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WORKING DOCUMENT

From:	Presidency
To:	Delegations
Subject:	Anti-corruption Directive - Presidency note

The Presidency will debrief JHA Counsellors, in their meeting in the afternoon of 12 May, on the third political trilogue in the file, which took place on 6 May in Strasbourg.

The meeting will thereafter examine the following two main blocks of Articles that were discussed at the said trilogue in detail:

1. **Articles 22-30 (protection of persons, investigative measures, cooperation and coordination, final provisions)**

The Presidency invites JHA Counsellors to examine these Articles, as they stand in the current phase of negotiations. The examination will be based on the provisional text which is currently under discussion between the co-legislators, as set out in Annex 1. The text is broadly based on an informal proposal from the EP, which the Presidency has modified slightly. Modifications in relation to the general approach are indicated in **bold** or ~~strikethrough;~~ modifications with regard to provisions proposed directly by the EP are indicated in relation to their original version.

The attention of delegations is drawn to the circumstance that the text is not the expression of any agreement between the co-legislators. The negotiation is still open, even though the assessment of the Presidency is that the text such as the annexed one could potentially be agreed by the EP, with one exception:

- As regards Article 28 (regarding the PIF-Directive), the detailed discussion between the co-legislators has not yet been started. When considering the text, delegations are therefore invited to yet again consider if there are aspects of the EP text (set out in Annex 3 to this note) that they could potentially agree to within the frame of an upcoming global compromise package.

As it is the intention of the Presidency to from now engage in negotiations with the EP on the whole Directive as a package compromise, it should be made clear that the purpose of the submitting this work in progress to JHA Counsellors now is to consult them on whether this text could be agreeable within the frame of an upcoming global compromise on the full text of the Directive.

2. **Articles 15-18, 20-21 (penalties, jurisdiction and limitation periods)**

In Annex 2 to this note, JHA Counsellors will find the informal compromise text on the Articles mentioned above of the EP, which the EP proposed just before the trilogue of 12 May. The Presidency in principle limited its reply to this text by referring to the confirmed Council position, while indicating that it would consult the Member States on the EP proposals.

In this light, JHA Counsellors are invited to indicate their position as regards the text in Annex 2. It should be underlined that this text – contrary to the one in Annex 1 – is not in any way based on concrete discussions between the co-legislators, but is a unilateral product of the EP.

In particular, the Counsellors are invited to indicate their positions on the following five questions, which have been marked as particularly important to the EP. It should again be underlined that any positions expressed by JHA Counsellors now will not be interpreted as a mandate to make final concessions to the EP; but will be used as a negotiation chip in the discussions aiming at reaching a global compromise text which is expected to start by mid-May:

1. The EP has strongly requested that at least some of the additional penalties indicated in Article 15(4) [1] as well as in Article 17(2)[2] shall be mandatory to implement in national law.

JHA Counsellors are invited to indicate whether they could agree to this in principle, without necessarily indicating which of the additional penalties should be mandatory.

2. Similarly, the EP has strongly requested that at least some of the aggravating circumstances indicated in Article 18 shall be mandatory to implement in national law[3].

JHA Counsellors are invited to indicate whether they could agree with this in principle.

3. The EP has proposed a compromise on the levels of penalties for natural persons provided for in Article 15 for natural persons[4]as well as provided for in Article 17 for legal persons [5], as set out in Annex 2.

JHA Counsellors are invited to assess this list.

4. The EP has proposed significantly longer limitation periods than the Council in Article 21, as illustrated in Annex 2.

JHA Counsellors are invited to indicate what openness they may have in this regard.

5. The EP has proposed the addition of an additional ground for mandatory jurisdiction in Article 20, with regard to acts that have been committed to the benefit of a legal person established on the territory of a Member State (see Annex 2).

The JHA Counsellors are invited to indicate if such an enlargement of the scope of the Directive could be acceptable.

[1] Including fines; the removal, suspension and reassignment from a public office; the disqualification from holding a public office or exercising a public service function; deprivation of the right to stand for elections, proportionate to the seriousness of the offence committed.

[2] Including exclusion from entitlement to public benefits or aid; exclusion from access to public funding, including tender procedures, grants, concessions and licences; temporary or permanent disqualification from the practice of business or commercial activities.

[3] The EP has thereby referred to the money laundering Directive as well as PIF Directive for a precedent of such mandatory aggravating circumstances.

[4] The EP has thereby referred to the four levels of penalties indicated in the 2002 Council conclusions.

[5] Fines based on on the total worldwide turnover of the legal person in question with rates of 6 %/ 4 % depending on serious or less serious type of offence respectively.

