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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**assessing the extent to which the Member States have taken the necessary measures in  
order to comply with Council Framework Decision 2003/568/JHA of 22 July 2003 on  
combating corruption in the private sector**

## INTRODUCTION

### 1.1. Background

#### 1.1.1. Scope of the Framework Decision and of the report

Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector<sup>1</sup> (hereinafter the Framework Decision) aims to ensure that:

- both active and passive corruption in the private sector are defined as a criminal offence in all EU Member States;
- legal persons (i.e. business entities, non-governmental organisations or public organisations) may also be held responsible for such offences; and
- these offences incur effective, proportionate and dissuasive penalties.

Article 2 applies to ‘business activities within profit and non-profit entities’, which limits the scope of the Framework Decision to corruption committed by individuals from the private sector.

Under the Framework Decision, Member States must criminalise two types of conduct:

- promising, offering or giving a bribe to a person in the private sector in order that he or she do something or refrain from doing something, in breach of that person’s duties;
- requesting or receiving a bribe, or the promise of such, while working in the private sector, in order to do something, or refrain from doing something, in breach of one’s duties.

Article 9(1) of the Framework Decision requires Member States to take the necessary measures to ensure compliance before 22 July 2005. Article 9(2) requires them to transmit to the Council and the Commission the text of the provisions that transpose the obligations imposed on them under the Framework Decision into national law.

Although initially bound by the Framework Decision, on 1 September 2014 the United Kingdom opted out of transposing it into national law on the basis of Article 10(4) of Protocol 36 annexed to the Treaties<sup>2</sup>. The current report therefore does not cover the United Kingdom.

#### 1.1.2. Purpose of this implementation report

The Lisbon Treaty introduced significant changes in the areas of freedom, security and justice. On 1 December 2014, the five-year transitional period provided for in Article 10 (1) of Protocol 36 annexed to the Treaties came to an end. This lifted the limitations to judicial control by the Court of Justice of the European Union and to the Commission’s enforcement powers in the areas of police cooperation and judicial cooperation in criminal matters. These major changes have contributed to the efficiency of freedom, security and justice in the EU and have strengthened mutual trust between the Member States and the confidence of EU citizens.

Since the Commission's last implementation reports in 2007<sup>3</sup> and 2011<sup>4</sup>, a number of major criminal law reforms have taken place in some Member States. Furthermore, the

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<sup>1</sup> OJ L 192, 31.7.2003, p. 54-56.

<sup>2</sup> OJ C 115, 9.5.2008, p 322-326.

<sup>3</sup> COM(2007) 328 final. In 2007 the Commission assessed that only two Member States had correctly transposed its provisions into their national legislation.

<sup>4</sup> COM(2011) 309 final. This report concluded that transposition was still not satisfactory despite some partial progress. The main problem was the incomplete transposition of some elements of Articles 2 and 5. As a result, the Commission called upon Member States to adopt without delay all the necessary measures to correct the situation. The Commission also invited Member States to notify measures adopted after the last notification.

criminalisation of active and passive bribery, including in the private sector, is mandatory under the Council of Europe's Criminal Law Convention of Corruption and the United Nations Convention against Corruption (UNCAC)<sup>5</sup>, to which all Member States are parties. These developments have prompted Member States to further align national implementing measures to international and European standards. This third implementation report takes stock of new developments and informs the co-legislators and the general public of Member States' progress in this area. The findings of this report are without prejudice to the Commission's enforcement powers under the Treaties.

### 1.1.3. Information gathering and methodology

On 15 December 2014, the Commission invited all Member State authorities to notify the Commission via the MNE database (*Mesures Nationales d'Exécution*) the national implementation measures for the instruments under the former third pillar by 1 March 2015. In 2018, the Commission asked Member States to provide updated information on the implementation of the Framework Decision. The description and analysis in this report are based on the information provided by the Member States by 1 August 2018.

In addition, in 2014, the Commission gathered official statistical data on the treatment of corruption cases in various stages of the criminal procedure in Member States<sup>6</sup>. Through the expert group on policy needs for data on crime and the network of national contact points on corruption, responses were received from 26 Member States for the reference years 2011, 2012 and 2013. In 2018, the data collection effort was extended to the reference years 2014, 2015 and 2016. Of the 22 Member States that submitted data,<sup>7</sup> only 7<sup>8</sup> were able to provide data on 'final convictions for bribery in the private sector' for any of the reference years between 2014 and 2016. While the data are subject to some inherent limitations, and they should be interpreted with caution also with careful consideration of the methodological notes provided<sup>9</sup>, they are useful to illustrate the enforcement of the offences in the Framework Decision.

