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**COMMISSION STAFF WORKING PAPER**

**accompanying the**

**REPORT FROM THE COMMISSION TO THE COUNCIL AND TO THE  
EUROPEAN PARLIAMENT**

**based on article 9 of the council framework decision 2003/568/JHA OF 22 JULY 2003  
on combating corruption in the private sector**

{COM(2011) 309 final}

**PART 1** Article 2 – Active and passive corruption in the private sector

**PART 2** Article 7 – Jurisdiction

## **PART 1 – Article 2 – Active and passive corruption in the private sector**

### ***1.1. Article 2 – Active and passive corruption in the private sector***

#### ***1.1.1. General comments***

Article 2 is a key Article of the 2003 Framework Decision (FD). It defines in detail offences relating to active and passive corruption, when carried out in the course of business activities. The scope of application of Article 2(1) includes business activities in both profit and non-profit entities, reflecting the general expansion of scope beyond the internal market.

However, Member States could declare that they would limit the scope to conduct involving a distortion of competition in relation to the purchase of goods or commercial services.

Such a declaration was entered by DE, AT, IT and PL.

#### ***1.1.2. Summary table of transposing legislation adopted by Member States***

<b>MS</b>	<b>Legislation</b>	<b>Measures which appeared relevant to Commission's analysis (where different from MS' citations)</b>
<b>BE</b>	<b>Art. 504 bis, §1 and §2, Criminal Code</b>	
<b>BG</b>	<b>Art. 225 c Criminal code</b>	
<b>CZ</b>	<b>Section 331, 333, 334 (1)(3) Act 40/2009 Criminal Code, section 160 161 and section 162, 162a Act 140/1961 Crime Act, section 332 Act 40/2009 Criminal Code</b>	<b>Section 162 Act 140/1961 Crime Act</b>
<b>DK</b>	<b>No reply</b>	<b>Section 299(2) Criminal Code (2007 report)</b>
<b>DE</b>	<b>§ 299 StGB Criminal code</b>	
<b>EE</b>	<b>Art. 288, 293-298 Criminal Code, art. 393, 394</b>	
<b>IE</b>	<b>Section 1 of the 1906 Act, as inserted by the Act of 2001</b>	
<b>EL</b>	<b>Art. 5 Law 3560/2007</b>	
<b>ES</b>	<b>No reply</b>	
<b>FR</b>	<b>Art. 445-1 art. 445-2 Criminal code</b>	
<b>IT</b>	<b>Art. 2635 civil code</b>	

CY	Section 4 of the Law 23 (III)/2000 ratifying the Council of Europe Criminal Law Convention on Corruption (Section 3 of the Law on prevention of corruption 161 refers to public sector corruption)	
LV	Chapter XIX "criminal offences of an economic nature" special part criminal code	
LT	No reply	Articles 225-227, 230, Criminal Code (2007 report)
LU	No specific provisions forwarded	Art. 310, 310-1 Criminal Code
HU	Art. 251,252,254 Act IV of 1978 on the Criminal Code	
MT	Art. 121(3), art. 121D Criminal Code	Art.112, 115, 120(1), Criminal Code
NL	Art. 46a and Art. 328 ter, criminal code	
AT	§§ 168 c, d and e, §§153, 153a and 304, 305, 306, 307, 308 of the Criminal Code and §10 Law of Unfair Competition (UWG)	Section 2, §3 of the <i>Verbandsverantwortlichkeitsgesetz</i> [Law on the liability of associations]
PL	Article 296a(1) Criminal Code	Articles 115, 296a(2) Criminal Code
PT	Art. 8 art. 9 law. 20/2008 of 21 April 2008	
RO	Art. 254,255,258 Criminal code Art. 147,145, Criminal Code (definitions)	
SI	Art. 241, 242 Criminal Code	Art.20(1), Criminal Code.
SK	Section 131(3), 328, 329, 330, 331, 332, 333, 334, 335, 336 Criminal code.	
FI	Chapter 30 section 7 and 8 Criminal code	
SE	Chapter 17 – Section 7 and Chapter 20 – section 2, Criminal Code	
UK	Section 1, Prevention of Corruption Act,1906	Bribery Act 2010

### 1.1.3. Summary account of the transposition

As in 2007, implementation of the Article 2 proved highly problematic for Member States. In 2007, only 2 Member States (BE, UK) correctly transposed every element of the offence. Currently 9 Member States (BE, BG, CZ, FR, IE, CY, PT, FI, UK) have correctly transposed all of them.

There was a particular difficulty for Member States in capturing the full meaning of the phrases "directly or through an intermediary" and "a person who in any capacity directs or work" in their national legislation.

The seven component requirements of the Article 2(1) are listed below.

<b>Article 2(1)(a) – active corruption</b>	<b>Article 2(1)(b) – passive corruption</b>
<ul style="list-style-type: none"> <li>• "Promising, offering or giving"</li> <li>• "Directly or through an intermediary"</li> <li>• "A person who in any capacity directs or works"</li> <li>• "For a private-sector entity"</li> <li>• "An undue advantage of any kind"</li> <li>• "For that person or for a third party"</li> <li>• "Perform or refrain from performing any act, in breach of that person's duties"</li> </ul>	<ul style="list-style-type: none"> <li>• "Directly or through an intermediary"</li> <li>• "Requesting or receiving or accepting the promise of"</li> <li>• "An undue advantage of any kind"</li> <li>• "For oneself or for a third party"</li> <li>• "While in any capacity directing or working"</li> <li>• "For a private-sector entity"</li> <li>• "Perform or refrain from performing any act, in breach of that person's duties"</li> </ul>

### 1.1.4. Detailed analysis

#### 1.1.4.1. Article 2(1)(a) – active corruption

12 Member States (BE, BG, CZ, DK, IE, EL, FR, CY, PT, FI, SI, UK) meet seven requirements of the definition of active corruption.

The most problematic elements of transposing Article 2 (1)(a) appear to be covering the full scope of "promising, offering or giving" and "perform or refrain from performing any act, in breach of that person's duties."

NL limited the offence to instances in which the employer or principal was not informed of this case. LU requires that the employer is not aware and does not approve the criminal behaviour. DE, AT, IT and PL had limited the scope of application of this requirement in line with the Article 2(3). DE limited the scope to acts relating to purchase of goods or commercial services; AT limited the offence to "legal acts" and PL limited the offence to behaviour resulting in losses, unfair competition or inadmissible preferential action. DE informed that new legislation to meet this requirement of the Framework Decision is pending.

1.1.4.2. In addition the Commission notes the following problems in transposition:

- EE does not cover offering, intermediaries, performing/refraining from performing of the duties in breach of one's duties
- IT does not cover offering of a bribe, intermediaries, persons who work in the private sector, as well as third party to whom the bribe is destined
- LV does not cover the element of promising a bribe, it also establishes a limitation on the offence to cases when offer/promise was accepted. A responsible employee ... or a person authorised", as noted in the 2007 assessment, does not seem to include all employees, and thus does not fully address the wording "any person who in any capacity directs or works(...)".
- HU does not refer to "offering" an advantage or to "directly or indirectly"
- RO does not make reference to a third part advantage
- SK does not address specifically offering of the bribe or advantage.

1.1.4.3. Article 2(1) (b) – passive corruption

12 Member States (BE, BG, CZ, IE, FR, CY, MT, PT, SI, SK, FI, UK) are fully compliant with the Article 2(1) (b).

In addition, the following was noted:

- DE makes a declaration which is not valid anymore
- EE does not refer to intermediary, to "requesting" a bribe and undue advantage
- EL does not cover the third party advantage
- IT does not cover intermediaries, third party advantage, "working" and "requesting" a bribe
- LV – acceptance of an offer is not included in LV legislation
- LU limits the scope of this article (see Article 2(1) (a))
- HU does not address "directly or indirectly"
- NL – advantage is to be concealed from the employer (narrower than the Framework Decision)

- AT – more information is needed on intermediaries. In addition, "servant/agent" of a private sector entity does not seem to cover those who direct such an entity.

#### 1.1.4.4. Article 2(2)

Article 2(2) establishes that Article 2(1) applies to business activities in both profit and non-profit entities. Some Member States make explicit reference to the inclusion of non-profit entities in their legislation while others have worded their legislation in such a broad way that non-profit entities are not excluded. Overall, 16 Member States transposed fully this provision (BE, BG, CZ, DE, EE, IE, FR, CY, HU, MT, NL, PL, PT, RO, FI, UK). In some cases, the wording of the legislation appears broad enough to cover this provision, but additional explanation would be necessary (EL, IT, LV, MT, AT, SK, SE).

#### 1.1.4.5. Article 2(3)

Under Article 2(3), four Member States made a Declaration (DE, IT, AT, PL) and submitted it already for the previous report. The declaration was valid until 22 July 2010 (Article 2(4) of the Framework Decision). Under Article 2(5) of the Framework Decision, the Council was to review Article 2 in due time before 22 July 2010 with a view to considering whether it is to be possible to renew declarations made under paragraph 3. As the Council did not take the decision to extend the possibility of renewing the declarations, the Commission considers that the declarations expired and that Member States need to amend their legislation accordingly.

#### 1.1.4.6. Summary table of transposition of Article 2

<b>MS</b>	<b>Article 2 (1) (a)</b>	<b>Article 2 (1) (b)</b>	<b>Article 2.2</b>	<b>Article 2.3</b>	<b>Comments</b>
BE	Meets the requirements	Meets the requirements	Meets the requirements	Does not make a Declaration	BE has transposed Article 2
BG	Meets the requirements	Meets the requirements	Meets the requirements	Does not make a Declaration	BG has transposed Article 2
CZ	Meets the requirements	Meets the requirements	Meets the requirements	Does not make a Declaration	CZ has transposed Article 2
DK (2007)	Meets the requirements	Meets partly the requirements	Meets the requirements	Does not make a Declaration	DK has partly transposed Article 2
DE	Meets partly the requirements	Meets partly the requirements	Meets the requirements	Declaration expired 22 July 2010.	DE has partly transposed Article 2.
EE	Meets partly the requirements	Meets partly the requirements	Meets the requirements	Does not make a Declaration	EE has partly transposed Article 2

<b>MS</b>	<b>Article 2 (1) (a)</b>	<b>Article 2 (1) (b)</b>	<b>Article 2.2</b>	<b>Article 2.3</b>	<b>Comments</b>
IE	Meets the requirements	Meets the requirements	Meets the requirements	Does not make a declaration	IE has not fully transposed Article 2
EL	Meets the requirements	Meets partly the requirements	Insufficient information for assessment	Does not make a declaration	EL has partly transposed Article 2
ES	-	-	-	-	Insufficient information for assessment
FR	Meets the requirements	Meets the requirements	Meets the requirements	Does not make a Declaration	FR has transposed Article 2
IT	Meets partly the requirements	Meets partly the requirements	Insufficient information for assessment	Declaration expired 22 July 2010.	It has partly transposed Article 2
CY	Meets the requirements	Meets the requirements	No specific provision	Does not make a declaration	CY has not fully transposed Article 2
LV	Meets partly the requirements	Meets partly the requirements	Insufficient information for assessment	Does not make a declaration	LV has partly transposed Article 2
LT (2007)	Meets partly the requirements	Meets partly the requirements	Insufficient information for assessment	Does not make a Declaration	LT has partly transposed Article 2
LU	Meets partly the requirements	Meets partly the requirements	Insufficient information for assessment	Does not make a declaration	LU has partly transposed Article 2
HU	Meets partly the requirements	Meets partly the requirements	Meets the requirements	Does not make a declaration	HU has partly transposed Article 2
MT	Meets the requirements	Meets the requirements	Insufficient information for assessment	Does not make a declaration	MT has partly transposed Article 2

<b>MS</b>	<b>Article 2 (1) (a)</b>	<b>Article 2 (1) (b)</b>	<b>Article 2.2</b>	<b>Article 2.3</b>	<b>Comments</b>
NL	Meets partly the requirements	Meets partly the requirements	Meets the requirements	Does not make a declaration	NL has partly transposed Article 2
AT	Meets partly the requirements	Meets partly the requirements	Insufficient information for assessment	'in as far as art.2 is not transposed, the exception clause of paragraph 3 is used'  Declaration expired 22 July 2010.	AT has partly transposed Article 2
PL	Meets partly the requirements	Meets partly the requirements	Meets the requirements	Made a Declaration in 2007, reported in Article 296 (a)  Declaration expired 22 July 2010.	PL has partly transposed Article 2
PT	Meets the requirements	Meets the requirements	Meets the requirements	Does not make a Declaration	PT has transposed Article 2
RO	Meets partly the requirements	Meets partly the requirements	Meets the requirements	Does not make a Declaration	RO has partly transposed Article 2
SI	Meets the requirements	Meets the requirements	Amendments to the Criminal Code in preparation to include non-profit entities	Does not make a Declaration	SI has partly transposed Article 2
SK	Meets partly the requirements	Meets the requirements	Insufficient information for assessment	Does not make a Declaration	SK has partly transposed Article 2

MS	Article 2 (1) (a)	Article 2 (1) (b)	Article 2.2	Article 2.3	Comments
FI	Meets the requirements	Meets the requirements	Meets the requirements	Does not make a Declaration	FI has transposed Article 2
SE	Meets partly the requirements	Meets partly requirements	Insufficient information for assessment	Does not make a Declaration	SE has partly transposed Article 2
UK	Meets the requirements	Meets the requirements	Meets the requirements	Does not make a Declaration	UK has transposed Article 2

### 1.1.5. Analysis of Member States

The discussion below builds on the observations and assessment made in the 2007 implementation report. In case no further changes or additional explanations have been communicated to the Commission, the assessment of the 2007 report is assumed to hold.

#### **Belgium**

BE informed the Commission that Article 504bis of the Belgian Penal Code indicates active and passive corruption. BE did not supply the text of the legislation, and the Commission assumes that no further changes have been effected from the 2007 report. BE is therefore assumed to be compliant with the requirements of Art.2 of the FD.

#### **Article 2(1)**

Article 2(1)(a) of the FD, defining active corruption in the private sector, is included under Article 504bis § 2 of the Belgian Penal Code. Article 2(1)(b) of the FD, defining passive corruption in the private sector, is included in the Belgian Penal Code under Article 504bis §1 er. The Article contains the relevant provisions of the FD, as discussed in the 2007 assessment.

Belgian legislation, it should be noted, specifies "breach of that person's duties" must occur without the knowledge or authorisation of the offender's superiors, which seems to be narrower than the scope of the Framework Decision. BE was considered as compliant with the FD in this respect in 2007 however, the Commission would welcome further comment on this particular provision.

*BE meets the requirements of Art. 2(1) of the FD.*

#### **Article 2(2)**

BE indicated Article 504bis of the Belgian Penal Code as the relevant provision applying to both profit and non-profit entities without supplying the text. No explicit mention is made of

profit/non-profit entities, but rather the text refers generally to legal persons. Provisions on legal persons and those related to ASBLs allow to conclude that BE meets this requirement.

*BE meets the requirements of Art.2(2) of the FD.*

## **Bulgaria**

Bulgaria informed the Commission that the relevant legislation is Article 225(c) of the Bulgarian Penal Code. This legislation indicates that Bulgaria has fully transposed Article 2 of the FD, as discussed below.

### **Article 2(1)(a) – active corruption**

Article 225c(2) defines active corruption, whereas paragraphs (3) and (4) respectively establish that the benefit may be for third persons and that the act may occur through intermediaries.

"Promising, offering or giving" is covered by "offers, promises or gives."

"Directly or through an intermediary" is not explicitly noted, albeit 225c(4) notes that "whoever mediates in the perpetration of one of the acts under the preceding paragraphs ... shall be punished."

"A person who in any capacity directs or works" is covered by "a person who works."

"For a private-sector entity" is covered by "a legal person or sole trader."

"An undue advantage of any kind" is covered by "a gift or an undue advantage of any kind."

"For that person or for a third party" is covered by 225c(3) "shall also be imposed when, with the consent ... the gift or advantage is offered, promised or given to another person."

"Perform or refrain from performing any act, in breach of that person's duties" is covered by "performing or refraining from performing any act in breach of their duties."

*BG meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2(1)(b) – passive corruption**

Article 225c(1) defines passive corruption, whereas paragraphs (3) and (4) respectively establish that the benefit may be for third persons and that the act may occur through intermediaries.

"Directly or through an intermediary" is not explicitly noted, albeit 225c(4) notes that "whoever mediates in the perpetration of one of the acts under the preceding paragraphs ... shall be punished."

"Requesting or receiving or accepting the promise of" is covered by "requests or accepts ... or accepts an offer or promise of."

"An undue advantage of any kind" is covered by "a gift or an undue advantage of any kind."

"For oneself or for a third party" is covered by 225c(3) "shall also be imposed when, with the consent ... the gift or advantage is offered, promised or given to another person."

"While in any capacity directing or working" is covered by "while working for."

"For a private-sector entity" is covered by "a legal person or sole trader."

"Perform or refrain from performing any act, in breach of that person's duties" is covered by "perform or refrain from performing any act, in breach of that person's duties."

*BG meets the requirements of Art. 2(1)(b) of the FD.*

### **Article 2(2)**

Bulgarian legislation does not make reference to profit or non-profit organization, only to legal person and sole trader in a general way, but it is the Commission understanding that the legal person concept covers also non profit entities, such as associations or foundations. Further clarification of this matter would ne welcome by the Commission.

*BG appears to meet the requirements of Art. 2(2) of the FD.*

### **Czech Republic**

CZ informed the Commission that the following legislation transposes Art 2(1) of the FD: Section 331, 333, 334 (1)(3) Act 40/2009 Criminal Code; section 160, 161 and section 162, 162a Act 140/1961 Crime Act, section 332 Act 40/2009 Criminal Code. As discussed below, these legal provisions indicate that CZ has fully transposed Article 2 of the FD.

#### **Article 2(1)(a) – active corruption**

"Promising, offering or giving" is covered by "provides, offers or promises" (Section 161(1) Crime Act; Section 332, Criminal Code).

"Directly or through an intermediary" appears to be covered by the wording "a bribe to or for another" (Section 332(1) Criminal Code).

"A person who in any capacity directs or works" is covered by "attending to matters of general interest" (Section 161(1) Crime Act; Section 332, Criminal Code) which, as CZ points out, also encompasses "the maintenance of an obligation, imposed by law or assumed contractually, intended to ensure that, in business relations, there is no damage to or unjust favouritism of participants in these relations or of persons acting on their behalf" (Section 162a, Crime Act; Section 334, Criminal Code).

"For a private-sector entity" is also covered through "attending to matters of general interest," which include business relations (see above).

"An undue advantage of any kind" is covered by the definition of "bribe" (Section 161(1) Crime Act; Section 332, Criminal Code), which is defined as "an undue advantage consisting of direct material enrichment or other advantage ... to which he is not entitled" (Section 162a, Crime Act; Section 334, Criminal Code).

"For that person or for a third party" is covered in the definition of "bribe" – "to be received by the bribed person or, with that person's consent, another person" (Section 162a, Crime Act; Section 334, Criminal Code).

"Perform or refrain from performing any act, in breach of that person's duties" is addressed in a generic manner, relating to "attending to matters of general interest" (see above). It appears that the general obligations in business relations cover the performance/non-performance of acts and the element of breach of duty.

