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

Cancels & replaces the same document of 25 September 2018

Phase 3 Follow-Up: Additional Report by Iceland

Paris, 9-11 October 2018

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Follow-Up to Phase 3 Report - Iceland

Instructions

In March 2018, the Working Group on Bribery decided to ask Iceland to provide a written report in October 2018 on its implementation of Phase 3 Recommendations 1, 2(a), 6(a), 7, 10(ii) and 11(ii), and on any new foreign bribery enforcement actions. This document sets out a template for Iceland to provide the written report. Further details concerning the written follow-up process is in the Phase 3 Evaluation Procedure [[DAF/INV/BR\(2008\)25/FINAL](#), paragraphs 55–67].

As required under the Phase 3 Evaluation Procedure, please submit completed answers to the Secretariat on or before **11 September 2018**.

Name of country: **Iceland**
 Date of approval of Phase 3 evaluation report: **15 December 2010**
 Date of information: **11 September 2018**

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

Text of recommendation:

1. Regarding the **foreign bribery offence**, the Working Group recommends that Iceland explicitly cover bribery of officials employed by state-owned and state-controlled companies, and specifically consider this recommendation in drafting its new Bill amending the foreign bribery offence in Iceland’s General Penal Code (GPC) [Convention, Article 1; Phase 2 Report, recommendation 9].¹

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

On June 7th this year, in response to the Working Group’s recommendations, parliament passed a bill (Act no. 66/2018) amending the provisions on foreign and domestic bribery offences in Iceland’s General Penal Code (GPC) no. 19/1940.

With regards to the bribery of foreign officials employed by state-owned and state-controlled companies, the relevant provision, article 264 a, was amended with the specific aim of including both foreign and domestic companies. Hence the wording of the provision now explicitly states that it covers managers and employees of “foreign or domestic” companies, whereas before it only covered employees of domestic companies. Previously,

¹ The [OECD anti-bribery instruments](#) (OECD Anti-Bribery Convention, the 2009 Anti-Bribery Recommendation, the 2009 Tax Recommendation, the 2006 Export Credit Recommendation and 1996 DAC Recommendation) can be downloaded from the OECD website: www.oecd.org/daf/nocorruption.

in 2013 (Act no. 5/2013), the same provision was amended to cover companies that are wholly, or in-part, state owned. Therefore, as currently constituted, the scope of article 264a extends to employees of all private or state-controlled companies irrespective of whether the company is based domestically or abroad.

However, it was not considered necessary to apply the term “public official” to the provision, as defined by the GPC, in addition to the terms “manager and employee”, as they are wider in scope and considered all-encompassing in that sense.

In summary: With the abovementioned amendments Iceland considers itself in compliance with the recommendation as article 264a of the GPC now adequately covers the bribery of foreign officials employed by state-owned and state-controlled companies.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

2. Regarding **sanctions** for foreign bribery, the Working Group recommends that Iceland:

a) Raise imprisonment sanctions against natural persons for foreign bribery, as provided under section 109 of the GPC, to ensure that they are effective, proportionate and dissuasive [Convention, Article 3.1].

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

With the enactment of Act no. 66/2018 sanctions against natural persons for foreign bribery offences were raised significantly.

The solicitation of bribery aimed at foreign public officials, which is punishable under Article 109 of the GPC, now carries a maximum sentence of 5 years imprisonment, instead of the previous maximum of 4 years.

Nonetheless, passive bribery by public officials, which is punishable under article 128 of the GPC, still carries a heavier maximum sentence of six years imprisonment. This is justified by the different nature of active and passive bribery, especially considering public officials’ high degree of confidentiality and duty to protect public interests. Therefore, their acceptance of a bribe constitutes a more serious offence than the solicitation of one by a private citizen. Iceland maintains that this difference should be reflected in the statutory sentencing parameters.

Similarly, Article 264a was amended so that the solicitation of a bribe now carries a maximum sentence of 5 years imprisonment, while passive bribery under the same provision carries a maximum sentence of 6 years. Before the amendment both offences only carried a maximum sentence of 3 years imprisonment.

In summary: With the adoption of Act no. 66/2018 amending the sentencing parameters of article 109 and 264a, all foreign bribery offences now carry a maximum sentence of at least 5 years imprisonment. For that reason, Iceland contends that it has sufficiently raised

imprisonment sanctions against natural persons for foreign bribery to ensure that they are effective, proportionate and dissuasive.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation:

6. Regarding **detection and reporting of foreign bribery**, the Working Group recommends that Iceland:

a) Ensure that appropriate measures are in place to facilitate reporting by public officials, in particular those posted abroad, to law enforcement authorities of suspected acts of foreign bribery detected in the course of their work, and raise awareness of the existence of these reporting channels [2009 Recommendation IX.(ii)].

