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

Following the meetings of JHA Counsellors on 28 May and 2 June, the Presidency has introduced a number of modifications of provisions discussed in the text annexed to WK 6797/2005. The modifications in **bold** are to be read in relation to the Commission proposal, whereas the latest changes are indicated in **bold underlined.**

The new version of the text will be examined by JHA Counsellors in their meeting on 5 June.

ANNEX

Updated proposal for a compromise package

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CHAPTER 1 – GENERAL PROVISIONS

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Article 1

Subject matter and scope

This Directive establishes minimum rules concerning the definition of criminal offences and **criminal and non-criminal** ~~sanctions~~ **penalties** in the area of corruption, as well as measures to better prevent and fight corruption.

Article 2

Definitions

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

~~1. 'prevention of corruption' refers to the detection and elimination of the causes of and conditions for corruption, through development and implementation of a system of appropriate measures, as well as deterrence against corruption-related acts.~~

1~~2~~**.** 'property' means funds or assets of any kind, **including crypto-assets**, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets.

2 ~~3~~. 'public official' means:

(a) a Union official or a national official of a Member State or of a third country,

i. ~~4.~~ 'Union official' means a person who is:

~~a. a member of an institution, body, office or agency of the Union and the staff of such bodies shall be assimilated to Union officials.~~

~~b.~~ **a.** an official or other servant engaged under contract by the Union within the meaning of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (the 'Staff Regulations');

~~c.~~ **b.** seconded to the Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants.

Members of an institution, body, office or agency of the Union and the staff of such bodies shall be assimilated to Union officials, in as much as the Staff Regulations do not apply to them.

ii. 'national official' means any person holding an executive, administrative, or judicial office at national, regional or local level, whether appointed or elected, **or employed on the basis of a contract**, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority. Any person holding a legislative office at national, regional or local level ~~is considered~~ **shall be assimilated to** a national **official in accordance with national law** ~~for the purpose of this Directive~~.

*__**NB** High level officials moved down since they are a special case and not only of national but also union official__*

(b) any other person assigned **and** exercising a public service function **__[or providing a public service]__ including those mandated by or under the authority of a public authority** in Member States or third countries**, in accordance with national law.**

(c) a person assigned and exercising a public service function for an international organisation or for an international court **in accordance with national law**.

3~~5~~**. 'Arbitrator' means any person called upon to render a legally binding decision in disputes submitted by the parties to the arbitration agreement where their status is set out in national law.**

4~~5~~**. 'Juror' means any person acting as a member of a body responsible for deciding on the guilt of an accused person in the framework of a trial, in accordance with national law.**

5~~6~~. 'breach of duty' covers as a minimum any ~~disloyal~~ behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business of a person who in any capacity directs or works for a private sector entity.

6~~7~~. 'legal person' means any entity having legal personality under the applicable national law, except for States or public bodies in the exercise of State authority and for public international organisations.

~~8. 'high level officials' are heads of state, heads of central and regional government, members of central and regional government, as well as other political appointees who hold a high level~~

~~public office such as deputy ministers, state secretaries, heads and members of a minister's private office, and senior political officials, as well as members of parliamentary chambers, members of highest Courts, such as Constitutional and Supreme Courts, and members of Supreme Audit Institutions.~~

8.' **high level officials' means public officials who are entrusted with key executive, administrative, legislative or judicial functions in accordance with national law. This may include the following officials:** ~~**which may include**~~ **heads of central and regional government, members of central and regional government, deputy ministers, state secretaries, key political advisers, heads and members of a minister's private office or cabinet when such have been established, as well as members of parliamentary chambers, members of Constitutional and Supreme Courts, the Prosecutor General, and members of Supreme Audit Institution as well as members of the College of Commissioners of the European Commission and the European Parliament.** ~~.~~ **The provisions of this Directive concerning high level officials shall be understood without prejudice to immunities and privileges established under national constitutions or laws.**

CHAPTER 2 – CORRUPTION OFFENCES

Article 7

Bribery in the public sector

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

(a) the promise, offer**ing** or giving, directly or through an intermediary, of an **undue** advantage of any kind to a public official for that official or for a third party in order for ~~the public~~ **that** official to act or refrain from acting ~~in accordance with his duty or~~ in the exercise of that official's functions (active bribery);

(b) the request or receipt by a public official, directly or through an intermediary, of an **undue** advantage of any kind or **the acceptance** of **the offer or** the promise of such an advantage for ~~the public~~ **that** official or for a third party, in order for that official to act

or to refrain from acting ~~in accordance with his duty or~~ in the exercise of that official's functions (passive bribery).

2. Arbitrators and jurors shall be assimilated to public officials for the purpose of paragraph 1.

Recital 10: It is necessary to streng~~ht~~**th**en the legal framework to combat bribery and to provide law enforcement and prosecution with the ~~necessary~~ **effective and proportionate** tools. In bribery of public officials, there are two sides to distinguish. Active bribery exists when a person promises, offers or gives an **undue** advantage of any kind to influence a public official. Passive bribery exists when the public official requests or receives such **undue** advantages**, or accepts the offer or the promise thereof** in order to act or to refrain from acting in a certain way. **Advantages can be both tangible or intangible, and pecuniary or non-pecuniary**. An advantage is considered **not to be** undue **including where it is permitted by law or by administrative rules as well as in case of minimum gifts, gifts of very low value or socially acceptable gifts**. ~~**when the offender (or any other person) is placed in a better position than he was before the commission of the offence and that he is not entitled to the benefit. Such advantages could be both tangible or intangible, and pecuniary or non-pecuniary. A due advantage, on the contrary, would consist of a benefit that the person in question is entitled to, such as a bonus, additional remuneration, or socially accepted gifts of a low value.**~~ This Directive should also set minimum rules on bribery and other forms of corruption in the private sector, where the immediate victims include companies that are impacted unfairly and where free competition ~~is~~ **can be** diminished by ~~each~~ bribe **payments** ~~offered or accepted~~**.**

Article 8

Bribery in the private sector

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 **or**~~,~~ business or commercial activities:

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

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(b) the request or receipt by a person, directly or through an intermediary, of an undue advantage of any kind or **the acceptance of the offer or** the promise of such an advantage, **in order** for that person or for a third party, while ~~in any capacity~~ directing or working **in any capacity** for a private-sector entity, to act or to refrain from acting, in breach of that person's duties (passive bribery).