ANNEX 1

Article 22
Protection of persons who report offences or assist the investigation

1. Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937[1] is applicable to the reporting of the offences referred to in Articles 7 to 14 of this Directive and to the protection of persons reporting such offences, under the conditions established therein.

2. In addition to the measures referred to in paragraph 1, Member States shall take the necessary measures to ensure that any person reporting offences referred to in this Directive, providing evidence or otherwise cooperating with competent authorities has access to protection, support and assistance measures in the context of criminal proceedings, in accordance with national law.

2a. Without prejudice to the national procedural rules on reporting, production and assessment of evidence, Member States shall not [prevent / discourage from] the anonymous disclosure, by any person, of information related to offences covered by this Directive.

Article 23
Investigative tools

1. Member States shall take the necessary measures to ensure that effective and proportionate investigative tools, for investigating or prosecuting the criminal offences referred to in this Directive.

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

2. **Member States shall take necessary measures to ensure, where appropriate, that their competent authorities freeze or confiscate instrumentalities and proceeds from the criminal offences referred to in this Directive.**

Comment: *The wording of paragraph 2 is inspired by Article 9 of ML Directive.*

Article 23a
Exchange of information

Member States shall enable competent law enforcement authorities referred to in Article 4, paragraph 2, excluding agencies or units dealing especially with national security issues, to have direct access to SIENA and use the SIENA system for exchanging information in cross-border investigations.

Article 23b

Rights of victims

Option 1 EP text

1. Member States shall protect and enable victims to have their views and concerns presented and considered at appropriate stages during criminal proceedings against offenders, in a manner that is not prejudicial to the rights of the defence.
2. Member States shall take the necessary measures to ensure that the rights afforded to victims under Directive (EU) 2012/29 are also applicable to the victims of corruption, and to ensure that any victim of corruption:

(a) is identified and notified of their status as a victim of corruption at the earliest possible opportunity;
(b) without prejudice to Article 11(5) of Directive (EU) 2012/29, has the right to a review of a decision not to prosecute or a decision to enter into a non-trial resolution;
(c) has the right to satisfaction including, but not limited to, an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality;
(d) has the right to a guarantee of non-repetition; and
(e) is entitled to injunctive relief where applicable.

3. Member States shall take such measures as necessary to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain proportionate and adequate compensation.

Option 2 PCY proposal

The Presidency would propose the following recital:

Any person who has suffered harm as a direct result of a criminal offence referred to in this Directive should be identified as a victim, in accordance with national law. Member States should take the necessary measures to ensure that the rights set out in Directive 2012/29/EU apply to victims of corruption, in accordance with national procedural rules.

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Article 23c
National strategies

Option 1 EP text:

To ensure a coherent approach to preventing and combating corruption, Member States shall adopt, publish and periodically review a national strategy on preventing and combating corruption, establishing objectives, priorities and corresponding measures and resources needed. Such national strategy shall be developed in consultation with civil society, the relevant specialised bodies or units referred to in Article 4, independent experts, researchers and other stakeholders, and shall take into account the needs, specificities and challenges of the Member States.

Option 2 PCY proposal

~~[To ensure a coherent approach to preventing and combating corruption],~~ Member States shall adopt and publish ~~and periodically review~~ a national strategy on preventing and combating corruption, establishing objectives, priorities ~~and~~ ,corresponding measures and resources needed. Member States shall strive to ensure that such national strategy would be developed in consultation with civil society, the relevant specialised bodies or units referred to in Article 4, independent experts, researchers and other stakeholders, and shall take into account their needs, specificities and challenges.

Comment : *In addition to the proposed change, the following recital accompanying the introduction of Article 23c could be considered:*

Combating corruption is essential for strengthening the quality of democracy and for the full realization of the Rule of Law. To achieve that goal, it is essential to adopt and regularly review an anti-corruption strategy and at national level on preventing and combatting corruption, and establishing objectives, priorities and trends and develop an action plan to take adequate actions.

Article 23d
Rights for the public concerned to participate in proceedings

Option 1 EP text

1. Member States shall take the necessary measures to ensure that the public concerned has appropriate rights to participate in the proceedings covered by this Directive, for instance as a civil party, where as a result of a corruption offence such public has a sufficient interest, and is entitled to maintain the impairment of a right, in accordance with national law.
2. Member States shall take the necessary measures to ensure that members of the public concerned may participate in the proceedings covered by this Directive, including by taking action before the courts or competent administrative bodies.

