



Organisation for Economic Co-operation and Development

DAF/WGB(2018)9

Unclassified

English - Or. English

3 April 2018

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

Cancels & replaces the same document of 22 February 2018

Phase 3 Follow-Up: Additional Written Report by Iceland

Paris, 13-15 March 2018

JT03429415

Follow-Up to Phase 3 Report - Iceland

Instructions

In June 2017, the Working Group on Bribery decided to ask Iceland to provide a written report in March 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 **13 February 2018**.

Name of country:	Iceland
Date of approval of Phase 3 evaluation report:	15 December 2010
Date of information:	16 February 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:

Iceland notes that the Minister of Justice is expected to submit a bill to parliament in March, amending the foreign and domestic bribery offence provisions in Iceland's General Penal Code (GPC) no. 19/1940 to explicitly cover and criminalise the bribery of officials employed by state-owned and state-controlled enterprises as recommended by the Working Group on Bribery. The amendment article 1 (4) (a) of the OECD foreign bribery Convention has also been taken into consideration in the work.

Furthermore, a clear distinction is made between officials employed by state-owned and state-controlled companies on one hand and employees of privately owned companies on the other hand in order for the amendments to explicitly cover officials employed by state-owned and state-controlled enterprises. The bill includes amendments to Article 109 of the GPC, along with article 128 and Article 264 a, which all relate to bribery offences. In addition, amendments are proposed to article 141 a of the GPC to further underline and clarify the definition of a public official. According to article 141 a public official under articles 109, and 128 is *“a person who, by virtue of his or her position or according to authorisation in law is able to take, or to influence, decisions regarding the rights and obligations of individuals or legal persons, or to dispose of, or to influence the disposal of, public interests.”* The amendment proposes adding “the disposal of funds” to the disposal of public interests in addition to proposing that the concept of a public official referred to in the articles above (art. 109 and 128) also applies to directors or employees of legal persons/enterprises, that are partly or wholly state-owned or state-controlled.

It is to be noted that Iceland has in previous years amended provisions on bribery for example to cover officials employed by state-owned and state-controlled enterprises (SOE's). With Act No. 5/2013, which entered into force on 31 January 2013, amendments were made to article 264 a of the GPC in compliance with the recommendations of the WGB, in order to cover managers or employees of enterprises that are state-owned and state-controlled. The provisions in Article 264a of the GPC are not limited to employees of Icelandic enterprises and companies. These provisions can therefore be applied to employees of foreign companies, when jurisdictional requirements are fulfilled.

¹ The [OECD anti-bribery instruments](http://www.oecd.org/daf/nocorruption) (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.

The Working Group on Bribery has however expressed concern that the active bribery of SOE managers or employees was subject to a lower maximum punishment (3 years' imprisonment) than bribery of other public officials (4 years' imprisonment, according to Article 109 of the GPC on active bribery and six years according to article 128 on passive bribery). In addition, the Working Group pointed out that bribery of employees of foreign SOE's should be criminalised as part of a foreign bribery offence and not as an offence of private sector bribery.

Iceland is now responding to these concerns and recommendations by submitting the new bill to parliament, for adoption. Subsequently, amendments to the relevant articles of the General Penal Code will specifically refer to the bribery of officials employed by SOE's, domestically and abroad. Their managers and certain employees can be considered public officials according to Icelandic law because they are trusted with official power, interests, funds and decision making. Article 1 (4) (a) of the Convention has been taken under consideration by proposing that officials employed by SOE's are subject to a maximum sanction of six years in prison, for soliciting or accepting bribes. Subsequently, those who bribe these employees, or make an attempt to do so, could be sentenced to six years of imprisonment provided that article 109 of GPC will also be amended by increasing maximum sanctions for active bribery up to six years. That amendment is further discussed in the answer to recommendation no. 2.

Both active and passive bribery of managers of private enterprises are now subject to up to three years imprisonment, according to article 264 a of the GPC. The new bill proposes to amend this article and raise the maximum sanctions for bribery in the private sector from three to five years imprisonment.

The bill amending the GPC was published for general comments on the website of the Ministry of Justice from 17 to 31 March 2017. See: <https://www.innanrikisraduneyti.is/frettir-irr/drog-ad-breytingum-a-almennum-hegningarlogum-vegna-mutubrota-til-umsagnar> In early September 2017, the Minister of Justice put the bill on the legislative agenda for the 2017 fall session of the parliament. However, on 15 September 2017, the Icelandic coalition government collapsed, prompting general elections on 28 October. A new government was formed on 30 November by three parties; The Independence Party, The Progressive Party and the Left-Green Movement. The Minister of Justice has put the anti-bribery bill on the legislative agenda for the current session of Althingi.