+ Recital 10a **Conduct in breach of professional duties by directors or workers of private-sector entities in the course of economic, financial or business activities can be detrimental to the interests of the private-sector company, and can also distort competition in relation to the purchase of goods or commercial services to the detriment of both would-be competitors and the general public. The offence of bribery in the private sector aims to deter both kinds of harm. It does so by preventing third parties from interfering in the fair conduct of business by promising, offering or giving any undue advantage to directors or workers of private-sector entities for them to act or to refrain from acting, in breach of their duties (active bribery). The offence also forbids directors and workers of private-sector entities to request or receive any undue advantage, or to accept the offer or the promise thereof, to act or to refrain from acting, in breach of that person's duties (passive bribery). The concept of "breach of duty" shall be understood in accordance with national constitutions, law or other applicable rules and should cover as a minimum the breach of statutory duties and professional regulations or instructions, which apply within that business.**

Article 9

Misappropriation

1. Member States shall take the necessary measures to ensure that the **the committing, disbursing, appropriation or use by a public official of property whose management is directly or indirectly entrusted to him** ~~contrary to the purpose for which it was intended~~ **is punishable, <u>when committed intentionally</u>, as a criminal offence, <u>in case:</u>**

(**<u>a) the committing, disbursing, appropriation or use of that property is contrary to the purpose for which it was intended, and</u>**
<u>(b)</u> either:

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(i) **the committing, disbursing, appropriation or use of that property is committed** for that official's advantage or for the advantage of another person or entity ~~following conduct is punishable as a criminal offence~~, or
(ii) **the committing, disbursing, appropriation or use of that property is** damaging the financial interests of the public or private entity concerned ~~and committed intentionally.~~

Recital X: In order to ensure that public officials do not intentionally **damage the financial interests of the public or private entity concerned by** usinge funds for purposes other than they were intended, it is necessary to lay down rules on the offence of misappropriation by public officials of property whose management is entrusted to them. **In order for misappropriation to be criminal, it should lead to an advantage for the public official or a third party or damage to the financial interests of the public or private entity concerned**. In order to take a comprehensive approach to the fight against corruption**, ~~this Directive should~~ Member States are also encouraged to ~~cover~~ criminalise** misappropriation in the private sector. ~~In order for misappropriation to be criminal, it should lead to an advantage for the public official or a third party.~~ **Member States may criminalise misappropriation where advantage and damage are alternative criteria, or choose to criminalise that conduct with only a requirement of advantage or only a requirement of damage. Member States should not define the offence as requiring both the establishment of damage and advantage.**

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Article 10

Trading in influence

1. Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally:
   (a) the promise, offer**ing** or giving, directly or through an intermediary, of an undue advantage of any kind to a**ny** person ~~or a third party in order for that person~~ to exert ~~real or supposed~~ **illicit** improper influence **over an action or omission by ~~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 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**,** ~~to~~ **by any** ~~a~~ person ~~or a third party~~ ~~in order for that person~~ to exert ~~real or supposed~~ **illicit** improper influence **over an action or omission ~~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.
2. In order for the conduct referred to in paragraph 1 to be punishable as a criminal offence, it shall be irrelevant whether or not the influence is exerted or whether or not the ~~supposed~~ **claimed** influence leads to the intended results.

[3. Arbitrators and jurors shall be assimilated to public officials for the purpose of paragraph 1.]

Recital (X) ~~Trading in influence, arising from the corrupt behaviour of those persons who are or claim to be in the proximity of power and try to exchange promises of exerting influence over decision-making processes in return for undue advantages should also be defined as a criminal offence. The constituent elements of the criminal offence should be that the instigator provides, or promises to provide the influence peddler with an undue advantage for exerting unlawful influence over an outcome or a process that is subject to decision-making. When carried out intentionally, this behaviour should be considered~~ **The exertion of influence over public decision-makers with a view to obtaining an undue advantage can seriously hamper the proper functioning of public administrations. To adequately tackle it, the constituent elements of the offence of trading in influence must cover two different situations, when carried out intentionally. First, the offence must cover the promising, offering or giving of any undue advantage aimed at the exertion of ~~illicit~~ improper influence with a view to obtaining an undue advantage from a public**

official. Secondly, it must also cover the request, receipt of any undue advantage, or the acceptance of an offer or a promise thereof, with a view to exertion of improper influence with a view to obtain~~ing~~ an undue advantage from a public official. Such conduct must constitute a criminal offence irrespective of **whether the influence was claimed or real** and whether the influence was exerted and whether or not the ~~claimed~~ influence ~~leads~~ **led** to the outcome intended. This offence should not cover the legitimate exercise of acknowledged forms of interest representation which may seek to legitimately influence public decision-making but do not entail an undue exchange of advantages. Such forms of interest representation, such as advocacy ~~for example~~, are often carried out in a regulated environment precisely for avoiding that a lack of transparency may allow them to become gateways to corruption. Having in place well-functioning additional rules on disclosing conflicts of interest, on 'revolving-doors' or on the financing of political parties, can also help to avoid grey areas and prevent undue influence.

Article 11

Abuse of functions

Option 1

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

~~1.~~ the performance of or failure to perform an act, in violation of laws, by a public official in the exercise of his functions for the purpose of obtaining an undue advantage for that official or for a third party**, is punishable as a criminal offence, when committed intentionally.** ~~;~~

~~2. the performance of or failure to perform an act, in breach of duties, by a person who in any capacity directs or works for a private-sector entity in the course of economic, financial, business or commercial activities for the purpose of obtaining an undue advantage for that person or for a third party.~~

~~1. NB. See Article 15(3): Member States may provide that conduct described in Article 11 does not constitute a criminal offence.~~

~~*Option 2*~~

~~Member States shall take the necessary measures to ensure that serious violations in the performance of or failure to perform an act, in violation / breach of laws, by a public official in the exercise of his~~

~~functions as a result of the offence referred to in Article 7, is punishable as criminal offence, when committed intentionally.~~

~~*NB. See Article 15(3): Member States may provide that conduct described in Article 11 does not constitute a criminal offence.*~~

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Article 12

Obstruction of justice

Member States shall take the necessary measures to ensure that the following conduct is punishable as **one or several** ~~a~~ criminal offence**s**, when committed intentionally:

1. the use, directly or through an intermediary, of physical force, threats or intimidation or the promis**ing**~~e~~, offering or giving of an ~~**undue**~~ advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding ~~concerning~~ **in relation to the commission of** any of the offences referred to in Article 7 to 1**0**~~1~~, 13 and 14;
2. the use, directly or through an intermediary, of physical force, threats or intimidation to interfere in the exercise of official duties by a person holding a judicial office or a member of law enforcement ~~concerning~~ **in relation to the commission of** any of the offences referred to in Article 7 to 1**0**~~1~~, 13 and 14.