3. Member States shall take the necessary measures to ensure that members of the public concerned as referred to in paragraph 2 have the right to a review of a prosecutorial decision related to:
   (a) the opening or not opening of the investigation or prosecution;
   (b) the suspension of the investigation or prosecution;
   (c) the discontinuation of the investigation or prosecution.
4. The determination of the scope and conditions under which judicial review as referred to in paragraph 3 shall be governed by national law and shall include safeguards against vexatious complaints

Option 2 PCY proposal

Member States shall take the necessary measures to ensure that the public concerned has appropriate rights to participate in the proceedings concerning the criminal offences referred to in [Articles 7 to 13] of this Directive, where such procedural rights for the public concerned exist in the Member State in proceedings concerning other criminal offences, for instance as a civil party[6].

Article 23e
Suspension or reassignment of a public official

Option 1 EP text

Member States shall establish procedures through which a public official accused of an offence as referred to in this Directive may, where appropriate, be suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

Option 2 PCY proposal

Member States shall **consider** establish**ing** procedures through which a public official accused of an offence as referred to in this Directive may, where appropriate, be suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

Comment: This proposal fits rather as a precautionary measure and not as part of prevention. Perhaps it could be better placed following Article 18a and be considered as criminal or non-criminal (disciplinary) measure. A dedicated recital would explain that its implementation depends on a decision in Member States to be taken by various

[6] Text inspired by Article 15 of the Envicrime Directive

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relevant authorities during criminal / disciplinary procedures according to national law.

PUBLIC

Article 23f
Exercise of discretionary powers

Option 1 EP text

Member States shall take the necessary measures to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences referred to in this Directive are exercised with the appropriate internal consultation and with due regard to the need to deter the commission of such offences.

Option 2 PCY proposal

Comment: The intentions expressed by the EP in Article 23f are to be presented in a dedicated recital with the following wording:

"The bodies, or organisational units tasked with the repression and investigation of corruption should take into account the public perception of their actions and be attentive to the needs of the public in the field of preventing and combatting offences referred to in this Directive"

Article 24

Cooperation between the Member States and Union bodies, offices or agencies

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

~~*Article 24a*~~

~~*Platform on prevention and repression of corruption*~~[7]

PUBLIC

Article 25

Commission support to Member States and their competent authorities

~~1. The Commission shall, where appropriate, support Member States and competent authorities in complying with their obligations under this Directive.~~

1. The Commission shall prepare an overview of sectoral risks of corruption in the Union and facilitate information exchange among Member States and experts across the Union.

2. The Commission, through the EU network against corruption, shall **in particular**:

(a) facilitate cooperation and exchange of best practices among Member States' practitioners, **civil society representatives,** experts, researchers and other stakeholders;

Option 1

(b) ***support Member States in their*** ~~**complement**~~ activities, such as those referred to in Article 3 and point (b) of Article 18(2) by developing **non-binding** best practices, guidance, materials and methodologies.

Option 2

(b) ***support Member States in their*** ~~complement~~ activities, by analysing best practices, guidance materials and methodologies.

3. The Commission shall inform Member States about financial resources at Union level available to Member States for the fight against corruption**, including regarding coordination and cooperation with third countries.**

~~Article 25a~~[8]

~~Coordination of the Union strategy on combating corruption~~

[7] The EP seems ready to drop this provision.

[8] The EP seems ready to drop this provision.

Article 26

Data collection and statistics

1. Member States shall have a system in place for the recording, production and provision of anonymised statistical data on **each of** the criminal offences ~~as~~ referred to in Articles 7 to ~~10 and 22~~ 14 of this Directive.

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

(a) the number of offences registered and adjudicated by the Member States;

(b) the number of dismissed court cases, ***distinguishing between dismissals on the substance or not and including non-trial resolutions***

(c) the number of **natural persons, that are**

(i) prosecuted,

(ii) convicted; **or**

(iii) fined;

(d) number of legal persons that are

(i) prosecuted,

(ii) convicted or **fined;**

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

~~(f) the number of convictions ;~~

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

~~(h) the number of legal persons held liable and sanctioned;~~

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

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

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

3. Member States shall, on an annual basis and by ***1 June*** [31 December], publish, in a standard, easily accessible and comparable format, the statistical data referred to in paragraph 2 for the previous year and inform the Commission thereof.

Comment: *recital 32 could be modified in the following way:*

(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) To effectively address the criminal offences defined in this Directive, it is necessary that competent authorities in the Member States collect accurate, consistent and comparable statistical data on those offences. Member States should therefore ensure that an adequate system is in place for the recording, production and transmission of existing statistical data on the offences defined in this Directive. It is important that those statistical data are used by Member States to serve the strategic and operational planning of enforcement activities, to analyse the scale of and trends in offences related to combating corruption, as well as for providing information to citizens. Member States should transmit to the Commission relevant statistical data on proceedings related to corruption, extracted from data that already exist at a centralised or decentralised level within the whole Member State. These data 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. **In the context of the Justice Scoreboard, the Commission is encouraged to ask Member States for specific statistics on the length of proceedings related to corruption criminal offences as referred to in this Directive.**

~~Article 26a~~[9]

~~EU Anti-Corruption Report~~

Article 27

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

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

With regard to the Member States bound by this Directive, references to ~~Framework Decision 2003/568/JHA~~ and ~~its~~ Article 2 **of Framework Decision 2003/568/JHA** shall be construed as references to ~~Chapter 2~~ **Article 8(1)** of this Directive.

