



EU ANTI-CORRUPTION POLICY



European Commission
Home Affairs

Unit A2 (Fight against Organised Crime
and Relations with EMCDDA)



TFEU

- ✚ the Union shall endeavour to ensure a high level of security through measures to prevent and combat crime (Art 67)
- ✚ possibility to adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies [...] in particular in order to facilitate full application of the principle of mutual recognition (Art 70)
- ✚ **corruption** listed among the particularly serious crimes with a **cross-border dimension** for which minimum rules on the definition of criminal offences and sanctions may be established (Art. 83 (1))
- ✚ possibility to establish measures to promote and support the action of MS in the field of crime prevention (Art. 84)





RELEVANT INSTRUMENTS

I. EU LEVEL

Legislative and policy instruments

II. LEGAL INSTRUMENTS OF OTHER BODIES

Council of Europe

OECD

United Nations





I. EU LEVEL

- + protection of EU financial interests***
- + addressing corruption involving officials of the EU or officials of Member States***
- + corruption in the private sector***
- + anti-corruption network (EACN)***
- + EU anti-corruption package and EU Anti-Corruption Report***
- + other related instruments (public procurement, money-laundering, freezing and confiscation)***





PROTECTION OF EU FINANCIAL INTERESTS

*Convention on the Protection of the European Communities' Financial Interests (PIF), 1995 - establishing minimum standards of protection against fraud in relation to EU funds
– entered into force on 17 October 2002 –*

MS were required to:

- ✓ put in place **criminal law penalties** which are effective, proportionate and dissuasive
- ✓ criminal liability of heads of **businesses** or any person having power to take decisions or exercise control within a business
- ✓ provide that they have jurisdiction over offences which take place **completely or partially** within their territory or where a person on their territory assists or causes the offence to be carried out or the offender is a national of the MS



1st Protocol to the PIF Convention

Protocol of 27 September 1996 (in force since 17 October 2002)

- ✓ MS obligation to incriminate corruption in **relation to EC financial interests**
- ✓ definition of Community official
- ✓ covers officials of MS as defined by national legislation (including elected and appointed officials)
- ✓ **definitions of active and passive corruption**, linking this to an act or omission which **damages or is likely to damage the EC's financial interests**
- ✓ **effective, proportionate and dissuasive criminal penalties** (including imprisonment in serious cases)
- ✓ MS obligation to apply their national law in a non-discriminatory manner to both national and Community officials
- ✓ **jurisdiction** (when offence committed totally or partially on the MS territory; offence committed by its nationals or officials; offence committed against a national official or Community official who is its national or the offender is a Community official in institution/body with HQs in that MS).





Definitions of corruption – 1st Protocol PIF

Active corruption

deliberate action of whosoever **promises or gives, directly or through an intermediary**, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which **damages or is likely to damage the European Communities' financial interests.**

Passive corruption

deliberate action of an **official**, who, **directly or through an intermediary**, **requests or receives** advantages of any kind whatsoever, for himself or for a third party, or **accepts a promise** of such an advantage, to **act or refrain** from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which **damages or is likely to damage the European Communities' financial interests.**





*Protocol of 29 November 1996 to **PIF** Convention (in force since 17 October 2002)*

- ✚ enables MS to refer a case to the ECJ for a preliminary ruling on the interpretation of the PIF Convention and its associated Protocols.

Protocol of 19 June 1997 to PIF Convention (in force since 1 May 2009)

- ✚ covers money laundering as a criminal offence
- ✚ **liability of legal persons** for the offences of **fraud, active corruption and money laundering** committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on a power of representation of the legal person, or an authority to take decisions on behalf of the legal person, or an authority to exercise control within the legal person
- ✚ liability of legal persons covers the lack of supervision or control and does not exclude criminal proceedings against natural persons
- ✚ **sanctions** applicable to legal persons have to be **effective, proportionate and dissuasive**, including criminal or non-criminal fines, and may include: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; a judicial winding-up order.
- ✚ refers to **seizure and confiscation** of the instruments and proceeds of fraud, active and passive corruption and money laundering (including value confiscation).



