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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council - Compilation of comments

Following the invitation of the Presidency in the meeting of the COPEN WP on 12 March, delegations will find in the Annex the comments received from Member States on the above.

Contents

FRANCE

Objet :Observations des autorités françaises à la suite de la réunion des Conseillers JAI + experts lutte contre la corruption des 12 mars 2025 - Note des autorités françaises.

P.J. : Document (2437/2025) - articles 2, 15, 16, 17(1) et (2), 18, 18a, 19 et 15 (4b), 20, 21 et 7, 8, 9, 10, 11, 12 et 12a de la proposition de directive relative à la lutte contre la corruption.

A la suite de la réunion des Conseillers JAI + experts lutte contre la corruption du 12 mars 2025, les autorités françaises souhaitent faire valoir les observations ci-dessous s'agissant des articles 2, 15, 16, 17(1) et (2), 18, 18a, 19 et 15 (4b), 20, 21 d'une part et 7, 8, 9, 10, 11, 12 et 12a d'autre part de la proposition de directive, tels que figurant dans le document de travail (2437/2025) :

Sur l'article 2 - Définitions :

En réponse à la question 1 aux fins de savoir si la définition des fonctionnaires nationaux pourrait être étendue à toute autre personne chargée et/ou exerçant une fonction de service public, les autorités françaises n'ont pas d'opposition à une telle extension, à la condition qu'il soit bien renvoyé au droit national pour la définition de ce qu'est une personne chargée d'une mission de service public. Le service public constitue en effet une notion particulièrement autonome, et ce renvoi au droit national apparait primordial par souci de sécurité juridique.

En réponse à la question 2, les autorités françaises sont favorables à l'emploi du « ou » au lieu du « et » (personne assignée ou exerçant un service public) et à l'extension au fait de « *fournir un service public* », mais elles relèvent toutefois que la définition du Parlement ne renvoie plus au droit national. Par conséquent, elles souhaitent le retour au texte de l'orientation générale sur ce point.

En réponse à la question 3 de la présidence visant à connaitre l'interprétation de l'article 4(4)(a) deuxième et troisième paragraphes de la directive (UE) 2017/1371 du Parlement européen et du Conseil du 5 juillet 2017 relative à la lutte contre la fraude portant atteinte aux intérêts financiers de l'Union au moyen du droit pénal concernant le renvoi ou non aux droits nationaux pour la définition des personnes exerçant des fonctions législatives les autorités françaises sont d'avis que ce renvoi aux droits nationaux est prévu au (ii) de l'article 4 exposant ce qu'est un agent national. Par ailleurs, les Etats membres désignent souverainement qui détient ce pouvoir en leur sein, de sorte que ce renvoi apparait nécessaire. Maintenir ces renvois au droit national permet par ailleurs d'assurer la sécurité juridique. Pour éviter cette question d'interprétation, les autorités françaises sont d'avis de maintenir cette référence explicite dans le présent texte comme prévu à l'orientation générale.

Sur la dernière question, les autorités françaises sont favorables à l'extension du champ d'autres infractions aux jurés et arbitres uniquement en ce qui concerne le trafic d'influence.

Courtesy translation:

On article 2 - Definitions:

In response to question 1 as to whether the definition of national officials could be extended to or any other person assigned [or/and] exercising a public service function, the French authorities have no objection to such an extension, provided that reference is made to national law for the definition of such a person. Public service is a particularly autonomous concept, and this reference to national law is essential for the sake of legal certainty.

In response to question 2, the French authorities are not opposed to the terms "person assigned or exercising a public service function", but have an issue with the fact that the Parliament's definition no longer refers to national law. Consequently, they would like to see a return to the text of the general approach on this point.

In response to question 3 from the Presidency asking about the interpretation of the second and third paragraphs of Article 4(4)(a) of the Directive (EU) 2017/1371 of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law concerning whether or not reference should be made to national law for the definition of persons exercising legislative functions, the French authorities are of the opinion that this reference to national law is provided for in (ii) of Article 4.
Moreover, the Member States have sovereignty over who is entrusted with this legislative power, so this reference appears necessary. Maintaining these references to national law also ensures legal certainty. To avoid this question of interpretation, the French authorities are of the opinion that this explicit reference should be maintained in the present text as provided for in the general approach.
On the last question, the French authorities are in favor of extending the scope of other offenses to jurors and arbitrators, but only as regard influence peddling.

Sur l'article 15 - Sanctions et mesures pour les personnes physiques :

Sur la première question de savoir si la commission d'un acte licite ou illicite peut influencer sur le quantum de la peine (5 ans en cas d'acte licite, contre 7 en cas d'acte illicite), les autorités françaises sont contre cet amendement, dès lors que le comportement visé à l'article 7 vise précisément à influencer une prise de décision d'un individu en sa faveur via la commission d'un acte, fût-il licite ou non.

Sur la deuxième question, les autorités françaises sont défavorables aux ajouts du Parlement européen sur les critères à prendre en compte par les juridictions lors du prononcé ou de l'aménagement des peines, dès lors que cela relève de la marge d'appréciation des Etats membres De tels ajouts ne devraient donc pas figurer, même au sein d'un considérant.

Courtesy translation:

On article 15 - Penalties and measures for natural persons:

On the first question of whether the commission of a lawful or unlawful act can influence the quantum of the penalty (5 years in the case of a lawful act, as opposed to 7 in the case of an unlawful act), the French authorities are against this amendment, since the conduct referred to in Article 7 is specifically intended to influence an individual's decision-making in his or her favour through the commission of an act, whether lawful or not.

On the second question, the French authorities are against the European Parliament's additions on the criteria to be taken into account by the courts when imposing or adjusting sentences, since this falls within the Member States' margin of discretion. Such additions should therefore not appear, even within a recital.

Sur l'article 17 - Sanctions et mesures à l'encontre des personnes morales :

En réponse à la première question, les autorités françaises sont favorables à l'inclusion de la mention relative à la publication de la décision judiciaire (paragraphe i.a, ligne 161a) selon la terminologie employée dans la directive violation des mesures restrictives, à la condition que cela figure dans une liste ouverte par la formulation suivante « *and may include other criminal or non-criminal penalties or measures that are proportionate to the gravity of the conduct, such as (...) »*

En réponse à la deuxième question sur les procédures de règlement extrajudiciaire des litiges, les autorités françaises font preuve de souplesse à condition qu'il soit clarifié que le paragraphe 2b) ne renvoie pas à une sphère non judiciaire (ce à quoi pourrait faire penser les termes « *non-trial resolutions processes* »), mais simplement à des mesures judiciaires alternatives au procès au sens strict, de type plaider-coupable ou convention judiciaire d'intérêt public. Il apparait en effet essentiel d'assurer pour ces affaires que les décisions finales soient validées par des juges. Le champ de cette dérogation doit cependant être cantonné aux infractions les plus strictement rattachées à la corruption et au trafic d'influence de la présente directive.

