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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 - Examination of the revised versions of selected articles

In view on the COPEN meetings on 28 and 29 February, the Presidency proposes to examine the whole corruption proposal. In view of Member States' comments regarding the provisions relating to prevention, the Presidency would like to suggest restructuring the text of the proposal in chapters, starting first with substantive criminal law, turning later to provisions regarding prevention.

Member States will be invited to indicate their position on this new structure before examining the proposal starting again from Article 1.

The Presidency would like to draw delegations' attention to the following:

- On Articles 1-2, there are few changes as compared to the document ST5924/24 discussed in COPEN on 7 February.

- There are no changes on Articles 3-7 as compared to the previous version, since the proposed revised text has not been discussed yet.
- Several drafting suggestions were made to Articles 8-25.
- Minor changes were made to Articles 26-32 following the COPEN meeting on 7 February.

Modifications in comparison to the Commission's proposal are indicated in **bold** or strikethrough. Modifications as compared to the previous Presidency text are indicated in **bold underlined**.

The Presidency believes a division into chapters might be a solution to clarify the main objective and the accessory objective of the directive. The titles are provisional and rewording suggestion are welcomed.

Member States are invited to indicate their position on a possible division into chapters.

[CHAPTER 1 – GENERAL PROVISIONS]

Article 1

Subject matter and scope

The Presidency believes there is enough support to keep the text as such.

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

Following the deletion of paragraph 1 defining the prevention of corruption, the Presidency considers there was support to add the definition of “prevention of corruption” in Recital 5.

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

§1: No changes. The Presidency believes there is enough support to keep the text as such.

1. ‘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.

§2, (b): The Presidency suggests the following wording as suggested at the previous COPEN.

2 3. ‘public official’ means:

- (a) a Union official or a national official of a Member State or of a third country,
- (b) any other person assigned and exercising a public service **administrative** function **but also those mandated 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.

§3: No changes. The Presidency believes there is enough support to keep the text as such.

3 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.~~
- (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’);
- (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.

§4: No changes except for the deletion of arbitrators. The Presidency took note of some concerns regarding jurors having to have to declare their assets. However, only persons designated under national law would need to declare their assets. This would mean it would be sufficient to not designate them under national law. Member States are invited to indicate their position on this change.

4 5 ‘national official’ means any person holding an executive, administrative, or judicial office, **including jurors**, 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** ~~for the purpose of this Directive. Arbitrators called upon to render a legally binding decision shall also be assimilated to national officials.~~

§5: The Presidency understands there could be support for a specific definition of arbitrators. The Presidency suggests the following definition from Recital 9 (which will need to be aligned should this definition be part of the operative part of the text).

5. ‘Arbitrators’ means any person called upon to render a legally binding decision in disputes submitted by the parties to the arbitration agreement.

§6: No changes.

6. ‘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.

§7: The Presidency considers this text to be close to a compromise.

7. ‘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: The Presidency suggests a reference to national law and to clarify “members of a minister's private office” rather than deleting it. Member States are invited to indicate their position on this change.

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 **with a decisional impact**, as well as members of parliamentary chambers, members of ~~highest Courts, such as~~ Constitutional and Supreme Courts, **the Prosecutor General**, and members of Supreme Audit Institutions, **as well as any other persons defined in accordance with national law. High level official shall be understood without prejudice to immunities and privileges protected by national constitutions**

The Presidency believes the prevention aspect in Articles 3 to 6 of the directive, being ancillary to the main objective of the directive – minimum harmonisation of offences of corruption - should not appear up front. In order to address the concerns expressed by some Member States, the Presidency suggests to modify the structure of the proposal in order to move the prevention aspect to a later part of the operative text.

Member States are invited to indicate their position on this new structure.