The political situation has therefore delayed the adoption of the bill. Nevertheless, Icelandic authorities acknowledge the importance of tangible results in changing legislation in order to respond to the recommendations of the Working Group on Bribery. The new bill underlines the commitment of Icelandic authorities to fulfil the recommendations of the Working Group on Bribery.

In summary:

The Minister of Justice is expected to submit a new bill to parliament in March, prompted by this WGB recommendation, in order to explicitly criminalise in the General Penal Code the bribery of officials employed by state-owned and state-controlled enterprises. These offences should thus be criminalised as a part of a foreign bribery offence and not as an offence of private sector 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:

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:

The Minister of Justice is expected to submit a bill to parliament this March which includes an amendment to raise imprisonment sanctions against natural persons for foreign bribery under section 109 of the GPC to six years imprisonment, which is equal to the maximum punishment for accepting or soliciting bribes by a foreign or a domestic public official. The amendment should ensure that sanctions for this offence are effective, proportionate and dissuasive, as is stipulated in section one of article 3 in the OECD Anti-Bribery Convention. Icelandic authorities acknowledge the importance of tangible results in changing legislation in response to the recommendation of the Working Group on Bribery. The new bill amending the GPC was published for general comments on the website of the Ministry from 17 to 31 March 2017 and is on the legislative agenda of the new Icelandic government..

Other amendments to the GPC should also ensure effective, proportionate and dissuasive imprisonment sanctions for managers and employees of State owned and state controlled enterprises, who are considered to be public officials and are convicted for bribery. Those amendments are further discussed in answer to recommendation no. 1.

In summary:

A new bill proposing raised sanctions for active bribery is expected to be submitted this March to parliament by the Minister of Justice. The bill is based on a careful review of the General Penal Code and has already been published for public consultations. Overall, Iceland is confident that the amendment will be sufficient to comply with this recommendation.

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:

The Prime Minister of Iceland is planning to appoint 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 expected to submit proposals on this particular issue no later than 1 October 2018.

It should be noted that Iceland has in force legal provisions and Codes of Conduct for public officials to 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 bribery detected in the course of their work, and to raise awareness of the existence of these reporting channels.

In 2010, Article 13 a. was added to the Act on rights and duties of government employees, no. 70/1996. It clearly indicates that Icelandic public officials are expected to report suspected offences: “An employee may not be adversely treated for disclosing to the appropriate parties that laws or ethical rules have been breached of which he has become aware in his work.”

Additionally, article 14 in the Act no. 70/1996 obliges a government employee to “perform his duties with diligence and care in every respect.” Although it is not specifically stipulated, reporting legal offences, be it foreign bribery or other breaches of law, should be a part of these duties.

The Act on the Government Offices of Iceland no. 115/2011 provides the legal foundation for the 2012 Code of Conduct for officials working for the Government Offices. The Prime Minister issues the Code after having consulted with the relevant employees and the Ethics Institution of the University of Iceland. Individual ministries can also adapt the Code to their needs and assignments. In article 5 c. of the Code the following is stipulated:

“Should a member of staff become aware of any morally reprehensible or **illegal activity** in the workplace, s/he shall give an indication of this to her/his next senior in line who has no personal interest at stake, **or to other appropriate parties**. See also:

<http://www.government.is/g-offices/code-of-conduct/>

Furthermore, section b in Article 7 in the Code of Conduct for Ministers stipulates that “Ministers shall respond whenever staff point out any ethically reprehensible or illegal

actions within the ministry or the ministerial portfolio. The minister must ensure that employees who point out such actions do not suffer for it.” The current Code of Conduct was confirmed by the Prime Minister on 16 December 2017. A Code of Conduct for MP’s was also approved by the Icelandic Parliament, Althingi on 16 March 2016. See:

<http://www.althingi.is/english/about-the-parliament/code-of-conduct-for-members-of-the-althingi/>

Finally, the 2013 Code of Conduct for government employees in general, stipulates that public officials shall report illegal decisions or acts to appropriate parties.

