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#### **'I' ITEM NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
Subject:	Proposal for a Directive of the European Parliament and of the Council on combating corruption - Confirmation of the final compromise text with a view to agreement at first reading

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#### **I. BACKGROUND/INTRODUCTION**

1. On 3 May 2023, the Commission submitted a proposal for a Directive on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive 2017/1371.

2. The draft Directive is based on Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).
3. On 14 June 2024, the Council reached a general approach<sup>1</sup> on the abovementioned proposal, which constituted the mandate for negotiations with the European Parliament in the context of the ordinary legislative procedure.
4. On 2 December 2025, a provisional agreement was reached between co-legislators, which resulted in the final compromise text set out in the Annex to this note.

## II. CONCLUSION

5. The Permanent Representatives Committee is therefore invited to:
  - a) confirm agreement on the final compromise text as set out in the Annex with a view to reaching an agreement at first reading with the European Parliament,
  - b) authorise the Chair of the Permanent Representatives Committee to send a letter to inform the Chair of the European Parliament's LIBE Committee that, should the European Parliament adopt its position at first reading on the proposal in the exact form as set out in the annex to this note, subject, if necessary, to revision of that text by the legal linguists of both institutions, the Council will approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position.

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<sup>1</sup> 11272/24.

2023/0135 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1) point (d), and Article 83(1) and (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Corruption remains a significant problem at the Union level, threatening the stability and security of societies, including by enabling organised and other serious crime. Corruption undermines democratic institutions and universal values on which the Union is founded, particularly the rule of law, democracy, equality and the protection of fundamental rights. ***Combating corruption is essential for strengthening the quality of democracy and for the full realization of the Rule of Law.*** It jeopardises development, prosperity and the sustainability and inclusiveness of our economies. In order to effectively prevent and combat corruption, a comprehensive and multidisciplinary approach is required. The purpose of this Directive is to tackle corruption by means of criminal law, allowing for better cross-border cooperation between competent authorities.

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- (2) Council Framework Decision 2003/568/JHA<sup>2</sup> lays down requirements on the criminalisation of corruption concerning the private sector. The Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union<sup>3</sup> addresses certain acts of corruption involving officials of the European Communities or officials of the Member States in general. These instruments are, however, not sufficiently comprehensive, and the current criminalisation of corruption varies across Member States hampering a coherent and effective response across the Union. Enforcement gaps and obstacles in cooperation between the competent authorities of different Member States have also emerged. This Directive aims to amend and expand the provisions of those instruments. Since the amendments to be made are of substantial number and nature, both instruments should, in the interests of clarity, be replaced in their entirety in relation to the Member States bound by this Directive.

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<sup>2</sup> Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192/54, 31.7.2003).

<sup>3</sup> Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2).

- (3) The existing legal framework should be updated and strengthened to facilitate an effective fight against corruption across the Union. This Directive aims to criminalise corruption offences when committed intentionally. Intention and knowledge may be inferred from objective and factual circumstances. As this Directive provides for minimum rules, Member States remain free to adopt or maintain more stringent criminal law rules for corruption offences. ***This Directive builds upon the existing legal framework and should not be interpreted as an aim to weaken current national rules on corruption.***

- (4) Corruption is a transnational phenomenon that affects all societies and economies. Measures adopted at national or Union level, should recognise this international dimension. Union action should therefore take into account the work of the Group of States against Corruption of the Council of Europe (GRECO), the Organisation for Economic Cooperation and Development (OECD) and the United Nations Office against Drugs and Crime (UNODC).

- (5) ***Diverse manifestations of corruption necessitate a coordinated and harmonized approach among Member States to address its root causes and consequences effectively. To effectively tackle*** corruption, both preventive and repressive mechanisms are needed. Member States are encouraged to take a wide range of preventive, legislative and cooperative measures as part of the fight against corruption. Whereas corruption is first and foremost a crime and specific ***corruption offences and corruption related offences*** are defined in national and international law, failings in integrity, undisclosed conflicts of interests or serious breaches of ***integrity*** rules can ***result in corruption offences*** if left unaddressed. The prevention of corruption mitigates the need for criminal repression and has wider benefits in promoting public trust and managing the conduct of public officials. Effective anti-corruption approaches ***in all Member States should*** build on measures to enhance transparency ■ and integrity, as well as by regulating in areas such as conflict of interest, lobbying and revolving doors. Public bodies should seek the highest standards of integrity, transparency and ***freedom from undue influence*** as an important part of tackling corruption more broadly. ***A fundamental pillar for efficient, transparent and effective Member States that aim to eradicate corruption effectively, is a public service staffed with individuals of high level of skills and integrity. Enhancing transparency, efficiency and the use of objective criteria in the recruitment and promotion of public officials may help to achieve such staffing. As the private sector also plays a key role in preventing and detecting corruption, Member States can encourage the elaboration and implementation of robust and effective compliance mechanisms within private companies. In order to ensure a common approach regarding the effectiveness of such compliance programs, which can include notably a risk map, a code of conduct, third-party evaluation as well as internal control and audit, Member States can cooperate in elaborating common guidelines.***



(5a) *While this Directive fully respects all relevant rules in national constitutions, constitutional principles and laws, it is emphasised that unduly shielding of individuals - in particular holders of public office - from accountability for corruption offences might undermine public trust in a way incompatible with the objectives of this Directive.*

(6) *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. In accordance with the principle of Member States' autonomy, such bodies or units do not necessarily need to be central bodies or **organisation units. In full respect of Member States' institutional and administrative autonomy, when such anti-corruption bodies have a power to take decisions on cases brought to their attention or identified by them, or make any recommendations as they consider necessary, they should operate without undue interference or undue influence by others, thus being protected against undue external interventions or pressure.** 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 **and allow for specialised knowledge on the repression and prevention of corruption.***

- (6a) *In order to raise citizens' awareness about the scope, characteristics, and effects of corruption, various measures may be undertaken, also in cooperation with relevant stakeholders such as the civil society, academia and the media. Measures may include for example dedicated sources of information, compilation of publication and relevant regulation, and awareness raising campaign and seminars open to the public and in an accessible language.*
- (7) The EU is a party to the United Nations Convention Against Corruption (UNCAC), which is the most comprehensive international legal instrument to combat corruption, combining measures to prevent and fight corruption. It requires that parties to the Convention take legislative and other measures to establish criminal offences for bribery, misappropriation and money laundering and consider taking legislative or other measures to criminalise other acts (such as abuse of functions, trading in influence and illicit enrichment). In line with the commitments contained in the Political Declaration adopted at the 2021 UN General Assembly Special Session against Corruption, the European Union should, to the extent possible, go beyond the minimum requirements of UNCAC and lay down additional measures for preventing and combating corruption. This Directive draws on the observations and best practices emanating from the Mechanism for the Review of Implementation of the UNCAC.

