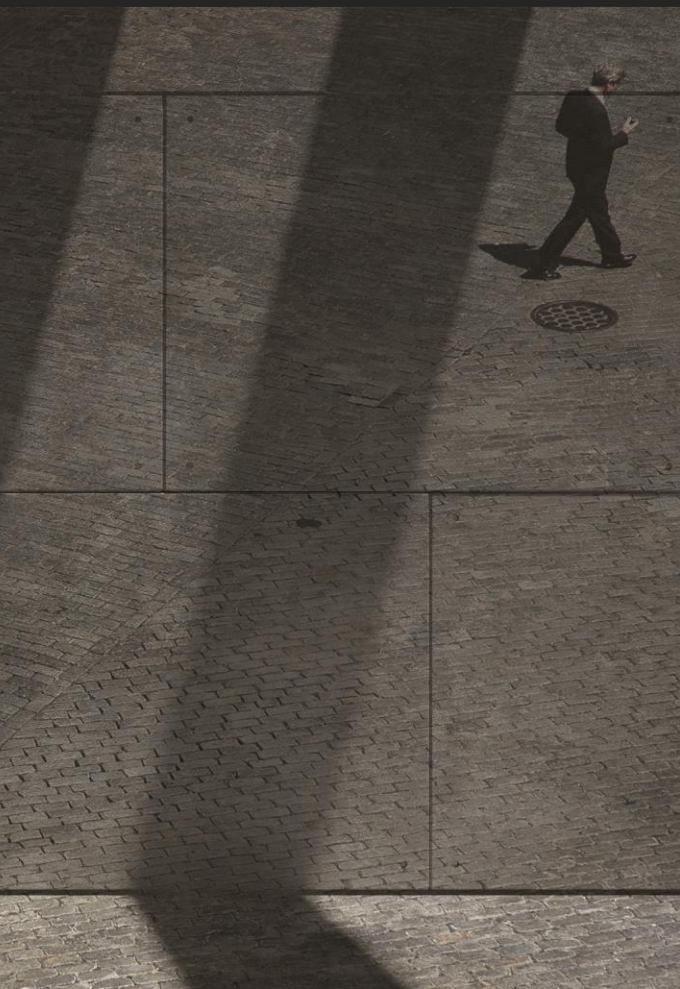




Implementing the OECD Anti-Bribery Convention



Phase 4 Two-Year Follow-Up Report: Iceland

This report, submitted by Iceland, provides information on the progress made by Iceland in implementing the recommendations of its Phase 4 report. The OECD Working Group on Bribery's summary and conclusions to the report were adopted on 7 March 2023.

The Phase 4 report evaluated and made recommendations on Iceland's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. The Phase 4 report was adopted by the OECD Working Group on Bribery on 17 December 2020.

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Iceland Phase 4: Two-Year Written Follow-up Report – Summary and Conclusions

Summary of findings¹

1. In March 2023, Iceland presented its Phase 4 two-year written follow-up report to the OECD Working Group on Bribery (“Working Group” or “WGB”), outlining the steps taken to implement the 28 recommendations and to address the follow-up issues contained in its December 2020 Phase 4 report (see [Phase 4 report](#)). In light of the information provided, the Working Group concludes that Iceland has fully implemented 6 recommendations, partially implemented 19 recommendations, and not implemented 3 recommendations.

2. The Working Group welcomes Iceland’s efforts to implement the Phase 4 recommendations. Iceland has reinforced its framework for investigating and prosecuting foreign bribery, in particular, by amending legislation (some pending coming into force) to align prison sentences, confiscate property, lengthen the limitation period for legal persons and clarify elements of the foreign bribery offence (article 264a GPC). Iceland has further implemented recommendations in relation to its financial intelligence unit (ICEFIU), increased engagement with the WGB through its participation in WGB and law enforcement officials meetings. In addition, Iceland made progress in relation to coordination between the DPO and the tax authorities and positive changes in relation to ODA contracts.

3. These steps are encouraging, and the Working Group hopes these will lead to enhanced foreign bribery detection and enforcement. However, the Working Group is still concerned at the low level of detection of cases and enforcement despite Iceland’s efforts. Iceland’s only foreign bribery investigation reported in Phase 4 remains ongoing and therefore Iceland has not concluded any foreign bribery cases since the entry into force of the Convention.

4. In particular, Iceland needs to increase the use of proactive steps to gather information from diverse sources at the pre-investigative and investigative stages both to increase the sources of allegations and enhance investigations. Other areas for improvement include stepping up efforts to assess properly and thoroughly any foreign bribery allegation and to ensure that whistleblowers are protected from

¹ The evaluation team for this Phase 4 two-year written follow-up evaluation of Iceland was composed of lead examiners from **Denmark** (Denmark was represented by Mr Andreas Steen Myllerup Laursen, Senior Prosecutor at the State Prosecutor Office for Special Crime, and Mr Jonathan Gasseholm, Prosecutor at the new Special Crime Unit) and **Lithuania** (Lithuania was represented by Mr Tomas Krušna, European Prosecutor at the European Public Prosecutor’s Office and Mr Darius Mickevičius, Head of International Cooperation Division of the Lithuanian Special Investigation Service) as well as members of the **OECD Anti-Corruption Division** (Paul Whittaker, Jaroslaw Mrowiec and Anaïs Michel, Legal Analysts). See [Phase 4 Procedures](#), paras 54 et seq. on the role of Lead Examiners and the Secretariat in the context of two-year written follow-up reports.

discriminatory or disciplinary action in practice. Awareness raising and training across many sectors needs to be increased.

5. The Working Group's summary with respect to specific Phase 4 recommendations are presented below. The summary and conclusions should be read in conjunction with the report prepared by Iceland, annexed to the present document.

Regarding prevention and detection of foreign bribery:

- ◆ *Recommendation 1 – Partially implemented:* Iceland's efforts to increase its ICEFIU staff capacity, to enhance AML detection and enforcement, to raise awareness of foreign bribery risks and to publish typologies on foreign bribery as a predicate offence to money laundering are commendable. Nevertheless, of the 18 reports that the ICEFIU has issued since 2019, only two are directly related to foreign bribery and were issued in the wake of a high-profile bribery case with a nexus to Iceland. None of the 42 training sessions reported specifically related to foreign bribery.
- ◆ *Recommendation 2(a) – Partially implemented:* The evaluation team welcomes the publication, on the website of the Administration of Occupational Safety and Health (AOSH), of guidelines to set up rules of procedure applicable to the public and private sectors. In March 2022, the Prime Minister's Office and the AOSH conducted a survey on the awareness of the Whistleblower Act among government agencies and private companies covered by the Whistleblower Act which identified the need for an awareness raising campaign. The evaluation team notes Iceland's efforts to raise awareness on the Whistleblower Act in the public sector. For example, the Prime Minister's Office published an educational video on the intranet of the Government Offices' Competences and Educational Centre, which explains the broad scope of the term "in their employers' activities" and the protections available to whistleblowers. The educational video also highlights the obligation of public employees to report suspected foreign bribery. Nevertheless, Iceland does not provide details on specific measures to promote and disseminate the guidelines issued by the AOSH and the educational video among the public sector, nor on specific trainings provided. In relation to the private sector, Iceland reports that AOSH plans to inquire into whether private companies covered by the Whistleblower Act have established rules of procedure in their workplaces by spring 2023. To date no other awareness raising initiatives focusing on the private sector, including SMEs, have been implemented by Icelandic authorities.
- ◆ *Recommendation 2(b) – Partially implemented:* The publication of rules of procedures by the Ministry of Financial and Economic Affairs (MFEA), and the issuance of guidelines by the AOSH to help set up rules of procedures are welcome, but Iceland does not report any specific measures aimed to ensure that whistleblowers are protected from discriminatory or disciplinary action in practice.
- ◆ *Recommendation 3 – Partially implemented:* As noted above (Recommendation 2(a)) the educational video published by the Prime Minister's Office highlights the obligation for public officials to report suspicions of foreign bribery. Nevertheless, Iceland does not report any specific measures to raise awareness and provide clear guidance to public officials engaging with Icelandic companies operating overseas.
- ◆ *Recommendation 4 – Partially implemented:* Iceland reports a course conducted by the Institute of State Authorised Public Accountants (ISAPA) specifically on combating foreign bribery and corruption, which took place in January 2023. The course covered the international conventions to which Iceland is a party, including the Anti-Bribery Convention, as well as relevant Icelandic legislation. The course specifically covered auditors' responsibilities (including sanctions) and reporting requirements in relation to foreign bribery. In May 2022, a virtual course briefly covered red flags for auditors and

accountants (see Recommendation 7(d) below). This shows welcome progress in the implementation of the recommendation.