~~*Article 12a*~~

~~*Political Party Financing*~~

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

~~1. the promise, offer or giving, directly or through an intermediary, of substantial financial contributions in favour of persons holding presidential, secretarial, political or administrative management positions within political parties or elected into parliaments or governments on regional, national, European and international level or organisations actively campaigning in favour of one specific political party, in violation of applicable laws on political financing, or of applicable transparency rules;~~

~~2. the request or receipt, directly or through an intermediary, of substantial financial contributions, by persons holding presidential, secretarial, political or administrative management positions within political parties or elected into parliaments or governments on regional, national, European and international level or organisations actively campaigning in favour of one specific political party, in violation of laws on political financing, or of applicable transparency rules.~~

Recital 15a:

Illegal political financing can be a means to ~~influence and~~ **corrupt** decision-makers to take decisions which may be in the interest of the financer. Member States should consider taking appropriate action against types of **illegal** political financing**,** ~~which do not fulfil the criteria of active bribery~~ **in line with accountability and transparency rules at EU and national level. While not regulated by this Directive, Member States may consider criminalising such political financing which can represent a threat to the democracy of the Member States and the Union.**

Article 13

Enrichment from corruption offences

Member States shall take the necessary measures to ensure that the intentional **acquisition, possession or use or by a public official of property that the official knows, at the time of receipt,** that the property is derived from the commission **by another public official** of any of the offences set out in Articles 7 to **10,** 12 and 14, is punishable as a criminal offence. ~~, irrespective of whether that official was involved in the commission of that offence.~~

Article 13a

Concealment

Member States shall take the necessary measures to ensure that the intentional concealment or disguise, of the true nature, source, location, disposition, movement, rights with respect to, or ownership, [by a public official], of, property, knowing that such property is derived from

the commission by another official of any of the offences set out in Articles 7 to 10, 12 and 14, is punishable as a criminal offence.

Recital 16:

The criminal offence of enrichment is meant to incriminate the deed of a public official who acquires, possesses or uses property which the public official knows to be derived from corruption offences committed by a different public official. The offence of illicit enrichment is without prejudice to the conduct provided for in Article 3 of the Directive (EU) 2018/1673 of the European Parliament and of the Council on combating money laundering by criminal law, and in particular paragraph 5 thereof, where applicable. When considering whether property is derived from any kind of criminal involvement in a corruption offence and whether the person had knowledge of that, the specific circumstances of each case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of property occurred within the same time frame. It should not be necessary to establish knowledge of all the factual elements or all circumstances relating to the criminal involvement, including the identity of the perpetrator. In addition, the proceeds obtained from corruption offences can be confiscated on the basis of Directive 2024/1260/EU of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation**. The said Directive also includes provisions on other types of confiscation ~~of unexplained wealth~~, including,** under certain conditions**, on confiscation of proceeds or other property the value of which corresponds to proceeds, which were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, where the relevant third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation** ~~provides also for confiscation of property stemming from intentional concealment or continued retention of property by a person who is that such property results from corruption offences, even if that person was not involved in committing those offences.~~

Article 14

*Incit**ingement** **and**, aiding and abetting, and attempt*

1. Member States shall take the necessary measures to ensure that inciting any of the offences referred to in Articles 7 **to 10 and 12** to 13 is punishable as a criminal offence.

2. Member States shall take the necessary measures to ensure that aiding and abetting any of the offences referred to in Articles 7 **to 10 and 12** to 13 is punishable as a criminal offence.

3. ~~Member States shall take the necessary measures to ensure that attempting any of the offences referred to in Articles 9 and 11 to 13 is punishable as a criminal offence.~~

Member States shall take the necessary measures to ensure that, an attempt to commit, <u>at least [for]</u> one of the offences referred to in Articles ~~[9] and~~ 7 to 10 and 13, 13a, is punishable as a criminal offence.

Article 15

Penalties and measures for natural persons

1. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 7 **to 10, and 12** to 14 are punishable by effective, proportionate and dissuasive criminal penalties~~, including fines~~.

2. Member States shall take the necessary measures to ensure that:

(a) the criminal offence referred to in Article**s** 7**, where the act to be performed by the official is in breach of that official's duties,** ~~and **9(1)(a)** 12~~ is punishable by a maximum term of imprisonment of at least ~~six~~ ~~**four**~~ **five** years;

(b) **the criminal offences referred to in Articles 9(1), ~~and~~ <u>13 and 13a</u> are punishable by a maximum term of imprisonment of at least four years;**

NB. Article 9(1) in PIF is four years and Article 13 constitutes a form of money laundering penalised under Directive 2018/1673 which sets a min max of 4 years for all offences.

(~~b~~**c**) the criminal offences referred to in Articles **7, where the act to be performed by the official is not in breach of that official's duties,** 8 ~~to, **9(b)**~~ **and 10** ~~11~~ are punishable by a maximum term of imprisonment of at least ~~five~~ **three** years; and

(c) ~~the criminal offence referred to in Article 13 is punishable by a maximum term of imprisonment of at least four **two** years.~~

~~2. Where a criminal offence referred to in Article 9 involves damage of less than EUR 10 000 or an advantage of less than EUR 10 000,~~

3. Member States may provide **that conduct described in Article 9 does not constitute a criminal offence where the advantage or damage involved is less than EUR 10 000**~~for sanctions other than criminal sanctions~~.

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~~3a. Member States may provide that conduct described in Article 11 does not constitute a criminal offence.~~

4. Without prejudice to paragraphs 1 ~~to 3~~ **and 2**, Member States shall take the necessary measures to ensure that natural persons who have ~~been convicted of~~ committe**d**~~ing one of~~ the ~~criminal~~ offences referred to in Article 7 **to 10 and 12** to 14 may be subject to **additional criminal or non-criminal** ~~sanctions~~ **penalties** or measures **that are proportionate to the gravity of the conduct** ~~imposed by a competent authority and that are not necessarily of a criminal nature, including~~ **which may include the following**:

(a) fines;

(b) the removal, suspension and reassignment from a public office;

(c) the disqualification from

(i) holding a public office;

(ii) exercising a public service function;

(iii) holding office in a legal person owned in whole or in part by that Member State;

(iv) the **practice of business** ~~exercise of commercial~~ activities **that resulted in or enabled the relevant offence** ~~in the context of which the offence was committed~~;

~~(d) deprivation of the right to stand for elections, proportionate to the seriousness of the offence committed; and~~

(**ed**) withdrawal of permits ~~or~~ **and** authorisations to pursue activities ~~in the context of which the offence was committed~~ **that resulted in or enabled the relevant offence; and**

(~~fe~~) exclusions from access to public funding, including tender procedures, grants**,** ~~and~~ concessions **and licenses.**~~;~~

(f) where there is a public interest, publication of all or part of the judicial decision relating to the criminal offence committed and the penalties or measures imposed, without prejudice to rules on privacy and the protection of personal data.

