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### **OUTCOME OF PROCEEDINGS**

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	10247/24
No. Cion doc.:	9241/24
Subject:	Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council - General approach

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At its meeting on 14 June 2024, the Council (Justice and Home Affairs) approved a general approach in respect of the above proposal for a Directive.

The text as approved by the Council is set out in the Annex. Changes with respect to the text of the Commission's proposal are marked in bold (for additions) and by strikethrough (for deletions).

The general approach will constitute the mandate for the negotiations with the European Parliament in the context of the ordinary legislative procedure.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on combating corruption, replacing Council Framework Decision 2003/568/JHA and the  
Convention on the fight against corruption involving officials of the European Communities  
or officials of Member States of the European Union and amending Directive (EU) 2017/1371  
of the European Parliament and of the Council**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1) point (d), and Article 83(1) and (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Corruption remains a significant problem at the Union level, threatening the stability and security of societies, including by enabling organised and other serious crime. Corruption undermines democratic institutions and universal values on which the Union is founded, particularly the rule of law, democracy, equality and the protection of fundamental rights. It jeopardises development, prosperity and the sustainability and inclusiveness of our economies. In order to effectively prevent and combat corruption, a comprehensive and multidisciplinary approach is required. The purpose of this Directive is to tackle corruption by means of criminal law, allowing for better cross-border cooperation between competent authorities.

- (2) Council Framework Decision 2003/568/JHA<sup>1</sup> lays down requirements on the criminalisation of corruption concerning the private sector. The Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union<sup>2</sup> addresses certain acts of corruption involving officials of the European Communities or officials of the Member States in general. These instruments are, however, not sufficiently comprehensive, and the current criminalisation of corruption varies across Member States hampering a coherent and effective response across the Union. Enforcement gaps and obstacles in cooperation between the competent authorities of different Member States have also emerged. This Directive aims to amend and expand the provisions of those instruments. Since the amendments to be made are of substantial number and nature, both instruments should, in the interests of clarity, be replaced in their entirety in relation to the Member States bound by this Directive.
- (3) The existing legal framework should be updated and strengthened to facilitate an effective fight against corruption across the Union. This Directive aims to criminalise corruption offences when committed intentionally. Intention and knowledge may be inferred from objective and factual circumstances. As this Directive provides for minimum rules, Member States remain free to adopt or maintain more stringent criminal law rules for corruption offences.
- (4) Corruption is a transnational phenomenon that affects all societies and economies. Measures adopted at national or Union level, should recognise this international dimension. Union action should therefore take into account the work of the Group of States against Corruption of the Council of Europe (GRECO), the Organisation for Economic Cooperation and Development (OECD) and the United Nations Office against Drugs and Crime (UNODC).

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<sup>1</sup> Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192/54, 31.7.2003).

<sup>2</sup> Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2).

- (5) To **effectively tackle** ~~root out~~ corruption, both preventive and repressive mechanisms are needed. Member States are encouraged to take a wide range of preventive, legislative and cooperative measures as part of the fight against corruption. Whereas corruption is first and foremost a crime and specific ~~acts of~~ corruption **offences and corruption related offences** are defined in national and international law, failings in integrity, undisclosed conflicts of interests or serious breaches of ~~ethical~~ **integrity** rules can ~~become~~ **result in corruption activities offences** if left unaddressed. **Prevention of corruption refers to the identification assessment, and mitigation of corruption risks, through development and implementation of a system of appropriate measures.** The prevention of corruption mitigates the need for criminal repression and has wider benefits in promoting public trust and managing the conduct of public officials. Effective anti-corruption approaches often build on measures to enhance transparency, ~~ethics~~ and integrity, as well as by regulating in areas such as conflict of interest, lobbying and revolving doors. Public bodies should seek the highest standards of integrity, transparency and ~~independence~~ **freedom from undue influence** as an important part of tackling corruption more broadly. **As the private sector also plays a key role in preventing and detecting corruption, Member States can encourage the elaboration and implementation of robust and effective compliance mechanisms within private companies. In order to ensure a common approach regarding the effectiveness of such compliance programs, which can include notably a risk map, a code of conduct, third-party evaluation as well as internal control and audit, Member States can cooperate in elaborating common guidelines.**

- (6) **Without prejudice to their institutional and administrative autonomy**, Member States should have in place bodies or **organisational** units ~~specialised in~~ **tasked with** the repression and ~~specialised in~~ the prevention of corruption. Member States ~~may~~ **are not obliged to create new bodies or organisational units, including the creation of specialised courts or tribunals, under this Directive, and can** decide to entrust ~~a the~~ **the same body or organisational unit** with ~~both a combination of~~ preventive and **repressive law enforcement** functions as well as **with tasks related to other criminal offences, such as organised crime. In accordance with the principle of Member States' autonomy, such bodies or units do not necessarily need to be central bodies or organisation units. In full respect of Member States' institutional and administrative autonomy, when such anti-corruption bodies have a power to take decisions on cases brought to their attention or identified by them, or make any recommendations as they consider necessary, they should operate without undue interference.** In order to ensure that these bodies **or units** operate effectively, ~~they should meet a number of conditions, including having the independence,~~ **Member States should ensure that** resources and powers **allocated to those bodies and organisational units** ~~that are commensurate necessary to~~ ensure the proper administration of their tasks.

- (7) The EU is a party to the United Nations Convention Against Corruption (UNCAC), which is the most comprehensive international legal instrument to combat corruption, combining measures to prevent and fight corruption. It requires that parties to the Convention take legislative and other measures to establish criminal offences for bribery, misappropriation and money laundering and consider taking legislative or other measures to criminalise other acts (such as abuse of functions, trading in influence and illicit enrichment). In line with the commitments contained in the Political Declaration adopted at the 2021 UN General Assembly Special Session against Corruption, the European Union should, to the extent possible **and in line with the ultima ratio principle**, go beyond the minimum requirements of UNCAC and lay down additional measures for preventing and combating corruption. This Directive draws on the observations and best practices emanating from the Mechanism for the Review of Implementation of the UNCAC.
- (8) Taking account of the evolution of corruption threats and the legal obligations on the Union and Member States under international law, as well as the development of national legal frameworks, the definition of corruption **offences** should be further approximated in all Member States so that it covers corrupt conduct more comprehensively.

- (9) To avoid impunity for corruption offences in the public sector, the scope of application needs to be well defined. First of all, the concept of public official should also cover **relevant** persons working in international organisations, including the institutions, agencies and bodies of the European Union and international courts. ~~This should, amongst other things, encompass persons acting as members of collegial bodies responsible for deciding on the guilt of an accused person in the framework of a trial, as well as persons who by virtue of an arbitration agreement are called upon to render a legally binding decision in disputes submitted by the parties to the arbitration agreement.~~ Secondly, many entities or persons nowadays exercise public functions without holding a formal office. Therefore, the concept of public official is defined to cover all relevant officials, whether appointed, elected or employed on the basis of a contract, holding a formal administrative or judicial office, as well as all persons providing a **public** service, which have been vested with public authority or who are subject to the control or supervision of public authorities in relation to the carrying out of such a **public service function**, even if they do not hold formal office. For the purposes of this Directive, the definition should cover persons ~~working~~ **performing public service functions** in state-owned and state-controlled enterprises, as well as in asset management foundations and privately-owned companies performing public service functions and **in** the legal persons established or maintained by them. Any person holding a legislative office **at national, regional or local level** should be ~~treated~~ **assimilated to a national** as a public official for the purposes of this Directive **in accordance with national law**.

- (9a) **High level officials should be understood as persons who exercise key executive, administrative, legislative or judicial functions. These tasks can include actively participating in the development and/or the execution of governmental functions, determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure and taking decisions on appointment of individuals to key executive, administrative, legislative or judicial functions, as well as deciding on court cases. High level officials can include national officials such as heads of central and regional government, members of central and regional government, deputy ministers, state secretaries, key political advisers, heads and members of a minister's private office or cabinet when such have been established, as well as members of parliamentary chambers, members of Constitutional and Supreme Courts, the Prosecutor General, and members of Supreme Audit Institutions.**
- (10) It is necessary to strengthen the legal framework to combat bribery and to provide law enforcement and prosecution with the ~~necessary~~ **effective and proportionate** tools. In bribery of public officials, there are two sides to distinguish. Active bribery exists when a person promises, offers or gives an **undue** advantage of any kind to influence a public official. Passive bribery exists when the public official requests or receives such **undue** advantages, **or accepts the offer or the promise thereof** in order to act or to refrain from acting in a certain way. This Directive should also set minimum rules on bribery and other forms of corruption in the private sector, where the immediate victims include companies that are impacted unfairly and where free competition is **can be** diminished by ~~each~~ **payments offered or accepted**.



