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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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

Corruption is highly damaging to society, to our democracies, to the economy and to individuals. It undermines the institutions on which we depend, diluting their credibility as well as their ability to deliver public policies and quality public services. It acts as an enabler for organised crime and hostile foreign interference. Successfully preventing and fighting against corruption is essential both to safeguard EU values and the effectiveness of EU policies, and to maintain the rule of law and trust in those who govern and public institutions.

Corruption is an impediment to sustainable economic growth, diverting resources from productive outcomes, undermining the efficiency of public spending and deepening social inequalities. It hampers the effective and smooth functioning of the single market, creates uncertainties in doing business, and holds back investment. Corruption is by its nature difficult to quantify, but even conservative estimates suggest that it costs the EU economy at least EUR 120 billion per year<sup>1</sup>. The negative effects of corruption are felt worldwide, undercutting efforts to bring good governance and prosperity, and to meet the United Nations Sustainable Development Goals.

The Eurobarometer survey data of 2022 suggests that 68 % of people in the EU and 62 % of companies based in the EU consider that corruption is widespread in their country<sup>2</sup>. The 2022 State of the Union address puts the fight against corruption high on the European's Commission's agenda highlighting the need to tackle it both at the EU and at the national level. The European Parliament has also repeatedly called for more EU action to combat corruption<sup>3</sup>. The Council made similar calls, in particular in the context of cooperation to fight organised and serious international crime<sup>4</sup>.

The existing EU legal framework on combating corruption needs to be updated to take into account the evolution of corruption threats and the legal obligations on the Union and Member States under international law, as well as the evolution of national criminal legal frameworks. Council Framework Decision 2003/568/JHA<sup>5</sup> lays down requirements on the criminalisation of corruption concerning the private sector. The 1997 Convention on the fight

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<sup>1</sup> This estimate is based on the work of specialised institutions and bodies, such as the International Chamber of Commerce, Transparency International, UN Global Compact, World Economic Forum, and Clean Business is Good Business, which suggest that the loss of economic wealth due to corruption amounts to 5% of GDP at world level. Another estimate suggested that the costs of corruption were between EUR 179 billion and EUR 990 billion per year in the EU (The Cost of Non-Europe in the Area of Corruption study by RAND Europe, 2016).

<sup>2</sup> See: [https://home-affairs.ec.europa.eu/news/citizens-and-businesses-have-spoken-corruption-remains-serious-problem-eu-countries-2022-07-13\\_en](https://home-affairs.ec.europa.eu/news/citizens-and-businesses-have-spoken-corruption-remains-serious-problem-eu-countries-2022-07-13_en).

<sup>3</sup> For example: Resolution of 25 October 2016, Fight against corruption and follow-up of the CRIM resolution, 2015/2110(INI), and European Parliament recommendation of 17 February 2022 to the Council and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning corruption and human rights (2021/2066(INI)).

<sup>4</sup> Council conclusions of 9 March 2023 setting the EU's priorities for the fight against serious and organised crime for EMPACT 2022-2025.

<sup>5</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).

against corruption involving EU officials or officials of EU Member States<sup>6</sup> addresses certain acts of corruption involving those officials in general. These instruments are, however, not sufficiently comprehensive, and the existing rules in the Member States need to be developed further to ensure a more coherent and effective response in the Union. Enforcement gaps at national level and obstacles in the cooperation between the competent authorities in different Member States have also emerged. Authorities in the Member States face challenges linked to the excessive length of prosecution, short statutes of limitations, rules on immunity and privileges, limited availability of resources, training and investigative powers to name a few.

The EU is a party to the United Nations Convention Against Corruption (UNCAC)<sup>7</sup>, which is the most comprehensive international legal instrument in this field, combining a wide range of measures to prevent and fight corruption. This legislative proposal will update the EU legislative framework, including by incorporating international standards binding on the EU, such as those in the UNCAC. The aim is to ensure that all forms of corruption are criminalised in all Member States, that legal persons may also be held responsible for such offences, and that offences incur effective, proportionate and dissuasive penalties. In addition, the proposal includes relevant measures to prevent corruption in accordance with international standards and facilitate cross-border cooperation, as required by the UNCAC.

To root out corruption, both preventive and repressive mechanisms are needed. Member States are encouraged to take a wide range of preventive, legislative and cooperative measures as part of the fight against corruption. Failings in integrity, undisclosed conflicts of interests or serious breaches of ethical rules can lead to corrupt activities if left unaddressed. The prevention of corruption mitigates the need for criminal repression and has wider benefits in promoting public trust and managing the conduct of public officials.

- **Consistency with existing policy provisions in the policy area**

The proposal for a Directive complements the EU Security Union Strategy (2020-2025)<sup>8</sup>. In April 2021, the Commission also adopted the 2021-2025 EU Strategy to tackle Organised Crime<sup>9</sup> with dedicated measures to combat corruption as an enabler of organised crime. As a follow up, the Commission assessed the current state of play of both the legislative and the operational dimension in preventing and fighting corruption in the context of an external study, which was finalised at the end of 2022<sup>10</sup>.

The EU Strategy on Combatting Trafficking in Human Beings (2021-2025)<sup>11</sup>, adopted in April 2021, is closely interlinked with the EU Strategy to tackle Organised Crime. It highlights that organised crime groups involved in trafficking in human beings increasingly exploit legal businesses in their operations and are involved in other serious crimes, such as corruption, to support their core activities. Corruption may further hinder detection of

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<sup>6</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).

<sup>7</sup> United Nations 2003, United Nations Convention Against Corruption, Treaty Series 2349 (October): 41, <https://www.unodc.org/unodc/en/treaties/CAC/>.

<sup>8</sup> Communication of 24 July 2020 on the EU Security Union Strategy, COM/2020/605 final.

<sup>9</sup> Communication of 14 April 2021 on the EU strategy to tackle organised crime 2021-2025, COM(2021) 170 final.

<sup>10</sup> European Commission, Gaglio, I., Guzzon, J., Bartz, K., et al., Strengthening the fight against corruption. Assessing the EU legislative and policy framework: final report for acceptance, Publications Office, 2023.

<sup>11</sup> Communication of 14 April 2021 on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, COM/2021/171 final.

trafficking in human beings, for instance if the authorities responsible for identifying the victims are involved in corruption.

- **Consistency with other Union policies**

#### Rule of law toolbox

Since 2020, the Commission has been monitoring anti-corruption developments at national level as one of the central pillars of the annual Rule of Law Report cycle. Since 2022, the reports also include recommendations for each country, with the objective to support Member States in their efforts to take forward ongoing or planned reforms, to encourage positive developments, and to help identify where improvements or follow-up to recent changes or reforms may be needed. Anti-corruption measures are also part of the work with Member States in the framework of the European Semester and the Recovery and Resilience Plans. The European Semester has assessed challenges in the fight against corruption, such as public procurement, integrity in public administration, the business environment and healthcare sectors. Country-specific recommendations under the Semester have guided concrete reforms and investments to improve the capacity to fight corruption in several Member States. These are reflected in concrete milestones in the national Recovery and Resilience Plans .

Under the Regulation on a general regime of conditionality for the protection of the Union budget (Regulation (EU, Euratom) 2020/2092), the Commission can propose that the Council of the EU imposes budgetary measures on EU Member States where breaches of the rule of law principles – including corruption – can affect, or seriously risk affecting, the sound financial management of the Union budget or of the financial interests of the Union in a sufficiently direct way.

Corruption is also a tool for foreign interference in democratic processes, the core target of action now being developed in the Defence of Democracy package also included in the Commission Work Programme 2023.

#### Confiscation and asset recovery

Directive 2014/42<sup>12</sup> established rules on freezing and confiscation of instrumentalities and proceeds of crime to effectively deprive criminals of their illegal assets. It included in its scope offences covered by the Convention on the fight against corruption involving officials<sup>13</sup> as well as the Council Framework Decision 2003/568/JHA on combating corruption in the private sector<sup>14</sup>. In May 2022, the Commission presented a proposal for a new Directive on Asset Recovery and Confiscation<sup>15</sup>, building upon the previous legislation<sup>16</sup>. The proposal

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<sup>12</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127/39, 29.4.2014).

<sup>13</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 the Member States of the European Union (OJ C 195, 25.6.1997).

<sup>14</sup> Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003).

<sup>15</sup> Brussels, 25 May 2022, COM/2022/245 final.

<sup>16</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127/39, 29.4.2014); Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332/103, 18.12.2007); Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ L 68/49, 15.3.2005);

provides for a new and strengthened asset recovery framework to ensure that crime does not pay. It would give authorities better tools to deprive organised crime groups of the financial means to carry out further criminal activities, including corruption.

### Anti-money laundering

Corruption and money laundering are intrinsically linked. Similar to other proceeds-generating crimes, corruption offences are committed with the objective of obtaining a private gain. Combating money laundering is the cornerstone of the broader agenda to fight serious crime, including corruption, by depriving criminals of their ill-gotten gains and by prosecuting those who assist in the laundering of such gains.

The Directive on combating money laundering by criminal law (EU) 2018/1673<sup>17</sup> establishes ground rules on the criminalisation of money laundering and sets out that corruption must be a predicate offence to money laundering. In July 2021, the Commission adopted legislative proposals to strengthen the Union's rules to combat money laundering and the financing of terrorism (AML/CFT)<sup>18</sup>, in particular by strengthening the ability of Financial Intelligence Units (FIUs) to detect, analyse and disseminate financial intelligence related to the laundering of proceeds of crime. This is a key prerequisite for effectively investigate and prosecute corruption offences.

Trafficking in cultural goods is a lucrative business for organised crime. Beyond trafficking, criminals can abuse even legally acquired cultural goods, for money laundering and sanctions evasion. On 13 December 2022, the Commission adopted the EU Action Plan against Trafficking in Cultural Goods<sup>19</sup> which provides a comprehensive framework for the EU and the Member States to advance prevention, detection and criminal justice response to cultural goods trafficking and related crimes, including corruption.

### Protection of whistleblowers

Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law ('the Whistleblowing Directive')<sup>20</sup> was adopted in 2019 with the aim of providing robust protection of whistleblowers as a means of strengthening the enforcement of EU law in key policy areas. The Directive also applies to the reporting of fraud, corruption and any other illegal activity affecting the financial interests of the Union and the protection of persons reporting such breaches<sup>21</sup>. This Directive should be made applicable to the reporting of offences as referred to in this proposal, as well as to the protection of persons reporting such offences. Competent national authorities should also ensure that persons providing evidence

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and Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303/1, 28.11.2018).