*CZ meets the requirements of Art. 2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

"Directly or through an intermediary" is covered by "himself or through another" (Section 331, Criminal Code).

"Requesting or receiving or accepting the promise of" is covered by "accepts or secures the promise of ... [or] seeks" (Section 160(1)-(2), Crime Act; Section 331, Criminal Code).

"An undue advantage of any kind" is covered by the definition of "bribe" (see discussion on active corruption").

"For oneself or for a third party" is covered through "for himself or for another" (Section 331(1), Criminal Code).

"While in any capacity directing or working" is covered by "attending to matters of general interest" (see discussion on active corruption).

"For a private-sector entity" is also covered through "attending to matters of general interest," which include business relations (see above).

"Perform or refrain from performing any act, in breach of that person's duties" is addressed in a generic manner, relating to "attending to matters of general interest" (see discussion on active corruption).

In addition to the elements required by the FD, Czech legislation also explicitly specifies differential punishments for actions committed "with the intention of causing significant damage or other particularly serious consequence to another" (Act 140/1961, Section 161(2)).

*CZ meets the requirements of Art. 2(1)(b) of the FD.*

## **Article 2(2)**

The relevant legislation is section 334 of the Criminal Code which states "(3) Attending to matters of general interest shall also encompass the maintenance of an obligation, imposed by law or assumed contractually, intended to ensure that, in business relations, there is no damage to or unjust favouritism of participants in these relations or of persons acting on their behalf." Czech authorities informed that "in terms of meeting the constituent elements, it is irrelevant whether the entity is a for-profit or not-for-profit entity."

*CZ meets the requirements of Art. 2(2) of the FD.*

## **Germany**

The relevant provision in German legislation relating to Article 2 of the FD is Article 299 of the *Strafgesetzbuch* (Criminal Code, StGB). While the provision itself remains unchanged since the previous assessment, DE provided comments on a number of clarifications requested by the Commission. Also worth noting is the fact that DE's declaration under Article 2(3), limiting the scope of application of Article 2(1) only to such conduct which involves, or could involve, a distortion of competition in relation to the purchase of goods or commercial services has expired, in line with the provision of the art 2(3). The discussion below addresses the pertinent elements.

### **Article 2(1)(a) – active corruption**

In the 2007 assessment, COM noted that German legislation did not address the requirement "directly or indirectly." DE clarified that while intermediaries are not expressly referred to, established case law points to the fact that such conduct is nonetheless covered.

DE also explained that the reference to "employee" and "agent" encompass employees, managers and board members and thus meets the FD reference to "who in any capacity works or directs."

"An undue advantage of any kind," DE explains, is understood as the component element of "advantage" (*Vorteil*). The same term is used in public sector corruption and Introductory Law of the Criminal Code of 1974 specifies that this term includes both material and immaterial advantages.

The German provision "giving unfair preference to him or another person in relation to the purchase of goods or commercial services" is linked to the declaration under Art.2(3) of the FD. However, given that the declaration can no longer be considered valid, it should be noted that this definition is narrower than the FD requirement "perform or refrain from performing

any act, in breach of that person's duties." Independently of this declaration, the Federal Government has put before the German *Bundestag* a Bill (*Entwurf eines ... Strafrechtsänderungsgesetzes vom 4. Oktober 2007* [Bill for a ... Law to amend the criminal law of 4 October 2007], Parliamentary Record 16/6658), which provides for an amendment of the constituent element of the offence in § 299 StGB which is consistent with Article 2(1) of the Framework Decision. It is proposed that in future the acceptance and grant of advantages in return for breaches of duty against the undertaking are also to constitute criminal offences (see § 299(1)(2) and (2)(2) StGB in the version of the Government Bill, 'principals model').

*DE partly meets the requirements of Art. 2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

"Through an intermediary" requirement is met in consideration with case law (see discussion on active corruption).

"An undue advantage of any kind" is met in consideration of the explanation offered by DE (see discussion on active corruption).

"While in any capacity directing or working" is met in consideration of the explanation offered by DE (see discussion on active corruption).

Given the expiry of DE's declaration and pending the entry into force of new legislation (see discussion on active corruption), "perform or refrain from performing any act, in breach of that person's duties" is only partly met.

*DE partly meets the requirements of Art. 2(1)(b) of the FD.*

#### **Article 2(2)**

The relevant legislation cited by the German authorities applies only to "the purchase of goods or commercial services" and "in the course of business." As such, it does not appear to apply to non-profit entities. However, DE explains that the term "geschäftlicher Betrieb" (business enterprise) in section 299 German CC not only covers entities which have the intention of making profits but also entities that do not pursue this intention, including social, charitable, cultural, clerical and all other non-profit entities (DE refers to the decision of the Federal Court (BGH) of 9 October 1990, para. 67, concerning "clerical entities"). This view is also reflected in commentary literature to section 299. Taking into account the explanation,

*DE meets the requirements of Art.2(2) of the FD.*

#### **Estonia**

While EE did not submit the cited articles of legislation, an explanation as to how relevant articles transpose the FD was provided to the Commission, addressing some of the concerns noted in the 2007 assessment. Where additional information was provided by EE, it is discussed below. In other respects the observations made in the 2007 report hold. These observations indicate that EE has partially transposed Art.2 of the FD.

#### **Article 2(1)(a) – active corruption**

EE provided an elaboration of "an official," to whom private sector corruption pertains, explaining that "'an official' is also a person who directs a legal person in private law or acts on behalf of such a person or acts on behalf of another natural person" (§288(2), Penal Code). This provision appears to meet the requirements of "who in any capacity works or directs." The above elaboration also indicates that EE meets the requirement "in the private sector."

While no definition of "bribe" or "gratuity" were provided, making it impossible to assess whether EE meets the requirement of "an undue advantage of any kind," EE did, however, inform the Commission that revised definitions of "bribe" and "gratuity" make explicit reference to third party advantage, indicating that EE now meets the requirements of "for that person or for a third party."

The following requirements were not fully met in the previous assessment, nor were any further explanations offered: "offering," "through an intermediary," "perform or refrain from performing any act, in breach of that person's duties."

*EE partly meets the requirements of Art. 2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

As discussed with reference to active corruption, EE informs that the new reference to "bribe" and "gratuity" makes explicit reference "for a third party."

As discussed with reference to active corruption, EE appears to meet "who in any capacity works or directs."

"Lawful acts ... a lawful omission ... an unlawful act ... an unlawful omission" meet the requirement "perform or refrain from performing any act, in breach of that person's duties."

The following requirements were not fully met in the previous assessment, nor was any further explanation offered: "through an intermediary," requesting," "an undue advantage."

Notably, for passive corruption, Estonian legislation makes a distinction in the penalties for an advantage (gratuity) which comprises a lawful act or omission on the one hand, or an advantage (a bribe) which comprises unlawful act or omission on the other, with the latter carrying a higher penalty than the former.

*EE partly meets the requirements of Art. 2(1)(b) of the FD.*

#### **Article 2(2)**

Estonian authorities informed about the relevant legislation is § 288(2) Penal Code, which makes no distinction between profit and non-profit private law legal persons.

*EE meets the requirements of Art.2(2) of the FD.*

#### **Ireland**

IE informed the Commission that Article 2(1) is transposed in Irish legislation by means of the Prevention of Corruption Act 1906 and its 2001 Amendment Act. In the meantime, the Prevention of Corruption (amendment) Act 2010 addressing the outstanding issue (gift/consideration/advantage) was adopted,

#### **Article 2(1)(a) – active corruption**

In the 2007 report, the wording "any gift or consideration" was considered as not fully compliant with "an undue advantage of any kind." The 2010 Act has changed the wording to "gift, consideration or advantage" which meets the requirement.

*IE meets the requirements of Art.2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

As noted in the 2007 assessment.

*IE meets the requirements of Art.2(1)(b) of the FD.*

### **Article 2(2)**

As noted in the 2007 assessment,

*IE meets the requirements of Art.2(2) of the FD.*

### **Greece**

EL informed the Commission that the relevant legislation is Article 5 of Law 3560, *Ratification and application of the Criminal Law Convention on Corruption and the Additional Protocol thereto* and provided a translation of this legislation. This legislation indicates that EL has partially transposed Art.2 of the FD – the element of third party advantage is missing in the definition of passive corruption, and it is unclear whether the provisions apply to non-profit entities.

### **Article 2(1)(a) – active corruption**

"Promising, offering or giving" is met by "promises, offers or gives"

"Directly or through an intermediary" is met by "directly or indirectly"

"A person who in any capacity directs or works" is met by "any person who, in any capacity, directs or works"

"For a private-sector entity" is met by "for a private sector entity"

"An undue advantage of any kind" is met by "an undue advantage or exchange of any kind"

"For that person or for a third party" is met by "for that person or a third party"

"Perform or refrain from performing any act, in breach of that person's duties" is met by

"Perform or refrain from performing any act, in breach of that person's duties"

*EL meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2(1)(b) – passive corruption**

"Directly or through an intermediary" is met by "directly or indirectly"

"Requesting or receiving or accepting the promise of" is met by "requests or receives ... any undue advantage or the promise of such an advantage"

"An undue advantage of any kind" is met by "an undue advantage"

"For oneself or for a third party" is not addressed

"While in any capacity directing or working" is met by "any person who directs or works"

"For a private-sector entity" is met by "for private sector entities"

"Perform or refrain from performing any act, in breach of that person's duties" is met by "perform or refrain from performing any act in breach of his/her duties"

*EL partly meets the requirements of Art.2(1)(b) of the FD.*

### **Article 2(2)**

No mention of Article 2(2) of the FD is made in Greece's communication to the Commission, nor is there any mention of non-profit entities.

*There is insufficient information to assess whether EL meets the requirements of Art.2(2) of the FD.*

## **France**

FR provided the Commission with the relevant Articles of French legislation – Article 445-1 and 445-2 of the criminal code. In addition to the observations made in the 2007 assessment, the inclusion of third party advantage for this report entail that France has fully transposed Art.2 of the FD.

### **Article 2(1)(a) – active corruption**

"For that person or for a third party" is met by "pour elle-même ou pour autrui"

*FR meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2(1)(b) – passive corruption**

"For that person or for a third party" is met by "pour elle-même ou pour autrui"

*FR meets the requirements of Art.2(1)(b) of the FD.*

### **Article 2(2)**

As noted in the 2007 assessment, the scope of application of the French legislation is sufficiently broad to encompass both profit and non-profit entities.

*FR meets the requirements of Art.2(2) of the FD.*

## **Italy**

IT supplied the Commission with Article 2635 of the Civil Code, which stipulates criminal sanctions for private section corruption. As noted in the 2007 assessment, a number of elements of FD articles are not fully transposed in Italian legislation. Furthermore, again as noted previously, the overall context for these provisions is a situation in which private sector corruption has caused harm to the company and, accordingly, only the person sustaining a loss can initiate a claim.

### **Article 2(1)(a) – active corruption**

As noted in the 2007 report, the elements "offering," "through an intermediary," "works" and "for a third party" are not provided for in Italian legislation.

*IT partly meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2(1)(b) – passive corruption**

As noted in the 2007 report, the elements "through an intermediary," "for a third party" and "working" are not provided for in Italian legislation.

Furthermore, it should be noted that "as the consequence of the giving or promising of a benefit" does not appear sufficient to cover the element of "requesting" in the FD.

*IT partly meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2(2)**

As noted in the 2007 assessment, no express mention of profit or non-profit entities is made in the Italian legislation forwarded to the Commission.

*There is insufficient information to assess whether IT meets the requirements of Art.2(2) of the FD.*

### **Cyprus**

Section 4 of Law 23(III)/2000 criminalizes both active and passive bribery in the private sector and explicitly refers to Articles 7 and 8 of the Council of Europe Criminal Law Convention on Corruption, providing that the acts and conduct, which are referred to therein constitute criminal offences. Thus, all the elements of these offences, as these elements are provided by the Convention, are adopted and embodied in Cyprus legal system and in particular in Law 23(III)/2000.

According to Section 2 of Cap. 161, the offence of passive and active corruption, without any distinction between the private and the public sector is also criminalized.

### **Article 2(1)(a) – active corruption**

CY explicitly refers to the art. 7 of the Council of Europe Convention Criminal Law Convention on Corruption.

*CY meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2(1)(b) – passive corruption**

CY explicitly refers to the art. 8 of the Council of Europe Criminal Law Convention on Corruption.

*CY the requirements of Art.2(1)(a) of the FD.*

### **Article 2(2)**

According to the information provided by CY there is no distinction between private sector entities (profit or non profit) and therefore CY legislation applies to business activities within profit and non-profit entities.

*CY meets the requirements of Art.2 (2) of the FD.*

### **Latvia**

The Latvian authorities provided the Commission with the relevant extracts of the Criminal Law pertaining to the FD, noting that Chapter XIX on Criminal Offences in the National Economy transposes Art. 2 of the FD. LV informed the Commission that, since the previous assessment, the Criminal Law has been amended more than ten times. Accordingly, the constituent elements of Art.2 of the FD are discussed again below. This assessment indicates, as noted in 2007, that Art.2 remains only partly transposed in Latvian legislation.

#### **Article 2(1)(a) – active corruption**

The provisions on active corruption are contained in Section 199 of the Latvian Criminal Law.

"Promising, offering or giving" is partially addressed by "offers or gives ... if the offer is accepted." This phrasing omits "promising" and appears to establish a limitation on the offence (that the offer or promise is accepted) not foreseen in the FD. Whether or not such instances would be considered an attempted criminal offence under Section 15 of the Criminal Law remains unclear.

"Directly or through an intermediary" is met by "personally or through intermediaries."

"A person who in any capacity directs or works" is partially addressed through "a responsible employee ... or a person authorised." As was noted in the 2007 assessment, such a definition does not include all employees, and thus does not fully address "works."

"For a private-sector entity" is met by "an undertaking (company) or organisation"

"An undue advantage of any kind" is met by "material value, property or benefits of another nature"

"For that person or for a third party" is met by "irrespective of whether the material value, property or benefits of another nature is intended for this or any other person"

"Perform or refrain from performing any act, in breach of that person's duties" is met by "using his or her authority in bad faith, performs or fails to perform some act in the interests of the giver of the benefit or he or she who proposed it".

*LV partly meets the requirements of Art.2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

"Directly or through an intermediary" is met by "him or herself or through an intermediary"

"Requesting or receiving or accepting the promise of" is not fully met, as the provision reads "requests and receives," suggesting that an unfulfilled request or acceptance of a promise are not included in the offence definition

"An undue advantage of any kind" is met through "property of material value or benefits of another nature"

"For oneself or for a third party" is met through "irrespective of whether the material value, property or benefits of another nature received is intended for this or any other person"

"While in any capacity directing or working" is met through "an employee ... or another person ... authorised." Unlike the case in active corruption, there is no requirement that the person working is a responsible employee.

"For a private-sector entity" is met by "an undertaking (company) or organisation"

"Perform or refrain from performing any act, in breach of that person's duties" is met by "for performing or failing to perform an act, in the interests of the giver of the benefit, using his or her authority in bad faith"

*LV partly meets the requirements of Art.2(1)(b) of the FD.*

#### **Article 2(2)**

No express mention of profit or non-profit entities is made in the Latvian legislation. However, the reference to an "undertaking (company) or organisation" could be broad enough to also encompass non-profit entities.

*There is insufficient information to assess whether LT meets the requirements of Art.2(2) of the FD.*

#### **Luxembourg**

LU made reference to the law of 23 May 2005, communicated to the Commission for the previous evaluation and of a draft law establishing criminal liability of legal persons and amending the Criminal Code being examined by the Conseil d'Etat since 2007. Since then, the law was adopted (law of 3 March 2010 on criminal liability of legal persons).

#### **Article 2(1)(a) – active corruption**

In the 2007 report, LU was considered as not fully addressing the elements of "giving," "works" or "private sector." Further analysis allows concluding that these elements are covered respectively by the art. 301-1 of the Criminal Code "proposer (...) *une offre, une promesse ou un avantage de toute nature... and "une personne qui a la qualité d'administrateur ou de gérant d'une personne morale, de mandataire ou de préposé d'une personne morale ou physique"*.

LU limits the scope of the art. 2 to situations where the employer is not aware and does not approve the criminal behaviour. It is not foreseen by the FD.

*LU partly meets the requirements of Art.2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

In the 2007 report, LU was not considered as properly addressing the elements "works" and "private sector". Further analysis (see above) allows concluding that these provisions are covered. However, additional clarifications and comments from LU in this respect would be welcomed.

In addition, LU limits the scope of the art. 2 to situations where the employer is not aware and does not approve the criminal behaviour. It is not foreseen by the FD.

*LU partly meets the requirements of Art.2(1)(b) of the FD.*

## **Article 2(2)**

No express mention of profit or non-profit entities is made. The concept of legal entity and of a non profit organization allow to suppose that non profit entities are covered, but the Commission invites Luxembourg to provide more clarifications in this respect.

*At this stage, there is insufficient information to assess whether LU meets the requirements of Art.2(2) of the FD.*

## **Hungary**

HU informed the Commission that Art.2(1) of the FD is transposed by the means of articles 251, 252 and 254 of the criminal code. HU also provided the Commission with further explanations with reference to the 2007 assessment, which are addressed below. In view of these explanations, HU has partly transposed Art.2 of the FD.

### **Art.2(1)(a) – active corruption**

"Promising, offering or giving" is partly met by "granting or promising." This wording does not appear to make offering an undue advantage an offence in and of itself.

"Directly or through an intermediary" - the Commission understands that this provision could be fully covered in connection with the provision on complicity in the Criminal Code. However, clarification would be welcomed as to how these provisions transpose the FD.

It should also be noted that the offence definition is not limited to the private sector, but extends to "budgetary authority, business or social organisation." The private sector corruption does not generally require the existence of a business relation, in addition, private sector corruption is not only linked to bribery but also covers trading in influence (section 256, paragraph 3 and 4), at least as regards the passive side of this offence. As such, HU goes beyond the minimum requirements of the FD.

HU noted that its reference to "breach his/her obligations" is wider than the FD "perform or refrain from performing any act, in breach of that person's duties," but that it also includes the FD requirement. This element is thus covered by HU legislation.

*HU partly meets the requirements of Art.2(1)(a) of the FD.*

### **Art.2(1)(b) – passive corruption**

"Directly or through an intermediary" (see the discussion above).

In 2007, "for oneself or for a third party" was considered as not addressed in the provisions submitted by HU. It appears to be transposed by "entering into an agreement....". However, further clarification as to that interpretation is needed.

"Perform or refrain from performing any act, in breach of that person's duties" is met through "breaching his/her obligations"

*HU partly meets the requirements of Art.2(1)(b) the FD.*

### **Art.2(2)**

There is no specific provision for non-profit activities, but the relevant article mentions "budget authority, business or social organization". The Hungarian authorities informed that the term "social organization" transposes exactly the definition of non-profit organizations.