## ANALYSIS

The following section presents the analysis in detail, taking an overall view of the status of the transposition of the Framework Decision in national legislation. The national transposition in every Member State was assessed against only one criteria, namely whether the provisions of the Framework Decision have been covered in national legislation.

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<sup>5</sup> European Treaty Series — No 173.

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>

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

<sup>6</sup> <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=21215&no=2>

<sup>7</sup> BE, BG, CZ, DE, ES, HR, IE, IT, CY, LV, LT, LU, HU, RO, AT, PL, PT, SK, SI, FI, SE, UK.

<sup>8</sup> BE, HR, IT, LU, LV, PL and SI

<sup>9</sup> References to legal provisions, both in national legislation and the UN Convention against Corruption, are as submitted by Member States. The framework of offences is based on Articles 15-22 UNCAC in an effort to aid future comparability, and to better understand the divergences between definitions and recording systems. The inclusion of data under one category or another does not imply a judgement on the part of the Commission about the scope of national provisions in relation to the categories for which we requested data. A detailed methodological discussion is available here:

[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/official\\_corruption\\_statistics\\_2011\\_2013\\_jan16\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/official_corruption_statistics_2011_2013_jan16_en.pdf)

The report concentrates on Articles 2 to 7 of the Framework Decision. It does not cover Articles 8 to 11 (ie. provisions on repeal, implementation, territorial application, entry into force) as they do not require national transposition.

**1.1. Article 2 — Active and passive corruption in the private sector**

*1.1.1. General remarks*

Article 2 is a key provision of the Framework Decision. It defines offences involving active and passive corruption, when carried out in the course of business activities. The scope of Article 2(1) includes business activities in both profit and non-profit entities.

The seven component requirements of Article 2(1) are listed below.

<b>Article 2(1)(a) — active corruption</b>	<b>Article 2(1)(b) — passive corruption</b>
‘Promising, offering or giving’	‘Requesting or receiving or accepting the promise of’
‘Directly or through an intermediary’	‘Directly or through an intermediary’
‘A person who in any capacity directs or works’	‘While in any capacity directing or working’
‘For a private-sector entity’	‘For a private-sector entity’
‘An undue advantage of any kind’	‘An undue advantage of any kind’
‘For that person or for a third party’	‘For oneself or for a third party’
‘Perform or refrain from performing any act, in breach of that person’s duties’	‘Perform or refrain from performing any act, in breach of one’s duties’

In the above table, only the first listed elements (‘promising, offering or giving’/‘requesting or receiving or accepting the promise of’) differ considerably for active and passive corruption. Therefore, Member States generally transposed the six remaining elements in their national legislation with similar wording. These six constitutive elements of active and passive corruption are therefore jointly considered below.

*Detailed analysis*

1.1.1.1. Article 2(1)(a) — active corruption — ‘promising, offering or giving’

The three actions of the offender are slightly different, although overlaps are possible. ‘Promising’ may, for example, cover situations where the briber commits to giving an undue advantage later or where there is an agreement between the briber and the bribed person that the briber will give the undue advantage later. ‘Offering’ may cover situations where the briber shows readiness to give the undue advantage at any moment. Finally, ‘giving’ may also include situations where the briber transfers the undue advantage.

19 Member States (BG, CZ, DK, DE, EL, ES, FR, HR, IT, CY, LT, NL, AT, PT, RO, SK, SI, FI and SE) have transposed almost literally the three terms ‘promising, offering or giving’ in their legislation.

In addition, in seven Member States (BE, EE, IE, LU, HU, MT and PL) under the relevant national jurisprudence the transposing terms have an equivalent meaning. In EE, HU, IE and PL, ‘offering a bribe’ is not mentioned in the current definition of active bribery but is covered by the jurisprudence. In BE and LU, the Criminal Code refers to ‘proposing an offer,

*a promise or an advantage of any nature*<sup>10</sup>. In MT, the person who ‘*bribes*’ is liable as an accomplice. The person who attempts to induce the other person to commit the crime is still subject to punishment even if their attempt is unsuccessful<sup>11</sup>.

In LV ‘*promising a bribe*’ is not explicitly covered.