<sup>17</sup> Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018).

<sup>18</sup> Anti-money laundering and countering the financing of terrorism legislative package, [https://finance.ec.europa.eu/publications/anti-money-laundering-and-countering-financing-terrorism-legislative-package\\_en](https://finance.ec.europa.eu/publications/anti-money-laundering-and-countering-financing-terrorism-legislative-package_en).

<sup>19</sup> Communication of 13 December 2022 on the EU Action Plan against Trafficking in Cultural Goods, COM(2022) 800 final.

<sup>20</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).

<sup>21</sup> Article 10(3)(a) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 437, 28.12.2013, p. 49).

or otherwise cooperating with criminal investigations are given the necessary protection, support and assistance in the context of criminal proceedings.

### Investor citizenship and residence schemes

Investor citizenship and residence schemes ('golden visas' and 'golden passport' schemes) can help hide or facilitate financial and economic crimes, including corruption<sup>22</sup>. There are also concerns around these schemes' lack of transparency and control, linked as well to the role of intermediaries in these schemes. The Commission's proposal for a new Anti-money Laundering Regulation<sup>23</sup> seeks to establish supervision over the activities of intermediaries in investor residence schemes. The Commission considers investor citizenship schemes, under which citizenship of a Member State, and thus EU citizenship, is systematically awarded in exchange for pre-determined payments or investments, and without a genuine link with the awarding Member State, to be in breach of EU law. As a consequence, the Commission is of the opinion that Member States must not operate such schemes<sup>24</sup>. The Commission has taken action against Member States maintaining such schemes directly on the basis of its prerogatives as guardian of the Treaties, with a view to their termination.

A Commission Recommendation of 28 March 2022 called on Member States to take all the necessary measures and safeguards to address the different risks inherent in investor residence schemes, including those linked to corruption<sup>25</sup>.

### Protection of the Union's financial interests

Directive (EU) 2017/1371<sup>26</sup> aims to establish a harmonised system, with minimum common rules, to fight fraud and other criminal offences affecting the Union's financial interests. The Directive provides common definitions of a number of criminal offences affecting the Union's financial interests, which include fraud, money laundering, active and passive corruption, and misappropriation.

Article 325 of the Treaty on the Functioning of the European Union (TFEU) establishes a shared responsibility between the Union and the Member States to counter fraud and any other illegal activity affecting the financial interests of the Union through effective and deterrent measures. It also sets out an obligation to ensure the same level of protection between the Union's and the national financial interests.

In order to ensure that the Member States have in place equivalent measures to counter corruption affecting the Union's and their own financial interests, there is a need to align Directive (EU) 2017/1371 with the standards set out in this Directive, in terms of sanctions, aggravating and mitigating circumstances and limitation periods.

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<sup>22</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. On 21 March 2023, the Commission referred one Member State to the Court of Justice for breaching EU law with its investor citizenship scheme.

<sup>23</sup> Proposal for a Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, COM(2021) 420 final.

<sup>24</sup> On 21 March 2023, the Commission referred one Member State to the Court of Justice for breaching EU law with its investor citizenship scheme.

<sup>25</sup> Commission Recommendation on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes, 28 March 2022, C(2022) 2028 final.

<sup>26</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Unions financial interests by means of criminal law (OJ L 198, 28.7.2017).

In the context of the evaluation of Directive (EU) 2017/1371, in accordance with Article 18 thereof, the Commission will assess the extent to which the offences provided for in that Directive also need to be updated in the light of the current Directive.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The legal bases for this proposal are Articles 83(1), 83(2) and 82(1)(d) TFEU.

Article 83(1) TFEU identifies corruption as one of the crimes with a particular cross-border dimension. It enables the European Parliament and the Council to establish the necessary minimum rules on the definition of corruption by means of directives adopted in accordance with the ordinary legislative procedure.

There is no single definition of corruption as corruption exists in different forms involving different participants. Indeed, corruption is an endemic phenomenon that takes multiple shapes and forms across all facets of society, for example bribery, embezzlement, trading in influence, trading of information, abuse of functions and illicit enrichment<sup>27</sup>.

During the negotiations of UNCAC, United Nations States Parties carefully considered whether to develop a legal definition of corruption. It was concluded that any attempt at a comprehensive definition would inevitably fail to address some forms of corruption. As a consequence, the international community reached consensus on certain manifestations of corruption while leaving each State free to go beyond the minimum standards set forth in UNCAC<sup>28</sup>.

Article 83(2) TFEU is the legal basis on which Directive (EU) 2017/1371, which is amended by the proposed Directive, was adopted. It sets out the EU's competence to establish minimum rules with regard to the definition of criminal offences and sanctions in EU policy areas which have been subject to harmonisation measures, if this is essential to ensure the effective implementation of such policy areas.

Article 82(1)(d) provides the legal basis for measures to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions, such as the adoption of common rules concerning jurisdiction in criminal matters.

### **• Subsidiarity (for non-exclusive competence)**

Corruption is a transnational phenomenon that affects all societies and economies. Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, would have unsatisfactory effect. Union action should give due consideration to 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). From 2016 to 2021, Eurojust registered 505 cross-border corruption cases, with the number steadily increasing over this 5-year period<sup>29</sup>, which confirms that corruption is a gradually growing cross-border phenomenon in the EU. A recent study published by the European Commission found that

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<sup>27</sup> Cost of Non-Europe Report Stepping up the EU's efforts to tackle corruption, EPRS | European Parliamentary Research Service, Meenakshi Fernandes and Lenka Jančová, 2023, p. 15.

<sup>28</sup> UNODC, Safeguarding against Corruption in Major Public Events Facilitator's Guide, p. 30.

<sup>29</sup> Eurojust, Eurojust Casework on Corruption: 2016–2021 Insights, May 2022.

“the lack of a coherent European framework including provisions for all corruption-related crimes identified by international standards constitutes a source for legislative and operational challenges in tackling cross-border corruption cases”<sup>30</sup>.

Due to corruption’s transnational dimension, and taking into account already existing EU legislation, EU-level action is expected to be more effective and efficient and to bring a tangible added value compared to action taken by Member States individually. EU intervention would create added value by further approximating criminal law of Member States, contributing to ensuring a common playing field between Member States, as well as coordination and common standards. As evidenced by the analysis in the yearly Rule of Law Reports, the gaps in and limited enforcement of existing legislation, together with the need for cooperation and capacity to prosecute cross-border cases, suggest the need for a stronger coordination and definition of common standards across the EU. Moreover, the effectiveness of prevention measures and investigative tools across the EU would be enhanced. Furthermore, given the increasingly cross-border nature of corruption cases, a close collaboration between Member States is required to ensure adequate prevention and repression. Shared definitions of criminal offences would facilitate such collaboration. Finally, the fight against corruption requires the combined efforts of many actors. Thus, framing the issue of corruption in the broader context of the EU, as opposed to the single national contexts of Member States, allows for a broader involvement of all relevant stakeholders.

If no action is taken at EU level, the scale of the corruption problem is likely to increase significantly in coming years. This would have clear cross-border implications and a direct effect on the single market, the financial interest of the EU, and internal security more generally. Corruption in one Member State is of direct interest to other Member States due to its cross-border effects. Judicial and law enforcement authorities would continue to face serious difficulties in dealing with more complex corruption cases, allowing perpetrators opportunities to possibly shop for EU jurisdictions which do not capture, or capture less effectively and comprehensively, certain corrupt activities within their anti-corruption legislative framework. Continued corruption would ultimately result in a wider societal cost through continued criminal activity and could also facilitate the continued operation of organised crime groups.

- **Proportionality**

In accordance with the principle of proportionality, as set out in Article 5(4) TEU, the proposed new Directive is limited to what is necessary and proportionate to efficiently prevent and combat corruption and to implement international obligations and standards, in particular as regards the criminalisation of corruption, in line with the UNCAC.

The UNCAC requires that parties to the Convention take legislative and other measures to establish bribery, misappropriation and money laundering as criminal offences and to consider taking legislative and other measures to establish certain other acts as criminal offences (abuse of functions, trading in influence and, subject to its constitution and the fundamental principles of its legal system, illicit enrichment). In line with the commitments contained in Political Declaration adopted at the 2021 UN General Assembly Special Session against Corruption, the European Union should, to the degree possible, go beyond the minimum and adopt additional measures for preventing and combating corruption.

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<sup>30</sup> European Commission, Gaglio, I., Guzzon, J., Bartz, K., et al., Strengthening the fight against corruption. Assessing the EU legislative and policy framework: final report for acceptance, Publications Office, 2023.



The proposal defines the scope of the corruption offences with a view to covering all relevant conduct while limiting it to what is necessary and proportionate. The proposal strengthens existing international obligations where necessary, in order to improve cross-border cooperation and to prevent criminals from exploiting the differences between national legislations to their advantage.

The impact of the proposed measures on Member States in terms of necessary resources and the need to adapt national framework is outweighed by the benefits provided by the increased ability of Member States to tackle corruption by means of criminal law, including through better cross-border cooperation between competent authorities in cases of cross-border corruption. Approximation of measures related to prevention and the use of investigative tools is provided for only to the extent needed for the proposed criminal law framework to function effectively.

- **Choice of the instrument**

In accordance with Article 83 and Article 82(1) TFEU, the establishment of minimum rules concerning the definition of criminal offences and sanctions in the area of serious crime with a cross-border dimension, including corruption can only be achieved by means of a Directive of the European Parliament and the Council adopted in accordance with the ordinary legislative procedure.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

The 1997 Convention on the fight against corruption involving public officials, covering bribery in the public sector, and Framework Decision 2003/568/JHA, covering bribery in the private sector, have not been subject to an ex-post evaluation.

The Commission has so far adopted two reports on the implementation of Directive (EU) 2017/1371. On 6 September 2021, the Commission adopted the first such report<sup>31</sup>, which outlines that all Member States bound by the Directive have transposed its main provisions, yet the transposition of the Directive still needs to be improved with regard to some other provisions. The report notes that some aspects of the definition of ‘public official’ have not been transposed into the legislation of about a half of the Member States. According to the report, an additional aspect ‘breach of duties’ is required in the definition of both active and passive corruption in several Member States. This additional aspect significantly narrows the scope of the Directive’s definitions of corruption.