IMPLEMENTATION OF PIF CONVENTION AND PROTOCOLS

- ✚ *Two implementation reports: 2004 and 2008;*
- ✚ *Conclusions of the last implementation report:*
 - formal compliance still not achieved
 - failure to achieve the harmonisation objective calls for further work towards adoption of a common position in the Council on the amended proposal for a Directive on the criminal-law protection of the Communities' financial interests
 - MS were invited to step up their efforts to reinforce their national criminal legislation to protect EU financial interests





New Directive proposed by the Commission for the protection of EU financial interests by means of criminal law (July 2012)

- ✚ will replace the PIF Convention and Protocols.
- ✚ **definition of corruption**: same as PIF Convention and its protocols. Novelty: no longer require for the offence to be committed 'in breach of official duties', but 'in accordance with his duty or in the exercise of his functions'.
- ✚ **dishonest conduct of tenderers in public procurement** to be criminalised in MS.
- ✚ **definition of public official**: includes not only holders of legislative, administrative or judicial office or otherwise those who exercise public service function for EU or in MS, but also persons exercising such functions in third countries.
- ✚ **minimum imprisonment ranges and minimum sanction types for legal persons**.
- ✚ **prescription (SoL)**: requires the establishment of a minimum period of prescription, as well as a provision on the prescription period for the enforcement of penalties following a final conviction.





CONVENTION ON FIGHTING CORRUPTION INVOLVING OFFICIALS OF THE EU OR OFFICIALS OF MEMBER STATES (1997)

(entered into force on 28 September 2005)

- ✚ definitions of national and Community official (both elected and non-elected)
- ✚ definitions of **active and passive corruption** (same as the first Protocol of the PIF Convention, but **not necessarily related to EU financial interests**)
- ✚ MS must apply their national law in the same way to national and Community officials
- ✚ effective, proportionate and dissuasive **criminal law penalties** (including imprisonment for serious cases), without prejudice to the exercise of disciplinary powers by the competent authorities
- ✚ **criminal liability of heads of businesses or any persons having power to take decisions or exercise control** within a business for corruption offences committed by a person under their authority acting on behalf of the business.
- ✚ provisions on **jurisdiction** (same as the first Protocol to PIF Convention)



CORRUPTION IN THE PRIVATE SECTOR *FRAMEWORK DECISION 2003/568/JHA*

OBJECTIVES:

- ✚ **Criminalize** active and passive corruption in the private sector
- ✚ Ensure **liability of legal persons**
- ✚ Ensure **effective, dissuasive, proportionate** sanctions
- ✚ Harmonize their level

IMPORTANT ELEMENTS

- ✚ Applies to **both profit and non-profit organisations**
- ✚ Until 2010 MS could limit the scope to cases which could distort competition in relation to the purchase of goods or commercial services
- ✚ Most significant articles – 2 (definition/elements of the offence), 5 (liability of legal persons), 6 (sanctions)
- ✚ Slow implementation



Elements of the offence (active and passive corruption in the private sector)

- ✚ Promising/offering/giving (requesting/receiving/accepting the promise)
- ✚ Directly/through an intermediary
- ✚ In any capacity directs or work
- ✚ An undue advantage of any kind
- ✚ That person/third party
- ✚ Perform/refrain
- ✚ Breach of duties

INSTIGATION, AIDING, ABETTING

PENALTIES

- ✚ Effective, dissuasive, proportionate
- ✚ Maximum at least 1-3 years
- ✚ Possibility to disqualify from carrying on business activity

LIABILITY OF LEGAL PERSONS

- ✚ For benefit
- ✚ Individually or as an organ, leading position (represents, takes decisions, controls)
- ✚ Lack of supervision or control
- ✚ Sanctions: effective, proportionate, dissuasive
- ✚ Criminal or not
- ✚ Examples (exclusion from public benefits of aid, temporary or permanent disqualification from commercial activities; judicial supervision; judicial winding-up order)



JURISDICTION

- (a) Offence committed in whole or in part within MS territory
- (b) By one of the nationals (exception applicable) or
- (c) For benefit of a legal person with headquarters in that MS (exception applicable)

Exception (inform Council and Commission): any MS may decide that it will not apply the jurisdiction rules in paragraphs (b) and (c), or will apply them only in specific cases or circumstances, where the offence has been committed outside its territory.