- (8) Taking account of the evolution of corruption threats and the legal obligations on the Union and Member States under international law, as well as the development of national legal frameworks, the definition of corruption **offences** should be further approximated in all Member States so that it covers corrupt conduct more comprehensively.
- (9) To avoid impunity for corruption offences in the public sector, the scope of application needs to be well defined. First of all, the concept of public official should also cover persons working in international organisations, including the institutions, agencies and bodies of the European Union and international courts. Secondly, many entities or persons nowadays exercise public functions without holding a formal office. Therefore, the concept of public official is defined to cover all relevant officials, whether appointed, elected or employed on the basis of a contract, holding a formal administrative or judicial office, as well as all persons providing a **public** service, which have been vested with public authority or who are subject to the control or supervision of public authorities in relation to the carrying out of such a **public service function**, even if they do not hold formal office. For the purposes of this Directive, the definition should cover persons **performing public service functions** in state-owned and state-controlled enterprises, as well as in asset management foundations and privately-owned companies performing public service functions and **in** the legal persons established or maintained by them. Any person holding a legislative office **at national, regional or local level** should be **assimilated to a national** official for the purposes of this Directive **in accordance with national law**.

- (9a) *High level officials should be understood as persons who exercise key executive, administrative, legislative or judicial functions. These tasks can include actively participating in the development and/or the execution of governmental functions, determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure and taking decisions on appointment of individuals to key executive, administrative, legislative or judicial functions, as well as deciding on court cases. High level officials can include national officials such as heads of central and regional government, members of central and regional government, deputy ministers, state secretaries, key political advisers, heads and members of a minister's private office or cabinet when such have been established, as well as members of parliamentary chambers, members of Constitutional and Supreme Courts, the Prosecutor General, and members of Supreme Audit Institutions; as well as members of the College of Commissioners of the European Commission and the European Parliament*

- (10) *It is necessary to strengthen the legal framework to combat bribery and to provide law enforcement and prosecution with effective and proportionate tools. In bribery of public officials, there are two sides to distinguish. Active bribery exists when a person promises, offers or gives an undue advantage of any kind to influence a public official. Passive bribery exists when the public official requests or receives such undue advantages, or accepts the offer or the promise thereof in order to act or to refrain from acting in a certain way. Advantages can be both tangible or intangible, and pecuniary or non-pecuniary. An advantage is considered not to be undue including where it is permitted by law or by administrative rules as well as in case of minimum gifts, gifts of very low value. This Directive should also set minimum rules on bribery and other forms of corruption in the private sector, where the immediate victims include companies that are impacted unfairly and where free competition can be diminished by each bribe payment. The offence of bribery in the public sector builds on the offences of passive and active corruption defined in Articles 2 and 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and should not be interpreted or applied in a manner that is more lenient than those Articles 2 and 3 of the Convention.*

- (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).*
- (11) In order to ensure that public officials do not intentionally ***damage the financial interests of the public or private entity concerned by using*** funds for purposes other than they were intended, it is necessary to lay down rules on the offence of misappropriation by public officials of property whose management is entrusted to them. In order **■** 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, Member States are also encouraged to criminalise misappropriation in the private sector. Member States should not define the offence as requiring both the establishment of damage and advantage.*

- (12) *The exertion of influence over public decision-makers with a view to obtaining an undue advantage can seriously hamper the proper functioning of public administrations. To adequately 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 improper influence with a view to obtaining an undue advantage from a public official. Secondly, it must also cover the request, receipt of any undue advantage, or the acceptance of an offer or a promise thereof, with a view to exertion of improper influence with a view to obtain an undue advantage from a public official. Such conduct must constitute a criminal offence irrespective of whether the influence was claimed or real and whether the influence was exerted and whether or not the influence led to the outcome intended. This offence should not cover the legitimate exercise of acknowledged forms of interest or legal representation which may seek to legitimately influence public decision-making but do not entail an undue exchange of advantages. Such forms of interest representation, such as advocacy , 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. For the purposes of this offence, the undue advantage to exert improper influence includes remuneration for these forms of representation where these activities they are carried out in a manner fulfilling the other elements of this offence, including due to a relevant violation of the applicable rules.*

- (13) *Unlawful exercise of public functions risks undermining public trust, the rule of law and economic fairness and can cause serious harm to public interest. In order to prevent such harm, Member States should identify the serious violations of law, be it actions, or omissions, or both. Such serious violations might include for example the violation of legislative or regulatory provisions designed to guarantee free access and equal contracts for candidates, or the deliberate bending of the law by judges or arbitrators. Member States should be able to limit the application to certain categories of public officials that fall under the Unlawful Exercise of Public Functions definition. In identifying the relevant serious violations of law, Member States may have regard to matters including whether conduct is committed in order to obtain an undue advantage for the official in question or for a third party or whether it is committed in order to cause a damage to the legitimate rights or interest of a person.*
- (14) Obstruction of justice is a criminal offence committed in support of corruption, **amongst other offences. This is acknowledged in Member States' criminal law.** It is therefore necessary to **incriminate** the obstruction of justice, which entails the exercise of physical force, threats or intimidation, or the inducement of false testimony or evidence. Actions to interfere in the giving of testimony or production of evidence, or with the exercise of official duties by judicial or law enforcement officials should also be covered. In line with the UNCAC, this Directive only applies to the obstruction of justice concerning proceedings relating to a corruption offence. **When transposing this Directive, Member States should not be obliged to lay down a specific offence of obstruction of justice relating to corruption offences as established in chapter 2 of this Directive, where their national law includes a general provision incriminating the obstruction of justice, applicable to all offences, including, but not limited to, corruption. Member States are also free to criminalise such conducts through several criminal offences at national level.**



