Public contracts: criminal law protection against fraudulent or unfair anti-competitive conduct on the award

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PURPOSE: joint action on criminal law protection against fraudulent or unfair anti-competitive conduct on the award of public contracts in the common market. CONTENT: this draft joint action seeks to strengthen both the protection of fair competition and the financial interests of contracting entities on the award of public contracts. It also covers the interests of the Union to the extent that Community bodies are concerned in procurement procedures. Every Member State is to take the necessary measures to ensure that the offence of fraudulent or unfair anti-competitive conduct shall be a criminal offence punishavble by effective, proportionate and dissuasive criminal penalties. Such an offence shall be deemed to have been committed if a person acting for an undertaking intentionally makes an offer based on an unlawful agreement between undertakings aimed at causing the contracting entity to accept a particular offer - as a result of a direct or indirect promise, offer or grnat of an advantage to a person, for that person himself or for a third person, in return for the award of a public contract in breach of duty or - as a result of other collusive combination with the person responsible for the award of the contract or - by concealing such an agreement. Each Member State shall ensure that legal persons can be held liable for a criminal offence committed for their benefit by any person acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on - a power of representation of the legal person, or - an authority to take decisions on behalf of the legal person, or - an authority to exercise control within the legal person, as well as for involvement as accessories to, or instigators of, the commission of such a criminal offence. Each Member State shall take the necessary measures to establish its jurisdiction with regard to the criminal offence where the criminal offence has been committed a) in whole or in part within its territory; or b) by one of its nationals, provided that the law of that Member State may require the offence to be punishable also in the country where it occurred; or c) for the benefit of the legal person that has its head office in the territory of that Member State.