*HU meets the requirements of Art.2(2) of the FD.*

### **Malta**

The concordance table provided by MT includes Articles 121(3) and 121D of the Criminal Code, which extend the crime of corruption to the private sector. Furthermore, these articles only relate to passive corruption. Art.120 (1) defines this offence, but was not mentioned by the Maltese authorities as relevant. The Commission has considered the provisions of legislation not expressly mentioned by MT, but would require further clarification on the matter.

#### **Article 2(1)(a) – active corruption**

"Promising, offering or giving" is addressed in "any reward or promise or offer" of Art.115 of the Criminal Code, given its application through articles 120 (1) (relating Art.115 to the private sector) and 121(3) (relating Art.115 to active corruption).

"Directly or through an intermediary" is covered by "directly or through an intermediary" mentioned in Art.121(3), Criminal Code – given the fact that the scope of Art.120(1) on active corruption extends to articles 115-118 "in accordance with any provision under this Code or under any other law."

"A person who in any capacity directs or works" is covered by "directing or working in any capacity" of Art.121(3), if this applies to active corruption (see discussion on the scope of Art.120(1) above).

"For a private-sector entity" appears to be covered by "in the private sector" of Art.121(3), if this applies to active corruption (see discussion on the scope of Art.120(1) above).

"An undue advantage of any kind" appears to be covered by "any reward in money or other valuable consideration or of any other advantage" of Art.115 of the Criminal Code, given its application through articles 120(1) (relating it to active corruption) and 121(3) (relating it to the private sector).

"For that person or for a third party" appears to be covered by "for himself or for any other person" of Art.115 of the Criminal Code, in light of Art.120(1) (relating it to active corruption) and 121(3) (relating it to the private sector).

"Perform or refrain from performing any act, in breach of that person's duties" appear to be covered by "to do what he is in duty bound to do" (Art.115(a), Criminal Code), "to forbear

from doing what he is in duty bound to do" (Art.115(b), Criminal Code) and "in breach of his duties" (Art.121(3), Criminal Code) when interpreted in conjunction with Art.120(1), Criminal Code.

*MT meets the requirements of Art.2 (1)(a), FD*

#### **Article 2(1)(b) – passive corruption**

"Directly or through an intermediary" is met by "directly or through an intermediary" (Art.121(3), Criminal Code).

"Requesting or receiving or accepting the promise of" is covered by "requests, receives, or accepts" (Art.115, Criminal Code).

"An undue advantage of any kind" is covered by "any reward in money or other valuable consideration or of any other advantage" (Art.115, Criminal Code).

"For oneself or for a third party" is covered by "for himself or for any other person" (Art.115, Criminal Code).

"While in any capacity directing or working" is covered by "when directing or working in any capacity" (Art.121(3), Criminal Code).

"For a private-sector entity" is covered by "in the private sector" (Art.121(3), Criminal Code).

"Perform or refrain from performing any act, in breach of that person's duties" is covered by "to do what he is in duty bound to do" (Art.115(a), Criminal Code), "to forbear from doing what he is in duty bound to do" (Art.115(b), Criminal Code) and "in breach of his duties" (Art.121(3), Criminal Code)

*MT meets the requirements of Art.2(1)(a) of the FD.*

#### **Article 2(2)**

Maltese legislation does not mention non-profit activities; the legislation applies generically to "a natural or legal person operating in the private sector"

*There is insufficient information to assess whether MT meets the requirements of Art.2(2) of the FD.*

#### **Netherlands**

NL supplied the Commission with the relevant articles of national legislation (Article 328ter, Criminal Code, subsequently amended), as well as a commentary on the 2007 assessment, making reference to established case law. These provisions are discussed below.

#### **Article 2(1)(a) – active corruption**

In the 2007 assessment, the Commission noted that Dutch legislation did not cover the element of "offering" in active corruption. NL informs the Commission that, a submitted

amendment proposal includes this provision in the Criminal Code. This new provision includes "offering". The Commission notes that in the meantime the law has been adopted, therefore this requirement is met.

In the 2007, the Commission observed a lack of provisions for "through an intermediary." NL explained that, as established by case law, this is indeed the meaning of the legislation. NL thus meets the requirement of this provision.

The Commission enquired, in the previous assessment, whether the "gift" and "promise" in Dutch legislation cover "undue advantage of any kind." NL explained that this is the interpretation in case law, and NL is thus deemed to meet this requirement.

Similarly, NL explains that, while the law makes no explicit reference to third party advantage, established case law indicates that this is the case. NL meets the requirement of third party advantage.

However, the Commission's final remark, that Dutch law introduces a specific limitation – that the offence not be declared to the employer or principal – which is not foreseen in the FD has not been addressed. Hence NL is considered to partly meet the requirements of Art.2(1)(a).

*NL partly meets the requirements of Art.2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

As discussed above with reference to active corruption, NL clarified that the role of intermediaries, the inclusion of "undue advantage of any kind" and the possibility of third party advantage are contained in Dutch case law and thus meet these requirements of the FD.

"Requesting" is covered by the amended provisions contained in the art. 328ter.

As noted with regard to the definition of active corruption, the requirement that the advantage be concealed from the employer or principal is narrower than the provisions of the FD and does thus not meet fully its requirements.

*NL partly meets the requirements of Art.2(1)(b) of the FD.*

#### **Article 2(2)**

As noted in the 2007 assessment,

*NL meets the requirements of Art.2(2) of the FD.*

#### **Austria**

AT informed the Commission that articles 168c, d and e; 153 and 153a; and 304 to 308 of the Criminal Code as well as Article 10 of the Law on Unfair Competition transpose Article 2 of the FD. As noted in the 2007 assessment, articles 304 to 308 of the Criminal Code appear to relate to public sector corruption only and thus were not assessed. In view of the legislation provided, AT appears to have partly transposed Art.2 of the FD.

### **Article 2(1)(a) – active corruption**

The provisions relating to the elements "through an intermediary" and "directs" in active corruption do not appear to have changed since the 2007 assessment, leading to the conclusion that they have not been fully transposed.

It should also be noted that AT issued a declaration under Art.2(3), limiting the scope of application of Art.2(1). The declaration is not valid anymore; therefore the scope of the application of this article should be widened.

*AT partly meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2(1)(b) – passive corruption**

Similarly to what was noted in the 2007 assessment and discussed above with reference to active corruption, Austrian legislation only partly meets the elements "intermediary," "undue advantage of any kind" and "perform or refrain from performing any act, in breach of that person's duties."

"Requesting or receiving or accepting the promise of" is met by "requests, receives or accepts the promise of."

The provision "a servant or agent" does not appear to address the full scope of "directs." However, it appears that this element is included in Art.3(4) of the Law on the liability of associations, which notes that "[A]n association's liability for an act and the possibility of punishing decision-makers or employees on account of the same act shall not be mutually exclusive."

"For oneself or for a third party" is covered by "for himself or a third party" (Art.169c).

*AT partly meets the requirements of Art.2(1)(b) of the FD.*

### **Article 2(2)**

Art. 168c and 168d refer to corruption in the scope of business activities. It is unclear whether the offence definition extends to business activities within non-profit entities also.

*There is insufficient information to assess whether AT meets the requirements of Art.2(2) of the FD.*

### **Poland**

Poland provided the Commission with Article 296a (1) of the Criminal code, which defines passive corruption. However, the Commission understands that active corruption is likewise an offence under Article 296a(2), the Article 115 covers the element of third party advantage and art 18(1) and (3) and 19(1) cover the liability of the intermediary.

### **Article 2(1)(a) – active corruption**

"Promising, offering or giving" – in 2007 assessment the element "offering" was considered not covered by "gives a material or personal benefit or a promise thereof" (Art.296a(2),

Criminal Code). However Polish authorities explained that this article is interpreted as covering offers as well. In the light of this explanation, this provision is considered to be met.

"Directly or through an intermediary" did not appear to be covered in 2007. PL explains that although art 296a does not cover the liability of the intermediary, this liability is provided for in the general part of the Criminal Code. Depending on the form of intermediary activity and the extent of his involvement in the offence, the intermediary may be liable for aiding and abetting or as an accomplice. Therefore the art 296a is to be read in conjunction with articles 18(1) and (3) and 19 (1) of the Criminal Code. In light of the above the provision is considered to be met.

"A person who in any capacity directs or works" is covered by "Persons who perform a leading function ... or who are employed by or working under a fee-for-task agreement or service contract" (Art.296a (1), Criminal Code).

"Perform or refrain from performing any act, in breach of that person's duties" was considered in 2007 as partly covered by "behaviour which may cause material losses to that organisation, an act of unfair competition or inadmissible preferential action." PL explains that the concept of behaviour contained in the art 296a covers both action and omission (including refraining from action) which lead to a situation in which the economic entity is exposed to material loss. This explanation allows to conclude that the "refraining" is addressed in PL legislation. However, while PL made a declaration under Art.2(3), such a declaration is no longer valid, and Polish legislation thus does not cover the more comprehensive scope of "any act, in breach of that person's duties."

*PL partly meets the requirements of Art.2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

"Requesting or receiving or accepting the promise of" is covered by "requests, receives such benefits or accepts the promise thereof"

"While in any capacity directing or working" is covered by "Persons who perform a leading function ... or who are employed by or working under a fee-for-task agreement or service contract."

"Perform or refrain from performing any act, in breach of that person's duties" is partly covered (see the discussion above on active corruption).

*PL partly meets the requirements of Art.2(1)(b) of the FD.*

#### **Article 2(2)**

Art. 296a of the Criminal Code relates to "organisation[s] engaging in economic activity." In 2007 the Commission was not in a position to assess the conformity of this provision with the FD, due to lack of additional information. PL explains that the Act on the freedom of economic activity provides that any entity conducting gainful activity OR organized professional activity is an undertaking. The undertaking does not have to make profit, and therefore the art 296a applies equally to non-profit entities as far as they engage in economic activity. Further analysis of PL legal framework allows to conclude that the requirement of the art 2 (2) is met.

*PL meets the requirements of Art.2(2) of the FD.*

## **Portugal**

PT states that it has transposed this Article by means of Articles 4, 8 and 9 of Law No 20/2008 of 21 April and Articles 4, 5, 26 and 27 of the Criminal Code. Bearing in mind the assessment made in 2007 the Commission offers the following additional comments:

### **Article 2.1 (a) active corruption**

Article 9 of Law No 20/2008 criminalises active corruption in the private sector.

- "offers or promises" omits the aspect of "giving". However, following explanations provided by PT, the Commission understands that the words *prometer* and *dar* that are contained in the original text cover promising, offering or giving.

*PT meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2.1 (b) passive corruption**

Article 8 of Law No 20/2008 criminalises passive corruption in the private sector. It covers all the elements of the offence, similarly to the provisions of the art 41-B of the Decree-Law No. 28/84 assessed in 2007 (repealed by currently assessed text).

*PT meets the requirements of Art.2(1)(b) of the FD.*

## **Article 2.2**

In 2007, in the context of Article 1 of the Framework Decision, PT informed the Commission that Portuguese law did not contain a separate definition of "legal person", but that legal person was defined by a number of Articles, including Article 157, Civil Code which provides for associations which do not have for their object the profit of the partners, social foundations and similar bodies.

In addition, the art 2e of the Law No 20/2008 states that private sector entity shall be understood as a private law legal person, a civil company and a de facto association.

*PT meets the requirements of Art 2.2 of the FD.*

## **Article 2.3**

PT does not make a declaration

## **Romania**

The provisions RO provided in its transposition table refer to corruption of "civil servants" – a wide definition, encompassing, according to Art. 147 of the Criminal Code, both public officials and "any other employee fulfilling a duty in the interest of a legal entity." Articles 254, 255 and 258 of the Romanian Criminal Code relate to Art.2(1) of the FD. Given the

absence of mention of third party advantage in the Romanian legislation, the Commission considers that

*RO only partly meets the requirements of Art.2 of the FD.*

#### **Article 2(1)(a) – active corruption**

"Promising, offering or giving" is covered by "Promising, offering or giving" (Art.255).

"Directly or through an intermediary" is covered by "directly or indirectly" (Art.254).

"A person who in any capacity directs or works" is covered by the definition of civil servant as "any other employee fulfilling a duty in the interest of a legal entity" (Art.147).

"For a private-sector entity" is incorporated in the wide scope of "legal entity," to which these provisions apply.

"An undue advantage of any kind" is covered by "money or other gains which are undue to that person" (Art.254).

"For that person or for a third party" appears to be only partly covered, as no reference to third party advantage is made.

"Perform or refrain from performing any act, in breach of that person's duties" is covered by "to commit, not to commit or delay the commitment of an act with regard to its duties or in order to commit an act contrary to such duties." (Art.254).

*RO partly meets the requirements of Art.2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

"Directly or through an intermediary" is covered by "directly or indirectly" (Art.254).

"Requesting or receiving or accepting the promise of" is covered by "claims or receives ... or accepts the promise... or does not reject" (Art.254).

"An undue advantage of any kind" is covered by "money or other gains which are undue to that person" (Art.254).

"For oneself or for a third party" appears to be only partly covered, as no reference to third party advantage is made.

"While in any capacity directing or working" is covered by the definition of civil servant as "any other employee fulfilling a duty in the interest of a legal entity" (Art.147).

"For a private-sector entity" is incorporated in the wide scope of "legal entity," to which these provisions apply.

*RO partly meets the requirements of Art.2(1)(b) of the FD.*

#### **Article 2(2)**

RO explained that the provisions for private sector corruption, referring to any civil servants, encompasses all legal entities and thus makes no difference between profit and non-profit entities. The legislation applies to both.

*RO meets the requirements of Art.2(2) of the FD.*

### **Article 2.3**

RO does not make a declaration

### **Slovenia**

SI informed the Commission that since 2007 its legislation had undergone amendments in November 2008, and forwarded the relevant provisions – Articles 241 and 242 – of the new Criminal Code (KZ-1) with explanatory comments. Given the ambiguity over whether Slovenian legislation addresses the full scope of "perform or refrain from performing any act, in breach of that person's duties," the Commission considers that SI partly meets the requirements of Art.2 of the FD.

### **Article 2(1)(a) – active corruption**

"Promising, offering or giving" is covered by "promises, offers or gives."

"Directly or through an intermediary" is covered. Although no direct reference to intermediary is contained in the provisions SI cited as relevant to Art.2(1), Art. 20(1) of the Criminal Code states that "A perpetrator of a criminal offence is whoever commits a criminal offence personally or by using and directing another (indirect perpetrator)."

"A person who in any capacity directs or works" is subsumed under the broad concept of "a person performing an economic activity."

"For a private-sector entity" is covered under "economic activity."

"An undue advantage of any kind" appears to be covered by "an unlawful award, gift or other benefit."

"For that person or for a third party" is covered by "for his benefit or the benefit of another."

"Perform or refrain from performing any act, in breach of that person's duties": there is no specific mention whether the offence could be committed also by omission. However, the notions of "concluding or maintaining a transaction or other unlawful benefit by neglecting the interests of the organisation or causing it damage" seem broad enough to cover not only "performing" but also "refraining from act". According to SI explanations, Article 17 of the SI Criminal Code is relevant in this respect. According to this article the criminal offence may be committed not only by voluntary act, but also by omission. This general provision also refers to Articles 241 and 242 on which the offences Unauthorised Acceptance of Gifts and Unauthorised Giving of Gifts could be committed also by omission. Breach of duty is not expressly mentioned, however SI explains that it is defined as an element of the offence in the art 241 and 242 (neglecting the interests of the organization, favor in exchange of a transaction or service, giving/obtaining advantages or conclude a transaction).

*SI meets the requirements of Art.2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

"Directly or through an intermediary" is covered. Although no direct reference to intermediary is contained in the provisions SI cited as relevant to Art.2(1), Art. 20(1) of the Criminal Code states that "A perpetrator of a criminal offence is whoever commits a criminal offence personally or by using and directing another (indirect perpetrator)."

"Requesting or receiving or accepting the promise of" is covered by "requests or accepts an [advantage] or a promise or an offer of such a benefit."

"An undue advantage of any kind" appears to be covered by "an unlawful award, gift or other benefit."

"For oneself or for a third party" is covered by "for himself or another."

"While in any capacity directing or working" is covered by "a person performing an economic activity."

"For a private-sector entity" is likewise subsumed under "economic activity."

"Perform or refrain from performing any act, in breach of that person's duties" - see discussion above.

*SI meets the requirements of Art.2(1)(b) of the FD.*

#### **Article 2(2)**

SI explained that, on the basis of the Companies Act, companies may pursue profit and, partially, also non-profit activities. It is however not clear to which extent this provision covers a situation of a non profit organization engaging in a business activity. The SI is invited to provide more clarification on this issue.

*There is insufficient information to assess whether SI meets the requirements of Art.2(2) of the FD.*

#### **Slovak Republic**

SK forwarded the amended provisions of its Criminal Code as they relate to the FD. These provisions appear to cover the majority of the requirements of the FD, albeit some ambiguities persist. Overall, the provisions supplied relate to breaches in connection with "employment, job, status or function." While these appear to cover private sector entities, both profit and non-profit, further clarification could serve to affirm this observation. Given the lack of reference to "offering," and pending clarification on the application of the offence definition to non-profit entities, SK partly meets the requirements of Art.2 of the FD.

#### **Article 2(1)(a) – active corruption**

"Promising, offering or giving" is partly covered by "gives ... or promises to give" in Section 332(1). While Sections 333(1), 334(1) and 335(1) include the element of offering, these relate

to general interest procurement, foreign public office holders and employees of international organizations and thus fall outside the scope of this FD.

"Directly or through an intermediary" is covered by "directly or through an intermediary" (Section 332(1)).

"A person who in any capacity directs or works" appears to be covered by "to another person ... in breach of his duties arising in connection with his employment, job, status or function" (Section 332(1)).

"For a private-sector entity" appears to be covered by the provision cited above.

"An undue advantage of any kind" is covered by the definition of a bribe according to Section 131(3): "an item or other consideration of a pecuniary or non-pecuniary nature, to which there is no legal entitlement."

"For that person or for a third party" appears to be covered by "gives a bribe ... to another person ... or give a bribe ... to another person to that end" (Section 332(1)).

"Perform or refrain from performing any act, in breach of that person's duties" is covered by "to act or refrain from action in breach of the duties arising in connection with his employment, job, status or function" (Section 332(1)).

*SK partly meets the requirements of Art.2(1)(a) of the FD.*

#### **Article 2(1)(b) – passive corruption**

"Directly or through an intermediary" is covered by "directly or through an intermediary" (Section 328(1)).

"Requesting or receiving or accepting the promise of" is covered by "accepts or requests a bribe or requests the promise thereof" (Section 328(1)).

"An undue advantage of any kind" is covered by the definition of a bribe according to Section 131(3): "an item or other consideration of a pecuniary or non-pecuniary nature, to which there is no legal entitlement."

"For oneself or for a third party" is covered by "for himself or for a third person" (Section 328(1)).

"While in any capacity directing or working" appears to be covered by "in connection with his employment, job, status or function" (Section 328(1)).

"For a private-sector entity" appears to be covered by the provision cited above.

"Perform or refrain from performing any act, in breach of that person's duties" is covered by "to act or refrain from action in breach of the duties arising in connection with his employment, job, status or function" (Section 328(1)).