- (15) Corruption feeds off the motivation for undue economic and other advantages. ***In*** order to reduce the incentive for individuals and criminal organisations to commit new criminal acts and deter individuals from consenting to becoming fake property owners, enrichment by corruption offences should be criminalised. This should, in turn, complicate the concealment of illicitly acquired property and reduce the spread of corruption as well as the damage done to society. Transparency helps competent authorities to detect possible illicit enrichment. For example, in jurisdictions where public officials are required to declare their assets at regular intervals, including when taking up and completing duties, authorities can assess whether the declared assets correspond to declared incomes.
- (15a) ***Member States should adopt measures to define as a punishable criminal offence, the intentional concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from the commission of the offences of bribery in the public and private sector, misappropriation, trading in influence, obstruction of justice, enrichment or inciting, aiding and abetting, and attempt, as set out in this directive.***
- (15aa) ***Illegal political financing can be a means to corrupt decision-makers to take decisions which may be in the interest of the financier. Member States should consider taking appropriate action against types of illegal political financing in line with the principle of proportionality, and accountability and transparency rules at EU and national level, and in full respect of internal market fundamental freedoms and the electoral rights of EU citizens. While not regulated by this Directive, Member States may consider criminalizing such illegal political financing where it represents a threat to the democracy of the Member States and the Union.***

- (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 and concealment is without prejudice to the conduct provided for in Article 3 of Directive (EU) 2018/1673 of the European Parliament and of the Council on combating money laundering by criminal law, and in particular paragraph 5 thereof, and the related Recital 11 of that Directive, where applicable.* When considering whether property is derived from any kind of criminal involvement in a corruption offence and whether the person had knowledge of that, the specific circumstances of each case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of property occurred within the same time frame. It should not be necessary to establish knowledge of all the factual elements or all circumstances 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 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.*

- (17) In order to deter corruption throughout the Union, Member States should lay down minimum types and levels of ***criminal and non criminal penalties*** when the criminal offences defined in this Directive are committed. The maximum levels of imprisonment and other penalties should be sufficiently high to deter possible offenders and to reflect the harmfulness of corruption **■** . At the same time, these levels should be proportionate to the seriousness of each corruption offence and be coherent with levels of criminal ***penalties*** set in Union and national law. Member States should ensure that ***penalties*** are enforced to the extent necessary in order to deter the commission of those offences. ***If national law establishes*** the eventuality of suspended or conditional sentences, early release, parole or pardoning of persons convicted of any of the offences referred to in this Directive, judicial authorities should be able to take into account the seriousness of the criminal offences concerned among other factors. ***This directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.***
- (18) This Directive does not affect the proper and effective application of disciplinary measures or penalties other than those of a criminal nature, such as administrative ***penalties***. ***Penalties*** that cannot be equated to criminal ***penalties***, which are imposed on the same person for the same conduct, can be taken into account when sentencing that person for a criminal offence defined by this Directive. The principle of prohibition of being tried or punished twice in criminal proceedings for the same criminal offence (ne bis in idem) should be fully respected.

- (19) *Member States are encouraged to enable their* competent authorities *to* be able to impose, in addition or as an alternative to imprisonment, *penalties* or measures, that are not necessarily of a criminal nature, such as ■ exclusion from *tender procedures or temporary bans on running for public office*. Such measures have a general dissuasive effect and may reduce the recidivism of convicted offenders. Member States should also consider establishing procedures for the suspension or temporary reassignment of a public official accused of a criminal offence as referred to in this Directive, bearing in mind the need to respect the principle of the presumption of innocence, and the right to an effective remedy ■
- (19a) *In order to enhance the criminal justice response to offences concerning corruption and to deter the commission of those offences, the sanctions regime against legal persons and natural persons should be clarified and brought in line with other Union criminal law instruments. Under Directive 2014/24/EU, Directive 2014/25/EU, Directive 2014/23/EU and Directive 2009/81/EC, a conviction, by way of final judgement, for corruption is grounds for an exclusion from participating in a procurement procedure or a concession award procedure. Nevertheless, Member States should also be able to decide to include, among the criminal or non-criminal sanctions or measures which can be imposed on legal persons and natural persons, the exclusion of such legal persons from tender procedures or concessions, in order to also cover procurements and concessions below the thresholds of the relevant directives.*
- (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 *their* worldwide turnover *or based on fixed maximum amounts. Non-trial resolutions are being applied in the context of corruption offences and often viewed as a pragmatic and efficient way to resolve cases that would otherwise require tremendous time and resources to investigate and prosecute before reaching a court. However, non-trial resolutions may also present some challenges that Member States are encouraged to take into account.*

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- (21) *While there is no obligation to increase sentences, Member States should ensure that the judge or the court is able to take the aggravating circumstances set out in this Directive, as implemented in national law, into account when sentencing offenders. It remains within the discretion of the judge or the court to determine whether to increase the sentence due to the specific aggravating circumstances, taking into account all the facts of the particular case.* Member States should not be obliged to provide for ■ aggravating circumstances *where national law provides for the criminal offences laid down in Council Framework Decision 2008/841/JHA to be punishable as separate criminal offences and this may lead to more severe sanctions* ■
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- (23) Member States should ensure that *the judge or the court is able to take the* mitigating circumstances *set out in* this Directive, *as implemented in national law, into account when sentencing offenders*. Subject to judicial discretion, these circumstances should cover those cases in which offenders provide information or otherwise collaborate with authorities. Similarly, where legal persons have implemented *genuine, effective and duly assessed* internal controls, ethics, and compliance programmes, it should be possible to consider these actions as a mitigating circumstance *when sanctioning such legal persons*. Lower *penalties* should also be considered where, upon discovery of an offence, a legal person swiftly discloses information and takes remedial measures. In any case, it *remains* within the discretion of the judge or the court to determine the actual amount of the *penalty due to the specific mitigating circumstances*, taking into account all the *facts* of the *particular case, including, where applicable, the fact that the legal person has compliance programmes only for cosmetic purposes, also called "window dressing"*.