On ‘passive corruption’, the Commission found that, in a small number of Member States, the aspect concerning the refraining of public officials ‘from acting in accordance with [their] duty’ is not covered by national legislation. On ‘active corruption’, the report mentions that some of the aspects of the definition provided for by the Directive are missing or not transposed correctly in some Member States. With regard to misappropriation, the Commission found that some Member States have provided for a narrower transposition of the relevant provision or not transposed it altogether. The report also mentions that, with regard to penalties, the provisions of the Directive have not been correctly transposed in a quarter of the Member States. As far as limitation periods are concerned, the Commission

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<sup>31</sup> Report from the Commission to the European Parliament and the Council on the implementation of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law, Brussels, 6.9.2021, COM(2021) 536 final.

found that, in a few Member States, the limitation period for executing a judgment is shorter than that provided for by the Directive<sup>32</sup>.

In September 2022, the Commission adopted the second implementation report of the Directive (EU) 2017/1371<sup>33</sup>. The report focused on three specific issues: i) the appropriateness of the threshold provided for by the Directive with regard to VAT-related fraud (EUR 10 million of total damage); ii) the effectiveness of the provisions on limitation periods; and iii) whether the Directive effectively addresses cases of procurement fraud. In accordance with Article 18(3) of Directive (EU) 2017/1371, the report was primarily based on the information that Member States provided to the Commission, including annual statistics on the criminal offences referred to in the Directive.

- **Stakeholder consultations**

In 2022 and 2023, the Commission consulted Member States about their existing provisions at national level regarding the criminalisation of and fight against corruption, by requesting updated information through two questionnaires, as described in the section below.

The ideas for a draft Directive, and the responses to the questionnaires, were discussed in two experience-sharing workshops on the fight against corruption. These workshops took place on 14 December 2022 and 14 March 2023 with experts from Member States, including representatives of the Ministries of Interior, Ministries of Justice, Anti-Corruption Agencies, police and prosecution. The Commission has also consulted the Union Agencies and bodies in charge of supporting police and judicial cooperation between Member States, including the European Union Agency for Criminal Justice Cooperation (Eurojust) and the European Union Agency for Law Enforcement Cooperation (Europol), as well as the European Public Prosecutor's Office (EPPO) and national authorities in charge of prevention and suppression of corruption.

The Commission consulted and received input from international organisations, including the UNODC, the OECD, and GRECO. Academic and civil society also provided input, including Transparency International and the UNCAC Coalition. A plenary meeting of the Local Research Correspondents on Corruption<sup>34</sup> discussed various topics in relation to the proposal on 13 March 2023.

This proposal was also discussed at the meetings of the Network of contact points on the Rule of Law on 27 January 2023, the Expert Group on Investor Citizenship and Residence Schemes on 1 March 2023, the EU FIU Platform on 15 March 2023 and the Commission Expert Group on EU Criminal Policy on 27 March 2023.

Overall, Member States and stakeholders stressed the need for harmonisation of corruption offences and sanctions to combat corruption across the EU in a comprehensive and effective way. Stakeholders indicated that there were frequent cases in which differing definitions hindered effective cross-border cooperation in the prosecution of corruption offences.

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<sup>32</sup> The Commission has so far opened infringement proceedings against 17 Member States for incorrect transposition of the Directive.

<sup>33</sup> Second report on the implementation of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, Brussels, 16.9.2022, COM(2022) 466 final.

<sup>34</sup> The Local Research Correspondents on Corruption are a network of civil society and academic experts from each Member States in the fight against corruption present in each Member State. The network is managed and funded by the European Commission under its contract HOME/2017/ISFP/CORR/0050 - Consultancy, technical assistance and support in the field of fight against corruption.

Approximating respective definitions of the corruption offences should improve cross border information exchange and cooperation between law enforcement authorities. Aligning the level of sanctions imposed for corruption offences would also make enforcement and deterrence more effective across the EU. A number of Member States submitted that a mechanical transposition of the offence of illicit enrichment as defined in the UNCAC would be at odds with the presumption of innocence and the constitutional traditions of the Member States. A large part of the stakeholders suggested that the proposal should also cover the prevention of corruption, include additional sanctions, such as the ineligibility to run or hold public office or tender for public funds, and reflect the importance of specialised anti-corruption bodies, with sufficient independence, training and resources.

A call for evidence was published for feedback from 20 January 2023 to 17 February 2023, with a total of 361 contributions received<sup>35</sup>. The replies confirmed the vital importance of the fight against corruption and the need to tackle corruption in the EU at many levels, including in the EU institutions. While the vast majority of replies called for additional measures, some also underlined the need to ensure the proper implementation of the current international framework and to carefully consider new legal or soft law initiatives. Several contributions stressed that there is a close link between corruption and organised crime. On strengthening the current framework, most respondents agreed that legislative gaps need to be addressed and criminalisation should cover criminal conduct beyond the current international legislative framework with corresponding sanctions. According to some respondents, to efficiently address the complexity of corruption cases, adequate capacities in terms of resources, training, special investigation techniques and specialised equipment need to be made available to law enforcement authorities. Several respondents called for a monitoring and verification tool to be created with the help of civil society.

- **Collection and use of expertise**

In line with the commitment made in the EU's 2021-2025 Organised Crime Strategy, the European Commission contracted a study to review the EU's body of law in the fight against corruption. The study "Strengthening the fight against corruption: assessing the EU legislative and policy framework", carried out by a consortium of EY and the RAND Corporation, was published on 3 January 2023<sup>36</sup>. It analysed the gaps in the EU legislative framework in the area of corruption prevention and repression, and provided recommendations for possible EU measures to address these gaps, by assessing and comparing the impacts of such measures.

The study concluded that closer legislative alignment between EU Member States, flanked by supporting soft measures, would have the biggest impact on the fight against corruption. Specifically, the study called for laying down common minimum rules on the definition of corruption offences and related penalties, alongside common rules to improve investigation and prosecution of corruption crimes across the Member States (e.g. boosting reporting, harmonising approaches to immunity and statutes of limitation, as well as to enablers of corruption). These conclusions have been taken on board in this proposal for a Directive. In addition, the study also called for measures aimed at ensuring effective prevention of corruption, including the comprehensive collection of corruption data, and the having in place of dedicated anti-corruption authorities both at the EU and national levels.

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<sup>35</sup> The call for evidence and contributions: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13674-Fighting-against-corruption-in-the-EU-updated-rules\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13674-Fighting-against-corruption-in-the-EU-updated-rules_en).

<sup>36</sup> European Commission, Gaglio, I., Guzzon, J., Bartz, K., et al., Strengthening the fight against corruption. Assessing the EU legislative and policy framework: final report for acceptance, Publications Office, 2023.

The Commission also took other data into account, such as the 2022 Eurobarometer surveys on corruption. The Commission has also relied on relevant documents of the UNODC, the OECD, the GRECO, and the European Parliamentary Research Service.

As mentioned above, the Commission sent a questionnaire to Member States to identify what criminal justice data on bribery offences is available. Most Member States collect data on bribery cases, whereas not all Member States that responded seem to collect data on convictions of legal persons, the number of pending cases and cases resolved in a different manner than convictions or acquittals. This indicates that a more harmonised collection of data on corruption cases could help identify and analyse trends across the EU.

The Commission also asked Member States to provide information on their specialised bodies working on the prevention of corruption including bodies that have certain repressive powers (such as levying fines). Most Member States reported one or several bodies that have some role in the area of prevention of corruption. In many Member States, there are several such bodies with their own powers, but some Member States have a single body with more comprehensive powers. Eight Member States did not report on the existence of a specialised preventive body but rather to bodies that, aside of their other tasks, also deal with prevention.

The Commission also asked Member States to provide information on the powers of their specialised bodies working on the prevention of corruption. This mapping reveals a wide variation in the tasks and powers of such bodies, which range from powers related to the oversight of declarations of assets/interests or gifts to enforcement of lobbying regulation and of “revolving doors” rules. Some bodies also have enforcement powers such as issuing fines.

Member States were also asked about their bodies specialised in the repression of corruption. Whereas all Member States allow regular police and prosecutorial bodies to investigate and prosecute some forms of corruption, almost all Member States also have in place some form of a specialised police to investigate specific corruption cases, for instance when they are more serious, complex or relating to a certain category of suspects. When it comes to prosecution of corruption, most Member States have specialised prosecutors to deal with such corruption cases.

A second questionnaire, for which input was gathered between 9 January and 8 February 2023, focused on information on the corruption offences, to inform and guide the Commission in relation to this proposal. Member States were invited to share their national legal provisions covering these offences, as defined in the UNCAC, the maximum length of imprisonment linked to such offences, and limitation periods in place. The corruption offences for which information was asked were bribery in the public and private sector, misappropriation by a public official or in the private sector, trading in influence, abuse of functions, illicit enrichment and obstruction of justice. All Member States except for Bulgaria and Denmark replied to the questionnaire. The results of this questionnaire are summarised below.

**Figure 1: Criminalisation of corruption offences in Member States**

OFFENCES	NUMBER OF MS WHERE THE OFFENCE IS COVERED IN NATIONAL LAW	NUMBER OF MS WHERE THE OFFENCE IS NOT COVERED IN NATIONAL LAW
<b>Bribery in the public sector</b>	25	0
<b>Bribery in the private sector</b>	25	0

<b>Embezzlement, misappropriation and other diversion of property by a public official</b>	25	0
<b>Embezzlement in the private sector</b>	25	0
<b>Trading in influence</b>	23	2
<b>Abuse of functions</b>	25	0
<b>Illicit enrichment</b>	8	17
<b>Obstruction of justice</b>	25	0

The analysis of what Member States reported shows that Member States have in their national legislation offences on bribery in the public and private sectors, embezzlement, misappropriation, obstruction of justice<sup>37</sup> and abuse of functions. Nonetheless, definitions have many variations, in particular when looking at embezzlement or abuse of functions. It can certainly not be concluded that Member States cover the full scope of corruption offences as defined in the UNCAC<sup>38</sup>. Many Member States report that they criminalised trading in influence in their national legislation, but some definitions differ significantly from the relevant UNCAC provision and sometimes the offence is only partly covered. Illicit enrichment remains sparsely covered, with eight Member States reporting some form of coverage in national legislation, while a number of others reporting that these aspects were covered in their money laundering or asset confiscation legislation. Differences in the definition of offences and the lack of criminalisation of some corrupt conduct causes problems in cross-border cases and leads to criticism by certain monitoring bodies of how Member States implement international instruments.