Article 2(1) (b) — passive corruption — ‘*requesting or receiving or accepting the promise of*

In the case of a passive corruption offence, the material elements include requesting or receiving an undue advantage or accepting the promise thereof. ‘*Requesting*’ may, for example, refer to a unilateral act, i.e. it is immaterial whether the request was actually acted upon. ‘*Receiving*’ may, for example, mean the actual taking of the benefit<sup>12</sup>. ‘*Accepting the promise*’ of an undue advantage may refer to situations where the bribed person agrees to take the advantage later.

18 Member States (BE, BG, DE, EL, HR, LT, LU, HU, MT, AT, PT, SK, FI, IT, RO, NL, PL and SE) have transposed almost literally the three terms ‘*requesting or receiving or accepting the promise of*’ in their legislation.

In six Member States (CZ, DK, EE, FR, IE and SI), while the transposing terms used in the Criminal Code is different, their meaning is equivalent under the relevant jurisprudence. In addition, in LV, ‘*accepting the promise of a bribe*’ is not *expressis verbis* covered, while ‘*accepting the offer of a bribe*’ is covered. In CZ, ‘*accepting the promise of an undue advantage*’ is not explicitly covered by the current definition of passive corruption, which refers to ‘*agrees to accept any gift or consideration as an incentive or remuneration*’.

In ES, the element of ‘*accepting the promise of a bribe*’ is not explicitly covered, since the law only refers to accepting ‘*an unjustified benefit or advantage*’.

Article 2(1) (a)-(b): the remaining five constituting elements

#### **‘Directly or through an intermediary’**

Irrespective of whether the recipient or the beneficiary of the undue advantage is the person receiving the bribe or a third party, Article 2 provides that the criminalisation should also cover intermediaries.

In 14 Member States, namely BE, CZ, ES, EL, FR, HR, CY, LV, LT, LU, MT, PT, RO and SK, this aspect is transposed literally.

In addition, in 12 Member States (BG, DE, DK, IE, IT, HU, NL, AT, PL, FI, SI and SE) ‘*directly or through intermediary*’ is not explicitly covered. In EE, this aspect is not covered in the definition of active bribery, while it is reflected in the definition of passive bribery. The information received from the Estonian authorities was not conclusive on whether some elements included only in the definition of passive bribery apply also to active bribery.

However, without mentioning ‘*directly or through intermediary*’, national laws imply that both cases are covered, therefore all Member States address it.

#### **‘A person who in any capacity directs or works’ / ‘While in any capacity directing or working’**

12 Member States (BG, BE, DE, EL, ES, FR, LV, LU, HU, MT, PL and FI) transposed this element literally.

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<sup>10</sup> ‘*proposer une offre, une promesse ou un avantage de toute nature*’.

<sup>11</sup> Articles 115, 120 and 121 of the Criminal Code.

<sup>12</sup> According to paras. 41-42 of the Explanatory report to the Criminal Law Convention.

In addition, 10 Member States (CZ, DK, HR, LT, NL, AT, PT, SE, SK and SI) transposed it with slight variations.

In HR, NL and AT, the legislation does not refer to the function of *'directing'* but simply to *'working'*. In PT, the definition does not refer either to the function of *'directing'*, but it refers to *'private sector employees'* for passive corruption and to *'any person'*<sup>13</sup> for active corruption. In LT bribery in the private sector is only criminalised in the case of people holding *'appropriate administrative powers'*, or *'entitled to act on behalf of an agency, enterprise or organisation'* or *'exercise public functions'*. LT argues that the duties of directing or working are clarified by the jurisprudence of the Supreme Court. In CZ and SK there is no explicit limitation to directing or working, as the wording seems to cover all types of relations with or links to a private company. In SE, the legislation refers to *'a person who is a worker or has a mandate'* (passive corruption) or to any *'person'* (active corruption). This seems to cover both directing and working aspects. In DK and SI, since the law does not specify the link between the perpetrator and the legal person, it is assumed that all these elements are covered.

As for EE, the aspect of *'working or directing'* is not covered in the definition of active bribery, while the definition of passive bribery refers to them more broadly, i.e. *'by a person competent to engage in economic activities'*. The information received from the Estonian authorities was not conclusive on whether some elements included in the definition of passive bribery also apply to active bribery.