Elles proposent en conséquence la rédaction suivante à l'article 17 :

- *"Member States shall take the necessary measures to establish effective and transparent non-trial resolutions processes that the competent **judicial** authorities can enter into with a legal person for any of the offences referred to in **article 7, 8 and 10**."*

Courtesy translation:

Article 17 - Sanctions and measures against legal persons:

In response to the first question, the French authorities are in favour of including the reference to publication of the judicial decision (paragraph i. a, line 161a) in accordance with the terminology used in the Restrictive Measures Directive, provided that this is included in a list opened by the following wording "and may include other criminal or non-criminal sanctions or measures proportionate to the seriousness of the act, such as (...)".

In response to the second question on out-of-court dispute resolution procedures, the French authorities are showing flexibility provided that it is clarified that paragraph 2b) does not refer to a non-judicial sphere (which the terms 'non-trial resolutions processes' might suggest), but simply to judicial alternatives to trial in the strict sense of the term, such as guilty pleas or judicial public interest agreements. In such cases, it seems essential to ensure that the final decisions are validated by judges. The scope of this derogation should, however, be confined to the offences most strictly related to corruption and trading in influence in this Directive.

They therefore propose the following wording for Article 17:

- *"Member States shall take the necessary measures to establish effective and transparent non-trial resolutions processes that the competent **judicial** authorities can enter into with a legal person for any of the offences referred to **in article 7, 8 and 10.**"*

Sur les articles 18 et 18 – Circonstances aggravantes et atténuantes :

Concernant la première question sur la manière de définir la notion d'agents de haut niveau (« *high-level official* »), les autorités françaises proposent un usage mixte entre une liste de catégories d'agents publics toujours considérés comme de haut niveau, et un renvoi au droit national pour d'autres éventuelles catégories d'agents publics qui répondraient à cette définition.
La liste socle pourra contenir les chefs d'Etats, les chefs et membres des gouvernement centraux et régionaux, les ministres et secrétaires d'Etat, certains membres des cabinets ministériels (« *chiefs of minister's private office and ministerial advisers* »), les parlementaires, les juges et procureurs (et non les membres, terme trop large) des cours suprêmes et constitutionnelles, les chefs de certaines missions d'inspection. Le tout sous réserve du maintien du renvoi aux régimes des immunités et privilèges prévus par les Constitutions et droits nationaux.

Sur les deuxième et troisième questions par lesquelles la présidence invite les délégations à indiquer s'il est envisageable d'inclure le paragraphe 1g dans la liste des circonstances aggravantes (g) (line 170) et si la circonstance aggravante de crime organisé pourrait être rendue obligatoire à la lumière de la directive (UE) 2017/1371 du Parlement européen et du Conseil du 5 juillet 2017 relative à la lutte contre la fraude portant atteinte aux intérêts financiers de l'Union au moyen du droit pénal, les autorités françaises sont souples pour la première addition, mais souhaitent que les Etats membres aient la liberté de choisir, parmi la liste des circonstances aggravantes, laquelle ou lesquelles doivent être rendues obligatoires. Elles préciseront ainsi ne pas être favorables à la mise en place d'un caractère obligatoire concernant la circonstance aggravante de crime organisé.

Courtesy translation:

On articles 18 and 18 - Aggravating and extenuating circumstances:
With regard to the first question on how to define the concept of 'high-level official', the French authorities propose a mixed approach between a list of categories of public officials always considered as high-level, and a reference to national law for any other categories of public officials who meet this definition.

The core list could include heads of state, heads and members of central and regional governments, ministers and secretaries of state, certain members of ministerial cabinets ('chiefs of minister's private office and ministerial advisers'), members of parliament, judges and prosecutors (not members, which is too broad a term) of supreme and constitutional courts, and heads of certain inspection missions. All this subject to maintaining the reference to the regimes of immunities and privileges provided for by national constitutions and laws.

On <u>the second and third questions</u> in which the Presidency invited delegations to indicate whether paragraph 1g could be included in the list of aggravating circumstances (g) (line 170) and whether the aggravating circumstance of organized crime could be made mandatory in the light of the Directive (EU) 2017/1371 of the European Parliament and the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, the French authorities are flexible on the first addition, but want Member States to be free to choose which of the list of aggravating circumstances should be made mandatory. The French authorities are not in favor of making the aggravating circumstance of organized crime mandatory.

<u>Su l 'article 20 - Compétence :</u>

Les autorités françaises souhaitent conserver une cohérence sur ces questions de compétence et ne sont ainsi pas favorables à rendre le paragraphe 1 (c) de l'article 20 obligatoire, en cohérence avec l'article 12 de la directive (UE) 2024/1203 du Parlement européen et du Conseil du 11 avril 2024 relative à la protection de l'environnement par le droit pénal et remplaçant les directives 2008/99/CE et 2009/123/CE, qui ne le prévoit pas non plus.

<u>Courtesy translation:</u>

<u>On article 20 - Jurisdiction:</u>

The French authorities wish to maintain consistency on these issues of jurisdiction, are therefore not in favor of making paragraph A (c) of article 20 mandatory, in line with the Article 12 of Directive (EU) *of the European Parliament and the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC*, which does not which does not provide for this either.

<u>Sur l'article 21 - Délais de prescription</u>

Les autorités françaises indiquent que ces questions de prescription ont un impact important sur la structure du droit pénal et procédural de manière générale.
A titre de compromis et pour faire preuve de souplesse, elles proposent toutefois que les délais visés soient harmonisés à 6 ans aux paragraphes 4 et 5.

Courtesy translation:

On article 21 - Limitation periods:

The French authorities indicate that these issues of limitation periods have a major impact on the structure of criminal and procedural law in general.

As a compromise and in order to show flexibility, they, however, propose that the periods referred to be harmonized at 6 years in paragraphs 4 and 5.