- (24) Members of Parliament and other public officials may have immunity or legal protection from investigation or prosecution, which helps strengthen their independence by protecting them against unfounded complaints, in particular with regard to opinions expressed or votes cast in the course of performing their functions. However, such immunities may hamper effective investigation and prosecution of corruption offences, including by affecting the detection and investigation or prosecution of other persons who do not enjoy immunity and may have participated in the offence. There should therefore be an appropriate balance between, on the one hand, any immunities or jurisdictional privileges accorded to public officials for acts performed in the exercise of their functions, and on the other hand, the possibility of effectively investigating, prosecuting and adjudicating corruption offences. *Member States should ensure that privileges or immunities from investigation and prosecution granted to national officials for the offences referred to in this Directive can be lifted. However, Member States should not be obliged to change their national constitutions and constitutional principles when transposing this Directive. In the transposition of this Directive into national law as well as in the application of national law transposing this Directive, those privileges and immunities, including the respect for the freedom of the Member's mandate, are fully taken into account. This directive should not affect the legitimate exercise of acknowledged forms of interest representation which may seek to legitimately influence public decision-making but do not entail an undue exchange of advantages. Interest representation is important for the creation of policy that is supported by civil society and can contribute legitimately to the public sector.*

- (25) *Without prejudice to the set-up of their national judicial systems*, discretionary powers under domestic law not to prosecute persons for criminal offences referred to in this Directive ■ should be exercised in accordance with clear rules and criteria. *These rules should aim to take into account the need, in general, for effective, proportionate and dissuasive criminal penalties for* corruption offences and *ensure* the effectiveness of the judicial process. *This Directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.*
- (24) Given, *in particular*, the mobility of *certain* perpetrators and proceeds stemming from criminal activities, as well as the complex cross-border investigations required to combat corruption, all Member States should establish their jurisdiction in order to enable the competent authorities to investigate and prosecute this crime *effectively* including when the offence is committed in whole or in part in its territory. As part of that obligation, Member States should ensure that jurisdiction is also established in situations where an offence is committed by means of information system used on their territory, whether or not that technology is based in their territory.



- (27) In order to ensure that the competent authorities have sufficient time to conduct complex investigations and prosecutions, this Directive provides for a minimum limitation period that enables the detection, investigation, prosecution and judicial decision of corruption offences for a sufficient period of time after the commission of such offences, without affecting those Member States which do not set limitation periods for investigation, prosecution and enforcement.
- (26) Corruption offences *can be* difficult **I** to identify and investigate, as they mostly occur *in hiding*. Thus, a significant proportion of corruption crime remains undetected, and the criminal parties are able to benefit from the proceeds of their corruption. The longer it takes to detect a corruption offence, the more difficult it is to uncover evidence. Therefore, it should be ensured that law enforcement and *competent authorities* have appropriate investigative tools to gather relevant evidence of corruption offences which often affect more than one Member State. Furthermore, Member States should allocate sufficient training, in close coordination with the European Union Agency for Law Enforcement Training (CEPOL), also on the use *of* investigative tools to successfully carry out proceedings and the identification and quantification of proceeds of corruption in the context of *asset recovery* and confiscation. In addition, this Directive facilitates the gathering of information and evidence by setting out mitigating circumstances for offenders that help the authorities. *The training of law enforcement and the judicial authority should concern criminal investigation and criminal proceedings of offences falling within the scope of this Directive.*
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- (29) Persons reporting information to competent authorities concerning past, ongoing or planned instances of corruption, which they have acquired in the context of their work-related activities, risk suffering retaliation in that context. Such whistleblowers' reports can strengthen enforcement by enabling the competent authorities to effectively prevent, detect and prosecute corruption. Given the public interest in shielding public and private institutions from such acts, and in enhancing transparency, good governance and accountability, it is necessary to ensure that effective arrangements are in place to enable whistleblowers to use confidential channels, to alert competent authorities and to protect them from retaliation. Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>1</sup> applies to reports of breaches affecting the financial interests of the Union as referred to in Article 325 of the Treaty and as further specified in relevant Union measures and thus applies to the reporting of all criminal offences falling within the scope of Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>2</sup>. As regards the criminal offences referred to in this Directive, Directive (EU) 2019/1937 should be applicable to the reporting of such offences and to the protection of persons reporting such offences under the conditions established therein. Beyond the obligations flowing from Directive (EU) 2019/1937, competent national authorities should ensure that persons providing evidence or otherwise cooperating with criminal investigations *have access to* the necessary protection, *in accordance with national law*.

- (29a) *Since the general public that is affected negatively by corruption offences will generally not be able represent itself as a victim in criminal proceedings, for the purpose of effective enforcement, members of the public concerned should have the possibility of acting on behalf of the general interest in corruption cases, in accordance with national law and subject to the relevant procedural rules. This Directive does not require Member States to introduce new procedural rights for the members of the public concerned. However, when such procedural rights for members of the public concerned exist in a Member State in equivalent situations concerning criminal offences other than those provided for pursuant to this Directive, such as the right to participate in proceedings as a civil party, such procedural rights should also be granted to the members of the public concerned in proceedings concerning the corruption offences defined in this Directive. The rights of the members of the public concerned are without prejudice to the rights of victims as set out in Directive 2012/29/EU of the European Parliament and of the Council. The notion of ‘members of the public concerned’ and of ‘victims’ 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.*
- (29b) *This Directive requires Member States to adopt and publish a national strategy on preventing and combating corruption. Member States are encouraged to develop such national strategy in consultation with civil society, anti-corruption bodies or organisational units, independent experts, researchers and other stakeholders. The national strategy should take into account the Member States' needs, specificities and challenges.*

