertaking the review took into account the clarifications provided by the Russian authorities, but, at the same time, noted the need for further work on providing explanations drawing a clear distinction between the offer and the promise of a bribe.

At the same time, the experts carrying out the review noted that, under article 30, paragraph 2, of the Criminal Code, criminal liability arose only for preparations to commit serious or extremely serious offences and that the maximum penalty could not exceed 10 years’ imprisonment for a serious offence or more than 10 years’ imprisonment in the case of a very serious offence. Criminal liability for a promise to give a bribe is directly provided for in the Criminal Code only for the offences provided for under article 291, paragraphs 3-5 (giving a bribe to an official for knowingly committing unlawful actions; giving a particularly large bribe; or giving a group of officials a bribe by prior agreement or a particularly large bribe). The experts undertaking the review therefore noted the need to find ways of applying article 30 of the Criminal Code on criminalizing preparations for committing an offence not only to serious and very serious offences but also to offences of a medium level of seriousness, at least, including the basic elements of actively taking bribes.

One of the questions raised during the visit was the application of provisions relating to active and passive bribery in the State and the private sector to cases where an undue advantage is intended for a third party. The Russian authorities gave details of the latest judicial practice in that area and pointed out that, under the National Plan to combat corruption, the Supreme Court of the Russian Federation had recommended the consolidation of judicial practice and the drafting of explanations on the application of the law in such cases.

The elements of an offence and the penalties imposed for the giving of bribes to national officials also apply to the giving of bribes to officials of foreign States or international organizations. A definition of “foreign official” is given in the note to article 290, paragraph 2, of the Criminal Code, which states that a foreign official means any appointed or elected person occupying any post in a legislative, executive, administrative or judicial body of a foreign State or any person performing any kind of public function for a foreign State, including a position with a public agency or public enterprise; an official of a public international organization is understood to mean an international official or any person authorized by such an organization to act on its behalf.

Article 160 of the Criminal Code provides for criminal liability for the misappropriation or embezzlement of another person's property entrusted to the convicted person. Such acts committed through the use of a person's official position are considered aggravating circumstances under article 160, paragraph 3. Misappropriation and embezzlement may involve any State property, including securities or other valuables. Other applicable provisions cited by the Russian authorities include article 285.1 (Expenditure of budgetary funds for unauthorized purposes) and article 285.2 of the Code (Expenditure of extrabudgetary State funds for unauthorized purposes).

According to the information provided by the Russian authorities and confirmed during the country visit, Russian law does not contain a specific provision criminalizing trading in influence. Depending on the circumstances of a given case, the following articles of the Criminal Code may apply: article 201 (Abuse of authority), article 285 (Abuse of official authority), article 290 (Bribe-taking), article 204 (Commercial bribery) and article 159 (Fraud). The experts noted that these provisions applied to acts relating to trading in influence. In their view, however, not all the elements of the actions provided for under article 18 of the Convention were covered by Russian criminal legislation.

Abuse of official position is covered in the Criminal Code (arts. 285, 286, 201 and 202).

When ratifying the Convention against Corruption, the Russian Federation made a declaration excluding its jurisdiction in relation to acts considered criminal under article 20 of the Convention (Illicit enrichment). During the country visit in 2012, the authorities of the Russian Federation drew the attention of the experts to new legislative initiatives on the adoption of legislation to monitor the expenditure of State officials. On 3 December 2012, the President of the Russian Federation signed into law Federal Act No. 230 on the monitoring of the correspondence of expenditure with income of persons discharging State functions or other persons. The Act provides for the requirement for State officials to provide information on the sources of their income in the event of their engaging in a transaction to acquire a plot of land or other immovable property, a vehicle, securities or shares, where the amount of the transaction exceeds the income of that person or his or her spouse over the three years preceding the transaction. Where the person concerned fails to submit information confirming that the property was acquired using lawful income, the public prosecution office will launch civil proceedings to transfer the property acquired to the State.

Both active and passive bribery in the private sector is a criminal offence under article 204 of the Criminal Code (Commercial bribery). Paragraph 1 of the article establishes criminal liability for the illegal transfer of money, securities or other assets to a person who discharges managerial functions in a profit-making or other organization, or rendering the person property-related services in return for actions, or inaction, in the interests of the giver, in connection with the official position held by that person. The experts conducting the review noted that article 204 of the Code criminalized bribery only in relation to persons discharging managerial or organizational functions. In that connection, the experts noted the absence in Russian criminal legislation of provisions on bribery in the private sector relating to persons working in any capacity in the course of economic, financial or commercial activities, as set out in article 21 of the Convention.