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 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 preventive tools are in place, such as, Those include, for instance, an appropriate access to information of public interest, rules for the disclosure and management of conflicts of interests in the public sector, rules for the disclosure and verification of assets of [designated] national officials designated by national law and rules regulating the interaction between the private and the public sector.~~
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) ~~law enforcement and judicial authorities, 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 and develop plans to address the main risks in the sectors identified.~~
6. ~~Member States shall organise, at least once a year, awareness-raising actions adapted to the specificities of the sectors identified in paragraph 5, including on ethics.~~
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 bodies

1. ~~Member States shall take the necessary measures to ensure that one or several bodies, or 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 units specialised in 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:~~
- ~~(a) can **autonomously** take decisions on **individual cases, where relevant, case by case basis, without undue interference** 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 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 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 law enforcement and judicial authorities tasked with criminal investigations and tracing of proceedings of offences falling within the scope of this Directive.~~

[CHAPTER 2 – CORRUPTION OFFENCES]

Article 7

Bribery in the public sector

No further changes since document ST5924/2024.

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, offer 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 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).

Article 7a

Bribery of arbitrators

The Presidency is aware that some Member States felt the arbitrators did not fit into article 7. The Presidency proposes an Article 7a to resolve this issue.

The Presidency also proposes to add: "Remuneration for arbitrators should only be deemed to be an advantage within the meaning of Article 7a if arbitrators request it, accept it to be promised to them or receive it from a party unknown to the other, or if one party offers, promises or gives it to them unknown to the other. Remuneration for arbitrators should be received as part of the arbitration agreement, any remuneration outside the arbitration agreement should be considered an undue advantage." in a corresponding recital.

The Presidency also suggest that the future redraft of Article 2 includes a paragraph 5a defining arbitrators.

Member States are invited to indicate their position on these changes.

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, offer or giving, directly or through an intermediary, of an undue advantage of any kind to an arbitrator for that arbitrator or for a third party in order for that arbitrator to act or refrain from acting in the exercise of that arbitrator's functions (active bribery);

(b) the request or receipt by an arbitrator, directly or through an intermediary, of an undue advantage of any kind or the acceptance of the promise of such an advantage for that arbitrator or for a third party, in order for that arbitrator to act or to refrain from acting in the exercise of that arbitrator's functions (passive bribery).

Article 8

Bribery in the private sector

The Presidency suggests deleting point (c) as this addition did not receive support.

The Presidency also added “of [an undue advantage]” in point (a) because the word seemed to be missing.

For the same reason, the Presidency added, in recital 10a, “undue advantage to directors or workers”.

Member States are invited to indicate their position on these changes and if they can support the inclusion of Recital 10a.

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, business or commercial activities:

- (a) the promise, offer or giving, directly or through an intermediary, **of** an undue advantage of any kind to a person who in any capacity directs or works 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 promise of such an advantage, for that person or for a third party, while in any capacity directing or working for a private-sector entity, to act or to refrain from acting, in breach of that person's duties (passive bribery).
- ~~(c) Member States may decide to limit the scope of letters "a" and "b" to such conduct which causes or is likely to cause a distortion of competition in relation to the purchase of goods or commercial services.~~

Recital 10a:

Conduct in breach of professional duties by directors or workers of private-sector entities in the course of economic, financial, business or commercial activities can not only be detrimental to the interests of the private-sector company, but also cause a distortion of competition in relation to the purchase of goods or commercial services to the detriment both of would-be competitors and the general public. The offence of bribery in the public sector aims to deter both kinds of harm. It does so by preventing third parties from interfering in the fair conduit 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 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 law and should cover as a minimum the breach of statutory duties and professional regulations or instructions. Since many Member States already have offences, such as embezzlement, which protect the interests of the company, the offence definition allows Member States to focus on conduct, which involves, or could involve, a distortion of competition in relation to the purchase of goods or commercial services.

Article 9

Misappropriation

The last sentence did not receive enough support, thus the Presidency suggests deleting this sentence in this Article and move it back to Article 15. Therefore, the Presidency also suggests deleting the addition that was made in Recital 11 and keep it as initially drafted in the proposal. Several Member States wanted to add a condition of prejudice in the offence of misappropriation. For this reason, the Presidency suggests adding the following "against the interests of the public or private entity concerned".

Member States are invited to indicate their position on these changes.

Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally **and against the interests of the public or private entity concerned:**

- (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) the committing, disbursing, appropriation or use, in the course of economic, financial, 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.