Regarding enforcement of the foreign bribery and related offences:

- ◆ *Recommendation 5 – Fully implemented:* The evaluation team commends Iceland for its amendments of Art. 264a GPC and notes the almost complete alignment of article 264a GPC with the Phase 4 recommendation. However, unlike Article 1 of the Convention and the translation of article 109 GPC, which both refer to “official duties”, article 264a GPC maintains a reference to “professional duties”. Iceland explained that, as a matter of translation, these duties are connected to the job function. While the evaluation team notes that there is a potential risk that the term “professional duties” might be interpreted at variance with the requirements of Article 1 of the Convention, the evaluation team considers the recommendation fully implemented as the Working Group will already follow up on this issue as case law develops (see follow-up issue 13(e)).
- ◆ *Recommendation 6(a) – Partially implemented:* Iceland reports an Act amending the GPC, which entered into force on 1 January 2022, which is clearly a step forward in the implementation of the recommendation. However, Iceland has not provided any evidence that would allow the evaluation team to remove their doubts as to how penalties and fines would be calculated in practice given the limited case law to date. In addition, there is no information provided on training and guidance to the judiciary.
- ◆ *Recommendation 6(b) – Partially implemented:* The evaluation team notes Iceland’s efforts to organise seminars for prosecutors. However, in all, out of the four courses reported by Iceland, only one seminar has taken place since Phase 4 with a further one planned for spring 2023. In addition, seminars are not all explicitly aimed at issues relating to confiscation, seizure, and recovery of assets. Therefore, concerns about the degree of experience of Icelandic prosecutors in relation to confiscation remain.
- ◆ *Recommendation 6(c) – Fully implemented:* Iceland amended article 69.b. GPC, which now provides for confiscation of property the value of which corresponds to the bribe and the proceeds of the bribery of a foreign public official and is hence fully in line with the recommendation.
- ◆ *Recommendation 7(a) – Not implemented:* Iceland reports no proactive steps to gather information from diverse sources at the pre-investigative and investigative stages. While article 11(2) of the Police Act no. 90/1996 as amended by Law 50/2021 could encourage Icelandic law enforcement authorities to further cooperate with foreign authorities, the progress consequent to this reform remains to be assessed in practice. Iceland further reports that a Bill amending the Police Act, which is expected to be adopted by Parliament by June 2023, could facilitate the use of data analysis, surveillance and information exchange with informants. Nevertheless, the Bill specifically focuses on organised criminality and offences against the public and state interests, not foreign bribery. The Working Group will assess the impact of this reform on investigations and prosecutions of foreign bribery in future evaluations of Iceland.
- ◆ *Recommendation 7(b) – Not implemented:* Iceland refers to Office of the District Prosecutor (DPO)’s priority to thoroughly assess all credible allegations of foreign bribery and start an investigation where appropriate. Yet, Iceland does not report any new allegations being assessed or investigations initiated since Phase 4.
- ◆ *Recommendation 7(c) – Fully implemented:* Iceland has attended all the WGB meetings and all the LEO meetings since the adoption of the Phase 4 evaluation report, as well as the 2022 edition of the GLEN.

- ◆ *Recommendation 7(d) – Partially implemented:* Iceland made notable efforts to implement this recommendation. Iceland set up a seminar specifically dedicated to prosecutors, which should be completed by a follow-up seminar in spring 2023. Iceland organised a very comprehensive virtual course aimed at raising awareness of a broader audience on a wide array of relevant topics related to the foreign bribery offence. However, this was a one-off course, and Iceland should be encouraged to provide for similar trainings on a regular basis. Further, judges did not attend this course and were not targeted by the seminar mentioned above. Iceland should be encouraged to provide specialised training to judges.
- ◆ *Recommendation 7(e) – Fully implemented:* Since January 2022, in application of article 81 GPC, the statute of limitations for legal persons is of ten years as far as foreign bribery is concerned and is hence aligned with the statute of limitations applicable to natural persons in foreign bribery cases.
- ◆ *Recommendation 8(a) – Not implemented:* Iceland does not provide any new information on new incoming MLA requests since Phase 4. It therefore remains difficult in practice to assess the enforcement of international cooperation obligations under the Convention and the progress made by Iceland in implementing this recommendation.
- ◆ *Recommendation 8(b) – Partially implemented:* The use of outgoing MLA requests by Icelandic authorities is still limited to one case – the sole foreign bribery investigation in Iceland. Furthermore, Iceland provides no information on whether potential responses enabled Icelandic authorities to progress the ongoing foreign bribery investigation in a timely manner and whether Icelandic authorities followed up on outstanding MLA requests. The evaluation team considers that Iceland still has to proactively use outgoing MLA requests to progress foreign bribery investigations in a timely manner.

Regarding liability of, and engagement with, legal persons:

- ◆ *Recommendation 9(a) – Partially implemented:* Iceland reports a process of awareness raising based on the liability of legal persons due to investigations by Icelandic authorities. However, Iceland notes that in many cases the legal persons under investigation went bankrupt before the conclusion of the investigation and it was therefore not possible to pursue sanctions against legal persons. The enforcement of corporate liability in Iceland hence remains very limited, as is the number of trainings on the subject.
- ◆ *Recommendation 9(b) – Partially implemented:* The evaluation team notes Iceland's efforts to prosecute legal persons for corruption and other economic crimes actively. Nevertheless, the evaluation team considers this recommendation partially implemented since the cases are still only in progress.
- ◆ *Recommendation 9(c) – Partially implemented:* The evaluation team welcomes Iceland's efforts in awareness-raising activities with regard to the private sector. Yet, Iceland reports that the Ministry of Industry and Innovation has yet to specifically promote the Good Practice Guidance on Internal Controls, Ethics and Compliance. Further, recent Guidelines on Corporate Governance, issued by the Chamber of Commerce are only at the draft stage.

Regarding other measures affecting implementation of the Convention:

- ◆ *Recommendation 10(a) – Partially implemented:* The Secretariat welcomes the amendment of article 50(6) of the Income Tax Act proposed to the Icelandic Parliament. If it comes into force, the law will be fully aligned with the recommendation.