Sur l'article 7 - Corruption dans le secteur public :

A l'aune des positions exprimées lors de la réunion du groupe COPEN corruption des 10 et 11 février 2025, les autorités françaises ont une préférence pour le maintien du terme « undue » dans le texte (lignes 96 et 97), mais en le déplaçant pour bien souligner qu'in fine, ce qui doit être qualifié de « sans droit », est la proposition ou l'acceptation en elle-même.

Elles rappellent que le Parlement européen propose une distinction textuelle entre les articles 7 et 8 et la suppression de ce terme pour l'article 7 en le justifiant par les champs distincts qu'ils couvrent, l'un le champ public, l'autre le champ privé.

Cependant, les autorités françaises sont d'avis que la définition retenue de ce qu'est un agent public dans cette directive est large et atténue la limite entre secteur public et privé, particulièrement celle proposée par le Parlement européen à l'article 2. Dès lors la justification proposée par le Parlement ne prend pas en considération cette extension et ferait encourir un risque pénal trop large dans le champ de l'article 7.

Maintenir ce terme « undue » permet de garantir que ne tombent pas dans le champ pénal des avantages promis sollicités ou versés de manière légale pour des personnes considérées comme des agents nationaux, mais qui peuvent exercer des activités dans des champs ne relevant pas strictement du secteur public, et dans lesquels il est possible qu'une rémunération leur soit légalement versée pour leur action ou abstention.

Les autorités françaises proposent donc la rédaction suivante à l'article 7 (1) : (lignes 95, 96, 97)

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

Courtesy translation:

On article 7 - Corruption in the public sector:

In the light of the positions expressed at the meeting of the COPEN Corruption Group on 10 and 11 February 2025, the French authorities prefer to retain the term 'undue' in the text (lines 96 and 97), but to move it to emphasise that, in the final analysis, what must be qualified as 'undue' is the proposal or acceptance itself.

They point out that the european Parliament is proposing a textual distinction between Articles 7 and 8 and the deletion of this term for Article 7, justifying this by the distinct fields they cover, one the public field, the other the private field.

However, the French authorities are of the opinion that the definition of a national official in this directive is broad and blurs the boundary between the public and private sectors, particularly that proposed by the European Parliament in Article 2. The aforementioned justification proposed by Parliament does not take account of this extension and would entail an excessively broad criminal risk within the scope of Article 7.

Maintaining this term 'undue' ensures that promised benefits solicited or paid in a lawful manner for persons considered to be national agents, but who may carry out activities in fields that do not strictly fall within the public sector, and in which it is possible that remuneration is lawfully paid to them for their action or abstention, do not fall within the scope of the criminal law.

The French authorities therefore propose the following wording for Article 7(1): (lines 95, 96, 97)
"*1. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:(a) the* ***undue*** *promise, offering or giving, directly or through an intermediary, of an* ~~***undue***~~ *advantage of any kind to a public official for that official or for a third party in order for that official to act or refrain from acting in the exercise of that official's functions (active bribery);(b) the* ***undue*** *request or receipt by a public official, directly or through an intermediary, of an undue advantage of any kind or the acceptance of the offer or the promise of such an advantage for that official or for a third party, in order for that official to act or to refrain from acting in the exercise of that official's functions (passive bribery)."*

Sur l'article 8 – Corruption dans le secteur privé :
Les autorités françaises sont flexibles sur cette proposition d'ajouter une mention relative aux activités professionnelles ou commerciale à la ligne 99.

Courtesy translation:

On article 8 - Corruption in the private sector:
The French authorities are flexible on this proposal to add a reference to both the terms business or commercial to line 99.

Sur l'article 9 - Détournement de fonds :

Les autorités françaises sont favorables à la mise en place d'un caractère obligatoire de l'article 9 paragraphe 2.

Courtesy translation:

Article 9 - Misappropriation:

The French authorities are in favour of making Article 9(2) mandatory.

Sur l'article 10 - Trafic d'influence :

Les autorités françaises sont souples sur cette disposition, et ne sont pas opposées aux propositions rédactionnelles alternatives proposées, tant sur la réintroduction des termes « *real or supposed* », que sur le remplacement du terme « *illicite* » par un autre vocable plus large, tel que « *improper* ». Sur le terme « *undue* » aux paragraphes a et b, elles sont favorables au rétablissement du terme « undue », mais en le déplaçant en début de phrase pour bien souligner le caractère impropre ou illicite de la promesse /sollicitation en elle-même plutôt que de l'avantage recherché, ceci afin de favoriser la démonstration de l'infraction et ne pas retarder les investigations dans les cas où la nature illicite ou impropre de l'avantage poserait difficulté.

Les autorités françaises proposent la rédaction suivante pour l'article 10 :

"1. *Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally(a) the* ***undue*** *promise, offering or giving, directly or through an intermediary, of an* ***~~undue~~*** *advantage of any kind to any person to exert* ***real or supposed illicit [or improper] influence*** *over a decision or measure to be taken by a public official in the exercise of that official's functions with a view to obtaining an* ***~~undue~~*** *advantage from a public official;*

(*b) the* ***undue*** *request or receipt, directly or through an intermediary, of an* ***~~undue~~*** *advantage of any kind, or the acceptance of an offer or a promise of such an advantage by any person to exert* ***real or supposed illicit [or improper] influence*** *over a decision or measure to be taken by a public official in the exercise of that official's functions with a view to obtaining an* ***~~undue~~*** *advantage from a public official.*"

Courtesy translation:

Article 10 - Trading in influence (follow-up to previous discussions):

The French authorities are flexible on this provision, and are not opposed to the proposed alternative wording, either on the reintroduction of the terms 'real or supposed', or on the replacement of the term 'illicit' by another broader term, such as 'improper'.
With regard to the term 'undue' in paragraphs a and b, they are in favour of reinstating the term 'undue', but moving it to the beginning of the sentence to emphasize the improper or illicit nature of the promise/solicitation itself rather than of the advantage sought, in order to make it easier to demonstrate the infringement and not to delay investigations in cases where the illicit or improper nature of the advantage poses a question. The French authorities propose the following wording for Article 10: "1. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:*(a) the* ***undue*** *promise, offering or giving, directly or through an intermediary, of an* ***~~undue~~*** *advantage of any kind to any person to exert* ***real or supposed illicit [or improper] influence*** *over a decision or measure to be taken by a public official in the exercise of that official's functions with a view to obtaining an* ***~~undue~~*** *advantage from a public official;the* ***undue*** *request or receipt, directly or through an intermediary, of an* ***~~undue~~*** *advantage of any kind, or the acceptance of an offer or a promise of such an advantage by any person to exert* ***real or supposed illicit [or improper] influence*** *over a decision or measure to be taken by a public official in the exercise of that official's functions with a view to obtaining an* ***~~undue~~*** *advantage from a public official."*

Sur l'article 11 - Abus de fonction :

Les autorités françaises peuvent faire preuve de souplesse concernant la mise en place d'un caractère obligatoire au premier paragraphe de l'article 11, mais souhaitent toutefois échanger plus en avant sur une rédaction de cette disposition qui permettrait de circonscrire plus précisément le champ de cette infraction.