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

On April 4th this year the Prime Minister appointed a committee of seven people, with representatives of several ministries, to review legislation on freedom of expression, media and information. The committee will, among other things, review current proposals regarding the duty of public employees to report legal offences or infractions of Codes of Conduct. The committee is set to present legislative proposals on this issue no later than October 1st this year.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

7. Regarding **whistleblower protection**, the Working Group recommends that Iceland ensure that appropriate measures are in place to protect from discriminatory or disciplinary action both public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery, and take steps to raise awareness of these mechanisms [2009 Recommendation IX.(iii)].

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

In addition to the information provided in Iceland's follow-up report from April of this year, it is noted that the working group on political integrity, appointed by the Prime Minister in January this year, published its report on the 5th of September. In its findings the working group recommends that legislation be prepared as soon as possible regarding the general protection of whistle-blowers in the public and private sector. The working group emphasised the need for comprehensive legislation regarding whistle-blower protection for all sectors and in doing so highlighted the WGB's recommendations and its reasoning for not settling for a fragmented form of protection.²

The abovementioned committee on freedom of speech, media and information will also consider the legal protection afforded to public and private employees who report offences or infractions, i.e. whistle-blower protection. Their work is expected to be guided, among other things, by the findings of the working group on political integrity. The committee is set to present legislative proposals on these issues no later than the 1st of March 2019.

Furthermore, a bill has been put forth to Parliament to amend Act no. 85/1997 on the Ombudsman of Parliament. The amendment will provide for an explicit channel for civil servants to report breaches of law or ethical codes to the Ombudsman along with protective provisions stipulating that any mistreatment of persons due to their reporting of breaches can result in criminal sanctions. The bill is expected to be passed before the end of the current session of Parliament.

Hence, there is renewed impetus to Iceland's efforts to strengthen whistle-blower protection and hopefully new legislation will be adopted within the next year or two.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

10. Regarding **official development assistance**, the Working Group recommends that Iceland's official development agency [...] (ii) where international business transactions are concerned, and as appropriate, take into consideration applicant companies' internal controls, ethics and compliance programmes or measures [2009 Recommendation X.C.(vi) and XI.(ii); 1996 DAC Recommendation].

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

Iceland reiterates previous measures described in the follow-up report from April and informs the Working Group that no significant action has been taken by ICEIDA.

However, considering that ICEIDA conducts its business in accordance with the Act on Public Procurement no. 120/2016, it is likely and will be encouraged to adopt a similar clause to their terms of agreement as Ríkiskaup (Central Public Procurement) has done

² The working group's report in Icelandic:

<https://www.stjornarradid.is/lisalib/getfile.aspx?itemid=8cffd3a1-b115-11e8-942c-005056bc530c>

regarding applicant companies' internal controls, etc. (see action taken regarding recommendation 11).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

11. Regarding **public procurement**, the Working Group recommends that Iceland [...] (ii) where international business transactions are concerned, and as appropriate, take into consideration applicant companies' internal controls, ethics and compliance programmes or measures [2009 Recommendation X.C.(vi) and XI.(i)].

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

In a direct response to the recommendation, Ríkiskaup (Central Public Procurement) has now added the following clause to the chapter on grounds for excluding tenderers in their terms of agreement:

“The contracting authority/buyer will, according to Article 68 of Public Procurement Act, and because of recommendations from the OECD WGB, take into account whether an economic operator has sufficient measures to prevent and detect foreign bribery committed by the company (e.g. internal audit systems, whistleblowing, code of conduct, policy on gifts, facilitation payments etc.) when deciding whether to award a public procurement contract to that economic operator. The tenderer shall confirm and describe in his tender what measures he has taken to prevent and detect foreign bribery”.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Report on Foreign Bribery-Related Enforcement Actions

Please provide information on all on-going investigations and prosecutions of cases of bribery of foreign public officials by Icelandic nationals and companies, including those referred to in the Phase 3 Report. The information, especially on on-going ones, should be anonymised and stripped of information that could jeopardise any investigations or prosecutions.

Currently, Iceland has no cases of foreign bribery to report.