IMPLEMENTATION OF FD 2003/568/JHA

- ✚ *Two implementation reports: 2007 and 2011;*
- ✚ *Conclusions of the last implementation report:*
 - *Quality of transposition remains uneven (notably on criminalisation of all elements of active and passive bribery and on liability of legal persons);*
 - *Even for Member States that transposed the FD, information on track-record of enforcement is rather scarce.*





ANTI-CORRUPTION NETWORK (EACN)

Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption

Objectives and setting

- ✚ Forum for exchange of information and best practices between MS anti-corruption authorities
- ✚ Members (up to 3 national authorities) designated by MS
- ✚ Commission, OLAF, Europol and Eurojust associated (since end 2012 OLAF chairs EACN)
- ✚ Network to build on the work of European Partners against Corruption (EPAC)

Way forward - COM will work with EACN towards:

- ✚ more concrete deliverables
- ✚ stronger focus on operational issues
- ✚ clearer delimitation of respective roles of EPAC and EACN





EU ANTI-CORRUPTION PACKAGE (follow-up of the Stockholm Programme)

Adopted on 6 June 2011

- *Communication on Fighting Corruption in the EU;*
- *Commission Decision (internal) setting up the EU Anti-Corruption Report;*
- *Report on modalities of EU participation in GRECO;*
- *Implementation Report FD 2003/568/JHA on combating corruption in the private sector corruption.*





WHAT IS NEW?

- *EU anti-corruption reporting mechanism (first of its kind);*
- *Stronger focus on enforcement and end-results (evaluation mechanism v. legislative solution);*
- *Acknowledgement of need to address lack of firm political commitment;*
- *Stronger focus on corruption in related internal and external EU policies (across the board approach);*
- *Consolidated EU policy for protection of licit economy (anti-corruption package; new anti-fraud strategy; proposal for reinforced legal framework on confiscation and asset recovery).*





EU ANTI-CORRUPTION REPORT – WHY DIFFERENT?

- *laws and institutions largely in place – need to get them work;*
- *focus on MS capacity to control corruption and corruption risks;*
- *look at the impact (end of the process) – no ticking of boxes;*
- *no universal solution to country-specific problems;*
- *selective v. comprehensive;*
- *trends;*
- *focus on specific areas relevant at EU level (e.g. public procurement) and on specifics of each MS;*
- *look for good practices, peer-learning;*
- *streamline information/assessments already available and fill in the gaps;*
- *COM in lead (no peer-review);*
- *grounds for future EU initiatives (policies/legislation/financing).*





Key challenges

- *Real added value (i.e. bring visible change)*
- *Depart from mere law enforcement approach towards a wider good governance approach (prevention tools/corruption risks);*
- *Smart use of existing standards/indicators/evaluations/information + innovative approaches/indicators;*
- *Outspoken and courageous Report, AND as objective as possible (i.e. reflect ever changing realities);*
- *MS ownership and follow-up of recommendations (no questionnaires, no country visits).*





HOW WILL THE EU ANTI-CORRUPTION REPORT WORK? (1)

- *Managed by the Commission and published every two years, starting in 2013 (first report to be published before end 2013);*
- *Wide definition of corruption ('abuse of power for private gain');*
- *Focused (selected cross-cutting and country-specific matters);*
- *Structure:*
 - ✚ *general part: methodology, Eurobarometer surveys, summary of main findings, thematic section (e.g. public procurement)*
 - ✚ *country chapters (selected matters that stand out: good practices, weaknesses, vulnerabilities, tailor-made recommendations).*





HOW WILL THE EU ANTI-CORRUPTION REPORT WORK? (2)