In RO, *'directing or working'* is not explicitly mentioned in the definition of active and passive corruption. The text refers to *'who, on a permanent or temporary basis, fulfils a duty or a task in so far as they take part in or can influence decision making'*. This seems to cover management functions, but not necessarily all types of working relationships. In IE and CY, the acts of active and passive corruption are limited to the agent's conduct *'in relation to his principle's affairs or business'*, which seems to narrow down the definition.

In IT, active and passive corruption only refer to executive roles, such as managers, directors general, directors in charge of the drafting of balance sheets, mayors and liquidators or whoever *'exercises various management functions'*<sup>14</sup>, leaving out of the personal scope persons without an executive role.

#### **'For a private-sector entity'**

In 10 Member States (BG, CZ, FR, EE, EL, IT, LV, HU, MT and PT) this element is explicitly addressed in the national transposition measures. However, it is not explicitly covered in 14 Member States (BE, DK, ES, HR, IE, CY, LT, LU, NL, PL, RO, SK, SI and SE) as in these countries the offence usually refers to any person (*'whoever'*). Nonetheless, as long as such reference is broad, this is in line with the Framework Decision.

In DE, AT and FI, the provision's scope is limited to businesses/companies<sup>15</sup>, which are narrower concepts than private sector entities. ES has limited the scope in a similar manner.<sup>16</sup> On this issue, see also Article 2 (2) below.

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<sup>13</sup> *'whoever'*.

<sup>14</sup> *'esercita funzioni direttivi diverse'*.

<sup>15</sup> *'Unternehmen/elinkein'*.

<sup>16</sup> *'empresa mercantile/sociedad'*

### **‘An undue advantage of any kind’**

Undue advantage may be an economic one but may also be non-material in nature. What is important is that the offender or any other person, for instance a relative, is put in a better position than he/she was before the offence was committed and that he/she is not entitled to the benefit. This includes for instance, money, holidays, loans, food and drinks, a case handled at an accelerated pace, better career prospects, etc. ‘*Undue*’ should be interpreted as something that the recipient is not lawfully entitled to accept or receive. This interpretation excludes advantages permitted by the law or by administrative rules from the scope of the offence.

19 Member States (BE, BG, DE, DK, ES, EL, CY, LT, LV, LU, HU, MT, AT, PL, PT, RO, FI, IT and SE) transposed this element literally.

Some other Member States transposed it with slight variations.

In NL, the implementing provision does not refer to an ‘undue advantage’, but rather to a ‘gift’, ‘service’ or ‘promise’. In CY, the ‘*undue advantage*’ is transposed as ‘*any gift, or consideration as an inducement or reward*’. FR legislation refers to ‘*any advantage*’, which has a slightly broader meaning, while in HR the law mentions a ‘*favour*’. In SI, the law refers to ‘*an unauthorised award, gift or other property benefit*.’ In IE the passive bribery offence refers to the terms ‘*gift, consideration or advantage*’, while the active bribery offence only refers to ‘*gift or consideration*’.

SK does not specifically address the offering of any undue advantage other than a bribe. The term ‘*advantage*’ is not used in the Slovak Criminal Code’s provisions on bribery, but rather the term ‘*bribe*’ is used<sup>17</sup>: ‘*a bribe shall mean a thing or the transfer of property or of anything of non-material nature to which no legal entitlement exists*’. In CZ, ‘*an undue advantage of any kind*’ is covered by the definition of ‘*bribe*’, which is defined as ‘*an undue advantage consisting of direct material enrichment or other advantage... to which he/she is not entitled*’<sup>18</sup>.

In EE, in the case of passive bribery, the undue advantage is referred to as ‘*property or other benefits*’ while for active bribery, the law refers to a bribe, which is a limited concept compared to the undue advantage. Based on the available information, it is not clear whether some elements included in the definition of passive bribery also apply to active bribery.

### **‘For that person / oneself or for a third party’**

In 22 Member States this element is transposed literally (BE, BG, CZ, DE, DK, ES, EL, FR, HU, HR, CY, LT, LV, LU, MT, AT, PT, SK, SI, FI, IE and SE).

In PL, the aspect related to a third party may be covered only indirectly, to the extent it corresponds to ‘*in favour of a buyer, or a recipient of goods, services or other performance*’.

This element is not explicitly covered in two Member States (NL and RO). In a further two (EE and IT) it is not covered as far as the definition of active bribery is concerned.

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<sup>17</sup> Defined in Section 131, paragraph 3. ‘*A thing*’ is defined in Section 130, paragraphs 1 and 2.

