



EUROPEAN COMMISSION

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## **THE FIGHT AGAINST CORRUPTION – EUROPEAN UNION**

### European Union Instruments

Although the European Union has not adopted any legislation directed specifically against corruption among justice and security officials, it has for some time recognised the need for action to combat corruption in general. The first significant such action was the adoption in September 1996 of the First Protocol to the Convention on the Protection of the European Communities' Financial Interests. This Protocol provided for the criminalisation of both active and passive bribery of national and Community officials which damages or is likely to damage the financial interests of the Community. Under this Protocol Member States also undertook to criminalise participation and instigation of corruption of officials and to ensure the offences became punishable by effective proportionate and dissuasive criminal sanctions. The Protocol also provides for criminal liability of heads of business for active corruption and has provisions providing for extradition and prosecution of corruption offences.

This was followed in May of the following year by a Corruption Convention. This also criminalised active and passive corruption of national and Community officials but went further in providing that the offence did not require that the financial interests of the Community be put at risk. This was an important development because it showed a recognition that corruption of public officials was in itself regarded as totally unacceptable behaviour. The corruption itself was damage enough, and proof of financial and other damages was not necessary.

A number of important anti-corruption provisions were also contained in the Second Protocol to the Corruption Convention adopted in June 1997. These include making corruption of officials a money laundering offence and providing for liability of legal persons for active corruption of officials.

These instruments taken together constitute a considerable body of EU anti-corruption legislation. The instruments chosen being conventions, they need ratification in each EU Member State, a

process which is not yet complete but has begun. Many Member States who have not yet ratified are at present in the process of preparing legislation and it is hoped that we will see all these instruments fully in effect in the near future.

The distinction between public and private sector corruption is not perhaps as clear as it might have been some years ago. With growing privatisation, and increasing importance of the operation of international markets to the everyday lives of people, the distinction has become more clouded. An important step towards recognition of this fact was the adoption in 1998 of a Joint Action on corruption in the private sector. The Joint Action starts from the premise that active or passive corruption of a person in the course of business activities is to be a criminal offence. This broad approach is however limited by the imposition of a minimum requirement to criminalise bribery involving distortion of competition, at least within the Common Market, and which could result in economic damage to others through the improper award or improper execution of a contract. The Joint Action also contains provisions on the liability of legal persons.

### Union Policy against corruption

Within the Union there is also a recognition that to fight corruption effectively a criminal law response is valuable but not sufficient. An integrated anti-corruption policy is required.

This was recognised by the European Parliament in its resolution of 15 December 1995 which stressed the threat posed by corruption and its links with organised crime, and called for a Union policy against corruption. The Action Plan against Organised Crime endorsed by the European Council in June 1997 also called for a comprehensive policy against corruption. At the same time, work on strategies against corruption were under discussion at G7, OECD, Council of Europe, United Nations and the WTO.

In response to, and in anticipation of those developments, in May 1997 the European Commission issued a communication to the Council and the European Parliament on a Union Policy against Corruption. That communication recognised that Union interests are affected by corruption because it :

- undermines sound decision making,
- distorts competition and challenges principles of open and free markets, in particular the proper functioning of the internal market,

- damages the financial interests of the European Community,
- adversely affects external policies in respect of a number of states receiving assistance, and
- is at variance with the transparent and open conduct of international trade.

The Union therefore has an interest in a coherent strategy on corruption both within and outside its borders, which should encompass international trade and competition, development cooperation policies and the pre-accession strategy to prepare new Member States for EU membership.

The communication endorses the criminal law response to corruption taken within the Union as well as work in progress in other international fora such as OECD and Council of Europe. It also proposes a comprehensive strategy involving preventive measures across a range of community activities. These include measures related to taxation policy and the question of the abolition of tax deductibility for bribes within the Member States. In relation to the Single Market and other internal policies, measures include examination of how the application of public procurement provisions can be improved to fight corruption, how accounting and auditing directives can be made more effective in the fight against corruption, and how persons or entities who have engaged in corruption can be excluded from benefiting from Community funds.

In relation to external aid and assistance, the communication argues for the establishment of a coherent anti-corruption policy in the area of cooperation with third countries benefiting from EC assistance and who have concluded cooperation or assistance agreement with the EC. The strategy includes promotion of transparency, good governance, an independent judiciary and provides technical assistance for establishing appropriate legislation, efficient procurement and control mechanisms.

Of particular importance is the anti-corruption programme for applicant countries of Central and Eastern Europe. In the framework of Europe Agreements and the Accession Partnership, initiatives are under way under the PHARE programme to improve the fight against organised crime in the applicant countries. These include programmes which have a specific anti-corruption focus such as the Catch-up Facility for the countries of Bulgaria, Rumania, Lithuania, Latvia, Slovakia, and the OCTOPUS II programme jointly financed with the Council of Europe. This programme is intended as an important element in contributing to the setting up of a legal and institutional framework for enabling the countries of Central and Eastern Europe to combat corruption.

In response to the call in the Action Plan on combating organised crime for a comprehensive EU policy against corruption, a report on the implementation of the Commission's communication on Corruption was submitted to the European Council in Cardiff in 1998 together with a report on the criminal law response. The European Parliament in a resolution of 6 October 1998 also supported the Commission's communication on a Union Policy against Corruption and asked the Commission to submit to it before the end of 1999 a timetable for its implementation.

#### EU Role in international measures against corruption

The European Union has also actively participated in and supported the international effort against corruption. In particular, it participated, on the basis of joint positions defended by all its Member States, in the 1997 work to draw up the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions. These joint positions were important not just in terms of their statement of EU support for the establishment of these international instruments, but also in terms of the negotiation positions which they contained on issues such as scope, jurisdiction, entry into force, international cooperation and consistency and coordination with each other and with EU instruments. They thus contributed significantly to the successful conclusion of both Conventions. The EU will also participate in the mechanism established by the OECD to monitor the implementation of the Convention, as well as in other ongoing work in this forum.

The European Union has also actively participated in and supported the comprehensive work being pursued within the Council of Europe to combat corruption, in particular the Criminal Law Corruption Convention. The European Commission has also been involved in the consultation process in relation to the draft Global Programme being negotiated in the United Nations whose emphasis on prevention is very much in line with the recommendation set out in the Commission's 1997 communication.