~~Member States may provide that conduct described in letters “a” and “b” does not constitute a criminal offence where the advantage or damage involved is less than EUR 10 000.~~

Article 10

Trading in influence

The Presidency would like to know whether the delegations prefer the wording proposed by the Commission “to a person or a third party”, or prefer the wording “to a public official or another person” or if they would prefer another wording such as “to any person”.

Member States are invited to indicate their position on these changes and if they can support the inclusion of Recital 12 as suggested by the previous Presidency.

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, offer or giving, directly or through an intermediary, of an undue advantage of any kind to a **public official or another** person ~~or a third party~~ in order for that **public official or** person to exert real or supposed influence 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 a** promise of such an advantage, ~~to~~ by a **public official or another** person ~~or a third party~~ in order for that **public official or** person to exert real or supposed influence 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.

Recital 12:

“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 prevent 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 promise, offer or giving of any undue advantage aimed at the exertion of 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 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 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, 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.”

Article 11
Abuse of functions

Following the discussions in CATS, the Presidency proposes to delete §2 and to base §1 on Article 19 of UNCAC, by making this article facultative.

Member States are invited to indicate their position on these changes.

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

Some delegations expressed concerns about the compatibility of this provision with their national systems. However, Member States retain some leeway when it comes to transposing this article. The Presidency invites Member States to suggest modifications that could address these concerns. For example, adding “*Member States are not required to create a specific offence for this conduct and may ensure that this conduct is criminalised through various legal provision*” in the Recital or “*punishable as criminal offences*” in the introductory wording of this Article.

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

1. the use, directly or through an intermediary, of physical force, threats or intimidation or the promise, 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 concerning any of the offences referred to in Article 7 to 11, 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 any of the offences referred to in Article 7 to 11, 13 and 14.

Article 13

Enrichment from corruption offences

The Presidency proposes to limit the scope of this Article 13 to cases where the individual knew when receiving the said property that it was derived from the commission of any of the offences set out in Articles 7 to 12 and 14. Changes have been made to align Recital 16.

Member States are invited to indicate their position on these changes.

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 of any of the offences set out in Articles 7 to 12 and 14, is punishable as a criminal offence, ~~irrespective of whether~~ **unless** that official ~~was involved in the commission of~~ **is held liable for** that offence **from which the property is derived.**

Recital 16:

(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 Council¹. It is meant to address those cases where the **court is fully satisfied that the property derives from one of the offences set out in Article 7 to 12 and 14 but where the public official cannot be convicted for that offence**~~judiciary considers that the corruption offence or offences cannot be proven..~~ **The competent authorities are therefore not required to convict someone for both the corruption offence and the enrichment that derived from committing that offence.** ~~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, w.~~ When 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, the competent authorities can recover the illicitly obtained property on the basis of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union².

Article 14

Incitement, aiding and abetting, and attempt

The Presidency proposes to delete the reference to Article 12 in the third paragraph. Member States are invited to indicate if they can support this deletion.

1. Member States shall take the necessary measures to ensure that inciting any of the offences referred to in Articles 7 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 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~~ **and** 13 is punishable as a criminal offence.

Article 15

Penalties and measures for natural persons

The Presidency made some changes to align this Article with ECD.

The Presidency changed sanctions into penalties to harmonise the text and reverted to the initial proposal on paragraph 3.

Following a proposal from the Commission, the recital indicating that point e (tender procedures) does not go beyond the Directive 2014/24/EU would read as follow:

“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.”

Member States are invited to indicate their position on these changes and on the proposed recital.

1. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 7 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 and ~~9~~ **12** are punishable by a maximum term of imprisonment of at least ~~six~~ **four** years;
 - (b) the criminal offences referred to in Articles 8 ~~to~~, **10 and 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 for sanctions other than criminal sanctions.
- 4.3. 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 14 may be subject to **additional criminal or non-criminal sanctions penalties** or measures imposed by a competent authority and ~~that are not necessarily of a criminal nature, including~~ **which may include the following:**
- (a) fines **that are proportionate to the gravity of the conduct;**
 - (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 exercise of commercial activities 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 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

The Presidency made some changes to align this Article with ECD.
Member States are invited to indicate their position on these changes.