The Russian Federation has criminalized the legalization, or laundering, of the proceeds of crime under articles 174, 174.1 and 175 of the Criminal Code. Articles 174 and 174.1 of the Code define money-laundering as an offence comprising the conducting of financial transactions and other transactions using monetary resources or other assets knowingly acquired by third parties by criminal means with a view to lending an air of legality to the possession, use and disposal of such monetary resources or other assets. The term “conducting of transactions” includes any course of action, such as the concealment or disguise of a criminal source, or the location, use or transaction involving such income, where the person concerned knows that the assets are the proceeds of crime. All offences involving corruption are considered predicate offences for the purpose of money-laundering.

Concealment (art. 24 of the Convention) is a criminal offence under article 175 of the Criminal Code (Acquisition or sale of property known to be the proceeds of crime). A person who gives a prior undertaking to conceal a criminal, the means or tools for committing a crime, the evidence of a crime or objects acquired as the proceeds of crime, or a person who gives a prior undertaking to acquire or sell such objects, is deemed an accomplice in an offence, under article 33, paragraph 5, of the Criminal Code. Under article 34, paragraph 4, of the Code, the actions of such a person are punished in accordance with the relevant article of the Special Section of the Code, depending on the offence committed, as set out in article 33, paragraph 5, of the Code.

The provisions of article 25 (a) of the Convention are covered by articles 302 (Coercion of a person to testify) and 309 of the Criminal Code (Subornation or coercion of a person to testify, to refrain from testifying or to give an inaccurate translation). Article 302, paragraph 1, of the Criminal Code provides for the criminal liability of an investigator or person conducting an initial inquiry, or any other person with such investigator’s knowledge or tacit consent, who compels by means of threats, blackmail or other unlawful actions, a suspect, defendant, victim, witness, expert or specialist conducting an investigation or inquiry to give evidence. If such action is accompanied by the use of force, abuse or torture, liability is incurred under paragraph 2 of the same article. Article 309 of the Code establishes liability for the subornation or coercion of a person to testify or to refrain from testifying in the administration of justice.

The experts conducting the review came to the conclusion that, overall, the Russian Federation had implemented article 25 (a) of the Convention. They emphasized, however, that the practical aspects of criminalizing the “promise, offering or giving of an undue advantage” for the purpose of obtaining or preventing testimony in the administration of justice should be clarified in the future in the country’s judicial practice regarding the application of articles 302 and 309 of the Criminal Code.

Article 25 (b) of the Convention was covered in the Russian Federation by articles 294 (Obstruction of justice or preliminary investigation), 295 (Attempt on the life of a person administering justice or engaged in a preliminary investigation) and 296 (Threats or force in connection with the administration of justice or the conduct of a preliminary investigation) of the Criminal Code.

Under Russian law, a legal person may be a subject of either administrative liability, in accordance with article 2.6 of the Code of Administrative Offences (Administrative liability of foreign nationals, stateless persons and foreign legal persons), or civil-law liability, in accordance with article 56 of the Civil Code (Liability of a legal person). The legal basis for the liability of legal persons for

corruption offences is set out in article 14 of the Federal Anti-corruption Law of 2008 and in article 19.28 of the Code of Administrative Offences (Unlawful remuneration by a legal person), under which “where corruption offences or offences creating the conditions for corruption offences are organized, prepared or perpetrated on behalf of or in the interests of a legal person, such legal person shall be liable to prosecution in accordance with the law of the Russian Federation.” The Federal Act also contains a provision stating that foreign legal persons may be prosecuted for corruption offences in the cases provided for under the law of the Russian Federation. Moreover, a legal person may be prosecuted for failure to comply with the requirements of the law on countering the legalization, or laundering, of the proceeds of crime and the financing of terrorism, as set out in article 15.27 of the Code of Administrative Offences.

As for the civil liability of legal persons for damage resulting from an act of corruption, the Civil Code does not specifically address this issue. The civil liability of a legal person for corruption offences is governed by the general rules concerning liability as they relate to contracts, the consequences of causing damage and the consequences of illicit enrichment. A transaction that is based on a corrupt action may be deemed invalid but, again, on general principles.

Article 14, paragraph 2, of the Federal Anti-corruption Act No. 273 of 25 December 2008 contains a provision stating that the prosecution of a legal person for a corruption offence does not exempt a moral person from liability to prosecution for the same offence. By the same token, the criminal or other prosecution of a moral person on a charge of corruption does not exempt a legal person from liability for the same offence.

The Russian authorities made it clear that the Code of Administrative Offences does not provide for any limit on the imposition of an administrative penalty: a judge is entitled to impose on a legal or moral person any penalty within the limits set out in the corresponding article, including the maximum penalty, with due regard for mitigating, aggravating or other circumstances that may have a bearing on the extent of liability of each of these persons.

