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European Commission proposes stronger rules to fight corruption in the EU and worldwide

On May 3, 2023, the European Commission presented proposals that represent a milestone in the fight against corruption at national and EU levels.

The proposed measures aim to prevent corruption and create a culture of integrity, criminalize all corruption offences under the United Nations Convention against Corruption, harmonize penalties across the European Union and establish a dedicated common foreign and security policy sanctions regime to target serious acts of corruption worldwide.

Global corruption indices put many European Union (“EU”) Member States among the countries seen as the least corrupt in the world.

However, corruption remains a key concern for people and public authorities across the EU as it is highly damaging to democracies and economies, undermines our institutions, dilutes their credibility, and acts an enabler for organized crime and hostile foreign interference.

Some estimates suggest that corruption costs the EU economy at least €120 billion per year. Its negative effects undermine efforts to bring good governance and prosperity, and to meet the United Nations sustainable development goals.

This is in this context that Mrs. Ursula von der Leyen, President of the European Commission, had in her 2022

State of the Union Address^[1] underlined the need for decisive action against corruption and committed to update the EU legislative framework for fighting corruption.

The proposals, also referred to as the anti-corruption package, presented on May 3, 2023 deliver on this commitment. This package consists of:

- a Communication on the fight against corruption in the EU^[2],
- a Proposal for a Directive on combating corruption by criminal law^[3], and
- a Proposal from the High Representative^[4], supported by the Commission, to establish a dedicated common foreign and security policy sanctions regime.

Communication on the fight against corruption in the EU

The Communication gives an overview of the EU anti-corruption framework and how anti-corruption could be further integrated into EU policy design.

It sets out the works of the EU helping to prevent, detect and combat corruption.

The workstreams set out in this Communication represent a major EU commitment to further efforts to combat corruption and to work towards a comprehensive and strategic approach with a European anti-corruption strategy.

A first step in the process will be to set up a European network against corruption that will act as a catalyst for corruption prevention across the EU.

This network will be tasked to develop best practices and practical guidance in various areas of common interest. It will also support a more systematic gathering of data and evidence that can serve as a solid basis for anti-corruption actions and for monitoring the success of these actions.

It will build on experience of working with law enforcement and public authorities, and will bring together all relevant stakeholders, including practitioners, experts and researchers, as well as representatives of civil society and international organizations.

One of its first tasks will be to map common high-risk areas by 2024.

The works of this network will feed into an EU anti-corruption strategy, to be developed in consultation with the European Parliament and the Council, to maximize the impact and coherence of EU actions.

The Communication also details the ethical, integrity and transparency rules in place to prevent corruption within the EU institutions and insists on the fact that this framework must be applied with rigor and consistency, and continually updated.

Proposal for a Directive on combating corruption by criminal law

The current EU criminal anti-corruption legislation is fragmented and limited in scope, with the consequence that the types of corruption offences and the sanctions applied vary significantly from one Member State to another.

Criminal law provisions to fight corruption are only harmonized to a limited extent, covering only bribery. Other corruption offences, such as misappropriation or influence peddling are not yet approximated. In addition, discrepancies in domestic laws hamper the effective fight against corruption, in particular in cross-border cases, which have been constantly increasing.

The proposed Directive, therefore, aims to modernize the existing EU anti-corruption framework, in accordance with the following lines of action.

Preventing corruption and building a culture of integrity

The proposed Directive imposes on Member States the obligation to carry out information and awareness-raising campaigns, research and education programs, and to take action to raise public awareness on the harmfulness of corruption, including by encouraging civil society and community-based organizations to participate in anti-corruption efforts.

It requires them to ensure that key preventive tools be put in place, including effective rules on access to information, disclosure and management of conflicts of interests in the public sector, disclosure and verification on assets of public officials; as well as provisions on the interaction between the private and the public sector.

It also mandates Member States to ensure the highest degree of transparency and accountability in public administration and public decision-making and to set up specialized anti-corruption bodies and provide adequate resources and training for authorities responsible for preventing and fighting corruption.

One legal act for all corruption offences and sanctions

The proposed Directive aims to update and harmonize EU rules on definitions of and penalties for corruption offences to ensure high standards and improved enforcement.