- ◆ *Recommendation 10(b) – Partially implemented:* As noted by the Working Group in Phase 4, tax officials have been provided with the new and updated OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors and have access to guidelines prepared by the MFEA. Iceland also reports a training in preparation with other Nordic countries expected to be held in 2023 which would focus on detecting corruption and bribery. Iceland does not report significant progress since Phase 4 in implementing the recommendation.
- ◆ *Recommendation 10(c) – Partially implemented:* Iceland reports an amendment of article 97 of the Income Tax Act proposed to the Icelandic Parliament. If it comes into force, the law will be aligned with the recommendation.
- ◆ *Recommendation 10(d) – Fully implemented:* Iceland substantially raised the number of meetings and interactions between the tax authorities and the DPO.
- ◆ *Recommendation 11 (a) – Partially implemented:* Iceland’s current project to create a *Procurement school* to train all employees working in public procurement is welcome. Nevertheless, Iceland reports only very limited developments in relation to measures to raise awareness and provide notification to applicants on the foreign bribery offence and the legal consequences under Icelandic law.
- ◆ *Recommendation 11 (b) – Partially implemented:* Iceland’s current project to establish an e-certificate for applicants to public tenders in Iceland can be noted as a good practice. However, Iceland still does not maintain a list of companies convicted in Iceland for corruption offences. Checks are manual and made on a discretionary basis.
- ◆ *Recommendation 12(a) – Fully implemented:* From 1 December 2022, Iceland reports that anti-corruption clauses are added to all ODA contracts, which also apply to sub-contractors, advisers, and consultants. The evaluation team welcomes the implementation of these clauses, which addresses the main concern of the recommendation. The evaluation team nevertheless regrets that these clauses do not mention the ability of the grantor or contracting authority to terminate the contract or suspend the grant in case of involvement in corruption or other illegal activities, in accordance with the 2021 Anti-Bribery Recommendation IV. The Working Group encourages Iceland to ensure that the anti-corruption clauses included in ODA contracts are in line with the 2021 Anti-Bribery Recommendation.
- ◆ *Recommendation 12(b) – Partially implemented:* Iceland only reports a one-off course where red flags for foreign bribery were specifically discussed and there is no indication of future courses. Iceland’s efforts to implement this recommendation are therefore very limited.
- ◆ *Recommendation 12(c) – Partially implemented:* The development of guidelines on reporting of suspicions of foreign bribery which include compliance with the new Whistleblower Act by MOFA is welcome, but Iceland has not provided a copy and hence the evaluation team could not assess its content. There is no indication as to when these will be published.

Dissemination of the Phase 4 report²

6. Iceland indicates that the Phase 4 report was published on the website of the Ministry of Justice along with a translation of the WGB press release and recommendations. The report was also shared specifically with all those who were involved in the on-site visit. Iceland further indicates that most if not all public and private news outlets in Iceland mentioned the Phase 4 report. Finally, Iceland mentioned that

² The [Phase 4 procedures](#), para. 50, provide that “the evaluated country should make best efforts to publicise and disseminate the report and translated documents, for example, by making a public announcement, organising a press event, and translating the full report into the national language. In particular, the evaluated country should share the report and translated documents with relevant stakeholders, particularly those involved in the evaluation”.

the Phase 4 report led to discussions in the Icelandic Parliament on the ongoing investigation in the country as well as on bribery and corruption in general.

Conclusions of the Working Group on Bribery

7. Based on these findings, the Working Group concludes that of Iceland's 28 recommendations 6 have been fully implemented (recommendations 5, 6.c., 7.c., 7.e., 10.d., and 12.a.); 19 have been partially implemented (recommendations 1, 2.a., 2.b., 3, 4, 6.a., 6.b., 7.d., 8.b., 9.a., 9.b., 9.c., 10.a., 10.b., 10.c., 11.a., 11.b., 12.b., and 12.c.); and 3 have not been implemented (recommendations 7.a.; 7.b. and 8.a.). The Working Group will continue to monitor follow-up issues as case law and practice develop. Iceland will also report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

Annex. Phase 4 Evaluation of Iceland: Two-Year Written Follow-Up Report by Iceland

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 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 4 Evaluation Procedure](#) (paragraphs 51-59 and Annex 8) as updated in December 2019.

*Please submit completed answers to the Secretariat on or before **21 November 2022**.*

Name of country:	ICELAND
Date of approval of Phase 4 evaluation report:	10 December 2020
Date of information:	21 November 2022

PART I: RECOMMENDATIONS FOR ACTION

Regarding Part I, 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 that have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation 1:

1. Regarding **detection of foreign bribery through anti-money laundering mechanisms**, the Working Group recommends that ICEFIU, commensurate with the increase in resources, raise awareness of foreign bribery risks and publish typologies on foreign bribery as a predicate offence to money laundering [Convention Article 7; 2009 Recommendation III(i); Phase 3 recommendation 8].

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

As reported during the phase 4 evaluation human resources at the FIU have been largely increased

since July 2015 and there are currently eight full time positions at the FIU.

Raise awareness of foreign bribery risks and publish typologies of foreign bribery:

The FIU is in a constant dialog with reporting entities to raise awareness of money laundering and terrorist financing and the underlying predicate offences. The outreach and guidance provided by the FIU to reporting entities has been extensive. The FIU has held meetings, provided training, and issued guidance's and warnings to reporting entities. The FIU also has a public private participation with the biggest reporting entities, the commercial banks, and meets with them once every month. The FIU has since the beginning of 2019 done 42 training/meetings with reporting entities and issued 18 guidance's/reports.

The FIU has shared with reporting entities and published on their website *Set of Indicators for Corruption Related Cases* (<https://justice.public.lu/dam-assets/fr/organisation-justice/crf/Corruption-red-flags-final-version-20181030.pdf>) and *FIU tools and practices for investigating laundering of the proceeds of corruption*. (https://egmontgroup.org/wp-content/uploads/2021/09/2019_Public_Summary_FIU_Tools_and_Practices_for_Investigating_Laundring_of_the_Proceeds_of_Corruption.pdf)

The FIU has also shared with reporting entities guidance and red flags on cross-border payments (provided with the responses). It is mainly guidelines on PEP risk and high-risk jurisdictions as well as consolidated material based on findings of three strategic analysis: transactions through offshore jurisdictions, transactions through high risk jurisdictions, and transactions with sanctioned jurisdictions.

If no action has been taken to implement recommendation 1, 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(a):

2. Regarding **whistleblower protection**, the Working Group recommends that Iceland:

a. Raise awareness in the public and private sectors, including SMEs, of the new Whistleblower Act, including the broad scope of the term “in their employers’ activities” in the commentary and the protections available to whistleblowers under the new law [2009 Recommendation III(i) and (iv), and IX(iii)];

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

The Ministry of Finance and Economic Affairs issued in November 2022 rules of procedure for whistleblowing for public institutions and legal entities that are majority owned by the State. Link to rules in Icelandic: <https://www.stjornartidindi.is/Advert.aspx?RecordID=90fc380f-bcbc-4a09-9bea-2e032e5160cf>

The Administration of Occupational Safety and Health has published on their webpage guidelines for rules of procedure for the private sector. Link to the guidelines: <https://vinnueftirlitid.is/en/services/laws-rules-and-regulations/protection-of-whistleblowers#english->

The rules and guidelines contain definitions of all the main concepts of the Act and explain the protection the Act provides for whistleblowers. Municipalities are required by the Whistleblower Act, no. 40/2020, to set their own rules of procedure. The most populated municipality of Reykjavik provides an online whistleblower portal.

In March 2022, The Prime Minister’s Office and The Administration of Occupational Safety and Health conducted a survey on the awareness of the Whistleblower Act and whether rules of procedure had been issued in different workplaces. The survey was sent to government agencies that fall under the ministries and to private companies that fall under the scope of the Act. The results indicated that there

was a need for an awareness campaign. As a part of the survey, the Administration of Occupational Safety and Health offered to send their guidelines to private companies, if requested, and assist in the making of rules of procedure for companies. 83 companies responded with such a request. The Prime Minister's Office and The Administration of Occupational Safety and Health are currently working together on how to raise awareness among private companies as regards the Whistleblower Act. The Prime Minister's Office has prepared an approximately 12 minutes educational video on the Whistleblower Act. The video is available online for all the employees of the Ministries on the intranet of the Government Offices' Competence and Educational Centre. In the video the broad scope of the term "in their employers' activities" and the protections available to whistleblowers, is explained. The aim is to send the video to all public agencies and prepare a similar one for the private sector.

If no action has been taken to implement recommendation 2(a), 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(b):

2. Regarding **whistleblower protection**, the Working Group recommends that Iceland:

b. Ensure that appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report suspected acts of foreign bribery, including within their own organisation and to law enforcement authorities [2009 Recommendation III(iv) and IX(iii); Phase 3 recommendation 7].

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

Reference is made to the response to Rec. 2(a).