**Figure 2: Imprisonment sanctions for corruption offences in Member States**

<b>Length of imprisonment in Member States</b>	<b>EU - range in years (based on received contributions)</b>	<b>EU - average in years (based on received contributions)</b>	<b>Median in years</b>
<b>Bribery in the public sector</b>	0,25 - 15	6.94 - 9.59	6 - 10
<b>Bribery in the private sector</b>	0,25 - 12	5.74 - 6.43	5 - 6
<b>Embezzlement, misappropriation and other diversion of property by a public official</b>	0,25 - 15	6.15 - 8.34	-6 - 10
<b>Embezzlement in the private sector</b>	0,25 - 20	5.57 - 8.08	5 - 8
<b>Trading in influence</b>	0,25 - 10	4.87 - 5.53	5
<b>Abuse of functions</b>	1 - 20	-5.92 - 6.56	4 - 5
<b>Illicit enrichment</b>	0,5 - 15	5.38 - 7.19	3.5 - 6
<b>Obstruction of justice</b>	1 - life	5.58 - 8.67	4,5 - 6

<sup>37</sup> Member States tend to criminalise this as a general offence, and not limited to corruption proceedings, as is the cases in the UNCAC.

<sup>38</sup> There are UNCAC implementation review reports available for most Member States, but these are not very recent.

In setting the minimum level of the maximum penalty for the offences in this proposal, the Commission took into account the nature of the offences, the levels of penalties set in Member States (see Figure 2), and the levels set by other EU instruments in the area of substantive criminal law. The penalties proposed in this Directive do not go beyond the average level of maximum penalties for these offences in Member States. For instance, the average penalty for bribery in the public sector ranges from around 7 to 9.5 years, while for bribery in the private sector it ranges from around 5.5 to 6 years. At the same time, there are also significant differences in Member States' legislation. For instance, the maximum penalties for the offence of misappropriation range from 3 months in Spain to 15 years in Greece<sup>39</sup>. Setting a minimum level of the maximum penalty at EU level will therefore facilitate cross-border police and judicial cooperation and increase deterrence.

**Figure 3: Statute of limitations for corruption offences in Member States**

Limitation periods in Member States	EU - range in years (based on received contributions)	EU - average in years (based on received contributions)	Median in years
<b>Bribery in the public sector</b>	3 - 25	10.76 - 14.28	10 - 12
<b>Bribery in the private sector</b>	3 - 25	10.26 - 11.70	10
<b>Embezzlement, misappropriation and other diversion of property by a public official</b>	3 - 25	10.50 - 13.20	10 - 12
<b>Embezzlement in the private sector</b>	3 - 25	9.42 - 12.19	10
<b>Trading in influence</b>	2 - 25	9.00 - 10.82	8 - 10
<b>Abuse of functions</b>	5 - 25	10.48 - 11.63	9 - 10
<b>Illicit enrichment</b>	5 - 20	10.13 - 11.38	10-11
<b>Obstruction of justice</b>	3 - 25	9.25 - 12.70	10

The responses of Member States concerning limitation periods for corruption offences in national legislation informed the Commission in its current proposal. For bribery in the public sector, the average ranges between 11 and 14 years; while for bribery in the private sector, the average ranges between 10 and 11.5 years. At the same time, there are also considerable differences in Member States legislation: for bribery in the public and the private sector minimum and maximum limitation periods range from 3 years in Member States like Czechia or Lithuania to 25 years in Poland.

The annual Rule of Law reports noted that operational shortcomings can severely obstruct the investigation and prosecution of corruption cases and undermine the effectiveness of the fight against corruption. Examples include excessively cumbersome or unclear provisions on lifting immunities, and short statutes of limitations, which can prevent the finalisation of complex cases, in particular if combined with other factors contributing to lengthy proceedings. Such obstacles can be particularly harmful for high-level and complex corruption cases and may create a risk of impunity, depriving anti-corruption efforts of their deterrent effects.

- **Impact assessment**

Given that this proposal for a Directive mainly incorporates international obligations and standards, leaving little margin for alternative courses of action, this proposal is exceptionally

<sup>39</sup> For this offence, the average maximum penalty lies between 5 and 7.5 years.

presented without an accompanying impact assessment. Moreover, the initiative is not likely to have significant economic, environmental or social impacts and costs, or those entailing significant spending. At the same time, it should benefit the economy and society as a whole.

This proposal nevertheless builds on the evidence gathered through external studies and assessments described in the earlier section and the various stakeholder consultations.

Different approaches were considered using the available evidence:

1. Non-legislative action at EU or national level, including guidelines, exchange of best practices, training and the development of correspondence tables for corruption-related offences;
2. A proposal transposing the provisions of the UNCAC;
3. A proposal transposing the provisions of the UNCAC while at the same time going beyond international obligations in certain aspects, by imposing minimum levels for the upper limit of sanctions, to facilitate prosecutions and increase awareness on ethics and integrity among public officials;
4. A proposal defining the various conditions and elements of all possible corruption offences and requirements for preventive measures such as rules on lobbying and conflicts of interest.

On the basis of the evidence gathered and previous assessments described above, the Commission has opted for an approach (option 3 above) that proposes harmonisation in line with the provisions of the UNCAC, while taking a more ambitious approach and going beyond international obligations in those areas where action has demonstrable benefits in terms of cross-border cooperation while respecting national traditions and case-law and ensuring consistency with EU law.

The legislative proposal is expected to make a positive contribution to the prevention and detection of, and response to, corruption, notably by approximation of definitions of criminal offences and alignment of criminal sanctions. Taking measures to prevent corruption, while prosecuting perpetrators and reducing the criminal phenomenon of corruption is expected to reduce economic and social costs and have a positive impact on the economy. Ensuring deterrent penalties for perpetrators is likely to increase the overall level of security and disrupt organised crime groups' activities. Increasing harmonisation in this field in principle would enable the EU to further align with international standards on corruption and reduce the administrative burden in case of cross-border cooperation between law enforcement and judicial authorities.

- **Regulatory fitness and simplification**

For the first time at EU level, the proposal brings together public and private sector corruption in one legal act. The proposal aims to introduce international obligations and standards in the EU legislation and updating the legal framework so it can properly respond to the cross-border phenomenon of corruption. This will help Member States when transposing and implementing the relevant provisions.

- **Fundamental rights**

The Union was founded on the values enshrined in Article 2 TEU and it recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights in accordance with Article 6(1) TEU. Corruption undermines democratic institutions and EU values, including the protection of fundamental rights. By tackling corruption, this proposal positively

contributes to the protection of fundamental rights, such as the right to fair trial and freedom of expression.

The fight against corruption and the protection of fundamental rights are complementary, not conflicting, objectives. Setting out, implementing and applying criminalisation has to be carried out in full respect of fundamental rights obligations. Any limitation on the exercise of fundamental rights and freedoms is subject to the conditions set out in Article 52(1) of the Charter of Fundamental Rights, namely be subject to the principle of proportionality with respect to the legitimate aim of genuinely meeting objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others, be provided for by law and respect the essence of those rights and freedoms.

A variety of fundamental rights and freedoms enshrined in the Charter of Fundamental Rights have to be taken into account in this respect. Rights which are particularly relevant in relation to the proposed measures include, but are not limited to, 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, as well as the principle that a person cannot be tried or punished twice for the same offence (*'ne bis in idem'*).

All measures adopted by the Union and its Member States on the criminalisation of corruption as provided for in this Directive, and the determination of criminal and non-criminal sanctions thereof, must be subject to the principle of legality and proportionality of criminal offences and penalties, to the presumption of innocence and to the rights of defence, and should exclude any forms or arbitrariness.

This proposal respects the principle that criminal offences and penalties must be set out in law and be proportionate. Fundamental rights in general and the principle of proportionality are respected in limiting the scope of the offences to what is strictly necessary to allow for the effective prosecution of acts that pose a particular threat to the stability and security of societies. The proposal also takes into account the principle of proportionality by providing for obligations related to aggravating and mitigating circumstances.

The Directive introduces minimum rules on the level of sanctions in accordance with the principle of proportionality (see in particular Articles 11(1) and 13(1) of the Directive), having regard to the nature of the offence. Moreover, administrative sanctions imposed are to be taken into account when sentencing the person for a criminal offence set out in the Directive (recital 13). The Directive also highlights that, to ensure the effective and transparent investigation and prosecution of corruption offences, Member States should establish procedures for the suspension or temporary reassignment of a public official accused of an offence as referred to in this Directive. In such cases they should bear in mind the principle of the presumption of innocence and the need to respect right to an effective remedy (recital 19).

The use of investigative tools, which the Directive seeks to ensure, has to respect fundamental rights, such as the right to an effective remedy and to a fair trial (Article 47) and the presumption of innocence and the right of defence (Article 48). The use of such tools, in accordance with national law, should be targeted and take into account the principle of proportionality and the nature and seriousness of the offences under investigation and should respect the right to the protection of personal data. Moreover, when applying the Directive, Member States must respect their obligations under Union law with regard to procedural rights of suspects or accused persons in criminal proceedings.



The data collected by Member States for the purposes of this Directive is statistical and does not include any personal data; therefore, Article 8 of the Charter of Fundamental Rights ('protection of personal data') is not affected by the obligation for Member States to collect and publish data.

#### **4. BUDGETARY IMPLICATIONS**

This proposal has no immediate budgetary implications for the Union.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the Directive will be monitored by the Commission on the basis of the information provided by the Member States on the measures taken to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive. The Commission shall, two years after the deadline for implementation of this Directive, 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.

Four years following 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 the impact on fundamental rights and freedoms. On the basis of this evaluation, the Commission shall, if necessary, decide on appropriate follow-up actions.

- **Explanatory documents**

No explanatory documents on the transposition are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

*Article 1: Subject matter and scope* – This provision sets out the purpose and scope of the draft Directive, in particular that it establishes minimum rules concerning the definition of criminal offences and sanctions in the area of corruption, as well as measures to better prevent and fight corruption.

*Article 2: Definitions* – This provision establishes definitions for 'property' (in relation to the offences of corruption in Articles 7-13) in line with the body of EU law<sup>40</sup> and 'legal persons' (in relation to the obligation to establish liability of legal persons in Article 16). The concept of 'public official' is based on the definitions provided for in the 1997 Convention and Directive (EU) 2017/1371 while making explicit that it also covers persons working in third countries, international organisations, including the institutions of the European Union, and national and international courts. This Directive uses a single definition of 'public official' which is applicable to all corruption offences set out in it. The concept of 'high level official' is defined in relation to aggravating circumstances (Articles 18 and 28), preventive measures (Article 23) and data collection (Article 25).