Iceland is aware that the Working Group on Bribery does not consider that the code of ethics adequately require Icelandic public officials to report foreign bribery. However, combined with legal provisions it should be clear that several 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

Regarding officials posted abroad, it should also be noted that the information sheet on foreign bribery originally distributed in February 2016 by the Ministry of Foreign Affairs, encourages and facilitates reporting by Icelandic public officials abroad to law enforcement authorities, on suspected acts of foreign bribery detected in the course of their work, and raises awareness of the existence of available reporting channels. The Ministry of Foreign Affairs takes these matters seriously. The circulation of the information sheet and further publication is important to remind officials in the foreign service of the importance of detecting and reporting foreign bribery. The Ministry of Foreign Affairs in cooperation with the Ministry of Justice has reminded public officials on the existence of the OECD Bribery Convention and its implementation. Recipients have also been reminded of the information sheet from February 2016.

Additionally, The Ministry for Foreign Affairs issued a Code of Conduct for employees in April 2009. The Code is published on the Ministry’s website and applies to all employees of the Icelandic Foreign Service, both in the Ministry and diplomatic missions abroad.

Article 12 of the Code of Conduct stipulates that employees may not accept or pay bribes and reads as follows:

Article 12

Abuse of Position

Employees may not accept or pay bribes. Employees may not give preferences to suppliers or promote transactions on behalf of the Foreign Service by reason of non-substantive criteria such as family connections or other personal connections.

Article 19 provides guidelines on how employees inform their supervisor about any type of infringements of this Code of Conduct.

Article 19

Infringements

Employees who become aware of corruption or illegal or inappropriate conduct should inform their highest ranking superior, head of personnel or Permanent Secretary of State thereof. The highest ranking superior should immediately notify the head of personnel or the Permanent Secretary of State of such reports.

Employees who accurately report such conduct in good faith shall not be penalised in any way.

Employees should report any well-founded suspicions of infringements of this Code of Conduct to their highest ranking superior and/or head of personnel of the Ministry. They may request anonymity. Employees accused of infringements may have access to all relevant documentation and be given an opportunity to comment. The highest ranking superior or head of personnel should reach a decision within one month of receiving the report. If the matter is settled in writing, the parties should sign the findings. Employees have a right to attach their comments. Penalties for infringements of this Code depend on the seriousness of the infringement. They can include a warning or dismissal according to Chapters IV and VI of the Government Employees Act, No. 70/1996.

In addition possible conflicts of interests are covered in article 15:

Article 15

Conflict of Interest

Employees should avoid any conflict of interest in their work. They should alert their highest ranking superior if the possibility of such conflicts should arise. This also applies when a change in an employee's circumstances could result in such possible conflict of interest.

Employees should observe rules concerning disqualification from a case by reason of kinship or for other reasons.

Employees may not use their position for private gain or to benefit others connected to them, irrespective of whether the benefit emerges immediately or at a later date, including after employment ceases.

A link to the English version of the Code of Conduct can be found here: [https://www.mfa.is/media/PDF/Code of Conduct of the Employees of the Foreign Service](https://www.mfa.is/media/PDF/Code_of_Conduct_of_the_Employees_of_the_Foreign_Service)

In summary:

Overall, Iceland contends that appropriate measures are already 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 to raise awareness of the existence of these reporting channels. Legal provisions on government employees are important in this respect and Codes of Conduct for public officials also have an important role. Iceland will continue to review legal measures in this area, for example by appointing a special committee on the subject.

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:

Several recent developments in legislation and policy make it clear that Icelandic authorities are actively focusing on strengthening whistle-blower protection and steps have already been taken to comply with this recommendation. The issue is addressed in the agenda of the new government, which emphasizes transparency and the need to cultivate trust in politics and public administration.²

A new act on whistle-blowing protection in the Icelandic financial sector was adopted by parliament on 9 May 2017. The act amends the Act on Financial Undertakings no. 161/2002 and the Act on Official Supervision of Financial Activities no. 87/1998. The amendments apply to financial institutions and companies and individuals regulated by the Icelandic Financial Supervisory Authority. Thus, the legislation provides whistle-blowing protection for those who report offences that originate in the financial sector.

A committee appointed by The Minister of Finance and Economic affairs drafted the bill. The committee consisted of representatives from several ministries, the Central Bank of Iceland, the Icelandic Financial Supervisory Authority and the Association of Financial Companies. This review was prompted by a European Directive 2013/36/EU– so called CRD IV directive on financial activities. Article 71 of the directive refers to processes that should be available to receive notifications on illegal activities in this field, both at supervisory agencies and also internal processes at relevant companies. The committee also reviewed legislation on the protection of whistle-blowers in other Nordic countries, the UK and several other countries.