~~*EP article 15(4a))*~~

~~*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.*~~

Recital 19

Member States are encouraged to enable the**ir** competent authorities ~~should~~ be able to impose, in addition or as an alternative to imprisonment, ~~sanctions~~ **penalties** or measures, that are not necessarily of a criminal nature, such as the ~~temporary or permanent disqualification from holding public office or the~~ exclusion from ~~public procurement~~ **tender procedures**. Such measures have a general dissuasive effect and may reduce the recidivism of convicted offenders. Member States should also consider establishing procedures for the suspension or temporary reassignment of a public official accused of a criminal offence as referred to in this Directive, bearing in mind the need to respect the principle of the presumption of innocence, and the right to an effective remedy. **Member States may ~~are should [encouraged~~ 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.**

Article 16

Liability of legal persons

1. Member States shall ~~take the necessary measures to~~ ensure that legal persons can be held liable for ~~any of the criminal~~ offences referred to in Articles 7 to **10 and 12 to** 14 **when such offences are** committed for the benefit of those legal persons by any ~~natural~~ person, ~~acting either individually or as part of an organ of the legal person, and having~~ **who has** a leading position within the legal person **concerned**, **acting either individually or as part of an organ of that legal person,** based on one or more of the following:

   (a) a power of representation of the legal person;

   (b) ~~the~~ **an** authority to take decisions on behalf of the legal person; or

   (c) ~~the~~ **an** authority to exercise control within the legal person.

2. Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made

possible the commission, ~~including by any of the persons under his authority, of any of the criminal~~ **of an offence** referred to in Articles 7 to **10 and 12** to 14 ~~**10 and 12 to**~~ for the benefit of ~~that~~ **the** legal person **by a person under its authority**.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who **commit** ~~are perpetrators~~, incit~~ers~~ or **are** accessories ~~in~~ **to** the criminal offences referred to in Articles 7 to **10 and 12 to** 14.

Article 17

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

1. Member States shall take the necessary measures to ensure that a legal person held liable ~~for criminal offences~~ pursuant to Article 16 **(1) or 16 (2)** ~~are~~ **is** punishable by effective, proportionate and dissuasive **criminal or non-criminal** ~~sanctions~~ **penalties or measures.**

2. Member States shall take the necessary measures to ensure that ~~sanctions~~ **penalties** or measures for legal persons **held** liable pursuant to Article 16 **(1) or 16 (2) for the offences refered to in Articles 7 to 10 and 12 to 14 shall** include **criminal or non-criminal fines, the amount of which shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned, and may include other criminal or non-criminal penalties or measures that are proportionate to the gravity of the conduct, such as**:

~~(a) criminal or non-criminal fines, the maximum limit of which should not be less than 5 percent of the total worldwide turnover of the legal person, including related entities, in the business year preceding the decision imposing the fine;~~

(**a~~b~~**) ~~the~~ exclusion ~~of that legal person~~ from entitlement to public benefits or aid;

(**b~~e~~**) ~~the temporary or permanent~~ exclusion**s** from **access to** public ~~procurement~~ **funding, including tender** procedures**, grants, concessions and licences;**

(**c~~d~~**) ~~the~~ temporary or permanent disqualification ~~of that legal person~~ from the ~~exercise of commercial~~ **practice of business** activities;

(**d~~e~~**) ~~the~~ withdrawal of permits ~~or~~ **and** authorisations to pursue activities ~~in the context of which~~ **that resulted in or enabled** the **relevant** offence ~~was committed~~;

(**e~~f~~**) ~~the~~ possibility for public authorities to annul or rescind a contract ~~with them~~, in the context of which the offence was committed;

(**f~~g~~**) ~~the~~ placing ~~of that legal person~~ under judicial supervision;

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(**g**~~h~~) ~~the~~ judicial winding-up ~~of that legal person~~; and

(**h**~~i~~) ~~the temporary or permanent~~ closure of establishments ~~which have been~~ used for committing the offence.

3. Member States shall take the necessary measures to ensure that, at least for legal persons held liable pursuant to Article 16(1), the offences referred to in Articles 7 to 10, and 13 are punishable by criminal or non-criminal fines, the amount of which shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of such fines is not less than:

(a) 5% of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine, for the offenses referred to in Articles 7 to 9.

(b) 3% of the total worldwide turnover of the legal person, either in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine, for the offenses referred to in Articles 10, 12 and 13.

or, alternatively

(c) an amount corresponding to EUR 40 million for offences referred to in Article 7 to 9, and EUR 24 million for offences referred to in Article 10, 12 and 13.

Member States may establish rules for cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine.

Article 18

Aggravating ~~and mitigating~~ circumstances

1. **To the extent that the following circumstances do not already form part of the constituent elements of the criminal offences referred to in Articles 7 to 10 and 12 to 13**, Member States shall take the necessary measures to ensure that**, in relation to the relevant offences referred to in Articles 7 to 10 and 12 to 14, ~~one or more of~~** the

following circumstances **are** regarded as aggravating circumstances, in relation to the offences referred to in Articles **7 to 10 and 12 to 14**.[1]

(fa) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA[2];

(gb) the offender is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 of the European Parliament and of the Council[3], or an employee of an obliged entity, or has the power, whether individually or as part of an organ of the obliged entity, to represent that entity, or the authority to take decisions on behalf of that entity or to exercise control within the obliged entity, and has committed the offence in the exercise of his professional activities.

2. **To the extent that the following circumstances do not already form part of the constituent elements of the criminal offences referred to in Articles 7 to 10 and 12 to 13**, Member States shall take the necessary measures to ensure that**, in relation to the relevant offences referred to in Articles 7 to 10 and 12 to 14, one or more of** the following circumstances are **may, in accordance with national law,** to be regarded as aggravating circumstances, in relation to the offences referred to in Articles 7 to 10 and 12 to 14:

(a) the offender is a high level official;

(b) the offender has previously been convicted by a final judgment before of an offences of the same nature referred to as those under Articles 7 to 10 and 12 to 14;

(c) the offender obtained a substantial benefit or the offence caused substantial damage**, to the extent that they can be determined**;

(d) the offender committed the offence for the benefit of a third country;

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1 **The Presidency will reiterate the opposition of Council to this mandatory aggravating circumstance. However, as it is the assessment of the Presidency that this provision is of a primordial symbolic importance to the Parliament, it would ask Member States to agree that the inclusion of this provision will remain a bargaining chip to be used for the case that the Parliament offers to meet the requests of Council on issues important for the Council.**

2 Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300/42.

