

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

2002/0817(CNS) - 22/07/2003 - Final act

PURPOSE : to adopt the Council Framework Decision on combating corruption in the private sector.

COMMUNITY MEASURE : Council Framework Decision 2003/568/JHA on combating corruption in the private sector. **CONTENT :** the aim of this Framework Decision is in particular to ensure that both active and passive corruption in the private sector are criminal offences in all Member States, that legal persons may also be held responsible for such offences, and that these offences incur effective, proportionate and dissuasive penalties. Member States attach particular importance to combating corruption in both the public and the private sector, as they believe that in both those sectors it poses a threat to a law-abiding society, distorts competition in relation to the purchase of goods or commercial services and impedes sound economic development. On 26 May 1997 the Council accordingly approved a Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union. It also adopted on 22 December 1998 Joint Action 98/742/JHA on corruption in the private sector (refer to CNS/1997/0914). 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 a first step at European Union level towards combating such corruption, and that additional measures in this area would be implemented at a later stage in the light of the results of an assessment conducted in accordance with that Joint Action. It is for this reason that the Framework Decision, based on the Danish initiative, strengthens the provisions already provided by : - ensuring that both active and passive corruption in the private sector are criminal offences in all Member States; - that legal persons may also be held responsible for such offences - and that these offences incur effective, proportionate and dissuasive penalties. The Framework Decision stipulates that 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: - 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; - 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. A Member State may declare that it will limit the scope to such conduct which involves, or could involve, a distortion of competition in relation to the purchase of goods or commercial services. Declarations shall be communicated to the

Council at the time of the adoption of this Framework Decision and shall be valid for five years as from 22 July 2005. The Council shall review this Article in due time before 22 July 2010 with a view to considering whether it shall be possible to renew declarations. 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. Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 22 July 2005. By the same date, Member States shall transmit to the General Secretariat of the Council and the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established using this information and a written report from the Commission, the Council shall before 22 October 2005 assess the extent to which Member States have complied with the provisions of this Framework Decision. TERRITORIAL APPLICATION : This Framework Decision shall apply to Gibraltar. ENTRY INTO FORCE : 31 July 2003.