Icelandic authorities have in recent years reviewed several measures in order to address and assess current legislation aimed at improving the legal status of whistle-blowers in light of legislation enacted in other European countries. An inter-ministerial working group, comprised of representatives from the Ministry of Education and Culture, Ministry of the Interior, the Prime Minister's Office, the Ministry of Foreign Affairs and other experts, reviewed possible amendments on whistle-blower protection in 2016 and drafted a memorandum which focused on whistle-blower protection in the public sector. This working group compiled a substantial amount of material on this subject and initiated public discussion on whistle-blower protection. The steering group on the implementation of international agreements against corruption, led by the Ministry of Justice, has also discussed measures to strengthen whistle-blower protection. The

² See the agenda of the government in English, the agreement between the three coalition parties, especially the chapter on democracy and transparency, p. 32. <https://www.government.is/library/05-Rikisstjorn/agreement2017.pdf>

Steering Group has put effort into information gathering to prepare legislation and will continue to focus on this matter.

On 5 January 2018 the Prime Minister of Iceland appointed a working group to review among other things changes to legislation on whistle-blower-protection, in line with the policy set forth in the agenda of the government.³ The group shall submit proposals no later than 1 September 2018. The group shall take into account recommendations from international institutions and previous domestic policy work on integrity issues. The committee includes representatives from the civil society, the business community and the government. Measures to protect those who want to report a breach of law or ethic rules, from disciplinary or discriminatory action, are in place in the public sector. In that respect Iceland refers to Article 13 a in the Act on the duties and rights of government employees no. 70/1996, previously mentioned. “An employee may not be adversely treated for disclosing to the appropriate parties that laws or ethical rules have been breached of which he has become aware in his work.” This article therefore provides a channel for whistle-blowers although government employees are also obliged to observe confidentiality in matters that shall be regarded as confidential, as is stated in Article 18 in the same legislation.

Act no. 68/2011 on special investigations committees, appointed by the parliament, Althingi, also has a comprehensive provision on whistle-blower protection for those who report offences to such committees. The provision states that it is prohibited to treat an individual adversely if he provides information that are relevant to the investigation at hand. If the individual in question provides the investigating committee with information on his own initiative, the committee can ask the Director of Public Prosecution not to prosecute the person, even though the individual may be incriminating himself by the material he has provided. If the “whistle-blower” is a public official the investigative committee can for the same reasons request that the director of a public agency or ministry, should not sanction the employee for violating his duties. However, the material provided by this person has to be related to a punishable offence in public administration, or an offence against public duties. The material also has to be considered important for the investigation. Iceland would like to draw attention to this provision, which was not reported on in the previous report to WGB.

Furthermore, a whistle-blower channel is provided in Codes of Conduct for individual groups of public officials, such as the Code for members of the foreign service, see article 19 previously quoted in the answer to recommendation 6.

The law on the ombudsman of Parliament no. 85/1997 has also been under review by the parliament. One of the issues being discussed is whether to provide for an explicit channel for civil servants to report breaches of law or ethical codes to the ombudsman.

Moreover, article 25 of the Icelandic law on media no. 138/2011 allows protection for those who have provided reporters or other media persons with information and wish to remain anonymous. Those who work for media companies are not allowed to release material on the identity of these confidential sources or anonymous authors. These restrictions also apply to those who are in any way connected to the media company. This protection can only be lifted either if the person who provided the information agrees to or on the grounds of Section 3 in Article 119 in the Law on Criminal Procedure No.

³ See the agenda of the new Icelandic government. <https://www.government.is/library/05-Rikisstjorn/agreement2017.pdf>

88/2008.

Finally regarding criminal law, amendments to Articles 70 and 74 in the GPC from June 15 2015 stipulate that it has a mitigating effect if the accused voluntarily provides significant assistance to the investigation, participation of others in the offence or other offences.

In summary:

New legislation is in place to protect whistle-blowers in the financial sector and to implement Directive 2013/36/EU. The act is a step towards whistler-blower protection in the private sector, thus responding to the recommendation from the Working Group on Bribery to 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. No separate legislation is currently in force to protect whistle-blowers in general in the private or public sector. Nevertheless, Icelandic authorities are taking steps to review these issues, for example by appointing a new working group, in line with the agenda of the new government. Moreover, several legal provisions, rules and mechanisms previously mentioned provide certain avenues for those who want to report wrongdoings or offences without facing discriminatory or disciplinary action.

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) XI.(ii); 1996 DAC Recommendation].

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

Comment from Iceland regarding the wording of the recommendation: There is not a separate Official Development Agency in Iceland anymore – Iceland's official international development assistance is carried out by a special directorate within the Ministry of Foreign Affairs - see top of the answer.