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

With regard to the Member States bound by this Directive, references to **Article 3 of** that Convention ~~and its Article 3~~ shall be construed as references to **Article 7(1) of** ~~Chapter 2~~ this Directive.

9 The EP seems ready to drop this provision.

Article 28[10]

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

PUBLIC

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

(1) In Article 2(1), the following point (c) is inserted:
'(c) 'high level officials' are those defined in Article 2(2) (iii) of Directive (EU) XXX on combating corruption.'

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

(~~3~~) In Article 7, paragraph (4) is replaced by the following:
'4. Member States may provide that conduct described in points (a), (b) or (c) of Article 3(2) or in Article 4(1) and (3) does not constitute a criminal offence where the advantage or damage involved is less than EUR 10 000. '

(4) In Article 7, the following paragraph 6 is inserted:
'7. Without prejudice to paragraphs 1 to 5, Member States shall take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3, 4 and 5 may be subject to additional criminal or non-criminal penalties or measures which may include those referred to in Article 15(4) of Directive (EU) XXX on combating corruption.'

(5) Article 8 is replaced by the following:

'*Article 8*

Aggravating and mitigating circumstances

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

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

(6) Article 9 is replaced by the following:

'Article 9

Sanctions with regard to legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is punishable by effective, proportionate and dissuasive criminal or non-criminal penalties or measures.
2. Member States shall take the necessary measures to ensure that penalties ~~sanctions~~ or measures for legal persons held liable pursuant to Article 6 shall include criminal or non-criminal fines, the amount of which shall be proportionate to the gravity of

[10] For reasons of available space, the EP version of Article 28 is reproduced in a separate Annex 3.

the conduct and to the individual, financial and other circumstances of the legal person concerned, and may include other criminal or non-criminal penalties or measures that are proportionate to the gravity of the conduct, such as those referred to in Article 17(2) of Directive (EU) XXX on combating corruption.'

Comment: *In addition,* a new provision regarding whistleblowers could be added to the PIF-Directive, similar to the one included in the Directive of restrictive measures, along the following lines:

« Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937 is applicable to the reporting of offences under Articles 7-14 of this Directive and to the protection of persons reporting such offences, under the conditions established therein."

Article 29

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [~~18~~ **24 [30]** months after adoption[11]] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 30

Evaluation and reporting

1. By [24 months after the deadline for implementation of this Directive], the Commission shall submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

~~2. Every two years as of [12 months after the deadline for implementation of this Directive], Member States shall send the Commission a report within three months which includes a summary about implementation of and actions taken in accordance with Articles 3 to 6.~~

[11] The Presidency has made it clear to the EP that the deadline of implementation can only be agreed when the rest of the text of the Directive has been finalised.

~~3~~**2**. By [48 months after the deadline for implementation of this Directive], the Commission shall submit a report to the European Parliament and to the Council, assessing the added value of this Directive with regard to combating corruption, **taking into account the annual statistical data provided by the Member States**. The report shall also cover the impact of this Directive on fundamental rights and freedoms. On the basis of this evaluation, the Commission shall, if necessary, decide on appropriate follow-up actions.

~~Article 30a~~[12]

~~Committee procedure~~

PUBLIC

[12] The EP seems ready to drop this provision.

ANNEX 2

PUBLIC

EP Suggestions on certain provisions of Articles 15-18, 20 and 21

Article 15(2) - Imprisonment sanctions for natural persons (lines 127-130a)