3 Directive 2015/849/EU the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117).

PUBLIC

(~~e~~**d**) the offender exercises investigation, prosecution or adjudication functions;

~~(f)~~ **the offender took advantage of the vulnerable situation of a person involved in the commission of the offence** (line 170a, EP mandate)

~~the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA[4]; and~~

~~(g) the offender is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 of the European Parliament and of the Council[5], 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.~~

~~**Article xx**~~

~~**Non-trial resolutions**~~

~~**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.~~

Recital 20 ***Redraft***

20) Legal persons should not be able to avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a public official on its behalf. Moreover, fines for legal persons should be calculated considering the**ir** worldwide turnover ~~of all legal~~

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4 Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300/42.

5 Directive 2015/849/EU the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117).

~~entities related to the offender, including parent entities, subsidiary entities, linked trusts, or similar or comparable legal entities.~~ **or based on fixed maximum amounts.**

Non-trial resolutions are being applied in the context of corruption offences and often viewed as a pragmatic and efficient way to resolve cases that would otherwise require tremendous time and resources to investigate and prosecute before reaching a court. However, non-trial resolutions may also present some challenges that Member States are encouraged to take into account.

PUBLIC

Article 18a

Mitigating circumstances

~~2.~~ Member States shall take the necessary measures to ensure that, in relation to the relevant offences referred to in Articles 7 to 10 and 12 to 14, one or more ~~several~~ of the following circumstances ~~are~~ may, in accordance with the relevant provisions of national law, be regarded as mitigating circumstances~~, in relation to the criminal offences referred to Articles 7 to 14~~:

(a) the offender provides the competent authorities with information which they would not otherwise have been able to obtain, helping them to

(i) identify or bring to justice **the** other offenders; or

(ii) find evidence

(b) **unless it constitutes a ground for exclusion of liability,** where ~~the offender is~~ a legal person **is held liable for any of the offences referred to Articles 7 to 10 and 12 to 14** and it has implemented effective internal controls, ethics awareness, and compliance programmes to prevent corruption prior to or after the commission of the offence; and

(c) where ~~the offender is~~ a legal person **is held liable for any of the offences referred to Articles 7 to 10 and 12 to 14** and it has, once the offence has been discovered, rapidly and voluntarily disclosed the offence to the competent authorities and taken remedial measures.

The mitigating circumstances referred to in points (b) and (c) are only applicable to legal persons.

Article 19

Privileges or immunity from investigation and prosecution of corruption offences

Unless it is contrary to their ~~legal systems,~~ constitutions, constitutional principles and ~~fundamental principles of their legal systems and traditions~~ laws, Member States shall take the necessary measures to ensure that privileges or immunities from investigation and prosecution granted to national officials for the offences referred to in this Directive can be lifted.

~~An accompanying recital: Member States should enable that that privileges or immunities from investigation and prosecution granted to national officials are established through an objective, impartial, effective and transparent process pre-established by law, based on clear criteria, and that is concluded within a reasonable timeframe.~~

NB. Recital 23 of the GA remains unchanged

Article 20

Jurisdiction

1. **Each** Member States shall **take the necessary measures to** establish **its** jurisdiction over the offences referred to in this Directive where:

   (a) the offence **was** ~~is~~ committed in whole or in part **within** ~~in~~ **its** territory;

   (b) the offender is **one of its** ~~a~~ nationals ~~of or has his or her habitual residence in that Member State~~;

   ~~(c) the offence is committed for the benefit of a legal person established in the territory of that Member State~~.

2. A Member State shall inform the Commission where it decides to extend its jurisdiction to one or more offences referred to in this Directive which have been committed outside its territory, where:

   (a) the offender is an habitual resident in its territory;

   (b) the offence is committed against one of its nationals or its habitual residents;

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

(d) the offence is committed for the benefit of a legal person in respect of any business done in whole or in part on its territory.

~~2.~~**3.** Where an offence referred to in this Directive falls within the jurisdiction of more than one Member State, ~~the~~ **those** Member States concerned shall cooperate to determine which ~~one shall~~ **Member State is to** conduct **the** criminal proceedings. The matter shall, where appropriate and in accordance with Article 12 of Council Framework Decision 2009/948/JHA[6], be referred to Eurojust.

~~3.~~**4.** In ~~the~~ cases referred to in paragraph 1, point (b), ~~each~~ Member State**s** shall **take the necessary measures to** ensure that the exercise of **their** ~~its~~ jurisdiction is not subject to the condition that a prosecution can be initiated only following a denunciation from the State **of the place where** ~~in which~~ the criminal offence was committed or following a report made ~~by the victim~~ in the State where the criminal offence was committed.

Article 21

Limitation periods ~~for corruption offences~~

1. Member States shall take the necessary measures to provide for a limitation period **that enables the investigation, prosecution, trial and adjudication** ~~in respect~~ of the criminal offences referred to in Articles 7 **to 10 and 12** to 14~~, which allows~~ for **a** sufficient **period of** time ~~to effectively investigate, prosecute, trial and decide on those offences following their commission~~ **after the commission of those criminal offences, in order for those criminal offences to be tackled effectively**.

   Member States shall take the necessary measures to provide for a limitation period that enables the enforcement of penalties imposed following a final conviction for criminal offences referred to in Articles 7 to 10 and 12 to 14 for a sufficient period of time after that conviction.

2. The limitation period referred to in paragraph 1**, first subparagraph,** shall ~~not~~ be ~~shorter than~~ **as follows**:

---

6 Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

(a) ~~fifteen~~ **at least ~~five~~ eight** years from the time when the offence was committed, for the criminal offences ~~referred to in Articles 7 and 12~~ **punishable by a maximum term of imprisonment of at least four years**;

(b) ~~ten~~ **at least ~~three~~ five** years from the time when the offence was committed, for the criminal offences ~~referred to in Articles 8, to 11~~ **punishable by a maximum term of imprisonment of at least ~~two~~ three years**~~;~~

~~(c) eight years from the time when the offence was committed, for the criminal offences referred to in Articles 13 and 14~~.

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

~~(a) ten years for the criminal offences referred to in Articles 7 and 12;~~

~~(b) eight years for the criminal offences referred to in Articles 8 to 11;~~

~~(c) five years for the criminal offences referred to in Articles 13 and 14.~~

~~4.~~**3.** ~~Member States shall take the necessary measures to enable the enforcement of a penalty of imprisonment following a final conviction for at least~~ **The limitation period referred to in paragraph 1, second subparagraph, shall be as follows**:

(a) at least ~~five~~ ten years from the date of the final conviction in the following cases:

(i) a penalty of more than one year of imprisonment; or alternatively

(ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of at least four years.

