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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
N° Cion doc.:	ST 9241 2023 INIT
Subject:	Anti-corruption Directive – proposed redraft of the recitals

Delegations will find in annex a most recent provisional redraft of the recitals to the Directive for information. The co-legislators have not yet discussed the redraft in substance and the Council will return to the redraft at a subsequent meeting. Nevertheless, JHA Counsellors are invited to indicate any concern they may have already at the meeting of JHA Counsellors on 7 October.

Recital 1				
9	(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.	(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.	(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.	COM proposal: maintain recital (1) and merge in part of recital (1b) (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. ***Combating corruption is essential for strengthening the quality of democracy and for the full realization of the Rule of Law.*** 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.
Recital 1a				
9a		***(1a) Member States should be provided with the tools and measures to combat the most serious corrupt behaviour, involving abuse of high level power***		**For discussion at ITM** – EP to clarify intention (unclear what this refers to, there is confusing language used)

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		or causing serious harm to societies. In order to ensure improved track record of tackling high level corruption cases across all Member States, it is imperative that national authorities dispose of specific measures with regards to the prevention, repression, investigation and prosecution of cases involving high level officials or gross misappropriation of public funds or resources.		
Recital 1b				
9b		***(1b) Combating corruption is essential for strengthening the quality of democracy and for the full realization of the Rule of Law. It is considered fundamental, for a good anti-corruption strategy, to act upstream of the phenomenon, preventing the existence of contexts that generate corrupt practices.***		COM proposal: **to delete**, democracy element integrated in line 9 / recital 1 + Strategy covered in line 37b / recital 29b
Recital 2				
10	(2) Council Framework Decision 2003/568/JHA[1] 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	(2) Council Framework Decision 2003/568/JHA[1] 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	(2) Council Framework Decision 2003/568/JHA[1] 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	COM proposal: maintain original drafting unchanged

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	Union[2] 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. _____ 1. Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192/54, 31.7.2003). 2. 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).	Union[2] 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. _____ 1. Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192/54, 31.7.2003). 2. 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).	Union[2] 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. _____ 1. Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192/54, 31.7.2003). 2. 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).	
Recital 3				
11	(3) The existing legal framework should be updated and strengthened	(3) The existing legal framework should be updated and strengthened	(3) The existing legal framework should be updated and strengthened	**For discussion at ITM**

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	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.	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. ***Nothing in this Directive is to be interpreted as grounds for reduction in the level of protection already afforded by existing criminal law rules for corruption offences.***	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.	
Recital 4				
12	(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).	(4) Corruption is a transnational phenomenon that affects all societies and economies. Measures adopted at national or Union level, should recognise this international dimension. ***Diverse manifestations of corruption necessitate a coordinated and harmonized approach among Member States to address its root causes and consequences effectively***. 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	(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).	**COM proposal – maintain original drafting**. EP insertion moved to line 13 / recital 5 (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

		(OECD) and the United Nations Office against Drugs and Crime (UNODC).		United Nations Office against Drugs and Crime (UNODC).
Recital 5				
13	(5) To 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 are defined in national and international law, failings in integrity, undisclosed conflicts of interests or serious breaches of ethical rules can become corrupt activities if left unaddressed. 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 as an important part of tackling corruption more broadly.	(5) To 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 are defined in national and international law, failings in integrity, undisclosed conflicts of interests or serious breaches of ethical rules can become corrupt activities if left unaddressed. 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~~ ***in all Member States should*** build on measures to enhance transparency, ethics and integrity, as well as by regulating in areas ***considered to be enablers of corruption,*** such as conflict of interest, lobbying and revolving doors***, public procurements and political parties financing***. Public bodies should seek the highest standards of integrity, transparency	(5) To ~~root out~~**effectively tackle** 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 corrupt activities~~ **result in corruption 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	**COM proposal – combination of positions of EP/Council – for discussion at ITM. Includes EP proposal from recital 4 / line 12** (5) ***Diverse manifestations of corruption necessitate a coordinated and harmonized approach among Member States to address its root causes and consequences effectively***. To ~~root out~~**effectively tackle** 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 corrupt activities~~ **result in corruption offences** if left unaddressed**.** The prevention of corruption mitigates the need for criminal repression and has wider benefits in promoting public trust

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		and independence as an important part of tackling corruption more broadly. ***A fundamental pillar for efficient, transparent and effective Member States that are free of corruption, is a public service staffed with individuals of the highest level of skill and integrity. Such staffing of public service can be achieved through enhancing transparency, efficiency and the use of objective criteria in the recruitment and promotion of public officials.***	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 **freedom from undue influence** ~~independence~~ 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.**	and managing the conduct of public officials. Effective anti-corruption approaches ~~often~~***in all Member States should*** 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 **freedom from undue influence** ~~independence~~ as an important part of tackling corruption more broadly. ***A fundamental pillar for efficient, transparent and effective Member States that are free of corruption, is a public service staffed with individuals of the highest level of skill and integrity. Such staffing of public service can be achieved through enhancing transparency, efficiency and the use of objective criteria in the recruitment and promotion of public officials.*** **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.
Recital 5a				
13a		***(5a) Public procurement, as a key interface between the public and private sectors, is particularly vulnerable to corruption, given the significant financial interests at stake and the complexity of procurement processes. Recognizing that these vulnerabilities can lead to inefficiencies, misallocation of public resources, and a loss of public trust in governmental institutions, robust measures are needed to enhance transparency, oversight, and accountability in public procurement processes. This includes establishing clear guidelines, promoting digital solutions for traceability, ensuring rigorous auditing mechanisms, and providing platforms for whistleblower protections and public scrutiny. In order to fight corruption efficiently, it is important that Member States strengthen the transparency of public procurement processes by enabling stakeholder participation, better access to information, including through the use of e-procurement, as well as oversight***		***(5a) Measures exempting from criminal liability or from enforcement of penalties constitute an inherent element of national criminal justice systems, often embedded in national constitutions or legal traditions, developed in response to societal needs of preserving fairness and justice. As such, these measures should follow the objectives and principles for which they have been developed, respecting fundamental principles of fairness, legality and judicial redress. At the same time, such measures, when introduced to effectively shield individuals – particularly holders of public office – from accountability for corruption offences, and when applied without a legitimate and proportionate justification, such as unmotivated: discontinuation or dismissal of investigations, early releases or suspensions, amnesties or pardoning, might undermine public trust [in a way incompatible with the Rule of Law and the objective of this Directive].***

		and control those procurement processes.		
Recital 5b				
13b				
Recital 5c				
13c		***(5b) Member States should adopt appropriate legislation and procedures which should govern the financing of political campaigns and the financing of political parties, such as setting the parameters for the limits, purpose and time periods of campaign expenditures, limits on contributions, state subsidies, identification of donors and the annual publication of accounts and expenditure by political party organisations.***		COM proposal: to delete, see compromise text recital 15a
Recital 5d				
13d		***(5c) Corruption phenomena strike at the heart of democracy, wounding it in its fundamental principles, namely those of equality, transparency, integrity, impartiality, legality, and fair redistribution of wealth. They have profoundly harmful economic effects, such as increased public spending, through interventions devoid of real interest, benefiting private individuals, deterring investors, and distorting competition rules.***		COM proposal: to delete, see compromise text recital 15a