Minimal maximum periods of imprisonment

Offence	**COM Proposal**	**EP mandate**	**CSL mandate**	**Presidency compromise proposal**	**Final compromise proposal**
Bribery in public sector (Art 7) **to obtain a lawful act**	6 years	5 years (to obtain a lawful act)	3 years (in breach of official duties)	3 years (neither in breach of official duties nor to obtain an unlawful act)	5 years (neither in breach of official duties nor to obtain an unlawful act)
Bribery in public sector (Art 7) **to obtain an unlawful act**	6 years	7 years (to obtain an unlawful act)	4 years (not in breach of official duties)	5 years (either in breach of official duties or to obtain an unlawful act)	6 years (either in breach of official duties or to obtain an unlawful act)
Bribery in private sector (Article 8)	5 years	6 years	3 years	3 years	4 years
Misappropriation (Article 9)	5 years	6 years	4 years	5 years	5 years
Trading in influence (Article 10)	5 years	6 years	3 years	3 years	4 years
Abuse of function (Article 11)	5 years	6 years	*no proposal*	*no proposal*	5 years
Obstruction of justice (Article 12)	6 years	7 years	*no minimal maximum*	*no minimal maximum*	6 years
Illicit political financing (Article 12a)	*not applicable*	7 years	*not applicable*	*not applicable*	5 years

Enrichment/AML (Article 13 and 13a)	4 years	5 years	2 years	3 years	4 years

PUBLIC

Articles 15(3a) and (4) - Sanctions other than imprisonment for natural persons (lines 131a-142)

The EP could accept to divide the sanctions into a list of obligatory and facultative penalties for Member States, as follows.

Obligatory penalties:

- fines (line 133)
- the removal, suspension and reassignment from a public office (line 134); (this is a compromise from the EP as the EP mandate proposes this penalty to be automatic)
- the disqualification from holding a public office or exercising a public service function (lines 135-137)
- deprivation of the right to stand for elections, proportionate to the seriousness of the offence committed (line 140)

Facultative penalties:

- the disqualification from:
    - holding office in a legal person owned in whole or in part by the Member State of the offence (line 138)
    - holding a leading position within a legal person of the type used for committing the offence (line 138a, EP mandate)
    - the practice of business or commercial activities that resulted in or enabled the relevant offence (line 139; Council wording could be accepted as more precise than the COM proposal and EP mandate)
    - where there is a public interest, following a case-by-case assessment, publication of all or part of the judicial decision relating to the criminal offence committed and the penalties or measures imposed, which may include the personal data of convicted persons only in duly justified exceptional case (new; proposed in the Council Presidency drafting paper)
- withdrawal of permits and authorisations to pursue activities that resulted in or enabled the relevant offence (line 141)
- exclusions from access to public funding, including tender procedures, grants, and concessions and licenses (line 142)

/////

Article 15(4a), EP mandate (line 142a)

Member States shall take the necessary measures to 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.

As part of a compromise package, EP could accept this general principle to be mentioned in a recital only.

/////

Article 17(2)(a) - Fines for legal persons (line 153; lines 161b-161f in the Council mandate)

All three institutions agree that fines for legal persons must be obligatory. The Commission proposes a minimal maximum of **5 %** of the total worldwide turnover for all corruption offences. The Parliament mandate proposes a minimal maximum of **10 %** of the total worldwide turnover for all corruption offences.

The Council mandate follows an approach which has been adopted in recently adopted criminal law directives, allowing Member States to choose between absolute figures and percentages of the total worldwide turnover when transposing the Directive into national law, as follows:

For bribery in the public and private sector and misappropriation (Articles 7-9):

A minimal maximum of 5% of the total worldwide turnover *or* a minimal maximum of EUR 40 million

For trading in influence, obstruction of justice and enrichment (Articles 10, 12 and 13):

A minimal maximum of 3% of the total worldwide turnover *or* a minimal maximum of EUR 24 million

The EP could accept, as part of an overall compromise, a division of the criminal offences into two categories (Articles 7-9 and 11 being the more serious category; pending agreement on the definitions), but insists on the obligatory nature for Member States of setting fines based on the total worldwide turnover of the legal person in question with the rates of 6% for the more serious category of offences and 4% for the less serious category of offences.

//////

Article 17(2)(b-ia) - Other sanctions for legal persons (lines 154-161a)

As in the case of sanctions for natural persons, the EP could accept a division into an obigatory and facultative list.

Obligatory sanctions:

- exclusion from entitlement to public benefits or aid (line 154)
- exclusion from access to public funding, including tender procedures, grants, concessions and licences (line 155)
- temporary or permanent disqualification from the practice of business or commercial activities (line 156)

Facultative sanctions:

- withdrawal of permits and authorisations to pursue activities that resulted in or enabled the relevant offence (line 157)

- possibility for public authorities to annul or rescind a contract, in the context of which the offence was committed (line 158)
- placing under judicial supervision (line 159)
- judicial winding-up (line 160)
- closure of establishments used for committing the offence (line 161)
- publication of the judgment (line 161a, EP mandate)

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Articles 18 and 18a - Aggravating and mitigating circumstances (lines 163-177)

The EP could accept a list of obligatory and facultative aggravating circumstances, as follows:

Obligatory aggravating circumstances:

- the offender is a high level official (line 164)
- the offender obtained a substantial benefit or the offence caused substantial damage, to the extent that they can be determined (line 166);
- the offence was committed within the framework of a criminal organisation (line 169); this is already an obligatory aggravating circumstance under the PIF Directive and under the AML criminal law directive;
- the offender is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 of the European Parliament and of the Council1, or an employee of an obliged entity, or has the power, whether individually or as part of an organ of the obliged entity, to represent that entity, or the authority to take decisions on behalf of that entity or to exercise control within the obliged entity, and has committed the offence in the exercise of his professional activities (line 170); is already an obligatory aggravating circumstance under the AML criminal law directive;
- committed to the benefit of a third country (line 167).