*SK meets the requirements of Art.2(1)(a) of the FD.*

## **Article 2(2)**

No specific mention of for profit and non profit entities was made. It seems that the vague wording of duties in relation to "employment, job, status or function" would also cover these, but clarification on the matter is needed.

*There is insufficient information to assess whether SK meets the requirements of Art.2(2) of the FD.*

## **Finland**

Though not indicating legislative changes since the previous assessment, FI provided a more detailed explanation of its transposition of the FD. While the explanations offered by FI would have benefited from more detailed references regarding their bases, FI appears to have transposed the provisions of Art.2 of the FD.

### **Article 2(1)(a) – active corruption**

As noted in the 2007 assessment, FI meets the FD requirements "promising, offering or giving," "a person who in any capacity directs or works," "private sector entity," "for that person or for a third party" and "perform or refrain from performing any act, in breach of that person's duties."

As regards the requirement "directly or through an intermediary," in the 2007 report COM noted that it was unclear whether Finnish legislation criminalized the bribe giver as well as intermediary. FI explained that the legislation should be interpreted so that the intermediary is an accessory to the crime (if intent is present) and the person providing the bribe as the bribe giver although this is not explicit in the provisions cited. FI thus appears to meet this requirement of the FD.

With reference to the definition in Finnish law "an undue advantage (bribe)," FI informs that a bribe can be a material or immaterial advantage. FI thus appears to meet the requirement "an undue advantage of any kind."

*FI meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2(1)(b) – passive corruption**

FI was found, in the 2007 assessment, to meet the FD requirements "for oneself or for a third party," "while in any capacity directing or working," "private sector entity" and "perform or refrain from performing any act, in breach of that person's duties."

As discussed above with reference to active corruption, FI explained that accepting undue advantages is criminalized both when the bribe is given directly and when it is given through an intermediary, though this is not explicitly specified in the provisions cited. FI thus appears to meet the requirement "directly or through an intermediary."

Finnish legislation criminalizes requesting a bribe, taking an initiative towards receiving a bribe, or receiving or accepting a bribe. FI is thus deemed to meet the requirement "requesting or receiving ... or accepting the promise of."

As discussed above with reference to active corruption, FI explained that a bribe can be either material or immaterial advantage and that the definition "undue advantage (bribe)" in active corruption (Section 7, Chapter 30, Criminal Code) and "bribe" in passive corruption (Section 8, Chapter 30, Criminal Code) are identical. FI thus appears to meet the requirement "an undue advantage of any kind."

*FI meets the requirements of Art.2(1)(b) of the FD.*

### **Article 2(2)**

FI informed that the word "business" covers both for profit and non-profit activities, without providing further details.

*FI appears to meet the requirements of Art.2(2) of the FD.*

### **Sweden**

SE informed the Commission that, although the relevant legislation has undergone certain amendments since the last assessment, no measures had been taken to implement the FD other than those set out in Sweden's notification in 2005. SE attached certain provisions in their current wording, albeit not those pertaining to Art.2. As such, the observations of the 2007 on Swedish transposition of Art.2 of the FD remain valid.

*SE partly meets the requirements of Art.2(1) of the FD.*

No further clarification on the definition of a "legal person" was offered.

*There is insufficient information to assess whether SE meets the requirements of Art.2(2) of the FD.*

### **United Kingdom**

The UK Prevention of Corruption Acts (1889-1916), which have been cited to the Commission in previous communications, have recently been repealed by the 2010 Bribery Act. Although UK did not notify these changes to the Commission, the analysis below pertains to the new Bribery Act 2010.

#### **Article 2(1)(a) – active corruption**

"Promising, offering or giving" is met by "offers, promises or gives" (Article 1(2)(a) and Article 1(3)(a)).

"Directly or through an intermediary" is covered by "it does not matter whether the advantage is offered, promised or given ... directly or through a third party" (Article 1(5)).

"A person who in any capacity directs or works" is covered by the offence definition covering "any activity connected with a business," "any activity performed in the course of a person's employment" and "any activity performed by or on behalf of a body of persons (whether corporate or unincorporated)" (Article 3(2)(b)-(d)).

"For a private-sector entity" is covered by the provisions cited above relating to working and directing.

"An undue advantage of any kind" is covered by "a financial or other advantage" (Article 1(2)(a) and 1(3)(a)).

"For that person or for a third party" is covered by "it does not matter whether the person to whom the advantage is offered, promised or given is the same as the person who is to perform, or has performed, the function or activity concerned" (Article 1(4)).

"Perform or refrain from performing any act, in breach of that person's duties" is covered by "perform improperly a relevant function or activity" (Article 1(2)-(3)). "Improperly" is defined in Article 4, which refers to an activity performed or not performed in breach of relevant expectations.

*UK meets the requirements of Art.2(1)(a) of the FD.*

### **Article 2(1)(b) – passive corruption**

"Directly or through an intermediary" is covered by "it does not matter ... whether R requests, agrees to receive or accepts ... the advantage directly or through a third party" (Article 2(6)(a)).

"Requesting or receiving or accepting the promise of" is covered by "requests, agrees to receive or accepts" (Article 2).

"An undue advantage of any kind" is covered by "a financial or other advantage" (Article 2).

"For oneself or for a third party" is covered by "it does not matter ... whether the advantage is (or is to be) for the benefit of R or another person" (Article 2(6)(b)).

"While in any capacity directing or working" is covered by the offence definition covering "any activity connected with a business," "any activity performed in the course of a person's employment" and "any activity performed by or on behalf of a body of persons (whether corporate or unincorporate)" (Article 3(2)(b)-(d)).

" For a private-sector entity" is covered by the provisions cited above relating to working and directing.

"Perform or refrain from performing any act, in breach of that person's duties" is covered by "perform improperly a relevant function or activity" (Article 2). "Improperly" is defined in Article 4, which refers to an activity performed or not performed in breach of relevant expectations.

*UK meets the requirements of Art.2(1)(b) of the FD.*

### **Article 2(2)**

The wide range of functions to which the Bribery Act pertains, enumerated in Article 3(2) - "any activity connected with a business," "any activity performed in the course of a person's employment" and "any activity performed by or on behalf of a body of persons (whether corporate or unincorporated)" – is sufficiently broad to cover both profit and non-profit sectors.

*UK meets the requirements of Art.2(2) of the FD.*

## 1.2. Article 3 – Instigation, aiding and abetting

### 1.2.1. General comments

This Article focuses on secondary participation in corruption through instigation, aiding and abetting. It does not address attempted offences.

### 1.2.2. Summary table of the transposing legislation adopted by Member States

<b>MS</b>	<b>Legislation</b>	<b>Measures which appeared relevant to Commission's analysis (where different to MS' citations)</b>
<b>BE</b>	Art. 66 – 69 Criminal Code	
<b>BG</b>	Art. 20-21 penal code	
<b>CZ</b>	140/1961 Crime Act Section 24 of act 40/2009, Criminal Code	
<b>DK (2007)</b>	No reply	Sections 23 and 299(2), Criminal Code (2007 report)
<b>DE</b>	Sections 26, 27 Criminal Code	
<b>EE</b>	Art. 22, 24 and 60 Criminal Code	
<b>IE</b>	Section 1(1) to 1(3) of the 1906 Act (inserted by section 2 of the Act of 2001), in conjunction with section 7(1) of the Criminal Law Act 1997 and section 22 of the Petty Sessions (Ireland) Act 1851. Section 7(1) of the Criminal Law Act 1997.  Section 22 of the petty Sessions (Ireland) Act 1851 ( the same provision as section 7(1) in respect of minor offences)	
<b>EL</b>	Art. 45,46,47,48,49 Criminal Code	
<b>ES</b>	No reply	
<b>FR</b>	Articles 121-6, 121-7, Criminal Code	
<b>IT</b>	Section 110, 115 and 378, Criminal Code	
<b>CY</b>	Law 23 (III)/2000	
<b>LV</b>	Chapter I and Chapter II of the General	

	part "Criminal Offences"	
<b>LT (2007)</b>	No reply	Articles 22-26, Criminal Code (2007 report)
<b>LU</b>	No specific provisions	Articles 66,67 Criminal Code
<b>HU</b>	Art. 19, 21 act IV of 1978 on the Criminal Code	
<b>MT</b>	Art. 41, 42 cap. 9 Criminal Code	
<b>NL</b>	No specific provisions	Sections 47,48, 48a Criminal Code
<b>AT</b>	No specific provisions	Section 12,15, code of Criminal Procedure as indicated in the previous report
<b>PL</b>	Art. 13, 18 Criminal Code	
<b>PT</b>	Articles 26, 27 Criminal Code	
<b>RO</b>	Articles 25, 26 Criminal Code	
<b>SI</b>	Article 37, 38,39, 40 General part of the Criminal Code  Articles 241 242 Criminal Code	
<b>SK</b>	Section 14, 19, 20, 21, 337 criminal code	
<b>FI</b>	Criminal code, chapter 5, section 5 and 6	
<b>SE</b>	Chapter 23, chapter 4, Criminal Code	
<b>UK</b>	A: with respect to England, Wales and Northern Ireland: section 8 accessories and abettors act 1861.  B: with respect to Scotland: criminal procedure act, 1995	

### 1.2.3. Summary account of the transposition

The overall level of transposition was already high in 2007, when 18 MS have transposed this Article. Currently all 26 MS (except ES which did not supply any information) are compliant with the provisions of Article 3. Those countries which did not provide any or provided scarce information, but found compliant in 2007 evaluation are still considered as fully compliant. The Commission assumed that no changes have occurred in their legislation.

### Summary table of transposition

<b>MS</b>	<b>Comments</b>
<b>BE</b>	BE meets the requirements
<b>BG</b>	BG meets the requirements.
<b>CZ</b>	CZ meets the requirements.
<b>DK</b>	DK did not submit a response, but was found to meet the requirements in the 2007 report.
<b>DE</b>	DE meets the requirements.
<b>EE</b>	EE meets the requirements.
<b>IE</b>	IE meets the requirements.
<b>EL</b>	EL meets the requirements
<b>ES</b>	-
<b>FR</b>	FR meets the requirements.
<b>IT</b>	IT meets the requirements.
<b>CY</b>	CY meets the requirements
<b>LV</b>	LV meets the requirements.
<b>LT</b>	LT did not submit a response, but was found to meet the requirements in the 2007 report.
<b>LU</b>	LU did not submit specific provisions, but was found to meet the requirements in the 2007 report.
<b>HU</b>	HU meets the requirements.
<b>MT</b>	MT meets the requirements.
<b>NL</b>	NL did not submit specific provisions, but was found to meet the requirements in the 2007 report.
<b>AT</b>	AT did not submit specific provisions, but was found to meet the requirements in the 2007 report.
<b>PL</b>	PL meets the requirements.
<b>PT</b>	PT meets the requirements

<b>RO</b>	RO meets the requirements.
<b>SI</b>	SI meets the requirements.
<b>SK</b>	SK meets the requirements.
<b>FI</b>	FI meets the requirements.
<b>SE</b>	SE meets the requirements.
<b>UK</b>	(1) England, Wales and Northern Ireland : appear to meet the requirements (legislation was not provided).  (2) Scotland appears to meet the requirements (as well the text of the legislation was not provided).

#### *1.2.4. Analysis of Member States*

##### **Belgium**

BE informed that the art 3 is transposed by the art 66 to 69 of the Penal Code. These articles criminalize participation in criminal acts, co-operation, aid, assistance, use of gifts/promises/threats, and abuse of authority or power.

*BE meets the requirements of Article 3*

##### **Bulgaria**

The art 20 and art 21 of the Criminal code clearly delineates the difference between perpetrator, instigator and accessory person and the penalties are allocated taking into consideration the nature and the degree of their participation to the deed.

*BG meets the requirements of Article 3*

##### **Czech Republic**

CZ stated that it had transposed this article by means of article 140/1061 Crime Act and section 24 of Act n. 40/2009 of the new Criminal Code (legislation effective as of 1 January 2010). Both Crime Act 40/1961 and Section 24 of Act 40/2009 relate to organizer, instigator and aider. An organizer is someone who devises or controls the committing of the offence; an instigator may involve someone encouraging someone else to decide to commit an offence. An aider is someone who allows or facilitates the offences, particularly by procuring funds, removing obstacles, luring the victim to the scene of the offence, acting as lookout during the offence, providing advice, hardening resolve, or promising to contribute after the offence.

A party's criminal liability may cease if the person voluntarily refrains from further abetting in a criminal offence. Where an offence involves more than one person, this shall not prevent the cessation of the criminal liability of a party who has thus acted.

*CZ meets the requirements of Article 3*

## **Denmark**

*In 2007 report DK was considered compliant with the Art. 3*

## **Germany**

DE did not provide the text of the legislation mentioned § 26 (*Anstiftung*, instigating) and 27 (*Beihilfe*, aiding and abetting) StGB. However, as the mentioned Articles are the same as those reported for the previous evaluation, and DE clearly pointed out all the modifications the national law has undergone in the meanwhile, the Commission considers that DE is compliant with the art. 3.

*DE meets the requirements of Article 3*

## **Estonia**

EE stated that it has transposed this Article by means of Sections 22, 24 and 60 for the Criminal Code entered into force 01.09.2002, which are the same as those reported for the previous evaluation.

EE informs that a clear distinction between abettors and aiders is made in the national legislation. An abettor is a person who intentionally induces another person to commit an intentional unlawful act; an aider is a person who intentionally provides physical, material or moral assistance to an intentional unlawful act of another person. The same provisions apply to the principal offender and to the accomplice.

*EE meets the requirements of the Article 3*

## **Ireland**

IE informed that the relevant legislation is Section 1(1) to 1(3) of the 1906 Act (inserted by section 2 of the Act of 2001), in conjunction with section 7(1) of the Criminal Law Act 1997 and section 22 of the Petty Sessions (Ireland) Act 1851. Section 7(1) of the Criminal Law Act 1997 provides that any person who aids, abets, counsels or procures the commission of an indictable offence is liable to be indicted, tried and punished in the same way as the principal offender. Section 22 of the petty Sessions (Ireland) Act 1851 makes the same provision as section 7(1) in respect of minor offences.

*IE meets the requirements of Article 3*

## **Greece**

EL stated that it has transposed Article 3 by means of Articles 45, 46, 47, 48 and 49 of the Criminal Code. Art. 45 covers accomplices, Art. 46 – instigators and primary accessories, Art 47 – Secondary accessories (aiding),

*EL meets the requirements of Article 3*

## **Spain**

Spain did not notify its transposition measures

*There is insufficient information to assess whether ES meets the requirements.*

### **France**

FR stated that it has transposed Article 3 by means of Articles 121-6, 121-7, Criminal Code. Article 121-6 applies to accomplices, who have the same liability as the main offender is punished in the same way as the perpetrator of the offence, in the meaning of the *article 121-7.*" Article 121-7 applies to aiders, abettors and instigators

*FR meets the requirements of Article 3*

### **Italy**

IT stated that it has transposed Article 3 by means of Art 110, 115 and 378, Criminal Code.

Section 110 provides that where several persons are jointly involved in the commission of an offence, each of them shall be liable to the penalty, unless otherwise provided. This appears to relate to aiding and abetting, a concept which can include being present at the scene of the crime. Section 115(1), Criminal Code, provides that agreeing to commit an offence, which is then not carried out, is not punishable; similarly for instigation of an offence which is not carried out (subsection 3). Section 378(1), criminal Code, applies to a particular serious crime, for which the law prescribes life imprisonment or imprisonment, everyone who helps a person elude investigation by the authorities or hides from them, is punishable by a term of imprisonment.

*IT meets the requirements of Article 3*

### **Cyprus**

CY explicitly refers to the art. 15 of the CoE Convention establishing participatory acts as a criminal offence. CY explains that it also covers instigation.

*CY meets the requirements of Article 3*

### **Latvia**

LV declared that it has transposed Article 3 by means of Chapter I and Chapter II of the General part "Criminal Offences".

Chapter I is very general in nature and does not appear directly relevant to article 3, FD. Section 15 (Chapter II: General Part "Criminal Offences") deals with completed and uncompleted criminal offences. Subsection 2 provides that preparation for a crime and an attempted crime are uncompleted criminal offences; subsection 3 addresses the meaning of "preparation for a crime" and subsection 4 that of "attempt," while subsection 5 provides that liability for these shall apply on the same basis as that of the provision relating to the specific offence.

Section 17-20 (Chapter II: General Part "Criminal Offences") deals with the perpetration and joint perpetration of an offence. In particular, section 20 addresses joint participation, organising or directing the commission of an offence, inducing another person to commit an offence and advising or providing practical or other form of assistance.

*LV meets the requirements of Article 3*

### **Lithuania (2007)**

In 2007 LT states it transposed the article by means of its legislation in art 22, 24 and 25 and 26 of the Criminal Code. They deal with attempt, complicity, including instigation, abetting/helping and with accomplices. Art 25 expands the notion of complicity to organized groups.

*In 2007 it was considered that LT met the requirements of the Article 3*

### **Luxembourg**

LU did not provide any specific provision for this particular article, however the internal legislation does not seem to have changed from the previous report, where LU was considered compliant with Article 3.

*LU meets the requirements of Article 3.*

### **Hungary**

HU stated that it has transposed Article 3 by means of Art. 19, 21 act IV of 1978 on the Criminal Code.

Art. 19 provides a clear definition of main offenders and co-perpetrators "Persons committing criminal acts are: the person committing the act and any accomplices (perpetrators), and any instigators and accessories (participants)." Art. 21 defines abettor and accessory "(1) An instigator is anyone who deliberately incites another person to commit a crime. (2) An accessory is anyone who deliberately provides assistance in committing a crime. The penalty specified to perpetrators shall also apply to participants".

*HU meets the requirements of Article 3.*

### **Malta**

MT stated that it has transposed Article 3 by means of Art. 41, 42 cap. 9 Criminal Code.

Art. 41 deals with attempted crimes, which are liable on conviction, with a possible decrease in case of voluntary determination of the offender not to complete the crime, if eventually the crime is not completed. An attempt to commit contravention is not liable for punishment.

Article 42 applies to complicity in crime, instigators, aiders and abettors are all deemed to be accomplice in crime.

*MT meets the requirements of Article 3*

### **The Netherlands**

NL did not provide any specific provision for this particular Article, however the internal legislation does not seem to have changed from the previous report.

*NL meets the requirements of Article 3*

## **Austria**

AT did not provide any specific provision for this particular Article. However, the internal legislation does not seem to have changed from the previous report.

*AT meets the requirements of Article 3, FD.*

## **Poland**

PL declared that it has transposed Article 3 by means of Art. 13, 18 Criminal Code.

The offence of instigating a crime is provided for by Article 18 (1), instigation by subsection 2 and aiding and abetting the commission of an offence by subsection 3.

*PL meets the requirements of Article 3*

## **Portugal**

PT stated that it has transposed Article 3 by means of Articles 26, 27 Criminal Code, without providing the text of the mentioned legislation. However, the Articles in question are the same as those mentioned in the previous evaluation.

*PT meets the requirements of Article 3, FD*

## **Romania**

RO stated that it has transposed Article 3 by means of Articles 25, 26 Criminal Code.