Iceland's official international development assistance is carried out by the Directorate for International Development Cooperation within the Ministry for Foreign Affairs. ICEIDA is the term used for Iceland's development cooperation.⁴ Subsequently, the Code of Conduct for the employees of the Ministry of Foreign Affairs, guides the work of MFA staff working on development assistance. In addition, ICEIDA has expanded its anti-corruption guidance to cover partners and contractors working on operations managed by partner countries and operations managed by ICEAIDA.

All partnership/programme/project agreements made by ICEIDA regarding bilateral aid include a provision on corruption under article on procurement:

"No offer, gift, payment or benefit of any kind, which would or could, either directly or indirectly, be construed as an illegal or corrupt practice, e.g. as an inducement or reward for the award or execution of procurement contracts, shall be accepted.

Invitations to make offers as well as the procurement contracts shall, respectively, include a clause stating that the offer will be rejected and/or the contract cancelled, in case any illegal or corrupt practices have taken place in connection with the award or the execution of the contract".

In the same partnership agreements there is clear clause on ICEIDA reservation to withhold disbursements or cancel the agreement in case of:

"12. 3. ICEIDA has the right to cancel the Agreement or portion of the Agreement and has the right to demand the cancellation of any contract financed under the Agreement with immediate effect if it determines that corrupt or fraudulent practices were engaged in by representatives of Contracting Parties or by a beneficiary of Programme funds during procurement or execution of the contract without the Contracting Parties having taken timely and appropriate action satisfactory to ICEIDA to remedy the situation."

Icelandic authorities emphasize the importance of following legislation, rules and standards that promote good business practices when awarding contracts funded by official development assistance. In the process of deciding of awarding such contracts,

⁴ See: The website of ICEIDA. <http://www.iceida.is/english>

Iceland is also aware that applicant companies' internal controls, ethics and compliance programmes or measures, can be considered when that is appropriate. ICEIDA follows the Act of Public Procurement no. 120/2016 when doing international business transactions. Article 68 of this act stipulates grounds for excluding a tenderer/applicant for public contracts due to the personal situation of the tenderer:

ICEIDA considers an applicant ineligible for participation in tenders if such entity or individual has been debarred by an international finance institution that has entered into the Agreement for Mutual Enforcement of Debarment Decisions dated 9 April 2010 ("Agreement for Mutual Enforcement"). Subsequently, this register or list is always reviewed by ICEIDA before entering into agreements with partners.

Furthermore, in 2016 the following text was added into all agreements for business transactions related to Icelandic official development assistance:

"No offer, payment, consideration, or benefit of any kind, which constitutes or could be construed as an illegal or corrupt practice, shall be made, either directly or indirectly, as an inducement or reward for the execution of this contract. Any such practice will be grounds for terminating this contract or taking any other corrective action as appropriate (including civil or criminal action). The Consultant agrees to take all measures to counteract fraud and corruption as well as report any allegations to the Client".

ICEIDA also relies on World Bank listing of ineligible firms and individuals, among others standards, in relation to international business transactions and when considering applicant's companies internal controls, ethics and compliance programmes or measures, through due diligence procedures,

<http://web.worldbank.org/external/default/main?contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984&querycontentMDK=64069700&theSitePK=84266>

Furthermore, ICEIDA has a special agreement with the Nordic Development fund on co-funding and the fund's policy on anti-corruption and integrity is applied in all contracts awarded under that scheme.

It should be noted that "[NDF's Policy on Anticorruption and Integrity](#) incorporates similar principles relating to integrity and anticorruption as its main co-financing partners have adopted, including a commitment to enforce cross-debarments triggered under the [Cross-Debarment Agreement of 2010](#) between several multilateral development banks. Under the policy, corruption, fraud, collusion, coercion and obstruction are prohibited in relation to NDF projects and NDF funds."

See also below: <http://www.ndf.fi/integrity-and-anticorruption>

In summary:

ICEIDA follows the Public Procurement Act no. 120/2016 when doing international business transactions. International agreements, guidelines and other commitments are also important in that process along with ICEIDA own policy and standards. Taken together, these measures should be adequate to assess the compliance systems of the companies in question.

