

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

2002/0817(CNS) - 17/07/2002 - Legislative proposal

PURPOSE : to present the initiative of the Kingdom of Denmark with a view to the adoption of Council Framework Decision on combating corruption in the private sector. **CONTENT** : on 22 December 1998, the Council adopted Joint Action 98/742/JHA on corruption in the private sector. In connection with the adoption of that Joint Action, the Council issued a statement to the effect that it agreed that the Joint Action represents the first step at EU level towards combating such corruption, and that additional measures will be implemented at a later stage. The aim of this proposal for a Framework Decision is in particular to ensure that both active and passive corruption in the private sector is a criminal offence in all Member States, that legal persons may also be held responsible for such offences, and that the offences incur effective, proportionate and dissuasive penalties. Member States shall take the necessary measures to ensure that the following intentional conduct constitutes a criminal offence, when it is committed in the course of business activities: a) promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity, an undue advantage of any kind, for that person or for a third party, in order that the person should perform or refrain from performing any act, in breach of that person's duties; b) directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties. Member States shall take the necessary measures to ensure that instigating, aiding and abetting, inciting and attempting shall be considered as criminal offences. With regards to the penalties, they may be between a maximum of at least 1 and 3 years of imprisonment. In addition, each Member State shall take the necessary measures to ensure that it is possible, where special circumstances so dictate, e.g. in the case of repeat offences: a) as a corollary of a conviction for the practices referred to in the Decision, temporarily to disqualify a natural person from carrying on a business, or from carrying it on in certain forms, where the facts established give reason to believe there to be a clear risk of abuse of position or office; b) temporarily to disqualify a natural person from being a founding member, manager or director of any limited liability company or company requiring special public approval, where the facts established give reason to believe there to be a clear risk of abuse of position or office. Any Member State which, under its domestic law, does not as yet extradite its own nationals shall take the necessary measures to establish its jurisdiction with regard to the offences when committed by its own nationals outside its territory. Each Member State shall take the necessary measures to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties such as: a) exclusion from entitlement to public benefits or aid; b) temporary or permanent disqualification from the practice of commercial activities; c) placing under judicial supervision; or d) a judicial winding-up order. The initiative request that those Member States which have not yet ratified the Convention on corruption 1997 shall undertake to do so within one year following the entry into force of this Framework Decision. Those Member States which have not yet ratified the Council of Europe Convention on corruption 1999 shall undertake to do so within one year following the entry into force of this Framework Decision. It should be added that from the date of the entry into force of this proposed framework decision, Joint Action 98/742/JHA shall be repealed.