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NOTE

From:	General Secretariat of the Council
To:	Delegations
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 - State of play

1. State of play

Throughout September, the Presidency has pursued the negotiations with the European Parliament in view of finding a global compromise on the draft anti-corruption Directive. The exchanges between the co-legislators continue to be very constructive, and important step have been taken towards a final compromise package. Nevertheless, a limited number of issues are still under discussion.

The Presidency will, at the meeting of JHA Counsellors on 7 October, present the detailed state of play following the inter-institutional technical meetings of 25 September and 2 October[1]. The presentation will be made in the light of the latest version of the four column table (WK 12474/2025). An update on ongoing reflections regarding the challenging provision on abuse of functions (Article 11) will also be given.

The purpose of this short note is to highlight the most recent developments in the discussions with the EP, and in particular the resulting changes that have been introduced in the four column table. Delegations are informed that at the inter-institutional meeting on 25 September the co-legislators provisionally agreed to green the following lines: 14, 131, 140, 203i, 203q, 203r and 203t. The Presidency would invite delegations to reflect on the questions indicated in the text below in the light of the ongoing efforts to formulate a global compromise on the whole text. Finally, the document also includes a number of informal drafting proposals from the lawyer linguists, which delegations are invited to consider.

2. Short overview of the issues recently discussed with the EP and questions to delegations

- Line 13a includes a new compromise text of recital 5a, that would replace the one figuring in WK 9801/2025. The Presidency has proposed a new beginning of the recital "Unless it is contrary to their legal systems…", and EP has proposed to insert "amnesties" before "pardons" in the text.

  Delegations are invited to indicate

  – if they can agree with the new text as set out in the four column table, and

  – if they could in particular accept, in the context of a global compromise, the inclusion of the term "amnesties" in the text (as indicated within brackets)

[1] The Presidency would draw the attention of delegations to the circumstance that this note may be complemented or revised following the inter-institutional meeting scheduled for 2 October

- Line 14 (recital 6): and agreement on the text was preliminarily reached by the co-legislators, which means that lines 203p-203w (Article 21c) have been marked green.

  Delegations are invited to take note of this development.

- Line 20 (recital 12) indicates two alternative formulations at the end of the text of the recital.

  Delegations are invited to indicate their preference in this sense.

- Line 23b includes a new compromise text of recital 15a.

  Delegations are invited to indicate if they can agree with the new text.

- Lines 25 and 35 (recitals 17 and 27): The EP has noted concerns with parts of the Presidency´s proposal for the text of recital 27 (concerning limitation periods). In order to meet the concerns of the EP, the Presidency has suggested to instead add text (inspired by the gender-based violence Directive) in recital 17 (concerning penalties). The EP will analyse this suggestion and revert.

  Delegations are invited to reflect on these developments and proposals.

- In line 37a (recital 29a), a compromise proposal based on the text of recitals 57 and 58 from ENVI-crime directive has been included.

  Delegations are invited to indicate if they can agree with this text, which would replace the previous recital 29a as it had been proposed by the EP.

- As for line 124 (Article 14(3), the EP requests the deletion of the words “may ensure” in the text proposed by the Council, with the intention to ensure that Member States will have the obligation criminalise the attempt to commit one of the offences referred to in Articles 7-10, in addition to the criminalisation of attempt to commit the offences referred to in Articles 13 and 13a.

  Delegations are invited to consider the request of the EP.

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- In line 131 (Article 15(3)), the co-legislators have agreed on a wording that is in line with the recent acquis.

  Delegations are invited to take note of this development.

- Line 140 (Article 15 (4)(d)): As regards the optional additional penalty that EP had proposed in this provision, the co-legislators have provisionally agreed to the limited (in relation to the EP proposal) wording "temporary bans on running for public office".

  Delegations are invited to mark their agreement of this line.

- Line 142 c) and 219 (Article 15(4) and Article 26) outlines options regarding the possible reference to the institute of pardons, which are still under reflection.

  Further, certain parts of the wording on Article 26 (in particular as regards the inclusion or not of the words "each of" in paragraphs 1 and 2e) are still open.

  Delegations are invited to indicate their positions with regard to these issues.

- Line 178 (Article 19): The EP appears ready to agree with the reference to legal systems, constitutions and constitutional principles that the Council has proposed, under condition that explanatory language is added to recital 24 (23 in GA)(line 32), as follows

  "*Member States could consider that such privileges and immunities are 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*."

  Delegations are invited to indicate whether they can agree with the proposal of the EP.

- Line 203i (Art. 21a (5)) – the co-legislators have provisionally marked the text of this provision green, after having agreed to the inclusion of the words "within appropriate intervals". With this provisional agreement, the whole text of Article 21(a) has been marked green.

  Delegations are invited to take note of this development.

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The Presidency finally also invites delegations to indicate if they have any other remarks, questions or suggestions with regard to the text included in the four column table.