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 response to this recommendation a new text, in Icelandic and English, has now been added to the terms of agreement for all public procurement conducted through Ríkiskaup, the central purchasing body operated by the Icelandic state. Contracts by local municipalities and entities in the utilities sector in Iceland, requesting assistance from Ríkiskaup, are also included. In practice, applicants will have to confirm that they fulfil these conditions, when they go through the procurement process. The text is as follows:

Business Ethics

*Corruption and other financial fraud are not accepted. The supplier will work actively against all forms of corruption, extortion and money laundering. **As part of this work, it is required that the Supplier has an ethical framework that applies to the Supplier's employees.** The rules shall contain a prohibition on offering, promising or giving unfair benefits to customers, suppliers and public employees. The same applies to the receipt of such benefits. **By accessing tender documents and sending a tender in this procurement procedure, the tenderer /supplier confirms that his firm has such ethical rules /framework.** See further terms and conditions regarding tender documents on the Ríkiskaup website where there is information regarding penalty for Bribery offences.*

This text shows clearly that in public procurement, including international business transactions, Icelandic authorities take into consideration applicant companies' internal controls, ethics and compliance programmes or measures, when appropriate.

Furthermore, it is mandatory for contracting authorities to verify if tenderers are subject to final conviction for corruption and fraud and bribes fall under the definition of corruption. The tenderer can also be required to provide various other documents to prove his qualifications and authorities have several means to verify that documentation. The contracting authority must rely on documents from authorities in the country where the economic operator is situated, for example criminal records. If the contracting authority or the procurer is offered bribes he shall report the case to the Police. In Iceland, it is rather difficult to bribe a civil servant who is in charge of public procurement procedure because he has to announce in the invitation to tender in details

how the tender will be evaluated. If any economic operator suspects that the tender documents are aimed at a certain economic operator or that the evaluation is not correct, he can file a complaint to the Public Procurement Complaints Commission as provided for in Article 105 of the Public Procurement Act no. 120/2016. Before the contract is awarded, a 5 – 10 days standstill period must pass so that the other economic operators have the opportunity to file a complaint and have the procurement procedure stopped by the Complaint's committee. If the contract has been awarded illegally, the contracting authority will have to pay high fines and compensatory damages. It is also possible that the Complaints Commission or the courts of Iceland declare the contract ineffective. The Remedies Directive made available a new remedy to claimants known as a "declaration of ineffectiveness". This allows the court to overturn an awarded contract in three specific situations, where the contract was "directly" awarded without notice or appropriate competition, where the contracting authority failed to run a compliant standstill period, which deprived the bidder of the opportunity to suspend the award process prior to award and where the contract was awarded under a framework arrangement and the rules on "mini-competitions" were not followed correctly.

Iceland has implemented Directive 2014/24/EU (the classic directive), Directive 2014/25/EU (utilities) and Directive 2014/23/EU (concessions) regarding public procurement. The standards set by Ríkiskaup are grounded on a strong legal and regulatory foundation and exclusion grounds are clearly stated in the procurement documents. Icelandic authorities will not buy goods, service or work from companies that do not comply with the standards set in the Public Procurement Act, Competition Law, Labour Law and the GPC.

The [Public Procurement Act no. 120/2016](#) was passed by Althingi, the Icelandic Parliament, on 11 October 2016. See English translation: <https://www.rikiskaup.is/english/icelandic-law/> Article 68 of the Public Procurement Act stipulates grounds for excluding a tenderer/applicant for public contracts due to the personal situation of the tenderer:

Any candidate or tenderer who has been the subject of a conviction by final judgment for the following offences shall be excluded from participation in procurement procedures:

- a. participation in a criminal organisation,*
- b. corruption,*
- c. fraud,*
- d. terrorist offences or offences linked to terrorist activities*
- e. money laundering or terrorist financing,*
- f. child labour and other forms of trafficking in human beings*

The obligation to exclude an economic operator shall also apply where the person convicted by final judgment of an offence according to paragraph 1, is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

Contracting authorities shall call for official certificates from tenderers before awarding a contract to verify that the tenderer or his managerial staff has not been subject to any of the circumstances stipulated in the article, for example that the tenderer does not have a criminal record on corruption offences. According to the Public Procurement Act no.

120/2016 the tenderer has to send the new „ESPD“ document (European Single Procurement Document“) along with his tender and also his subcontractors. However, only the winning tenderer and his subcontractors have to send verifications. The same applies to procurement procedures under the Utilities procurement regulation no. 340/2017⁵, the concessions procurement regulation no. 950/2017⁶ and the Defence procurement regulation no. 845/2014⁷.