Facultative aggravating circumstances:

- previous conviction for a corruption offence (line 165)
- the offender exercises investigation, prosecution or adjudication functions (line 168)
- the offender took advantage of the vulnerable situation of a person involved in the commission of the offence (line 170a, EP mandate)
- the offender destroyed evidence, or intimated witnesses or complainants (the Council Presidency's counter-proposal to EP line 170c)

As part of the overall compromise package, provided that the Council makes concessions in particular on the obligatory nature of certain aggravating circumstances, the EP could accept the mitigating circumstances to be facultative for Member States.

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Article 17(2a), EP mandate - Transparency and effectiveness of non-trial resolutions

The EP could agree to the compromise proposal from the Council Presidency as shared on 22 April on this provision as it expresses the aim of the EP mandate, with one proposed addition in bold italics below (as already discussed at an ITM):

> 4. When non-trial resolutions processes in relation to legal persons are established, such ***processes*** shall be effective and transparent.

Accompanying recital:

> Member States are encouraged to develop non-trial resolution mechanisms, recognized as good practices in the area of alternative dispute resolution. Such mechanisms should comply with the principles of legality, procedural fairness, and accountability. When applied to legal persons, they should be structured to ensure the effective enforcement of legal obligations while maintaining transparency, impartiality, and strong procedural safeguards.

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Article 20 - Jurisdiction (lines 180-183e)

The Commission proposal and EP mandate propose obligatory jurisdiction of MS where:

- the criminal offence has been committed in whole or in part within the territory of a MS
- the offender is a national of the MS
- the offender has a habitual residence in the MS
- the offence is committed to the benefit of a legal person established in the territory of the MS

The Council proposes to only make jurisdiction obligatory in the first two cases (territory, nationals).

As a compromise, the EP could propose not to include obligatory jurisdiction based on habitual residence in the MS, but insist on the last category (to the benefit of a legal person) which is important in view of corruption committed in third countries.

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Article 21 - Limitation periods (lines 187-203)

General clause of Article 21(1) shall be agreed after the final list of offences is clear.

Minimum limitation periods for *conviction* in relation to specific offences:

Offence	**COM Proposal**	**EP mandate**	**CSL mandate**	**Presidency compromise proposal**	**Final compromise proposal**
Bribery in public sector (Art 7) **to obtain a lawful act**	15 years	15 years	3 years (in breach of official duties)	5 years (neither in breach of official duties nor to obtain an unlawful act)	8 years
Bribery in public sector (Art 7) **to obtain an unlawful act**	15 years	15 years	5 years (not in breach of official duties)	5 years (either in breach of official duties or to	10 years

				obtain an unlawful act)	
Bribery in private sector (Article 8)	10 years	10 years	3 years	5 years	8 years
Misappropriation (Article 9)	10 years	10 years	5 years	5 years	8 years
Trading in influence (Article 10)	10 years	10 years	3 years	5 years	8 years
Abuse of function (Article 11)	10 years	10 years	*no proposal*	*no proposal*	8 years
Obstruction of justice (Article 12)	15 years	15 years	no limitation period	no limitation period	8 years
Illicit political financing (Article 12a)	*not applicable*	8 years	*not applicable*	*not applicable*	6 years
Enrichment/AML (Article 13 and 13a)	8 years	8 years	3 years	5 years	5 years
Incitement, aiding and abetting, attempt (Article 14)	8 years	8 years	no limitation period	no limitation period	5 years

Minimum limitation periods for the *execution of the sanction* counted from the moment of the final convictions are proposed in the Commission proposal and the EP mandate to be identical in length to the minimum limitation periods for conviction. The Council instead proposes a system where the execution limitation period would be dependent on the actual term of imprisonment and alternatively on the offence itself. The EP could be flexible and accept the Council approach, but the numbers would have to be proportionate to those agreed on the limitation periods for conviction.