<sup>18</sup> Section 334, para.1 of the Criminal Code.

### **‘Perform or refrain from performing any act, in breach of that person’s / one’s duties’**

In 13 Member States (BE, BG, DE, DK, FR, EL, IE, IT, CY, LV, LU, AT and SK) this element is transposed literally by the national legislation.

Seven Member States (LT, LV, HU, MT, PT, RO and SE) transposed this element with slight variations. In RO this aspect is only reflected in the definition of passive bribery. In LT, it is transposed as *‘lawful or unlawful action or inaction (...) in exercising his/her powers’*. In PT, the notion of ‘breach of duty’ only appears in the passive bribery definition, but not in the active one. In LV, the component *‘perform or refrain from performing any act, in breach of that person’s duties’* is transposed more broadly in that performing or refraining from performing an act has to happen *‘using his or her authority’* without necessarily involving a specific breach. In HU, MT, and SE, the legislation does not refer to ‘should perform or refrain from performing’. It implies that the omission of these elements does not have an impact on ‘in breach of that person’s duties’ which set out is in the Criminal Code — it does not make any difference whether these words are implicit or explicit.

In EE, this aspect is referred to as *‘abuse of his or her competence’* in passive corruption, while it is not mentioned at all in the definition of active corruption. The information received from the Estonian authorities was not conclusive as to whether some elements included in the definition of passive bribery also apply to active bribery.

In CZ, the Criminal Code does not limit the applicability of the provisions on private sector bribery to cases in which there has been a breach of duty.

In ES, the sentence *‘in breach of that person’s duties’* was removed from the law. Moreover, the aspect of *‘perform or refrain from performing any act’* is not reflected in the current wording. The article's scope is also limited (*‘in the purchase or sale of goods, or in the contracting of services or commercial relations’*).

In FI, and HR, breach of duty is not specified, and instead of ‘perform or refrain from performing an act’, the text refers to favouring a briber or another person. In SI, the law mentions neglecting the interest of the organisation or other individual or causing damage when concluding or retaining a contract. In the Netherlands, the element of *‘breach of duty’* is transposed as *‘in violation of good faith’*, which includes *‘concealing the acceptance or request of the gift or promise or service from his employer or principal’*<sup>19</sup>.

In PL, the notion of *‘breach of duty’* is transposed as *‘failing to fulfil a duty assigned to such person that may inflict material damage on such unit or may constitute an act of unfair competition or inadmissible act of preference in favour of a buyer, or a recipient of goods, services or other performance’*.

### **Further limitations**

Unlike in the 25 other EU Member States, in BE and LU there is a limitation to cases where the breach of duty was not known by the superior, in both passive and active bribery offences.

Article 2(2)

Article 2(2) establishes that Article 2(1) applies to business activities in both profit and non-profit entities.

Most Member States explicitly refer to the inclusion of non-profit entities in their legislation, and others have worded their legislation in such a broad way that non-profit entities are not excluded (BE, BG, CZ, DK, EE, FR, EL, HR, IE, IT, CY, LV, LT, LU, HU, NL, MT, PL, PT, RO, SK, SI and SE).

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<sup>19</sup> Section 328ter of the Criminal Code.



In four Member States (DE, FI, AT and ES) the scope of the offence is different. In DE, FI, AT, the provision is limited to ‘businesses/companies’<sup>20</sup>, which is narrower than private sector entities. ES limited the scope in a similar manner. Limiting the scope of the relevant criminal offences to businesses in some cases excludes criminal responsibility of individuals bribing on behalf of, or in favour of non-profit organisations. Non-profit organisations are part of the private sector, they may be for instance foundations, associations, sport clubs, church organisations and charities. Non-profit organisations often engage in business activities, but they typically use the revenues to further achieve their ultimate social, educational or charity objectives, rather than distributing the income to the organisation’s shareholders, leaders, or members.

Furthermore, for the activities covered by the Framework Decision, under Article 2(3), Member States could declare that they would limit the scope to conduct involving a distortion of competition in relation to the purchase of goods or commercial services. Such declarations were made by DE, IT, AT and PL. The declarations were valid until 22 July 2010. (Article 2(4)). Since the Council did not take a decision to extend their validity, the Commission considers that they are no longer valid.

In DE, the current wording of section 299 of the Criminal Code may exclude some situations that private sector entities are involved in, or confronted with in practice and which are not strictly related to procurement transactions. In comparison, Article 2 refers to bribery ‘*in the course of business activity*’, which encompasses the broadest range of activities.

