Combating corruption in the private sector. Framework Decision. Initiative Denmark

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The Commission presented a report assessing the extent to which the Member States have taken the necessary measures in order to comply with Council Framework Decision 2003/568/JHA on combating corruption in the private sector.

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

Since the Commission's last implementation reports in 2007 and 2011, a number of major criminal law reforms have taken place in some Member States. Furthermore, the 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), 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 provides an update on the latest developments.

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.

The main conclusions of the report are as follows:

Reforms in the Member States

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.

Transposition

National transposition in all Member States was assessed on the basis of a single criterion, namely whether the provisions of the Framework Decision are covered by national legislation. Overall, the level of transposition of the Framework Decision has improved significantly since the 2011 Implementation Report. The Framework Decision requires Member States to take the necessary measures to ensure that

active and passive corruption in the private sector is punishable by a maximum penalty of at least 1 to 3 years' imprisonment. The Commission concludes that the threshold for penalties is transposed into the legislation of all Member States.

Difficulties of implementation

The report indicates that some provisions of the Framework Decision have been difficult to implement in some Member States:

- 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;

- 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.

Enforcing criminal measures

Member States' efforts must now be extended to enforcing these criminal measures. Only 13Member States (AT, BE, BG, DE, HR, HU, IT, LT, LU, LU, PL, PT, SL and UK) provided data on bribery in the private sector, among the 22 Member States that provided statistics in the 2018 update for the 2014 to 2016 reference years. There have been very few convictions for private sector corruption in the reported years.

Prospects for the future

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.

Lastly, the Commission will continue to collect criminal statistics covering private sector corruption.