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Recital 6				
14	(6) Member States should have in place bodies or units specialised in the repression and specialised in the prevention of corruption. Member States may decide to entrust a body with a combination of preventive and law enforcement functions. In order to ensure that these bodies operate effectively, they should meet a number of conditions, including having the independence, resources and powers that are necessary to ensure the proper administration of their tasks.	(6) Member States should have in place bodies or units specialised in the repression and ***investigation and*** specialised in the prevention of corruption***. The management of the specialised bodies or units should be appointed through an open and transparent procedure in full compliance with the principle of legislative oversight, including several branches of government, to ensure public trust in the national anti-corruption bodies and avoid potential conflicts of interest. Providing such specialised bodies or units with a clear mandate enshrined in law is paramount not only to ensuring their permanence, but also to increasing awareness among the public as to what the body, unit or agency's powers and responsibilities are***. Member States may decide to entrust a body with a combination of preventive and law enforcement functions. In order to ensure that these bodies operate effectively, they should meet a number of conditions, including having the independence, resources and powers that are necessary to ensure the proper administration of their tasks. ***All Member States should also create integrated services specifically tasked with duties related to the investigation and prosecution of corruption***	(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 body with a combination of~~ **the same body or organisational unit with both** preventive and ~~law enforcement~~ **repressive** 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	(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 body with a combination of~~***the same body or organisational unit with both*** preventive and ~~law enforcement~~***repressive*** 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 or undue influence by others, thus being protected against undue***

		offences. Member States should equip such integrated anti-corruption investigation and prosecution services with specialised personnel, adequate technical means, and financial resources to ensure their full autonomy and a high degree of professionalism.	effectively, ~~they~~**Member States** should ~~meet a number of conditions, including having the independence,~~**ensure that** resources and powers ~~that are necessary to ensure~~ **allocated to those bodies and organisational units are commensurate to** the proper administration of their tasks.	***external interventions or pressure***. In order to ensure that these bodies ***or units*** operate effectively, ~~they~~***Member States*** should ~~*meet a number of conditions, including having the independence,*~~ ***ensure that*** resources and powers ~~*that are necessary to ensure*~~***allocated to those bodies and organisational units are commensurate to*** the proper administration of their tasks ***and allow for specialised knowledge on the repression and prevention of corruption***. Connected to agreement on the related article (article 4).
Recital 6a				
14a		***(6a) Raising citizens' awareness about the scope, characteristics, and effects of corruption requires the design of campaigns that, in accessible language, warn about daily improper behaviours associated with corruption phenomena, thereby helping a better detection of such phenomena, while also promoting their rejection. This approach is also essential for shaping more demanding, attentive, and less tolerant citizens to corrupt behaviour.***		COM proposal: maintain EP proposal, declarative
Recital 7				

15	(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 illict 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, 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.	(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 illict 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, 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.	(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 ~~illict~~**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.	For discussion at ITM – Council to explain rationale behind its changes (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 ~~illict~~**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.
Recital 8				

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16	(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 should be further approximated in all Member States so that it covers corrupt conduct more comprehensively.	(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 should be further approximated in all Member States so that it covers corrupt conduct more comprehensively.	(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.	COM proposal – take Council text (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.
Recital 9				
17	(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 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	(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 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	(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~~	COM proposal: take over most of the Council text as their definition has largely been used, small modifications. (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,~~

	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 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 service, even if they do not hold formal office. For the purposes of this Directive, the definition should cover persons working in state-owned and state-controlled enterprises, as well as in asset management foundations and privately-owned companies performing public service functions and the legal persons established or maintained by them. Any person holding a legislative office should be treated as a public official for the purposes of this Directive.	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 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 service, even if they do not hold formal office. ***This Directive should also apply to all public officials who exercise their functions in relation to the implementation of the EU budget.*** For the purposes of this Directive, the definition should cover persons working in state-owned and state-controlled enterprises, as well as in asset management foundations and privately-owned companies performing public service functions and the legal persons established or maintained by them. Any person holding a legislative office should be treated as a public official for the purposes of this Directive.	~~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 **performing public service functions** ~~working~~ 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 as a public~~ **assimilated to a national** official for the purposes of this Directive **in accordance with national law**.	~~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 **performing public service functions** ~~working~~ 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 as a public~~ **assimilated to a**

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				national official for the purposes of this Directive **in accordance with national law.**
Recital 9a				
17a		***(9a) With regard to the prevention of and contrast to corruption, the creation of specialised bodies, units or agencies with a mandate enshrined on a clear legal basis is paramount to ensure their permanence, but also to entrust them with a specific mandate, and to increase awareness among the general public as to what the body, unit or agency's powers and responsibilities are. The effectiveness of bodies, units or agencies specialised in the prevention of corruption depends, in particular, on their possibility to manage asset declarations of public officials, monitor compliance with transparency rules applying to public officials and public entities, as well as with statutory provisions and rules related to conflicts of interests in the public and private sector, and to the financing of political parties. As for the investigation and prosecution of corruption offences, integrated services need to be created in all EU Member States, but also equipped with specialised personnel and adequate technical capabilities and financial***	**(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**	COM Proposal: take over Council draft of recital 9(a) with one addition to align with definition in operative part **(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**

Commented [A1]: Open question for co-legislators: is recital language on arbitrators and jurors needed? (since these are now defined in art. 2)

		resources, so that their full autonomy and professionalism is guaranteed. Victims of corruption face serious challenges when attempting to establish and understand their rights and potential remedies. Therefore, it is essential that an independent coordinator for the rights of victims of corruption also be established at national level to ensure that the rights of persons affected by the crimes covered by this Directive are upheld, and that such persons are compensated for their loss.	**Supreme Courts, the Prosecutor General, and members of Supreme Audit Institutions.**	**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**; as well as members of the College of Commissioners of the European Commission and the European Parliament
Recital 9b				
17b		***(9b) State services must assess corruption and bribery risks associated with their type of activity, the nature of the services they provide, and the context in which these services are provided. For this purpose, State services will have to draft prevention or risk management plans, in which services or acts most susceptible to bribery, exploitation or diversion of funds, and personal favouritism or favouritism towards third parties are identified, as well as measures to reduce risks and ways to react to illicit practices. Those measures shall specifically focus on high-risk areas such as the financial, health, digital, construction and***		COM: to delete, dealt with in recital 34 (line 42)