Art. 25 applies to the instigator where "the instigator is the person who willingly makes another person commit an act provided for the criminal law." Article 26 deals with the aider or abettor "the accessory is the person who willingly facilitates or helps by any means in the commitment of an act referred to by the criminal law. An accessory is also a person who promises, before or during the commitment of the act, that he/she would conceal the goods in connection with that act or that he/she would encourage the perpetrator even if after the act has been committed, the promise is not fulfilled."

*RO meets the requirements of Article 3*

## **Slovenia**

SI declared that it has transposed Article 3 by means of Articles 37, 38, 39, 40 General part of the Criminal Code and Articles 241, 242 Criminal Code.

SI informs the Commission that in the Republic of Slovenia, a prosecution is possible of an accomplice, instigator and aide of criminal offences in Articles 241 and 242 of the Criminal Code. Instigation, aiding and abetting are defined in the General Part of the Criminal Code as follows:

‘Perpetrator and accomplice

Article 20

(1) A perpetrator of a criminal offence is whoever commits a criminal offence personally or by using and directing another (indirect perpetrator).

(2) A perpetrator of a criminal offence is also whoever, together with another, commits a criminal offence by willfully participating in the offence or in some other way decisively participating in the offence (accomplice).’

‘Instigation

Article 37

(1) Whoever intentionally instigates another person to commit a criminal offence shall be punished as if he himself had committed it.

(2) Whoever intentionally instigates another person to commit a criminal offence for which a sentence of three years of imprisonment or more may be imposed, shall be punished for the criminal attempt, even when there was no attempt to commit a criminal offence.’

‘Aiding

Article 38

(1) Whoever intentionally supports another person in intentionally committing a criminal offence shall be punished as if he himself had committed it; he may also be punished leniently.(2) Aiding in committing a criminal offence shall be deemed to include: giving advice or instructions to the perpetrator on how to carry out the criminal offence; providing the perpetrator with instruments or removing obstacles for committing the criminal offence; giving a promise to conceal the criminal offence, the perpetrator, the instruments used for committing the criminal offence, the traces of the criminal offence, the objects resulting from the criminal offence or gains obtained by committing the criminal offence.’

‘Punishability of Instigators and Aides for Criminal Attempt

Article 39

If the perpetration of a criminal offence falls short of the intended consequence, the instigator or aids shall be punished for the criminal attempt.’

‘Limits of Punishability of Participants

Article 40

(1) A perpetrator, instigator and aide shall be punished for criminal offences within the limits of their intent.

(2) If the instigator or the aide voluntarily prevented the intended criminal offence from being accomplished, his sentence may be remitted.

(3) Personal relations, attributes and circumstances, on the basis of which the guilt or punishability are excluded by law or sentence is remitted, reduced or extended, may be taken into consideration only with respect to the participant by whom such relations, attributes and circumstances were determined.’

Concealment, as laid down in the Council Framework Decision, is defined in Article 38(2) of the KZ-1 as a form of aiding in committing a criminal offence. Article 217 of the Criminal Code also provides for a criminal offence of Concealment which includes a liability of a legal person.

‘Concealment

Article 217

(1) Whoever purchases, takes as a pledge or otherwise acquires, conceals or disposes either movable or immovable property which he knows to have been acquired by means of a criminal offence shall be sentenced to imprisonment for not more than two years. (2) Whoever commits the offence under the preceding Paragraph, and should and could have known that the property had been acquired by means of a criminal offence, shall be punished by a fine or sentenced to imprisonment for not more than one year.(3) If the offences referred to in Paragraphs 1 or 2 were committed by at least two persons who colluded with the intention of concealment, or if the property referred to in Paragraphs 1 or 2 is of high value, or the property is either of special cultural significance or a natural curiosity, the perpetrator shall be sentenced to imprisonment for not more than three years for the offence referred to in paragraph 1, and to imprisonment for not more than two years for the offence referred to in paragraph 2.(4) If the concealed property was acquired by means of a criminal offence for which the perpetrator is prosecuted by a private action or complaint, the prosecution of offences under paragraphs 1 and 2 shall be initiated upon the private action or complaint.(5) If the offence referred to in paragraphs 1, 2 or 3 was committed by a criminal association for committing such criminal offences, the perpetrator shall be sentenced to imprisonment for not more than five years.’

*SI meets the requirements of Article 3*

### **Slovakia**

SK stated that it has transposed Article 3 by means of Section 14, 19, 20, 21, 337 Criminal Code.

Section 14 deals with attempted offence, where an attempted criminal is liable as a perpetrator, with the exception of the voluntary refrain to commit the crime. Sections 19 and 20 deal with the perpetrator "whosoever commits a criminal offence on his own" and the accessory "if the criminal offence is committed through the joint action of two or more perpetrators, they shall each be liable as if they had committed the offence on their own."

Section 21 deals with aider and abettor. Section 337 as well as section 21 a) b) deal with instigation

*SK meets the requirements of Article 3*

### **Finland**

FI informed that it has transposed Article 3 by means of Section 5 and 6 Chapter 5, Criminal code, without however submitting the text of the mentioned legislation. The Articles reported are nonetheless the same as those referred to in the previous evaluation.

*FI meets the requirements of Article 3*

## Sweden

SE informed that the acts referred to in Article 3 – instigation, aiding and abetting the conduct referred to in Article 2 – are criminal acts in Sweden pursuant to the provisions of Chapter 23, Section 4 of the Penal Code.

*SE meets the requirements of Article 3*

## United Kingdom

UK informed the Commission that it has transposed Article 3 by means of:

A: in respect of England, Wales and Northern Ireland: section 8 accessories and abettors act 1861.

B: in respect of Scotland: criminal procedure act, 1995.

Article 3 on instigation, aiding and abetting is covered under section 8 of the Accessories and Abettors Act 1861 (which applies to England, Wales and Northern Ireland). It lays down that any person who aids, abets, counsels, or procures an indictable offence (and the offences under the 1906 Act are indictable) may be prosecuted and punished as a principal. ('Counsel' and 'procure' would cover instigation). In addition to the 1861 Act, an accessory will, in most cases, be able to be charged with the full offence as a secondary party. Incitement to commit any crime is also a separate common law offence in itself.

In Scotland, participating or instigating is covered under the Criminal Procedure (Scotland) Act 1995. Instigation to commit crimes is also a common law offence. Attempting is covered under the Criminal Attempts and Conspiracy Procedure (Scotland) Act 1995.

*UK meets the requirements of Article 3*

### **1.3. Article 4 – Penalties and other sanctions**

#### **1.3.1. General Comments**

This Article of the Framework Decision requires that private sector corruption offences be punishable by criminal penalties which are "effective, proportionate and dissuasive". It also requires MS to ensure that passive and active corruption in the private sector is punishable by a penalty of a maximum of at least one to three years of imprisonment. Article 4(3) sets out a requirement that MS, in accordance with their constitutional rules and principles, provide in certain circumstances for the temporary prohibition of natural persons from carrying on that particular or comparable business activity in a similar position or capacity.

#### **1.3.2. Summary table of the transposing legislation adopted by Member States**

<b>MS</b>	<b>Legislation</b>	<b>Measures which appeared relevant to Commission's analysis (where different to MS' citations)</b>
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<p><b>BE</b></p>	<p><b>Art. 504 ter Criminal Code</b></p> <p><b>Art. 2 Law 26/06/2000 in relation to the introduction of Euro in the legislation concerning the subject covered by art. 78 Constitution.</b></p> <p><b>Law 5 March 1952</b></p> <p><b>AR No. 22 of 24 October 1934, Art.1(f)</b></p> <p><b>Art. 19 of the Act of March 20, 1991 on employers' organization and art. 20 Law 15 June 2006 on public procurement and some works, supplies and services</b></p>	
<p><b>BG</b></p>	<p><b>Article 225c of the Bulgarian Penal Code</b></p> <p>Article 301, paragraph 4 PC in conjunction with Article 7(6) and (7) PC</p> <p>Art. 37. (1)</p> <p><b>Article 93 of the Penal Code</b></p>	
<p><b>CZ</b></p>	<p><b>Section 49, 73 of Act No 140/1961, the Crime Act</b></p>	
<p><b>DK (2007)</b></p>	<p><b>No reply</b></p>	<p><b>Sections 26, 27(2), 299(2), Criminal Code (2007 report)</b></p>
<p><b>DE</b></p>	<p><b>§299 §300 Criminal Code</b></p> <p><b>§70 Criminal Code</b></p>	
<p><b>EE</b></p>	<p><b>§§ 293(2), 294(2), 297(2), 298(2), Penal Code, entered into force 01.09.2002</b></p> <p><b>§§209-213, 217, 280, 281, 295-298 or Chapter 19 of the Penal Code.</b></p> <p><b>§§49-49, Penal Code, as amended on 22.12.2008</b></p>	
<p><b>IE</b></p>	<p><b>Section 1(4) of the 1906 Act, as inserted by section 2 of the Act of 2001, Section 7(1) of the Criminal Law Act 1997 and section 22 of the Petty Sessions (Ireland) Act 1851.</b></p> <p><b>Section 1 of the 1906 Act, Section 160 of the Companies Act 1990.</b></p>	

EL	Penal code art. 67, 61, 63 Art. 4 law 3560/2007	
ES	No reply	
FR	Art. 445-1, 445-2, 445-3 Penal Code	
IT	Art. 2635 Civil code Art. 35bis, 32bis, 378 Criminal Code	
CY	No specific provisions	
LV	Chapter XIX "Criminal offences of an economic Nature," Special Part Criminal Law	
LT (2007)	No reply	Sections 24, 26 225-227, Criminal Code (2007 report)
LU	No specific provision	In the 2007 evaluation, LU cited Art. 310 and 310-1, criminal code, in association with Articles 1, 14, 15, criminal Code and Article 69 Criminal Code.
HU	Art. 56, 57, 251, 252, 254 Act IV 1978	
MT	Art. 115, art. 121(3) Criminal Code	
NL	No specific provisions	In the 2007 evaluation, NL cited Section 47, 48, 48a, 328b 91) and (2), and 339(1) Criminal Code.
AT	§§168c,d and e, 153, §§153a and 304, 305, 306, 307, 308 Criminal Code §10 of the Law on Unfair Competition Law on Corporate Liability	
PL	Art. 296a, art. 41 Criminal Code	
PT	Art. 8 and 9 of the Law no 20/2008 of 21 April establishing the new criminal regime to combat corruption in the international trade and in the private sector	
RO	Art. 64, 65, 254 255 Criminal Code	
SI	Art. 71, 241, 242 Criminal code	

<b>SK</b>	<b>Art. 320, 338, 329, 330, 331, 332, 333, 334, 335, 336 section 61</b> <b>Sect 436 Act no 301/2005, code of Criminal Procedure as amended</b>	
<b>FI</b>	<b>Transposed article 4(1) and 4(2) by means of : Criminal code, chapter 30, section 7 and 8.</b> <b>Transposed Article 4(3) by means of Act on disqualification from business activities (1059/1985), section 2,3,4</b>	
<b>SE</b>	<b>Chapter 17, Section 7 and Chapter 20, Section 2 of the Penal Code</b> <b>Trading Prohibition Act (1986:436).</b>	
<b>UK</b>	<b>Company Directors Disqualification Act 1986</b>	

1.3.2.1.

*1.3.3. Summary account of the transposition*

Overall this Article is implemented by an important majority of ME. 22 MS (BE, BG, CZ, DE, DK, EE, EL, IE, FR, IT, CY, LU, LT, HU, NL, PL, PT, SI, SK, FI, SE, UK) have fully transposed this article into their domestic law.

22 MS meet the requirements of Article 4(1) FD. LV, MT, AT and RO did not provide sufficient information to assess whether sanctions provided cover also instigation, aiding and abetting (Art3). ES didn't reply. 26 MS transposed Art 4(2), ES was not evaluated. 22 MS have transposed Art 4(3), LV has transposed it partly, MT did not implement it and CY and AT did not provide enough information. ES did not provide any information.

It is to be noted that as regards Article 4(1), the Commission did not analyze whether the sanctions are effective, proportionate and dissuasive, as this analysis should rather be done together with an in-depth analysis of MSs legal systems.

1.3.3.1. Summary table of the transposition

<b>MS</b>	<b>Article 4(1) and (2)</b>	<b>Article 4(3)</b>	<b>Comments</b>
<b>BE</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>BE has transposed Article 4</b>
<b>BG</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>BG has transposed Article 4</b>
<b>CZ</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>CZ has transposed Article 4</b>

<b>MS</b>	<b>Article 4(1) and (2)</b>	<b>Article 4(3)</b>	<b>Comments</b>
<b>DK</b>	<b>Appeared to meet the requirements in 2007 evaluation</b>	<b>Appeared to meet requirements in 2007 evaluation</b>	<b>Appeared to have transposed Article 4 in 2007 evaluation</b>
<b>DE</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>DE has transposed Article 4</b>
<b>EE</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>EE has transposed Article 4</b>
<b>IE</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>IE has transposed Article 4</b>
<b>EL</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>EL has transposed Article 4</b>
<b>ES</b>	<b>-</b>	<b>-</b>	<b>There is no information to available to assess whether ES has transposed Article 4</b>
<b>FR</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>FR has transposed Article 4</b>
<b>IT</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>IT has transposed Article 4</b>
<b>CY</b>	<b>Meets the requirements</b>	<b>There is insufficient information to assess whether CY meets the requirements</b>	<b>CY has partly transposed Article 4</b>
<b>LV</b>	<b>Insufficient information as to the Art 3</b>	<b>Partly meets the requirements</b>	<b>LV has partially transposed Article 4</b>
<b>LT</b>	<b>Meets the requirements in 2007 evaluation</b>	<b>Met requirements in 2007 evaluation</b>	<b>LT had transposed Article 4 in 2007 evaluation</b>
<b>LU</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>LU has transposed Article 4</b>
<b>HU</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>HU has fully transposed Article 4</b>

<b>MS</b>	<b>Article 4(1) and (2)</b>	<b>Article 4(3)</b>	<b>Comments</b>
<b>MT</b>	<b>There is insufficient information to assess whether MT meets the requirements of art. 4(1) as regards the Art 3</b>	<b>Does not meet the requirements</b>	<b>MT has transposed Article 4 (1) as regards to Art 2</b>
<b>NL</b>	<b>Meets the requirements (2007)</b>	<b>Meets the requirements (2007)</b>	<b>NL has transposed article 4</b>
<b>AT</b>	<b>Insufficient information to assess whether AT meets the requirements as to the Art 3</b>	<b>Insufficient information</b>	<b>AT has transposed the Article 4(1) as regards Art 2</b>
<b>PL</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>PL has transposed Article 4</b>
<b>PT</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>PT has transposed Article 4</b>
<b>RO</b>	<b>Insufficient information to assess whether RO meets the requirements as to the Art 3</b>	<b>Meets the requirements</b>	<b>RO has partly transposed Article 4</b>
<b>SI</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>SI has transposed Article 4</b>
<b>SK</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>SK has transposed Article 4</b>
<b>FI</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>FI has transposed Article 4</b>
<b>SE</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>SE has transposed Article 4</b>
<b>UK</b>	<b>Meets the requirements</b>	<b>Meets the requirements</b>	<b>UK has transposed Article 4</b>

#### *1.3.4. Article 4(2) Analysis of Member States*

##### **Belgium**

BE has provided additional explanations on penalties.

The Article 50ter Criminal Code stipulates: § 1 on a private corruption case, the penalty is imprisonment for six months to two years and a fine of 100 francs to 10,000 francs, or both. § 2. If the request referred to in Article 504bis, § 1, is followed by a proposal referred to in Article 504bis, § 2, and the same if the proposal referred to in Article 504bis, § 2 is accepted, the penalty shall be imprisonment of six months to three years and a fine of 100 francs to 50,000 francs, or both. With the Law 26 June 2000 art. 2 in relation to the introduction of Euro, is clarified that fine expressed in franc currency shall be multiplied by 5.5 to be compliant with the Euro.

*BE meets the requirements of Article 4(1) and (2)*

##### **Bulgaria**

Bulgaria referred the Commission to Article 225c and Article 301 Criminal Code. Active and passive corruption are punished by means of imprisonment of up to five years (passive) or a fine up to twenty thousand BGN and up to three years or a fine of up to fifteen thousand BGN. Mediators and Accomplices are punished by the penalty stipulated for the given offence, taking into consideration the nature and the degree of their participation. Moreover, the object of the crime shall be confiscated by the state, and if it is missing or alienated, its equivalent shall be adjudicated.

*BG meets the requirements of Article 4(1) and (2)*

##### **Czech Republic**

The offences of passive corruption under section 160 and 331 of the Crime Act are punished with imprisonment up to 3 years or a fine. CZ informed that in addition to imprisonment, it is also possible to impose a fine, even though is not directly mentioned in the constituent elements of the offence of bribery if the offender, through an intentional offence, obtains or tries to obtain economic benefit.

In addition to these penalties, it is also possible to order the forfeiture of an item or other assets pursuant to section 55 of the Crime Act, whereby the forfeiture of an item or other economic asset (a bribe) intended, used or acquired through criminal activity is possible.

The offences of active corruption under section 161 and 332 of the Crime Act are punished with imprisonment of up to 2 years or a fine. The penalties foreseen are higher (imprisonment of one to six years, forfeiture of property or a fine) if the offence is committed with the intention of obtaining significant benefit or with the intention of causing significant damage.

With regard to instigation, aiding and abetting, section 333 of the Crime Act provide for penalty of imprisonment of up to two years

*CZ meets the requirements of Article 4(1) and (2)*

##### **Germany**

The criminal offences of passive and active corruption in the course of business under §299 StGB is subject to a term of imprisonment of a maximum of up to three years. In particularly serious cases of passive and active corruption in the course of business, provision is made under §300StGB for a term of imprisonment of a maximum of up to five years.

With regard to offences under Article 3, German authorities mentioned the provisions of sections 26 and 27 of the Criminal Code, which provide that the same punishment would correspond to that for the perpetrator.

*DE meets the requirements of Article 4(1) and (2)*

### **Estonia**

Granting or promising a gratuity is punishable by a pecuniary punishment or up to 3 years' imprisonment, as foreseen by § § 297 and 298 of the Penal Code. Giving or promising a bribe is punishable by 1 to 5 years' imprisonment.

Passive corruption is punished by means of § § 293 and 294 up to 3 years' imprisonment in case of lawful acts or omissions and up to 5 years' imprisonment for unlawful acts or omissions.

Under aggravating circumstances the sanctions are higher, e.g. accepting of gratuity at least twice; by demanding gratuities; by a group, or on a large-scale basis, is punishable by up to 5 years' imprisonment. Accepting bribe at least twice; by demanding bribe; by a group, or on a large-scale basis, is punishable by 2 to 10 years' imprisonment.

Granting of gratuity, if committed at least twice, is punishable by up to 5 years' imprisonment. Giving bribe, if committed at least twice, is punishable by 2 to 10 years' imprisonment.

With regard to instigation, aiding and abetting, section 22(4), Criminal Code provides that unless section 24 is applicable, a punishment shall be imposed on an accomplice pursuant to the same provision of law which prescribes the liability of the principal offender. Section 24 Criminal Code deals with "special personal characteristics" that is/in other words certain circumstances which are a necessary part of an offence. Section 24(2) Criminal Code provides that if an accomplice lacks such characteristics then section 60, Criminal Code, which deals with mitigation of penalties, may apply.

