



Organisation for Economic Co-operation and Development

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**5 January 2018**

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

**Cancels & replaces the same document of 29 November 2017**

**Phase 3 follow-up: Additional written report by Ireland**

**Paris, 12-15 December 2017**

**JT03425187**

## PHASE 3 EVALUATION OF IRELAND: WRITTEN FOLLOW-UP REPORT

**Instructions**

*This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 3 Evaluation Procedure [DAF/INV/BR(2008)25/FINAL, paragraphs 55-67].*

*Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.*

*Please submit completed answers to the Secretariat on or before **27 November 2017**.*

**Name of country:** [Ireland]

**Date of approval of Phase 3 evaluation report:** [13 December 2013]

**Date of information:** [28 November 2017]

The [Criminal Justice \(Corruption Offences\) Bill 2017](#) was published on Thursday 2<sup>nd</sup> November 2017. The Bill aims to modernise Irish anti-corruption laws. It will repeal and replace the seven previous Prevention of Corruption Acts dating back as far as 1889. In addition, it provides for a number of new offences as well as stronger penalties for those convicted of corruption.

The Bill will contribute to meeting Ireland's commitments under various international anti-corruption instruments, including the OECD Convention on Bribery of foreign public officials.

The Bill is on the Priority list of Government legislation and completed second stage in the Houses of Parliament on Wednesday 15 November 2017. The next stage is scheduled to take place in January 2018, with a view to enactment during the 2<sup>nd</sup> quarter of 2018.

**PART I: RECOMMENDATIONS FOR ACTION**

*Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery*

**Text of recommendation 1:**

1. Regarding Ireland's offences of bribing a foreign public official in POCA 2010 and CJOA 2001, the Working Group recommends that Ireland:

(a) As previously recommended in Phase 2, consolidate and harmonise the foreign bribery offences in the two statutes in a manner that is in compliance with Article 1 of the Anti-Bribery Convention, without further delay, including by removing reference to the term "agent" in POCA 2010 (Convention, Article 1);

**Action taken as of the date of the follow-up report to implement this recommendation:**

The corruption offences (and some fraud offences) in the Criminal Justice (Theft and Fraud) Offences Act 2001 were created to give effect to the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests done at Brussels on 26 July 1995. Previously, Ireland had indicated that it would not consider repealing the corruption provisions in the 2001 Act pending the adoption of Directive 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of Criminal Law which has now been agreed.

Having examined the new directive, it is considered that the provisions of the Criminal Justice (Corruption Offences) Bill adequately cover Ireland's obligations under the directive and that there is no further need for the corruption offences in the 2001 Act. It is therefore proposed to repeal the corruption offences in 2001 Act and related definitions by way of amendment to the Corruption Bill at Committee Stage of its passage through Dáil Éireann (Lower House of Parliament). The Minister for Justice and Equality stated this on the record of Dáil Éireann on 15 November 2017.

With regard to the reference to "Agent" in Recommendation 1(a), it will be noted that use of the terms agent/principal are not being applied in the Bill.

**Text of recommendation 2(a):**

2. Regarding the liability of legal persons for foreign bribery, the Working Group recommends that Ireland:

(a) Review on a high priority basis, the law on the liability of legal persons for foreign bribery with a view to codifying it, and to expand the scope of the liability to cover bribery committed by a lower level person with the express or implied permission of a senior person, as previously recommended in Phase 2 and Phase 2bis, and further expand the liability to meet the standards in the Good Practice Guidance in Annex I of the 2009 Anti-Bribery Recommendation (Convention, Article 2; 2009 Recommendation Annex I.B);

**Action taken as of the date of the follow-up report to implement this recommendation:**

This Recommendation is being addressed in the Criminal Justice (Corruption Offences) Bill 2017.

Section 18 of the Bill includes a new strict liability offence where a corporation can be liable for the actions of directors, managers, employees, etc, who commit a corruption offence for the benefit of the corporation. Designed to prevent corruption in corporate bodies, it shall be a defence for a company to prove that it took all reasonable measures and exercised due diligence to avoid the commission of the offence.

**Text of recommendation 6(a):**

6. Concerning anti-money laundering (AML) measures and foreign bribery, the Working Group recommends that Ireland:

(a) Amend the dual criminality exception for the money laundering offence in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to ensure that foreign bribery is always a predicate offence for money laundering, without regard to the place where the bribery occurred, as previously recommended in Phase 2 in relation to the Criminal Justice Act 1994 (Convention, Article 7; Commentary 28);

**Action taken as of the date of the follow-up report to implement this recommendation:**

It is intended to address this recommendation by way of amendment to the Criminal Justice (Corruption Offences) Bill 2017 at Committee Stage of its passage through Dáil Éireann (Lower House of Parliament). The Minister for Justice and Equality stated this on the record of Dáil Éireann on 15 November 2017.

The proposed amendment would insert a new paragraph (c) into the definition of “criminal conduct” in section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to address conduct in another state involving a foreign public official, which if it occurred in the State would constitute an offence of active or passive corruption or active and passive trading in influence as in section 5 and section 6 of the Criminal Justice (Corruption Offences) Bill 2017.