Courtesy translation:

Article 11 - Abuse of functions (follow-up to previous discussions):

The French authorities can be flexible about making the first paragraph of Article 11 binding, but would like to discuss further the wording of this provision, which would make it possible to define the scope of this offence more precisely.

Sur l'article 12 – Entrave à la justice :

Les autorités françaises font preuve de souplesse sur ces deux points, concernant la suppression de la notion « undue » à la ligne 117 et le soutien au considérant proposé par la présidence, qui vise à répondre à la préoccupation du Parlement concernant la signification des termes « criminal proceedings ».

Courtesy translation:

On article 12 - Obstruction of justice:

The French authorities have shown flexibility on these two points, concerning the deletion of the term 'undue' in line 117 and support for the recital proposed by the Presidency, which aims to address Parliament's concern about the meaning of the term 'criminal proceedings'.

CROATIA

Article 2 - Definitions

We are opposed to the introduction of a functional criterion in the definition of a national official because the functional criterion is listed in Article 2. paragraph 2. Item b) and thus included in the definition of "public official". We do not see the need to duplicate, and we do not support the inclusion of the expression "*or any other person assigned or exercising a public service function*" nor the expression „*any person entrusted with tasks of public interest or in charge of a public service*" into the definition of a national official. We want to retain a reference to national law in defining members of representative bodies at all levels and we support the inclusion of arbitrators and jurors as the perpetrators of the criminal offenses into Article 10 (trading in influence), provided that the definitions of the arbitrators and jurors remain prescribed as in the GA with references to national law**.**

Article 3 - Prevention of corruption and Article 4 - Specialised bodies

We remain in full agreement with the general approach and the EP proposals in this form are unacceptable.

The EP proposals introduce rules that relate to significantly different areas of corruption prevention and contain many unclear and undefined terms, which is completely unacceptable when it comes to defining obligations for Member States, which does not contribute to clarity or strengthening the preventive framework. By "throwing in" obligations that relate to significantly different areas of the preventive framework, all in the context of the vague concept of corruption prevention, we believe that this has gone too far in relation to the content and aim of the Proposal.

Each of these areas (for example, prevention of conflicts of interest, representation of interests in public decision-making, integrity, transparency of public decision-making, financing of political parties, strategic framework,) requires defining terms and obligations in accordance with a uniform definition of terms, which is not the subject of this Proposal. It is also not possible to start from the assumption that there is a uniform understanding of the content of these terms by the other Member States. Furthermore from the understanding of the meaning of these terms, obligations for the Member States cannot be defined because we do not know exactly how implementation and enforcement should look like.

Namely, many of these obligations imply significant funds, human resources, the establishment of new mandates, and potentially significant changes in the already established preventive and repressive framework for the prevention of corruption. We believe that it is not appropriate to introduce such a wording at this stage of the discussion on the Directive because we have not conducted analyzes of what such an expansion of the scope of the Directive would mean in the context of changing the legal and institutional framework of the Member States. In the context of all of the above, we notice a smaller number of references to the established legal and institutional framework within the Member State. The same remark is applicable to Article 4.

Article 7 - Bribery in the public sector

We propose to keep a word „undue“ and we suggest to delete the "*request of an offer or promise."*

Article 8 - Bribery in the private sector

We prefer the text of the provision as defined in the GA and paragraph 2. should be kept as the optional one.

Article 9 - Misappropriation

We consider as acceptable text of the GA that contains additional elements of incrimination in the form of „advantage“ or other damage („damaging financial interest…“). We support a GA which prescribes a paragraph 2 as the optional one.

Article 10 - Trading in influence

We deem as necessary to keep the text as it is defined in GA. Compared to the term "request of promise", which would be the new modality of committing the criminal offense of trading in influence according to the proposal of the EP (Article 10, paragraph 1, point b), we are not in favour to accept proposed introduction because we believe that the request of the bribe's promise is already covered through the modality of committing the "request of an undue advantage of any kind".

Article 11 - Abuse of functions

We support a GA according to which paragraph 11 is optional and paragraph 2 should be deleted.

Article 12 - Obstruction of justice

In relation to Article 12 we consider that the formulation proposed by the EP in paragraph 1, which contains more detailed descriptions of the way the criminal offense/act can be committed, is more appropriate for the recital than for the operational part of the Directive.

Article 12a - Illicit political financing

Regarding the proposed Article 12a (Illicit political financing), we would point out as follows:

Any direct or indirect, active or passive financing of political parties (presidents of political parties, secretaries and governing bodies of a party) or legislative or executive office holders at national, European or international level that is contrary to the positive regulations governing the financing of political activities, as well as the criminalisation of such conduct by the organisations actively advocating one of the political parties is not prescribed as a target offence in its essential characteristics. The proposed offence does not require that the direct or indirect, active or passive unlawful financing of political activities be undertaken with the aim of ensuring that, on account of such funding, the president of a political party, the secretary and the governing bodies of the party or legislative or executive office holders at national, European or international level take or refrain from taking action within the limits or beyond the limits of their powers, as is the case with active and passive bribery offences.

The proposed criminal offence represents de facto a blanket disposition according to which any violation of national legislation on the financing of political activities is a criminal offence, which is questionable from the perspective of the ultima ratio principle as a fundamental principle of criminal law. In addition, prescribing the crime as a blanket disposition with a reference to national laws regulating the financing of political activities, which are not harmonised at EU level, would not lead to the establishment of uniform minimum rules on the definition of criminal offences at the level of the Member States.