- *Use of all available sources:* monitoring mechanisms (GRECO, OECD, UNCAC), independent experts and researchers, civil society, specialised networks (e.g. EACN), EU institutions, services and agencies (including OLAF, Eurojust, Europol), analyses/reports issued by public authorities in MS, COM studies, Eurobarometer, other stakeholders;
- *No additional administrative burden on MS;*
- *Facilitate experience sharing.*





PREPARING THE FIRST EU ANTI-CORRUPTION REPORT

- ***Expert group to advise COM on: methodology, approach, good practices, analysis of EU trends, assessment methods, new EU measures:***
 - **open call** – experts selected and appointed in December 2011;
 - **wide variety of backgrounds** (public/private, law enforcement, judiciary, prevention, international organisations, civil society, academia);
 - **act in personal capacity.**
- ***Network of local research correspondents to help COM identify most outstanding country-specific problematic issues/good practices + collect relevant information/data + analyses/research upon COM request:***
 - **network in place since August 2012** (public procurement procedures)
 - **one correspondent/MS** from among civil society/researchers/academia;
 - **second opinion experts**
- ***Regional workshops – consultations with stakeholders;***
- ***COM studies (e.g. public procurement, protection of whistle-blowers, NIS, healthcare).***



STRONGER FOCUS ON CORRUPTION IN INTERNAL AND EXTERNAL EU POLICIES

- *Reinforced judicial and police cooperation* (Europol, Eurojust);
- *Asset recovery* (new directive proposed in March 2012);
- *Financial investigations*;
- *Public procurement* (revised EU legislation proposed in December 2011);
- *Crime statistics* (uniform EU statistics system on corruption);
- *Protecting EU public money against corruption* (protection of licit economy and protection of EU financial interests);
- *Enlargement and neighborhood policies* (intensified rule of law dialogue);
- *Cooperation and development policies* (greater use of the conditionality principle), etc





EU REINFORCED COOPERATION WITH GRECO

- *Report from the Commission to the Council recommending EU participation in GRECO (in line with the Stockholm Programme);*
- *Commission Communication on EU participation in GRECO of October 2012;*
- *EU reinforced cooperation with GRECO would ensure:*
 - **coordinated anti-corruption approach at European level;**
 - **synergies with the EU Anti-Corruption Report;**
 - **benefits for both parties (EU to make best use of the GRECO expertise and help improve the follow-up rate of GRECO's recommendations).**
- *Form of cooperation/participation?*





OTHER EU INSTRUMENTS RELEVANT FOR ANTI-CORRUPTION POLICIES

PUBLIC PROCUREMENT

Currently

- + Directive [2004/18/EC](#) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts*
- + Directive [2004/17/EC](#) on the coordination of procurement procedures of entities operating in the water, energy, transport and postal services sectors*

Ongoing work

- + Commission proposal for the amendment of public procurement directives adopted in **December 2011***
- + The proposal aimed at simplification of procedures, but **strengthens anti-corruption guarantees**, e.g. provisions on conflict of interest, national oversight, red flagging systems, centralising of data, stricter rules for modification of contracts, expanded exclusion criteria, monitoring of concluded contracts, etc.*





MONEY LAUNDERING

Currently

- ✚ The Third Anti-money Laundering Directive (Council Directive 2005/60/EC of 26 October 2005 on prevention of the use of the financial system for the purpose of money laundering and terrorist financing) provides for corruption as one of the predicate offences for money laundering***

Ongoing work

- ✚ In February 2013, COM adopted two proposals to reinforce the EU's existing rules on anti-money laundering and fund transfers. The package includes a directive on the prevention of the use of the financial systems for the purpose of money laundering and terrorist financing and a regulation on information accompanying transfers of funds to secure "due traceability" of these transfers.***
- ✚ More focus of FATF on laundering of proceeds of corruption.***





FREEZING AND CONFISCATION

Currently

- + Four Council Framework Decisions and one Council Decision covering harmonisation of substantial criminal law, mutual recognition and Asset Recovery Offices***
- + Overall insufficient implementation***