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<sup>40</sup> Article 2(2) of Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22) and Article 3(3) of Directive (EU) 2015/849 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. 85).

*Article 3: Prevention of corruption* – This provision aims to underline the need to address the fight against corruption from a preventive perspective. It aims to explore activities to raise awareness on the fight against corruption, through education and research programmes, involving civil society and non-governmental organisations. In order to properly establish such a preventive system, an adequate risk assessment process is needed, in order to identify and tackle gaps and sectors most at risk of corruption. As set out in the Communication accompanying this proposal, the Commission will, with help of the EU network against corruption, and in close consultation with Member States, map common high-risk areas by 2024. The results will inform the Member States’ national assessment of risks, required by this proposal.

*Article 4: Specialised bodies* – This provision requires Member States to put or have in place bodies in their national legal orders that are specialised in the prevention and repression of corruption. Such bodies need to be independent, have sufficient human, financial, technical and technological resources and have the necessary powers for the exercise of their tasks. They need to be known to the public and exercise their functions with transparency, integrity and accountability.

*Article 5: Resources* – This provision aims at ensuring that Member State authorities responsible for the detection, investigation, prosecution or adjudication of the offences under the Directive continuously have appropriate human, financial, technical and technological resources necessary for the effective performance of their duties.

*Article 6: Training* – This provision obliges Member States to provide specialised anti-corruption training for competent authorities and their staff and to ensure that there are adequate resources for this. It also contains obligations concerning relevant training for public officials.

*Articles 7 and 8: Bribery* – These provisions define bribery in the public and private sectors and provide that such conduct is to be punishable as a criminal offence, when committed intentionally. The definition of the criminal offences covers both active and passive bribery.

*Article 9: Misappropriation* – This provision defines misappropriation in the public and private sector and provides that such conduct is to be punishable as a criminal offence, when committed intentionally.

*Article 10: Trading in influence* – This provision defines trading in influence and provides that such conduct is to be punishable as a criminal offence, when committed intentionally. The provision also specifies that trading in influence is punishable regardless of whether the influence is exerted or whether it’s supposed exercise leads to results.

*Article 11: Abuse of functions* – This provision defines abuse of functions in the public and private sector and provides that conduct or failure to act is to be punishable as a criminal offence, when committed intentionally.

*Article 12: Obstruction of justice* – This provision defines obstruction of justice and provides that such conduct is to be punishable as a criminal offence, when committed intentionally and in the context of a proceedings concerning an offence as defined in this Directive.

*Article 13: Enrichment from corruption offences* – Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by

criminal law<sup>41</sup> establishes ground rules on the criminalisation of money laundering and sets out that corruption should be considered as a predicate offence to money laundering. However, that Directive does not oblige Member States to criminalise the acquisition, possession or use of property derived from corruption if a person was involved in the offence from which the property was derived (this is what is called ‘self-laundering’). This proposal for a Directive introduces such a targeted requirement, thereby creating the offence of ‘enrichment from corruption’. For this offence, the prosecution would only have to prove a link between the property and the involvement in corruption, just as they would have to prove corruption as a predicate offence for the purpose of money laundering.

*Article 14: Incitement, aiding and abetting, and attempt* – This is a provision applicable to the criminal offences mentioned above, which requires Member States to criminalise forms of aiding and abetting, inciting and attempting most of the mentioned offences.

Aiding and abetting a corruption offence may include a large variety of activities that range from facilitating or providing counselling to the provision of supportive services for the commission of these acts. In addition, in order to ensure effective deterrence, it is necessary to criminalise incitement, making punishable the act of soliciting others to carry out the offences set out in the proposed Directive. Since the definition of some corruption offences, such as bribery, encompass acts that may qualify as preparatory and do not require that the offender obtained an actual advantage, this Directive does not require Member States to criminalise their attempt.

*Article 15: Penalties and measures for natural persons* – This provision is applicable to all offences and requires Member States to apply effective, proportionate and dissuasive criminal penalties.

In addition, the provision establishes the minimum level of the maximum sanction. Framework Decision 2003/568/JHA already sets a minimum threshold for a maximum penalty of one to three years for bribery in the private sector. The 1997 Convention on the fight against corruption requires for bribery of public officials, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

This proposal sets the minimum maximum penalty between four and six years, depending on the seriousness of the offence, which is an increase in comparison to the above-mentioned penalties at EU level for bribery. As explained above, the Commission analysed Member States’ legislation in preparation of this legislation.

Framework Decision 2003/568/JHA already sets the possibility that a person convicted for corruption may be temporarily prohibited from carrying on his business activity. This Directive sets a number of additional sanctions that the competent authorities should be able to impose upon persons convicted for a corruption offence.

*Article 16: Liability of legal persons* – This is a provision applicable to all criminal offences set out in this Directive, which requires Member States to ensure the liability of legal persons, while excluding that such liability is alternative to that of natural persons. The provision is in line with Article 10 of the Warsaw Convention.

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<sup>41</sup> Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018).

This provision follows a standard formula that can be found in other EU legal instruments, obliging Member States to ensure that legal persons can be held liable for criminal offences referred to in this Directive committed for their benefit by any person with leading positions, within the legal person, or by other persons under their control or supervision. It is not required that such liability be exclusively criminal.

*Article 17: Sanctions for legal persons* – This provision is applicable to sanctions for legal persons. It establishes a list of sanctions and measures, which are not necessarily of a criminal nature, such as the temporary or permanent exclusion from public procurement.

*Article 18: Aggravating and mitigating circumstances* – This provision first provides a list of circumstances that must be regarded as aggravating circumstances to allow the judiciary to take into account the broader societal damage perpetrated for example by organised groups or persons holding positions of public responsibility. It also provides a list of circumstances that must be regarded as mitigating circumstances, covering for instance cases in which offenders provide information or collaborate with authorities.

*Article 19: Immunity or privileges from investigation and prosecution of corruption offences* – This is a provision applicable to all offences mentioned above, which requires Member States to take measures to ensure that immunity or privileges from investigation and prosecution which are granted under national law for the offences referred to in this Directive can be lifted through an effective and transparent process pre-established by law and that is concluded in a reasonable timeframe.

*Article 20: Jurisdiction* – This provision is applicable to all criminal offences set out in this Directive and requires the existence of jurisdiction grounds for the judicial authorities to initiate investigations, pursue prosecutions and bring to judgment the perpetrators of the criminal offences defined in this Directive.

*Article 21: Limitation periods for criminal offences* – This article lays down provisions on limitation periods in order to allow the competent authorities to investigate, prosecute and adjudicate the criminal offences covered by this proposal, as well as the execution of relevant sanctions, for a sufficient time period. This proposal sets the minimum length of the limitation periods between eight to fifteen years, depending on the seriousness of the offence.

*Article 22: Protection of persons who report offences or assist the investigation* – Directive (EU) 2019/1937 establishes rules and procedures to protect individuals who report information they acquired in a work-related context on breaches of EU law in key policy areas. Whistleblowers can provide valuable information to competent authorities, enabling them to effectively prevent, detect and prosecute corruption. When whistleblowers report criminal offences referred to in this directive, this provision requires the application of Directive (EU) 2019/1937. This Article also provides that competent national authorities ensure that persons who assist the investigations are given the necessary protection, support and assistance in the context of criminal proceedings

*Article 23: Investigative tools* – This provision aims at ensuring that investigative tools which are provided for in national law for organised crime or other serious crime cases can also be used in cases of money laundering.

*Article 24: Cooperation between Member States' authorities, the Commission, Europol, Eurojust, the European Anti-Fraud Office and the European Public Prosecutor's Office* – This provision envisions the cooperation between the Member States' authorities, Europol, Eurojust, the European Public Prosecutor's Office and the Commission in the fight against

corruption. This includes the provision of technical and operational assistance by Europol, Eurojust, OLAF, the European Public Prosecutor's Office and the Commission.

*Article 25: Commission support to Member States and their competent authorities* – This provision sets out the ways in which the Commission will support Member States and competent authorities in complying with their obligations under this Directive. As announced in the accompanying Communication, the Commission will establish an EU network against corruption, which will rationalise and support existing networks and maximise the exchange of best practices between national authorities and agencies, civil society and independent experts.

*Article 26: Data collection and statistics* – This provision requires Member States to collect statistical data to monitor the effectiveness of their systems to combat corruption. The provision lists, in a non-exhaustive manner, the statistical data that should be collected by the Member States and obliges them to publish such data annually.

*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* – This provision replaces the current provisions in the area of the criminalisation of corruption in relation to Member States participating in this Directive.

*Article 28: Amendments to Directive (EU) 2017/1371* – This provision amends Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law. As a result, the standards set out in Directive (EU) 2017/1371 for fighting corruption affecting the Union's financial interests, notably in terms of sanctions with regard to natural and legal persons, aggravating and mitigating circumstances and limitation periods, are aligned with those laid down by this Directive.

*Article 29: Transposition* – The Commission will report on the transposition of this Directive 24 months after the deadline for transposition has passed, which is 18 months after the adoption of this Directive.

*Article 30: Evaluation and reporting* – This provision sets out that, starting 12 months after the deadline for implementation of this Directive, Member States report every two years on how they implement Articles 3 to 6 and that the Commission will also adopt an evaluation report.

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. 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.
- (2) Council Framework Decision 2003/568/JHA<sup>42</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>43</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

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<sup>42</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>43</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).

should, in the interests of clarity, be replaced in their entirety in relation to the Member States bound by this Directive.