- (10a) **Conduct in breach of professional duties by directors or workers of private-sector entities in the course of economic, financial or business activities can be detrimental to the interests of the private-sector company, and can also distort competition in relation to the purchase of goods or commercial services to the detriment of both would-be competitors and the general public. The offence of bribery in the private sector aims to deter both kinds of harm. It does so by preventing third parties from interfering in the fair conduct of business by promising, offering or giving any undue advantage to directors or workers of private-sector entities for them to act or to refrain from acting, in breach of their duties (active bribery). The offence also forbids directors and workers of private-sector entities to request or receive any undue advantage, or to accept the offer or the promise thereof, to act or to refrain from acting, in breach of that person’s duties (passive bribery). The concept of “breach of duty” shall be understood in accordance with national constitutions, law or other applicable rules and should cover as a minimum the breach of statutory duties and professional regulations or instructions, which apply within that business.**
- (11) In order to ensure that public officials do not intentionally **damage the financial interests of the public or private entity concerned by using** funds for purposes other than they were intended, it is necessary to lay down rules on the offence of misappropriation by public officials of property whose management is entrusted to them. **In order for misappropriation to be criminal, it should lead to an advantage for the public official or a third party.** In order to take a comprehensive approach to the fight against corruption, ~~this Directive should~~ **Member States are also encouraged to cover criminalise** misappropriation in the private sector. ~~In order for misappropriation to be criminal, it should lead to an advantage for the public official or a third party.~~

- (12) ~~Trading in influence, arising from the corrupt behaviour of those persons who are or claim to be in the proximity of power and try to exchange promises of exerting influence over decision-making processes in return for undue advantages should also be defined as a criminal offence. The constituent elements of the criminal offence should be that the instigator provides, or promises to provide the influence peddler with an undue advantage for exerting unlawful influence over an outcome or a process that is subject to decision-making. When carried out intentionally, this behaviour should be considered~~ **The exertion of influence over public decision-makers with a view to obtaining an undue advantage can seriously hamper the proper functioning of public administrations. To adequately tackle it, the constituent elements of the offence of trading in influence must cover two different situations, when carried out intentionally. First, the offence must cover the promising, offering or giving of any undue advantage aimed at the exertion of illicit influence with a view to obtaining an undue advantage from a public official. Secondly, it must also cover the request, receipt of any undue advantage, or the acceptance of an offer or a promise thereof, with a view to obtaining an undue advantage from a public official. Such conduct must constitute** a criminal offence irrespective of whether the influence was exerted and whether or not the ~~claimed~~ influence ~~leads~~ led to the outcome intended. This offence should not cover the legitimate exercise of acknowledged forms of interest representation which may seek to legitimately influence public decision-making but do not entail an undue exchange of advantages. Such forms of interest representation, such as advocacy ~~for example~~, are often carried out in a regulated environment precisely for avoiding that a lack of transparency may allow them to become gateways to corruption. Having in place well-functioning additional rules on disclosing conflicts of interest, on ‘revolving-doors’ or on the financing of political parties, can also help to avoid grey areas and prevent undue influence.

- (13) Moreover, ~~it is necessary to define~~ the offence of abuse of functions in the public sector ~~as a~~ **is the** failure to perform an act by a public official, in violation of laws, to obtain an undue advantage. **Member States should consider criminalising such conducts at national level.** ~~In order to comprehensively fight corruption, this Directive should also cover abuse of functions in the private sector.~~
- (14) **Members States' criminal law acknowledges** Obstruction of justice ~~is as~~ a criminal offence committed in support of, **amongst other offences**, corruption. It is therefore necessary to ~~lay down a criminal offence for~~ **incriminate** the obstruction of justice, which entails the exercise of physical force, threats or intimidation, or the inducement of false testimony or evidence. Actions to interfere in the giving of testimony or production of evidence, or with the exercise of official duties by judicial or law enforcement officials should also be covered. In line with the UNCAC, this Directive only applies to the obstruction of justice concerning proceedings relating to a corruption offence. **When transposing this Directive, Member States should not be obliged to lay down a specific offence of obstruction of justice relating to corruption offences as established in chapter 2 of this Directive, where their national law includes a general provision incriminating the obstruction of justice, applicable to all offences, including, but not limited to, corruption. Member States are also free to criminalise such conducts through several criminal offences at national level.**

- (15) Corruption feeds off the motivation for undue economic and other advantages. In order to reduce the incentive for individuals and criminal organisations to commit new criminal acts and deter individuals from consenting to becoming fake property owners, enrichment by corruption offences should be criminalised. This should, in turn, complicate the concealment of illicitly acquired property and reduce the spread of corruption as well as the damage done to society. Transparency helps competent authorities to detect possible illicit enrichment. For example, in jurisdictions where public officials are required to declare their assets at regular intervals, including when taking up and completing duties, authorities can assess whether the declared assets correspond to declared incomes.

(16) The criminal offence of enrichment ~~builds upon the rules on the criminal offence of money laundering laid down in Directive (EU) 2018/1673 of the European Parliament and of the Council<sup>3</sup>. It is meant to~~ **incriminate the deed of a public official who acquires, possesses or uses property which the public official knows to be derived from corruption offences committed by a different public official** ~~address those cases where the judiciary considers that the corruption offence or offences cannot be proven. Like the predicate offence in money laundering, the burden of proof is of a different nature. This means that in criminal proceedings regarding the criminal offence of enrichment, The offence of illicit enrichment is without prejudice to the conduct provided for in Article 3 of the Directive (EU) 2018/1673 of the European Parliament and of the Council on combating money laundering by criminal law, and in particular paragraph 5 thereof, where applicable. W~~hen considering whether property is derived from any kind of criminal involvement in a corruption offence and whether the person had knowledge of that, the specific circumstances of each case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of property occurred within the same time frame. It should not be necessary to establish knowledge of all the factual elements or all circumstances relating to the criminal involvement, including the identity of the perpetrator. ~~When a person is convicted of a criminal offence as defined in this Directive~~ **In addition, the proceeds obtained from corruption offences can be confiscated** ~~the competent authorities can recover the illicitly obtained property on the basis of Directive 2021/41260/EU of the European Parliament and of the Council of 3-24 April 2024~~ **2024** ~~on the freezing asset recovery and confiscation of instrumentalities and proceeds of crime in the European Union<sup>4</sup>.~~

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<sup>3</sup> ~~Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).~~

<sup>4</sup> **Directive (EU) 2021/42/EU1260** of the European Parliament and of the Council of **324** April 20**14** on **the freezing asset recovery** and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127/39, 29.4.2014, p. 39).

- (17) In order to deter corruption throughout the Union, Member States should lay down minimum types and levels of ~~sanctions~~ **criminal and non criminal penalties** when the criminal offences defined in this Directive are committed. The maximum levels of imprisonment and other penalties should be sufficiently high to deter possible offenders and to reflect the harmfulness of corruption ~~and the priority that the competent authorities should give to combat such offences~~. At the same time, these levels should be proportionate to the seriousness of each corruption offence and be coherent with levels of criminal ~~sanctions~~ **penalties** set in Union and national law. Member States should ensure that ~~sanctions~~ **penalties** are enforced to the extent necessary in order to deter the commission of those offences. ~~Where the Member States consider~~ **If national law establishes** the eventuality of suspended or conditional sentences, early release, parole or pardoning of persons convicted of any of the offences referred to in this Directive, judicial authorities should be able to take into account the seriousness of the criminal offences concerned among other factors. **This directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.**
- (18) This Directive does not affect the proper and effective application of disciplinary measures or penalties other than those of a criminal nature, such as administrative ~~sanctions~~ **penalties**. ~~Sanctions~~ **Penalties** that cannot be equated to criminal ~~sanctions~~ **penalties**, which are imposed on the same person for the same conduct, can be taken into account when sentencing that person for a criminal offence defined by this Directive. ~~For sanctions of criminal nature,~~ **T**he principle of prohibition of being tried or punished twice in criminal proceedings for the same criminal offence (ne bis in idem) should be fully respected.

- (19) The competent authorities should be able to impose, in addition or as an alternative to imprisonment, ~~sanctions~~ **penalties** or measures, that are not necessarily of a criminal nature, such as the ~~temporary or permanent disqualification from holding public office or the exclusion from public procurement~~ **tender procedures**. Such measures have a general dissuasive effect and may reduce the recidivism of convicted offenders. Member States should also consider establishing procedures for the suspension or temporary reassignment of a public official accused of a criminal offence as referred to in this Directive, bearing in mind the need to respect the principle of the presumption of innocence and the right to an effective remedy.
- (19a) In order to enhance the criminal justice response to offences concerning corruption and to deter the commission of those offences, the sanctions regime against legal persons and natural persons should be clarified and brought in line with other Union criminal law instruments. Under to Directive 2014/24/EU, Directive 2014/25/EU, Directive 2014/23/EU and Directive 2009/81/EC, a conviction, by way of final judgement, for corruption is grounds for an exclusion from participating in a procurement procedure or a concession award procedure. Nevertheless, Member States should also be able to decide to include, among the criminal or non-criminal sanctions or measures which can be imposed on legal persons and natural persons, the exclusion of such legal persons from tender procedures or concessions, in order to also cover procurements and concessions below the thresholds of the relevant directives.**
- (20) Legal persons should not be able to avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a public official on its behalf. Moreover, fines for legal persons should be calculated considering ~~their~~ worldwide turnover of all legal entities related to the offender, ~~including parent entities, subsidiary entities, linked trusts, or similar or comparable legal entities.~~ **or based on fixed maximum amounts.**

- (21) Where the offence is committed by a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA<sup>5</sup> or where the perpetrator abused their position to enable corruption, **it is important that courts are able to take this into account as** ~~Member States should provide for~~ aggravating circumstances in accordance with the applicable rules established by their legal systems. Whilst subject to judicial discretion, these aggravating circumstances ~~should~~ allow the judiciary to take into account the broader societal damage caused, for example by corruption perpetrated by organised groups, political parties, or persons holding positions of public responsibility. Member States should not be obliged to provide for any of the aggravating circumstances in this Directive when those circumstances are punishable as separate criminal offences ~~with~~ **and this can lead to more severe sanctions penalties under national law.**
- ~~(22) Corruption for the benefit of a third country has a particularly detrimental impact on democratic institutions and political life of the Member States and the Union. Member States should thus provide for an aggravating circumstance to cover such situations. Such an aggravating circumstance should cover corruption offences, such as bribery or trading in influence, that are committed with a view to create an advantage for a third country, such as altering the public decision-making in order to come to a decision that is favourable to the third country.~~

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<sup>5</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42).