The Whistleblower Act, no. 40/2020, the beforementioned rules of procedure for the public and the private sector, contain provisions that protect whistleblowers from discriminatory or disciplinary action, including such actions that may stem from reporting suspected acts of foreign bribery.

If no action has been taken to implement recommendation 2(b), 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 3:

3. Regarding **reporting of foreign bribery**, the Working Group recommends that Iceland urgently raise awareness and provide clear guidance to public officials, especially those engaging with Icelandic companies operating overseas, concerning their obligation to report suspected foreign bribery [2009 Recommendation III(i), IX(ii) and Annex I.A; Phase 3 recommendation 6(a)].

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

Public officials and employees of SOEs have a clear legal obligation to report suspected foreign bribery according to Para. 2 of Art. 2 of the Whistleblower Act. Reference is made to the responses provided regarding rec. 2 on the Whistleblower protection, as the rules of procedures for public institutions contain provisions on the obligation to report as well as being highlighted in the educational video.

Currently under development by the MOFA are awareness raising measures for MOFA staff, including those positioned abroad. These measures will for example focus on foreign bribery, with an emphasis on staff's obligation to report suspected foreign bribery. A dedicated session will be held on this matter during the annual meeting of ambassadors in Iceland at the end of December of this year. This will be followed up with information and training material regarding the subject which will be made available to Icelandic missions abroad.

If no action has been taken to implement recommendation 3, 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 4:

4. Regarding **detection of foreign bribery through accounting and auditing**, the Working group recommends that Iceland undertake further awareness-raising measures with regard to the reporting obligations of auditors and sanctions for failure to report, and promptly provide training on red flags to detect foreign bribery [2009 Recommendation III(i) and X.B(iii) and (v); Phase 3 recommendation 5(c)].

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

In September of 2019 the Institute of State Authorized Public Accountants (ISAPA) held a full-day course on money laundering and economic crime, which was conducted by an expert from Iceland Revenue and Customs and a police superintendent. The course included specific sections on auditors' obligations to report as well as sanctions for failure to report.

In November of 2019 another course was held by ISAPA on money laundering, which was conducted by experts from Deloitte. The course also focused heavily on auditors' obligation to report as designated reporting entities according to AML legislation.

Furthermore, in November 2020 the ISAPA held a course on the risk of fraud and related obligations of external auditors.

Finally, more than a dozen external auditors participated in the MOJs seminar on anti-corruption and foreign bribery held in May of this year. A specific part of the seminar focused on training for external auditors, with special focus on red flags to detect foreign bribery. This part of the seminar was taught by a forensic accountant and academic with vast experience in the field. The part concerning external auditors was recorded and will be shared by the ISAPA with its members for awareness-raising and training purposes.

For further information on the course a reference is made to the response to Rec. 7. d. and the provided course outline.

ISAPA is planning on conducting a course on anti-corruption and foreign bribery in 2023, in cooperation with the MOJ and law enforcement authorities.

If no action has been taken to implement recommendation 4, 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 enforcement of the foreign bribery and related offences

Text of recommendation 5:

5. Regarding the **foreign bribery offence**, the Working Group recommends that Iceland take all necessary steps to clarify that article 264a GPC covers (i) bribery of all foreign SOE officials, including those who perform a public function, and (ii) all acts or omissions in relation to the performance of the SOE official's duties, including any use of the official's position, whether or not within the official's authorised competence [Convention Article 1 and Commentaries 12, 14 and 15; Phase 3 recommendation 1].

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

In 2021 the MOJ prepared and wrote a bill to amend the GPC in response to the Phase 4 report. The bill was presented in parliament in September of 2021, approved by parliament in December and passed into law on the 1st of January of this year.

One of the amendments concerns the wording of Art. 264 a. which is highlighted by this recommendation. Following the amendment, Art. 264. a. now covers all foreign SOE officials, including those who perform a public function. This was achieved by removing the phrase "in business" in both paragraphs.

Additionally, to remove all doubt that the provision covers both state-owned and state controlled SOEs, following the phrase "in public ownership" in paragraphs 1 and 2 it now states, "or under the control of the state."

Finally, all acts or omissions in relation to the performance of the SOE official's professional duties are now included in the provision, as the phrase "in variance with professional duties" in paragraphs 1 and 2 has been replaced by "in relation to his professional duties."

These amendments substantively align Art. 264. a. with Art. 109 as recommended by the Working Group in the Phase 4 report.

For further information on the amendment, please consult the provided translation of the legislative bill, including the commentary.

If no action has been taken to implement recommendation 5, 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 6(a):

6. Regarding **sanctions, including confiscation, against natural persons** for foreign bribery, the Working Group recommends that Iceland:

a. take all necessary steps, including through guidance and training to the judiciary, to ensure that any sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive in practice [Convention Articles 3 and 5; 2009 Recommendation III(i)];

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

The aforementioned amendment of the GPC included raising the maximum penalty for foreign bribery from five years imprisonment to the recommended six years imprisonment, thus aligning the maximum penalties for active and passive bribery as well as with other serious economic offenses.

This recommendation was also in the Phase 3 report which advocated increasing the maximum penalty for foreign bribery to six years in order to fully comply with the recommendation. Similar criticism was put forward by the lead examiners in the phase 4 evaluation which led to the recommendation being upheld in the phase 4 report.

The amendment is therefore a direct response to this recommendation.

If no action has been taken to implement recommendation 6(a), 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 6(b):

6. Regarding **sanctions, including confiscation, against natural persons** for foreign bribery, the Working Group recommends that Iceland:

b. continue to train its prosecutors on confiscation measures and draw their attention to the importance of routinely seeking confiscation against natural persons in foreign bribery cases [Convention Article 3; 2009 Recommendation III(i); Phase 3 recommendation 3];

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

The Director of Public Prosecution (DPP), which is responsible for the training and education of prosecutors, held a seminar in September 2021 on anti-corruption which, i.a. focused on confiscation measures. A follow-up course on the same subject will be held in the spring of 2023.

Additionally, the National Commissioner of the Icelandic Police (NCIP) has held 3 seminars since 2019 for both investigators and prosecutors regarding investigations of financial crime. These seminars included specific training on asset seizure, confiscation, and asset recovery. Lectures were conducted by experts from the District Prosecutor's Office (DPO) as well as by other members of law enforcement authorities. The next seminar (4th in total) is scheduled to be held on the 15th of November 2022. The aim of these seminars is to improve the investigation and prosecution of financial and economic crimes as well as raise awareness among prosecutors on the importance of seeking confiscation in these types of cases.

If no action has been taken to implement recommendation 6(b), 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 6(c):

6. Regarding **sanctions, including confiscation, against natural persons** for foreign bribery, the

Working Group recommends that Iceland:

c. amend its legislation to provide for confiscation of property the value of which corresponds to the bribe and the proceeds of the bribery of a foreign public official, or for monetary sanctions of comparable effect [Convention Article 3].

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

By raising the maximum penalty for foreign bribery to six years imprisonment, art. 69. b. of the GPC now allows for confiscation of property the value of which corresponds to the bribe and the proceeds of the bribery of a foreign public official.

If no action has been taken to implement recommendation 6(c), 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(a):

7. Regarding the **investigation and prosecution** of foreign bribery, the Working Group recommends that Iceland:

a. increase the use of proactive steps to gather information from diverse sources at the pre-investigative and investigative stages both to increase the sources of allegations and enhance investigations [Convention Article 5 and Commentary 27; 2009 Recommendation III, V and Annex I.];

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

In recent times, media coverage has on numerous occasions led to investigations of corruption. Examples of such are the Arni Johnsen case, where a member of Parliament was in 2003 sentenced by the Supreme Court to 2 years imprisonment for passive bribery, fraud and embezzlement. Another case is the Eimskip Pollution case, in which the shipping company Eimskip is accused of having illegally shipped an old vessel to West Africa for recycling. (https://icelandmonitor.mbl.is/news/news/2021/12/17/eimskip_s_offices_raided_by_prosecutor/) Then, of course, the Samherji case was disclosed in the media, while at the same time a whistleblower came forward and approached the DPO with information. These events immediately prompted an investigation by the DPO.