		pharmaceutical sectors, as well as on public procurement.		
Recital 9c				
17c		***(9c) Associated with the drafting of prevention or risk management programs is the creation of codes of ethics or conduct, which succinctly, objectively, and clearly describe the expected behaviours of all workers. These instruments must be simple, easily understood by their intended recipients, and adapted to the specificities of the respective activity. To achieve these results, it is recommended to involve all stakeholders in the drafting process of prevention or risk management programs.***		COM: to delete, dealt with in recital 5 (line 13) and 34 (line 42)
Recital 9d				
17d		***(9d) A Public Administration made up of agents with high ethical standards is a key condition for reducing corruption risks. Regardless of the type of public service entry exams, subsequent training, in all sectors of the administration, should incorporate content with a strong focus on probity and corruption prevention.***		COM: to delete, recital 5 (line 13) covers the Public Service now
Recital 9e				
17e		***(9e) With a view to prevent corruption, Member States should take measures to implement education for public integrity in the***		COM: to delete, final article 21a(1) does not mention education; part on public service is covered in recital 5 (line 13)

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		school system and in the classroom. Member States should provide opportunities for educators to receive specialized training in anti-corruption education methodologies and strategies and to ensure the effective delivery of those programs. Member States should also take the necessary measures to prevent favouritism, nepotism or cronyism in public recruitment and in administrative procedures, and to ensure that all public human resource processes strive to develop a systematic approach based on: identification of possible risks; establishment of strong preventive mechanisms; ensuring policy compliance, reporting and sanctioning of misconduct.		
Recital 10				
18	(10) It is necessary to strenghten the legal framework to combat bribery and to provide law enforcement and prosecution with the necessary tools. In bribery of public officials, there are two sides to distinguish. Active bribery exists when a person promises, offers or gives an advantage of any kind to influence a public official. Passive bribery exists when the public official requests or receives such advantagesin order to act or to refrain from acting in a certain way.	(10) It is necessary to strenghten the legal framework to combat bribery and to provide law enforcement and prosecution with the necessary tools. In bribery of public officials, there are two sides to distinguish. Active bribery exists when a person promises, offers or gives an advantage of any kind to influence a public official. Passive bribery exists when the public official requests or receives such advantagesin order to act or to refrain from acting in a certain way.	(10) It is necessary to ~~strenghten~~**strengthen** the legal framework to combat bribery and to provide law enforcement and prosecution with the **effective and proportionate** ~~necessary~~ 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	(10) ~~*It is necessary to strenghten the legal framework to combat bribery and to provide law enforcement and prosecution with the necessary tools. In bribery of public officials, there are two sides to distinguish. Active bribery exists when a person promises, offers or gives an advantage of any kind to influence a public official. Passive bribery exists when the public official requests or receives such advantagesin 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 diminished by each bribe offered or accepted.	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 diminished by each bribe offered or accepted.	~~advantagesin~~**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 **can be** ~~is~~ diminished by ~~each~~ bribe ~~offered or accepted~~**payments**.	~~*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 diminished by each bribe offered or accepted.*~~ ***It is necessary to strengthen the legal framework to combat bribery and to provide law enforcement and prosecution with 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. Advantages can be both tangible or intangible, and pecuniary or non-pecuniary. An advantage is considered not to be undue including where it is permitted by law or by administrative rules as well as in case of minimum gifts, gifts of very low value. 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 can be diminished by each bribe payment. ***The offence of bribery in the public sector builds on the offences of passive and active corruption defined in Articles 2 and 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and should not be interpreted or applied in a manner that is more lenient than those Articles 2 and 3 of the Convention.***
Recital 10a					
G	18a			**(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**	***(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***	G

				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.	***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).***
Recital 11					
G	19	(11) In order to ensure that public officials do not intentionally use 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 to take a comprehensive approach to the fight against corruption, this Directive should also cover 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.	(11) In order to ensure that public officials do not intentionally use 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 to take a comprehensive approach to the fight against corruption, this Directive should also cover 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.	(11) In order to ensure that public officials do not intentionally ~~use~~**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 ~~to take a comprehensive approach to the fight against corruption, this Directive should also cover misappropriation in the private sector. In order~~ for	(11) In order to ensure that public officials do not intentionally ~~use~~***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 ~~*to take a comprehensive approach to the fight against corruption, this Directive should also cover misappropriation in the private sector. In order*~~ for	G

				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, Member States are also encouraged to criminalise misappropriation in the private sector.**	misappropriation to be criminal, it should lead to an advantage for the public official or a third party ***or damage to the financial interests of the public or private entity concerned. In order to take a comprehensive approach to the fight against corruption, Member States are also encouraged to criminalise misappropriation in the private sector. Member States should not define the offence as requiring both the establishment of damage and advantage.***
Recital 12					
G	20	(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 a criminal offence irrespective of whether the influence was exerted and whether	(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 a criminal offence irrespective of whether the influence was exerted and whether	(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~~**The exertion of** influence over ~~decision-making processes in return for~~**public decision-makers with a view to obtaining an** undue ~~advantages should also be defined as a criminal offence~~**advantage can seriously hamper the proper functioning of public administrations**. **To adequately tackle it,** the constituent elements of the ~~criminal~~ offence ~~should be that the instigator provides, or promises to provide the~~**of trading in** influence ~~peddler with an undue advantage for exerting unlawful influence over an outcome or a~~	(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*~~***The exertion of*** influence over ~~*decision-making processes in return for*~~***public decision-makers with a view to obtaining an*** undue ~~*advantages should also be defined as a criminal offence*~~***advantage can seriously hamper the proper functioning of public administrations. To adequately tackle it,*** the constituent elements of the ~~*criminal*~~ offence ~~*should be that the instigator provides, or promises to provide the*~~***of trading in*** influence ~~*peddler with an undue advantage for exerting unlawful influence over an outcome or a*~~

	or not the claimed influence leads 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.	or not the claimed influence leads 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.	~~process that is subject to decision-making.~~**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~~, ~~this behaviour should be considered~~ 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	~~*process that is subject to decision-making.*~~ ***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 improper 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 exertion of improper influence with a view to obtain an undue advantage from a public official. Such conduct must constitute*** ~~*, this behaviour should be considered*~~ a criminal offence irrespective of whether the influence was ***claimed or real and 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 ***or legal*** 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