(223) ~~It is important that courts Member States should ensure that~~ **can take into account** mitigating circumstances ~~are laid down in national legislation~~ in relation to the offences covered by this Directive, **in accordance with the applicable rules established by their legal systems**. Subject to judicial discretion, these circumstances should cover those cases in which offenders provide information or otherwise collaborate with authorities. Similarly, where legal persons have implemented **genuine, effective and duly assessed** internal controls, ethics, and compliance programmes, it should be possible to consider these actions as a mitigating circumstance **when sanctioning such legal persons**. Lower ~~sanctions~~ **penalties** should also be considered where, upon discovery of an offence, a legal person swiftly discloses information and takes remedial measures. In any case, it should remain within the discretion of the judge or the court to determine the actual amount of the sanction, taking into account all the circumstances of the individual case, **including, where applicable, the fact that the legal person has compliance programmes only for cosmetic purposes, also called "window dressing"**.

(234) Members of Parliament and other public officials may have immunity or legal protection from investigation or prosecution, which helps strengthen their independence by protecting them against unfounded complaints, in particular with regard to opinions expressed or votes cast in the course of performing their functions. However, such immunities may hamper effective investigation and prosecution of corruption offences, including by affecting the detection and investigation or prosecution of other persons who do not enjoy immunity and may have participated in the offence. ~~Moreover, the application of immunity without appropriate procedures to lift immunity in cases where there are grounds to suspect participation in criminal acts undermines the credibility of public institutions.~~ There should therefore be an appropriate balance between, on the one hand, any immunities or jurisdictional privileges accorded to public officials for acts performed in the exercise of their functions, and on the other hand, the possibility of effectively investigating, prosecuting and adjudicating corruption offences. **Member States should ensure that privileges or immunities from investigation and prosecution granted to national officials for the offences referred to in this Directive can be lifted. However, Member States should not be obliged to change their national constitutions and constitutional principles when transposing this Directive. In the transposition of this Directive into national law as well as in the application of national law transposing this Directive, those privileges and immunities, including the respect for the freedom of the Member's mandate, are fully taken into account. This directive should not affect the legitimate exercise of acknowledged forms of interest representation which may seek to legitimately influence public decision-making but do not entail an undue exchange of advantages. Interest representation is important for the creation of policy that is supported by civil society and can contribute legitimately to the public sector.**

- ~~(25) In order to increase trust in prosecution services whilst reducing the perception of corruption in Member States, discretionary powers under domestic law not to prosecute persons for criminal offences referred to in this Directive on opportunity grounds should be exercised in accordance with clear rules and criteria and guarantee, with appropriate internal consultation, as well as the aim of deterring the commission of corruption offences and the effectiveness of the judicial process.~~
- (246) Given, **in particular**, the mobility of **certain** perpetrators and proceeds stemming from criminal activities, as well as the complex cross-border investigations required to combat corruption, all Member States should establish their jurisdiction in order to enable the competent authorities to investigate and prosecute this crime **effectively** ~~in a sufficient wide range of cases~~, including when the offence is committed in whole or in part in its territory. As part of that obligation, Member States should ensure that jurisdiction is also established in situations where an offence is committed by means of information system used on their territory, whether or not that technology is based in their territory.
- (257) In order to ensure that the competent authorities have sufficient time to conduct complex investigations and prosecutions, this Directive provides for a minimum limitation period that enables the detection, investigation, prosecution and judicial decision of corruption offences for a sufficient period of time after the commission of such offences, without affecting those Member States which do not set limitation periods for investigation, prosecution and enforcement.

(268) Corruption offences ~~are~~ **can be** a difficult ~~category of crime~~ to identify and investigate, as they mostly occur **in hiding** ~~as part of a conspiracy between two or more willing parties and lack an immediate and obvious victim who could complain~~. Thus, a significant proportion of corruption crime remains undetected, and the criminal parties are able to benefit from the proceeds of their corruption. The longer it takes to detect a corruption offence, the more difficult it is to uncover evidence. Therefore, it should be ensured that law enforcement and **competent authorities** ~~prosecutors~~ have appropriate investigative tools to gather relevant evidence of corruption offences which often affect more than one Member State. Furthermore, Member States should allocate sufficient training, in close coordination with the European Union Agency for Law Enforcement Training (CEPOL), also on the use of investigative tools to successfully carry out proceedings and the identification and quantification of proceeds of corruption in the context of ~~freezing~~ **asset recovery** and confiscation. In addition, this Directive facilitates the gathering of information and evidence by setting out mitigating circumstances for offenders that help the authorities. **The training of law enforcement and the judicial authority should concern criminal investigation and criminal proceedings of offences falling within the scope of this Directive.**

(279) Persons reporting information to competent authorities concerning past, ongoing or planned instances of corruption, which they have acquired in the context of their work-related activities, risk suffering retaliation in that context. Such whistleblowers' reports can strengthen enforcement by enabling the competent authorities to effectively prevent, detect and prosecute corruption. Given the public interest in shielding public and private institutions from such acts, and in enhancing transparency, good governance and accountability, it is necessary to ensure that effective arrangements are in place to enable whistleblowers to use confidential channels, to alert competent authorities and to protect them from retaliation. Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>6</sup> applies to reports of breaches affecting the financial interests of the Union as referred to in Article 325 of the Treaty and as further specified in relevant Union measures and thus applies to the reporting of all criminal offences falling within the scope of Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>7</sup>. As regards the criminal offences referred to in this Directive, Directive (EU) 2019/1937 should be applicable to the reporting of such offences and to the protection of persons reporting such offences under the conditions established therein. ~~Beyond the obligations flowing from Directive (EU) 2019/1937,~~ Competent national authorities should **furthermore** ensure that persons providing evidence or otherwise cooperating with criminal investigations are given the necessary protection, support and assistance in the context of criminal proceedings, **where appropriate. Such protection, support and assistance may include witness protection, being heard anonymously or providing legal aid.**

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<sup>6</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305 26.11.2019).

<sup>7</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the protection of the Union's financial interests by means of criminal law (OJ 198 L, 28.7.2017, p. 29).

(2830) Independent civil society organisations are crucial for the well-functioning of our democracies, and play a key role in upholding the common values on which the EU is founded. They act as essential watchdogs, drawing attention to threats to the rule of law, contributing to making those in powers accountable, and ensuring respect for fundamental rights. Member States should promote the participation of civil society in anti-corruption activities, **where appropriate**.

(2931) Media pluralism and media freedom are key enablers for the rule of law, democratic accountability, equality and the fight against corruption. Independent and pluralistic media, in particular investigative journalism, play an important role in the scrutiny of public affairs, detecting possible corruption and integrity breaches, raising awareness and promoting integrity. Member States have an obligation to guarantee an enabling environment for journalists, protect their safety and pro-actively promote media freedom and media pluralism. The Commission's Recommendation on the protection, safety and empowerment of journalists<sup>8</sup>, as well as ~~the proposal for a~~ **Directive (EU) 2024/1069**<sup>9</sup> and a Commission Recommendation<sup>10</sup> on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation') include important safeguards and standards to ensure that journalists, human rights defenders and others can carry out their role unhindered.

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<sup>8</sup> Commission Recommendation of 16 September 2021 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, C(2021)6650 final.

<sup>9</sup> **Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')**

<sup>10</sup> Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), C(2022) 2428 final.

- (3032) Member States should collect and publish data concerning the application of this Directive, which can be analysed and used by the Commission in the context of the monitoring, implementation and evaluation of the Directive, as well as the application of any of the Rule of Law tools, such as the annual Rule of Law report.
- (313) To combat corruption effectively, efficient exchange of information between competent authorities responsible for the prevention, detection, investigation or prosecution of corruption offences is crucial. Member States should ensure that information is exchanged in an effective and timely manner in accordance with national and Union law. This Directive, which aims to lay down common definitions of corruption offences, should serve as a benchmark for information exchange and cooperation between the competent national authorities under Directives (EU) XX/2023<sup>11</sup>, (EU) 2019/1153<sup>12</sup>, (EU) 2016/681<sup>13</sup> of the European Parliament and of the Council, Regulations (EU) 2018/1240<sup>14</sup>, (EU) 2018/1862<sup>15</sup> and (EU) 603/2013<sup>16</sup> of the European Parliament and of the Council, Council Decision 2008/633/JHA<sup>17</sup>.