Paragraphs 3 and 5 of the Commission proposal and EP mandate could be included as part of the final compromise (lines192-195 and 200-203), allowing Member States to introduce limitation periods *shorter by one third* on the condition that those periods are interrupted (start running from zero) or suspended (do not run for a certain period, but then resume) based on certain procedural acts.

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Annex 3

The EP version of Article 28

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

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

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

'high level officials' are those defined in Article 2(8) of Directive (EU) XXX on combating corruption.

(2) Article 4(2) is replaced by the following:

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

(a) the promise, offer or giving, directly or through an intermediary, of an advantage of any kind to a public official for that official or for a third party in order for the public official to act or refrain from acting in the exercise of that official's functions in a way which damages or is likely to damage the Union's financial interests (active bribery);

(b) the request or receipt by a public official, directly or through an intermediary, of an advantage of any kind or the acceptance of an offer or the promise of such an advantage for that official or for a third party, in order for the public official to act or to refrain from acting in the exercise of that official's functions in a way which damages or is likely to damage the Union's financial interests (passive bribery).

Member States shall take the necessary measures to ensure that it is presumed that any act of passive bribery or committed by a 'Union official', has the aim of deviating resources from the lawful exercise of their public office and, as such, implies a damage to the Union's financial interests.'

(2a) In Article 4, the following paragraph 2a is inserted:

2a. Member States shall take the necessary measures to ensure that the following conduct shall be punishable as a criminal offence, when committed intentionally and in the course of economic, financial, business or commercial activities:

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

(2b)

Article 4(3) is replaced by the following:

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

(a) the committing, disbursing, appropriation or use by a public official of property whose management is directly or indirectly entrusted to that public official contrary to the purpose for which it was intended in any way which damages the Union's financial interests or is likely to damage the Union's financial interests;

(b) the committing, disbursing, appropriation or use, in the course of economic, financial, business or commercial activities, by a person who directs or works, in any capacity, in a private sector entity, of any property whose management is directly or indirectly entrusted to that public official contrary to the purpose for which it was intended in any way which damages the Union's financial interests or is likely to damage the Union's financial interests.'

(2c)

In Article 4, the following paragraphs are inserted:

3a. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:

(a) the promise, offer or giving, directly or through an intermediary, of an undue advantage of any kind to a person or a third party in order for that person to exert real

or supposed influence with a view to obtaining an undue advantage from a public official in a way which damages or is likely to damage the Union's financial interests;

(b) the request or receipt, directly or through an intermediary, of an undue advantage of any kind or the request or acceptance of an offer or the promise of such an advantage to a person or a third party in order for that person to exert real or supposed influence with a view to obtaining an undue advantage from a public official in a way which damages or is likely to damage the Union's financial interests.

In order for the conduct referred to in points (a) and (b) to be punishable as a criminal offence, it shall be irrelevant whether or not the influence is exerted or whether or not the supposed influence leads to the intended results.

3b. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:

(a) the performance of or failure to perform an act, in violation of laws, by a public official in the exercise of that public official's functions for the purpose of obtaining an undue advantage of any nature for that official or for a third party in a way which damages or is likely to damage the Union's financial interests;

(b) the performance of or failure to perform an act, in violation of laws or in breach of duties, by a person who in any capacity directs or works for a private-sector entity in the course of economic, financial, business or commercial activities for the purpose of obtaining an undue advantage of any nature for that person or for a third party in a way which damages or is likely to damage the Union's financial interests.';

3c. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:

(a) the use, directly or through an intermediary, of inducements, physical force, threats or intimidation or the promise, offering or giving of an advantage to induce false testimony, to interfere in the giving of testimony or the production of evidence or to influence, pressure or coerce witnesses, experts or any involved parties to abstain from participating, communicating or cooperating with judicial authorities in a proceeding concerning the commission of offences referred to in this Directive;

(b) the use, directly or through an intermediary, of physical force, threats or intimidation to interfere in the exercise of official duties by a person holding a judicial office or a member of law enforcement in relation to the commission of offences referred to in this Directive;

(c) the destruction, alteration, concealment or falsification of evidence, including digital evidence, with the intent to interfere in a proceeding concerning the commission of offences as referred to in this Directive.';

3d. Member States shall take the necessary measures to ensure that the intentional acquisition, possession or use by a public official of property that is significantly disproportionate to and cannot be justified by the lawful income of that public official shall be punishable as a criminal offence where such property is derived from the commission of an offence as set out in this Directive.