- (28) Independent civil society organisations are crucial for the well-functioning of our democracies, and play a key role in upholding the common values on which the EU is founded. They act as essential watchdogs, drawing attention to threats to the rule of law, contributing to making those in powers accountable, and ensuring respect for fundamental rights. Member States should promote the participation of civil society in anti-corruption activities, *where appropriate*.
- (29c) Media pluralism and media freedom are key enablers for the rule of law, democratic accountability, equality and the fight against corruption. Independent and pluralistic media, in particular investigative journalism, play an important role in the scrutiny of public affairs, detecting possible corruption and integrity breaches, raising awareness and promoting integrity. Member States have an obligation to guarantee an enabling environment for journalists, protect their safety and pro-actively promote media freedom and media pluralism. The Commission’s Recommendation on the protection, safety and empowerment of journalists<sup>4</sup>, as well as Directive (EU) 2024/1069<sup>5</sup> and a Commission Recommendation<sup>6</sup> on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’) include important safeguards and standards to ensure that journalists, human rights defenders and others can carry out their role unhindered.

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<sup>4</sup> Commission Recommendation of 16 September 2021 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, C(2021)6650 final.

<sup>5</sup> Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded *claims* or abusive court proceedings (‘Strategic lawsuits against public participation’)

<sup>6</sup> Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’), C(2022) 2428 final.

- (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 analyse the scale of and trends in offences related to corruption, 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 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.*

- (33) To combat corruption effectively, efficient exchange of information between competent authorities responsible for the prevention, detection, investigation or prosecution of corruption offences is crucial. Member States should ensure that information is exchanged *between competent law enforcement authorities using Europol's Secure Information Exchange Network Application (SIENA)* in an effective and timely manner in accordance with national and Union law. This Directive, which aims to lay down common definitions of corruption offences, should serve as a benchmark for information exchange and cooperation between the competent national authorities under Directives (EU) 2023/977<sup>7</sup>, (EU) 2019/1153<sup>8</sup>, (EU) 2016/681<sup>9</sup> of the European Parliament and of the

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<sup>7</sup> See Proposal for a Directive of the European Parliament and of the Council on information exchange between law enforcement authorities of Member States, repealing Council Framework Decision 2006/960/JHA, COM/2021/782 final.

<sup>8</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA OJ L 186, 11.7.2019, p. 122.

<sup>9</sup> Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132), Annex II, point 6.

Council, Regulations (EU) 2018/1240<sup>10</sup>, (EU) 2018/1862<sup>11</sup> and (EU) 603/2013<sup>12</sup> of the European Parliament and of the Council, Council Decision 2008/633/JHA<sup>13</sup>.

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- <sup>10</sup> Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1), Annex, point 7.
- <sup>11</sup> Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, (OJ L 312, 7.12.2018, p. 56). Reference to corruption is made indirectly in the SIS II Council Decision by delimiting its scope with a reference to the European Arrest Warrant, for instance in Article 8.
- <sup>12</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).
- <sup>13</sup> Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129). Reference to corruption is made indirectly in the VIS Council Decision for law enforcement by delimiting its scope with a reference to the European Arrest Warrant in recital 6.

(34) Corruption is a cross-cutting issue, while vulnerabilities differ from sector to sector, as well as the most adequate way to tackle them. Member States should therefore, ***within appropriate intervals***, 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, including by ***regularly*** organising, ***as appropriate***, awareness-raising actions adapted to the specificities of the sectors ***or occupations*** identified. Member States that have broad national anti-corruption strategies in place, may also choose to address their risk assessments **■**, as long as the risks are assessed and the measures are reviewed regularly. For instance, investor residence schemes are among the sectors ***that bear*** high risks for corruption<sup>14</sup>**■** and should therefore be included in the assessments of the sectors most at risk of corruption and the trainings to be conducted by Member States as provided for by this Directive.

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(35) To provide for an equivalent level of protection between the Union's and the national financial interests, the provisions of Directive (EU) 2017/1371<sup>15</sup> should be aligned with those of this Directive. To this end, the rules applicable to criminal offences affecting the Union's financial interests as regards sanctions, aggravating and mitigating circumstances and limitation periods should be equivalent to those laid down by this Directive.

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<sup>14</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Investor Citizenship and Residence Schemes in the European Union, 23 January 2019, COM(2019) 12 final **■**

<sup>15</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the protection of the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29.



- (36) The implementation of this Directive should ensure a level of protection of the Union's financial interests which is equivalent to the protection of the national financial interests.
- (37) Since the objective of this Directive, namely to subject corruption in all Member States to effective, proportionate and dissuasive criminal penalties, cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (35) The intended dissuasive effect of the application of criminal law *penalties* requires particular caution with regard to fundamental rights. This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the 'Charter') and in particular the right to liberty and security, the protection of personal data, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the principles of the legality and proportionality of criminal offences and *penalties*, as well as the principle of ne bis in idem.
- (36) ■ In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Ireland has notified, *by letter of 10 July 2023*, its wish to take part in the adoption and application of this Directive.

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- (41) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Council Framework Decision 2003/568/JHA shall continue to be binding upon and applicable to Denmark.

HAVE ADOPTED THIS DIRECTIVE:

## *Chapter 1*

### **GENERAL PROVISIONS**

#### *Article 1*

#### **Subject matter and scope**

This Directive establishes minimum rules concerning the definition of criminal offences and ***criminal and non criminal 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:

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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.

3. 'public official' means:

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

= (i) 'Union official' means a person who is:

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

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

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

*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 ***shall be assimilated to*** a national official ***in accordance with national law***.