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<sup>11</sup> See Proposal for a Directive of the European Parliament and of the Council on information exchange between law enforcement authorities of Member States, repealing Council Framework Decision 2006/960/JHA, COM/2021/782 final.

<sup>12</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA OJ L 186, 11.7.2019, p. 122.

<sup>13</sup> Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132), Annex II, point 6.

<sup>14</sup> Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1), Annex, point 7.

<sup>15</sup> Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, (OJ L 312, 7.12.2018, p. 56). Reference to corruption is made indirectly in the SIS II Council Decision by delimiting its scope with a reference to the European Arrest Warrant, for instance in Article 8.

<sup>16</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international

(324) Corruption is a cross-cutting issue, while vulnerabilities differ from sector to sector, as well as the most adequate way to tackle them. Member States should therefore, ~~regularly~~ **when necessary**, perform an assessment to identify the sectors **or occupations** most at risk of corruption and develop ~~risk management plans~~ **measures, such as national plans**, to address the main risks in the sectors identified, including by organising, ~~at least once a year~~ **as appropriate**, awareness-raising actions adapted to the specificities of the sectors **or occupations** identified. Member States that have broad national anti-corruption strategies in place, may also choose to address their ~~risk assessments and risk management plans~~ **measures** therein, as long as the risks are assessed and the measures are reviewed ~~regularly~~ **when necessary**. For instance, investor residence schemes are among the sectors that bear high risks for corruption<sup>18</sup>, and should therefore be included in the assessments of the sectors most at risk of corruption and the trainings to be conducted by Member States as provided for by this Directive.

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protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

<sup>17</sup> Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129). Reference to corruption is made indirectly in the VIS Council Decision for law enforcement by delimiting its scope with a reference to the European Arrest Warrant in recital 6.

<sup>18</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Investor Citizenship and Residence Schemes in the European Union, 23 January 2019, COM(2019) 12 final.



- ~~(35) To provide for an equivalent level of protection between the Union's and the national financial interests, the provisions of Directive (EU) 2017/1371<sup>19</sup> should be aligned with those of this Directive. To this end, the rules applicable to criminal offences affecting the Union's financial interests as regards sanctions, aggravating and mitigating circumstances and limitation periods should be equivalent to those laid down by this Directive.~~
- (336) The implementation of this Directive should ensure a level of protection of the **national** ~~Union's~~ financial interests which is equivalent to the protection of the **Union's national** financial interests.
- (347) Since the objective of this Directive, namely to subject corruption in all Member States to effective, proportionate and dissuasive criminal penalties, cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (358) The intended dissuasive effect of the application of criminal law ~~sanctions~~ **penalties** requires particular caution with regard to fundamental rights. This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the 'Charter') and in particular the right to liberty and security, the protection of personal data, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the principles of the legality and proportionality of criminal offences and ~~sanctions~~ **penalties**, as well as the principle of ne bis in idem.

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<sup>19</sup> ~~Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the protection of the Union's financial interests by means of criminal law, OJ L 198 L, 28.7.2017, p. 29.~~

(369) ~~In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Ireland has notified, by letter of 10 July 2023, its wish to take part in the adoption and application of this Directive.~~

AND/OR

~~(40) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption and application of this Directive and are not bound by it or subject to its application.]~~

(374) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Council Framework Decision 2003/568/JHA shall continue to be binding upon and applicable to Denmark.

HAVE ADOPTED THIS DIRECTIVE:

# CHAPTER 1 – GENERAL PROVISIONS

## *Article 1*

### *Subject matter and scope*

This Directive establishes minimum rules concerning the definition of criminal offences and **criminal and non criminal sanctions-penalties** in the area of corruption, as well as measures to better prevent and fight corruption.

## *Article 2*

### *Definitions*

For the purposes of this Directive, the following definitions apply:

- ~~1. ‘prevention of corruption’ refers to the detection and elimination of the causes of and conditions for corruption, through development and implementation of a system of appropriate measures, as well as deterrence against corruption-related acts.~~
12. ‘property’ means funds or assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets.

23. 'public official' means:

(a) a Union official or a national official of a Member State or of a third country,

i. 4.—'Union official' means a person who is:

~~a. a member of an institution, body, office or agency of the Union and the staff of such bodies shall be assimilated to Union officials.~~

~~b.~~ a. an official or other servant engaged under contract by the Union within the meaning of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (the 'Staff Regulations');

~~e.~~ b. seconded to the Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants.

**Members of an institution, body, office or agency of the Union and the staff of such bodies shall be assimilated to Union officials, in as much as the Staff Regulations do not apply to them.**

ii. 'national official' means any person holding an executive, administrative, or judicial office at national, regional or local level, whether appointed or elected, or employed on the basis of a contract, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority. Any person holding a legislative office at national, regional or local level ~~is considered~~ **shall be assimilated to a national official in accordance with national law for the purpose of this Directive.**

iii. **‘high level officials’ means public officials who are entrusted with key executive, administrative, legislative or judicial functions in accordance with national law. The provisions of this Directive concerning high level official shall be understood without prejudice to immunities and privileges established under national constitutions or laws.**

(b) any other person assigned and exercising a public service function **including those mandated by or under the authority of a public authority** in Member States or third countries, **in accordance with national law.**

(c) a person assigned and exercising a public service function for an international organisation or for an international court **in accordance with national law.**

35. **‘Arbitrator’ means any person called upon to render a legally binding decision in disputes submitted by the parties to the arbitration agreement where their status is set out in national law.**

45. **‘Juror’ means any person acting as a member of a body responsible for deciding on the guilt of an accused person in the framework of a trial, in accordance with national law.**

56. ‘breach of duty’ covers as a minimum any ~~disloyal~~ behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business of a person who in any capacity directs or works for a private sector entity.

67. ‘legal person’ means any entity having legal personality under the applicable national law, except for States or public bodies in the exercise of State authority and for public international organisations.

~~8. 'high level officials' are heads of state, heads of central and regional government, members of central and regional government, as well as other political appointees who hold a high level public office such as deputy ministers, state secretaries, heads and members of a minister's private office, and senior political officials, as well as members of parliamentary chambers, members of highest Courts, such as Constitutional and Supreme Courts, and members of Supreme Audit Institutions.~~

*Article 3*

*Prevention of corruption*

- ~~1. Member States shall take appropriate action, such as information and awareness-raising campaigns and research and education programmes, to raise public awareness on the harmfulness of corruption and reduce the overall commission of corruption offences as well as the risk of corruption.~~
- ~~2. Member States shall take measures to ensure the highest degree of transparency and accountability in public administration and public decision-making with a view to prevent corruption.~~
- ~~3. Member States shall take measures to ensure that key preventive tools such as an open access to information of public interest, effective rules for the disclosure and management of conflicts of interests in the public sector, effective rules for the disclosure and verification of assets of public officials and effective rules regulating the interaction between the private and the public sector are in place.~~

- ~~4. Member States shall adopt comprehensive and up-to-date measures to prevent corruption in both the public and private sectors, adapted to the specific risks of an area of activity. Such measures shall at least include actions to strengthen integrity and to prevent opportunities for corruption among:~~
- ~~(a) high level officials;~~
  - ~~(b) members of law enforcement and the judiciary, including measures relating to their appointment and conduct, and by ensuring adequate remuneration and equitable pay scales.~~
- ~~5. Member States shall regularly perform an assessment to identify the sectors most at risk of corruption.~~
- ~~Following that assessment, Member States shall:~~
- ~~(a) organise, at least once a year, awareness-raising actions adapted to the specificities of the sectors identified, including on ethics; and~~
  - ~~(b) develop plans to address the main risks in the sectors identified.~~
- ~~6. Where appropriate, Member States shall take measures to promote the participation of civil society, non-governmental organizations and community-based organizations in anti-corruption activities.~~

## Article 4

### *Specialised bodies*

1. ~~Member States shall take the necessary measures to ensure that one or several bodies, or organisation units specialised in the prevention of corruption is or are in place.~~
2. ~~Member States shall take the necessary measures to ensure that one or several bodies, or organisational units specialised in the repression of corruption is or are in place.~~
3. ~~Member States shall take the necessary measures to ensure that the body or bodies, or an organisation unit or units as referred to in paragraph 1 and 2:~~
  - (a) ~~are functionally independent from the government and have a sufficient number of qualified staff and the financial, technical and technological resources, as well as the powers and tools necessary to ensure the proper administration of their tasks;~~
  - (b) ~~are known to the public;~~
  - (c) ~~provide public access to relevant information on the exercise of their activities, with due regard for the protection of personal data and the confidentiality of investigations;~~
  - (d) ~~operate and take decisions in accordance with transparent procedures established by law, with the effect of ensuring integrity and accountability.~~