			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.	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. ***For the purposes of this offence, the undue advantage to exert improper influence includes in particular remuneration for these forms of representation where these activities are carried out in violation of the applicable national rules.*** Commission tasked with proposing drafting options to clarify the last sentence.
Recital 13				
21	(13) Moreover, it is necessary to define the offence of abuse of functions in the public sector as a failure to perform an act by a public official, in violation of laws, to obtain an undue advantage. In order to comprehensively fight corruption, this Directive should also cover abuse of functions in the private sector.	(13) Moreover, it is necessary to define the offence of abuse of functions in the public sector as a failure to perform an act by a public official, in violation of laws, to obtain an undue advantage. In order to comprehensively fight corruption, this Directive should also cover abuse of functions in the private sector.	(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. ~~In order to comprehensively fight corruption, this Directive~~**Member States** should ~~also cover abuse of functions in the private sector.~~**consider criminalising such conducts at national level.**	*To be determined later, depending on discussion of art. 11*
Recital 14				
22	(14) Obstruction of justice is a criminal offence committed in	(14) Obstruction of justice is a criminal offence committed in	(14) **Members States' criminal law acknowledges** obstruction of	COM proposal: take over council recital in line with definition

	support of corruption. It is therefore necessary to lay down a criminal offence for 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.	support of corruption. It is therefore necessary to lay down a criminal offence for 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 ***as well as the destruction, alteration, concealment or falsification of evidence*** 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.	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.**	offence. Proposal to slightly redraft first sentence for linguistic clarity (14) Obstruction of justice is a criminal offence committed in support of corruption, amongst other offences. This is acknowledged in **Member States' criminal law**. 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**

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				such conducts through several criminal offences at national level.
Recital 14a				
22a		***(14a) Illicit political financing leaves democracies vulnerable to malign finance and undue influence in politics. Abuses of state resources conferring undue benefits on politicians and parties can be a major corruptive force in the electoral process as they can introduce or exacerbate power inequalities, give unfair electoral advantage to incumbents, compromise the integrity of an election, and reduce public trust in the legitimacy of the process and its outcomes. Furthermore, the private sector may use its influence and resources to pressure public authorities to adopt or implement policies and laws in their favour. On the other hand, the integrity of the private sector may be compromised by illicit political finance if politicians pressure companies for donations in exchange for continued business with the state, which can lead to policy capture. It is therefore necessary to lay down a criminal offence for illicit political financing.***		COM: to delete, see recital 15a (line 23a)
Recital 15				

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23	(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.	(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*~~***should therefore be*** required to declare their assets ***and interests*** at regular intervals, including when taking up and completing duties, ***so that competent*** authorities***, or independent entities,*** can assess whether the declared assets correspond to declared incomes***, as well as detect potential conflict of interest and revolving doors situations. With the aim of preventing and combating corruption and of promoting transparency and accountability in the public and private sector, the Union should take the necessary measures to monitor and prevent situations of illicit enrichment and unexplained wealth, by***	(15) Corruption feeds off the motivation for undue economic and other advantages. ~~In~~ **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.	COM proposal: include council draft (15) Corruption feeds off the motivation for undue economic and other advantages. ~~In~~ **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.

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		establishing a complete registry of beneficial ownerships to a full set of financial and non-financial assets. This Directive paves the way for further measures to prevent and combat corruption at Union level, including the establishment of an EU Asset Register, which would be built upon the Member States network of registries, allowing for corruption crimes to be better prevented, identified and duly investigated.		
Recital 15a				
23a		***(15a) Member States should adopt measures to define as a punishable criminal offence, the intentional concealment or continued retention of property by a person who is aware that such property results from the offences referred to in this Directive, even if that person was not involved in committing those offences.***		COM: depends on final formulation of article 13a / line 120c Proposal: (15aa) Member States should adopt measures to define as a punishable criminal offence, the intentional concealment or disguise 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] set out in this Directive.
Recital 15b				
23b				***(15a) Illegal political financing can be a means to corrupt decision-***

				makers to take decisions which may be in the interest of the financer. Member States should consider taking appropriate action against types of illegal political financing, in line with accountability and transparency rules at EU and national level. While not regulated by this Directive, Member States may consider criminalising such political financing which can represent a threat to the democracy of the Member States and the Union.
Recital 15c				
23c		***(15b) Member States should be obliged to take measures that hold public officials accountable for any culpable breach of their official duties that results in harm to the rights or to the legitimate interests of individuals or entities. Such breaches, involving a failure to perform duties or a defective performance of duties, should be punishable as criminal offences.***		COM: to delete
Recital 16				
24	(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[1] . It is meant to address those cases where	(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[1] . It is meant to address those cases where	(16) The criminal offence of enrichment ~~builds upon the rules on the criminal~~**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**	(16) The criminal offence of enrichment ~~*builds upon the rules on the criminal*~~***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***

	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, 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 Union[2].	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, 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 ***that the official or person in question was involved in the commission of the criminal offence, 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	**corruption offences committed by a different public official. The** offence of ~~money laundering laid down in~~**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[1]~~. It is meant to address those cases where the judiciary considers that the corruption offence or offences cannot be proven. Like the predicate offence in~~ **on combating** money laundering~~, the burden of proof is of a different nature. This means that in~~ **by** criminal ~~proceedings regarding the criminal offence of enrichment~~**law, and in particular paragraph 5 thereof**, **where applicable.** 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,	***corruption offences committed by a different public official. The*** offence of ~~*money laundering laid down in*~~***illicit enrichment and concealment is without prejudice to the conduct provided for in Article 3 of*** Directive (EU) 2018/1673 of the European Parliament and of the Council[1]~~*. It is meant to address those cases where the judiciary considers that the corruption offence or offences cannot be proven. Like the predicate offence in*~~ ***on combating*** money laundering~~*, the burden of proof is of a different nature. This means that in*~~ ***by*** criminal ~~*proceedings regarding the criminal offence of enrichment*~~***law, and in particular paragraph 5 thereof, and the related Recital 11 of that Directive, where applicable.*** 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

	_____ 1. 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). 2. 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 Union (OJ L 127/39, 29.4.2014, p. 39).	April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union[2]. _____ 1. 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). 2. 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 Union (OJ L 127/39, 29.4.2014, p. 39).	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~~**In addition, the proceeds** obtained ~~property~~**from corruption offences can be confiscated** on the basis of Directive ~~2014/42/EU~~**2024/1260/EU** of the European Parliament and of the Council of ~~3~~**24** April ~~2014 on the freezing~~ **2024 on asset recovery** and confiscation ~~of instrumentalities and proceeds of crime in the European Union~~[2]. _____ ~~1. 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).~~ 2. **[2]** Directive ~~2014/42/EU~~**(EU) 2024/1260** of the European Parliament and of the Council of ~~3~~**24** April ~~2014 on the freezing~~**2024 on asset recovery** and confiscation ~~of instrumentalities and proceeds of crime in the European Union (OJ L 127/39, 29.4.2014, p. 39).~~	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*~~***In addition, the proceeds*** obtained ~~*property*~~***from corruption offences can be confiscated*** on the basis of Directive ~~*2014/42/EU*~~***2024/1260/EU*** of the European Parliament and of the Council of ~~*3*~~***24*** April ~~*2014 on the freezing*~~***2024 on asset recovery*** and confiscation***. The said Directive also includes provisions on other types of confiscation including, under certain conditions, on confiscation of*** ~~*of instrumentalities and*~~ proceeds ~~*of crime in the European Union*~~[2]***or other property the value of which corresponds to proceeds, which were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, where the relevant third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation***. _____ ~~*1. 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).*~~