As for ES, active and passive corruption is limited to ‘*the purchase or sale of goods, or in the contracting of services or commercial relations*’.

In SI the offence contains a possible limitation: ‘*when concluding or retaining a contract*’.

### **Article 3 — Instigation, aiding and abetting**

Article 3 focuses on participation in corruption through instigation, aiding and abetting. However, it does not address attempted offences<sup>21</sup>.

In 25 Member States (BE, BG, CZ, DE, DK, ES, EE, EL, FR, HR, CY, LT, LV, LU, HU, MT, NL, AT, PL, PT, RO, SK, SI, FI and SE) the national laws address instigation, aiding and abetting. IE explained that while instigation was not specifically covered by its national law, it addressed by case law.

IT considers that these concepts are covered by articles in the Criminal Code under the notion of ‘favouring’<sup>22</sup>. However, the information received in that respect was not conclusive.

### **Article 4 — Penalties and other sanctions**

Article 4 (1) requires that private sector corruption offences be punishable by criminal penalties which are ‘effective, proportionate and dissuasive’. The national laws of all Member States address Article 4(1).

Article 4(2) requires Member States to ensure that passive and active corruption in the private sector is punishable by a maximum penalty of at least 1-3 years of imprisonment. The Commission concludes that the threshold for penalties is transposed in all Member States’ legislation.

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<sup>20</sup> *Unternehmen/elinkeino.*

<sup>21</sup> This is because the definition of active and passive bribery encompasses also the ‘promising’, ‘offering’ and ‘requesting’ or ‘accepting the promise of’ and not only the ‘giving’ and ‘receiving’.

<sup>22</sup> *Favoreggiamento.*

Article 4(3) requires Member States to prohibit temporarily, in certain circumstances, natural persons from pursuing the particular or comparable business activity in a similar position or capacity. This is addressed by national law in 24 Member States (BE, BG, CZ, DE, DK, EE, EL, FR, HR, IE, IT, LV, LT, LU, HU, MT, NL, AT, PT, PL, RO, FI, SK and SI). SE explained that these measures can be taken based on the Act on Disqualification from Commercial Activities, but did not provide a more detailed explanation.

The information provided by CY and ES was not sufficient to conclude whether or not their national laws address Article 4(3).

#### ***Article 5 — Liability of legal persons***

Article 5 provides for the liability of legal persons in relation to both active and passive corruption. Member States may decide between criminal and administrative liability.

In accordance with Article 5(1), Member States have to ensure that legal persons are liable when bribery is committed for their benefit by any person who is *‘acting either individually or as a part of an organ of the legal person’* and has a leading position within that legal person.

Under Article 5(2), Member States have to ensure that a legal person can also be liable in cases where the commission of the offence was made possible because of lack of supervision or control.

The liability of legal persons does not exclude criminal proceedings against natural persons involved as perpetrators, instigators or accessories (Article 5(3)).

Currently, 16 Member States (BE, DK, DE, ES, EL, FR, CY, LV, LT, LU, HU, AT, PL, FI, SK and SI) have legislation in place that transposes this provision. Some Member States use criminal measures, while others use administrative measures against legal persons. Both approaches are equally acceptable under the Framework Decision. In IE, the liability of legal persons is based on case law. IE did not provide sufficient information to be able to assess the transposition of Articles 5(2) and 5(3).

In PT, the liability of legal persons and equivalent entities is excluded if the perpetrator acted against the specific orders or instructions of those entitled to issue them. In HR, the liability of legal persons is conditional on two alternative criteria, out of which one refers to an *‘illegal gain’* for the legal person or for the third person. In EE, the legal person is exempted of criminal liability if an act committed by a competent representative thereof was *‘inevitable’* for the legal person. IE refers to common law and the relevant jurisprudence, according to which a legal person is liable for the acts of its *‘controlling officers’*.

Under Article 5(2), Member States have to ensure that a legal person can also be held liable in cases where the commission of the offence was made possible because of lack of supervision or control. In eight Member States, there is not enough information to assess whether the lack of supervision or control is covered under national law (BG, CZ, EE, IT, MT, NL and PT), or whether case law covers these aspects (IE).

Article 5(3) sets out a negative condition. Where Member States have no contradictory legislation or practice in place, it is assumed that they meet the condition, namely that the liability of legal persons does not exclude criminal proceedings against natural persons involved as perpetrators, instigators or accessories.