## *Article 5*

### *Resources*

~~Member States shall take the necessary measures to ensure that national authorities competent for the detection, investigation, prosecution or adjudication of the criminal offences referred to in this Directive are continually provided with an adequate number of qualified staff and the financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.~~

## *Article 6*

### *Training*

- ~~1. Each Member State shall take the necessary measures to ensure adequate resources for and the provision of training for its national officials to be able to identify different forms of corruption and corruption risks that may occur in the exercise of their duties and to react in a timely and appropriate manner to any suspicious activity.~~
- ~~2. Each Member State shall take the necessary measures to ensure adequate resources for and the provision of specialised anti-corruption training at regular intervals for its members of law enforcement, the judiciary and the staff of authorities tasked with criminal investigations and proceedings of offences falling within the scope of this Directive.~~

## CHAPTER 2 – CORRUPTION OFFENCES

### *Article 7*

#### *Bribery in the public sector*

1. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:
  - (a) the promise, offering or giving, directly or through an intermediary, of an **undue** advantage of any kind to a public official for that official or for a third party in order for ~~the public~~ **that** official to act or refrain from acting ~~in accordance with his duty or~~ in the exercise of that official's functions (active bribery);
  - (b) the request or receipt by a public official, directly or through an intermediary, of an undue advantage of any kind or **the acceptance of the offer or** the promise of such an advantage for ~~the public~~ **that** official or for a third party, in order for that official to act or to refrain from acting ~~in accordance with his duty or~~ in the exercise of that official's functions (passive bribery).
2. **Arbitrators and jurors shall be assimilated to public officials for the purpose of paragraph 1.**

## Article 8

### *Bribery in the private sector*

Member States shall take the necessary measures to ensure that the following conduct shall be punishable as a criminal offence, when committed intentionally and in the course of economic, financial ~~or, business or commercial~~ activities:

- (a) the promise, offering or giving, directly or through an intermediary, ~~of~~ an undue advantage of any kind to a person who ~~in any capacity~~ directs or works **in any capacity** for a private-sector entity, for that person or for a third party, in order for that person to act or to refrain from acting, in breach of that person's duties (active bribery);
- (b) the request or receipt by a person, directly or through an intermediary, of an undue advantage of any kind or **the acceptance of the offer or** the promise of such an advantage, **in order** for that person or for a third party, while ~~in any capacity~~ directing or working **in any capacity** for a private-sector entity, to act or to refrain from acting, in breach of that person's duties (passive bribery).

## Article 9

### Misappropriation

1. Member States shall take the necessary measures to ensure that the **the committing, disbursing, appropriation or use by a public official of property whose management is directly or indirectly entrusted to him contrary to the purpose for which it was intended, for that official's advantage or for the advantage of another person or entity following** ~~conduct~~ is punishable as a criminal offence, when **damaging the financial interests of the public or private entity concerned and** committed intentionally.:-
  - (a) ~~the committing, disbursing, appropriation or use by a public official of property whose management is directly or indirectly entrusted to him contrary to the purpose for which it was intended;~~
  - (b) ~~2. Member States may take the necessary measures to ensure that~~ the committing, disbursing, appropriation or use, in the course of economic, financial ~~or~~, business ~~or~~ ~~commercial~~ activities, by a person who directs or works, in any capacity, in a private sector entity, of any property whose management is directly or indirectly entrusted to him contrary to the purpose for which it was intended-, **for that person's advantage or for the advantage of another person or entity is punishable as a criminal offence, when damaging the financial interests of the public or private entity concerned and committed intentionally.**

*Article 10*

*Trading in influence*

1. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:
  - (a) the promise, offering or giving, directly or through an intermediary, of an undue advantage of any kind to **any person** ~~or a third party in order for that person~~ to exert ~~real or supposed~~ **illicit influence over a decision or measure to be taken by a public official in the exercise of that official's functions** with a view to obtaining an undue advantage from a public official;
  - (b) the request or receipt, directly or through an intermediary, of an undue advantage of any kind, or the **acceptance of an offer or a promise** of such an advantage, ~~to~~ **by any a** person ~~or a third party in order for that person~~ to exert ~~real or supposed~~ **illicit influence over a decision or measure to be taken by a public official in the exercise of that official's functions** with a view to obtaining an undue advantage from a public official.
2. In order for the conduct referred to in paragraph 1 to be punishable as a criminal offence, it shall be irrelevant whether or not the influence is exerted or whether or not the ~~supposed~~ influence leads to the intended results.

## Article 11

### *Abuse of functions*

Member States ~~shall~~ **may** take the necessary measures to ensure that ~~the following conduct is punishable as a criminal offence, when committed intentionally:~~

- ~~1.—the performance of or failure to perform an act, in violation of laws, by a public official in the exercise of his functions for the purpose of obtaining an undue advantage for that official or for a third party, is punishable as a criminal offence, when committed intentionally.;~~
- ~~2.—the performance of or failure to perform an act, in breach of duties, by a person who in any capacity directs or works for a private sector entity in the course of economic, financial, business or commercial activities for the purpose of obtaining an undue advantage for that person or for a third party.~~

## Article 12

### *Obstruction of justice*

Member States shall take the necessary measures to ensure that the following conduct is punishable as **one or several** a criminal offences, when committed intentionally:

1. the use, directly or through an intermediary, of physical force, threats or intimidation or the ~~promising~~, offering or giving of an **undue** advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding ~~concerning~~ **in relation to the commission of** any of the offences referred to in Article 7 to ~~10~~, 13 and 14;
2. the use, directly or through an intermediary, of physical force, threats or intimidation to interfere in the exercise of official duties by a person holding a judicial office or a member of law enforcement ~~concerning~~ **in relation to the commission of** any of the offences referred to in Article 7 to ~~10~~, 13 and 14.

*Article 13*

*Enrichment from corruption offences*

Member States shall take the necessary measures to ensure that the intentional acquisition, possession or use by a public official of property that that official knows, **at the time of receipt, that the property** is derived from the commission **by another public official** of any of the offences set out in Articles 7 to **10**, 12 and 14, is punishable as a criminal offence, ~~irrespective of whether that official was involved in the commission of that offence.~~

*Article 14*

*~~Incitement and, aiding and abetting, and attempt~~*

1. Member States shall take the necessary measures to ensure that inciting any of the offences referred to in Articles 7 **to 10 and 12** to 13 is punishable as a criminal offence.
2. Member States shall take the necessary measures to ensure that aiding and abetting any of the offences referred to in Articles 7 **to 10 and 12** to 13 is punishable as a criminal offence.
- ~~3. Member States shall take the necessary measures to ensure that attempting any of the offences referred to in Articles 9 and 11 to 13 is punishable as a criminal offence.~~

*Article 15*

*Penalties and measures for natural persons*

1. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles **7 to 10, and 12** to 14 are punishable by effective, proportionate and dissuasive criminal penalties.
2. Member States shall take the necessary measures to ensure that:
  - (a) the criminal offences referred to in Articles 7, **where the act to be performed by the official is in breach of that official's duties**, and **9(a)** ~~12~~ are punishable by a maximum term of imprisonment of at least ~~six~~ **four** years;
  - (b) the criminal offences referred to in Articles 7, **where the act to be performed by the official is not in breach of that official's duties**, ~~8 to~~ **9(b) and 10** ~~11~~ are punishable by a maximum term of imprisonment of at least ~~five~~ **three** years; and
  - (c) the criminal offence referred to in Article 13 is punishable by a maximum term of imprisonment of at least ~~four~~ **two** years.



3. ~~Where a criminal offence referred to in Article 9 involves damage of less than EUR 10 000 or an advantage of less than EUR 10 000, Member States may provide~~ **that conduct described in Article 9 does not constitute a criminal offence where the advantage or damage involved is less than EUR 10 000**~~for sanctions other than criminal sanctions.~~
4. Without prejudice to paragraphs 1 ~~to 3~~ **and 2**, Member States shall take the necessary measures to ensure that natural persons who have ~~been convicted of committing one of the criminal offences referred to in Article 7 to 10 and 12 to 14~~ may be subject to **additional criminal or non-criminal sanctions penalties** or measures **that are proportionate to the gravity of the conduct** ~~imposed by a competent authority and that are not necessarily of a criminal nature, including~~ **which may include the following:**
- (a) fines;
  - (b) the removal, suspension and reassignment from a public office;
  - (c) the disqualification from
    - (i) holding a public office;
    - (ii) exercising a public service function;
    - (iii) holding office in a legal person owned in whole or in part by that Member State;
    - (iv) **the practice of business** ~~exercise of commercial activities that resulted in or enabled the relevant offence in the context of which the offence was committed;~~
  - (d) ~~deprivation of the right to stand for elections, proportionate to the seriousness of the offence committed; and~~
  - (**ed**) ~~withdrawal of permits or~~ **and** ~~authorisations to pursue activities in the context of which the offence was committed that resulted in or enabled the relevant offence; and~~

- (fe) exclusions from access to public funding, including tender procedures, grants, and concessions **and licenses.**;