The WGB Matrix is also systematically reviewed by the DPO and scanned thoroughly for cases which might have a nexus to Icelandic jurisdiction and therefore a possible cause for opening an investigation.

The **Helicopter case** was considered by examining the information from Sweden as stated by the Deputy Director of Public Prosecution during Phase 4 country visit. It was determined that there was not any cause for opening an investigation in Iceland considering that the Icelandic citizen involved was already a subject of the Swedish investigation and gave statements to the DPO as a witness in the case in accordance with an MLA request from the Swedish authorities. The Swedish investigation did not lead to any indictments.

Icelandic law enforcement authorities, and the DPO in particular, have and will continue to increase the use of any proactive steps to increase the sources of allegations and enhance investigation, including media reports, the Matrix and other open source intelligence.

The Police Act no. 90/1996 (<https://www.althingi.is/lagas/nuna/1996090.html>) was also recently amended (January 2021) allowing for increased cooperation between Icelandic Police and foreign law enforcement authorities as well as international organizations within the sphere of law enforcement (Art. 11 a.). Enhanced bilateral and international cooperation can be an important source for increased

detection of corruption offences.

Furthermore, a bill to amend the Police Act has been presented to the cabinet of ministers and is expected to be presented in Parliament in November of this year. The bill will provide law enforcement authorities with improved measures for action in the field of preventive and proactive law enforcement, including enhanced data analysis, surveillance, and information exchange with informants. If passed into law, the bill will increase all law enforcements' ability to detect and prevent offences, including corruption offences. However, the primary aim of the bill is to reduce and prevent organized criminality and offences against the public and state interests, including terrorist offences.

If no action has been taken to implement recommendation 7(a), 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(b):

7. Regarding the **investigation and prosecution** of foreign bribery, the Working Group recommends that Iceland:

b. ensures that all credible allegations of foreign bribery are properly and thoroughly assessed, and investigated as appropriate [Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D];

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

In accordance with the action taken regarding 7.a. one of the DPO's main priorities is to thoroughly assess all credible allegations of foreign bribery and commence an investigation when it is appropriate. Awareness of the foreign bribery offence has been raised significantly with investigators and prosecutors along with the FIU, and FIU reporting entities, especially because of the Samherji investigation as well because of training courses that have been held for investigators and prosecutors.

If no action has been taken to implement recommendation 7(b), 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(c):

7. Regarding the **investigation and prosecution** of foreign bribery, the Working Group recommends that Iceland:

c. participate in the Working Group meetings, and in particular the LEOs meetings, which could assist with their first investigation of a foreign bribery case [Convention Article 12; 2009 Recommendation XIV(iv) and XV];

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

Since the publication of the Phase 4 report Iceland's delegation has participated in every WGB plenary meeting, as well as several side meetings, such as on the issue of data protection. In accordance with current government policy, which was put in effect during COVID, the plenary meetings have been attended virtually. The policy provides that international meetings shall be

attended virtually when hybrid participation is available. However, Iceland plans to attend the plenary meetings in 2023 in person, considering the importance of on-site participation and meeting other delegates for informal discussions and networking purposes within the field of foreign bribery and anti-corruption.

Prosecutors and investigators from the District Prosecutor's Office have attended all LEO meetings since the publication of the Phase 4 report as well as all GLEN meetings. This has provided the DPO with new and important knowledge on how foreign countries are dealing with bribery and corruption offences.

If no action has been taken to implement recommendation 7(c), 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(d):

7. Regarding the **investigation and prosecution** of foreign bribery, the Working Group recommends that Iceland:

d. provide specialised training to law enforcement authorities, including investigators, prosecutors and judges, on the investigation and prosecution of foreign bribery, including key elements of the offence in 264a GPC [2009 Recommendation III(ii) and V; Phase 3 recommendation 4b)];

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

In September of 2021 the DPP held a seminar for prosecutors on foreign bribery and anti-corruption. The seminar focused on the relevant provisions in the GPC, including Art. 109 and 264 a., as well as relevant case law. The seminar also focused on confiscation measures and the liability of legal persons, as well as providing an overview of the various international conventions within anti-corruption that Iceland is a party to and has ratified and how Icelandic law has developed because of those international instruments, including the Anti-Bribery Convention.

The DPP intends to conduct a follow-up seminar on these same subjects in the spring of 2023.

Furthermore, in May of this year the MOJ organized an extensive 4-day (12 hour) course on anti-corruption and foreign bribery. The course was primarily tailored for investigators, prosecutors and other law enforcement personnel, while also being relevant for other public officials as well as external auditors.

The course was conducted virtually and taught by Canadian anti-corruption expert and adjunct professor Noah Arshinoff (<https://www2.uottawa.ca/faculty-law/common-law/faculty/arshinoff-noah>). A specific part of the course focusing on external auditors and red flags for detecting foreign bribery was taught by Mr. Marc Tassé, a part time professor and forensic certified public accountant.

Participants included investigators, prosecutors, and expert personnel from the DPO and other law enforcement authorities, including Police Commissioners. Other participants included tax officials, public procurement officials, staff members of ministries and customs officials. For further details on the composition of participants please consult the provided excel sheet with all participants.

The course focused mainly on foreign bribery and consisted of general material on the offense as well as detailed case studies. For further information on the course material please consult the provided outline of the course.

If no action has been taken to implement recommendation 7(d), 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(e):

7. Regarding the **investigation and prosecution** of foreign bribery, the Working Group recommends that Iceland:

e. amend article 81 GPC so that the limitation periods for legal persons are the same as they currently are for natural persons [Convention Articles 2 and 6].

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

The previously mentioned amendment of the GPC included a provision amending article 81, which now specifically states that the limitation period for legal persons is five years except for offenses referred to in Article 109 and paragraph 1 of Article 264 a. where the limitation period is 10 years.

If no action has been taken to implement recommendation 7(e), 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 8(a):

8. Regarding **mutual legal assistance (MLA) and extradition** in foreign bribery cases, the Working Group recommends that Iceland:

a. carefully consider incoming MLA requests, and where appropriate investigate credible allegations of foreign bribery [Convention Article 9; 2009 Recommendation III(ix) and XIII(ii)];

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

Regarding the **Helicopter case** we refer to the information provided regarding rec. 7a.

Regarding the Samherji/Namibian case, the FIU-ICE received an inquiry on Samherji from the FIU in Namibia through the Egmont system. Additionally, Iceland received an MLA from Namibia after the Icelandic investigation had started in November 2019 and after a meeting in the Hague convened by Iceland with colleagues from Norway and Namibia. That meeting took place in December 2019, but the MLA from Namibia was received by the District Prosecutors Office on the 7th of January 2020.

Iceland has already acted on the MLA from Namibia and has sent information which are vital for the Namibian investigation and assisted the Namibian authorities in every way possible.

If no action has been taken to implement recommendation 8(a), 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 8(b):

8. Regarding **mutual legal assistance (MLA) and extradition** in foreign bribery cases, the Working Group recommends that Iceland:

b. use outgoing MLA requests proactively to progress foreign bribery investigations in a timely manner [Convention Article 9; 2009 Recommendation III(ix) and XIII].

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

Iceland has sent MLAs to several countries in connection with the Samherji investigation, including to Spain, Norway and Namibia which clearly demonstrates that Icelandic authorities are using MLAs for gathering information and evidence. Furthermore, there have been several meetings between Icelandic and Namibian officials in The Hague as well as in Iceland.