				~~2. 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 Union (OJ L 127/39, 29.4.2014, p. 39).~~
Recital 17				
25	(17) In order to deter corruption throughout the Union, Member States should lay down minimum types and levels of sanctions 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 set in Union and national law. Member States should ensure that sanctions are enforced to the extent necessary in order to deter the commission of those offences. Where the Member States consider 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	(17) In order to deter corruption throughout the Union, Member States should lay down minimum types and levels of sanctions 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 set in Union and national law. Member States should ensure that sanctions are enforced to the extent necessary in order to deter the commission of those offences. Where the Member States consider 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	(17) In order to deter corruption throughout the Union, Member States should lay down minimum types and levels of **criminal and non criminal penalties** ~~sanctions~~ 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	COM: take over Council text (17) In order to deter corruption throughout the Union, Member States should lay down minimum types and levels of- **criminal and non–criminal penalties** ~~sanctions~~ 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,

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	seriousness of the criminal offences concerned among other factors.	seriousness of the criminal offences concerned among other factors.	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.**	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.**
Recital 18				
26	(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. Sanctions that cannot be equated to criminal sanctions, 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, the 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.	(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. Sanctions that cannot be equated to criminal sanctions, 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, the 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.	(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. Sanctions~~**penalties. 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,~~ The 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.	COM proposal: take over Council text (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. Sanctions~~**penalties. 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,~~ The 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.
Recital 19				
27	(19) The competent authorities should be able to impose, in addition or as an alternative to imprisonment, sanctions 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. 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.	(19) The competent authorities should be able to impose, in addition or as an alternative to imprisonment, sanctions 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. 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.	(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.	(19) ~~The~~***Member States are encouraged to enable their*** competent authorities ~~should~~***to*** 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*** or temporary bans on running for public office. 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. ***[Member States might enable courts or other competent authorities to take into account the gravity of the offences concerned when considering the eventuality of suspended sentences, early release or parole.]***

Commented [A2]: Following agreement on line 140 ("temporary bans on running for public office" as facultative additional penalty) COM believes this should be added in this recital

				The last sentence is a tentative compromise text proposed by the Council PCY in relation to EP's Article 15(4a). To be considered by both co-legislators in the context of the overall compromise package.
Recital 19a				
27a			**(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**	For further discussion at ITM – COM proposal is to include it (as we assisted the Council in drafting this clarification on interaction of this Directive with the Public Procurement Directives)

			and concessions below the thresholds of the relevant directives.	
Recital 20				
28	(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 the worldwide turnover of all legal entities related to the offender, including parent entities, subsidiary entities, linked trusts, or similar or comparable legal entities.	(20) Legal persons should not ***be liable only for acts of a leading person in their organisation, nor should they*** 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 ***proportionate and commensurate to the gravity of the offence, and*** calculated considering ***the gross gain, or the gross loss, caused by the offence, or*** the worldwide turnover of all legal entities related to the offender, including parent entities, subsidiary entities, linked trusts, or similar or comparable legal entities. ***Corruption related offences are often resolved through non-trial resolutions processes, which are often viewed as a pragmatic and efficient way to resolve cases that would otherwise require tremendous time and resources to investigate and prosecute before reaching a court. However, non-trial resolutions also present legal, institutional and procedural challenges, and raise questions of transparency, the level of***	(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 ~~the~~**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**.	(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 ~~*the*~~***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.*** ***Non-trial resolutions are being applied in the context of corruption offences and often viewed as a pragmatic and efficient way to resolve cases that would otherwise require tremendous time and resources to investigate and prosecute before reaching a court. However, non-trial resolutions may also present some challenges that Member States are encouraged to take into account***.

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		deterrence and victims' compensation. Member States should therefore also take the necessary measures to establish fair, effective, and transparent non-trial resolution processes that competent authorities can enter into with a legal person for any of the offences covered by this Directive.		
Recital 20a				
28a		***(20a) In the fight against corruption, urgent attention should be directed towards tackling the misuse of bearer shares and trusts, which are essential in clandestine financial activities. Member States still permit the use of bearer shares, allowing for illicit funds to be received, held, and transferred in a clandestine manner. These mechanisms create an opacity level even higher than tax havens, making them a serious concern in the battle against corruption. Moreover, trusts are also exploited for their potential to allow obscure financial transactions and to hide the true beneficiaries. The misuse of funds further compounds the challenge of tracking and combating corruption effectively. Therefore, Member States need to swiftly implement robust measures. Such measures should encompass an unambiguous ban on bearer***		Commission proposal: deletion, no corresponding article

		shares and a comprehensive strategy to ensure transparency of ownership in the use of trusts.		
Recital 21				
29	(21) Where the offence is committed by a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA[1] or where the perpetrator abused their position to enable corruption, 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 more severe sanctions. _____ 1. Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42).	(21) Where the offence is committed by a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA[1] or where the perpetrator abused their position to enable corruption, 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 more severe sanctions. _____ 1. Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42).	(21) Where the offence is committed by a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA[1] or where the perpetrator abused their position to enable corruption, ~~Member States should provide for~~**it is important that courts are able to take this into account as** 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**. _____ 1. **[1]** Council Framework Decision 2008/841/JHA of 24 October 2008 on the	(21) ~~*Where the offence is committed by a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA[1] or where the perpetrator abused their position to enable corruption*~~***While there is no obligation to increase sentences***, Member States should ~~*provide for*~~***ensure that the judge or the court is able to take the*** aggravating circumstances ***set out in this Directive, as implemented in national law, into account when sentencing offenders. It remains within the***~~*in accordance with the applicable rules established by their legal systems. Whilst subject to judicial*~~ discretion~~*, these*~~ ***of the judge or the court to determine whether to increase the sentence due to the specific*** aggravating circumstances ~~*should allow the judiciary to take*~~***, taking*** into account ***all the facts of the particular case***~~*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

			fight against organised crime, (OJ L 300, 11.11.2008, p. 42).	~~any of the~~ aggravating circumstances ***where national law provides for the criminal offences laid down in Council Framework Decision 2008/841/JHA to be*** ~~in this Directive when those circumstances are~~ punishable as separate criminal offences ~~with~~***and this may lead to*** more severe sanctions~~.~~ ~~1. Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42).~~
Recital 22				
30	(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.	(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.	~~(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.~~	Commission proposal: deletion (not covered by an article anymore)
Recital 23				
31	(23) Member States should ensure that mitigating circumstances are laid down in national legislation in	(23) Member States should ensure that mitigating circumstances are laid down in national legislation in	(~~23~~**22**) ~~Member States should ensure that~~**It is important that courts can take into account**	For further discussion at ITM; Council to explain rationale behind changes in the first three sentences.