Ongoing work

- + Commission adopted in March 2012 a proposal for a Directive on the freezing and confiscation of proceeds of crime***
- + The proposal covers corruption offences as defined in the EU legislation and comprises provisions on: direct confiscation, value confiscation, extended confiscation, non-conviction based confiscation (in limited circumstances), third party confiscation, effective execution, management of frozen property.***





II. LEGAL INSTRUMENTS OF OTHER BODIES

1. Council of Europe

Criminal Law Convention on Corruption and Additional Protocol
Civil Law Convention on Corruption

2. OECD

Convention on combating bribery of foreign public officials in international business transactions

3. United Nations

Convention against Corruption
Convention against Transnational Organised Crime





1. Council of Europe Criminal Law Convention on Corruption and Additional Protocol

Chapters including:

- ✚ measures to be taken at national level
- ✚ monitoring (GRECO)
- ✚ international cooperation

Provisions

- ✚ develop **common standards** concerning: certain corruption offences (i.e. active/passive bribery); trading in influence; money laundering the proceeds of corruption offences; account offences
- ✚ corporate liability, a state does not have to impose a criminal liability, it can continue to impose a civil or administrative law liability
- ✚ penalties have to be effective, proportionate and dissuasive
- ✚ the **Protocol** extends the Convention's scope to jurors and arbitrators





Civil Law Convention on Corruption

- ✚ enabling persons who have suffered damage as a result of corruption to receive **fair compensation**. The act of corruption is not confined to the public sector
- ✚ **liability** arises **even if all parties to it are in the private sector**
- ✚ States are required to provide that a person (individual or legal person) has the **right to initiate an action** before the courts for full(!) **compensation for damage**
- ✚ States must provide that a **contract undermined by corruption** can be declared **void** by the courts; **no sanction taken** against an employee who **reports suspicions** of corruption in good faith and on reasonable grounds and annual accounts of companies are drawn up clearly and give a true and fair view of the company's financial position.



Other Council of Europe Instruments

- + 20 Guiding Principles
- + Recommendation on Codes of Conducts for public officials
- + Recommendation on common rules against corruption in the funding of political parties and electoral campaigns





2. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

- ✚ active bribery of foreign officials and officials of international organisations is made a criminal offence
- ✚ without prejudice to questions of jurisdiction the offence should cover corruption with regard to officials of any State or international organisation
- ✚ **thorough evaluation mechanism** through the **Working Group on Bribery** (three phases: adequacy of legislation, effectiveness of implementation, enforcement).





3. UN Convention against Corruption (UNCAC)

- ✚ adopted in October 2003 and entered into force on 14 December 2005
- ✚ ever first global instrument tackling fighting corruption.
- ✚ covers four main strands: prevention, criminalisation and law enforcement, international cooperation and asset recovery.
- ✚ **EU accession in September 2008** by Council Decision 2008/801/JHA.
- ✚ **review mechanism** set up in 2009 and divided in two review cycles (first, ongoing, covering criminalisation, law enforcement and international cooperation; second cycle on prevention and asset recovery).
- ✚ EU committed to support a **strong mechanism for the review of implementation.**
- ✚ EU does not yet take part in the UNCAC review mechanism.





UN Convention against transnational organised crime (UNTOC)

- + adopted in November 2000 and entered into force in September 2003
- + **concluded on behalf of the EU** in April 2004
- + aims to enable law enforcement authorities to **cooperate effectively in combating organised crime** by eliminating differences and different definitions of crimes among national legal systems
- + States parties to ensure that **four serious types of crime** are regarded as a crime in their domestic laws: participation in an organised criminal group, money laundering, corruption, and the obstruction of justice
- + UNTOC only deals with organised crime and public sector corruption
- + improves **co-operation on extradition**, mutual legal assistance, transfer of proceedings and joint investigations; provisions for victim and witness protection, shielding legal markets from infiltration by organised criminal groups.



Questions?

THANK YOU!