If no action has been taken to implement recommendation 8(b), 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 9(a):

9. Regarding **responsibility of legal persons**, the Working Group recommends that Iceland:

a. draw the attention of prosecutors to the importance of applying effectively the criminal liability of legal persons in foreign bribery cases, including by strengthening training programmes on corporate proceedings [Convention Articles 2 and 3; 2009 Recommendation III(ii) and Annex I.B];

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

Awareness has been raised within the DPO regarding the liability of legal persons because of the Samherji case investigation and by the anti-corruption seminar held by the DPP in September of 2021, which focused on the liability of legal persons among other issues.

Other cases have also raised awareness, such as the ongoing Eimskip investigation, which also concerns the criminal liability of legal persons. The case concerns an alleged breach of regulation on pollution by selling ships to scrap yards in Africa and beaching them. The investigation was initiated based on media reports.

In many cases the legal persons under investigation have gone bankrupt before the conclusion of the investigation and therefore it has not been possible to pursue any sanctions against the legal persons.

The punishment for legal persons is monetary fines and they are generally determined based on illegal gains or damages caused. Illegal gains by legal persons are generally subject to confiscation.

If no action has been taken to implement recommendation 9(a), 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 9(b):

9. Regarding **responsibility of legal persons**, the Working Group recommends that Iceland:

b. proactively pursue criminal proceedings against legal persons, where appropriate, for foreign bribery and related offences [Convention Articles 2 and 5, and Commentary 27; 2009 Recommendation V and Annex I.D and Annex I.B]; Convention]

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

With reference to the information provided under Rec. 9 (A), the DPO has pursued criminal proceedings against legal persons, both concerning foreign bribery (the Samherji case) and other economic crimes (the Eimskip case).

With the increased awareness of seeking criminal liability for legal persons, more emphasis has been put on the importance of proactively pursuing criminal proceeding against legal persons.

If no action has been taken to implement recommendation 9(b), 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 9(c):

9. Regarding **responsibility of legal persons**, the Working Group recommends that Iceland:

c. step up its awareness-raising activities with regard to the private sector and promote, including to SMEs, the Good Practice Guidance on Internal Controls, Ethics and Compliance [2009 Recommendation III(i) and Annex II; Phase 3 recommendation 5b)].

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

The Ministry of Industry and Innovation has yet to specifically promote the Good Practice Guidance on Internal Controls, Ethics and Compliance.

However, the most recent Guidelines on Corporate Governance, issued by the Chamber of Commerce, specifically mention bribery and corruption in relation to non-financial information:

On p. 46 it states: Every year, companies are to publish, together with the report of the Board of Directors and on their website, the non-financial information necessary to make an assessment on the development, scope, position and effect on the Company. At a bare minimum, a discussion must be included of the Company's policies on the following issues:

- Environmental issues
- Community issues
- Human resources issues
- Human rights issues
- Corruption and bribery issues

This can be said to be in direct response to the legislative amendments on non-financial information highlighted by Iceland in the P4 evaluation.

For further information please consult the provided translation of the guidelines.

If no action has been taken to implement recommendation 9(c), 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 regarding other measures affecting implementation of the Convention

Text of recommendation 10(a):

10. Regarding **tax measures for combatting foreign bribery**, the Working Group recommends that Iceland:

a. amend the guidelines prepared by the MFEA for tax officials to clarify that bribes paid to SOE officials are non-tax deductible [2009 Recommendation VIII(i); 2009 Tax Recommendation I(i)];

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

As stated in the Iceland Phase 4 Report (page 41) Iceland expressly prohibits the deductibility of bribe payments for tax purposes under Article 50(6) of the Act on Income Tax (90/2003) but only in relation to an offence under Article 109 GPC. Iceland has submitted that Article 50(2) of the Income Tax Act, which provides that costs in any form that can be linked to punishable offences cannot be deducted from taxable income, would include any bribes paid to SOE officials, which is an offence under Article 264a GPC.

Further examination of the wording and the content of Article 50(2) and 50(6) has now been carried out. The MFEA and the IRC (Iceland Revenue and Customs) have concluded that it is appropriate to further strengthen the prohibition rule in the Act on Income Tax relating to an offence under Article 264a GPC. In view of this, the MFEA submitted a bill to the Parliament in the autumn session of 2022, proposing an amendment to Article 50(6) of the Act on Income Tax by adding a clear reference to Article 264a of the GPC therein. Article 50 (6) will thus equally apply to offences covered by Article 109 and 264a GPC. It is presumed that the Parliament will approve the bill before the end of 2022 and the amendment will enter into force on the 1st of January 2023.

The MFEA's guidelines will be updated in accordance with this above amendment.

The relevant provision in the bill is in Art. 9.

Link to the bill in Icelandic: <https://www.althingi.is/altext/153/s/0502.html>

If no action has been taken to implement recommendation 10(a), 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(b):

10. Regarding **tax measures for combatting foreign bribery**, the Working Group recommends that Iceland:

b. provide awareness-raising and training for tax officials on (i) the guidelines prepared by the MFEA; (ii) the new and updated OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors; and (iii) foreign bribery risks and the techniques used more generally [2009

Recommendation III(iii) and VIII(i); Phase 3 recommendation 9];

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

Tax officials at the IRC have access to the new and updated OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors. The MFEA Guidelines and supplemental procedures are easily accessible on the IRC intranet and despite no specific training, the guidelines are widely available and IRC staff are highly aware of them. The guidelines stipulate that IRC personnel shall notify if they become aware of possible bribery and corruption.

A number of tax officials attended the MOJ course in May of this year.

The Nordic countries are currently collaborating in preparing training material on detecting corruption and bribery and upon completion the material will be used to provide awareness-raising and training for tax officials.

If no action has been taken to implement recommendation 10(b), 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(c):

10. Regarding **tax measures for combatting foreign bribery**, the Working Group recommends that Iceland:

c. ensure that the limitation period to re-examine tax returns is sufficient by aligning it with the limitation periods for criminal liability of natural persons of ten years as per the foreign bribery offences under articles 109 and 264a GPC [2009 Recommendation III(iii) and VIII(i), Tax Recommendation II];

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

The MFEA submitted a bill to the Parliament in the autumn session of 2022 (152. Legislative Session) amending Article 97 of the Income Tax Act by adding a new sub-paragraph stipulating that when it comes to violation of Articles 109 and 264a of the GPC, the tax authorities may re-assess tax in accordance with Article 96 in the last ten years prior to the year of a re-assessment. The period of the re-assessment in these cases will therefore be extended by four years, going from six years to ten years. It is assumed that the Parliament will pass the bill before the end of 2022 and the legislation will come into force on 1 January 2023.

The relevant provision is in Art. 12 of the bill.

Link to the bill in Icelandic: <https://www.althingi.is/altext/153/s/0502.html>

If no action has been taken to implement recommendation 10(c), 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(d):

10. Regarding **tax measures for combatting foreign bribery**, the Working Group recommends that Iceland:

d. ensure the DPO systematically and promptly share information with the tax authorities in relation to foreign bribery investigations and convictions, so that the tax authorities can investigate and enforce non-deductibility of bribes [2009 Recommendation III(iii) and VIII(i)].

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

Due to recent amendments to the legislation regarding tax investigations there are now regular meetings held between the tax investigation office and the DPO every two weeks and more often if needed on an ad hoc basis. In these meetings information is being shared concerning on-going cases by the tax authorities as well as on any relevant developments regarding DPO investigations. The focus is to discuss and detect any possible tax-offense nexuses regarding economic offences. For example, the Samherji case produced a tax investigation in Iceland that is still on-going.

If no action has been taken to implement recommendation 10(d), 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(a):

11. Regarding **public procurement**, the Working Group recommends that Iceland:

a. develop measures to raise awareness and provide notification to applicants on the foreign bribery offence and the legal consequences under Icelandic law [2009 Recommendation X.C(vi) and XI(i); Phase 3 recommendation 11(i)];

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

Ríkiskaup emphasises in its contact with applicants and in information provided to them that active bribery towards a public official is a punishable offence according to article 109 of the Icelandic General Penal Code no. 19/1940. Additionally, Ríkiskaup highlights the seriousness of bribery on the official Icelandic tendering website. Furthermore, in all terms of agreement for tender documents prepared by Ríkiskaup it is mandatory for contracting authorities to verify if tenderers are subject to final conviction for corruption and fraud.