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 14 when such offenses are committed for their 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 the 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 also 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** offences referred to in Articles 7 to 14 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 14.

Article 17

~~Sanctions~~ **Penalties** and measures for legal persons

The changes made were to align this Article with ECD.

Sanctions was changed into penalties to harmonise the text.

A third paragraph was added to align this Article with ECD.

Member States are invited to indicate their position on these changes.

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 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 ~~sanctions~~ penalties or measures, 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;~~
 - (b) ~~the exclusion of that legal person from entitlement to public benefits or aid;~~
 - (c) ~~the temporary or permanent exclusions from access to public procurement funding,~~ **including tender procedures, grants, concessions and licences;**
 - (d) ~~the temporary or permanent disqualification of that legal person from the exercise of commercial practice of business activities;~~
 - (e) ~~the withdrawal of permits or~~ **and** ~~authorisations to pursue activities in the context of which have that resulted in committing the relevant offence was committed;~~
 - (f) ~~the possibility for public authorities to annul or rescind a contract with them, in the context of which the offence was committed;~~
 - (g) ~~the placing of that legal person under judicial supervision;~~

- (h) ~~the judicial winding-up of that legal person; and~~
- (i) ~~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 11, 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, 11 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

The changes were made to align this Article with ECD.

The Presidency proposes to delete the point d and g due to the lack of support.

1. ~~In so far as~~ **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 13, Member States shall take the necessary measures to ensure that, **in relation to the relevant offences referred to in Articles 7 to 14, one or more several** of the following circumstances ~~are~~ **may, in accordance with the relevant provisions of national law, to** be regarded as aggravating circumstances, in relation to the offences referred to in Articles 7 to 14:
- (a) the offender is a high level official;
 - (b) the offender has **previously** been ~~definitively~~ convicted **by a final judgment** before of ~~an~~ offences of the same nature referred to **as those** under Articles 7 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;~~
 - (e) the offender exercises investigation, prosecution or adjudication functions;
 - (f) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA¹; and

¹ 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 Council², 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.~~

2. Member States shall take the necessary measures to ensure that, **in relation to the relevant offences referred to in Articles 7 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~~ **administrative or judicial** 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
- (b) ~~where the offender is a legal person~~ **is held liable for any of the offences referred to Articles 7 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 14** and it has, once the offence has been discovered, rapidly and voluntarily disclosed the offence to the competent authorities and taken remedial measures.

² Directive 2015/849/EU 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).

Article 19

Privileges or immunity from investigation and prosecution of corruption offences

No substantial change, except for a technical one.

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, **in accordance with ~~its~~ their legal systems and constitutional principles**, 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

The Presidency made some changes to align this Article with ECD.

Member States are invited to indicate their position on these changes.

1. **Each** Member States shall **take the necessary measures to** establish ~~their~~ **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** ~~their~~ 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 ~~one of its~~ an habitual residents 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 ~~which is established in~~ on 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/JHA³, 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~~

The changes were made to align this Article with ECD.

In paragraph 2, the Presidency also suggests including the terms “*for the most serious offences*” to introduce the threshold of proportionality that was requested by several Member States.

Member States are invited to indicate their position on these changes.

³ 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).

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 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 3 and 4 for a sufficient period of time after that conviction.**
2. The limitation period referred to in paragraph 1, **first subparagraph**, shall ~~not be~~, **for the most serious offences, shorter than as follows:**
- (a) ~~fifteen~~ **five** years from the time when the offence was committed, for the criminal offences referred to in Articles 7, **7a** and ~~12~~ **9**;
 - (b) ~~ten~~ **three** years from the time when the offence was committed, for the criminal offences referred to in Articles 8, ~~to 11~~ and **10 to 14**;
 - (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 ~~in the case of~~ for a criminal offence ~~which is~~ punishable by a maximum ~~sanction~~ term of at least four years of imprisonment, imposed following a final conviction for a criminal offence referred to in Articles 7, 7a and 9, ~~for at least five years from the date of the final conviction.~~
- (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 ~~in the case of~~ for a criminal offence ~~which is~~ punishable by a maximum ~~sanction~~ term of at least two years of ~~imprisonment~~, imposed following a final conviction for a criminal offence referred to in Articles 8 and 10 to 14, ~~for at least three years from the date of the final conviction.~~
- (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 **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.** ~~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 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;~~
- (e) ~~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 OF OFFENCES OF CORRUPTION]

