
Liability of legal persons and the fight against shell companies in corruption matters

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Approach

- > as in (preliminary) draft questionnaire
 - > legal persons in general
 - > corporate liability
 - > sanctions for legal persons
 - > not: tax deductibility & account offences
- > principal basis
 - > R(97)24: General Principle 5
 - > Criminal Law Convention: Articles 18-19
- > broader
 - > taking more account of international dimension
 - > bringing in current EU trends/discussions
 - > plea for more general approach
 - > not limited to corruption only

Legal persons in general

- > too general issues /– of no immediate/specific relevance
 - > typology of main legal persons & corresponding legal capability
 - > general requirements for establishment legal persons
 - > number of accounts legal person can hold
 - > restrictions on possibility for legal person to hold shares of another legal person
 - > different rules in off-shore zones (also on-shore + broader)
- > most important/relevant issues/questions
 - > registration duty for legal persons
 - > registration about investigation, conviction, disqualification legal persons
 - > international exchange of registered information

Registration duty for legal persons

- > as precondition for legal capacity
- > to what extent 'public' character
- > what information is included
 - > crucial information to cope with 'shell companies'
 - > information about other legal persons or natural persons 'behind' legal person concerned
 - > involvement in establishment, management, funding
 - > important shareholders
 - > information about shares held by legal person concerned of other legal persons

Investigations, convictions, disqualifications

- > investigations/prosecutions against legal persons
 - > (central) database pending investigations/prosecutions?
 - > for corruption offences only/broader?
- > convictions
 - > entries for legal persons in criminal records database?
- > registered disqualifications (as part of conviction or not)?
 - > for legal persons to take part in
 - > certain forms of business or commercial activity
 - > public tender procedures
 - > for natural persons
 - > to manage, fund, direct, exercise controlling influence over legal person
 - > to engage in certain forms of business activity

International information exchange (1)

- > information about (natural persons behind) legal persons
 - > enhanced exchange/EU register natural persons involved in creation/direction legal persons (EU OC Millennium Strategy)
- > accounts held by these persons
 - > Protocol October 2001 to EU Mutual Assistance Convention
 - > implicit obligation for banks to disclose account information (accounts owned/controlled by person, account details, ...)
- > pending investigations/prosecutions
 - > compatible with inquisitorial investigatory systems?
 - > black-lists/single EU database convicts/suspects OC/illicit origin of funding (EU OC Millennium Strategy)
 - > Europol/Eurojust db pending investigations/ prosecutions?

International information exchange (2)

- > convictions
 - > enhanced bilateral exchange
 - > Article 22 1959 CoE MLA Convention
 - > model form + higher frequency?
 - > European/EU criminal records database (ECRD)?
 - > EU Mutual Recognition Programme
 - > individualized sanctioning/international re-offending
 - > disqualification register natural/legal persons
 - > IRCP research project 2001/GRP/024
 - > possibility of introduction requirement for employees in vulnerable professions in private sector to obtain certificate of non-prior European conviction (e.g. for corruption)
 - > feasibility of EU criminal records database and disqualification register for natural and legal persons (not for corruption only)

Information on legal persons in ECRD

- > name
- > date and place of creation
- > place(s) of business activiteit (seat)
- > type of company
- > identification number in commercial register
- > date of entry of the information
- > natural persons involved in creation and/or direction of or 'behind' legal person

Corporate liability (1)

- > either criminal, civil or administrative liability
- > for
 - > all/specific criminal offences
 - > corruption
 - > active
 - > passive
 - > not in CoE acquis/previous (1998) EU acquis
 - > in new EU acquis (draft EU FD corruption private sector)
 - > also in IAPL recommendations
 - > trading in influence
 - > money laundering
- > committed for the benefit of the legal person

Corporate liability (2)

- > for what type of legal persons?
 - > including non-profit entities establishing business activity (draft EU FD corruption private sector)?
 - > fighting corruption in private sector is about more than protecting fair competition only
 - > political parties, trade unions, ...?
 - > including state-owned/state-controlled entities?
 - > traditional restriction: exercise of state authority
- > also when lack of supervision/control by person having a leading position has facilitated the offence?
- > corporate liability (not) excluding liability for natural persons (for acting as perpetrators, aiding, abetting, ...)?

Sanctions for legal persons

- > in case of offences committed for the benefit of the legal person
 - > criminal or non-criminal fines
 - > exclusion from entitlement to public benefits or aid?
 - > temporary/permanent disqualification commercial activity
 - > placing under judicial supervision
 - > judicial winding-up order
- > where offence was facilitated by lack of supervision/control natural person having a leading position
 - > striking distinction between intent/negligence (good)
- > confiscation of equivalent value of legal person under controlling influence person concerned
 - > draft EU FD confiscation crime-related proceeds, ...

Discussion and questions