Legal advisors at Ríkiskaup have for many years been teaching procurement law, ethics, and prevention against bribery to all project managers and new staff members at Ríkiskaup. These courses have recently been bolstered and made more comprehensive, in line with recommendations from supervisory authorities.

Furthermore, Ríkiskaup is currently working towards establishing *The Procurement School*. The aim of the school is to extend the teaching of the legal advisors at Ríkiskaup to all of those who work in public procurement. The school's course is modelled after *ProcurComp^{EU}* (European Competency Framework for Public Procurement Professionals) and on the curriculum there's an ethics course which will cover rules concerning code of conduct, anti-corruption/anti-collusion guidelines, bribery and ethical standards.

It is expected that the school will become operational within the first few months of 2023.

If no action has been taken to implement recommendation 11(a), 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(b):

11. Regarding **public procurement**, the Working Group recommends that the Netherlands;
b. through Ríkiskaup maintain a list of companies convicted in Iceland for corruption offences and routinely check the debarment lists of multilateral financial institutions [2009 Recommendation XI(i)].

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

Ríkiskaup has not established a formal list of companies convicted for corruption offences in Iceland which staff members can automatically check against when assessing applicants. Hence, all such checks are performed manually by checking the Icelandic courts database for convictions, but all judgements in Iceland are published on the relevant court's website free of charge. In cases where Ríkiskaup has deemed it necessary to examine a company and its owners in more detail staff members have therefore used the courts' database to determine if a final conviction has been made on either the board members, owners of the company or the company itself. However, Ríkiskaup realises the limited effectiveness of these checks since they are not systematic and subject to the discretion of individual staff members.

In the year 2021 the government approved a policy on sustainable procurement and on the grounds of that policy an action plan on sustainable procurement has been published. There it states that the government is developing an *e-certificate* to make it easier for bidders and participants in tender procedures to demonstrate their qualifications to participate and to confirm that exclusion grounds according to the public procurement act no. 120/2016 does not apply to them.

The project is based on a Danish model. In rough terms, if a tenderer wants to participate in a public tendering procedure, he needs to either fill out a *European Single Procurement Document* (ESPD) or get a *certificate*. In practice the District Commissioners office will provide these certificates and check if any of the exclusion grounds are applicable. The certificates will have a limited period of validity so the idea is that participants in tenders procedures will be routinely and systematically checked. Expectations are that the process will mainly be automated and therefore minimizing the chance for human error. The sourcing of the documents will be an electronic procedure and the checking of, for example, criminal records and other relevant documents will also be an automatic process. However, if the process detects an anomaly The District Commissioners office has a team of legal advisors who will manually review the documents before certifying.

The work has already come a long way and the Ministry of Finance and Economics is working on the project alongside the Ministry of Justice. Ríkiskaup does not take part in the project directly but sends the ministries data and other relevant information for the completion of the project. According to the action plan the project should be finished by end of year 2022 but after further inquiry it seems the project will not be finalized and operation until the beginning of 2023.

The aim of the project is also to be grounds for the formal establishment of a *blacklist* of companies convicted for corruption offences in Iceland since the companies or board members who are not eligible for a certificate will not be eligible for participation in tender proceedings. With the creation of the Icelandic list it will be possible for Ríkiskaup to continually monitor and maintain a record of all companies convicted of corruption offences and automatically check whether applicants are on it.

Regarding international debarment lists, Ríkiskaup recently implemented protocols which stipulate that all non-Icelandic based tenderers shall be checked against publicly available debarment lists of

multilateral financial institutions, such as the World Bank's, as well as performing routine checks and monitoring of such lists.

If no action has been taken to implement recommendation 11(b), 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 12(a):

12. Regarding **official development assistance (ODA)**, the Working Group recommends that Iceland:

a. ensure that the anti-corruption clauses in all ODA contracts also apply to sub-contractors and third parties [2016 ODA Recommendation III.6(v)];

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

The MOFA will ensure that anti-corruption clauses are added to all ODA contracts, also applying to sub-contractors, advisers, and consultants. This will be implemented into all new contracts starting from the 1st of December of this year.

If no action has been taken to implement recommendation 12(a), 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 12(b):

12. Regarding **official development assistance (ODA)**, the Working Group recommends that Iceland:

b. provide regular training and guidance to MOFA staff on foreign bribery red flags [2009 Recommendation III(i) and Annex I.A];

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

MOFA staff attended the course held by the MOJ in May of this year, where red flags for foreign bribery were specifically discussed.

For further information on the course a reference is made to the response to Rec. 7. d. and the provided course outline.

If no action has been taken to implement recommendation 12(b), 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 12(c):

12. Regarding **official development assistance (ODA)**, the Working Group recommends that Iceland:

c. ensure that the reporting of suspicions of foreign bribery by MOFA staff is covered in internal MOFA guidelines, which include compliance with the new Whistleblower Act [2009 Recommendation III(i), IX(ii) and Annex I.A; 2016 Recommendation III.7]

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

As public officials, MOFA staff is obligated to report any suspicions of foreign bribery according to art. x of the Whistleblower Act.

A reporting mechanism specifically for ODA funds is currently being developed by the MOFA. It will facilitate the reporting of suspicions of foreign bribery, as well as fraud, waste, abuse and SEAH. The mechanism provides that reporting will be directed to an internal affairs unit within the MOFA. Work is currently underway to ensure confidentiality and protection of data. Internal guidelines, which are in compliance with the Whistleblower Act, have been developed as well and will be published when the reporting mechanism becomes operational.

If no action has been taken to implement recommendation 12(c), 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.

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Regarding Part II and as per the procedures agreed by the Working Group in December 2019, countries are invited to provide information with regard to any follow-up issue identified below where there have been relevant developments since the Phase 4 report. Please also note that the Secretariat and the lead examiners may also identify follow-up issues for which it specifically requires information from the evaluated country.

13. The Working Group will follow up on the issues below as case law, practice, and legislation develops:

Text of issue for follow-up 13(a):

a. whether the application of the term “in their employers’ activities” covers in practice all reports of foreign bribery by public and private sector employees [2009 Recommendation IX(ii)];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

According to The Administration of Occupational Safety and Health, in 2021 there were 126 cases where an employee requested a Whistleblower protection. Such a protection was provided in 106 cases. No statistics are available for such requests made to The Althing parliamentary Ombudsmen. Although there have not been any court cases concerning whistleblower protection, these statistics seem to indicate a broad scope of protection.

Furthermore, as is stated in the commentary to the Whistleblower Act No. 40/2020, the provision requiring that a conduct takes place „in their employers’ activities” should be interpreted broadly, so as to include any misconduct that the whistleblower may perceive in the context of work, including foreign bribery by public and private sector employees. The provision includes any conduct that the employee becomes aware of in his work. Every activity that employees become aware of in their work is therefore to be considered within their employers’ activities in a broad sense.

Text of issue for follow-up 13(b):

b. whether easily accessible reporting channels are available to whistleblowers in the public and private sectors [2009 Recommendation III(iv), and IX(i)];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Accessible reporting channels are available to whistleblowers. The Althing parliamentary Ombudsman and The Administration of Occupational Safety and Health have an online portal for whistleblowers and other complainants. The biggest municipality, Reykjavik, provides an online whistleblower portal. According to the law both private and public entities can decide upon internal channels, this should be done in co-operation with employees.

The aforementioned rules on procedure of whistleblowing addresses the channels available for whistleblowers. The law does not require whistleblowers to report misconduct to their employer. Whistleblowers can report to their employers or to competent authorities.