## *Article 16*

### *Liability of legal persons*

1. Member States shall ~~take the necessary measures to~~ ensure that legal persons can be held liable for ~~any of the criminal~~ offences referred to in Articles 7 to **10 and 12 to 14** ~~when such offences are~~ committed for the benefit of those legal persons by any ~~natural~~ person, ~~acting either individually or as part of an organ of the legal person, and having~~ **who has** a leading position within the legal person **concerned, acting either individually or as part of an organ of that legal person,** based on one or more of the following:
  - (a) a power of representation of the legal person;
  - (b) ~~the an~~ authority to take decisions on behalf of the legal person; or
  - (c) ~~the an~~ authority to exercise control within the legal person.
2. Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, ~~including by any of the persons under his authority, of any of the~~ **criminal of an** offence referred to in Articles 7 to **10 and 12 to 14** ~~10 and 12 to~~ for the benefit of ~~that the~~ legal person **by a person under its authority.**
3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who **commit** ~~are perpetrators,~~ inciters or **are** accessories ~~in to~~ the criminal offences referred to in Articles 7 to **10 and 12 to 14.**

Article 17

*Sanctions Penalties and measures for legal persons*

1. Member States shall take the necessary measures to ensure that a legal person held liable for ~~criminal offences~~ pursuant to Article 16 (1) or 16 (2) ~~are~~ **is** punishable by effective, proportionate and dissuasive ~~criminal or non-criminal sanctions~~ **penalties or measures**.
2. Member States shall take the necessary measures to ensure that ~~sanctions~~ **penalties** or measures for legal persons **held** liable pursuant to Article 16 (1) or 16 (2) **for the offences referred to in Articles 7 to 10 and 12 to 14 shall include criminal or non-criminal fines, the amount of which shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned, and may include other criminal or non-criminal penalties or measures that are proportionate to the gravity of the conduct, such as:**
  - ~~(a) criminal or non-criminal fines, the maximum limit of which should not be less than 5 percent of the total worldwide turnover of the legal person, including related entities, in the business year preceding the decision imposing the fine;~~
  - ~~(ab) the exclusion of that legal person from entitlement to public benefits or aid;~~
  - ~~(be) the temporary or permanent exclusions from access to public procurement funding, including tender procedures, grants, concessions and licences;~~
  - ~~(cd) the temporary or permanent disqualification of that legal person from the exercise of commercial practice of business activities;~~
  - ~~(de) the withdrawal of permits or and authorisations to pursue activities in the context of which that resulted in or enabled the relevant offence was committed;~~
  - ~~(ef) the possibility for public authorities to annul or rescind a contract with them, in the context of which the offence was committed;~~

- (fg) ~~the placing of that legal person~~ under judicial supervision;
- (gh) ~~the judicial winding-up of that legal person~~; and
- (hi) ~~the temporary or permanent closure of establishments which have been used for committing the offence.~~

**3. Member States shall take the necessary measures to ensure that, at least for legal persons held liable pursuant to Article 16(1), the offences referred to in Articles 7 to 10, and 13 are punishable by criminal or non-criminal fines, the amount of which shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of such fines is not less than:**

- (a) 5% of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine, for the offenses referred to in Articles 7 to 9.**
- (b) 3% of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine, for the offenses referred to in Articles 10, 12 and 13.**

**or, alternatively**

- (c) an amount corresponding to EUR 40 million for offences referred to in Article 7 to 9, and EUR 24 million for offences referred to in Article 10, 12 and 13.**

**Member States may establish rules for cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine.**

*Article 18*

*Aggravating ~~and mitigating~~ circumstances*

~~1.~~—**To the extent that the following circumstances do not already form part of the constituent elements of the criminal offences referred to in Articles 7 to 10, 12 and 13,** Member States shall take the necessary measures to ensure that, **in relation to the relevant offences referred to in Articles 7 to 10 and 12 to 14, one or more of the following** circumstances ~~are~~ **may, in accordance with national law,** ~~to~~ be regarded as aggravating circumstances, in relation to the offences referred to in Articles 7 to **10 and 12 to 14**:

- (a) the offender is a high level official;
- (b) the offender has **previously been convicted by a final judgment** ~~before of an~~ offences of the same nature ~~referred to as those under~~ Articles 7 to **10 and 12 to 14**;
- (c) the offender obtained a substantial benefit or the offence caused substantial damage, **to the extent that they can be determined**;
- ~~(d) the offender committed the offence for the benefit of a third country;~~
- (**ed**) the offender exercises investigation, prosecution or adjudication functions;
- (~~fe~~) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA<sup>20</sup>; and

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<sup>20</sup> **Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300/42.**

~~(g) the offender is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 of the European Parliament and of the Council<sup>21</sup>, or an employee of an obliged entity, or has the power, whether individually or as part of an organ of the obliged entity, to represent that entity, or the authority to take decisions on behalf of that entity or to exercise control within the obliged entity, and has committed the offence in the exercise of his professional activities.~~

### *Article 18a*

#### *Mitigating circumstances*

~~2-~~ Member States shall take the necessary measures to ensure that, in relation to the relevant offences referred to in Articles 7 to 10 and 12 to 14, one or more ~~several~~ of the following circumstances ~~are~~ may, in accordance with the relevant provisions of national law, be regarded as mitigating circumstances, ~~in relation to the criminal offences referred to Articles 7 to 14:~~

- (a) the offender provides the competent authorities with information which they would not otherwise have been able to obtain, helping them to
  - (i) identify or bring to justice ~~the~~ other offenders; or
  - (ii) find evidence

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<sup>21</sup> Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117).

- (b) **unless it constitutes a ground for exclusion of liability**, where ~~the offender~~ is a legal person **is held liable for any of the offences referred to Articles 7 to 10 and 12 to 14** and it has implemented effective internal controls, ethics awareness, and compliance programmes to prevent corruption prior to or after the commission of the offence; and
- (c) where ~~the offender~~ is a legal person **is held liable for any of the offences referred to Articles 7 to 10 and 12 to 14** and it has, once the offence has been discovered, rapidly and voluntarily disclosed the offence to the competent authorities and taken remedial measures.

**The mitigating circumstances referred to in points (b) and (c) ~~should be~~ are only applicable to legal persons.**

#### *Article 19*

##### *Privileges or immunity from investigation and prosecution of corruption offences*

**Unless it is contrary to their legal systems, constitutions and constitutional principles**, Member States shall take the necessary measures to ensure that privileges or immunities from investigation and prosecution granted to national officials for the offences referred to in this Directive can be lifted ~~through an objective, impartial, effective and transparent process pre-established by law, based on clear criteria, and that is concluded within a reasonable timeframe.~~

*Article 20*

*Jurisdiction*

1. **Each** Member States shall **take the necessary measures to** establish **its** jurisdiction over the offences referred to in this Directive where:
  - (a) the offence ~~was~~ is committed in whole or in part **within** ~~in~~ **its** territory;
  - (b) the offender is **one of its** ~~a~~-nationals ~~of or has his or her habitual residence in that~~ **Member State**;
  - ~~(c) the offence is committed for the benefit of a legal person established in the territory of that Member State.~~
  
2. **A Member State shall inform the Commission where it decides to extend its jurisdiction to one or more offences referred to in this Directive which have been committed outside its territory, where:**
  - (a) **the offender is an habitual resident in its territory;**
  - (b) **the offence is committed against one of its nationals or its habitual residents;**
  - (c) **the offence is committed for the benefit of a legal person established in its territory;**
  - (d) **the offence is committed for the benefit of a legal person in respect of any business done in whole or in part on its territory.**



- ~~2.3.~~ Where an offence referred to in this Directive falls within the jurisdiction of more than one Member State, ~~the~~ **those** Member States concerned shall cooperate to determine which ~~one shall~~ **Member State is to** conduct ~~the~~ criminal proceedings. The matter shall, where appropriate and in accordance with Article 12 of Council Framework Decision 2009/948/JHA<sup>22</sup>, be referred to Eurojust.
- 3.4. In ~~the~~ cases referred to in paragraph 1, point (b), ~~each~~ Member States shall **take the necessary measures to** ensure that the exercise of **their** ~~its~~ jurisdiction is not subject to the condition that a prosecution can be initiated only following a denunciation from the State **of the place where** ~~in which~~ the criminal offence was committed or following a report made ~~by the victim~~ in the State where the criminal offence was committed.