The experts conducting the review took into account the provisions of the Criminal Code under which a limitation period is extended in accordance with the nature of the punishment imposed, depending on the offence in question. They judged the periods laid down to be sufficient to serve the interests of justice.

They also considered the penalties imposed on moral or legal persons to be generally effective and proportionate and to exercise a deterrent effect. The experts particularly noted the successful practice adopted in national legislation on offences relating to bribery and commercial bribery, where the amount of a fine is a multiple of the amount involved in the corruption or bribe. The experts considered that consideration should be given to the question of whether criminal sanctions were proportionate, in view of the provisions of article 30 of the Criminal Code, under which a person is criminally liable for the preparation only of serious or very serious offences.

Under the Constitution and the law of the Russian Federation, the following categories of highly placed officials enjoy immunity from prosecution: the President of the Russian Federation, the members of both chambers of parliament (the Federation Council and the State Duma), judges, members of jury courts and the Commissioner for Human Rights.

The President of the Russian Federation has immunity under article 91 of the Constitution and the law provides that immunity continues following the completion of the President's term in office. The President may be dismissed by the Federation Council only on the basis of a charge of State treason or other serious offence brought by the State Duma and confirmed by a ruling of the Supreme Court of the Russian Federation that the actions of the President of the Russian Federation show evidence of an offence and a decision by the Constitutional Council of the Russian Federation to set in motion the correct procedure for issuing an indictment. A decision by the State Duma to bring a charge and a decision by the Federation Council to dismiss the President must be taken by a two-thirds majority of the full membership of both chambers on the basis of a motion by not less than one third of the members of the State Duma and following the conclusions of a special commission established by the State Duma.

Members of the Federation Council and of the State Duma (but not candidates for membership) enjoy immunity (art. 98 of the Constitution). They may not be detained, arrested or searched, except in cases in which they may be detained at the scene of an offence, or subjected to a search of their person, except where such action is required under federal law to ensure the safety of other persons.

Under article 120 of the Constitution, judges are independent and answer only to the Constitution and federal law. Under article 122 of the Constitution, all judges enjoy immunity. A judge is not subject to criminal prosecution, except in cases provided for by law. Under article 16 of the Status of Judges in the Russian Federation Act of 1992, this extends to immunity to disciplinary, administrative or criminal prosecution. The procedure for limiting immunity, initiating criminal proceedings and prosecuting a judge depends on the judge's rank.

Article 447 of the Code of Criminal Procedure sets out a specific procedure for handling criminal cases involving particular categories of officials. The procedure depends on agreement by the relevant bodies, according to their respective competence, to impose coercive measures and initiate criminal procedure actions against such officials. The authorities of the Russian Federation gave practical examples of the use of such provisions, including cases where immunity and other privileges of officials were lifted and the corresponding investigation of such persons set in motion.

Under article 38 of the Code of Criminal Procedure, an investigator is authorized to conduct the course of an investigation independently and take decisions on initiating investigative and other procedural actions, except in cases where, under the Code, a judicial decision or the approval of the head of the investigatory body is required.

The powers, organization and system of the Office of the Procurator are governed by Federal Act No. 2202-1 on the Office of the Procurator of the Russian Federation, of 17 January 1992. The Office of the Procurator has the following basic functions: monitoring compliance with the law, ensuring respect for human rights and initiating criminal prosecutions in accordance with the powers established by the criminal-procedure legislation of the Russian Federation; representing the interests of the State and the public before the courts, monitoring compliance with the law by bodies engaging in investigations, initial inquiries and pretrial investigation; monitoring compliance with the law by bailiffs; and monitoring compliance with the law by the administrations of bodies and institutions responsible for the enforcement of sentences and the application of coercive restriction measures imposed by the courts. Whereas investigators are responsible

for investigating offences, the main task of the Office of the Procurator during an investigation is to perform a supervisory function. Under article 21 of the Federal Act on the Office of the Procurator of the Russian Federation, such supervision includes ensuring that the Constitution, the law and enabling legislation are consistent with each other at various levels.

The Code of Criminal Procedure provides for the imposition on a suspected or accused person of such procedural enforcement measures as temporary removal from office. Article 45 of the Criminal Code provides for such penalties as deprivation of the right to occupy a given position or to engage in a given activity.

The measures on the freezing, seizure and confiscation of the proceeds of crime, set out in article 31 of the Convention against Corruption, are defined in the Code of Criminal Procedure. Article 115 of the Code provides for interim measures (seizure) for the possible confiscation of the proceeds of crime or assets acquired unlawfully. The legal basis for the application of measures to confiscate assets is set out in the Criminal Code, the Code of Criminal Procedure, the Civil Code, the Code of Administrative Procedure and the Code of Administrative Offences. Under section VI of the Criminal Code (Other measures under criminal law), confiscation is a criminal-law measure, may not be considered a punishment and has no bearing on the nature of the sentence. Under article 104.1-104.3 of the Code, confiscation is the forcible removal of assets, without compensation, that revert to the State in the event of a conviction.