*EE meets the requirements of Article 4(1) and (2)*

### **Ireland**

With respect to Article 2 offences, section 1(4) of the 1906 Act, as inserted by section 2 of the Act of 2001, provides for a fine or imprisonment for a term not exceeding 10 years, or both, where an offence of active or passive corruption has been committed.

Section 7(1) of the Criminal Law Act 1997 and section 22 of the Petty Sessions (Ireland) Act 1851, satisfy the requirements with respect to Article 3 offences, providing that any person who aids, abets, counsels or procures the commission of an indictable offence is liable to be indicted, tried and punished in the same way as the principal offender.

*IE meets the requirements of Article 4(1) and (2)*

## **Greece**

EL refers to Art. 5 L.3560/2007. However, this article does not include details of the penalties which may be imposed on those who commit active or passive corruption but further refers to Articles 235, 236 and 238 of the Penal Code. With regard to instigation, aiding and abetting, EL made reference to Articles 45, 46, 47, 48, 49 of the Penal Code. These provisions cover the requirement of Art 4(2).

*EL meets the requirements of Article 4(1) and (2)*

## **France**

The same penalties are provided for both active and passive corruption (article 445-1 and 445-2), namely imprisonment for 5 years and a fine of 75,000 euro.

With regard to penalties concerning instigation, aiding and abetting, article 121-6 states that complicity in these acts is punished as the principal violation.

*FR meets the requirements of Article 4(1) and (2)*

## **Italy**

For the offences of active corruption, section 2635(2) of the Civil Code provides for a penalty of imprisonment up to 3 years.

For the offence of passive corruption (section 2635(1) of the Civil Code) the maximum penalty of imprisonment is 3 years.

The penalty provided for the offences of instigating, aiding and abetting is the same as the penalty for the main offence (imprisonment of up to 3 years).

*IT meets the requirements of Article 4(1) and (2)*

## **Cyprus**

According to Section 4 of Law 23 (III)/2000 (Ratification law), the acts referred to in a number of Articles of the Council of Europe Criminal Law Convention on Corruption, including active and passive bribery in the private sector, as well as participatory acts such as aiding and abetting (art. 7, 8, 15) constitute offences which are liable to seven years seven years imprisonment or a fine of up to 17.000 Euro, or to both sentences, without prejudice to the trial Court to impose any other sentence or to issue any order which it may impose in the adjudication of criminal cases.

In addition, the Section 3 of the Prevention of Corruption Act applies to private and public corruption as well. It establishes it as a criminal offence and provides for imprisonment of up to two years or a fine not exceeding 2.550 Euro or both.

Further comments on penalties applicable to instigation would be welcome.

*CY meets the requirements of Article 4(1) and (2)*

## **Latvia**

Section 196 of the Criminal Code states that the penalty foreseen in respect of use or abuse of one's authority in bad faith, is imprisonment for a period not exceeding 3 years or confiscation of property or community service or a fine not exceeding 40 times the minimum monthly wage. If the same offence is committed for the purpose of obtaining property, certain elements of the applicable penalty are higher, namely imprisonment for a period not exceeding 5 years, or confiscation of property or community service or a fine not exceeding 120 times the minimum monthly wage.

Section 199 foresees the penalty (for offering or giving an advantage, if the offer is accepted) of imprisonment for a term not exceeding 3 years or custodial arrest, or community service or a fine not exceeding 50 times the minimum monthly wage. Where the offence is repeated or on a larger scale, the penalty is imprisonment for a period not exceeding 5 years, or community service, or a fine not exceeding 100 times the minimum monthly wage.

With regard to instigation, aiding and abetting, offences under section 15, Chapter II, Criminal Code, dealing with preparation of an offence, are penalized on the same basis as that of the main offence. However, section 20, Chapter II, Criminal Code, dealing with instigators and accessories, focuses on questions of liability rather than on the penalties.

*LV meets the requirements of Article 4(2), but there's insufficient information to assess whether LV meets the requirements of Article 4(1) with regard to Article 3*

### **Luxembourg**

The art 310 of the Penal Code (passive corruption) foresees a penalty of one month to five years and a fine of 251 to 30.000 Euro. In the article 310-1 (active corruption) the same level of penalties is provided for.

With regard to instigation, aiding and abetting LU did not provide additional clarifications, but was found compliant with the art 4 (1) with regard to art. 3

*LU meets the requirements of Article 4(1) and (2)*

### **Hungary**

The penalty foreseen for an offence of active corruption is imprisonment for a period up to 2 years, where the bribed is an employee or member of a budgetary agency, economic organisation or non-governmental organisation, or to another person on his/her account. The penalty is higher - up to 3 years, if the bribed is an employee or member who is authorized to act in the name and on behalf of a budgetary agency, economic organisation or non-governmental organisation, or to another person on his/her account.

The penalty for an offence of passive corruption:

- imprisonment for a period up to 2years, where the person seeking the bribe is an employee or member of a budgetary agency, economic organisation or non-governmental organisation (section 251(1) Criminal Code); if guilty of a felony the period is 1 to 5 years or, if guilty of a pattern of criminal profiteering, criminal conspiracy or involve a matter of greater importance, between 2 to 8 years.

With regard to penalties concerning instigation, aiding and abetting art. 21(3) of the Criminal Code states that the penalties specified to perpetrators shall also apply to participants.

*HU meets the requirements of Article 4(1) and (2)*

### **Malta**

Article 115, Criminal Code provides the penalties as follows:

- where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do, the punishment shall be imprisonment for a term from six months to three years;

- where the object be to induce the officer or servant to forbear from doing what he is in duty bound to do, the punishment shall, for the mere acceptance of the reward, promise or offer, be imprisonment for a term from nine months to five years;

-where besides accepting the rewards, promise or offer, the officer or servant actually fails to do what he is in duty bound to do, the punishment shall be imprisonment for a term from one year to eight years.

Art. 121D provides the possibility of fine.

With regard to offences of instigation, aiding and abetting under Articles 41 and 42 of the Criminal Code, focuses on questions of liability rather than on the penalties.

*MT meets the requirements of Article 4(2) but there is insufficient information to assess whether MT meets the requirements of Article 4(1), FD with regard to Article 3.*

### **The Netherlands**

No specific provisions were submitted regarding this Article by NL, but it should be noted that NL met the requirements at the time of the first evaluation in 2007.

*NL meets the requirements of Article 4(1) and (2)*

### **Austria**

The penalties are as follows: up to 3 years of imprisonment for active corruption, if the advantage exceeds 5.000 Euro and up to 2 years for passive.

AT did not provide any further information regarding penalties for offences defined in the Article 3, therefore it is impossible to assess whether the relevant legislation is compliant with the Framework Decision.

*AT meets the requirements of Article 4(2) FD but there is insufficient information to assess whether AT meets the requirements of Article 4(1) FD with regard to Article 3.*

### **Poland**

The same level of penalty is foreseen for offences of either active or passive corruption with respect to an offence causing material losses or in less serious cases.

The penalty for causing material losses to one's organisation is imprisonment for a term of between 3 months and 5 years.

Article 19 of the Criminal Code provides that the penalties for instigating, aiding and abetting are those which apply within the limits of the penalties provided for the offences, but may in exceptional cases be lighter for persons convicted of aiding and abetting.

*PL meets the requirements of Article 4(1) and (2)*

### **Portugal**

Passive corruption is punished by imprisonment of up to two years or with a fine. If it is liable to distort competition or to cause a patrimonial damage to third parties, the person is punished by imprisonment of up to five years or with a fine.

In case of active corruption (art.9) the perpetrator is punished by imprisonment of up to a year or with a fine. If the action is liable to cause a patrimonial damage to third parties or to lead to a distortion of competition, the person is punished by imprisonment of up to three years or with a fine.

The art. 27 of the Criminal Code states that "the person who, intentionally or in whatever form, materially or morally helps other person to perform an intentional act, is punishable as accomplice. The penalty applicable to the accomplice is the one which is fixed for the principal, specially mitigated".

*PT meets the requirements of Article 4(1) and (2)*

### **Romania**

Article 2 was transposed by Article 254 and 255 of the Criminal Code, which makes it a criminal offence to take and to give a bribe, the sentence being imprisonment from 3 to 12 years (for bribe taking), from 6 months to 5 years (for bribe giving), respectively, in its standard form, and imprisonment from 3 years to 15 years for bribe taking in the aggravated form of the offence.

RO did not submit any information regarding the penalties referred to Article 3.

*RO meets the requirements of Article 4(2) but there is insufficient information to assess whether RO meets the requirements of Article 4(1), with regard to Article 3.*

### **Slovenia**

SI explains that penalties for criminal offences under Article 2 of the Framework Decision are laid down in the Articles 241 and 242 of the Criminal Code according to which the highest penalty is always stated in a range as provided in Article 4(2) of Framework Decision (maximum of at least one to three years). The primary criminal offences of passive and active corruption are punishable by an imprisonment for not less than six months and no more than five years.

With regard to instigation, aiding and abetting (article 27 and 38), they are punishable with the same penalty as the main offence.

Mitigating circumstances are set in the art 40:

## "Limits of Punishability of Participants

### Article 40

(1) A perpetrator, instigator and aide shall be punished for criminal offences within the limits of their intent.

(2) If the instigator or the aide voluntarily prevented the intended criminal offence from being accomplished, his sentence may be remitted.

(3) Personal relations, attributes and circumstances, on the basis of which the guilt or punishability are excluded by law or sentence is remitted, reduced or extended, may be taken into consideration only with respect to the participant by whom such relations, attributes and circumstances were determined."

*SI meets the requirements of Article 4(1) and (2)*

### **Slovakia**

The Slovak legislation foresees (section 328 Criminal Code) between 2 and 5 years of imprisonment for passive corruption, or between 3 and 8 years where offence committed in an aggravated manner or between 7 and 12 years if the offence is committed on a large scale.

For active corruption the penalties are similar (section 329 Criminal Code) between 3 and 8 years as a base, between 10 and 15 years if it is committed on a large scale.

Section 21(2) provides that the provisions governing the criminal liability of an offender shall apply to a participant, save where otherwise stipulated. For instigation (section 337) the penalties are imprisonment up to 2 years or a pecuniary penalty.

*SK meets the requirements of Article 4(1) and (2)*

### **Finland**

Penalties for passive and active corruption, as stated in the article 7 and 8, chapter 30 of the Finnish Criminal Code are: a fine or imprisonment for up to two years.

With regard to offence under article 3, sections 5 and 6 of Chapter 5 of the Criminal Code apply. They state that an instigator is punishable for incitement to the offence as if he or she was the perpetrator. With regard to abetting, the abettor is sentenced for abetting on the basis of the same legal provision as the perpetrator. Incitement to punishable aiding and abetting is punishable as aiding and abetting

*FI meets the requirements of Article 4(1) and (2)*

### **Sweden**

The penalty for active corruption is a fine or imprisonment for a period not exceeding 2 years.

The penalty for passive corruption is also a fine or imprisonment for a period not exceeding 2 years. However, if the offence is serious (but no definition is supplied for this term),

imprisonment for a period not exceeding 6 years shall be imposed (Chapter 20 – section 2, Criminal Code).

According to Chapter 23 - Section 4 Criminal Code, the penalties for instigation, aiding and abetting are those which are provided in respect of the main offence.

*SE meets the requirements of Article 4(1) and (2)*

### **United Kingdom**

The maximum penalty for corruption is 7 years imprisonment and an unlimited fine.

Section 8 of the Accessories and Abettors Act 1861 (applies to England, Wales and Northern Ireland) lays down that any person who aids, abets counsels or procures an indictable offence may be prosecuted and punished as a principal. (Counsel and procure would cover instigation). In addition, an accessory will, in most cases be able to be charged with the full offence as a secondary party. Incitement to commit a crime is also a separate common law offence in itself.

*UK meets the requirements of Article 4(1) and (2)*

#### *1.3.5. Article 4(3)*

##### *1.3.5.1. Analysis of Member States*

The majority of MS meet the requirements of Article 4(3). However, AT, MT, UK, LV, PT, did not supply information with regard to Article 4(3). While they did name the relevant legislation, they supplied neither commentary nor text.

Given the multiplicity of approaches, a country by country analysis is provided below.

### **Belgium**

BE informed the Commission that the following accessory penalties may also be imposed:

Prohibition of certain functions, Royal Decree 22 of October 24, 1934 on the prohibition placed on certain judicial convicted and bankrupts from exercising certain functions, professions or activities (it includes prohibition to carry comparable business activities from 3 to 10 years in a similar position or capacity).

Exclusion of public procurement:

Law of 15 June 2006 on public procurement and certain contracts for works, supplies and services, art. 20 states that: "is excluded from participation in any public market any candidate or tender who has been convicted by a court having the force of *res judicata* for participation in [...] corruption."

*BE meets the requirements of Article 4(3), FD.*

### **Bulgaria**

Article 301, paragraph 4 Criminal Code in conjunction with Article 7(6) and (7) Criminal Code lay down additional sanctions, such as disqualification from holding a public office and revocation of the right to exercise a certain profession or activity."

*BG meets the requirements of Article 4(3)*

## **Czech Republic**

Section 49 and section 73 (effective from 1 January 2010) of the Crime Act provide that a court may impose the penalty of a prohibition of a particular activity for one to ten years if an offender commits an offence in connection with that activity. Under the punishment of the prohibition of a particular activity, a convicted person, over the duration of this punishment, is prohibited from pursuing a particular job or occupation, holding a particular office, or carrying on an activity for which a special permit is required or the performance of which is regulated by other legislation. They directly address the FD's requirement in relation to a temporary prohibition on carrying out that particular or comparable business activity.

*CZ meets the requirements of Article 4(3)*

## **Germany**

The requirements in Article 4(3), FD are covered in German law by the provision prohibiting a person convicted for passive or active bribery from carrying on a profession under section 70 Criminal Code. The minimum period of disqualification is three months. Disqualification may be ordered on a permanent basis if it is expected that the maximum statutory period is insufficient to protect against the risk posed by the offender.

*DE meets the requirements of Article 4(3)*

## **Estonia**

Estonian authorities informed of recent amendments on that provision (Criminal Code as amended on 22.12.2008): a court may deprive a convicted offender of the right to work in a certain position or operate in a certain area of activity for up to three years if the person is convicted of a criminal offence relating to abuse of professional or official status or violation of official duties.

A court may apply an entrepreneurship ban to a convicted offender from one to five years if the person has been convicted for an offence connected to the abuse of professional rights or breach of duties, or for an offence referred to in the §§209-213, 217, 280, 281, 295-298 or Chapter 19 of the Code. A person, to whom an entrepreneurship ban has been applied, may not be an entrepreneur, or a member of a leading body of a legal person, a liquidator or general agent of a legal person, or to participate in the management of a legal person in any way.

*EE meets the requirements of Article 4(3)*

## **Ireland**

Irish authorities informed that acts of corruption under section 1 of the 1906 Act are indictable offences. Section 160 of the Companies Act 1990 provides that where a person is convicted on indictment of any indictable offence in relation to a company, or involving fraud or dishonesty, he or she may not be appointed or act as an auditor, director or other officer, receiver, liquidator or examiner or in any other way participate in the formation or management of a company for a period of 5 years from the date of conviction or such other period as the court may decide. A court may also make a disqualification order for such period as it sees fit in certain circumstances. A variety of other sanctions may be imposed depending on the circumstances in situations where section 160 is not applicable.

*IE meets the requirements of Article 4(3)*

### **Greece**

In relation to Article 4(3) EL referred the Commission to Articles 67, 61 and 63 of the Penal Code. Art 61 provides, in a case of a sentence of imprisonment, deprivation of civil rights for a period between 1 and 5 years. Art 63 lays down effects of deprivation of civil rights, such as permanent or temporary loss of public positions, incapacity to regain civil rights, prohibition to vote and to be a member of a jury. Art. 67 provides for disqualification from the exercise of professional occupation and revocation of a license if needed.

*EL meets the requirements of Article 4(3), FD.*

### **France**

FR informed the Commission that the following measures are applicable to offences under Articles 445-1 and 445-2, Criminal Code are set out at Article 445-3, Criminal Code:

*"- interdiction des droits civiques, civils et de famille,*

*- interdiction d'exercer une fonction publique ou d'exercer l'activité professionnelle ou sociale dans l'exercice ou à l'occasion de laquelle l'infraction a été commise,*

*- de confiscation de la chose qui a servi ou était destinée à commettre l'infraction ou de la chose qui en est le produit,*

*- d'affichage ou de diffusion de la décision prononcée"*

*FR meets the requirements of Article 4(3), FD.*

### **Italy**

Section 35bis, Criminal Code provides that for the imposition of a suspension on a person, following any conviction for an offence of abuse of power or breach of duty in relation to the material office. It also provides that persons who are suspended from managerial functions in bodies corporate or companies may not, for the duration of the suspension, exercise the office of director, auditor, liquidator or managing director or any other office conferring the power to represent the body corporate or company. The period of suspension is between 15 days and 2 years. A disqualification, which carries the same conditions as a suspension, shall be ordered following conviction and sentencing to a term of imprisonment of at least 6 months for such an offence.

*IT meets the requirements of Article 4(3), FD.*

### **Cyprus**

*In the documents provided there was insufficient information to assess whether CY meets the requirements of Article 4(3)*

### **Latvia**

Section 198 of the Criminal Code lays down penalties for passive corruption, among them the prohibition to engage in specific forms of entrepreneurial activity or employment for a term not exceeding three years. If the offences were committed repeatedly or on a large scale, this period may not exceed 5 years.

There is no similar provision with regard to active corruption.

*LV partly meets the requirements of Art 4(3)*

### **Luxembourg**

As stated in the 2007 report, the Criminal Code lists the various types of penalty available (*criminelles et correctionnelles*) and these are applicable to the offences of active and passive corruption provided for by Articles 310-1 and 310, Criminal Code respectively. Apart from imprisonment or a fine, the penalties provided by the Criminal Code include a prohibition on exercising certain professional or social activities, although there is no information as to the maximum period for which this might be imposed.

*LU meets the requirements of Article 4(3)*

### **Hungary**

Section 56, Criminal Code provides that a person may be prohibited from practicing his profession if he has violated the rules of his profession, and the term profession includes people of senior status in an organisation such as a member or director of a body exercising general control of an organisation such as a member or director of a body exercising general control of an organisation or a member of a board of directors. Section 57, Criminal Code sets out the conditions which apply to the prohibition, which can either be temporary (for a period of 1 to 10 years) or permanent.

*HU meets the requirements of Article 4(3)*

### **Malta**

Information provided by MT does not include any elements allowing to conclude that the art. 4 (3) has been transposed.

*Therefore, the Commission considers that MT does not meet the requirements of Article 4(3)*

### **The Netherlands**

NL did not provide additional information, since it met the requirement according to the previous report. Section 339(1), Criminal Code provides for the exclusion of persons guilty of offences, including corruption in the private sector, from the occupation through which they have committed such an offence.

*NL meets the requirements of Art 4(3)*

### **Austria**

AT provided neither the relevant legislation nor a commentary.