#### *Article 21*

##### *Limitation periods for ~~corruption offences~~*

1. Member States shall take the necessary measures to provide for a limitation period **that enables the investigation, prosecution, trial and adjudication** ~~in respect of~~ the criminal offences referred to in Articles 7 to 10 and 12 to 14, ~~which allows for a sufficient period of time to effectively investigate, prosecute, trial and decide on those offences following their commission~~ **after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.**

**Member States shall take the necessary measures to provide for a limitation period that enables the enforcement of penalties imposed following a final conviction for criminal offences referred to in Articles 7 to 10 and 12 to 14 for a sufficient period of time after that conviction.**

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<sup>22</sup> Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

2. The limitation period referred to in paragraph 1, **first subparagraph**, shall ~~not be shorter than~~ **as follows**:
- (a) ~~fifteen~~ **at least five** years from the time when the offence was committed, for the criminal offences ~~referred to in Articles 7 and 12~~ **punishable by a maximum term of imprisonment of at least four years**;
  - (b) ~~ten~~ **at least three** years from the time when the offence was committed, for the criminal offences ~~referred to in Articles 8, to 11~~ **punishable by a maximum term of imprisonment of at least two years**;
  - (c) ~~eight years from the time when the offence was committed, for the criminal offences referred to in Articles 13 and 14.~~
3. ~~By way of derogation from paragraph 2, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts and that the applicable rules on the suspension and limitation periods do not hamper the effectiveness of the judicial process and the dissuasive application of penalties. This period shall not be shorter than:~~
- (a) ~~ten years for the criminal offences referred to in Articles 7 and 12;~~
  - (b) ~~eight years for the criminal offences referred to in Articles 8 to 11;~~
  - (c) ~~five years for the criminal offences referred to in Articles 13 and 14.~~

4.3. ~~Member States shall take the necessary measures to enable the enforcement of a penalty of imprisonment following a final conviction for at least~~ **The limitation period referred to in paragraph 1, second subparagraph, shall be as follows:**

**(a) at least five years from the date of the final conviction in the following cases:**

**(i) a penalty of more than one year of imprisonment; or alternatively**

**(ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of at least four years.**

**(b) at least three years from the date of the final conviction in the following cases**

**(i) a penalty of imprisonment of up to one year of imprisonment; or alternatively**

**(ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of at least two years.**

~~(a) fifteen years from the date of the final conviction for any of the criminal offences referred to in Articles 7 and 12;~~

~~(b) ten years from the date of the final conviction for any of the criminal offences referred to in Articles 8 to 11;~~

~~(c) eight years from the date of the final conviction for any of the criminal offences referred to in Articles 13 and 14.~~

~~5.~~ 4. By way of derogation from paragraphs **2 and 3-4**, Member States may establish a ~~shorter~~ ~~limitation period,~~ **limitation period that is shorter than five years, but not shorter than three years**, provided that ~~the such limitation~~ period may be interrupted or suspended in the event of specified acts. ~~and that the applicable rules on the suspension and limitation periods do not hamper the effectiveness of the judicial process and the dissuasive application of penalties.~~ This period shall not be shorter than:

- ~~(a) ten years from the date of the final conviction for any of the criminal offences referred to in Articles 7 and 12;~~
- ~~(b) eight years from the date of the final conviction for any of the criminal offences referred to in Articles 8 to 11;~~
- ~~(c) five years from the date of the final conviction for any of the criminal offences referred to in Articles 13 and 14.~~

## CHAPTER 3 – PREVENTION, REPORTING AND INVESTIGATION

### *Article 3*

#### *Prevention of corruption*

1. Member States shall take appropriate action, ~~such as information and awareness-raising campaigns and research and education programmes,~~ to raise public awareness on the harmfulness of corruption and **with the objective to** reduce the overall commission of corruption offences as well as the risk of corruption.
2. Member States shall take measures to ensure ~~the highest degree~~ **adequate** levels of transparency and accountability in public administration and public decision-making with a view to prevent corruption.
3. Member States shall take measures to ensure that ~~key~~ preventive tools **are in place. Those may include, for instance, an appropriate** ~~such as an open~~ access to information of public interest, ~~effective~~ rules for the disclosure and management of conflicts of interests in the public sector, ~~effective~~ rules for ~~the disclosure and verification of assets~~ **declaration by national** of public officials **designated by national law** and ~~effective~~ rules regulating the interaction between the private and the public sector ~~are in place.~~

4. Member States shall **ensure that** ~~adopt comprehensive and up-to-date~~ measures to prevent corruption in both the public and private sectors, **are available and** adapted to the specific risks of an area of activity. Such measures shall at least include actions to strengthen integrity and to prevent opportunities for corruption among:
  - (a) high level officials;
  - (b) ~~members of law enforcement and the judiciary~~ **judicial authorities**, including measures relating to their appointment and conduct, ~~and by ensuring adequate remuneration and equitable pay scales.~~
5. Member States shall ~~regularly~~ **when necessary** perform an assessment to identify the sectors **or occupations** most at risk of corruption **and develop measures to address the main risks in the sectors or occupations identified.**
6. Following that assessment, Member States shall, **as appropriate**,:
  - (a) ~~organise, at least once a year,~~ awareness-raising actions adapted to the specificities of the sectors **or occupations** identified **in paragraph 5**, including on ethics. ~~;~~
  - (b) ~~develop plans to address the main risks in the sectors identified.~~
7. Where appropriate, Member States shall take measures to promote the participation of civil society, non-governmental organizations and community-based organizations in anti-corruption activities.

*Article 4*

*Specialised Anti-corruption bodies or organisational units*

1. **To advance the fight against corruption on a common basis**, Member States shall ~~take the necessary measures to~~ ensure that one or several bodies, or **organisational** units ~~specialised in~~ **tasked with** the prevention of corruption is or are in place.
2. Member States shall take the necessary measures to ensure that one or several bodies, or **organisational** units ~~specialised in~~ **tasked with** the repression of corruption is or are in place.
3. Member States shall take the necessary measures to ensure that the bodies or units as referred to in paragraph 1 and 2 **can operate without undue interference and, where relevant, take decisions or make recommendations in accordance with transparent procedures established by law, regulations or administrative provisions.:**
  - (a) ~~are functionally independent from the government and have a sufficient number of qualified staff and the financial, technical and technological resources, as well as the powers and tools necessary to ensure the proper administration of their tasks;~~
  - (b) ~~are known to the public;~~

- ~~(c) provide public access to relevant information on the exercise of their activities, with due regard for the protection of personal data and the confidentiality of investigations;~~
- ~~(d) operate and take decisions in accordance with transparent procedures established by law, with the effect of ensuring integrity and accountability.~~

## *Article 5*

### *Resources*

Member States shall ~~take the necessary measures to ensure that~~ **bodies or organisational units referred to Article 4, paragraphs 1 and 2**, ~~national authorities competent for the detection, investigation, prosecution or adjudication of the criminal offences referred to in this Directive are~~ ~~continually~~ provided with an adequate number of qualified staff and the financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.

## *Article 6*

### *Training*

1. Each Member State shall take the necessary measures to ~~ensure adequate resources for and the provision of~~ **provide** training for its national officials to be able to identify different forms of corruption and corruption risks that may occur in the exercise of their duties and to react in a timely and appropriate manner to any suspicious activity.
2. **Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union**, ~~Each~~ Member State shall take the necessary measures to ~~ensure adequate resources for and the provision of~~ **provide** specialised ~~anti-corruption~~ training at regular intervals for its members of law enforcement **and judicial**, ~~the judiciary and the staff of~~ authorities tasked with criminal investigations and **criminal** proceedings of offences falling within the scope of this Directive.



## Article 22

### *Protection of persons who report offences or assist the investigation thereof*

1. Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937<sup>23</sup> is applicable to the reporting of the offences referred to in Articles 7 to 14 of this Directive and **to the protection of persons reporting such offences, under the conditions established therein.**
2. In addition to the measures referred to in paragraph 1, Member States shall **take the necessary measures to ensure that persons any person** reporting offences referred to in this Directive ~~and, providing evidence or otherwise cooperating with the investigation, prosecution or adjudication of such offences~~ **competent authorities are provided the necessary** ~~has access to~~ protection, support and assistance **measures** in the context of criminal proceedings, **in accordance with national law.**

## Article 23

### *Investigative tools*

Member States shall take the necessary measures to ensure that effective **and proportionate** investigative tools, ~~such as those used in countering organised crime or other serious crimes,~~ are available to ~~persons, units or services responsible~~ for investigating or prosecuting the criminal offences referred to in this Directive.

**Where appropriate, those tools shall include special investigative tools, such as those used in countering organised crime or in other serious crime cases.**

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<sup>23</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17-56

## CHAPTER 4 – COORDINATION AND COOPERATION

### *Article 24*

*Cooperation between ~~the Member States' authorities, the Commission, and Union bodies, offices or agencies Europol, Eurojust, the European Anti-Fraud Office and the European Public Prosecutor's Office~~*

**Where the criminal offences referred to in this Directive, are suspected to be of a cross-border nature, the competent authorities of the Member States concerned shall consider referring the information related to those offences to appropriate competent Union bodies, offices or agencies.** Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, ~~Member States' authorities, Europol, Eurojust, the European Public Prosecutor's Office, and the European Anti-Fraud Office (OLAF) and the Commission~~ shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in this Directive. To that end, **Eurojust, Europol and the European Anti-Fraud Office shall,** where appropriate, ~~Europol, Eurojust, the European Public Prosecutor's Office, the European Anti-Fraud Office (OLAF), and the Commission~~ shall provide **the** technical and operational assistance in accordance with their respective mandates **as needed by the competent authorities** to facilitate ~~the~~ coordination of **their** investigations ~~and prosecutions by the competent authorities.~~

## Article 25

### *Commission support to Member States and their competent authorities*

- ~~1. The Commission shall, where appropriate, support Member States and competent authorities in complying with their obligations under this Directive.~~
- ~~1.2.~~ The Commission shall prepare an overview of sectoral risks of corruption in the Union and facilitate information exchange among Member States and experts across the Union.
- ~~2. 3.~~ The Commission, through the EU network against corruption, shall ~~in particular:~~
  - ~~(a)~~ facilitate cooperation and exchange of best practices among Member States' practitioners, experts, researchers and other stakeholders;
  - ~~(b)~~ complement activities, such as those referred to in Article 3 and point (b) of Article 18(2) by developing best practices, guidance materials and methodologies.
- ~~3. 4.~~ The Commission shall inform Member States about financial resources at Union level available to Member States for the fight against corruption.