Ríkiskaup is now in the process of getting ISO 9001-certification for the whole operation of the agency and has signed a contract with a verified certification agency, Vottun hf., which will be responsible for the certification process. Although certification has not yet been obtained, Ríkiskaup has already a quality control system to ensure that Ríkiskaup handles all procurement procedures according to law and relevant rules, regulations and EU directives. As a part of the system Ríkiskaup has a manual for procurement procedures where project managers are urged, in addition to legal requirements, to examine informations on the internet about the selected buyer to make sure that there are no allegations of fraud, bribery and other unethical circumstances, before a tender is finally accepted.

On a general note, a contracting authority which has obtained a project, product or service through Ríkiskaup is considered to have met its obligations pursuant to the Icelandic Public Procurement Act insofar as Ríkiskaup has done so. Ríkiskaup's procurement documents also contain standardised text from the Act no. 120/2016 (based on Directives 2014/24 and 25/EU).

To further emphasize the importance of taking into consideration the internal controls, ethics and compliance programmes or measures of applicants for public procurement, the following should be noted to illustrate the measures taken by Icelandic public procurement authorities.

In accordance with Article 57 of [Directive 2014/24/EU](#) and article 68 of the Icelandic Public Procurement Act, Ríkiskaup and contracting authorities ask candidates or tenderers to supply relevant means of proof according to article 60 of the Directive and can also turn to the competent authorities to obtain any information they consider necessary on the personal situation of the candidates or tenderers concerned. On the website of [E-certis](#)⁸ (article 61 of the Directive), relevant documents for each country are listed and if the candidate or tenderer provides the relevant documents or they are listed on official lists (article 64 of the Directive) of approved economic operators and certification by bodies established under public or private law, , no further proof or statements shall be required other than those requested of national economic operators by law. Of course further requirements regarding ethics and standards can be required in the procurement documents and Ríkiskaup has already done so.

Where the information concerns a candidate or tenderer established in a State other than that of the contracting authority, the contracting authority may seek the cooperation of the competent authorities. However, information about flaws in the personal situation of a candidate/tenderer are often received from their competitors. Economic operators are well informed about their competitors' personal situation and do not hesitate to contact contracting authorities or file a complaint if something is wrong. Situations where there

⁵ <https://www.reglugerd.is/reglugerdir/eftir-raduneytum/fjarmala--og-efnahagsraduneyti/nr/0340-2017>

⁶ <https://www.reglugerd.is/reglugerdir/eftir-raduneytum/fjarmala--og-efnahagsraduneyti/nr/0950-2017>

⁷ <https://www.reglugerd.is/reglugerdir/eftir-raduneytum/fjarmala--og-efnahagsraduneyti/nr/19254>

⁸ E-certis database: <https://ec.europa.eu/growth/tools-databases/ecertis/>

is a doubt about the personal situation of a tenderer do occur very seldom in Iceland. However, Ríkiskaup and other Icelandic contracting authorities have the mechanisms and the legal framework to deal with them. Before awarding a tender, the contracting authorities also actively track news from abroad about bribery and other crimes in public procurement. Overall, these and other measures which have been reported, clearly show that Icelandic public procurement take note of applicant's compliance programs.

Furthermore, The Icelandic Competition Authority – Samkeppniseftirlitið - also monitors that Icelandic Contracting Authorities procure goods and services in conformity with Competition Law and has issued guidelines to them according to OECD Guidelines to fight bid rigging and bribery in public procurement. Ríkiskaup's tender documents are in conformity with those guidelines. See:

<https://www.oecd.org/competition/cartels/42851044.pdf>

Finally, it should be noted that the procurement of Icelandic Public Authorities is also audited by The Icelandic National Audit Office (INAO) .

Ethical guidelines for public procurement officials

Ríkiskaup adopted a special ethical code of conduct in 2003 and it was updated in 2016⁹ The code was acknowledged and accepted by the staff of Ríkiskaup. The code states among other things:

- We build our decisions on objective reasoning.
- We are objective and honour equality.
- We honour law regarding access to information and transparency of Public Administration.
- We do not misuse official authority for the advantage of ourselves or others.
- We do not accept or demand gifts or other benefits that we are not entitled to because of our civil service status.

Ríkiskaup also participated in a working group at the Ministry of Finance and Economic Affairs writing special ethical guidelines for public officials working in the field of public procurement. The Minister of Finance and economic affairs published those guidelines in 2013.¹⁰ The guidelines are based on OECD Code of Conduct for Procurement Practitioners.¹¹

General rules on transparency and procedures in public procurement

According to Article 65 of the Public Procurement Act, tenderers may be present when tenders are opened and are entitled to have the following information read aloud as it is indicated in the tenders:

- a. Name of the tenderer.
- b. Total tender amount.
- c. Whether the tender is submitted as a variant.