- (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.
- (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) To root out corruption, both preventive and repressive mechanisms are needed. Member States are encouraged to take a wide range of preventive, legislative and cooperative measures as part of the fight against corruption. Whereas corruption is first and foremost a crime and specific acts of corruption are defined in national and international law, failings in integrity, undisclosed conflicts of interests or serious breaches of ethical rules can become corrupt activities if left unaddressed. The prevention of corruption mitigates the need for criminal repression and has wider benefits in promoting public trust and managing the conduct of public officials. Effective anti-corruption approaches often build on measures to enhance transparency, ethics and integrity, as well as by regulating in areas such as conflict of interest, lobbying and revolving doors. Public bodies should seek the highest standards of integrity, transparency and independence as an important part of tackling corruption more broadly.
- (6) Member States should have in place bodies or units specialised in the repression and specialised in the prevention of corruption. Member States may decide to entrust a body with a combination of preventive and law enforcement functions. In order to ensure that these bodies operate effectively, they should meet a number of conditions, including having the independence, resources and powers that are necessary to ensure the proper administration of their tasks.
- (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 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. This should, amongst other things, encompass persons acting as members of collegial bodies responsible for deciding on the guilt of an accused person in the framework of a trial, as well as persons who by virtue of an arbitration agreement are called upon to render a legally binding decision in disputes submitted by the parties to the arbitration agreement. Secondly, many entities or persons nowadays exercise public functions without holding a formal office. Therefore, the concept of public official is defined to cover all relevant officials, whether appointed, elected or employed on the basis of a contract, holding a formal administrative or judicial office, as well as all persons providing a service, which have been vested with public authority or who are subject to the control or supervision of public authorities in relation to the carrying out of such a service, even if they do not hold formal office. For the purposes of this Directive, the definition should cover persons working in state-owned and state-controlled enterprises, as well as in asset management foundations and privately-owned companies performing public service functions and the legal persons established or maintained by them. Any person holding a legislative office should be treated as a public official for the purposes of this Directive.
- (10) It is necessary to strengthen the legal framework to combat bribery and to provide law enforcement and prosecution with the necessary tools. In bribery of public officials, there are two sides to distinguish. Active bribery exists when a person promises, offers or gives an advantage of any kind to influence a public official. Passive bribery exists when the public official requests or receives such advantages in order to act or to refrain from acting in a certain way. This Directive should also set minimum rules on bribery and other forms of corruption in the private sector, where the immediate victims include companies that are impacted unfairly and where free competition is diminished by each bribe offered or accepted.
- (11) In order to ensure that public officials do not intentionally use funds for purposes other than they were intended, it is necessary to lay down rules on the offence of misappropriation by public officials of property whose management is entrusted to them. In order to take a comprehensive approach to the fight against corruption, this Directive should also cover misappropriation in the private sector. In order for misappropriation to be criminal, it should lead to an advantage for the public official or a third party.
- (12) Trading in influence, arising from the corrupt behaviour of those persons who are or claim to be in the proximity of power and try to exchange promises of exerting influence over decision-making processes in return for undue advantages should also be defined as a criminal offence. The constituent elements of the criminal offence should be that the instigator provides, or promises to provide the influence peddler with an undue advantage for exerting unlawful influence over an outcome or a process that is subject to decision-making. When carried out intentionally, this behaviour should be considered a criminal offence irrespective of whether the influence was exerted and whether or not the claimed influence leads to the outcome intended. This offence should not cover the legitimate exercise of acknowledged forms of interest representation which may seek to legitimately influence public decision-making but do



not entail an undue exchange of advantages. Such forms of interest representation, such as advocacy for example, are often carried out in a regulated environment precisely for avoiding that a lack of transparency may allow them to become gateways to corruption. Having in place well-functioning additional rules on disclosing conflicts of interest, on ‘revolving-doors’ or on the financing of political parties, can also help to avoid grey areas and prevent undue influence.

- (13) Moreover, it is necessary to define the offence of abuse of functions in the public sector as a failure to perform an act by a public official, in violation of laws, to obtain an undue advantage. In order to comprehensively fight corruption, this Directive should also cover abuse of functions in the private sector.
- (14) Obstruction of justice is a criminal offence committed in support of corruption. It is therefore necessary to lay down a criminal offence for the obstruction of justice, which entails the exercise of physical force, threats or intimidation, or the inducement of false testimony or evidence. Actions to interfere in the giving of testimony or production of evidence, or with the exercise of official duties by judicial or law enforcement officials should also be covered. In line with the UNCAC, this Directive only applies to the obstruction of justice concerning proceedings relating to a corruption offence.
- (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.
- (16) The criminal offence of enrichment builds upon the rules on the criminal offence of money laundering laid down in Directive (EU) 2018/1673 of the European Parliament and of the Council<sup>44</sup>. It is meant to address those cases where the judiciary considers that the corruption offence or offences cannot be proven. Like the predicate offence in money laundering, the burden of proof is of a different nature. This means that in criminal proceedings regarding the criminal offence of enrichment, when considering whether property is derived from any kind of criminal involvement in a corruption offence and whether the person had knowledge of that, the specific circumstances of each case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of property occurred within the same time frame. It should not be necessary to establish knowledge of all the factual elements or all circumstances relating to the criminal involvement, including the identity of the perpetrator. When a person is convicted of a criminal offence as defined in this Directive, the competent authorities can recover the illicitly obtained property on the basis of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the

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<sup>44</sup> Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).

freezing and confiscation of instrumentalities and proceeds of crime in the European Union<sup>45</sup>.

- (17) In order to deter corruption throughout the Union, Member States should lay down minimum types and levels of sanctions when the criminal offences defined in this Directive are committed. The maximum levels of imprisonment and other penalties should be sufficiently high to deter possible offenders and to reflect the harmfulness of corruption and the priority that the competent authorities should give to combat such offences. At the same time, these levels should be proportionate to the seriousness of each corruption offence and be coherent with levels of criminal sanctions set in Union and national law. Member States should ensure that sanctions are enforced to the extent necessary in order to deter the commission of those offences. Where the Member States consider the eventuality of suspended or conditional sentences, early release, parole or pardoning of persons convicted of any of the offences referred to in this Directive, judicial authorities should be able to take into account the seriousness of the criminal offences concerned among other factors.
- (18) This Directive does not affect the proper and effective application of disciplinary measures or penalties other than those of a criminal nature, such as administrative sanctions. Sanctions that cannot be equated to criminal sanctions, which are imposed on the same person for the same conduct, can be taken into account when sentencing that person for a criminal offence defined by this Directive. For sanctions of criminal nature, the principle of prohibition of being tried or punished twice in criminal proceedings for the same criminal offence (*ne bis in idem*) should be fully respected.
- (19) The competent authorities should be able to impose, in addition or as an alternative to imprisonment, sanctions or measures, that are not necessarily of a criminal nature, such as the temporary or permanent disqualification from holding public office or the exclusion from public procurement. Such measures have a general dissuasive effect and may reduce the recidivism of convicted offenders. Member States should also consider establishing procedures for the suspension or temporary reassignment of a public official accused of a criminal offence as referred to in this Directive, bearing in mind the need to respect the principle of the presumption of innocence and the right to an effective remedy.
- (20) Legal persons should not be able to avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a public official on its behalf. Moreover, fines for legal persons should be calculated considering the worldwide turnover of all legal entities related to the offender, including parent entities, subsidiary entities, linked trusts, or similar or comparable legal entities.
- (21) Where the offence is committed by a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA<sup>46</sup> or where the perpetrator abused their position to enable corruption, Member States should provide for aggravating circumstances in accordance with the applicable rules established by their legal systems. Whilst subject to judicial discretion, these aggravating circumstances should allow the judiciary to take into account the broader societal damage caused, for example by corruption perpetrated by organised groups, political parties, or persons

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<sup>45</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127/39, 29.4.2014, p. 39).

<sup>46</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42).

holding positions of public responsibility. Member States should not be obliged to provide for any of the aggravating circumstances in this Directive when those circumstances are punishable as separate criminal offences with more severe sanctions.

- (22) Corruption for the benefit of a third country has a particularly detrimental impact on democratic institutions and political life of the Member States and the Union. Member States should thus provide for an aggravating circumstance to cover such situations. Such an aggravating circumstance should cover corruption offences, such as bribery or trading in influence, that are committed with a view to create an advantage for a third country, such as altering the public decision-making in order to come to a decision that is favourable to the third country.
- (23) Member States should ensure that mitigating circumstances are laid down in national legislation in relation to the offences covered by this Directive. Subject to judicial discretion, these circumstances should cover those cases in which offenders provide information or otherwise collaborate with authorities. Similarly, where legal persons have implemented effective internal controls, ethics, and compliance programmes, it should be possible to consider these actions as a mitigating circumstance. Lower sanctions should also be considered where, upon discovery of an offence, a legal person swiftly discloses information and takes remedial measures. In any case, it should remain within the discretion of the judge or the court to determine the actual amount of the sanction, taking into account all the circumstances of the individual case.
- (24) Members of Parliament and other public officials may have immunity or legal protection from investigation or prosecution, which helps strengthen their independence by protecting them against unfounded complaints, in particular with regard to opinions expressed or votes cast in the course of performing their functions. However, such immunities may hamper effective investigation and prosecution of corruption offences, including by affecting the detection and investigation or prosecution of other persons who do not enjoy immunity and may have participated in the offence. Moreover, the application of immunity without appropriate procedures to lift immunity in cases where there are grounds to suspect participation in criminal acts undermines the credibility of public institutions. There should therefore be an appropriate balance between, on the one hand, any immunities or jurisdictional privileges accorded to public officials for acts performed in the exercise of their functions, and on the other hand, the possibility of effectively investigating, prosecuting and adjudicating corruption offences.
- (25) In order to increase trust in prosecution services whilst reducing the perception of corruption in Member States, discretionary powers under domestic law not to prosecute persons for criminal offences referred to in this Directive on opportunity grounds should be exercised in accordance with clear rules and criteria and guarantee, with appropriate internal consultation, as well as the aim of deterring the commission of corruption offences and the effectiveness of the judicial process.
- (26) Given the mobility of perpetrators and proceeds stemming from criminal activities, as well as the complex cross-border investigations required to combat corruption, all Member States should establish their jurisdiction in order to enable the competent authorities to investigate and prosecute this crime in a sufficient wide range of cases, including when the offence is committed in whole or in part in its territory. As part of that obligation, Member States should ensure that jurisdiction is 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.
- (28) Corruption offences are a difficult category of crime to identify and investigate, as they mostly occur as part of a conspiracy between two or more willing parties and lack an immediate and obvious victim who could complain. Thus, a significant proportion of corruption crime remains undetected, and the criminal parties are able to benefit from the proceeds of their corruption. The longer it takes to detect a corruption offence, the more difficult it is to uncover evidence. Therefore, it should be ensured that law enforcement and prosecutors have appropriate investigative tools to gather relevant evidence of corruption offences which often affect more than one Member State. Furthermore, Member States should allocate sufficient training, in close coordination with the European Union Agency for Law Enforcement Training (CEPOL), also on the use of investigative tools to successfully carry out proceedings and the identification and quantification of proceeds of corruption in the context of freezing and confiscation. In addition, this Directive facilitates the gathering of information and evidence by setting out mitigating circumstances for offenders that help the authorities.
- (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>47</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>48</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 are given the necessary protection, support and assistance in the context of criminal proceedings.