Money, securities or other proceeds of crime are subject to confiscation, or any income from such assets or such income that was transformed or converted, in part or in full, into other property (indirect confiscation). Where property acquired as a result of an offence and/or income from such property is combined with legally acquired property, the part of the property corresponding to the value of the property added, or income from it, is subject to confiscation.

Under article 104.2 of the Criminal Code, a sum of money corresponding to the value of the property may be confiscated instead of the property itself. Thus, if the confiscation of a given item forming part of the property indicated in article 104.1 of the Code, once a court has adopted a decision on the confiscation of that item, is not possible because it has been used or sold or for some other reason, the court adopts a decision to confiscate a sum of money corresponding to the value of the item (confiscation of equivalent value).

Under article 104.1 of the Code, confiscation is permissible only where the accused has been convicted. Confiscation without criminal proceedings is not permitted. Moreover, the proceeds of crime, whether direct or indirect, or the income therefrom, are subject to “procedural confiscation”, on the basis of article 81 of the Code of Criminal Procedure, in order that they may be used as material evidence.

With regard to the introduction of a system to require an offender to demonstrate the lawful origin of income and property liable to confiscation, which appears to be optional under article 31, paragraph 8, of the Convention against Corruption, the Russian Federation has drawn attention to the partial adoption and implementation of such a system. This question has been discussed on a number of occasions in various forums, including a round table held by the State Duma of the Federal Assembly of the Russian Federation in 2010. The possibility of introducing a system to transfer the burden of proof as to the lawful origin of the alleged proceeds of crime was agreed to be a possible long-term prospect for the development of the country’s legal system.

The protection of witnesses is provided for by the Federal Act on State protection of victims, witnesses and other participants in criminal proceedings, of 2004. The Act establishes a system of measures to provide State security not only for the victim of a crime but for all participants in criminal proceedings.

Under Russian law, relocation of such persons is not applicable to participants in criminal proceedings relating to minor or moderately serious offences. In the course of the country visit, the Russian Federation stated that an agreement was concluded in 2006 with the countries of the Commonwealth of Independent States (CIS) on the protection of participants in criminal proceedings. The agreement includes provisions on such measures of security as relocation.

It provides for a range of rules of evidence, enabling participants in criminal proceedings to be provided with security. In particular, these include changing a person's name in the police report on the investigation and using a pseudonym. Telephone conversations and other conversations are monitored and recorded. Identity parades are held in such a way as to preclude the suspect's seeing the person carrying out the identification. Judicial proceedings are held in camera and witnesses are questioned during the proceedings under conditions precluding their being seen by other participants in the proceedings. Provision is also made for the possibility for questioning a witness during the proceedings via a videoconferencing link.

The experts conducting the review noted that article 11, paragraph 3, of the Code of Criminal Procedure provides for a wide range of measures to protect participants in criminal proceedings in the Russian Federation. Nonetheless, they considered that the provision outlined only general rules for the protection of participants in criminal proceedings and failed to establish specific measures to protect experts taking part in the proceedings.

The protection of persons that inform the relevant authorities of any facts relating to corruption offences is governed in the Russian Federation by the Federal Act on State protection of victims, witnesses and other participants in criminal proceedings, of 2004. Under article 2, paragraph 2, of the Act, "State protection measures may also be applied prior to the commencement of criminal proceedings in relation to any other persons providing assistance in the prevention or disclosure of an offence."

There are as many possible ways of eliminating the consequences of corruption offences as there are consequences themselves. The general provisions on ways to protect rights, including rights breached by corruption offences, are set out in the Civil Code. According to article 168 of the Code, a transaction that does not comply with the requirements of the law or other legal instruments is invalid, unless the law states that such a transaction is open to dispute or does not provide for other consequences of the offence. During the country visit, confirmation was given of the existence in Russian legislation of rules on the revoking of laws and regulations or decisions that had resulted from corruption offences.

The Russian Federation provided information on a well-developed system of institutions and units engaged in work to combat corruption. Under article 5 of the Federal Anti-corruption Act of 2008, federal State agencies, State agencies of entities of the Russian Federation and local government bodies are responsible for countering corruption to the extent of their authority. The Council of the President of the Russian Federation for Combating Corruption was set up in 2008 in order to coordinate the activities of the federal executive agencies, the executive bodies of

entities of the Russian Federation and local government bodies implementing State anti-corruption policy.