■

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

(ba) *a person assigned and exercising a public service function for an international organisation or for an international court.*

3. '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. '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. 'breach of duty' covers as a minimum any 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. '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' *means public officials who are entrusted with key executive, administrative, legislative or judicial functions in accordance with national law. This 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 Institutions *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.*

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## *Chapter 2*

### ***CORRUPTION OFFENCES***

#### *Article 7*

#### **Bribery in the public sector**

1. Member States shall take the necessary measures to ensure that, *where it is intentional*, the following conduct *constitutes* a criminal offence:

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

2. ***For the purposes of paragraph 1, arbitrators and jurors shall be considered to be public officials.***

#### *Article 8*

#### **Bribery in the private sector**

Member States shall take the necessary measures to ensure that, ***where it is intentional*** and in the course of economic, financial, ***or*** business or commercial activities, ***the following conduct constitutes a criminal offence***:

- (a) the promise, **offering** or giving, directly or through an intermediary, **of** an undue advantage of any kind to a person who **■** 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);

- (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 ■ 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).

#### Article 9

#### Misappropriation

- (a) Member States shall take the necessary measures to ensure that, *where it is intentional, 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, constitutes* a criminal offence, *either* when committed *for the official's advantage or for the advantage of another person or entity, or when damaging the financial interests of the public or private entity concerned.*

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- (b) *Member States may take the necessary measures to ensure that, where it is intentional,* the committing, disbursing, appropriation or use, in the course of economic, financial, *or* business or commercial activities, by a person *directing or working*, in any capacity, in a private sector entity, of any property whose management is directly or indirectly entrusted to *that person* contrary to the purpose for which it was intended, *constitutes a criminal offence, either when committed for that person's advantage or for the advantage of another person or entity, or when damaging the financial interests of the public or private entity concerned.*

## Article 10

### Trading in influence

1. Member States shall take the necessary measures to ensure that, *where it is intentional*, the following conduct **constitutes** a criminal offence **■** :
  - (a) the promise, **offering** or giving, directly or through an intermediary, of an undue advantage of any kind to **any** person to exert **improper** influence **over an action or omission 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, **by any** person to exert **improper** influence **over an action or omission 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 **constitute** a criminal offence, it shall be irrelevant whether or not the influence is exerted or whether or not the **claimed** influence leads to the intended results.
- 2a. **Arbitrators and jurors shall be assimilated to public officials for the purpose of paragraph 1.**

## Article 11

### Unlawful exercise of public functions

Member States shall take the necessary measures to ensure that **at least certain serious violations of law in the performance of or failure to perform an act by a public official in the exercise of his functions are** punishable as **■** criminal offence, when committed intentionally. **Member States may limit the application of this article to certain categories of public officials.**

**■**



## Article 12

### Obstruction of justice

Member States shall take the necessary measures to ensure that, *where it is intentional*, the following conduct *constitutes one or several* criminal *offences*:

1. the use, directly or through an intermediary, of physical force, threats or intimidation or the *promising*, offering or giving of an advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding *in relation to the commission of* any of the offences referred to in Article 7 to **10**, 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 *in relation to the commission of* any of the offences referred to in Article 7 to **10**, 13 and 14.

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## Article 13

### Enrichment from corruption offences

Member States shall take the necessary measures to ensure that the intentional acquisition, possession or use *of property* by a public official *knowing at the time of receipt, that such* property *was* derived from the commission *by another public official* of any of the offences *referred to* in Articles 7 to **10**, 12 and 14, *constitutes* a criminal offence ■ .

### *Article 13a*

#### *Concealment*

***Member States shall take the necessary measures to ensure that the intentional concealment or disguising of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from the commission of any of the offences referred to in Articles 7 to 10, 12 and 14 constitutes a criminal offence.***

### *Article 14*

#### ***Inciting, aiding and abetting, and attempt***

1. Member States shall take the necessary measures to ensure that inciting ***the commission of an offence*** referred to in Articles 7 to 10 and 12 to 13a constitutes a criminal offence.
2. Member States shall take the necessary measures to ensure that aiding and abetting ***the commission of an offence*** referred to in Articles 7 to 10 and 12 to 13a constitutes a criminal offence.
3. Member States shall take the necessary measures to ensure that ***an attempt to commit*** the offences referred to in Articles 13 and 13a ***is punishable as a criminal offence, and shall consider taking the necessary measures to ensure that an attempt to commit at least one of any of the offences referred to in Article 7 to 10 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 14 are punishable by effective, proportionate and dissuasive criminal penalties.

2. Member States shall take the necessary measures to ensure that:
- (a) the criminal *offence* referred to in Article 7, *where the act to be performed by the official is in breach of that official's duties*, is punishable by a maximum term of imprisonment of at least *five* years;
  - (b) the criminal offences referred to in *Articles 9(1), 13 and 13a* are punishable by a maximum term of imprisonment of at least *four* years; █
  - (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 and 10* are punishable by a maximum term of imprisonment of at least *three* years.

- █
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. Member States shall take the necessary measures to ensure that the threshold of EUR 10 000 or more may be met through a series of conduct covered by Article 9, that are linked and of the same kind, where those offences are committed by the same offender.*

- █
4. Without prejudice to paragraphs 1 *and 2*, Member States shall take the necessary measures to ensure that natural persons who have *committed* offences referred to in Article 7 to *10 and 12 to 14* may be subject to *additional criminal or non-criminal penalties* or measures █ that are *proportionate to the gravity of the conduct 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* activities *that resulted in or enabled the relevant* offence ;

(d) *temporary bans on running for public office*

(e) withdrawal of permits *and* authorisations to pursue activities *that resulted in or enabled the relevant* offence;

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

(fa) *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.*

#### Article 16

#### Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for 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 *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) **an** authority to take decisions on behalf of the legal person; or
  - (c) **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, **of an offence** referred to in Articles 7 to **10 and 12 to 14** for the benefit of **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, incite or are** accessories **to** the criminal offences referred to in Articles 7 to **10 and 12 to 14**.