When tenders are submitted by electronic means, that information is always sent to the candidates/tenderers by e-mail after the opening of tenders.

When the successful tenderer/tender has been selected, notification is sent to all the

⁹ <http://www.rikiskaup.is/um-rikiskaup/sidareglur/>

¹⁰ <http://www.fjarmalaraduneyti.is/media/frettir/Vidmid-um-goda-starfshaetti-i-innkaupum.pdf>

¹¹ <http://www.oecd.org/governance/procurement/toolbox/codeofconductforprocurementpractitioners.htm>

candidates/tenderers of the decision to award the contract. The notification includes the name of the selected tenderer and information on the characteristics and merits of the tender the contracting authority selected with reference to the selection criteria specified in the procurement documents. Such notification also includes a statement on the exact standstill period for the contractual process (5-10 days). If a decision to select a tender has been subjected to a complaint, the awarding of contract is prohibited until the Public Procurement Complaints Commission has permanently resolved the complaint. All decisions and rulings of the Complaints Commission are published on the Internet.¹²

General awareness- raising on anti-corruption measures regarding public procurement

In recent years, Ríkiskaup has been active in raising awareness on anti-corruption measures, in cooperation with different stakeholders. For example on 29th and 30th September 2016 and on 10th November 2017 the agency offered a course for public officials on legal provisions, ethic rules and several other aspects of public procurement, in cooperation with the University of Iceland. It should also be noted that Ríkiskaup raised awareness on corruption, including foreign bribery, during a conference on Public Procurement which took place in Reykjavík on 3 November 2015. The Chairman of the Inter-Ministerial Steering Committee on anti-corruption measures was one of speakers at the conference. The presentation focused on the concepts of corruption and foreign bribery, international commitments by Iceland in this field, relevant aspects of Icelandic laws and ethical duties of officials, especially those responsible for public procurement. Finally, representatives of Ríkiskaup and other contracting authorities in Iceland attended the seminar on foreign bribery featuring Mr. Drago Kos, on 29 October 2015 and an inter-agency course on money laundering and corruption in the Icelandic Police Academy in January 2016

Corporate Social Responsibility and sustainability

Icelandic authorities have participated in projects to build platforms for both public agencies and economic operators to involve CSR¹³ and sustainability in all their activities, among other things in procurement procedures. Fighting corruption is important for sustainability.

Festa is the Icelandic Centre for Corporate Social Responsibility. It is a membership based non profit association of which both economic operators and public authorities in Iceland can become members. Festa's aim is to raise awareness of CSR and sustainability among Icelandic businesses and the general public, as well as supporting its member organizations in implementing sustainability and CSR into their strategy and day to day operations by organizing training, dialogue events, conferences and workshops on Sustainability and CSR, publishing news and information on the development of CSR for Icelandic business and mobilizing organizations and authorities on strategic issues of CSR and sustainability. Today, Festa has 90 members, both economic operators and public agencies operating in Iceland.¹⁴ Some of the largest public utilities in Iceland are members of **Festa**, for example: **Isavia** (Keflavik International Airport), **Landsvirkjun** (The national power company of Iceland), **RARIK** (The Iceland State Electricity), **Landsnet** (the transmission system operator of the Icelandic high-voltage power grid), **Orkuveita Reykjavíkur** (Reykjavik Energy) and **Samgöngustofa** (The Icelandic Transport

¹² <http://www.urskurdir.is/Fjaramala/KaerunefndUtbodsmala>

¹³ <http://www.unido.org/csr/o72054.html>

¹⁴ Festa - the Icelandic Center for Corporate Social Responsibility <http://festasamfelagsabyrgd.is/english/>

Agency). Other public agencies are for example [Íslandsstofa](#) (Promote Iceland) and [Neyðarlínan](#) (112).

In summary:

The new Public Procurement Act no 120/2016 in Iceland strengthens legal and regulatory procedures in this field. Ríkiskaup (the central purchasing body) which serves most of the public buyers in Iceland, has in its standard procurement documents made special requirements regarding “business ethics” that economic operators have to confirm that they fulfil, when participating in a tender procedure. Overall, legal provisions in addition to the policy and standards of Ríkiskaup and other contracting authorities reveal how Iceland takes into consideration applicant companies’ internal controls, ethics and compliance programmes or measures, where appropriate. Subsequently, Iceland has taken measures to adequately examine corporate compliance systems when awarding public procurement contracts as provided for in the PP Act and PP Directives.

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.

[Case Name]

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