The network of procurator's offices around the country contains a vertically integrated independent structure of specialized units set up to monitor compliance with the law on countering corruption to help regulate their activities. Two orders have been issued by the Office of the Procurator-General, approving the Integrated Plan of Action against Corruption for 2011-2012, which was drawn up to take account of the aims set out in the National Plan to combat corruption.

The federal security service agencies conduct investigations, in accordance with article 10 of the Federal Security Service Act, with a view to detecting, preventing, suppressing and exposing criminal offences, including corruption.

Within the framework of the central organization of the Ministry of Internal Affairs of the Russian Federation, specialized units have been established: the Central Department for Economic Security and Combating Corruption of the Ministry of Internal Affairs and the Central Department for Internal Security of the Ministry of Internal Affairs. There are corresponding sub-units dealing with economic security and anti-corruption activities, and also sub-units dealing with internal security, in regional internal affairs departments of the Ministry of Internal Affairs. Specialized units to investigate crimes of office and economic offences have also been set up within the Investigative Committee of the Russian Federation. Investigators attached to these units have been receiving preparation and training, beginning in 2009 and continuing to the present day, and a set of methodological recommendations has been drawn up for their benefit.

The Federal Act on the Office of the Procurator of the Russian Federation, the Federal Act on the Investigative Committee of the Russian Federation, the Federal Police Act and the Federal Police Operations Act provide for the requirement for State agencies and officials to provide information at the request of the law-enforcement agencies.

The experts conducting the review gave due consideration to the information provided on the specialization of investigators responsible for investigating corruption offences and came to the conclusion that there was a need for further improvements to the specialist skills of investigators and the arrangements for their professional training.

The notes to articles 291 and 291.1 of the Criminal Code state that a person who has given a bribe or has acted as an intermediary in giving a bribe is exempted from criminal liability, where, after an offence has been committed, he or she actively assists in exposing or suppressing the offence and voluntarily informs the body responsible for instituting criminal proceedings that he or she has given a bribe or acted as an intermediary. The notes to article 184 of the Code (Bribery of participants and organizers of professional sports events and profit-making entertainment events) and article 204 of the Code (Commercial bribery) set out the conditions for exemption from criminal liability, which are similar to those set out in article 291 (with the exception of the condition relating to active assistance in exposing or investigating the offence, by analogy with article 184). Under article 61 of the Code, circumstances mitigating an offence include giving oneself up, rendering active assistance in the disclosure or investigation of an offence, the exposure and criminal prosecution of other accomplices and the search for property acquired as a result of the offence. In addition, chapter 40.1 of the Code of Criminal Procedure provides for the possibility of concluding a pretrial agreement on

cooperation with a suspected or accused person, setting out the conditions for his or her liability, depending on his or her actions following the start of criminal proceedings or the laying of charges.

Cooperation between financial institutions and law-enforcement agencies on questions of crime is governed by the Federal Act on countering the legalization (laundering) of the proceeds of crime and the financing of terrorism, of 2001. The Act sets out a list of transactions involving monetary assets or other property subject to obligatory controls (art. 6) and establishes the requirement for organizations engaging in such transactions to provide information on them to the relevant authorities (art. 7).

Under article 8 of the Act, in a case where there are sufficient grounds to indicate that a transaction is related to the legalization or laundering of the proceeds of crime or the financing of terrorism, the Federal Financial Monitoring Agency sends the relevant information and materials to the law-enforcement agencies concerned, depending on their specific mandates.

On 30 November 2009, in the course of its work on drawing up new legislation and amending existing instruments, the Council of the Chamber of Auditors of the Russian Federation adopted a decision to include provisions obliging auditors to inform the law-enforcement agencies of the full details of any corruption offence and also to provide for the development of effective measures of cooperation between the Chamber of Auditors and procurator's offices.

In October 2011, the presidium of the Council of the President of the Russian Federation for Combating Corruption decided to set up a working group on the question of joint participation in combating corruption, made up of representatives of the business community and State bodies. Furthermore, the Russian business Anti-corruption Charter was adopted at the International Investment Forum on 21 September 2012.

The Russian Federation stated that banking secrecy is not an impediment to obtaining information from banks where cases of corruption and money-laundering are under investigation. The legislation regulating this area is the Federal Banks and Banking Act and articles 5, 7 and 9 of the Federal Act on countering the legalization (laundering) of the proceeds of crime and the financing of terrorism.

In the course of a discussion of the number of convictions that followed a criminal prosecution in other States, the Russian authorities drew attention to article 60, paragraph 3, of the Criminal Code, which does not, however, set out precise requirements compared with verdicts passed in other States. However, the mechanism for obtaining information on such convictions is provided for in the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, of 1993.