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<sup>47</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).

<sup>48</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 198 L, 28.7.2017, p. 29).

- (30) Independent civil society organisations are crucial for the well-functioning of our democracies, and play a key role in upholding the common values on which the EU is founded. They act as essential watchdogs, drawing attention to threats to the rule of law, contributing to making those in powers accountable, and ensuring respect for fundamental rights. Member States should promote the participation of civil society in anti-corruption activities.
- (31) Media pluralism and media freedom are key enablers for the rule of law, democratic accountability, equality and the fight against corruption. Independent and pluralistic media, in particular investigative journalism, play an important role 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>49</sup>, as well as the proposal for a Directive<sup>50</sup> and a Commission Recommendation<sup>51</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.
- (32) Member States should collect and publish data concerning the application of this Directive, which can be analysed and used by the Commission in the context of the monitoring, implementation and evaluation of the Directive, as well as the application of any of the Rule of Law tools, such as the annual Rule of Law report.
- (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 in an effective and timely manner in accordance with national and Union law. This Directive, which aims to lay down common definitions of corruption offences, should serve as a benchmark for information exchange and cooperation between the competent national authorities under Directives (EU) XX/2023<sup>52</sup>, (EU) 2019/1153<sup>53</sup>, (EU) 2016/681<sup>54</sup> of the European Parliament and of the

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<sup>49</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>50</sup> Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), COM/2022/177 final.

<sup>51</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.

<sup>52</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>53</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>54</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>55</sup>, (EU) 2018/1862<sup>56</sup> and (EU) 603/2013<sup>57</sup> of the European Parliament and of the Council, Council Decision 2008/633/JHA<sup>58</sup>.

- (34) Corruption is a cross-cutting issue, while vulnerabilities differ from sector to sector, as well as the most adequate way to tackle them. Member States should therefore regularly perform an assessment to identify the sectors most at risk of corruption and develop risk management plans to address the main risks in the sectors identified, including by organising, at least once a year, awareness-raising actions adapted to the specificities of the sectors identified. Member States that have broad national anti-corruption strategies in place, may also choose to address their risk assessments and risk management plans therein, as long as the risks are assessed and the measures are reviewed regularly. For instance, investor residence schemes are among the sectors that bear high risks for corruption<sup>59</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.
- (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>60</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.
- (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.

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<sup>55</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>56</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>57</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>58</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.

<sup>59</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>60</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 198 L, 28.7.2017, p. 29.

- (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.
- (38) The intended dissuasive effect of the application of criminal law sanctions requires particular caution with regard to fundamental rights. This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the ‘Charter’) and in particular the right to liberty and security, the protection of personal data, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the principles of the legality and proportionality of criminal offences and sanctions, as well as the principle of *ne bis in idem*.
- (39) [In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Directive.

AND/OR

- (40) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption and application of this Directive and are not bound by it or subject to its application.]
- (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:

#### *Article 1*

##### Subject matter and scope

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

#### *Article 2*

##### *Definitions*

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

1. 'prevention of corruption' refers to the detection and elimination of the causes of and conditions for corruption, through development and implementation of a system of appropriate measures, as well as deterrence against corruption-related acts.
2. 'property' means funds or assets of any kind, 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,
  - (b) any other person assigned and exercising a public service function in Member States or third countries, for an international organisation or for an international court.
4. 'Union official' means a person who is:
  - (a) a member of an institution, body, office or agency of the Union and the staff of such bodies shall be assimilated to Union officials.
  - (b) an official or other servant engaged under contract by the Union within the meaning of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (the 'Staff Regulations');
  - (c) 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.
5. 'national official' means any person holding an executive, administrative, or judicial office at national, regional or local level, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority. Any person holding a legislative office at national, regional or local level is considered a national official for the purpose of this Directive.
6. 'breach of duty' covers as a minimum any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business of a person who in any capacity directs or works for a private sector entity.
7. 'legal person' means any entity having legal personality under the applicable national law, except for States or public bodies in the exercise of State authority and for public international organisations.
8. 'high level officials' are heads of state, heads of central and regional government, members of central and regional government, as well as other political appointees who hold a high level public office such as deputy ministers, state secretaries, heads and members of a minister's private office, and senior political officials, as well as members of parliamentary chambers, members of highest Courts, such as Constitutional and Supreme Courts, and members of Supreme Audit Institutions.

*Article 3*  
*Prevention of corruption*

1. Member States shall take appropriate action, such as information and awareness-raising campaigns and research and education programmes, to raise public awareness



on the harmfulness of corruption and reduce the overall commission of corruption offences as well as the risk of corruption.

2. Member States shall take measures to ensure the highest degree of transparency and accountability in public administration and public decision-making with a view to prevent corruption.
3. Member States shall take measures to ensure that key preventive tools such as an open access to information of public interest, effective rules for the disclosure and management of conflicts of interests in the public sector, effective rules for the disclosure and verification of assets of public officials and effective rules regulating the interaction between the private and the public sector are in place.
4. Member States shall adopt comprehensive and up-to-date measures to prevent corruption in both the public and private sectors, adapted 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) members of law enforcement and the judiciary, including measures relating to their appointment and conduct, and by ensuring adequate remuneration and equitable pay scales.
5. Member States shall regularly perform an assessment to identify the sectors most at risk of corruption.

Following that assessment, Member States shall:

- (a) organise, at least once a year, awareness-raising actions adapted to the specificities of the sectors identified, including on ethics; and
  - (b) develop plans to address the main risks in the sectors identified.
6. Where appropriate, Member States shall take measures to promote the participation of civil society, non-governmental organizations and community-based organizations in anti-corruption activities.

#### *Article 4* *Specialised bodies*

1. Member States shall take the necessary measures to ensure that one or several bodies, or organisation units specialised in the prevention of corruption is or are in place.
2. Member States shall take the necessary measures to ensure that one or several bodies, or organisational units specialised in the repression of corruption is or are in place.
3. Member States shall take the necessary measures to ensure that the body or bodies, or an organisation unit or units as referred to in paragraph 1 and 2:
  - (a) are functionally independent from the government and have a sufficient number of qualified staff and the financial, technical and technological resources, as well as the powers and tools necessary to ensure the proper administration of their tasks;
  - (b) are known to the public;

- (c) provide public access to relevant information on the exercise of their activities, with due regard for the protection of personal data and the confidentiality of investigations;
- (d) operate and take decisions in accordance with transparent procedures established by law, with the effect of ensuring integrity and accountability.

*Article 5*  
*Resources*

Member States shall take the necessary measures to ensure that national authorities competent for the detection, investigation, prosecution or adjudication of the criminal offences referred to in this Directive are continually provided with 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 6*  
*Training*

1. Each Member State shall take the necessary measures to ensure adequate resources for and the provision of 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. Each Member State shall take the necessary measures to ensure adequate resources for and the provision of specialised anti-corruption training at regular intervals for its members of law enforcement, the judiciary and the staff of authorities tasked with criminal investigations and proceedings of offences falling within the scope of this Directive.

*Article 7*  
*Bribery in the public sector*

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

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

*Article 8*  
*Bribery in the private sector*

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

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

*Article 9*  
*Misappropriation*

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

- (a) the committing, disbursing, appropriation or use by a public official of property whose management is directly or indirectly entrusted to him contrary to the purpose for which it was intended;
- (b) the committing, disbursing, appropriation or use, in the course of economic, financial, business or commercial activities, by a person who directs or works, in any capacity, in a private sector entity, of any property whose management is directly or indirectly entrusted to him contrary to the purpose for which it was intended.

*Article 10*  
*Trading in influence*

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

- (a) the promise, offer or giving, directly or through an intermediary, of an undue advantage of any kind to a person or a third party in order for that person to exert real or supposed influence with a view to obtaining an undue advantage from a public official;
- (b) the request or receipt, directly or through an intermediary, of an undue advantage of any kind or the promise of such an advantage to a person or a third party in order for that person to exert real or supposed influence with a view to obtaining an undue advantage from a public official.

2. In order for the conduct referred to in paragraph 1 to be punishable as a criminal offence, it shall be irrelevant whether or not the influence is exerted or whether or not the supposed influence leads to the intended results.

*Article 11*  
*Abuse of functions*

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

- 1. the performance of or failure to perform an act, in violation of laws, by a public official in the exercise of his functions for the purpose of obtaining an undue advantage for that official or for a third party;

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

*Article 12*  
*Obstruction of justice*

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

1. the use, directly or through an intermediary, of physical force, threats or intimidation or the promise, 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 concerning any of the offences referred to in Article 7 to 11, 13 and 14;
2. the use, directly or through an intermediary, of physical force, threats or intimidation to interfere in the exercise of official duties by a person holding a judicial office or a member of law enforcement concerning any of the offences referred to in Article 7 to 11, 13 and 14.

*Article 13*  
*Enrichment from corruption offences*

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

*Article 14*  
*Incitement, aiding and abetting, and attempt*

1. Member States shall take the necessary measures to ensure that inciting any of the offences referred to in Articles 7 to 13 is punishable as a criminal offence.
2. Member States shall take the necessary measures to ensure that aiding and abetting any of the offences referred to in Articles 7 to 13 is punishable as a criminal offence.
3. Member States shall take the necessary measures to ensure that attempting any of the offences referred to in Articles 9 and 11 to 13 is punishable as a criminal offence.

*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 offences referred to in Article 7 and 12 are punishable by a maximum term of imprisonment of at least six years;

- (b) the criminal offences referred to in Article 8 to 11 are punishable by a maximum term of imprisonment of at least five years; and
- (c) the criminal offence referred to in Article 13 is punishable by a maximum term of imprisonment of at least four years.
3. Where a criminal offence referred to in Article 9 involves damage of less than EUR 10 000 or an advantage of less than EUR 10 000, Member States may provide for sanctions other than criminal sanctions.
4. Without prejudice to paragraphs 1 to 3, Member States shall take the necessary measures to ensure that natural persons who have been convicted of committing one of the criminal offences referred to in Article 7 to 14 may be subject to sanctions or measures imposed by a competent authority and that are not necessarily of a criminal nature, including:
- (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 exercise of commercial activities in the context of which the offence was committed;
  - (d) deprivation of the right to stand for elections, proportionate to the seriousness of the offence committed; and
  - (e) withdrawal of permits or authorisations to pursue activities in the context of which the offence was committed
- (f) exclusions from access to public funding, including tender procedures, grants and concessions;

*Article 16*  
*Liability of legal persons*

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences referred to in Articles 7 to 14 committed for the benefit of those legal persons by any natural person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one or more of the following:
- (a) a power of representation of the legal person;
  - (b) the authority to take decisions on behalf of the legal person; or
  - (c) the authority to exercise control within the legal person.
2. Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, including by any of the persons

under his authority, of any of the criminal offences referred to in Articles 7 to 14 for the benefit of that legal person.