	relation to the offences covered by this Directive. 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 effective internal controls, ethics, and compliance programmes, it should be possible to consider these actions as a mitigating circumstance. Lower sanctions 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.	relation to the offences covered by this Directive. 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 effective internal controls, ethics, and compliance programmes, it should be possible to consider these actions as a mitigating circumstance. Lower sanctions 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.	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"**.	COM proposal to at least keep Council addition at the end of the recital.
Recital 24				

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32	(24) 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.	(24) 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.	(~~24~~**23**) 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**	Dependent on political agreement on article 19

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			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.	
Recital 25				
33	(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 the prosecute persons for criminal offences referred to in this Directive on opportunity grounds should be	(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 ~~*the*~~ prosecute persons for criminal offences referred to in this Directive on opportunity grounds should be	~~(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 the prosecute persons for criminal offences referred to in this Directive on opportunity grounds should be~~	(25) ~~*In order to increase trust in prosecution services whilst reducing the perception of corruption in Member States*~~***Without prejudice to the set-up of their national judicial systems***, discretionary powers under domestic law not to the prosecute persons for criminal offences

	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.	exercised in accordance with clear rules and criteria and guarantee, with appropriate internal consultation, ~~*as well as the aim of deterring*~~***and decisions subject to review by the public concerned, subject to proportionality requirements as provided under national law. These rules and criteria and guarantees can contribute to deter*** the commission of corruption offences and ***to ensure*** the effectiveness of the judicial process.	~~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.~~	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*~~***. These rules should aim to take into account the need, in general, for effective, proportionate and dissuasive criminal penalties for*** corruption offences and ***ensure*** the effectiveness of the judicial process. ***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.***
Recital 26				
34	(26) Given the mobility of 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 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	(26) Given the mobility of 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 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	(~~26~~**24**) 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 ~~in a sufficient wide range of cases.~~ **effectively** including when the offence is committed in whole or in part in its territory. As part of that obligation, Member States should	COM proposal: Keep Council text 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 ~~in a sufficient wide range of cases.~~ **effectively** including when the offence is committed in whole or in part in its

	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.	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.	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.	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.
Recital 27				
35	(27) 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.	(27) 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.	(~~27~~**25**) 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.	**For further discussion at ITM** The Council has proposed the following text: 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. [The minimum limitation periods provided for in this Directive should apply at least to the most serious forms of criminal offences punishable by a certain maximum term of imprisonment. This directive does not, however, affect] those Member States which do not set limitation periods for investigation, prosecution and enforcement. The EP has reservations about the text in brackets.

Recital 28				
36	(28) Corruption offences are a difficult category of crime to identify and investigate, as they mostly occur 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 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 investigative tools to successfully carry out proceedings and the identification and quantification of proceeds of corruption in the context of freezing and confiscation. In addition, this Directive facilitates the gathering of information and evidence by setting out mitigating circumstances for offenders that help the authorities.	(28) Corruption offences are a difficult category of crime to identify and investigate, as they mostly occur 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 prosecutors have appropriate investigative tools to gather relevant evidence of corruption offences which often affect more than one Member State. ***Such tools should as a minimum include the tools listed in Directive 2014/41/EU of the European Parliament and of the Council[1a], such as covert investigations, investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time, interception of telecommunications, information on banking and other financial operations and bank and other financial accounts.*** Furthermore, Member States should allocate sufficient training, in close	(~~28~~**26**) Corruption offences ~~are~~ **a can be** difficult ~~category of crime~~ to identify and investigate, as they mostly occur ~~as part of a conspiracy between two or more willing parties and lack an immediate and obvious victim who could complain~~ **in hiding**. 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 ~~prosecutors~~ **competent authorities** 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 **asset recovery** ~~freezing~~ and confiscation. In addition, this Directive facilitates the gathering of information and evidence by setting out mitigating	**For discussion at ITM – proposal of Council appears closest to compromise on art. 21e - training.**

		coordination with the European Union Agency for Law Enforcement Training (CEPOL), also on the use investigative tools to successfully carry out proceedings and the identification and quantification of proceeds of corruption in the context of freezing and confiscation. In addition, this Directive facilitates the gathering of information and evidence by setting out mitigating circumstances for offenders that help the authorities. _____ ***1a. Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p.1)***	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.**	
Recital 28a				
36a		***(28a) Corruption is not a victimless crime and the rights of victims of corruption should be safeguarded on the same level as those of victims of other crimes, including regarding the right to information, support and protection. Victims of corruption should be represented in court proceedings, consulted about corruption investigation and adequately compensated. This will ensure that the consequences and the damage of corruption to societies are recognised and will guarantee the rights of people suffering from corruption.***		**COM proposal: to delete – compromise on article 23c covers victim's rights**
Recital 29				

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37	(29) 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[1] 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[2]. As regards the criminal offences referred to in this Directive,	(29) 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[1] 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[2]. As regards the criminal offences referred to in this Directive,	(~~29~~27) 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[1] 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[2]. As regards the criminal offences referred to in this Directive,	**For discussion at ITM; Commission proposal based on agreement found on Article 22:** 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[1] 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

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	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 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. _____ 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). 2. 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).	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 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. _____ 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). 2. 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).	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.** _____ 1. **[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). 2. **[2]** 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).	(EU) 2017/1371 of the European Parliament and of the Council[2]. 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 ensure that persons providing evidence or otherwise cooperating with criminal investigations ~~are given~~ **have access to** the necessary protection, **in accordance with national law.**
Recital 29a				
37a		***(29a) The public concerned, including affected communities, should be entitled to obtain reparation of damages caused by the offences. For such purposes Member States should ensure that,***		COM proposal based on the agreement found during the ITM on 25/09: **Since the general public that is affected negatively by corruption**

		in accordance with their national legal system, members of the public concerned have appropriate rights to participate in the proceedings covered by this Directive, for instance as a civil party. The public concerned should be entitled to participate in the proceedings covered by this Directive where as a result of a corruption offence, they have a sufficient interest and are entitled to maintain the impairment of a right, in accordance with national law. For the purposes of participating in the proceedings covered by this Directive, the public concerned including entities that wish to represent the rights of victims of corruption should meet minimum standards. First, they should have a non-profit making nature. Second, there should be a direct relationship between the main objectives of the entity representing the public concerned and the action brought before the relevant court or competent administrative body. Third, the entity should have been established for at least five years prior to the date of its application to the relevant court or competent administrative body. Entities representing the public concerned should also make publicly available in plain and intelligible language by any		**offences will generally not be able represent itself as a victim in criminal proceedings, for the purpose of effective enforcement, members of the public concerned should have the possibility of acting on behalf of the general interest in corruption cases, in accordance with national law and subject to the relevant procedural rules. This Directive does not require Member States to introduce new procedural rights for the members of the public concerned. However, when such procedural rights for members of the public concerned exist in a Member State in equivalent situations concerning criminal offences other than those provided for pursuant to this Directive, such as the right to participate in proceedings as a civil party, such procedural rights should also be granted to the members of the public concerned in proceedings concerning the corruption offences defined in this Directive. The rights of the members of the public concerned are without prejudice to the rights of victims as set out in Directive 2012/29/EU of the European Parliament and of the Council. The notion of 'members of the public concerned' and of 'victims'**

