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

Cancels & replaces the same document of 4 June 2018

Phase 3 follow up: additional written report by Ireland

Paris, 12-15 June 2018

JT03434430

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.

Name of country: [Ireland]
Date of approval of Phase 3 evaluation report: [13 December 2013]
Date of information: [1 June 2018]

The [Criminal Justice \(Corruption Offences\) Bill 2017](#) was published on Thursday 2nd November 2017. The purpose of the Bill was to modernise Irish anti-corruption laws. It repeals and replaces 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 also contributes to meeting Ireland's commitments under various international anti-corruption instruments, including the OECD Convention on Bribery of foreign public officials.

The Bill completed its passage through the Houses of Parliament on the 30 May 2018.

The final text of the legislation can be found at https://data.oireachtas.ie/ie/oireachtas/bill/2017/122/eng/ver_b/b122b17d.pdf

PART I: RECOMMENDATIONS FOR ACTION

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

Text of recommendation 1(a):

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. Ireland previously submitted to the OECD that the corruption offences in the 2001 Act could not be repealed until a new Directive was agreed. Following 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, Ireland is now satisfied that the provisions of the Criminal Justice (Corruption Offences) Bill adequately cover Ireland’s obligations under the new directive and that there is no further need for the corruption offences in the 2001 Act.

Therefore the corruption offences in the 2001 Act and related definitions were repealed by way of amendment to the Corruption Bill during its passage through Dáil Éireann (Lower House of Parliament), as reflected in Schedule 2 to the Bill.

With regard to the reference to “Agent” in Recommendation 1(a), it will be noted that the 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 has been 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. Please note, as per Good Practice Guidance in Annex I of the 2009 Anti-Bribery Recommendation, the liability is not restricted to cases where the natural person or persons are prosecuted or convicted. The offence also reflects the wide variety of decision-making systems in legal persons and contemplates the liability of legal persons for the actions of agents or subsidiaries.

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:

This recommendation was addressed by way of amendment to the Criminal Justice (Corruption Offences) Bill 2017 during its passage through Dáil Éireann (Lower House of Parliament).

The amendment inserted 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 corruption or active trading in influence as in section 5 and section 6 of the Criminal Justice (Corruption Offences) Bill 2017.