#### ***Article 6 — Penalties for legal persons***

Article 6 requires Member States to establish effective, proportionate and dissuasive sanctions for legal persons (criminal or non-criminal) for active and passive corruption, instigation and abetting and for making the commission of the offence possible through lack of supervision or

control. Article 6(1), in addition to financial penalties, gives other examples of sanctions which may be imposed, such as exclusion from public benefits or aids, disqualification from the practice of commercial activities, judicial supervision, or a judicial winding-up order. Under Article 6(2), sanctions have to be effective, proportionate and dissuasive.

18 Member States (BE, BG, CZ, DE, DK, EL, FR, HR, LV, LU, HU, MT, AT, PL, SK, SI, FI and CY) have provided information which indicates that legislation transposing Article 6(1) is in place. The information from the other Member States was not conclusive.

Article 6(2) is addressed in national legislation in 26 Member States. IE confirms the transposition of Article 6 by means of a legal act adopted in 1906. However, this act only covers penalties for natural persons, not legal persons. The information provided is therefore insufficient to assess the transposition.

### ***Article 7 — Jurisdiction***

Article 7 requires Member States to take the necessary measures to establish jurisdiction over an offence falling under the scope of this Framework Decision, where the offence has been committed in whole or in part on its territory, by one of its nationals, or for the benefit of a legal person that has its head office in its territory. Member States have a margin of discretion in applying the last two jurisdiction rules.

All Member States have in place national measures to transpose this provision.

In line with Article 7 (2), 16 Member States (BG, DE, DK, FR, EL, IT, IE, LT, LU, HU, MT, NL, AT, PL, FI and SE) have decided not to apply certain rules on jurisdiction (when the offence has been committed by one of its nationals or committed for the benefit of a legal person with its head office in the territory of the Member State). In some Member States (such as FI, FR, or DK), under Article 7 (2) b) a dual criminality requirement is foreseen, and may be subject to further conditions, such as a report submitted by the victim (FR) or the proceeding initiated by the prosecutor (FR).

## **CONCLUSIONS**

Information received from the Member States indicates that major reforms have taken place in many of them since 2011. For example, Greece amended its criminal provisions on corruption in 2014, and Bulgaria, Germany, Estonia and Spain did so in 2015. Belgium amended its Criminal Code in 2016 and 2018 and Italy did so in 2017. Hungary adopted a new Criminal Code in 2012 and revised all the related legal instruments. Slovakia adopted a law on the liability of legal persons in 2016.

Overall, the level of transposition of the Framework Decision has clearly improved since the 2011 implementation report. The level of sanctions introduced in the national criminal codes is in line with the minimum thresholds of the Framework Decision in all Member States.

However, some of the Framework Decision's provisions have been difficult to implement in some Member States. For example, accepting the promise of a bribe is not covered in the national legislation of all Member States, and in some countries the committing of an offence by someone in a directing or working role is limited to specific positions or powers. Undue advantage offered or given to third parties does not seem to be fully covered in a small number of Member States. Undue advantage is also a concept which is defined in a variety of ways, sometimes covering more than what is strictly necessary, but other times omitting important elements. Furthermore, some Member States included a limitation to the scope of the private sector corruption offence, either by specifying certain conditions in which the offence may be committed, or by limiting the scope of the offence to companies and other for-profit entities, thereby omitting non-profit organisations. In some Member States, the relevant provisions of the Criminal Code do not extend to non-profit entities.

While several Member States made efforts to amend their national legislation, their efforts need to extend to enforcing these criminal measures. Only 13<sup>23</sup> Member States provided recorded data on bribery in the private sector, among the 22 Member States that provided statistics in the framework of 2018 update for the reference years 2014–2016. There have been only very few convictions for private sector corruption in the reported years.

The Commission will continue to support Member States in transposing, implementing and enforcing EU legislation to a satisfactory level. This includes checking that national measures fully comply with the corresponding provisions in the Framework Decision, organising meetings with Member States' national authorities and facilitating the development and exchange of best practices in specific areas. Where necessary, the Commission will make use of its enforcement powers under the Treaties through infringement procedures. Finally, the Commission will continue to collect criminal statistics covering private sector corruption.

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<sup>23</sup> AT, BE, BG, DE, HR, HU, IT, LT, LU, PL, PT, SL and UK.