In determining whether the property in question is derived from any kind of criminal involvement in the commission of an offence as set out in this Directive, account shall be taken of all the circumstances of the case, including the specific facts and available evidence.';

3e. Member States shall take the necessary measures to ensure that, when committed intentionally, the concealment of property by a person having knowledge that such property is the result of any of the offences established in accordance with this Directive, even if that person was not involved in the commission of such offences, is punishable as a criminal offence.';

3f. Member States shall take the necessary measures to ensure that, when committed in a way which damages or is likely to damage the Union's financial interests, the culpable breach by a public official of an official duty, by failing to perform it or performing it defectively, if it causes substantial damage or injury to the rights or legitimate interests of a natural person or a legal person, is punishable as a criminal offence.';

(2d) Article 5(2) is replaced by the following:

2. Member States shall take the necessary measures to ensure that attempting an offence referred to in Article 3 and in Article 4(3), (3b), (3c) and (3d) is punishable as a criminal offence.'

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

'3. Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3 and in Article 4(1), (2) and (3c) are punishable by a maximum penalty of at least seven years of imprisonment; offences referred to in Article 4(2) which have been

committed to obtain a lawful act are punishable by a maximum term of imprisonment of at least five years.

Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 4(2a), (3), (3a) and (3b) are punishable by a maximum penalty of at least six years of imprisonment.

Member States shall take the necessary measures to ensure that the criminal offence referred to in Article 4(3d) and (3e) is punishable by a maximum penalty of at least five years of imprisonment.

Member States shall take the necessary measures to ensure that the criminal offence referred to in Article 4(3f) is punishable by a maximum penalty of at least three years of imprisonment.'

(4) In Article 7, paragraph 4 is deleted.

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

6. Without prejudice to paragraphs 1 to 5, Member States shall take the necessary measures to ensure that natural persons who have been convicted of committing one of the criminal offences referred to in this Directive may be subject to sanctions or measures as referred to in Article 15(4) of Directive (EU) XXX on combating corruption.

(6) Article 8 is replaced by the following:

Article 8

Aggravating and mitigating circumstances

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

(7) Article 9 is replaced by the following:

Article 9

Sanctions with regard to legal persons

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

2. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons held liable pursuant to Article 6 shall include those referred to in Article 17(2) of Directive (EU) XXX on combating corruption.

(7b) In Article 11(1), the following point (c) is added:

(c) the offence is committed for the benefit of a legal person established in its territory'.

(7c) Article 11(3) is replaced by the following:

3. A Member State shall inform the Commission where it decides to extend its jurisdiction to criminal offences referred to in Articles 3, 4 or 5 which have been committed outside its territory when the offender is one of its officials who acts in official duty.'

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

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

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

(b) ten years from the time when the offence was committed for the criminal offences referred to in Article 4(2a), (3), (3a) and (3b);

(ba) eight years from the time when the offence was committed, for the criminal offences referred to in Article 4(3d), (3e) and (3f), and in Article 5.

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

(a) ten years for the criminal offences referred to in Article 3 and in Article 4(1), (2) and (3c);
(b) eight years for the criminal offence referred to in Article 4(2b), (3), (3a) and (3b);

(ba) five years for the criminal offences referred to in Article 4(3d), (3e) and (3f) and in Article 5.

4. Member States shall take the necessary measures to enable the enforcement of a penalty of imprisonment following a final conviction for at least:

(a) fifteen years from the date of the final conviction for any of the criminal offences referred to in Article 3 and in Article 4(1), (2) and (3c);

(b) ten years from the date of the final conviction for the criminal offence referred to in Article 4(2a), (3), (3a) and (3b);

(ba) eight years from the date of the final conviction for any of the criminal offences referred to in Article 4(3d), (3e) and (3f) and in Article 5.

5. By way of derogation from paragraph 4, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts and that the applicable rules on the suspension and limitation periods do not hamper the effectiveness of the judicial process and the dissuasive application of penalties. This period shall not be shorter than:

(a) ten years from the date of the final conviction for any of the criminal offences referred to in Article 3 and in Article 4(1), (2) and (3c);

(b) eight years from the date of the final conviction for the criminal offence referred to in Article 4(2a), (3), (3a) and (3b);

(ba) eight years from the time when the offence was committed, for the criminal offences referred to in Article 4(3d), (3e) and (3f) and in Article 5.

(8a) The following Article 12a is inserted:

Article 12a

Privileges or immunity from investigation and prosecution of corruption offences

Member States shall ensure that the provisions of Article 19 of Directive (EU) XXX on combating corruption are applicable to the offences referred to in this Directive.'

(8b) The following Article 12b is inserted:

Article 12b

Protection of persons who report offences or assist the investigation

In addition to the measures provided under Directive (EU) 2019/1937, Member States shall ensure that persons reporting offences referred to in this Directive and providing evidence or otherwise cooperating with the investigation, prosecution or adjudication of such offences are provided the necessary protection, support and assistance in the context of criminal proceedings.'

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