Article 3

Prevention of corruption

§1: No further changes since document ST5924/2024. Following the concerns regarding the legal basis for the prevention of corruption expressed by some Member States, the Council Legal Service already indicated that they did not consider the legal basis to be an issue. In the COPEN of September 27th, the CLS recalled the constant case-law of the CJEU (CJEU, C-36/98 §§58-59) indicating that the choice of a legal basis for a measure must rest on objective factors such as the aim and the content of the measure. If the measure pursues a twofold purpose or that it has a twofold component and if one of these is identifiable as the main or predominant component, whereas the other is merely incidental, the act must be based on a single legal basis.

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: No further changes since document ST5924/2024. Following Member States' concerns, the Presidency suggests keeping “adequate levels of”.

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: No further changes since document ST5924/2024. Following some concerns expressed by Member States, the Presidency made some modifications attempting to clarify the flexibility that the Member States have regarding these measures. “*Such as*” was deleted to avoid redundancy with “*for instance*”.

3. Member States shall take measures to ensure that ~~key~~ preventive tools are in place, ~~such as~~, **Those include**, for instance, an appropriate 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 ~~{designated}~~ national officials **designated by national law** and rules regulating the interaction between the private and the public sector ~~are in place~~.

§4: No further changes since document ST5924/2024. The Presidency considers there was a broad support to apply this Article to the private sector. However, “*comprehensive and up to date*” has been deleted, as suggested, to allow more flexibility to the Member States.

4. Member States shall adopt ~~comprehensive and up to date~~ measures to prevent corruption in ~~[both]~~ the public ~~[and private]~~ sector[s], 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 and 6: No further changes since document ST5924/2024. To address the concerns expressed about the administrative burden of the risk assessment and the awareness-raising campaign. In paragraph 5, the Presidency is open to wording suggestions from the Member States to replace “*regularly*” and “*at least once a year*”.

5. Member States shall regularly perform an assessment to identify the sectors most at risk of corruption **and develop plans to address the main risks in the sectors identified.**
6. ~~Following that assessment,~~ Member States shall:
 - (a) ~~organise,~~ at least once a year, awareness-raising actions adapted to the specificities of the sectors identified **in paragraph 5**, including on ethics. ~~;~~ ~~and~~
 - (b) ~~develop plans to address the main risks in the sectors identified.~~

§7: No further changes since document ST5924/2024..

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 bodies

No further changes since document ST5924/2024.

§§1 and 2: The Presidency understands that some Member States wanted to clarify that Member States do not have to set up specialised criminal courts, and that they may also entrust multiple bodies with such functions. The Presidency invites Member States to indicate whether the clarifications in recital 6 would solve their concerns. Suggestions for other wording that would take into account concerns are welcomed.

§3:

Points (b), (c) and (c) were not modified, Presidency would like Member States to indicate if they could support these points.

Regarding point (a), the Presidency understands that there are still a number of concerns that need to be addressed and invites Member States to indicate if the following changes can be acceptable.

1. Member States shall take the necessary measures to ensure that one or several bodies, or 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 units specialised in 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:
- (a) **can autonomously take decisions on individual cases, where relevant, a case by case basis, are functionally independent from the government without undue interference** 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

No further changes since document ST 5924/2024.

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

No further changes since document ST 5924/2024.

§2: The Presidency understands there was support for the deletion of ‘*tracing of*’.

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 and judicial , the judiciary and the staff of~~ authorities tasked with criminal investigations and ~~tracing of~~ proceedings of offences falling within the scope of this Directive.

Article 22

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

The Presidency asks the delegations if they can accept the text aligned with Article 14 of ECD and Article 14 VURM, knowing only the first paragraph apply to whistle blowers.

1. Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937^[1] 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.**

^[1] 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

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 protection,~~ **has access to support and assistance measures** in the context of criminal proceedings, **in accordance with national law.**

Article 23

Investigative tools

The Presidency made some changes to align this Article with ECD.
Member States are invited to indicate their position on these changes.

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~~ **these** tools shall include special investigative tools, such as those ~~which are used in countering organised crime or in~~ **other serious crime cases.**

[CHAPTER 4 – CORDINATION AND COOPERATION]

Article 24

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

The Presidency made some changes to align this Article with ECD.
Member States are invited to indicate their position on these changes.

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 ~~these cases~~ to appropriate competent bodies. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, the Member States' ~~authorities~~, Europol, Eurojust, the European Public Prosecutor's Office, 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 [and Europol] shall**, where appropriate, ~~Europol, Eurojust, the European Public Prosecutor's Office, the European Anti-Fraud Office (OLAF), and the Commission~~ shall provide such the technical and operational assistance needed by ~~in accordance with their respective mandates to facilitate the coordination of investigations and prosecutions by the competent authorities.~~ **as the competent national authorities need to facilitate coordination of their investigations. The Commission may, where appropriate, provide assistance.**

Article 25

Commission support to Member States and their competent authorities

Due to the lack of support, the Presidency proposes to delete §1 and point b of §3.

- ~~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: No changes.

§2: The Presidency considers the first sentence is close to a compromise.

The Presidency also suggests to align on data collection to Article 21 of ECD.

Points (a) and (b) would be replaced by point (a) concerning offences registered and adjudicated.

Point (i) would be replaced by point (b) concerning dismissed cases.

Point (g) would be replaced by point (c) concerning natural persons. Disaggregation of such data is a suggestion in brackets.

Point (h) would be replaced by point (d) concerning legal persons.

Since new points (c) and (d) would cover the number of prosecuted and convicted natural and legal persons, the Presidency suggests the deletion of point (c) and (f).

Since points (d) and (e) from the original text about average length of investigations and proceedings raised a lot of concerns, the Presidency suggests their deletion.

§3: The mentions of “1 June” was replaced with “31 December”. The terms “*in a machine-readable and disaggregated format*” were replaced by “*in a standard, easily accessible and comparable format*” in alignment with Article 21§4 of ECD.

1. Member States shall collect statistical data on the criminal offences as referred to in Articles 7 to 14 of this Directive.
2. The statistical data referred to in paragraph 1 shall, **as a minimum, include the existing data, 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, including due to the expiry of the limitation period;
- (c) the number of natural persons[, with specification of the number of public officials and high level officials,] 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;~~

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

(f) 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

No changes.

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 shall be construed as references to 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 shall be construed as references to 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

The reason for including Article 28 in the Directive is to align Directive 2017/1371 on definitions ("high level officials" and "passive and active corruption"), aggravating circumstances, sanctions and limitation periods on those contained in this proposal.

Since the corresponding articles are still under discussions, the Presidency suggests addressing this Article when the relevant Articles of the proposal are closer to a compromise.

Member States are nonetheless welcome to indicate their position.

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(8) 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.’

- (4) 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 for sanctions other than criminal sanctions.’
- (5) 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 this Directive may be subject to sanctions or measures as referred to in Article 15(4) of Directive (EU) XXX on combating corruption.’
- (6) Article 8 is replaced by the following:
- ‘Article 8*

Aggravating and mitigating circumstances

Member States shall take the necessary measures to ensure that the circumstances referred to in Article 18 of Directive (EU) XXX on combating corruption are to be regarded as aggravating and mitigating circumstances, in relation to the criminal offences referred to in this Directive.'

- (7) 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 punishable by effective, proportionate and dissuasive sanctions.
2. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons held liable pursuant to Article 6 shall include 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).'

Article 29

Transposition

Following comments from Member States, the Presidency suggests changing the transposition period to three years since the Directive is comprehensive and detailed. Member States are invited to indicate if they can support this change.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ~~[18 months after adoption]~~ **[24 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

No changes.

The Presidency notes some Member States' concerns about the overlaps with the Rule of Law Report (Anti-corruption framework) and the reports already published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD.

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.
3. 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

No changes.

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

No changes.

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