(b) at least ~~three~~ five years from the date of the final conviction in the following cases

(i) a penalty of imprisonment of up to one year of imprisonment; or alternatively

(ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of at least three years.

~~(a) fifteen years from the date of the final conviction for any of the criminal offences referred to in Articles 7 and 12;~~

~~(b) ten years from the date of the final conviction for any of the criminal offences referred to in Articles 8 to 11;~~

~~(c) eight years from the date of the final conviction for any of the criminal offences referred to in Articles 13 and 14.~~

~~5.~~ **4.** By way of derogation from paragraph**s 2 and 3** ~~4~~, Member States may establish a ~~shorter limitation period,~~ **limitation period that is shorter than ten, eight or five years respectively, but not shorter than five or three years respectively,** provided that ~~the~~ **such limitation** period may be interrupted or suspended in the event of specified acts**.** ~~and that the applicable rules on the suspension and limitation periods do not hamper the effectiveness of the judicial process and the dissuasive application of penalties. This period shall not be shorter than:~~

~~(a) ten years from the date of the final conviction for any of the criminal offences referred to in Articles 7 and 12;~~

~~(b) eight years from the date of the final conviction for any of the criminal offences referred to in Articles 8 to 11;~~

~~(c) five years from the date of the final conviction for any of the criminal offences referred to in Articles 13 and 14.~~

Recital 25

In order to ensure that the competent authorities have sufficient time to conduct complex investigations and prosecutions, this Directive provides for a minimum limitation period that enables the detection, investigation, prosecution and judicial decision of corruption offences for a sufficient period of time after the commission of such offences, ~~without affecting.~~ [**The minimum limitation periods provided for in this Directive should apply at least to the most serious forms of criminal offences punishable by a certain maximum term of imprisonment. This directive does not, however, affect**]those Member States which do not set limitation periods for investigation, prosecution and enforcement

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Chapter 3

PREVENTION, REPORTING AND INVESTIGATION

PUBLIC

Article 3

Prevention of corruption

1. Member States shall take appropriate action, **which could include** ~~such as~~ **information and awareness-raising campaigns**, to raise public awareness **among the public and private sector** on the **impact and** harmfulness **of corruption** with the objective to reduce the overall commission of corruption offences as well as the risk of corruption.
2. Member States shall take measures to ensure ~~the highest degree~~ **high appropriately high** level of integrity, transparency and accountability in public administration and public decision-making with a view to prevent corruption.
3. Member States shall take measures to ensure that preventive tools are in place. Those may include, for instance, ~~**an anticorruption strategy**~~, an appropriate access to information of public interest, rules for the disclosure and management of conflicts of interests in the public sector, rules for asset declaration by national officials designated by national law and rules regulating the interaction between the private and the public sector, **regulation on revolving doors situation**.
4. Member States shall ensure that measures to prevent corruption in both the public and private sectors, are available and ~~adapted~~ **tailored** to the specific risks of an area of activity. Such measures shall at least include actions to strengthen integrity and to prevent opportunities for corruption among:
   (a) high level officials;
   (b) law enforcement and judicial authorities, including measures relating to their appointment and conduct~~,~~

(4b) Member States shall promote a public service culture, based on integrity, transparency and accountability, ensuring that national officials and administrations will continue to develop their capacity ~~**have the appropriate training and support**~~ **to deal with** ~~**both**~~ **the adequate** ~~**increased**~~ **professional standards** ~~**and the tasks in implementing their mandate**~~**, and their** ~~**that they are**~~ **awareness of conflict of interest situations and of the risks of corruption.** ~~**and financial and economic crimes.**~~

5. Member States shall **when necessary** perform an assessment to identify the sectors or occupations most at risk of corruption **and develop measures to address the main risks in the sectors or occupations identified**.
6. Following that assessment, Member States shall, **as appropriate, regularly** organize ~~at least once a year,~~ awareness-raising actions adapted to the specificities of the sectors **or occupations** identified **in paragraph 5**, including on ethics.
7. Where appropriate, Member States shall take measures to promote the participation of civil society, **academia,** non-governmental organizations and community-based organizations in anti-corruption activities.

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Article 3a (EP art 23c)

National Strategies

Without prejudice to existing policies, Member States shall adopt and publish a national strategy on preventing and combating corruption, establishing objectives, priorities, and corresponding measures. Member States shall strive to ensure that such national strategy would be developed in consultation with civil society, the anti-corruption ~~relevant specialised~~ bodies or units referred to in Article 4, independent experts, researchers and other stakeholders, [and shall take into account the Member States' needs, specificities and challenges].

Recital **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, assessments ~~of which sectors are most at risk and trends~~ and develop an action plan to take adequate actions.**

Article 4

~~*Specialised*~~ ***Anti-corruption*** *bodies* ***or organisational units***

1. **To advance the fight against corruption on a common basis,** Member States shall ~~take the necessary measures to~~ ensure that one or several bodies, or **organisational** units ~~specialised in~~ **tasked**

with the prevention of corruption is or are in place. **The tasks of such bodies or organizational units may include**, **as appropriate:**

a) **the assessment of asset declarations of national officials, as designated~~determined~~ by national law**
b) **monitoring compliance with transparency rules applicable to national officials and public entities,**
c) **monitoring compliance with the statutory provisions and rules related to conflicts of interests in the public sectors,**
d) **identifying sectors or occupations most at risk ~~vulnerable to risks~~ of corruption;**
e) **cooperation with competent authorities, bodies or organizational units s~~pecialized~~ ~~in~~ tasked with the repression of corruption.**

2. Member States shall take the necessary measures to ensure that one or several bodies, or **organisational** units ~~specialised in~~ **tasked with** the repression **and investigation** of corruption is or are in place.

3. Member States shall take the necessary measures to ensure that the bodies or units as referred to in paragraph 1 and 2:

a) **can operate without undue interference;**
b) **are known to ~~widely/commonly recognised by~~ the public;**
c) **where relevant, take decisions or make recommendations in accordance with transparent procedures established by law, regulations or administrative provisions.**

~~(a) are functionally independent from the government and have a sufficient number of qualified staff and the financial, technical and technological resources, as well as the powers and tools necessary to ensure the proper administration of their tasks;~~

~~(b) are known to the public;~~

~~(c) provide public access to relevant information on the exercise of their activities, with due regard for the protection of personal data and the confidentiality of investigations;~~

~~(d) operate and take decisions in accordance with transparent procedures established by law, with the effect of ensuring integrity and accountability.~~

Comment: In addition, the following addition to recital 6 could be considered.