The principles for establishing jurisdiction are set out in articles 11 and 12 of the Criminal Code. Article 11 establishes jurisdiction with regard to offences committed within the territory of the Russian Federation, while article 12 lays down the conditions under which the jurisdiction of the criminal law of the Russian Federation may be extended to offences committed beyond the borders of the Russian Federation. Foreign nationals and stateless persons not permanently residing in the Russian Federation who have committed an offence outside the

Russian Federation are subject to criminal prosecution in cases where the offence concerned is directed against the interests of the Russian Federation, or against a national of the Russian Federation or a stateless person permanently residing in the Russian Federation, and also in cases provided for under an international treaty entered into by the Russian Federation, unless the foreign national or stateless person not residing permanently in the Russian Federation was convicted in a foreign State and is subject to criminal prosecution in the territory of the Russian Federation (art. 12, para. 3, of the Criminal Code).

2.2 *Successful results and practices*

The experts conducting the review identified the following successful practices:

- A new legislative approach to the offences of bribery and commercial bribery, where a fine is calculated as a multiple of the bribe or commercial bribe;
- The establishment in October 2011, in accordance with a decision by the presidium of the Presidential Council for Combating Corruption of a working group on joint participation in combating corruption, made up of representatives of the business community and State bodies and also the establishment of a working group on cooperation with civil society on combating corruption;
- In August 2012, the Office of the Procurator-General of the Russian Federation issued instructions on developing action to prosecute legal persons on behalf of whom or in the interest of whom corruption offences are committed.

2.3 *Difficulties and recommendations*

After noting the prolonged and substantial efforts made by the Russian Federation to achieve consistency between the country's legislation and the provisions of the Convention against Corruption on criminalization and law enforcement, the experts singled out a number of difficulties in achieving these aims and the starting point for further improvements. They also made the following observations for consideration or subsequent action by the relevant authorities of the Russian Federation, depending on whether the requirements set out in the Convention were binding or not:

- In the light of the provisions of article 30, paragraph 9, of the Convention, ways and means should be sought to apply article 30 of the Criminal Code of the Russian Federation, which criminalizes preparations only for serious and very serious offences, also to less serious ones, including the basic elements of active bribery or subornation for giving or withholding testimony;
- Efforts should continue on providing clarifications that will draw a clear distinction between the offer and the promise of a bribe, including suborning a person to give or withhold testimony;
- Work should continue on developing a consistent judicial practice and/or on considering the possibility of amending current legislation with a view to extending the provisions on active and passive bribery in the public and private sectors in cases where undue preference is given to the interests of third parties;

- Action should continue on the adoption of measures to improve further the specialist skills of investigators attached to the Investigative Committee responsible for investigating criminal cases involving corruption.

3. Chapter IV. International cooperation

3.1 Observation on the implementation of the articles under review

In the Russian Federation, the extradition process is governed by article 61 of the Constitution, chapter 54 (arts. 460-468) of the Code of Criminal Procedure and article 13 of the Criminal Code, in addition to the generally acknowledged principles and rules of international law and the federal legislation on the ratification of the relevant international treaties entered into by the Russian Federation. Under article 462 of the Code of Criminal Procedure, extradition may take place for the perpetration of acts punishable by deprivation of freedom for a period exceeding one year or by a more severe punishment, or where the person in respect of whom an extradition request is made has been sentenced to deprivation of freedom for a period of not less than six months or to a more severe punishment.

If an extradition request relates to a number of separate offences punishable under the law of the Russian Federation and the requesting State, but some of these offences do not meet the extradition criteria, the person may be extradited for only one of the offences listed in the request, where it meets such criteria. In addition, where an extradition request includes a number of separate acts punishable under the legislation of both countries, but some of them do not meet the criterion relating to the form of punishment, the requested party may at its own discretion carry out the extradition also in respect of such actions. These provisions are included in a number of extradition treaties entered into by the Russian Federation, or drafts of such treaties.

The classification by both States of an action as indictable constitutes a condition for effecting an extradition (art. 462, para. 1, of the Code of Criminal Procedure). Under article 13, paragraph 2, of the Criminal Code, however, an extradition may take place “in accordance with the international treaties entered into by the Russian Federation”. Theoretically, this means that an extradition may be effected on the basis of an extradition treaty that does not contain a requirement relating to the classification by both States of an action as indictable. In practice, however, no precedent for this has been observed. Moreover, under Decision No. 11, paragraph 5, of the Plenum of the Supreme Court, of 14 June 2012, the Russian Federation may hand a person over to a foreign State, if the action that has given rise to the extradition request is punishable under the criminal law of the Russian Federation and the law of the requesting State (art. 462, para. 1, of the Code of Criminal Procedure). A definition of whether an action is punishable under the criminal law of the Russian Federation should take into account the provisions of articles 9 and 10 of the Criminal Code, which establish the effectiveness of criminal law in time and also its retroactive effectiveness.