*There is insufficient information to assess whether AT meets the requirements of Article 4(3), FD.*

### **Poland**

The relevant legislation is Article 296a(1) and Article 41(1), Criminal Code. According to Article 41(1) and (2):

Article 41

(1) The courts may issue an order banning an individual from occupying a given position or working in a given profession if the offender abused his position or profession to commit an offence or if it transpires that it would not be in the public good, as enshrined in law, for him to continue occupying the position in question or working in that profession.

(2) The courts may issue an order banning an individual from conducting a given business activity in the event of his being convicted of an offence committed in connection with that activity, in so far as it would not be in the public good, as enshrined in law, for him to continue carrying out the business activity in question.

*PL meets the requirements of Article 4(3)*

### **Portugal**

No specific provision was provided by the Portuguese authorities. However, in Chapter III, art. 65 the Criminal Code sets out some general principles, in line with which "The law may make certain crimes correspond to the prohibition from exerting some rights or professions".

*PT meets the requirements of Article 4(3)*

### **Romania**

Article 4(3) was transposed by Article 64 and the following of the Criminal Code, which provides the possibility to apply the complementary penalty of prohibiting some rights, including the right to fill a position or pursue a profession or to carry out an activity of the type used by the convict for the commitment of the offence.

Likewise, Article 6 of Act no 31/1990 on companies provides that "the persons who, under the law, are unable or have been convicted for fraudulent management, abuse of trust, forgery, use of false documents, fraud, defalcation, false testimony, giving or taking a bribe for the offences referred to in Act no 656/2002 providing for the prevention and sanctioning of money laundering, as well as for the establishment of measures for the prevention and combating of terrorist acts financing, as subsequently amended and supplemented, for the offences referred to in Article 143 to 145 of Act no 85/2006 on the insolvency procedure or for the offences provided for by this act, as subsequently amended and supplemented, cannot be founders."

*RO meets the requirements of Article 4(3)*

### **Slovenia**

The General Part of the Criminal Code defines safety measures that may be ordered against perpetrators of criminal offences. In accordance with the provisions of the Criminal Code a court may issue against a perpetrator one or more safety measures when the conditions laid therein are met. One of the safety measures is a prohibition from carrying on an occupation, which Article 71 of the Criminal Code defines as follows:

*'Prohibition from Carrying on Occupation*

*Article 71*

*(1) The court may prohibit the perpetrator from carrying on a certain occupation, independent activity or function if, by abusing his occupation, position, activity, or function, he committed a criminal offence and if the court has reasonable grounds to conclude that his further performance of such an occupation would therefore be dangerous.*

*(2) The court shall determine the duration of the measure in the preceding paragraph which may not be for less than one year and not more than five years, from the day the judgement becomes final, whereby the time spent in prison or in a health institution for treatment and detention shall not be credited towards the term of such a measure.*

*(3) When pronouncing a suspended sentence, the court may order that such a sentence be revoked if the perpetrator violates the terms of the prohibition from carrying on his occupation.*

*(4) The court may order that such safety measure be repealed, when a period of two years has passed from the day the measure commenced. The court may decide thereof upon a request of the offender if it considers the reasons for such a measure have ceased to exist.'*

*SI meets the requirements of Article 4(3)*

**Slovakia**

Section 61 of the Criminal Code provides the penalty of disqualification, meaning that for the duration of the sentence, the person convicted shall be disqualified from engaging in a particular employment, job or function for which a special authorization is required or the exercise of which is governed by a specific legal provision. A court may impose the penalty of disqualification from an activity for a period of one to ten years where the perpetrator committed a criminal offence in connection with the activity concerned.

*SK meets the requirements of Article 4(3)*

**Finland**

FI cited sections 2, 3 and 4 of Act on disqualification from Business Activities (1059/1985), without providing the text. The legislation is however, the same referred for the previous report and the Commission assumes that no changes have occurred in the meanwhile.

*FI meets the requirements of Article 4(3)*

**Sweden**

The Trading Prohibition Act (1986:436) provides for the imposition of an injunction against trading in a number of cases. The injunction may be imposed for a period of 3 to 10 years.

Details of the scope of the injunction are provided at section 6, and include a prohibition on conducting business activities and being a partner, board member or otherwise of specified entities.

*SE meets the requirements of Article 4(3)*

### **United Kingdom**

UK stated that the relevant legislation is the Company Directors Disqualification Act,

1986. It lays down that the court may make a disqualification order against a person where he is convicted of an indictable offence. The maximum period of disqualification under this section is where the disqualification order is made by a court of summary jurisdiction, 5 years, and in any other case, 15 years.

*UK meets the requirements of Article 4(3)*

### **1.4. Article 5 – Liability of legal persons**

#### **1.4.1. General Comments**

Article 5 provides for the liability of legal persons in relation to both active and passive corruption. This is one of the most difficult articles to implement by Member States.

#### *1.4.2. Summary table of the transposing legislation adopted by Member States*

<b>MS</b>	<b>Legislation</b>	<b>Measures which appeared relevant to Commission's analysis (where different to MS' citations)</b>
<b>BE</b>	Art. 5 Criminal Code	
<b>BG</b>	Art. 83 a Criminal Code	
<b>CZ</b>	CZ informed the Commission that internal law is at this stage incompatible with the European requirement. However an action is being taken to comply with the Framework Decision	
<b>DK</b>	No reply	Sections 26, 27, 306, Criminal code (2007 report)
<b>DE</b>	§ 30, 130 Law on administrative offence (OWiG), §152 Code of Criminal Procedure (StPO)	
<b>EE</b>	Art. 14(1) (2) penal code	
<b>IE</b>	Section 9 of act 2001	
<b>EL</b>	Art. 10 law 3560/2007	
<b>ES</b>	-	

<b>FR</b>	Art. 121-2 Criminal Code	
<b>IT</b>	No particular provisions to address this article	
<b>CY</b>	No particular provision	Ratification Law No L.23 (III)/2000, in connection with the art. 18 of the CoE Criminal Law Convention on Corruption
<b>LV</b>	Chapter VIII "Coercive measures applicable to legal persons" of the general part of the Criminal Law	In particular art. 20, 225(5), 227(5)
<b>LT</b>	No reply	Articles 20, 225(5), 227(5), Criminal Code (2007 report)
<b>LU</b>	Art. 34, 37 criminal code. LU informed the Commission a new Bill is currently under discussion	
<b>HU</b>	Art. 2 Act CIV 2001	
<b>MT</b>	Art 121(3), art. 121(D) criminal Code	
<b>NL</b>	No particular provision	Section 51 Criminal Code
<b>AT</b>	Law on corporate liability	
<b>PL</b>	Art. 16(1) Criminal Liability of Bodies Corporate Act of 28 October 2002	
<b>PT</b>	Art. 4 Law 20/2008 of 21 April, establish liability and refers to general provisions of the Criminal Code	
<b>RO</b>	Art. 19 Criminal Code	
<b>SI</b>	Art. 4, 5(2) ZOPOKD-B(criminal liability of legal entities act	
<b>SK</b>	No particular provisions. Draft amendment to the Criminal Code and the Code of Criminal Procedure is under discussion	
<b>FI</b>	Criminal code, chapter 9, section 2 and 3; Chapter 30, section 13 (465/2005)	
<b>SE</b>	Section 7-10 Chapter 36 Penal Code	
<b>UK</b>	Interpretation Act 1978 Civil law of negligence Proceed of crime Act 2002	

#### 1.4.3. Summary account of the transposition

The poor transposition of Article 5 is still a matter of concern for the Commission, as it was in the previous report. 15 MS have fully transposed Article 5 (BE, DE, IE, EL, CY, LT (2007), LU, NL (2007), AT, PL, PT, RO, SI, SE, UK). 8 MS transposed it partly (BG, DK (2007),

EE, FR, LV, HU, MT, FI), CZ and IT did not transpose the Article, SK did not provide sufficient information and ES did not submit any reply.

23 MS (all except CZ, IT, no information on SK, ES) meet the requirement of the Article 5 (1), establishing criminal liability for legal persons. As many as 15 MS (BE, DE, IE, EL, CY, LU, AT, PL, PT, SI, SE, UK, LT (2007), NL (2007), RO transposed Article 5(2). RO was requested to provide more clarifications as to the extent to which the wording of its legislation (which appears to be compliant) is wide enough to cover liability in case of lack of control. FR, SK and LV did not provide sufficient information and CZ, IT, BG, EE, IT, HU, FI, MT were considered as not fully transposing Article 5(2). 20 MS (BE, BG, DE, EE, IE, EL, FR, CY, LV, LU, HU, MT, NL, AT, PL, PT, RO, SI, SE, UK) have transposed the Article 5(3). The Article was not transposed by CZ and IT, while SK, DK, FI did not provide sufficient information for assessment.

The particular difficulty faced in the analysis was a lack of information from the MS, which was especially evident in relation to Articles 5(2) and 5(3). The Commission notes that many MS did not refer directly in their legislation to the case of lack of supervision or to the fact whether or not corporate liability excludes liability of the natural person.

#### 1.4.3.1. Summary table of the transposition

MS	Article 5(1)	Article 5(2)	Article 5(3)	Comments
BE	Meets the requirements	Meets the requirements	Meets the requirements	BE has transposed Article 5
BG	Meets the requirements	Does not meet the requirements	Meets the requirements	BG has partly transposed Article 5
CZ	Does not meet the requirements	Does not meet the requirements	Does not meet the requirements	CZ has not transposed Article 5
DK	Meets the requirements (2007 report)	Meets the requirements (2007 report)	In 2007 there was insufficient information to assess whether DK met the requirements	DK has transposed the art 5 (1) and (2)
DE	Meets the requirements	Meets the requirements	Meets the requirements	DE has transposed Article 5
EE	Meets the requirements	Does not meet the requirements	Meets the requirements	EE has partly transposed Article 5
IE	Meets the requirements	Meets the requirements	Meets the requirements	IE has transposed Article 5
EL	Meets the requirements	Meets the requirements	Meets the requirements	EL has transposed Article 5
ES	-	-	-	-
FR	Meets the requirements	Insufficient information	Meets the requirements	FR has partly transposed Article 5

<b>MS</b>	<b>Article 5(1)</b>	<b>Article 5(2)</b>	<b>Article 5(3)</b>	<b>Comments</b>
<b>IT</b>	Does not meet the requirements	Does not meet the requirements	Does not meet the requirements	IT has not transposed article 5
<b>CY</b>	Meets the requirements	Meets the requirements	Meets the requirements	CY has transposed Article 5
<b>LV</b>	Meets the requirements	Insufficient information	Meets the requirements	LV has partly transposed Article 5
<b>LT</b>	Met requirements in 2007 report	Met requirements in 2007 report	Met requirements in 2007 report	LT has transposed Article 5 in 2007
<b>LU</b>	Meets the requirements	Meets the requirements	Meets the requirements	LU has transposed Article 5
<b>HU</b>	Meets the requirements	Does not appear to meet the requirements	Meets the requirements	HU has partly transposed article 5
<b>MT</b>	Meets the requirements	Does not appear to meet the requirements	Meets the requirements	MT has partly transposed Article 5
<b>NL</b>	Meets the requirements	Meets the requirements	Meets the requirements	NL has transposed Article 5 (2007)
<b>AT</b>	Meets the requirements	Meets the requirements	Meets the requirements	AT transposed Article 5
<b>PL</b>	Meets the requirements	Meets the requirements	Meets the requirements	PL has transposed Article 5
<b>PT</b>	Meets the requirements	Meets the requirements	Meets the requirements	PT has transposed Article 5
<b>RO</b>	Meets the requirements	Appears to meet the requirements	Meets the requirements	RO has transposed Article 5
<b>SI</b>	Meets the requirements	Meets the requirements	Meets the requirements	SI has transposed Article 5
<b>SK</b>	Insufficient information	Insufficient information	Insufficient information	Insufficient information to assess whether SK has transposed Article 5
<b>FI</b>	Meets the requirements	Partly meets the requirements	There is insufficient information to assess whether FI meets the requirements	FI has partly transposed Article 5
<b>SE</b>	Meets the requirements	Meets the requirements	Meets the requirements	SE has transposed Article 5

MS	Article 5(1)	Article 5(2)	Article 5(3)	Comments
UK	Meets the requirements	Meets the requirements	Meets the requirements	UK has transposed Article 5

#### 1.4.4. Article 5(1) Analysis of Member States

Belgium

BE met the requirements in 2005, no further changes were referred to.

*BE appears to meet the requirements of Article 5(1), FD.*

#### **Bulgaria**

Art. 83a of the Criminal Code provides:

"Art. 83a. 1

Whenever a legal person has unlawfully derived advantage or may unlawfully derive advantage from a crime as defined in Articles 108a, 109, 110 (preparation of terrorism), 142 to 143a, 159 to 159c, 209 - 212a, 213a, 214, 215, 225c, 242, 250, 252, 253, 254, 254b, 256, 257, 280, 283, 301 to 307, 319a to 319f, 320 to 321a and 354a to 354c of the Penal Code, and from any crimes carried out under the instructions or in accordance with a decision of an organised criminal group, and such crime is committed by:

1. a person who has been granted decision-making powers with respect to a legal person;
2. a person who has been granted powers of attorney with respect to a legal person;
3. a person appointed as member of a monitoring or supervisory body of a legal person, or
4. an employee to whom certain duties have been delegated by a legal person, where the crime is committed in the course of or in relation to those duties

a fine of a maximum of one million BGN shall be imposed but not less than an amount equal to the corporeal advantage derived; where the advantage is incorporeal or its value cannot be determined, a fine from five thousand BGN up to a maximum of one hundred thousand BGN shall be imposed."

According to the art 83a.2, a fine will be imposed on a legal person in case of instigation/abetting.

*BG meets the requirements of Article 5(1)*

#### **Czech Republic**

CZ informed the Commission that Czech law did not recognize the criminal liability of legal persons. Legal persons are liable for administrative offences laid down in specific individual laws. The liability of legal persons for the conduct referred to in Article 2 of the Framework Decision is not enshrined in Czech law.

CZ informed that the main tenets of the liability of legal persons for corruption and other solicited action were being prepared, for the time being however the Commission has not received any draft of such mentioned acts.

*CZ does not meet the requirements Article 5(1)*

### **Germany**

DE stated that the relevant provision is section 30, Administrative Offences Act. Section 30, Administrative Offences Act provides for the liability of a legal person where an administrative or criminal offence is committed by certain bodies or categories of natural person, including a partner or executive manager, or anyone else with responsibility for directing the business, including supervising the conduct of its business or otherwise exercising powers of control in a management position. This appears to meet the requirement to cover "a leading person". The offence in question should involve a breach of duties incumbent on the legal person or its enrichment.

*DE meets the requirements of Article 5(1)*

### **Estonia**

Estonia informed the Commission that, in the cases provided by law, a legal person shall be held responsible for an act which is committed by a body, a member of a body, senior official or an authorized representative thereof in the interest of the legal person.

(§ 14(1), Criminal Code, as amended on 28.07.2008) The Supreme Court has construed the concept of senior official very broadly, and the concept of authorized representative, added in 2008, should cover also persons representing a legal person without employment relationship.

*EE meets the requirements Article 5(1)*

### **Ireland**

As described in the 2007 report, the relevant legislation is section 9 of the Act of Prevention of Corruption Act, which provides that where an offence under the Prevention of Corruption Acts 1889 to 2001 has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. Section 9(2) provides that where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

*IE meets the requirements of Article 5(1)*

### **Greece**

Art. 10 par. 1 of law 3560/2007 states: "If any of the criminal offences of active bribery, trading in influence and money laundering referred to in articles 159, 235 and 237 of the

Greek Penal Code and articles third to eighth hereof, is committed for the benefit of any legal person exercising business activities, by any natural person, acting either as perpetrator or instigator or accessory, 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, in addition to the criminal liability of the said natural person, the following sanctions shall be imposed on this legal person, upon a decision of the Head of the competent regional directorate of the Special Control Service:

- an administrative fine up to three times the value of the advantage achieved or pursued; or
- temporary or, in case of recidivism, permanent disqualification from the practice of business activities; or
- temporary or permanent expulsion from entitlement to public benefits or aid ." Par. 3 and 4 of the same law specify that apart from the mentioned sanctions, other provisions shall apply as well and a joint decision of the Minister of Economy and Finance and Minister of Justice shall determine the procedure for the imposition of the sanctions.

*EL meets the requirements of Article 5(1).*

### **France**

French authorities clarified that Art. 121-2 of the Criminal Code allow that the legal person can be held liable when an act is committed for its benefit "*par (ses) organes ou représentants.*" FR informs that the jurisprudence gives a wide interpretation of the definition of *représentant*.

*"Pour que la responsabilité de la personne morale soit engagée, il faut que les infractions aient été commises par un organe ou un représentant de la personne morale et pour son compte (Cass. crim. 18 janvier 2000, Bull. crim. n°28)."*

*"La Chambre Criminelle de la Cour de Cassation, a notamment estimé qu'avaient la qualité de représentant au sens de l'article 121-2 du code pénal les personnes pourvues de la compétence, de l'autorité et des moyens nécessaires en raison d'une délégation de pouvoir de la part des organes de la personne morale ou d'une subdélégation des pouvoirs d'une personne déléguée par ces mêmes organes."*

Employees can, depending on the circumstances, and if they are not acting as sending party (*mandataire social*) regularly designated by the legal person, commit the liability (*'engare la responsabilité'*) if they have authority to take decisions on behalf of the legal person.

The text submitted and the interpretations of the jurisprudence confirm the compliance of Art.121-2 to the requirements posed by the FD.

*FR meets the requirements Article 5(1)*

### **Italy**

IT stated in its notification that there were no provisions to cover the Article 5 and 6.

*IT does not meet the requirements of the art.5 and 6.*

### **Cyprus**

CY in its Law Ratifying the Criminal Law Convention of Corruption of the CoE expressly refers to the art. 18 of the Convention, introducing the concept of corporate liability into domestic legislation.

*CY meets the requirements of Article 5(1)*

### **Latvia**

Section 70(1) provides the basis for the application of coercive measures to a legal person in the private sector for those criminal offences provided for in the Special Part of the Law, and thereby includes offences under Sections 196 and 199 of Chapter XIX Special Part. Among the factors which a court shall take into consideration, in applying coercive measures, is the status of the natural person within the legal person.

*LV meets the requirements of Article 5(1).*

### **Luxembourg**

Art. 34 of the Penal Code provides

*" La personne morale peut également être déclarée pénalement responsable lorsqu' une ou plusieurs des infractions énumérées ci-dessous ont été commises en son nom et dans son intérêt par un de ses mandataires, de droit ou de fait, exerçant une fonction dirigeante et rapportant directement à un de ses organes légaux:[...]*

*Concussion, prise illégale d'intérêts, corruption active et passive, corruption privée"*

*LU meets the requirements of Article 5(1)*

### **Hungary**

The relevant legislation is Art. 2(1) Act CIV of 2001 on the criminal law measures applicable to legal persons. They state that the measures specified in this Act shall be applicable to legal persons deliberately committing a criminal act specified in Act IV of 1978 on the Criminal Code where committing the criminal act was intended to produce or resulted in an advantage for the legal person and where, in respect of the legal person, the criminal act:

was committed by a chief executive officer or an employee or a partner entitled to represent, or by an official, a manager or a member of the supervisory board or their delegate acting on behalf of the legal person,

was committed by a partner or an employee acting on behalf of the legal persons and the chief executive officer, the manager and the supervisory board could have prevented the act by complying with their managerial or supervisory obligations."