#### *Article 17*

#### ***Penalties and measures for legal persons*** ■

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 16 **(1) or 16 (2)** 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** or measures for legal persons **held** liable pursuant to Article 16 **(1) or 16 (2)** **for the offences referred 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:**

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- (b) ■ exclusion ■ from entitlement to public benefits or aid;

- (c) *exclusions from access to public funding, including tender procedures, grants, concessions and licences;*
  - (d) ■ temporary or permanent disqualification ■ from the *practice of business* activities;
  - (e) ■ withdrawal of permits *and* authorisations to pursue activities *that resulted in or enabled the relevant* offence ■ ;
  - (f) ■ possibility for public authorities to annul or rescind a contract ■ , in the context of which the offence was committed;
  - (g) ■ placing ■ under judicial supervision;
  - (h) ■ judicial winding-up ■ ; and
  - (i) ■ closure of establishments ■ used for committing the offence.
- (ia) *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.*

*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.*

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**Aggravating [ ] 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 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 13 to 14, the following circumstance is regarded as aggravating circumstance:*
  - (a) *the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA<sup>16</sup>.*
- 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 13, Member States may take the necessary measures to ensure that, in relation to the relevant offences referred to in Articles 7 to 10 and 13 to 14, one or more of the following circumstances are, in accordance with national law, regarded as aggravating circumstances, in relation to the offences referred to in Articles 7 to 10 and 13 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 13 to 14;*
  - (c) *the offender obtained a substantial benefit or the offence caused substantial damage, to the extent that they can be determined;*

**[ ]**

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<sup>16</sup> *Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300/42.*



- (e) the offender exercises investigation, prosecution or adjudication functions;
- (ea) *the offender took advantage of the vulnerable situation of a person involved in the commission of the offence;*

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- (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<sup>17</sup>, 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 18a*

#### *Mitigating■ circumstances*

1. 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 may, in accordance with the relevant provisions of national law, be regarded as mitigating circumstances ■
  - (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

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<sup>17</sup> Directive 2015/849/EU of 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).

- (ii) find evidence ■
- (b) *unless it constitutes a ground for exclusion of liability*, where ■ 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 ■ 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 constitutions, constitutional principles and 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 ■

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#### 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* committed in whole or in part *within* its territory;

- (b) the offender is *one of its nationals*;

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1a. *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. Where an offence referred to in this Directive falls within the jurisdiction of more than one Member State, *those* Member States concerned shall cooperate to determine which *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<sup>18</sup>, be referred to Eurojust.

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

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<sup>18</sup> 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).

■ **Limitation periods** ■

1. Member States shall take the necessary measures to provide for a limitation period *that enables the investigation, prosecution, trial and adjudication* of the criminal offences referred to in Articles 7 to 10 and 12 to 14 *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 *be as follows*:
  - (a) *at least eight* years from the time when the offence was committed, for the criminal offences *punishable by a maximum term of imprisonment of at least four years*;
  - (b) *at least five* years from the time when the offence was committed, for the criminal offences *punishable by a maximum term of imprisonment of at least three years*;

■

4. *The limitation period referred to in paragraph 1, second subparagraph*, shall *be as follows*:
  - (a) *at least 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 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.*

■

5. 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 ■ . This period shall not be shorter than:

- (a) *five years for the criminal offences punishable by a maximum term of imprisonment of at least four years;*
- (b) *three years for the criminal offences punishable by a maximum term of imprisonment of at least three years;*

5a. *By way of derogation from paragraph 3, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts. This period shall not be shorter than:*

- (a) *five years from the date of the final conviction in the following cases:*
  - (i) *a penalty of more than one year of imprisonment; or alternatively*
  - (ii) *a penalty of imprisonment for a criminal offence punishable by a maximum term of at least four years;*
- (b) *three years from the date of the final conviction in the following cases:*
  - (i) *a penalty of imprisonment of up to one year of imprisonment; or alternatively*

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

I

### **Chapter 3**

## **PREVENTION, REPORTING AND INVESTIGATION**

### *Article 21a*

#### **I Prevention of corruption**

1. Member States shall take appropriate action, such as information and awareness-raising campaigns I , 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 *high level of integrity*, transparency and accountability in public administration and public decision-making with a view to prevent corruption. *Member States shall promote a public service culture based on these principles, ensuring that national officials and administrations will continue to develop their capacity to deal with the adequate professional standards, and their awareness of conflict of interest situations and of the risks of corruption.*

3. Member States shall take measures to ensure that **■** preventive tools *are in place. Those may include, for instance, an appropriate* access to information of public interest, **■** rules for the disclosure and management of conflicts of interests in the public sector, *measures to ensure transparency in the funding of candidatures for elected* public officials and *political parties, rules for asset declarations and verification of such declarations, interest declarations and regulation of revolving doors situations by national officials designated by national law, rules regarding failure to report substantial assets or interests, and* rules regulating the interaction between the private and the public sector **■** .
4. Member States shall *ensure that* measures to prevent corruption in both the public and private sectors, *are available and 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 **■**
5. Member States shall, *within appropriate intervals*, 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 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.

*Article 21b*  
*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 and the means to meet these objectives. Member States shall strive to ensure that such national strategy would be developed in consultation with civil society, the relevant bodies or units referred to in Article 21c, independent experts, researchers and other stakeholders, and shall take into account the Member States' needs, specificities and challenges.*

*Article 21c*  
*Anti-corruption bodies or organisational units*

1. To advance the fight against corruption on a common basis, Member States shall ensure that one or several bodies, or organisational units tasked with the prevention of corruption is or are in place and possess the necessary expertise to fight against corruption. The tasks of such bodies or organizational units may include, as appropriate:
  - (a) *the assessment of asset declarations of national officials, as designated 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 of corruption;*
  - (e) *cooperation with competent authorities, bodies or organizational units tasked with the repression of corruption.*



2. Member States shall take the necessary measures to ensure that one or several bodies, or organisational units ***tasked with*** the repression ***and investigation*** of corruption is or are in place.
3. Member States shall take the necessary measures to ensure that ■ bodies, or ***organisational*** units as referred to in paragraph 1 and 2:
- (a) ***operate without undue interference;***
  - (b) are known to the public;
  - (c) ***where relevant, take decisions or make recommendations in accordance with transparent procedures established by law, regulations or administrative provisions;***
  - (d) ***report on their main activities and their results.***

#### *Article 21d*

#### **Resources**

Member States shall ■ ensure that ***bodies or organizational units tasked with prevention and repression of corruption have*** an adequate number of qualified staff and the financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.