The Russian Federation does not predicate extradition on the existence of a treaty. Under article 462, paragraphs 1 and 2, of the Code of Criminal Procedure, the Russian legal system provides for the application of the principle of international reciprocity, regardless of international treaties.

The Convention against Corruption may be used a legal basis for cooperation in extradition matters. When ratifying the Convention, the Russian Federation made a declaration stating that “in accordance with article 44, paragraph 6 (a), of the Convention, the Russian Federation declares that, on the basis of reciprocity, it will use the Convention as legal grounds for cooperation in extradition matters with other States parties to the Convention”.

Although there is no provision for a simplified procedure under Russian legislation, the Russian Federation operates an administrative rather than a judicial procedure for taking decisions on extradition. Extradition decisions are thus taken by the Procurator-General of the Russian Federation or his or her deputy.

Under the Constitution (art. 61, para. 1) and article 464 of the Code of Criminal Procedure, an extradition is inadmissible if the person who is the subject of an extradition request from a foreign State is a national of the Russian Federation. Where extradition is refused owing to the fact that the person is a Russian national, the Office of the Procurator-General of the Russian Federation confirms its readiness to institute a criminal prosecution in accordance with article 459 of the Code of Criminal Procedure.

The Russian Federation is party to a large number of multilateral treaties concluded within the framework of the United Nations, the Council of Europe and CIS containing provisions on cooperation between States in extradition matters, including the European Convention on Extradition of 1957 and its additional protocols and the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993. The Russian Federation has also concluded 28 bilateral agreements regulating extradition matters. It is currently preparing to conclude similar agreements with a number of other States.

The handing over of a convicted person is governed by chapter 55 (arts. 469-472) of the Code of Criminal Procedure.

The Russian Federation is a party to the Council of Europe Convention on the Transfer of Sentenced Persons of 1983 and its Additional Protocol of 1997, under which the consent of the sentenced person to the transfer is not required. The Russian Federation has also concluded bilateral agreements on this matter. In accordance with Federal Act No. 206 on the ratification of the Convention on the Transfer of Sentenced Persons and its Additional Protocol, of 24 July 2007, however, the Russian Federation declared, on the basis of article 3, paragraph 6, of the Additional Protocol, that it would not take over the execution of sentences under the circumstances described in article 3 of the Additional Protocol.

Under article 457 of the Code of Criminal Procedure, a request for legal assistance is implemented in accordance with an international treaty entered into by the Russian Federation or an international agreement or on the basis of reciprocity. As stated by the authorities of the Russian Federation, legal assistance is provided for the relevant authorities to the widest possible extent, including in cases relating to offences for which a legal person is liable to prosecution, provided that granting a request for assistance does not run counter to Russian law or its implementation may prejudice the sovereignty or security of the Russian Federation. The absence of dual criminality for an offence, or cases in which requests are accompanied by *de minimis* questions, are not, under Russian law, an impediment to the execution of a request for legal assistance in a criminal matter.

Under article 457 of the Code of Criminal Procedure, a court, procurator, investigator or head of an investigatory body executes a request submitted under the established procedure by the corresponding competent bodies or officials of foreign States for the institution of criminal proceedings, in accordance with the international agreements entered into by the Russian Federation, international treaties or the principle of reciprocity.

The Presidential Decree on the central agencies of the Russian Federation responsible for implementing the provisions of the United Nations Convention against Corruption with regard to mutual legal assistance, of 18 December 2008, provides that the Ministry of Justice of the Russian Federation is the central authority for civil matters, including the civil-law aspects of criminal cases, and the Office of the Procurator-General for other matters relating to mutual legal assistance.

The Russian Federation will accept requests for mutual legal assistance and communication through the channels of the International Criminal Police Organization, on the basis of reciprocity and in emergency situations, provided that the documents containing the relevant request or communication are transmitted without delay and according to the proper procedure.

Requests for legal assistance addressed to the Russian Federation, and the attached materials, must be accompanied by a translation into Russian, unless an international treaty entered into by the Russian Federation states otherwise or an agreement between the cooperating States provides otherwise.

Under article 457, paragraph 2, of the Code of Criminal Procedure, the rules and regulations of Russian legislation are applied in the execution of a request, but the procedural rules and regulations of the foreign State may be applied in accordance with the international agreements or treaties entered into by the Russian Federation or the principle of reciprocity, unless this conflicts with the legislation and international obligations of the Russian Federation.