Article 13 - Illicit enrichement

With regard to Article 13 (enrichment from corruption offences), this provision was the subject of extensive discussion during the negotiations in the COPEN Working Party, which resulted in the compromise contained in the GA. The aforementioned criminalisation, as formulated in the text of the GA, does not require Member States to criminalise the acquisition, possession or use of property obtained through corruption offences in a situation where the perpetrator of the predicate corruption offence and the criminal offence of enrichment through corruption offences (Article 13 of the Proposal for a Directive) is the same person. It therefore criminalises the acquisition, possession or use of property for which the official, at the time of receipt, knows to have been obtained through the commission of a corruption offence by another public official.

The normative solution proposed by the EP reopens the possibility of criminalizing the acquisition, possession or use of property obtained through a corruption crime even in cases where the perpetrator of the predicate corruption crime and of enrichment through corruption offences is the same person, what is unacceptable to us.

Article 13a – Concealment

In relation to the proposed article 13a (Concealment), which incriminates the act of hiding/concealing assets with the knowledge that such assets resulted from a criminal offense prescribed by this draft Directive, we believe that it is necessary to limit the incrimination in accordance with the characteristics contained in Article 3 of Directive (EU) 2018/1673 on the fight against money laundering by means of criminal law, with regard to the characteristics of the assets to which the hiding/concealment refers and for what purpose it has been done.

Also, we agree with the deletion of the proposed Article considering the interventions of the COPEN meeting, held on 10 and 11 February 2025, during which Member States proposed deletion of this Article since it is already covered by the Directive (EU) 2018/1673 on combating money laundering by criminal law.

Article 13b - Misconduct in public office

In relation to the proposed article 13b, it is unclear what is meant by the term "*culpable breach of an official duty*", i.e. whether the term "*culpable*" covers only intentional or also careless behaviour. We believe that it is necessary to stick to the legislative solutions contained in the text agreed within the framework of the GA, in Article 9, Paragraph 1 (misappropriation), which is binding and Article 11 (Abuse of position), which is optional.

Article 15 par 2 (line 128, line 142 a) - Penalties and measures for natural persons

In relation to the criminal offence under Article 7 of the proposed Directive, we could accept the Parliament's proposed minimum specific maximum sentence of 7 years, and of 5 years in the case of unlawful bribery (to obtain a lawful act). For the criminal offence under Article 12, we consider the proposed minimum specific maximum sentence of 7 years to be too high. We do not support the introduction of Article 12a into the text of the Directive.

In relation to the new Article 15, paragraph 4.a, proposed by the EP, we point out that Croatian court, when deciding whether to apply a suspended sentence, is obliged to consider, among other things, the circumstances of the commission of the criminal offence itself. The court may impose a suspended sentence on an offender who has been sentenced to a prison sentence of up to one year or to a fine if it assesses that the offender will not commit criminal offences in the future, even without serving the sentence.

Article 17 (line 161a, 161g) - Sanctions for legal persons

In the text of Article 17, paragraph 2, the proposal of the Directive, as it is defined in the text of GA, imposing the obligation for the Member States to prescribe a fine, and for other sanctions, uses the expression "*may include other ... such as*", we could accept wording in line 161a (ia). If it was a compulsory sanction, the Parliament's proposal cannot be accepted.

Regarding art. 17(2) p.(ia) we emphasize that, in the national criminal legislation (Article 21 of the Liability of Legal Persons for Criminal Acts) prescribes the publication of a judgment as a *sui generis* measure that can be applied to a legal person, provided that, given the significance of the criminal offence, there are justified reasons to inform the public about the final judgment.

In relation to line 161G, Art. 17, par. 2b we emphasize that, in the national criminal legislation, the institute of agreement on punishment and other measures, as well as the adoption of a verdict based on an agreement between the parties (Articles 359 to 364 of the Criminal Procedure Code), is also applicable to legal persons. Therefore, we could accept this proposal of the Parliament.

Article 18 (line 169 and 170)- Aggravating and mitigating circumstances

As for lines 169 and 170, we could accept the Parliament's proposal, provided that the introductory text of the Article 18 provides wording as defined in the GA ("*one or more of the following circumstances may, in the accordance with national law, be regarded*").

ITALY

The Italian delegation thanks very much the Presidency for the work already done and for carefully considering the positions of the Member States. With regards to the trilogue ongoing, Italy recalls, once again, its position with reference to **Article 11 on the offence of abuse of functions**.

With reference to the request made by the Presidency - *to indicate whether a more mandatory nature of Article 11 would be acceptable in line 113, for example by adding the element of a damage* – the Italian delegation reiterates that for Italy **the preservation of Article 11 in the formulation of the general approach is a red line**. The compulsory nature of the incrimination of abuse of functions would be irreconcilable with our legal system, as amended by the Italian Parliament with the recent reform that abolished the crime of abuse of functions.

In support of this position, we would like to recall some elements also mentioned during the discussion:

1) The proposal for a directive was presented without a prior impact assessment. National specificities were not taken into account, nor was an analysis made of how the offence of abuse of office was actually 'functioning' in the legal systems where it existed. The Commission's proposal to make the criminalisation mandatory is therefore affected by this fundamental weakness.

2) In Italy, according to statistics, the offence of abuse of functions resulted in a very small number of final convictions (9) compared to the thousands of proceedings initiated in a year (about 5,000 in 2022). It should be noted that the principle of mandatory prosecution enshrined in the Italian Constitution made it necessary for prosecutors to initiate criminal proceedings whenever a citizen filed a complaint, even before assessing the criminal relevance of the alleged facts. This resulted in an enormous waste of energy and resources in the judicial system.

3) The reform of the Criminal code, with the abrogation of the offence of abuse of functions, took place after the law had already been amended to restrict its scope four times, and was strongly requested by local administrators, as a barrier to the phenomenon of 'defensive administration' or 'fear of signing'.

4) The abrogation of the offence did not lead to any weakening of the fight against corruption, since the Italian legal system provides for several other remedies for the case of illegitimate acts committed by a public official. These remedies include: 17 offences relating to conduct that can be largely attributed to corruption; the right to appeal to the administrative court to annul the act; the application of disciplinary sanctions; the sanction of accounting damages by the Court of Auditors; as well as possible compensation for damages caused to third parties, decided by the civil court. In other words, in order to fight corruption, it is not essential for the offence of abuse of functions to be included in the legal system. This is demonstrated by the fact that the United Nations Convention Against Corruption (UNCAC) does not include the mandatory criminalisation of abuse of functions.