## Article 21e

### 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***, each Member State shall take the necessary measures to **provide** specialised **and up-to-date** training **for** law enforcement **and judicial** 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<sup>19</sup> 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**.

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<sup>19</sup> ***Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17-56***

2. In addition to the measures referred to in paragraph 1, Member States shall ***take the necessary measures to*** ensure that ***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***.

## Article 23

### Investigative tools

Member States shall take the necessary measures to ensure that effective ***and proportionate*** investigative tools **■** are available **■** 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.***

### *Article 23a*

#### *Freezing and confiscation*

*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 23b*

#### *Exchange of information*

*Member States shall take the necessary measures to ensure that Europol's Secure Information Exchange Network Application (SIENA) is used for the exchange of information between competent law enforcement authorities in accordance with Article 13 of 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 23c*

#### *Rights of victims*

- 1. Without prejudice to the Directive (EU) 2012/29, Member States shall take the necessary measures to apply the relevant rights under applicable law to the victims of offences under this directive, including legal persons, where applicable, in accordance with national law.*

**I**

#### *Article 23d*

##### *Rights for the public concerned to participate in proceedings*

1. *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 as 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.*

**I**

#### *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 authority, bearing in mind the respect for the principle of the presumption of innocence.*

## **Chapter 4**

### **COORDINATION AND COOPERATION**

#### *Article 24*

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

*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 **■**, 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 shall*, where appropriate, **■** provide *the* technical and operational assistance *needed* by the competent authorities *to facilitate coordination of their investigations*. *The Commission and OLAF may, where appropriate, provide assistance.*

**■**

#### *Article 25*

##### **Commission support to Member States and their competent authorities**

**■**

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.

3. ***The tasks of*** the Commission, through the EU network against corruption, shall ***include***
- (a) facilitate cooperation and exchange of best practices among Member States' practitioners, ***civil society representatives***, experts, researchers and other stakeholders;
  - (b) ***upon request, support all stakeholders, and in particular to Member States, in their*** activities, ■ by developing best practices, ***non-binding*** guidance materials and methodologies.
4. The Commission shall inform Member States about financial resources at Union level available to Member States for the fight against corruption, ***including Union anti-corruption programmes with third countries.***
- 

#### *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 the criminal offences as referred to in Articles 7 to 14 of this Directive.
2. The statistical data referred to in paragraph 1 shall, ***as a minimum***, include ■ the following ***existing data, when available at the central level:***
- (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 14, when such mechanisms exist in a Member State at any stage;*
- (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;*
  - (iii) *fined;*
- (d) *number of legal persons that are*
- (i) *prosecuted;*
  - (ii) *convicted;*
  - (iii) *fined;*
- (e) *the types and levels of sanctions imposed for the criminal offences referred to in Articles 7 to 14.*
- (f) ■ *number of pardons related to convictions regarding Articles 7, 8, 9 and 10.*

■

3. Member States shall, on an annual basis and *if possible* by 1 June, *but no later than 31 December*, publish, in a machine-readable, *easily accessible and comparable* format, the statistical data referred to in paragraph 2 for the previous year and inform the Commission thereof.

■



## **Chapter 5**

### **FINAL PROVISIONS**

#### *Article 27*

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

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

With regard to the Member States bound by this Directive, references to Framework Decision 2003/568/JHA shall be construed as references to this Directive. ***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 shall be construed as references to 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.***

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

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(7) 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), where the act to be performed by the official is not in breach of that official's duties, is punishable by a maximum term of imprisonment of at least four years of imprisonment when it involves 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 it involves considerable damage or advantage ***and where the act to be performed by the official is in breach of that official's duties.***

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.

***Member States may also provide for a maximum sanction of at least four years of imprisonment in other serious circumstances defined in their national law.'***

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

‘4. Where a criminal offence referred to in points (a), (b) or (c) of Article 3(2) or in Article 4(1) and (3) involves damage of less than EUR 10 000 or an advantage of less than EUR 10 000, ■ Member States may provide for sanctions other than criminal sanctions.’

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

***Where a criminal offence referred to in points (a), (b) or (c) of Article 3(2) or in Article 4(1) and (3) involves damage of less than EUR 10 000 or an advantage of less than EUR 10 000, Member States may provide for sanctions other than criminal sanctions***

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

‘6. 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.’

(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 *may* take the necessary measures to ensure that *one or more of* the circumstances referred to in Article 18(2) 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.’

(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 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* 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 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. *Insofar as legal persons are held liable, pursuant to Article 6(1), for the criminal offences referred to Articles 4(2) and 4(3), Article 17(3) of Directive (EU) XXX on combating corruption applies'*

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

- ‘2. *Member States shall take the necessary measures to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3 and 4(1) and 5 which are punishable by a maximum sanction of at least four years of imprisonment, for a period of at least five years from the time when the offence was committed.*

3. By way of derogation from paragraph 2, Member States may establish a limitation period *that is shorter than five years, but not shorter than three 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 *investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 4(2) and 4(3) which are punishable by a maximum sanction of at least four years of imprisonment, for a period of at least eight years from the time when the offence was committed.*

5. By way of derogation from paragraph 4, 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 .

- 5a. *Member States shall take the necessary measures to enable the enforcement of a penalty of imprisonment following a final conviction for at least five years from the date of the final conviction for any of the criminal offences referred to in Articles 3, 4(1) and 5 in the following cases:*

= (a) *A penalty of more than one year of imprisonment; or alternatively*

= (b) *A penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least four years of imprisonment.*

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

- 5c. *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 4(2) and 4(3) in the following cases:*

- (a) *A penalty of more than one year of imprisonment; or alternatively*
- (b) *A penalty of imprisonment in the case of a criminal offence which is punishable by a maximum sanction of at least four years of imprisonment.*
- 5d. *By way of derogation from paragraph 8, 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**

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

*However, for the obligations under Article 21a(4) and Article 21(b) they shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 36 months after the date of adoption of this Directive.*

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## Article 30

### Evaluation and reporting

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.

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, ***including an assessment of Article 11 and its implementation by 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 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*