Cancels & replaces the same document of 13 March 2018

PHASE 3 FOLLOW-UP: ADDITIONAL WRITTEN REPORT BY POLAND

Paris, 13-15 March 2018

JT03429930
Phase 3 evaluation of Poland on the implementation of the OECD Convention on combating bribery of foreign public officials in international business transactions: additional follow-up report

(OECD Working Group on Bribery plenary meeting on 13-15 March 2018)

In the course of examining the follow-up report by Poland on the implementation of specific Phase 3 recommendations (plenary meeting of the OECD Working Group on Bribery in International Business Transactions on 17 - 20 October 2017), the Working Group requested Poland to present within 6 months an additional report regarding the progress in the implementation of recommendations: 1, 2(a), 3(c) and 8(b).

Name of country: Poland

Date of approval of Phase 3 evaluation report: June 2013

Date of last follow-up report: October 2017

Date of information: 9 March 2018

To supplement the information presented to OECD in 2017 and as of the date of submission of this report, the activities undertaken in order to implement the aforementioned recommendations are as follows:

**Text of recommendation 1**

1. Regarding the offence of bribing a foreign public official in Article 229.5 of the Polish Penal Code, the Working Group recommends that Poland urgently take appropriate measures feasible within the Polish legal system to ensure that the “impunity” provision cannot be applied to the bribery of foreign public officials (Convention, Articles 1 and 3; 2009 Recommendations III and V).

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

The Ministry of Justice has elaborated a draft act amending the so-called impunity clause stipulated in Article 229 § 6 of the Penal Code, which aims to exclude the application of the clause to cases of active bribery of foreign public officials (Article 229 § 5 of the Penal Code), while preserving the application of the clause in proceedings regarding bribery of domestic officials (art. 229 §§ 1 to 4 of the Penal Code), taking into account the findings as to the effectiveness of the clause in such cases.

At present, the issue of amending the Penal Code in the aforementioned scope is subject of additional analysis.
2. Regarding the liability of legal persons in the Act on Liability of Collective Entities for the bribery of a foreign public official, the Working Group recommends that Poland:

(a) Take urgent steps to eliminate the requirement of a conviction of a natural person or a decision to discontinue proceedings against the natural person, in order to impose liability on a legal person (Convention, Articles 2 and 3);

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

The Ministry of Justice is currently conducting work on a broad reform of the system of liability of collective entities with the aim to ensure greater effectiveness of the rules regarding such liability. As already indicated in the follow-up report of 2016, the considered amendments in question include, i.e., elimination of the condition that the liability of a collective entity depends on the prior conviction of a natural person, enabling proceedings against such an entity simultaneously with the proceeding against a natural person and raising the level of financial penalties available under the law combined with the resignation from linking the amount of such penalties with the level of a collective entity’s revenue (recommendations 2(a) and 3(c)).

The Ministry of Justice organised, on 16 November 2017 in Warsaw, an international conference with the participation of experts specializing in the field of liability of legal persons which precedes further legislative work on the subject.

The draft new law on the liability of collective entities has been listed in the Council of Ministers’ register of legislative works. Now the proposal awaits to be subjected to inter-ministerial and public consultations.

3. Concerning sanctions for the bribery of a foreign public official, the Working Group recommends that Poland:

(c) Regarding legal persons, eliminate the cap on or increase the maximum penalty available under the law so that they are subject to effective, proportionate and dissuasive penalties, and as a matter of priority draw the attention of the relevant authorities to the availability of additional sanctions, including debarment, upon conviction of a legal person under the Liability of Collective Entities Act (Convention, Articles 2 and 3; 2009 Recommendation III).

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

As part of the current work on the reform of the system of liability of collective entities, the envisaged amendments provide for the increasing of the minimum financial penalty up to PLN 30 000 and the maximum financial penalty to PLN 30 000 000. The amount of penalty will not be linked with the level of a collective entity’s revenue.

See also explanations for recommendation 2(a).
Moreover, recommendations of the Deputy Attorney-General of 31 March 2014, which were notified in the follow-up report of June 2015, remain valid. These recommendations refer among others to adequacy of penalties and penal measures requested by public prosecutors in the course of criminal proceedings regarding bribery of foreign public officials, including against legal persons.

**Text of recommendation 8(b)**

8. The Working Group recommends that Poland take the following steps to enhance public awareness and the reporting of foreign bribery:

(b) Prioritise the reform of the law on whistleblower protections to ensure that appropriate measures are in place to protect from retaliatory or disciplinary action private and public sector employees who report suspected acts of foreign bribery in good faith and on reasonable grounds (2009 Recommendation IX).

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

The necessity of enhancing protections for whistle-blowers has been recognised in the Resolution of the Council of Ministers no. 207 – the Government Anti-Corruption Program for 2018 - 2019, as adopted on 17 December 2017.

The protection of whistle-blowers, including as regards disclosing corruption offences, has been covered with the draft act on the transparency of public life (chapter 9).

The proposal stipulates the following protection measures:

- prohibition to terminate or adversely amend the terms of an employment contract or other contractual relation with a whistle-blower, without the approval of the public prosecutor;
- in case of such termination or amendment of a contract – compensation being double the amount of annual remuneration or equalling the total contractual amount due to the whistle-blower, which had not been paid until the termination date;
- reimbursement from the State Treasury of costs of representation in proceedings for the purpose of legal protection from adverse consequences of disclosure of information about the offence.

The proposal has been subjected to inter-departmental and public consultation. Currently, works at the level of the Permanent Committee of the Council of Ministers are underway.