The negotiations within the Council were an opportunity to clarify these aspects in a frank and fair exchange, concluded with the approval of the general approach by the Ministers of Justice. We believe that the current text, which provides for optional criminalisation, is very well balanced and fully respects national particularities. The 'may' clause allows Member States to implement the directive in accordance with national legal systems, guaranteeing the flexibility in substantive criminal law inherently associated with a minimum harmonisation directive.

For all these reasons, we reiterate that **we are opposed to any amendment that could result in the mandatory criminalisation of the offence, even if the scope is limited.** We would also like to point out that **the Italian position on the entire text (with or without acceptance of other compromise points) is necessarily linked to this point**.

Finally, we would like to conclude with an observation on the outcome of the discussion held on 12 March: **we believe that there is no mandate for the Presidency to explore with the Parliament the feasibility of 'more binding' solutions than the text of Article 11 as foreseen by the general approach**. The majority of Member States that intervened were in fact opposed to a mandatory provision.

Considering the outcome of the last meeting, we believe that the Presidency will be able to highlight to the Parliament that the request to maintain Article 11, in the version approved by the general approach, comes from more than half of those who have taken a position in the debate.

Article 11 of the general approach was one of the reasons why many Member States, including Italy, accepted, in the end, the Directive. It is, therefore, a very delicate "*house of cards"*: if Article 11 is touched, the entire structure of the proposal risks collapsing.

The Parliament will understand that the current rule is simply more flexible, but, however, it brings with it a very clear advantage: a common definition of “abuse of function” is harmonised at the EU level. And this is the real goal achieved.

We believe that all these arguments can be well used by the Presidency to ensure that the mandate of the ministers is defended.

We have great confidence in the Presidency's action and we insist therefore that the Presidency defends the general approach.

NETHERLANDS

Written input by the Netherlands to the proposals of the European Parliament to articles 2, and 15 to 19, 20, 21, and 7 to 12 of the Proposal of a Directive of the European Parliament and of the Council on combating corruption.

1. Introduction

During the COPEN (Corruption) meeting of March 12th 2025, Member States were requested to provide written responses to the preliminary outcomes of the technical meeting with the European Parliament, regarding articles 2, 15-21 and 7-12 (document WK 2437/2025 REV 1). In this document, the Netherlands responds to this request.

The comments below should be read in addition to the remarks made by the Dutch delegation during the meeting on March 12th. Furthermore, we emphasise that discussions in parliament may lead to amendment, supplementation or withdrawal of (parts of) our comments.

2. Articles 2 and 15-21

Article 2 – definition of public official

- Regarding the definition of Public Official, the Netherlands does not support the broadening of the sub-definition of 'national official' as proposed by the parliament (by adding the phrase 'or any other person assigned [or/and] exercising a public service function'). The definition of public official in the GA follows the structure where a national official is a specific type of public official. As such, this definition should remain narrow. The addition of 'any other person' is already part of the definition of public official as sub b of this clause, and should not be unnecessarily repeated. The structure of the GA should be maintained. In addition, we wish to maintain the reference to national law.
- Parliament argues that they wish to broaden the definition of 'national official' in order to alter the scope of any later provisions which refer exclusively to national officials and thereby do not cover the 'any other person' element. In order to reach that goal, we propose to defer the discussion to the articles parliament would wish to see adapted and see if we can change their scope rather than this definition.

Article 15:

- The Netherlands can be flexible on the proposed wording for line 128. However, we do not support the proposed 7 year term of imprisonment. We consider this too long.
- Additionally, we have no objections to including the content of line 142a in a recital.

Article 17:

- Regarding the wording of line 161a, the Netherlands can be flexible. We support uniformity between EU legislative instruments and can therefore support this proposal. However, we remark that art. 7 from the Directive on the violation of restricted measures is optional in nature – it describes measures 'such as…'. We would like to preserve this in art. 17 of our own directive as well.

Article 18:

- As long as the aggravating circumstances remain optional, we do not object to the inclusion of line 170 in the list of aggravating circumstances.
- We do not support making the aggravating circumstance on 'organised crime' mandatory.
- The Netherlands advocates for uniformity between EU legislative instruments and therefore supports recent efforts to create standardized phrasing in criminal law directives. Examples of this can be found in the recent directives on Environmental Crime and Violence against Women. Because the PIF directive predates the attempt at uniformization and deviates from what has been agreed upon in this regard, we do not agree with the wording from the PIF directive.

Articles 19 and 15(4b):

- The Netherlands strongly opposes the proposal in article 15(4b) and would like to repeat our previously expressed concerns. While we understand the wish for parliament to make a stance against misuse of immunities granted to national officials in article 19, amnesties and pardons are a crucial aspect of criminal law to ensure just, humaine and proportionate penalties.

- We consider it disproportionate to eliminate the possibility of a pardon for all corruption cases. We remark that pardoning procedures are also applicable for cases in which after a final judgement, new information comes to light which would have influenced said judgement or in cases where the circumstances of the convicted party are altered in such a way that the imposed sentence is no longer proportionate to the goals it set out to reach. Moreover, in the Netherlands the pardoning procedure is also applied for the reassessment of life sentences. The proposal of the Parliament would exclude such a reassessment for combination offences where a crime constituting a life sentence is combined with a corruption offence. We consider this a breach of the European Convention on Human Rights.

Article 21:

- We are open to discuss the length of the limitation periods.

Articles 7-12

Article 7:

- The Netherlands can be flexible regarding the removal of the word 'undue' in point (a).

Article 8:

- The Netherlands can be flexible and is willing to agree on the inclusion of both 'commercial' and 'business' in line 99.

Article 9:

- The Netherlands does not object to proposal of the Parliament to remove the optional nature of the provision in 1(b) (line 105) regarding misappropriation in the private sector.

Article 10:

- As examples for the difference between 'improper influence' and 'obtaining an undue advantage, we suggest the following:
    - 'Improper influence' can be used to describe situations in which decisions have been influenced in a way that cannot be considered legitimate lobbying. For example when conversations are held in secret of regulations for lobbying activities are circumvented. While the influencing is considered improper, the decision itself it not necessarily illegitimate.

- With ‘obtaining an undue advantage’, on the other hand, can be referred to situations where influence is used to obtain illegitimate benefits. Examples of this might be influencing a decision on granting a permit or procurement for which the (legal) requirements have not been met.

- Thus, by requiring both improper influence as well as undue advantage, the scope could be sufficiently narrowed to behaviour that should in fact be criminalized.