Text of issue for follow-up 13(c):

c. whether there is proper coordination among competent authorities in defining the rules and procedures of article 5 of the Whistleblower Act and in monitoring its implementation [2009 Recommendation III(iv) and IX(iii)];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The rules of procedure that have been set on the grounds of Article 5 of The Whistleblower Act are materially the same and based on the provisions of the Act. The Prime Minister's Office and the The Administration of Occupational Safety and Health are co-operating in making available instructions to employees about the provisions of the Act.

Text of issue for follow-up 13(d):

d. whether article 264a GPC covers bribery of officials of both state-owned and state-controlled enterprises [Convention Article 1; Phase 3 recommendation 1];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Reference is made the information provided on Rec. 5. regarding amendments to the GPC concerning state-owned and state-controlled enterprises.

Text of issue for follow-up 13(e):

e. whether the term "professional duties" is applied in accordance with the requirements of Article 1 of the Convention [Convention Article 1, and Commentaries 12 and 15];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No new case law or other developments to report on how the term is applied.

Text of issue for follow-up 13(f):

f. whether Iceland can hold in practice natural persons liable for bribery committed through intermediaries, and that a bribe in Iceland's penal code covers both pecuniary and non-pecuniary advantages [Convention Article 1 and Commentary 6];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No new case law or other developments to report.

Text of issue for follow-up 13(g):

g. whether the structural changes to the DPO's Economic Crimes Department and the integrated approach of the investigation and prosecution of foreign bribery cases result in an increased capability to detect, investigate and prosecute foreign bribery and related offences [Convention Article 5];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In 2019 the number of staff in the FIU-ICE was increased from 5 to 8 and in 2020 6 investigators were added to the economic crimes' unit. This increase and the structural changes that have been made have enhanced the DPO's ability to investigate foreign bribery. Attending the LEO meetings after the phase 4 report has also increased the knowledge and capability within the DPO of foreign bribery. Additionally, the DPO now routinely reviews the Matrix and processes MLAs with specific attention to whether there is need for investigation of foreign bribery in Iceland.

Text of issue for follow-up 13(h):

h. how Iceland exercise its jurisdiction in practice over cases of bribery of foreign public officials, notably regarding those committed in whole or part abroad [Convention Articles 4 and 5];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Although it has not been put in practice before the courts, Iceland can exercise universal jurisdiction for foreign bribery according to numeral 10 of para. 2 of Art. 6 of the GPC.

In cases of foreign bribery there is always a need for cross border cooperation which requires division of labour between states, including decisions on prosecution to avoid risks of ne bis in idem. The Samherji case is an example of such a case and its investigation is still ongoing. Suspects include Icelandic nationals suspected of foreign bribery committed abroad. No new cases of foreign bribery have been detected since its investigation began in 2019.

Text of issue for follow-up 13(i):

i. how limitation periods impact, if at all, foreign bribery investigation [Convention Articles 5 and 6];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

A reference is made to the legislative amendments of the GPC which have extended the limitation period for legal persons to 10 years. Whether and how the 10-year limitation period impacts foreign bribery investigations has yet to be tested.

Text of issue for follow-up 13(j):

j. how requests for MLA impact the suspension of limitation periods [Convention Articles 6 and 9];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

An MLA that requests interviewing a suspect can potentially suspend the limitation period according to para. 4 and 5 of Art. 82 of the Code of Criminal Procedure. However, an MLA request concerning the collection of evidence alone would ordinarily not suffice to impact the suspension of limitation periods.

How and whether such MLA requests impact suspension of limitation periods in practice has yet to be tested.

Text of issue for follow-up 13(k):

k. which investigative techniques have been used in foreign bribery cases [Convention Article 5];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The same investigative techniques are used in foreign bribery cases as are used in other economic crimes investigations. All authorized techniques according to the Code of Criminal Procedure and the rules on Specific Techniques can be used. These investigations also require cooperation with foreign law enforcement authorities as well as international organizations such as Europol and Eurojust. They also include the use of MLAs.

Text of issue for follow-up 13(l):

l. whether the funding arrangements for the DPO are sufficient and transparent in order for the DPO to function appropriately to investigate and prosecute foreign bribery allegations [Convention Article 5; 2019 Recommendation Annex I.D];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 13(m):

m. whether Iceland can provide a broad range of MLA to Parties to the Convention that apply civil or administrative (and not criminal) liability to legal persons for foreign bribery [Convention Article 9];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Although no MLAs of such a nature have been received, it is not perceived that there would be any legal or practical obstacles in providing such assistance.

Text of issue for follow-up 13(n):

n. whether Iceland can hold in practice a legal person liable for foreign bribery (i) without prior prosecution or conviction of a natural person, and (ii) for acts of related legal persons and intermediaries [Convention Articles 2 and 3; 2019 Recommendation Annex I.B];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No new case law or other developments to report.

Text of issue for follow-up 13(o):

o. whether the lack of successor liability in Icelandic law may hamper the effective enforcement of the foreign bribery offence against legal persons [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B];

No new case law or other developments to report.

With regard to the issue identified above, describe any new case law, legislative, administrative,

doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up 13(p):

p. whether sanctions against legal persons are effective, proportionate and dissuasive and that confiscation measures are routinely sought in foreign bribery cases [Convention Articles 2, 3 and 5];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No new case law or other developments to report.

Text of issue for follow-up 13(q):

q. the proposed new legislation amending the legislation on the New Business Venture Fund and the TRU once the legislation is available [2009 Recommendation XII and 2019 Export Credit Recommendation].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In January 2021 a new law was passed which abolished TRU. In the commentary the reasoning for its abolishment is stated as such:

“The provision of export guarantees is considered to be state aid within the meaning of Article 61 of the EEA Agreement. State aid serves to reduce competition and weaken the operating basis of companies that do not benefit from any guarantee of the state treasury, as well as those that benefit from such aid in the long term. It is preferable to help export companies that are at a sensitive growth stage in a more transparent way, such as with grants from funds that have such a role and minimize the intervention of the public sector in the free market. It is undesirable to have a dual system of state guarantees. On the one hand, the Government Guarantee Fund, where Parliament’s approval is required for the granting of guarantees from the Government Guarantee Fund together with mortgage insurance, registration and special supervision of guarantees. On the other hand, the export credit insurance department (TRU), where supervision and conditions for the approval of Althingi and mortgage insurance are not available when granting export guarantees. It is therefore proposed that the guarantee department for export loans be abolished and only the Act on Government Guarantee Fund applies to government guarantees of any kind.”

The link to the legislation in Icelandic: <https://www.althingi.is/alttext/151/s/1252.html>

PART III: FOREIGN BRIBERY AND RELATED ENFORCEMENT ACTIONS SINCE PHASE 4

Foreign bribery and related enforcement actions since Phase 4

To this end, we would kindly ask you to please provide information on:

- The foreign bribery investigations and prosecutions mentioned in §§ 22-25 to (pp. 10-11) of the [Iceland Phase 4 Report](#)

Please update the information contained in these documents and add information on any additional investigations underway or terminated since Phase 4.

Information may be provided below or in a separate document.

Action taken as of the date of the follow-up report:

The Samherji case is the only investigation of foreign bribery in Iceland. The investigation was initiated in 2019 and is still ongoing.

PART IV: DISSEMINATION OF EVALUATION REPORT

Efforts made to publicise and disseminate the Iceland Phase 4 report, for example, through public announcements, press events, sharing with relevant stakeholders, particularly those involved in the on-site visit [*Phase 4 Evaluation Procedures, para. 50*]

Action taken as of the date of the follow-up report:

The report was published on the website of the Ministry of Justice along with a translation of the WGB press release and recommendations.

The report was also shared specifically with all those who were involved in the on-site visit.

The publication of the report gathered quite a lot of media attention and was reported on in most if not all public and private news outlets in Iceland.

The Samherji case and the WGB P4 report have also led to special discussions in Parliament on the case as well as bribery and corruption in general. Link to the discussions: <https://www.althingi.is/altext/upptokur/lidur/?lidur=lid20221027T111405>

www.oecd.org/corruption/anti-bribery