(5) Without prejudice to their institutional and administrative autonomy, Member States should have in place bodies or organisational units tasked with the

repression and the prevention of corruption. Member States are not obliged to create new bodies or organisational units, including the creation of specialised courts or tribunals, under this Directive, and can decide to entrust the same body or organisational unit with both preventive and repressive functions as well as with tasks related to other criminal offences, such as organised crime. ***The tasks may include detection, investigation and prosecution of the offences referred to in this Directive, including through evidence-gathering, inter-agency cooperation and the enforcement of sanctions.*** *In accordance with the principle of Member States' autonomy, such bodies or units do not necessarily need to be central bodies or organisation units. In full respect of Member States' institutional and administrative autonomy, when such anti-corruption bodies have a power to take decisions on cases brought to their attention or identified by them, or make any recommendations as they consider necessary, they should operate without undue interference. In order to ensure that these bodies or units operate effectively, Member States should ensure that resources and powers allocated to those bodies and organisational units are commensurate to the proper administration of their tasks."*

Article 5

Resources

Member States shall ensure that bodies or organizational units tasked with ~~detection, investigation, prosecution or adjudication as well as~~ ~~with the~~ prevention **and repression** of corruption have a ~~are provided with an adequate~~**sufficient number of** qualified staff and sufficient financial, technical and technological resources for the effective performance of their functions related to the implementation of this Directive.

Article 6

Training

1. Each Member State shall take the necessary measures to provide **up-to-date** training for its national officials to be able to identify different forms of corruption and corruption risks that

may occur in the exercise of their duties and to react in a timely and appropriate manner to any suspicious activity.

2. **Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union,** ~~E~~**e**ach Member State shall take the necessary measures to ~~ensure adequate resources for and the provision of~~ **provide** specialised ~~anti-corruption~~ **and up-to-date** training ~~at regular intervals~~ for ~~its members of~~ law enforcement **and judicial** ~~, the judiciary and the staff of~~ authorities tasked with criminal investigations and **criminal** proceedings of offences falling within the scope of this Directive.

Article 22

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

1. Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937[7] 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 ~~persons~~ **any person** reporting offences referred to in this Directive ~~and,~~ providing evidence or otherwise cooperating with ~~the investigation, prosecution or adjudication of such offences~~ **competent authorities** ~~are provided the necessary~~ **has access to** protection, support and assistance **measures** in the context of criminal proceedings**, in accordance with national law**.

2a. Without prejudice to the rules on anonymous reports set out in Directive (EU) 2019(1937) as transposed in national legislation and freedom of expression, and to national procedural rules on reporting, production and assessment of evidence, Member States

[7] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17-56

shall not prevent the anonymous reporting, by any person, of information related to offences covered by this Directive.

Article 23

Investigative tools

Member States shall take the necessary measures to ensure that effective **and proportionate** investigative tools, ~~such as those used in countering organised crime or other~~ serious ~~crimes,~~ are available ~~to persons, units or services responsible~~ for investigating or prosecuting the criminal offences referred to in this Directive.

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

New Article 23bis

Freezing and confiscation

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

Member States shall take the necessary measures to enable the tracing, identifying, freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in Chapter 2 of this Directive.

Member States bound by Directive 2014/42/EU of the European Parliament and of the Council shall take the measures referred to in the first paragraph in accordance with that Directive.

Article 23a

Exchange of information

~~Without prejudice to the rights of national security agencies,~~ Member States shall, as appropriate, take the necessary measures to enable competent law enforcement authorities to have direct access to SIENA and use the SIENA system for exchanging information in cross-border investigations in accordance with Directive (EU) 2023/977 of the European Parliament and of the Council of 10 May 2023 on the exchange of information between the law enforcement authorities of Member States and repealing Council Framework Decision 2006/960/JHA.

~~Article 23b~~

~~Rights of victims~~

~~1. Member States shall protect and enable victims of corruption 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. Without prejudice to the application of Directive (EU) 2012/29 on victims' rights, Member States shall take the necessary measures to ensure that the rights afforded to victims under that Directive are also applicable to the victims of corruption.~~

…

Recital: Any person who has suffered harm, which was directly caused by a criminal offence referred to in this Directive, has the right to be recognised ~~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 such corruption that constitutes a criminal offence, in so far as that ~~the sense of the~~ Directive is applicable and ~~, of corruption,~~ in accordance with national procedural rules.

NB. EP article 23c became article 3a

Article 23d

Rights for the public concerned to participate in proceedings

Member States shall ensure that persons affected or likely to be affected by the criminal offences referred to in Articles [7 to 13] of this Directive, and persons having sufficient interest

or maintaining the impairment of a right as well non-governmental organisations involved in the fight against corruption and meet requirements under national law, have appropriate procedural rights in proceedings concerning those offences, 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.

Comment: The following recital based on recital 58 of the Envicrime Directive could be added: "This Directive does not require Member States to introduce new procedural rights for the members of the public concerned. However, when such procedural rights for members of the public concerned exist in a Member State in equivalent situations concerning criminal offences other than those provided for pursuant to this Directive, such as the right to participate in proceedings as a civil party, such procedural rights should also be granted to the members of the public concerned in proceedings concerning the criminal offences defined in this Directive. The rights of the members of the public concerned are without prejudice to the rights of victims as set out in Directive 2012/29/EU of the European Parliament and of the Council. The notion of 'members of the public concerned' and of 'victims' should remain distinct and Member States should not be required to apply victims' rights to members of the public concerned. This Directive does not require Member States to grant to members of the public concerned the procedural rights in criminal proceedings that they grant to categories of persons other than members of the public concerned."

Article 23e

Suspension or reassignment of a public official

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

The following modification of the accompanying recital 19 could be considered

Recital 19:

Member States should also consider establishing procedures, **whether criminal, administrative or disciplinary and appropriate to their national systems,** for the suspension or temporary reassignment of a public official accused of a criminal offence as referred to in this Directive, **in order to avoid the risk of further negative consequences prior to the conclusion of the judicial**

procedure, bearing in mind the need to respect **rules on immunities and privileges,** the principle of the presumption of innocence and the right to an effective remedy.

~~**Article 23f**~~

~~**Exercise of discretionary powers**~~

Instead of Article 23f, PCY proposes the following recital 25:

(25) **Without prejudice to the set-up of their national judicial systems,** ~~In order to increase trust in prosecution services whilst reducing the perception of corruption in Member~~ States, discretionary powers under domestic law not to the prosecute persons for criminal offences referred to in this Directive ~~on opportunity grounds~~ should be exercised in accordance with clear rules and criteria. **These rules should** ~~and guarantee, with appropriate internal consultation, as well as the~~ aim **to take into account the need, in general, for effective, proportionate and dissuasive criminal penalties** ~~of deterring the commission of~~ **for** corruption offences and **ensure** the effectiveness of the judicial process. **This Directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.** ~~**in order to increase public trust in the integrity of the prosecution services and judicial authorities and safeguard the rule of law whilst reducing the perception of corruption in Member States**~~.