Article 11:

- The Netherlands considers the general scope of the offence described in article 11 very broad. With this broad scope, we wish to maintain the optional nature of the provision. However, under the condition that the scope of the article is narrowed – for example by including the requirement that the advantage is actually obtained and not just attempted – we are willing to reconsider.

Article 12/recital 14:

- We have no objections to the proposed recital and can be flexible regarding the removal of ‘undue’ in line 117.

ROMANIA

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

Ref. Docs.:
- WK 2437/25 REV.1 (07.03.2025)

1. In reference to art. 2

a) As regards the definition of "national official", in view of the EP's arguments, we consider the definition can be supplemented with the indicated phrase, in order to include in this category persons who have exercised a public service. However, we consider that the text could refer exclusively to the exercise of a public function or a public service, without specifying the manner in which he came to exercise that function or service (designated or not).

b) With regard to the second question, we consider that the definition can be amended, namely to eliminate the reference to the designated person.

c) With regard to the third question, we consider that, to the extent that, according to MS legislation, the person exercising a legislative function does not fall within the notion of national official, according to the PIF Directive, this should be included/assimilated.

d) As regards the fourth question, we consider that such an extension of the scope of certain offences is neither necessary nor appropriate. The definition of public official is comprehensive from the perspective of the scope of the offences provided for by the Directive, it not being indicated that certain categories should be mentioned as being included/assimilated to this category. It should also be considered that the inclusion of arbitrators and jurors in the scope of he offences of "active bribery" and "passive bribery" is also in line with the Additional Protocol to the Criminal Law Convention on Corruption of the Council of Europe. But this was done considering the specific nature of the offences of "active bribery" and "passive bribery" which can only be committed by a public official, therefore a person with a certain capacity.

In this Additional Protocol, it was not provided for the inclusion of arbitrators and jurors in the scope of the offence of trading in influence because this offence does not have a qualified active subject, so it can be committed by any person, regardless of whether he is a public official or not, an arbitrator or not. Therefore, the offence of trading in influence is a general offence that can be committed by any person. What is relevant for this offence is that the person against whom it is alleged that there is an influence is a public official. Only with regard to this last aspect can a mention be made that the trafficked influence can also refer to an arbitrator or juror.
In any case, according to national law, if an arbitrator commits an offence of trading in influence, he will be criminally liable for the offence of trading in influence without the need for an express text to this effect in the Directive. However, given that the legal systems of the MS have many specific features (RO, for example, does not have a justice system in which there is participation of jurors), we consider that such a text must provide the MS with a wide margin of appreciation, so that we can agree with such a text if it is not formulated in imperative terms - "may".

2. In reference to art. 15

a) Regarding the first aspect, we do not support such a compromise proposal that includes the phrase “committed to obtain a lawful act”. In our opinion, in the case of the bribery, retaining this hypothesis may be difficult to achieve, since the briber does not know the duties of the public official, and will not know whether the act in question will be legal or illegal.
In addition, we consider that the reference to the breach of duty used in the GA is the correct one because the bribe is given or accepted for the performance of an act additional to or in contradiction with the official duties. So, the bribe is not given or accepted “for obtaining a lawful act”.
b) Regarding the second aspect, as we stated during the previous meeting, but also in our written comments, we can support the ideas for para. 4a (line 142a), but these aspects seem more appropriate to be included in a recital. Therefore, we consider that this recommendation can be included in the recitals and it shall be a general norm, a recommendation that may be useful, in the sense of underlining the seriousness of these acts. Nevertheless, mentioning the early release and parole is inappropriate here because ordering these measures consider several different criteria connected to post conviction or execution phase.

3. In reference to art. 17

Like other delegations, we can support the proposal for L161a only if the wording is mirrored to the same sanction provided for in the Directive on the violation of restrictive measures. This way we could ensure coherence and language consistency between other instruments which have been already adopted.

4. In reference to art. 18 and 18a

We consider it difficult to implement a definition of high-level official with a list of functions, without referring to national legislation. In this regard, if the directive includes, within this category, a list of functions, MS will encounter problems in transposing such a provision, given that each state has a unique system of public functions, and some will not find a correspondent in their domestic framework.

In principle, we do not consider it necessary to include the aggravating circumstance proposed in art. 18 para. (1) letter g), since not in all cases corruption offences are related to the offence of money laundering, and the respective quality of the perpetrator does not, in all cases, also underline his increased dangerousness. Alternatively, the text in letter g) can be accepted as long as the list of aggravating circumstances remains open and optional for MS (with the wording "one or more" retained) because they must have room for manoeuvre regarding these aspects.

We consider it unnecessary to include the aggravating circumstance provided for in art. 8 of the PIF Directive (regarding the commission of the act within an organized criminal group). However, for reasons of reaching a compromise, we can only agree with this proposal if it is accepted that this aggravating circumstance can be retained as a stand-alone offence because in our domestic law, if an offence is committed within criminal organization, the judicial bodies will retain multiple offences (the purpose offence + the offence of constituting an organized criminal group), so the criminal liability will be aggravated anyway.

5. In reference to art. 20

We find it hard to support the reintroduction of letter c) in para. 1 of art. 20 as we do not see the added value of such a provision. We highlight that the hypothesis under consideration seems already included in art. 16 concerning the definition of the criminal liability of the legal person. That is to say, art. 16 para. 1 already provides for offences committed for the benefit of a legal person, and the Member States already have jurisdiction over these offences.

6. In reference to art. 21

From our point of view, as we have consistently stated during the negotiations so far, we are in favor of regulating longer limitation periods. A possible compromise could be an average between the limitation periods proposed by the EP and those agreed in the General Approach.

7. In reference top art. 7

We maintain our previous position on this issue of the notion of "undue". This notion is also found in art. 15 and 21 of the UNCAC, as well as in the Council of Europe Criminal Law Convention on Corruption. The EP argument according to which "undue" is not found in the PIF Directive, although true, is not valid and cannot be considered because the PIF Directive does not provide for corruption offences, but other types of offences instead. Therefore, the correlation must be made with other international instruments in the field of corruption, with similar regulatory objects to the directive under negotiation.

We consider that the notion of "*undue*" should be retained in the criminalization text because it reflects the essence of the criminalization of bribery in the public and private sectors. That is, the receipt or offering, for example, concerns some undue benefits for the public official or advantages that would not normally be due to him. In other words, the public official receives a benefit for performing his official duties, a benefit that is additional to the remuneration that is normally due to him. This is the meaning of the notion of "*undue*" in the text. In addition, the notion of "*undue*" can also be found in art. 15 and 21 of UNCAC.