3. Informal suggestions of the lawyer linguists as regards the language of Articles 7-14

The lawyer-linguists of the co-legislators have analysed the formulations used in Articles 7-14 in the draft Directive and made the proposals indicated below. Delegations are invited to consider these informal proposals, which are also under consideration by the EP.

Article 7

Bribery in the public sector

Member States shall take the necessary measures to ensure that, where it is intentional, the following conduct constitutes a criminal offence:

(a) active bribery in the public sector, which is the promise, ***offering*** or giving, directly or through an intermediary, of an ***undue*** advantage of any kind to a public official for the benefit of that official, or of a third party, in order for ***that*** official to act or refrain from acting ▌ in the exercise of that official's functions;

(b) passive bribery in the public sector, which is 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 benefit of that official, or of a third party, in order for ***that*** official to act or to refrain from acting ▌ in the exercise of that official's functions.

2. For the purposes of paragraph 1, arbitrators and jurors shall be considered to be public officials.

Article 8

Bribery in the private sector

Member States shall take the necessary measures to ensure that, where it is intentional and in the course of economic, financial, ***or*** business or commercial activities, the following conduct constitutes a criminal offence: ▌

(a) active bribery in the private sector, which is the promise, ***offering*** or giving, directly or through an intermediary, ***of*** an undue advantage of any kind to a person who ▌ directs or works ***in any capacity*** for a private-sector entity, for the benefit of that person, or of a third party, in order for that person to act or to refrain from acting, in breach of that person's duties;

(b) passive bribery in the private sector, which is the request or receipt by a person, directly or through an intermediary, of an undue advantage of any kind or the ***acceptance of an offer or*** promise of such an advantage, ***in order*** for that person or for a third party, while ▌ 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.

Article 9

Misappropriation

1. Member States shall take the necessary measures to ensure that, where it is intentional, the ***committing, disbursing, appropriation or use by a public official of property whose management is directly or indirectly entrusted to that public official contrary to the purpose for which it was intended,*** constitutes a criminal offence, ***either when committed for the official's advantage or for the advantage of another person or entity, or when damaging the financial interests of the public or private entity concerned.***

▌

2. ***Member States may take the necessary measures to ensure that***, where it is intentional, the committing, disbursing, appropriation or use, in the course of economic, financial, or business or commercial activities, by a person directing or working, in any capacity, in a private sector entity, of any property whose management is directly or indirectly entrusted to that person contrary to the purpose for which it was intended***,*** constitutes ***a criminal offence, either when committed for that person's advantage or for the advantage of another person or entity, or when damaging the financial interests of the public or private entity concerned***.

Article 10

Trading in influence

1. Member States shall take the necessary measures to ensure that, where it is intentional, the following conduct constitutes a criminal offence:

(a) the promise, ***offering*** or giving, directly or through an intermediary, of an undue advantage of any kind to ***any*** person to exert ***improper*** influence ***over an action or omission 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***, by any*** person to exert ***improper*** influence ***over an action or omission 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 constitute a criminal offence, it shall be irrelevant whether or not the influence is exerted or whether or not the ***claimed*** influence leads to the intended results.

2a. For the purposes of paragraph 1, arbitrators and jurors shall be considered to be public officials.

Article 12

Obstruction of justice

Member States shall take the necessary measures to ensure that, where it is intentional, the following conduct constitutes ***one or several*** criminal ***offences***:

1. the use, directly or through an intermediary, of physical force, threats or intimidation or the ***promising***, offering or giving of an advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding ***in relation to the commission of*** any of the offences referred to in ***[***Article 7 to ***10***, 13 and 14***]***;

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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 ***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 of property by a public official knowing ***at the time of receipt, that such property*** was derived from the commission ***by another public official*** of any of the offences referred to in ***[***Articles 7 to ***10,*** 12 and 14***]***, constitutes a criminal offence .

Article 13a

Concealment

Member States shall take the necessary measures to ensure that the intentional concealment or disguising of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from the commission of any of the offences referred to in [Articles 7 to 10, 12 and 14] constitutes a criminal offence***.***

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Article 14

Inciting, aiding and abetting, and attempt

1. Member States shall take the necessary measures to ensure that inciting the commission of an offence referred to in ***[***Articles 7 to ***10 and 12 to 13a]*** constitutes a criminal offence.

2. Member States shall take the necessary measures to ensure that aiding and abetting the commission of an offence referred to in ***[***Articles 7 to ***10 and 12 to 13a]*** constitutes a criminal offence.

3. Member States shall take the necessary measures to ensure that an attempt to commit an offence referred to in Articles 13 and 13a constitutes a criminal offence, and may take the necessary measures to ensure that an attempt to commit at least one of the offences referred to in Articles 7 to 10 constitutes a criminal offence.

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