## Article 26

### *Data collection and statistics*

1. Member States shall **have a system in place for the for the recording, production and provision of anonymised** collect-statistical data on the criminal offences as referred to in Articles 7 **to 10 and 12** to 14 of this Directive.

2. The statistical data referred to in paragraph 1 shall, **as a minimum, include the existing data, when available at a central level** ~~include at least the following:~~

- (a) **the number of offences registered and adjudicated by the Member States;**
- (b) **the number of dismissed court cases;**
- (c) **the number of natural persons that are**
  - (i) **prosecuted,**
  - (ii) **convicted;**
- (d) **the number of legal persons that are**
  - (i) **prosecuted,**
  - (ii) **convicted or fined;**

~~the number of cases reported;~~

~~the number of cases investigated;~~

~~the number of indictments;~~

~~the average length of the criminal investigations of cases;~~

~~the average length of courts proceedings of cases in first instance, second instance and cassation;~~

~~the number of convictions ;~~

~~the number of natural persons convicted and sanctioned, with specification of the number of public officials and high level officials;~~

~~the number of legal persons held liable and sanctioned;~~

~~the number of dismissed court cases for corruption, distinguishing between dismissals on the substance or not and including non-trial resolutions;~~

(ej) the types and levels of sanctions imposed for each of the criminal offences referred to in Articles 7 to 14.;

~~(k) the number of convictions pardoned, with specification of the number of pardons to public officials and to high level official.~~

3. Member States shall, on an annual basis and by ~~31 June~~ **December**, publish, **in a standard, easily accessible and comparable format** ~~in a machine-readable and disaggregated format~~, the statistical data referred to in paragraph 2 for the previous year and inform the Commission thereof.

## CHAPTER 5 – FINAL PROVISIONS

### *Article 27*

*Replacement of Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*

1. Framework Decision 2003/568/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of that Framework Decision into national law.

With regard to the Member States bound by this Directive, references to Framework Decision 2003/568/JHA **and its Article 2** shall be construed as references to **Chapter 2** of this Directive.

2. The Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union is replaced with regard to the Member States bound by this Directive.

With regard to the Member States bound by this Directive, references to that Convention **and its Article 3** shall be construed as references to **Chapter 2** of this Directive.

*Article 28*

*Amendments to Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law*

Directive (EU) 2017/1371 is amended as follows:

(1) In Article 2(1), the following point (c) is inserted:

‘(c) ‘high level officials’ are those defined in Article 2(~~82~~) (iii) of Directive (EU) XXX on combating corruption.’

(2) In Article 4(2), the words ‘passive and active corruption’, ‘passive corruption’ and ‘active corruption’ are replaced respectively by ‘passive and active bribery in the public sector’, ‘passive bribery in the public sector’ and ‘active bribery in the public sector’.

~~(3) Article 7(3) is replaced by the following:~~

~~‘3. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3, 4(1) and (2) are punishable by a maximum penalty of at least six years of imprisonment when they involve considerable damage or advantage.  
Member States shall take the necessary measures to ensure that the criminal offence referred to in Article 4(3) is punishable by a maximum penalty of at least five years of imprisonment when it involves considerable damage or advantage.’~~

~~The damage or advantage resulting from the criminal offences referred to in points (a), (b) and (c) of Article 3(2) and in Article 4 shall be presumed to be considerable where the damage or advantage involves more than EUR 100 000.~~

~~The damage or advantage resulting from the criminal offences referred to in point (d) of Article 3(2) and subject to Article 2(2) shall always be presumed to be considerable.<sup>2</sup>~~

(34) In Article 7, paragraph (4) is replaced by the following:

- ‘4. ~~Where a criminal offence referred to in points (a), (b) or (c) of Article 3(2) or in Article 4(1) and (3) involves damage of less than EUR 10 000 or an advantage of less than EUR 10 000, Member States may~~ **provide that conduct described in points (a), (b) or (c) of Article 3(2) or in Article 4(1) and (3) does not constitute a criminal offence where the advantage or damage involved is less than EUR 10 000** ~~provide for sanctions other than criminal sanctions.<sup>2</sup>~~

(45) In Article 7, the following paragraph 6 is inserted:

- ‘7. Without prejudice to paragraphs 1 to 5, Member States shall take the necessary measures to ensure that natural persons who have ~~been convicted of committing one of the criminal offences referred to in Articles 3, 4 and 5 this Directive~~ may be subject to **additional criminal or non-criminal penalties sanctions** or measures as **which may include those** referred to in Article 15(4) of Directive (EU) XXX on combating corruption.’



(56) Article 8 is replaced by the following:

*‘Article 8*

*Aggravating and mitigating circumstances*

**Member States shall take the necessary measures to ensure that where a criminal offence referred to in Articles 3, 4 or 5 is committed within a criminal organisation in the sense of Framework Decision 2008/841/JHA, this shall be considered as an aggravating circumstance.**

Member States shall take the necessary measures to ensure that **one or more of the circumstances referred to in Articles 18, points (a) to (d), and 18a of Directive (EU) XXX on combating corruption are to be may, in accordance with the relevant provisions of national law, be** regarded as aggravating and mitigating circumstances, in relation to the criminal offences referred to in this Directive.’

(67) Article 9 is replaced by the following:

*‘Article 9*

*Sanctions with regard to legal persons*

1. Member States shall take the necessary measures to ensure that a legal person held liable for ~~criminal offences~~ pursuant to Article 6 ~~shall be~~ **is** punishable by effective, proportionate and dissuasive **criminal or non-criminal penalties or measures** ~~sanctions~~.

2. Member States shall take the necessary measures to ensure that **penalties** ~~sanctions~~ or measures for legal persons held liable pursuant to Article 6 shall include **criminal or non-criminal fines, the amount of which shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned, and may include other criminal or non-criminal penalties or measures that are proportionate to the gravity of the conduct, such as** those referred to in Article 17(2) of Directive (EU) XXX on combating corruption.’

~~(8) In Article 12, paragraphs (2), (3) and (4) are replaced by the following:~~

~~‘2. The limitation period as referred to in paragraph 1 shall not be shorter than:~~

~~(a) fifteen years from the time when the offence was committed, for the criminal offences referred to in Articles 3, 4(1) and (2);~~

~~(b) ten years from the time when the offence was committed for the criminal offence referred to in Article 4(3).~~

~~3. By way of derogation from paragraph 2, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts and that the applicable rules on the suspension and limitation periods do not hamper the effectiveness of the judicial process and the dissuasive application of penalties. This period shall not be shorter than:~~

~~(a) ten years for the criminal offences referred to in Articles 3, 4(1) and (2);~~

~~(b) eight years for the criminal offence referred to in Article 4(3).~~

- ~~4. Member States shall take the necessary measures to enable the enforcement of a penalty of imprisonment following a final conviction for at least:~~
- ~~(a) — fifteen years from the date of the final conviction for any of the criminal offences referred to in Articles 3, 4(1) and (2);~~
  - ~~(b) — ten years from the date of the final conviction for the criminal offence referred to in Article 4(3).~~
- ~~5. By way of derogation from paragraph 4, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts and that the applicable rules on the suspension and limitation periods do not hamper the effectiveness of the judicial process and the dissuasive application of penalties. This period shall not be shorter than:~~
- ~~(a) — ten years from the date of the final conviction for any of the criminal offences referred to in Articles 3, 4(1) and 4(2);~~
  - ~~(b) — eight years from the date of the final conviction for the criminal offence referred to in Article 4(3).<sup>2</sup>~~

#### *Article 29*

#### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ~~{18-36 months after the date of adoption of this Directive}~~ at the latest. They shall forthwith communicate to the Commission the text of those provisions.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### *Article 30*

#### *Evaluation and reporting*

1. By [24 months after the deadline for implementation of this Directive], the Commission shall submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.
- ~~2. Every two years as of [12 months after the deadline for implementation of this Directive], Member States shall send the Commission a report within three months which includes a summary about implementation of and actions taken in accordance with Articles 3 to 6.~~
23. By [48 months after the deadline for implementation of this Directive], the Commission shall submit a report to the European Parliament and to the Council, assessing the added value of this Directive with regard to combating corruption. The report shall also cover the impact of this Directive on fundamental rights and freedoms. On the basis of this evaluation, the Commission shall, if necessary, decide on appropriate follow-up actions.

*Article 31*

*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*.

*Article 32*

*Addressees*

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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