8. In reference to art. 8

We express a flexible position on the inclusion of both notions of "business" and "commercial". However, we draw attention to the fact that, from our point of view, the notion of "business" is general enough to include the notion of "commercial", and the use of both notions (thus, the express mention of the notion of "commercial") may give rise to the interpretation that until now the offence of bribery in the private sector committed in the context of "commercial activities" was not criminalized, which is false.

9. In reference to art. 9

Introducing mandatory conditions for the offence of misappropriation would mean for us lowering the national regulatory standards. As we have stated so far, the offence of misappropriation is regulated without a threshold or condition related to causing a harm or obtaining an advantage. So, we can only agree with the EP proposals if para. 2 remains optional. If the para. 2 (with the EP proposals) is to be mandatory, then we cannot support such a compromise text.

10. In reference to art. 10

We reiterate our preference for using the phrase “real or supposed influence” which we believe is clearer and more predictable than the “illicit influence” in the GA.

The phrases “improper influence” and “obtaining an undue advantage” refer to the actions or conduct of a person towards two different persons. Those phrases are not mutually exclusive, but they can coexist in practice. Thus, the offence has as a triangle premise formed by 3 persons:

- person A who is the buyer of influence: he offers money or other benefits/advantages to person B;
- person B who is the trafficker of influence: he receives money or other benefits/advantages from person A to whom he promises to exercise his influence (regardless of whether this influence is real or supposed) over person C;
- person C is the public official on whom person B exerts his influence so that person C does something for person A (the latter being the ultimate beneficiary of the trading in influence).

Therefore, person A receives an undue advantage.

11. In reference to art. 11

We can support the EP's proposals to underline the mandatory nature of this offence. The general offence of abuse of office existing in our national law refers to a breach of the public official’s duties, a breach which causes damage or harm to the rights or legitimate interests of a natural or legal person.

We therefore consider that the offence should not only concern material damage, but also an impairment of a legitimate right or interest.

12. In reference to art. 12

We are flexible regarding deletion of the notion of "undue" from art. 12 para. 1.

We can support PRES PL proposal for a recital in the sense of those proposed by the EP.

FINLAND

WK 2437/2025 REV 1

Finland would like to thank the Presidency for their hard work and for the opportunity to comment in writing. We reiterate what we have said orally and provided in written earlier. With these comments, we wish to highlight points that are particularly important to Finland.

Article 2 (Definitions)

Definition for high level officials

Finland considers it very important that the wording of the definition of high level officials as agreed in the General Approach is retained. We do not see any room for making a compromise on this.

We strongly oppose making a list of officials in the definition of high level officials and the removal of the reference to national law. In the last COPEN meeting, it was pointed out during discussions concerning the definition of the high level official, that maybe high level officials could be defined by way of a list with a reference to national law. This also is not acceptable to us. Below we elaborate reasons for not being able to compromise on this.

1) The inclusion of the Head of State into the definition of the national official or the high level official would be very problematic from the perspective of Finnish Constitution as it would lead to a stipulation which is contrary to the Finnish Constitution. Hence, we cannot accept that the definition of "high level officials" includes Heads of State.
2) In the Finnish system the Head of State, ministers or Members of Parliaments are not considered as fulfilling the national definition for an official. For this reason, we cannot accept making a list in the definition of high level officials. As high level officials are at the same time national officials in the directive, this would mean harmonizing the definition of national official in a manner that, in our opinion, contradicts institutional autonomy of the Member States. The Member States should be left room to manouvre in this matter. We believe that making a list with a reference to national law would not guarantee the institutional autonomy of the Member States.

3) In addition, we believe that the legal basis for harmonizing the definition of a national official or a high level official is not legally sound. We insist to have an explanation on the legal basis for the harmonisation of the definition of a national official and a high level official.
4) We believe that making a list could, in fact, be counterproductive. In the COPEN discussions it has become clear that Member States have differing national systems and implementing the same definition for every Member State would be difficult. In view of this, the functional definition as agreed in the General Approach is more flexible and enables Member States to swiftly implement the directive.

Article 10 (Trading in influence)

We do not support changing ”illicit” to ”improper” or to “real or supposed”. We believe that “improper” is too vague and imprecise to be used in this article. We wish to highlight that according to the principle of legality, criminalisations should be clearly defined. We consider that using the word “improper” does not completely fulfill this requirement. Nor does “real or supposed”. In Finland, the principle of legality is enshrined in the Constitution and because of this, we think that there is no flexibility when it comes to changing “illicit” to “improper” or to “real or supposed”. We consider it very important to keep the wording of the provision as agreed in the General Approach. For us, the most important thing is that the terms used are defined with adequate precision and clarity. We consider it important that the terms used (illicit/improper influence and undue advantage) are clarified in the recitals.

Article 15 (Penalties and measures for natural persons)

The proposed list of mandatory additional measures is not acceptable to us. We strongly support the General Approach, and we do not support harmonizing additional measures. For us it very important that it is a “may” provision and, that there is a wording “which may include”. It is important to maintain consistency with other directives, which also do not have mandatory additional measures (i.e. Envicrime Directive, Directive for the violation of Union restrictive measures).

We are also very concerned of the proposed mandatory additional measures by the EP, because many of these are very problematic from the perspective of the Constitution of Finland. Both subparagraphs (a) and (b) of paragraph 3a are problematic for us from the perspective of our Constitution.

We also strongly oppose the loss of eligibility referred to in subparagraph (d) of paragraph 4. The deprivation of the right to stand elections would be contrary to our Constitution. For us it is democratically central provision that everyone can stand elections. This additional sanction should be deleted from the list like it is in the General Approach. If this is not possible, then it should be optional and Member States should not be obliged to introduce such a sanction.
We cannot accept the proposed addition of paragraph 4b concerning prohibition to any pardoning or amnesty, because this would be in contrary to Finnish Constitution.

Article 19 (Privileges or immunity from investigation and prosecution of corruption offences)
We strongly oppose the proposed amendments by the EP to Article 19, because these would be in contrary with Finnish Constitution. These are unacceptable to us. Also, the proposal made by the Commission was in contrary to Finnish Constitution. It is very important that the phrase "Unless it is contrary to their legal systems, constitutions and constitutional principles" is kept. We strongly support the General Approach.