Where a request cannot be executed, the documents received are returned, with an indication of the reasons preventing its execution, through the body that received it or through the diplomatic channel, to the relevant body of the foreign State from which the request came. A request is returned unexecuted where it conflicts with the legislation of the Russian Federation or its execution could prejudice the country's sovereignty or security.

The Russian Federation is also party to a number of multilateral conventions containing provisions on mutual legal assistance concluded within the framework of the United Nations, the Council of Europe and CIS, such as the European Convention on Mutual Assistance in Criminal Matters, of 1959, and the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, of 1993. The Russian Federation is also party to over 40 bilateral agreements governing the question of providing legal assistance in criminal matters.

The Russian Federation is party to a range of international bilateral and multilateral intergovernmental and interdepartmental agreements on cooperation in combating crime, which include corruption offences, economic and financial offences and money-laundering. The Russian Federation is also party to multilateral agreements within the framework of CIS (Agreement on Cooperation by the Member States of

the Commonwealth of Independent States in Combating Crime, of 1998, and the Agreement on Cooperation between Ministries of Internal Affairs in Combating Organized Crime, of 1994) and the Black Sea Economic Cooperation Organization (Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in particular in its Organized Forms, of 1998).

The Federal Security Service (FSB) of the Russian Federation is building cooperation, within its mandate, with foreign law-enforcement agencies to combat corruption on the basis of multilateral and bilateral intergovernmental agreements and international interdepartmental agreements concluded by FSB with the law-enforcement agencies of foreign States on combating crime. (FSB has concluded or makes use of over 90 interdepartmental agreements, protocols and other international-law instruments solely on the question of combating crime.) Combating corruption is not singled out as a subject of these agreements but it is a fundamental part of the “fight against international crime referred by national legislation to the competence of the Parties”, which appears as one of the subjects in most of these agreements.

Such agreements regulate cooperation among the relevant bodies of the Parties and, as a rule, provide for the following forms of cooperation: exchange of operational information and information regarding legislation, joint action in seeking persons suspected of committing an offence, joint action in carrying out investigations, exchange of experiences and specialized staff and training of employees of the relevant bodies of the Parties.

Joint investigations may be carried out on the basis of article 63 of the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002. The Russian Federation has signed but not yet ratified the Convention. In August 2011, discussions were held in Minsk on a draft agreement on the procedure for the establishment of operational investigation units in the territories of the CIS member States and the activities undertaken by such units. Following this meeting, a decision was taken to put the draft agreement to the CIS member States in order to clear it at the domestic level.

With a view to combating corruption effectively, the law-enforcement agencies of the Russian Federation are entitled to carry out special investigations, which may involve them in conducting interrogations or inquiries, collecting samples for comparative research, making purchases for verification purposes, tracking down objects and documents, engaging in surveillance, conducting identifications, inspecting premises, buildings, installations, specific areas or vehicles, monitoring postal deliveries, telegrams or other communications, tapping telephone conversations, gathering information from technical communication channels, engaging in data collection, setting up controlled deliveries and conducting sting operations. Such measures are used in accordance with the Police Operations Act of 1995, where the grounds established in article 7 of the Act are present and on the conditions set out in article 8.

Investigations may be launched on the basis of a request by the law-enforcement agencies of a foreign State on the basis of an international agreement entered into by the Russian Federation.

During the country visit, the experts noted the absence or the limited accessibility of systematic statistical or practical information on examples of international cooperation in combating corruption, including the activities of the law enforcement agencies. The experts called on the Russian authorities to continue their efforts to collect and use information to improve the effectiveness of cooperation mechanisms in combating corruption.

3.2 *Successful results and practices*

The experts conducting the review concluded that the Russian Federation had created a significant basis for international cooperation. Attention may be drawn to the following examples, which stand out as having particular value in improving the mechanisms of international cooperation:

- The participation of the Russian Federation in regional agreements on various forms of international cooperation and in multilateral agreements on combating corruption, money-laundering and organized crime, which also contained provisions on international cooperation in criminal matters;
- The development of bilateral interdepartmental agreements on cooperation with the relevant bodies of foreign States, as evidenced in the signing by the Office of the Procurator-General of the Russian Federation of 13 cooperation agreements for 2011-2012 and 2012-2013 on specific issues, including action against corruption, some of which have already been implemented.

3.3 *Difficulties and recommendations*

The attention of the Russian authorities was drawn to the following observations, with a view to the further improvement of international cooperation mechanisms:

- Continue to take active steps towards concluding and implementing bilateral and multilateral agreements with other States in order to improve the effectiveness of various forms of international cooperation;
- Continue to improve further the existing system for handling cases involving corruption offences in order to ensure that statistics and other practical information on international cooperation are systematically collected and used for the further improvement of the effectiveness of international cooperation mechanisms.