It makes all offences under the United Nations Convention against Corruption^[5] mandatory under EU law. As such, it extends the list of EU corruption offences to cover *inter alia* misappropriation, influence peddling, abuse of functions, as well as obstruction of justice and illicit enrichment related to corruption offences, beyond the more classic bribery offences.

For the first time at EU level, the proposed Directive brings together anti-corruption provisions for both the public and the private sectors in one legal act.

In order to remedy the significant differences in Member States' legislations in terms of sanction, the proposed Directive sets out consistent penalty levels and establishes the minimum level of the maximum penalty for corruptions offences. For example, influence peddling, abuse of function and misappropriation will be punishable by a maximum term of imprisonment of at least six years, whereas at present the maximum penalties for the offence of misappropriation range from 3 months in Spain to 15 years in Greece.

Finally, the proposed Directive defines aggravating and mitigating circumstances. Aggravating circumstances could be applicable, for example, when the offender is a high-level official or is responsible for law enforcement. On the other hand, mitigating circumstances could include situations where the offender cooperates with the judge by giving the name of his/her accomplice(s) and/or the name of other co-offenders.

Ensuring effective investigations and prosecution of corruption

The proposed Directive requires Member States to take the necessary measures *inter alia* to:

- make available to persons, units, or services responsible for investigating or prosecuting the corruption offences effective investigative tools, such as those used in countering organized crime or other serious crimes;
- lift, through an objective, impartial, effective, and transparent process pre-established by law, based on clear criteria, and concluded within a reasonable timeframe, privileges or immunities from investigations and prosecution granted to national officials for corruption offences;
- ensure that natural persons and legal entities liable for corruption offences be punishable by effective, proportionate, and dissuasive sanctions.

It also sets the minimum length of the limitation periods for corruption offences between eight to fifteen years, depending on the seriousness of the offence, in order to enable the detection, investigation, prosecution and judicial decision of corruption offences for a sufficient period of time after their commission.

Proposal from the High Representative to establish a dedicated Common Foreign and Security Policy sanctions regime

The Common Foreign and Security Policy (CFSP) of the European Union aims to preserve peace and strengthen international security in accordance with the principles of the United Nations Charter.

The European Commission uses the CFSP budget to respond in a rapid and flexible manner to external conflicts and crises, to build the capacity of partner countries and to protect the EU and its citizens.

The proposal from the High Representative is intended to complement the CFSP toolbox of restrictive measures (sanctions) with a dedicated sanctions regime to fight serious acts of corruption worldwide.

EU sanctions help to achieve key CSFP objectives such as preserving peace, strengthening international security, and consolidating and supporting democracy, international law and human rights.

To date, the EU has frameworks targeting corruption outside the EU in only two third countries.

Thanks to the proposal from the High Representative, the EU will have the ability to target serious acts of corruption worldwide, no matter where they occur.

In practical terms, the new framework will enable the EU to adopt restrictive measures when acts of corruption seriously affect or risk affecting the objectives of the CFSP.

For example, passive or active bribery of a public official or the embezzlement or misappropriation of property by a public official, including the laundering of proceeds from those acts, could constitute such serious acts of corruption, especially in a country that appears on the EU list of non-cooperative jurisdictions for tax purposes, or a country that suffers from strategic deficiencies in its national regimes on anti-money laundering and countering terrorism financing that pose significant threats to the financial system of the EU.

As Joseph Borrell, High Representative, said during the presentation of the new anticorruption package on May 3:

“The new CFSP sanctions regime (...) is a clear proof of our determination to step up our action to prevent and fight corruption both within the EU and beyond, and to use all our instruments to that end. We are sending a clear message: the EU is not open for business to those who engage in corruption, wherever that occurs.”

[1] https://ec.europa.eu/commission/presscorner/detail/ov/speech_22_5493

[2] https://commission.europa.eu/system/files/2023-05/JOIN_2023_12_1_EN.pdf

[3] <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023PC0234>

[4] The High Representative (“HR”) of the Union for Foreign Affairs and Security Policy shapes and conducts the EU’s common foreign and security policy (“CFSP”), including its common security and defense policy, presides over the Foreign Affairs Council, heads the European Defense Agency, and is one of the vice-presidents of the European Commission.

[5] https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

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