		appropriate means, in particular on their website, information that demonstrates their compliance with the criteria required to participate in the proceedings covered by this Directive, and information about the sources of their funding, organisational structure, statutory purpose and activities.		**should remain distinct and Member States should not be required to apply victims' rights to members of the public concerned. This Directive does not require Member States to grant to members of the public concerned the procedural rights in criminal proceedings that they grant to categories of persons other than members of the public concerned.**
Recital 29b				
37b		***(29b) The preparation and adoption of coordinated strategies for the prevention of corruption and the promotion of public integrity emerged as a common standard to foster a coordinated and continuous approach to the challenges posed by corruption. This Directive requires all Member States to adopt, publish and periodically review national strategies on preventing and combating corruption to duly take into account the needs, specificities and challenges of the Member States. The strategies should be developed in cooperation with all level of governments concerned, including local governments and institutions translating national strategies into the specific context, and in consultation with civil***		Commission proposal based on tentative agreement (not yet greened) on Article 21b (line 203o): **This Directive requires Member States to adopt and publish a national strategy on preventing and combating corruption. Member States are encouraged to develop such national strategy in consultation with civil society, anti-corruption bodies or organisational units, independent experts, researchers and other stakeholders. The national strategy should take into account the Member States' needs, specificities and challenges.**

		society, independent experts, researchers and other stakeholders.		
Recital 30				
38	(30) 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.	(30) 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. ***The consistent involvement of civil society in the prevention and in the fight against corruption, as well as in raising public awareness regarding the existence, causes and gravity of corruption and the threats it poses should be an essential element of the Union's approach.***	(~~30~~**28**) 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**.	**For discussion at ITM**
Recital 31				
39	(31) 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	(31) 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	(~~31~~**29**) 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	**For discussion at ITM** **COM encourages including reference to Directive 2024/1069 which has now been adopted, (as in council text)**

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	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[1], as well as the proposal for a Directive[2] and a Commission Recommendation[3] 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. _____ 1. 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. 2. Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), COM/2022/177 final. 3. Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or	in the scrutiny of public affairs, detecting possible corruption and integrity breaches, raising awareness and promoting integrity. Member States ***should be transparent as regards funding the media through institutional advertising, preventing any administration from favouring the media of their choice. In addition, 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[1], as well as the ~~*proposal*~~***proposals for a Regulation establishing a common framework for media services in the internal market (European Media Freedom Act)[1a] and*** for a Directive[2] and a Commission Recommendation[3] 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, ***whistleblowers,*** and others can carry out their role unhindered. _____	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[1], as well as ~~the proposal for a~~ Directive **(EU) 2024/1069**[2] and a Commission Recommendation[3] 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. _____ 1. **[1]** 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. 2. ~~Proposal for a~~ **[2]** 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~~"~~"), ~~COM/2022/177 final.~~	

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	abusive court proceedings (“Strategic lawsuits against public participation"), C(2022) 2428 final.	1. 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. ***1a. Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, COM/2022/457 final.*** 2. Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), COM/2022/177 final. 3. 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.	3. **[3]** 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.	
Recital 32				
40	(32) 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.	(32) 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.	(~~32~~**30**) 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.	Commission proposal: maintain initial drafting
Recital 33				
41	(33) To combat corruption effectively, efficient exchange of information between competent	(33) To combat corruption effectively, efficient exchange of information between competent	(~~33~~**31**) To combat corruption effectively, efficient exchange of information between competent	Commission proposal based on the agreement found on Article 23b (lines 208e-f):

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	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[1], (EU) 2019/1153[2], (EU) 2016/681[3] of the European Parliament and of the Council, Regulations (EU) 2018/1240[4], (EU) 2018/1862[5] and (EU) 603/2013[6] of the European Parliament and of the Council, Council Decision 2008/633/JHA[7]. _____ 1. 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. 2. 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. 3. Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record	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[1], (EU) 2019/1153[2], (EU) 2016/681[3] of the European Parliament and of the Council, Regulations (EU) 2018/1240[4], (EU) 2018/1862[5] and (EU) 603/2013[6] of the European Parliament and of the Council, Council Decision 2008/633/JHA[7]. ***To ensure the security of the information shared between Anti-Corruption Investigation bodies, units and agencies, the use of the Secure Information Exchange Network Application (SIENA), managed by Europol in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council[7a], should be mandatory for all Anti-Corruption Investigation bodies, units and agencies under this Directive.*** _____	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[1], (EU) 2019/1153[2], (EU) 2016/681[3] of the European Parliament and of the Council, Regulations (EU) 2018/1240[4], (EU) 2018/1862[5] and (EU) 603/2013[6] of the European Parliament and of the Council, Council Decision 2008/633/JHA[7]. _____ 1. 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. 2. 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. 3. Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record	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 **between competent law enforcement authorities using Europol's Secure Information Exchange Network Application (SIENA)** 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) **2023/977[1]**, (EU) 2019/1153[2], (EU) 2016/681[3] of the European Parliament and of the Council, Regulations (EU) 2018/1240[4], (EU) 2018/1862[5] and (EU) 603/2013[6] of the European Parliament and of the Council, Council Decision 2008/633/JHA[7].

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	(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. 4. 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. 5. 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. 6. 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 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	1. 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. 2. 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. 3. 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. 4. 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. 5. 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	(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. 4. 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. 5. 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. 6. 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 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	

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	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). 7. 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.	with a reference to the European Arrest Warrant, for instance in Article 8. 6. 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 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). 7. 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. ***7a. Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p.53).***	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). 7. 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.	
Recital 33a				

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41a		***(33a) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.***		COM proposal: deletion (no committee procedure)
Recital 33b				
41b		***(33b) Victims of corruption often lack representation in legal processes, consultation in corruption investigations, and opportunities for compensation. In practice, enforcing actions against international corruption often neglects the involvement and rights of victims, creating a significant gap where victims remain largely unknown. Member States should safeguard the rights of victims, ensuring their perspectives are voiced and considered without compromising the rights of the defence during criminal proceedings against offenders. The compensation of victims represents the essence of justice and victims should be empowered to seek remedies. Therefore, Member States should implement measures allowing individuals or entities harmed by acts of corruption to initiate legal actions against the***		COM proposal based on the agreement found during the ITM on 25/09: deletion of this recital, content included in recital 29a.