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

#### *Article 17*

##### *Sanctions for legal persons*

1. Member States shall take the necessary measures to ensure that a legal person held liable for criminal offences pursuant to Article 16 are punishable by effective, proportionate and dissuasive sanctions.
2. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons liable pursuant to Article 16 include:
  - (a) criminal or non-criminal fines, the maximum limit of which should not be less than 5 percent of the total worldwide turnover of the legal person, including related entities, in the business year preceding the decision imposing the fine;
  - (b) the exclusion of that legal person from entitlement to public benefits or aid;
  - (c) the temporary or permanent exclusion from public procurement procedures;
  - (d) the temporary or permanent disqualification of that legal person from the exercise of commercial activities;
  - (e) the withdrawal of permits or authorisations to pursue activities in the context of which the offence was committed;
  - (f) the possibility for public authorities to annul or rescind a contract with them, in the context of which the offence was committed;
  - (g) the placing of that legal person under judicial supervision;
  - (h) the judicial winding-up of that legal person; and
  - (i) the temporary or permanent closure of establishments which have been used for committing the offence.

#### *Article 18*

##### *Aggravating and mitigating circumstances*

1. Member States shall take the necessary measures to ensure that the following circumstances are to be regarded as aggravating circumstances, in relation to the offences referred to in Articles 7 to 14:
  - (a) the offender is a high level official;
  - (b) the offender has been convicted before of an offence referred to Articles 7 to 14;
  - (c) the offender obtained a substantial benefit or the offence caused substantial damage;
  - (d) the offender committed the offence for the benefit of a third country;
  - (e) the offender exercises investigation, prosecution or adjudication functions;

- (f) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA; and
  - (g) the offender is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 of the European Parliament and of the Council<sup>61</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.
2. Member States shall take the necessary measures to ensure that the following circumstances are regarded as mitigating circumstances, in relation to the criminal offences referred to Articles 7 to 14:
- (a) the offender provides the competent authorities with information which they would not otherwise have been able to obtain, helping them to
    - (i) identify or bring to justice other offenders; or
    - (ii) find evidence.
  - (b) where the offender is a legal person and it has implemented effective internal controls, ethics awareness, and compliance programmes to prevent corruption prior to or after the commission of the offence; and
  - (c) where the offender is a legal person and it has, once the offence has been discovered, rapidly and voluntarily disclosed the offence to the competent authorities and taken remedial measures.

#### *Article 19*

#### *Privileges or immunity from investigation and prosecution of corruption offences*

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 through an objective, impartial, effective and transparent process pre-established by law, based on clear criteria, and that is concluded within a reasonable timeframe.

#### *Article 20*

#### *Jurisdiction*

1. Member States shall establish jurisdiction over the offences referred to in this Directive where:
- (a) the offence is committed in whole or in part in its territory;
  - (b) the offender is a national of or has his or her habitual residence in that Member State;
  - (c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

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<sup>61</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).

2. Where an offence referred to in this Directive falls within the jurisdiction of more than one Member State, the Member States concerned shall cooperate to determine which one shall conduct criminal proceedings. The matter shall, where appropriate and in accordance with Article 12 of Council Framework Decision 2009/948/JHA<sup>62</sup>, be referred to Eurojust.
3. In the cases referred to in paragraph 1, point (b), each Member State shall ensure that the exercise of its jurisdiction is not subject to the condition that a prosecution can be initiated only following a denunciation from the State in which the criminal offence was committed or following a report made by the victim in the State where the criminal offence was committed.

### *Article 21*

#### *Limitation periods for corruption offences*

1. Member States shall take the necessary measures to provide for a limitation period in respect of the criminal offences referred to in Articles 7 to 14, which allows for sufficient time to effectively investigate, prosecute, trial and decide on those offences following their commission.
2. The limitation period referred to in paragraph 1 shall not be shorter than:
  - (a) fifteen years from the time when the offence was committed, for the criminal offences referred to in Articles 7 and 12;
  - (b) ten years from the time when the offence was committed, for the criminal offences referred to in Articles 8 to 11;
  - (c) eight years from the time when the offence was committed, for the criminal offences referred to in Articles 13 and 14.
3. By way of derogation from paragraph 2, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts and that the applicable rules on the suspension and limitation periods do not hamper the effectiveness of the judicial process and the dissuasive application of penalties. This period shall not be shorter than:
  - (a) ten years for the criminal offences referred to in Articles 7 and 12;
  - (b) eight years for the criminal offences referred to in Articles 8 to 11;
  - (c) five years for the criminal offences referred to in Articles 13 and 14.
4. Member States shall take the necessary measures to enable the enforcement of a penalty of imprisonment following a final conviction for at least:
  - (a) fifteen years from the date of the final conviction for any of the criminal offences referred to in Articles 7 and 12;
  - (b) ten years from the date of the final conviction for any of the criminal offences referred to in Articles 8 to 11;
  - (c) eight years from the date of the final conviction for any of the criminal offences referred to in Articles 13 and 14.

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<sup>62</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).



5. By way of derogation from paragraph 4, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts and that the applicable rules on the suspension and limitation periods do not hamper the effectiveness of the judicial process and the dissuasive application of penalties. This period shall not be shorter than:
- (a) ten years from the date of the final conviction for any of the criminal offences referred to in Articles 7 and 12;
  - (b) eight years from the date of the final conviction for any of the criminal offences referred to in Articles 8 to 11;
  - (c) five years from the date of the final conviction for any of the criminal offences referred to in Articles 13 and 14.

#### *Article 22*

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

1. Member States shall take the necessary measures to ensure that Directive (EU) 2019/1937 is applicable to the reporting of the offences referred to in Articles 7 to 14 and the protection of persons reporting such offences.
2. In addition to the measures referred to in paragraph 1, Member States shall ensure that persons reporting offences referred to in this Directive and providing evidence or otherwise cooperating with the investigation, prosecution or adjudication of such offences are provided the necessary protection, support and assistance in the context of criminal proceedings.

#### *Article 23*

##### *Investigative tools*

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

#### *Article 24*

##### *Cooperation between Member States' authorities, the Commission, Europol, Eurojust, the European Anti-Fraud Office and the European Public Prosecutor's Office*

Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, Member States' authorities, Europol, Eurojust, the European Public Prosecutor's Office, 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, where appropriate, Europol, Eurojust, the European Public Prosecutor's Office, the European Anti-Fraud Office (OLAF), and the Commission shall provide technical and operational assistance in accordance with their respective mandates to facilitate the coordination of investigations and prosecutions by the competent authorities.

#### *Article 25*

*Commission support to Member States and their competent authorities*

1. The Commission shall, where appropriate, support Member States and competent authorities in complying with their obligations under this Directive.
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 Commission, through the EU network against corruption, shall in particular:
  - (a) facilitate cooperation and exchange of best practices among Member States' practitioners, experts, researchers and other stakeholders;
  - (b) complement activities, such as those referred to in Article 3 and point (b) of Article 18(2) by developing best practices, 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.

*Article 26*

*Data collection and statistics*

1. Member States shall collect 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 include at least the following:
  - (a) the number of cases reported;
  - (b) the number of cases investigated;
  - (c) the number of indictments;
  - (d) the average length of the criminal investigations of cases;
  - (e) the average length of courts proceedings of cases in first instance, second instance and cassation;
  - (f) the number of convictions ;
  - (g) the number of natural persons convicted and sanctioned, with specification of the number of public officials and high level officials;
  - (h) the number of legal persons held liable and sanctioned;
  - (i) the number of dismissed court cases for corruption, distinguishing between dismissals on the substance or not and including non-trial resolutions;
  - (j) the types and levels of sanctions imposed for each of the criminal offences referred to in Articles 7 to 14;
  - (k) the number of convictions pardoned, with specification of the number of pardons to public officials and to high level official.
3. Member States shall, on an annual basis and by 1 June, publish, in a machine-readable and disaggregated format, the statistical data referred to in paragraph 2 for the previous year and inform the Commission thereof.

### 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.

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.

### Article 28

#### *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(8) 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, 4(1) and (2) are punishable by a maximum penalty of at least six years of imprisonment when they involve considerable damage or advantage.'

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

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

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

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

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

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

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

(6) Article 8 is replaced by the following:

*‘Article 8*

*Aggravating and mitigating circumstances*

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

(7) Article 9 is replaced by the following:

*‘Article 9*

*Sanctions with regard to legal persons*

1. Member States shall take the necessary measures to ensure that a legal person held liable for criminal offences pursuant to Article 6 shall be punishable by effective, proportionate and dissuasive sanctions.
2. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons held liable pursuant to Article 6 shall include those referred to in Article 17(2) of Directive (EU) XXX on combating corruption.’

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

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

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

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

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

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

- (a) fifteen years from the date of the final conviction for any of the criminal offences referred to in Articles 3, 4(1) and (2);
- (b) ten years from the date of the final conviction for the criminal offence referred to in Article 4(3).

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

- (a) ten years from the date of the final conviction for any of the criminal offences referred to in Articles 3, 4(1) and 4(2);
- (b) eight years from the date of the final conviction for the criminal offence referred to in Article 4(3).'

#### *Article 29* *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months after adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 30* *Evaluation and reporting*

1. By [24 months after the deadline for implementation of this Directive], the Commission shall submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.
2. Every two years as of [12 months after the deadline for implementation of this Directive], Member States shall send the Commission a report within three months which includes a summary about implementation of and actions taken in accordance with Articles 3 to 6.
3. By [48 months after the deadline for implementation of this Directive], the Commission shall submit a report to the European Parliament and to the Council, assessing the added value of this Directive with regard to combating corruption. The report shall also cover the impact of this Directive on fundamental rights and freedoms. On the basis of this evaluation, the Commission shall, if necessary, decide on appropriate follow-up actions.

*Article 31*  
*Entry into force*

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

*Article 32*  
*Addressees*

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*