Article 24

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

Where the criminal offences referred to in this Directive, are suspected to be of a cross-border nature, the competent authorities of the Member States concerned shall consider referring the information related to those offences to appropriate competent Union bodies, offices or agencies. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, **the** Member States' ~~authorities~~, Europol, Eurojust, the European Public Prosecutor's Office~~,~~ **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, ~~Europol, Eurojust, the European Public Prosecutor's Office, the European Anti-~~

~~Fraud Office (OLAF), and the Commission shall~~ provide **the** technical and operational assistance ~~in accordance with their respective mandates as~~ **needed by the competent authorities** to facilitate ~~the~~ coordination of **their** investigations ~~and prosecutions by the competent authorities~~. **The Commission may, where appropriate, provide assistance.**

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.~~2.~~ **The Commission shall prepare an overview of sectoral risks of corruption in the Union and facilitate information exchange among Member States and experts across the Union.**

2. ~~3.~~ The **tasks of the** Commission, through the EU network against corruption, shall **include~~, as a minimum~~** ~~in particular~~:

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

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

3. ~~4.~~ The Commission shall inform Member States about financial resources at Union level available to Member States for the fight against corruption, **including ~~major~~ Union anti-corruption programmes with third countries.**

~~Article 25a~~

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

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Article 26

Data collection and statistics

NB Envicrime used as model for amendments

1. Member States shall **have a system in place for the for the recording, production and provision of anonymised** ~~collect~~ statistical data on the criminal offences as referred to in Articles 7 **to 10 and 12** to 14 of this Directive.

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

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

   (b) the number of dismissed court cases including on the grounds of expiry of the limitation period for the criminal offence concerned;

   (ba) the number of non-trial resolutions for cases of the criminal offences referred to in Articles 7 to 14d, when such mechanisms exist in a Member State [at any stage of the judicial procedure]

   (c) the number of natural persons with specification, when available, of the number of public officials and high-level officials that are

      (i) prosecuted,

      (ii) convicted; or

      (iii) fined;

   (d) the number of legal persons that are

      (i) prosecuted,

      (ii) convicted or

      (iii) fined;

   ~~the number of cases reported;~~

   ~~the number of cases investigated;~~

   ~~the number of indictments;~~

   ~~the average length of the criminal investigations of cases;~~

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

~~the number of convictions ;~~

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

~~the number of legal persons held liable and sanctioned;~~

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

(f~~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 **if possible by 1 June, but no later than 31~~1~~ ~~June~~ December**, publish, **in a machine-readable ~~standard~~, easily accessible and comparable format**, the statistical data referred to in paragraph 2 for the previous year and inform the Commission thereof.

(recital **30**~~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.~~

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 the violation of Union restrictive measures, as well as for providing information to citizens. Member States should publish relevant statistical data on proceedings related to corruption offences, extracted from data that already exists at a centralised or decentralised level within the whole Member State. These data can be analysed and used by the Commission in the

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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.

~~Article 26a~~

~~EU Anti Corruprion Report~~

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CHAPTER 5 – FINAL PROVISIONS

Article 27

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

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~~ shall be construed as references to ~~Chapter 2 of~~ this Directive. In particular, references to Article 2 of Framework Decision 2003/568/JHA shall be construed as references to Chapter 2 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 that Convention ~~and its Article 3~~ shall be construed as references to ~~Chapter 2 of~~ this Directive . In particular, references to Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union shall be construed as references to Chapter 2 of this Directive.

Article 28

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

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

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

'(c) 'high level officials' are those defined in Article 2(~~8~~**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) Article 7(3) is replaced by the following:

'3. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3 and 4(1) and (3) are punishable by a maximum penalty of at least four years of imprisonment when they involve considerable damage or advantage.

Member States shall take the necessary measures to ensure that the criminal offence referred to in Article 4(2) is punishable by a maximum penalty of at least five years of imprisonment when they involve considerable damage or advantage.

~~Member States shall take the necessary measures to ensure that the criminal offence referred to in Article 4(3) is punishable by a maximum penalty of at least four years of imprisonment when it involves considerable damage or advantage.~~

The damage or advantage resulting from the criminal offences referred to in points (a), (b) and (c) of Article 3(2) and in Article 4 shall be presumed to be considerable where the damage or advantage involves more than EUR 100 000.

The damage or advantage resulting from the criminal offences referred to in point (d) of Article 3(2) and subject to Article 2(2) shall always be presumed to be considerable.'

(~~4~~) In Article 7, paragraph (4) is replaced by the following:

'4. ~~Where a criminal offence referred to in points (a), (b) or (c) of Article 3(2) or in Article 4(1) and (3) involves damage of less than EUR 10 000 or an advantage of less than EUR~~

~~10 000,~~ Member States may **provide 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** ~~provide for sanctions other than criminal sanctions.'~~

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

'7. Without prejudice to paragraphs 1 to 5, Member States shall take the necessary measures to ensure that natural persons who have ~~been convicted of~~ committ**ed**~~ing~~ ~~one of~~ the ~~criminal~~ offences referred to in **Articles 3, 4 and 5** ~~this Directive~~ may be subject to **additional criminal or non-criminal penalties** ~~sanctions~~ or measures ~~as~~ **which may include those** 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 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 Article**s** 18**,points (a) to (d), and 18a** of Directive (EU) XXX on combating corruption ~~are to be~~ **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.'

(**7**) Article 9 is replaced by the following:

'Article 9

Sanctions with regard to legal persons

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

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**

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non-criminal fines, the amount of which shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned, and may include other criminal or non-criminal penalties or measures that are proportionate to the gravity of the conduct, such as those referred to in Article 17(2) and 17(3) of Directive (EU) XXX on combating corruption.'

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

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

eight years from the time when the offence was committed, for the criminal offences referred to in Articles 3, 4(1) , (2) and (3);

3. By way of derogation from paragraph 2, Member States may establish a limitation period that is shorter than eight years but not shorter than five years , provided that the period may be interrupted or suspended in the event of specified acts

4. Member States shall take the necessary measures to enable the enforcement of a penalty of imprisonment following a final conviction for at least: ten years from the date of the final conviction for any of the criminal offences referred to in Articles 3, 4(1), (2) and (3);

~~(b)~~

~~5~~. By way of derogation from paragraph 4, Member States may establish a shorter limitation period than ten years but not shorter than five years, provided that the period may be interrupted or suspended in the event of specified acts

Article 29

Transposition

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

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

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3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 30

Evaluation and reporting

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.~~

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

Article 31

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*.

Article 32

Addressees

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

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