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		responsible parties to seek appropriate compensation.		
Recital 34				
42	(34) 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 perform an assessment to identify the sectors most at risk of corruption and develop risk management plans to address the main risks in the sectors identified, including by organising, at least once a year, awareness-raising actions adapted to the specificities of the sectors identified. Member States that have broad national anti-corruption strategies in place, may also choose to address their risk assessments and risk management plans therein, as long as the risks are assessed and the measures are reviewed regularly. For instance, investor residence schemes are among the sectors thatbear high risks for corruption[1]. 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. _____ 1. Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Investor	(34) 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 perform an assessment to identify the sectors most at risk of corruption and develop risk management plans to address the main risks in the sectors identified, including by organising, at least once a year, awareness-raising actions adapted to the specificities of the sectors identified. Member States that have broad national anti-corruption strategies in place, may also choose to address their risk assessments and risk management plans therein, as long as the risks are assessed and the measures are reviewed regularly. For instance, investor residence ***and citizenship*** schemes are among the sectors ~~*thatbear*~~***that bear*** high risks for corruption[1]~~.~~ and should therefore be ~~*included in the assessments of the sectors most at risk of corruption and the trainings to be conducted by*~~***completely banned by the*** Member States ~~*as provided for by this Directive*~~. _____	(~~34~~**32**) 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**, when necessary,** ~~regularly~~ perform an assessment to identify the sectors **or occupations** most at risk of corruption and develop ~~risk management~~ **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 ~~thatbear~~**that bear** high risks for corruption[1]~~.~~ 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.	COM proposal based on the agreement found during the ITM on 25/09 [text in yellow still subject to co-legislators' agreement, see line 203j, text in red also still subject to agreement]: 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**, within appropriate intervals,** ~~regularly~~ perform an assessment to identify the sectors **or occupations** most at risk of corruption and develop ~~risk management~~ **measures** ~~plans~~**,** to address the main risks in the sectors **or occupations** identified, including by **regularly** 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 therein, as long as the risks are assessed and the measures are reviewed regularly. For instance, investor residence schemes are among the

	Citizenship and Residence Schemes in the European Union, 23 January 2019, COM(2019) 12 final.	1. 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.	_____ 1. **[1]** 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.	sectors th~~atbear~~ **that bear** high risks for corruption[1]~~.~~ 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.
Recital 34a				
42a		***(34a) The European Commission should support Member States and their authorities to comply with the obligations stemming from this Directive. In particular, the Commission should offer guidance and support to Member States in enhancing the capacity of their institutions, strengthening investigative bodies and the judiciary in order to respond better to risks of corruption identified at national and Union level.***		COM proposal: deletion given the agreement found on Article 25(3)
Recital 34b				
42b		***(34b) The EU network against corruption should bring together the expertise and resources of Member States, Union institutions, civil society, and the private sector in order to develop comprehensive strategies and share best practices in the fight against corruption. It should serve as a platform for cooperation, coordination, and information sharing, including with international organisations and bodies, thus allowing the***		COM proposal: deletion given the agreement found on Article 25(3)

		Union to combat corruption more effectively.		
Recital 34c				
42c		***(34c) To ensure coordinated EU oversight over the efforts of Member States to tackle corruption, Member States should facilitate the tasks of an EU Anti-Corruption Coordinator. The Coordinator should be responsible for improving coordination and coherence among EU institutions, EU agencies and Member States and should contribute to the effective application of this Directive. To ensure implementation of the country-specific recommendations in regards to combatting corruption set out in the Commission annual Rule of Law Report, the Coordinator should report on the actions that Member States take to address and fulfil them. On its own initiative, or upon the request of the Commission, the Anti-Corruption Coordinator may draw up opinions regarding national measures which may have a significant impact on the implementation of this Directive, including the national anti-corruption strategies of the Member States.***		COM proposal: deletion given the agreement found on Article 25(3)
Recital 34d				

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42d		***(34d) In order to ensure a comprehensive overview and assessment of the corruption related trends and systemic corruption issues across the EU, including the identification of areas that have been affected most by the misappropriation of EU funds, the Commission should develop a yearly Anti-corruption Report, which should provide concrete and actionable recommendations to Member States to act upon in order to address identified shortcomings.***		COM proposal: deletion given the agreement found on Article 26a
Recital 35				
43	(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[1] 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. _____ 1. 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.	(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[1] should be aligned with ~~those of~~***the standards set out in*** this Directive. To this end, ~~the rules applicable to criminal~~***Member States should ensure that*** offences ***covered by this Directive constitute offences also when*** affecting the Union's financial interests~~ as regards~~***. Therefore, the standards set out by Directive (EU) 2017/1371 for fighting corruption affecting the Union's financial interests, in particular in terms of definitions of criminal offences,*** sanctions***, limitation periods***, aggravating and mitigating	~~(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[1] 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.~~ _____ ~~1. 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.~~	For discussion at ITM

		circumstances and ~~*limitation periods*~~***jurisdiction*** should be equivalent to those laid down by this Directive. _____ 1. 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.		
Recital 36				
44	(36) The implementation of this Directive should ensure a level of protection of the Union's financial interests which is equivalent to the protection of the national financial interests.	(36) The implementation of this Directive should ensure a level of protection of the Union's financial interests which is equivalent to the protection of the national financial interests.	(~~36~~**33**) The implementation of this Directive should ensure a level of protection of the ~~Union's~~ **national** financial interests which is equivalent to the protection of the ~~national~~**Union's** financial interests.	**For discussion at ITM** Council to explain their change of order, given that the original drafting of the recital is based on Article 325 TFEU. COM in favour of original proposal text.
Recital 37				
45	(37) 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.	(37) 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.	(~~37~~**34**) 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.	COM proposal: maintain original drafting unchanged

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Recital 38				
46	(38) The intended dissuasive effect of the application of criminal law sanctions 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, as well as the principle of ne bis in idem.	(38) The intended dissuasive effect of the application of criminal law sanctions 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, as well as the principle of ne bis in idem.	(~~38~~**35**) 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.	COM proposal: use Council Mandate given the agreement that has been found on Article 1
Recital 39, first subparagraph				
47	(39) [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 its wish to take part in the adoption and application of this Directive.	(39) [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 its wish to take part in the adoption and application of this Directive.	(~~39~~**36**) ~~[~~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	COM proposal: use Council Mandate text given Ireland's indication to take part

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			take part in the adoption and application of this Directive.	
Recital 39, second subparagraph				
48	AND/OR	AND/OR	~~AND/OR~~	
Recital 40				
49	(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.]	(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.]	~~(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.]~~	COM proposal: deletion
Recital 41				
50	(41) 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.	(41) 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.	(~~41~~**37**) 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.	COM proposal: maintain original drafting unchanged
Formula				

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