

European & international legal framework on corruption

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meeting on


The organisation of the fight against
corruption in the member states and
candidate countries of the european union

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Challenges calling for an international legal response

Tax deductible bribes to international (private &)
foreign public officials

Scope *ratione personae* of national
incriminations on corruption limited to officials
of the own state

Absence of dual criminality

Hindering


Extradition

taking of coercive/intrusive investigative measures in the
context of MLA

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Extra-territorial jurisdiction limited to
bribery of officials of the own state
protective principle

Preventing prosecution of

bribery of officials of international & eu
institutions

Active bribery by own nationals of foreign officials

Lack of external auditing & internal control
mechanisms




absence criminalisation corruption in
private sector

Absence corporate liability for active
corruption

Corruption not recognised as predicate
offence money laundering

National legislation not allowing for
seizure/confiscation proceeds of
corruption



Most relevant co-operation levels

European union (EU)

Council of europe (CoE)

Organisation for economic co-
operation & development (OECD)

United nations (UN)



Main achievements & legal instruments

EU

1996 protocol to 1995 PFI convention

Criminalisation active/passive corruption

Likely to damage EU FI

Extra-territorial jurisdiction

1997 2nd protocol to 1995 PFI convention

Mandatory Liability legal persons

Seizure & confiscation

Eu (continued)

1997 convention

on fight against corruption involving EC or MS officials

Similar to 1996 protocol to 1995 PFI convention

Potential damage EU FI not required

No liability legal persons (instead: heads businesses)

Several joint positions/actions

Aimed at safeguarding compatibility between eu instruments/initiatives and developments/negotiations in other fora

CoE

1996 programme of action against corruption

Resolution (98)7

Establishing group of states against corruption (greco) aiming at improving capacity members to fight corruption by following up compliance with their undertakings in this area (monitoring system)

1999 criminal law convention

1999 civil law convention

Minimum rules as regards possibility to obtain compensation for damage suffered as result from corruption



OECD

1996 recommendation on tax deductibility of bribes to foreign public officials

1997 recommendation on combating bribery in international business transactions

Urging implementation 1996 Recommendation

Calling for criminalisation bribery foreign public officials, announcing negotiations on convention on the matter

Recommending accounting requirements, external audit and internal company control

Recommending suspension from competition for public contracts of persons having bribed foreign public officials

1997 Convention on combating bribery of foreign public officials in international business transactions

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UN

1996 declaration

against corruption and bribery in international commercial transactions

Calling for criminalising foreign bribery and denial of tax deductibility

1998 resolution

strengthening 1996 declaration

Draft anti-corruption convention

next years

odccp

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Similarities/resemblances

Timing

active/passive corruption criminalised

Corporate liability

criminal or non-criminal

Recognition corruption as predicate offence for money laundering

(value) Seizure and confiscation (laundered) proceeds of corruption

Effective/dissuasive criminal sanctions

for physical persons

jurisdiction

Extra-territorial: active personality (own nationals/officials) & assimilation

EU/OECD: consultation to determine most appropriate jurisdiction prosecution

Improved international co-operation

Extradition: extraditable offence & aut dedere aut judicare

Mutual legal assistance

monitoring mechanism

EU: joint action 1997 on mutual evaluation

CoE: GRECO

OECD: committee on Fiscal affairs

Differences/particularities

Coe

Criminal law convention

Broadest concept of corruption

Including also « trading of influence »

Criminalisation of all passive and active forms of domestic and foreign bribery

In both the public and private sector

Obligation to provide effective and appropriate protection for witnesses and collaborators of justice

Civil law convention

EU

regional universal jurisdiction

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Status of ratification

EU

Quasi-unratified by MS

Essential part of EU JHA acquis for candidate countries

Coe

Criminal law convention

6 ratifications (14 required)

Among which: Czech republic, denmark, Slovak republic, slovenia

Oecd

26 ratifications

Among which: austria, belgium, bulgaria, czech republic, denmark, finland, france, germany, greece, hungary, poland, slovak republic, spain, sweden, turkey, united kingdom

Entered into force on February 19, 1999

Hence: by far most important convention to date

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The end

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