



FIGHT AGAINST CORRUPTION

The fight against corruption involving European Community officials

The Council is strengthening judicial cooperation between the Member States in order to fight corruption involving officials of the European Communities or officials of Member States of the European Union.

ACT

Council Act 97/C 195/01 of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union [Official Journal C 195 of 25 June 1997]

SUMMARY

For the purposes of this Convention, "official" means any Community or national official, including any national official of another Member State.

For the purposes of this Convention, "Community official" means:

- any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities;
- any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants.

For the purposes of this Convention, "national official" is to be understood by reference to the definition of 'official' or "public officer" in the national law of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.

Nevertheless, in the case of proceedings involving a Member State's official initiated by another Member State, the latter shall not be bound to apply the definition of "national official" except insofar as that definition is compatible with its national law.

For the purposes of this Convention, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in

accordance with his duty or in the exercise of his functions in breach of his official duties constitutes passive corruption.

Each Member State shall take the necessary measures to ensure that conduct of the type referred to above is made a criminal offence.

For the purposes of this Convention, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties constitutes active corruption.

Each Member State shall take the necessary measures to ensure that conduct of the type referred to above is made a criminal offence.

Each Member State must take the necessary measures to ensure that in its criminal law the descriptions of the offences referred to in points 4 and 5 committed by or against its Government Ministers, elected members of its parliamentary chambers, the members of its highest Courts or the members of its Court of Auditors in the exercise of their functions apply similarly in cases where such offences are committed by or against Members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities respectively in the exercise of their duties.

Where a Member State has enacted special legislation concerning acts or omissions for which Government Ministers are responsible by reason of their special political position in that Member State, the above paragraph does not apply to such legislation, provided that the Member State ensures that Members of the Commission of the European Communities are also covered by the criminal legislation implementing points 4 and 5.

These two paragraphs are without prejudice to the provisions applicable in each Member State concerning criminal proceedings and the determination of the competent court.

This Convention applies in full accordance with the relevant provisions of the Treaties establishing the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statute of the Court of Justice and the texts adopted for the purpose of their implementation, as regards the withdrawal of immunity.

Each Member State must take the necessary measures to ensure that the conduct referred to in points 4 and 5, and participating in and instigating the conduct in question, is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of corruption, as referred to in point 5, by a person under their authority acting on behalf of the business.

Each Member State shall take the measures necessary to establish its jurisdiction over the offences it has established in accordance with the obligations arising out of points 4 and 5 where:

- the offence is committed in whole or in part within its territory;
- the offender is one of its nationals or one of its officials;
- the offence is committed against one of the persons referred to in point 1 or a member of one of the European Community institutions (Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities);
- the offender is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State in question.

Any Member State which, under its law, does not extradite its own nationals must take the necessary measures to establish its jurisdiction over the offences it has established in accordance with the obligations arising out of points 4 and 5, when committed by its own nationals outside its territory.

If any procedure in connection with an offence established in accordance with the obligations arising out of points 4 and 5 concerns at least two Member States, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.

Member States shall apply, in their national criminal laws, the *ne bis in idem* rule, under which a person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that if a penalty was imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing State.

No provision in this Convention prevents Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.

Any dispute between Member States on the interpretation or application of this Convention which it has proved impossible to resolve bilaterally must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution. If no solution has been found within six months, the matter may be referred to the Court of Justice of the European Communities by one of the parties to the dispute.

This Convention is subject to adoption by the Member States in accordance with their respective constitutional requirements.

This Convention is open to accession by any State that becomes a member of the European Union.

This Convention enters into force on the ninetieth day after the Secretary-General of the Council of the European Union has been notified by the last Member State to fulfil that formality.

Context

Fighting corruption and fraud within the European institutions is a top priority for the European Union. The Member States of the Union cooperate at international level with non-member countries within international organisations. The Organisation for Economic Cooperation and development (OECD) and the Council of Europe have adopted conventions in this area.

RELATED ACTS

Council Decision 2003/642/JHA of 22 July 2003 concerning the application to Gibraltar of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union [Official Journal L 226 of 10 September 2003]

No provision was made in the Convention on corruption regarding its application to Gibraltar, whose international relations are the responsibility of the United Kingdom. This Decision extends application of the Convention to Gibraltar.

Explanatory Report on the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (text approved by the Council on 3 December 1998). [Official Journal C 391 of 15 December 1998]

First Protocol to the Convention on the protection of the Communities' financial interests [Official Journal C 313 of 23 October 1996]

With regard to corruption relating to protection of the Communities' financial interests the Council adopted a first Protocol to the Convention of 26 July 1995 on 27 September 1996, which also focuses on definition of the concepts of "official" and active and passive "corruption" and on harmonisation of the penalties for corruption offences. An Explanatory Report on the Protocol was adopted on 19 December 1997 [Official Journal C 11 of 15 January 1998].