*HU meets the requirements of Article 5(1)*

## **Malta**

Article 121D of the Criminal Code provides

"Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purpose of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable payment of a fine (multa) not less than one thousand and one hundred and sixty-four euro and sixty nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents

*.MT meets the requirements of Article 5(1)*

## **The Netherlands**

No specific provision was submitted, however NL was fully compliant according to the previous report and no further modifications in the legislation have been referred.

*NL meets the requirements of Article 5(1), FD.*

## **Austria**

The article is transposed by the Law on the Liability of Associations, under Article 2 (definitions of decision-makers and employees) and 3 which provide the liability of associations.

According to Article 2 a decision-maker is:

- "1. a managing director, board member, or signing clerk, or a person who, on the basis of legal power of representation, including power in respect of particular management duties, is similarly entitled to represent the association in external relations,
2. a member of the supervisory board or administrative board, or a person who otherwise performs a senior supervisory role with powers of control, or
3. a person who exercises significant influence over the management of the association."

*AT meets the requirements of Article 5(1), FD.*

## **Poland**

Poland made reference to the same Articles provided for the previous report according to which Polish legislation was fully compliant to the requirements.

*PL meets the requirements of Article 5(1), FD.*

## **Portugal**

Portugal informed that the Commission that the relevant legislation is Article 4 of Law No 20/2008 of 21 April (liability of legal persons) which establishes liability and refers to the general provisions of the Criminal Code.

*PT meets the requirements of Article 5(1)*

### **Romania**

The relevant legislation is article 19 of the Criminal Code, which lays down the conditions with regard to the criminal liability of the legal entity.

"ARTICLE 19 – Conditions with regard to the criminal liability of legal entities

Legal entities, except for the State, the public authorities and the public institutions which pursue an activity which cannot fall within the scope of the private sector, shall be held responsible under the criminal law for the offences committed with the aim to pursue their object, in the interests or on behalf of the legal entity, if the act was committed under the offence punishable by the criminal law.

Criminal liability of the legal entity does not exclude the criminal liability of the natural person who contributed by any means to the commitment of the same offence.

Under the Criminal Code, the onus of criminal liability shall be on all the legal entities, except for the State, the public authorities and the public institutions pursuing an activity which is outside the scope of the private sector.

With regard to the scope of offences that can be committed by a legal entity, the “system of the general clause” was the option, which implies that the legal entity can commit in principle any offence as a perpetrator, accessory or instigator, and each specific case shall be examined to find whether the conditions for the engagement of the criminal liability have been fulfilled."

*RO meets the requirements of Article 5(1)*

### **Slovenia**

The Criminal Liability of Legal Entities Act provides that a legal person may be liable for a criminal offence laid down in Articles 241 and 242 of the Criminal Code. Concerning instigation, aiding and abetting, and concealment, as laid down in Article 3 of the Framework Decision, the provisions of the General Part of the Criminal Code apply by analogy to legal persons. The grounds for a liability of legal persons are laid down in Article 4 of the law ZOPOKD-B which provides:

‘Article 4

A legal person shall be liable for a criminal offence committed by the perpetrator in the name of, on behalf of, or for the benefit of the legal person:

1. if the committed criminal offence constitutes carrying out an unlawful decision, order or endorsement by its management or supervisory bodies;
2. if its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence;

3. if it gains an unlawfully obtained pecuniary benefit or uses objects resulting from the criminal offence;
4. if its management or supervisory bodies have omitted due supervision over the legality of actions of employees subordinate to them.'

*SI meets the requirements of Article 5(1)*

### **Slovakia**

Slovak authorities informed the Commission that the provisions on liability of legal persons under criminal law were included in the draft amendment to the Criminal Code and the Code of Criminal Procedure, discussion on which was interrupted by the Slovak Government on 9 April 2008 pending the proceedings before the Constitutional Court regarding the constitutional legality of the Special Court of the Slovak Republic. On 20 May 2009, the Constitutional Court ruled in this matter and as a result, the legislative process is expected to continue now. As in the meantime the legislation seems to have changed, and the Commission was not notified of any of the changes, nor was it provided with the new text, it is impossible to assess the compliance with the art. 5

*There is insufficient information to assess whether SK meets the requirements of the art. 5*

### **Finland**

According to the Criminal Code (chapter 9 section 1) A corporation, foundation or other legal entity in whose operations an offence has been committed may on the request of the public prosecutor be sentenced to a corporate fine if such a sanction has been provided in this Code for the offence". Section 2 states that A corporation may be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence have not been observed in the operations of the corporation.

*FI meets the requirements Article 5(1)*

### **Sweden**

The relevant legislation is section 7 of Chapter 36 of the Penal Code:

" for a crime committed in the exercise of business activities the entrepreneur shall, at the instance of a public prosecutor, be ordered to pay a corporate fine if it for the crime is prescribed a more severe punishment than a summary fine and

1. the entrepreneur has not done what could reasonably be required of him for prevention of the crime, or
2. the crime has been committed by
  - a) a person who has a leading position based on a power of representation of the entrepreneur or an authority to take decisions on behalf of the entrepreneur, or

b) a person who otherwise has had a special responsibility of supervision or control of the business.

*SE meets the requirements of Article 5(1)*

### **United Kingdom**

UK authorities informed that the general provision concerning legal persons is made under the Interpretation Act 1978, which (in its Schedule 1) provides that unless the contrary is stated, the word 'person' in a statute is to be construed as including a 'body of persons, corporate or incorporate'. No exception is made for the statutes on corruption and therefore legal persons can be prosecuted for corruption. In the case of crimes such as corruption, which involves "mens rea", attribution of responsibility to the legal person depends on finding someone with an appropriate level of authority within the organisation who has the mental state in question. This means that in the UK corporate liability is based on the third alternative in Article 5(1), namely 'an authority to exercise control within the legal person.'

*UK meets the requirements of Article 5(1)*

#### *1.4.5. Article 5(2) Analysis of Member States*

### **Belgium**

Since in the previous report the Commission retained that there was insufficient information to assess whether BE meets the requirement of Article 5(2), FD and was requested to provide further commentary, Belgium provided the following information:

Article 5 states that "any legal person is criminally responsible for offences that are intrinsically linked to the achievement of its purposes or to defend its interests, or those with specific facts showing that they were committed on its behalf." The Commission's reasoning, that the wording is broad enough to include situations where there was lack of supervision or control, is correct and is confirmed by the explanatory memorandum to the Act of May 4, 1999 introducing criminal liability of legal persons (legal document Senate, session 1998-1999, 1-1217/1 n0). This paper (an extract is included below) says that the corporation may be declared criminally liable for any infringement on the condition that it was committed to achieving the object of the person moral, to promote its interests or for his account. No limits to the person who put the measure are introduced.

*« 1.2. Les comportements qui donnent lieu à la responsabilité*

*En ce qui concerne les comportements qui donnent lieu à la responsabilité de la personne morale, la proposition prévoit que la personne morale est pénalement responsable pour tout type d'infraction, à la condition que celle-ci ait été commise en vue de la réalisation de l'objet de la personne morale, en vue de promouvoir son intérêt ou pour son compte."*

*On a préféré cette formulation plus précise à celle, plus large, adoptée par le Conseil de l'Europe dans sa recommandation 1988/18, qui vise tous les faits accomplis à l'occasion de l'exercice des activités de la personne morale. En effet, on estime que la responsabilité pénale de la personne morale ne doit être engagée que quand il existe un lien intrinsèque entre le fait infractionnel et la personne morale en tant que telle. Il ne paraît pas contre pas approprié de*

*rendre la personne morale pénalement responsable de faits commis par des personnes ayant un lien avec elle (employés, administrateurs,...), quand celles-ci n'auraient fait que profiter du cadre juridique ou matériel de la personne morale pour commettre des infractions dans leur propre intérêt ou pour leur compte. Il ne s'agit pas d'instaurer une responsabilité objective de la personne morale pour tout fait quelconque commis en son sein. Ce point sera développé au point 1.3 à propos de l'élément intentionnel requis de la personne morale.*

*À l'inverse, on a estimé ne pas devoir préciser les personnes physiques ou les organes par lesquels la responsabilité pénale de la personne morale pourrait être engagée. En effet, cette indication aurait pour conséquence une limitation de la responsabilité qui ne se justifie pas, dans la mesure où elle imposerait une double imputation des faits, à savoir à la personne morale et à des personnes physiques déterminées. En outre, dans l'hypothèse où l'intervention des organes serait requise pour engager la responsabilité de la personne morale, toute responsabilité pourrait être éludée par le simple fait pour l'organe de ne pas acter les décisions qui auraient un caractère illicite. »*

In consideration of the wide and specific explanation given,

*BE meets the requirements of Article 5(2), FD.*

### **Bulgaria**

There is no clear reference to the liability of the legal person in case of lack of supervision or control and it does not seem that the wording of Article 83(a) would encompass such a situation.

*BG does not meet the requirements of Article 5(2)*

### **Czech Republic**

See discussion above

*CZ does not meet the requirements of Article 5(2)*

### **Germany**

DE stated that the relevant provisions are sections 30 and 130, Administrative Offences Act. Section 30, Administrative Offences Act provides for the liability of a legal person where an administrative or criminal offence is committed by certain bodies or categories of natural person, including a partner or executive manager, or anyone else with responsibility for directing the business, including supervising the conduct of its business or otherwise exercising powers of control in a management position. This is expanded by section 130, Administrative Offences Act which addresses the failure of supervision, whether intentionally or by negligence, to prevent, within the business or company, breaches of duties incumbent on the proprietor, which is made an administrative offence.

*DE meets the requirements of Article 5(2)*

### **Estonia**

Estonia informed the Commission that there are no explicit rules concerning the lack of supervision/duty of care. However, it is held that a legal person is responsible if an authorized representative thereof at least with indirect intent (*dolus eventualis*) gives/accepts a bribe/gratuity in the interests of the legal person. EE also reported that further amendments depend on an analysis of the issue, until now postponed due to lack of court practice.

Taking note of the above, the Commission still considers that the situation remains unclear and invites Estonia to consider criminalising explicitly the legal person for criminal acts committed for its benefit by a person under its authority in the case where the legal person had not exercised due supervision or control.

*EE does not meet the requirements of Article 5(2)*

### **Ireland**

Section 9 of the Act of 2001 as amended by the Act of 2010, provides that liability may be imposed for an offence by a corporate body which "is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of (...)". IE informed also that, in certain circumstances, under Irish law the acts of the controlling officers of a legal person are viewed as constituting the acts of the legal person itself. Thus in the case of corruption offences, the crimes of a company's controlling officers are the crimes of the corporation itself. See for instance, *Superwood Holdings plc v. Sun Alliance and London Insurance Plc* [1995] 3 IR, 30.

*IE meets the requirements of Article 5(2)*

### **Greece**

Art. 10 par. 2 Law 3560/2007 foresees:

"2. The same sanctions shall be imposed on the legal person where the lack of supervision or control by a natural person referred to in par. 1 has made possible the commission of the criminal offences mentioned in the same paragraph by a natural person under its authority."

*EL meets the requirements of Article 5(2), FD.*

### **France**

There is no direct reference in article 121-2 to the case of lack of supervision, however the legal person can be held liable for offences perpetrated by an organ or person with power of representation. The wording appears sufficiently wide to encompass this possibility, but similarly to the assessment made in 2007 further clarification would be welcomed.

*There is insufficient information to assess whether FR meets the requirements of Article 5(2)*

### **Italy**

See discussion on art 5(1)

*IT does not meet the requirements of art 5(2)*

### **Cyprus**

CY in its Law Ratifying the Criminal Law Convention of Corruption of the CoE expressly refers to the art. 18 of the Convention, introducing the concept of corporate liability into domestic legislation. Art. 18 (2) establishes liability in cases of lack of supervision.

*CY meets the requirements of Article 5(2)*

### **Latvia**

This is not directly addressed in Chapter VIII. While there is a reference in Section 70(8) to the Court, in applying coercive measures, observing certain conditions such as the nature and consequences of the acts of the legal person (subsection (2) and the measures taken by the legal person in order to prevent the committing of new criminal offences (subsection(3), it is unclear whether a court could thereby hold a legal person liable where its lack of supervision or control has made possible the commission of the offence, as required by Article 5(2).

*There is insufficient information to assess whether LV meets the requirements of Article 5(2), FD.*

### **Luxembourg**

Legal persons are liable for the criminal acts of active and passive corruption without any limiting requirement as to the absence of supervision or control. This approach is broader than the FD.

*LU meets the requirements of Article 5(2)*

### **Hungary**

The relevant legislation is section 2(2), Act CIV of 2001 on measures Applicable to legal persons:

"(2) The measures specified in paragraph (1) shall also apply to cases where committing the criminal act produced an advantage for the legal person, and the chief executive or partner or employee entitled to represent, or the official, manager or member of the supervisory board was aware of the crime being committed."

The article does not make express reference to lack of supervision or control and the wording, on the contrary, seems to limit the liability to the cases where the persons with the authority to exercise control have knowledge of the crime perpetrated.

*HU does not meet the requirements of Article 5(2)*

### **Malta**

The relevant legislation is Article 121D of the Criminal Code. No direct reference is made to the liability for lack of supervision or control and the wording of the article does not seem to encompass this particular case.

*MT does not meet the requirements of Article 5(2)*

### **The Netherlands**

No specific provision was submitted. However, NL was fully compliant according to the previous report and no further modifications in the legislation were referred.

*NL meets the requirements of Article 5(2), FD.*

### **Austria**

Article 3(3) of the new Law on the Liability of Associations, provides that in the case of criminal offences by employees, the association shall be liable if

"[.]2. the committing of the offence was made possible or considerably easier because decision-makers failed to exercise the reasonable care required by the circumstances, particularly by failing to take essential technical, organizational or staff measures to prevent such acts."

*AT meets the requirements of Article 5(2), FD.*

### **Poland**

Poland made reference to the same Articles provided for the previous report according to which Polish legislation was fully compliant to the requirements. While the full text of the Articles was not provided, no further modification in the legislation have been referred.

*PL meets the requirements of Article 5(2), FD.*

### **Portugal**

Portugal informed that the Commission that the relevant legislation is Article 4 of Law No 20/2008 of 21 April (liability of legal persons) which establishes liability and refers to the general provisions of the Criminal Code. Article 10 of the Criminal Code states that: " When a legal type of crime includes a certain result, the fact comprises not only the action proper to produce it, as the omission of the action proper to avoid it, except if the intention of the law is different. The commission of a result by omission is only punishable when the omissive person is under a legal duty that personally obliges him to avoid that result."

*PT meets the requirements of Article 5(2)*

### **Romania**

The relevant legislation is provided in the Criminal Code under Article 19. Romania informs that considering the novelty of the provisions relating to the legal entity, the meaning of the judicial practice cannot be anticipated. There is not direct reference to liability for lack of supervision or control; however the wording seems wide enough to encompass also this particular case. Further clarification is required.

*RO appears to meet the requirements of Article 5 (2)*

### **Slovenia**

The Criminal Liability of Legal Entities Act provides that a legal person may be liable for a criminal offence laid down in Articles 241 and 242 of the Criminal Code. Concerning instigation, aiding and abetting, and concealment, as laid down in Article 3 of the Framework

Decision, the provisions of the General Part of the Criminal Code apply by analogy to legal persons. The grounds for a liability of legal persons are laid down in Article 4 of the ZOPOKD-B which provides:

"Article 4

A legal person shall be liable for a criminal offence committed by the perpetrator in the name of, on behalf of, or for the benefit of the legal person:

1. if the committed criminal offence constitutes carrying out an unlawful decision, order or endorsement by its management or supervisory bodies;
2. if its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence;
3. if it gains an unlawfully obtained pecuniary benefit or uses objects resulting from the criminal offence;
4. if its management or supervisory bodies have omitted due supervision over the legality of actions of employees subordinate to them."

*SI meets the requirements of Article 5(2)*

### **Slovakia**

See earlier discussion on art 5 (1)

*There is insufficient information to assess whether SK meets the requirements of Article 5(2), FD.*

### **Finland**

As stated in the 2007 report, in the Criminal Code, section 2 chapter 9 cover lack of due care and diligence which has allowed the commission of an offence. At the same time, no corporate fine is to be imposed if the offence is not reported by the injured party so as to have charges brought, unless it is extremely important to public interest that charges be brought". This was considered a significant limitation on the prosecution of a legal person, and therefore the legislation was considered as partly compliant with the requirements in 2005.

*FI partly meets the requirements of Article 5(2)*

### **Sweden**

Chapter 36 - section 7, Criminal Code provides for a penalty of a fine where a crime has been committed by a legal person in the exercise of business activities. One of the two conditions to be met is a requirement that the legal person has not done what could reasonably be required of it to prevent the crime, which appears broad enough to meet the intention of Article 5(2), FD that MS provide for liability of legal persons "where the lack of supervision or control by a person referred to in Article 5(1), FD has made possible the commission of an offence of the type referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority".

*SE meets the requirements of Article 5(2)*

### **United Kingdom**

UK authorities provided the same information as for the previous report. The Commission considered in 2007 that UK did not meet the requirements, because the internal legislation failed to address the question of the legal person's criminal liability. The Commission did not consider that administrative or civil sanctions alone are sufficient.

However, in the meantime the new Bribery Act 2010 has established an offence of failure of commercial organizations to prevent bribery. It addresses the lack of supervision.

*UK meets the requirements of Article 5(2)*

#### *1.4.6. Article 5(3) Analysis of Member States*

### **Belgium**

Belgium already met the requirements in 2005, no further changes occurred.

*BE meets the requirements of Article 5(3), FD.*

### **Bulgaria**

Article 83a (2) and (3) clarifies that a fine shall also be imposed on the legal person, independently of the criminal liability of the perpetrator of the crime. Therefore it seems clear that the liability of the natural person who materially acted is encompassed.

*BG meets the requirements of Article 5(3).*

### **Czech Republic**

See earlier discussion on art 5(1).

*CZ does not meet the requirements of Article 5(3)*

### **Germany**

German authorities informed that in the case of criminal offences committed by persons from the management echelons of legal persons and other associations of persons, under § 30 Law on the Administrative Offences, German law provides for a fine as a penalty against the undertaking. This fine is imposed in addition to the penalty against the natural person, meaning that criminal prosecution of the natural person is still possible. This follows not just from the general principles of German criminal law and the German law of criminal procedure, but also from the provision in § 30(4) Law on the Administrative Offences, under which a fine may be imposed on a legal person independently, i.e. independent of proceedings against the natural person, in exceptional circumstances only.

*DE meets the requirements of Article 5(3)*

### **Estonia**

Paragraph 14(2) of the Penal Code, entered into force 01.09.2002 foresees that prosecution of a legal person does not preclude prosecution of the natural person who committed the offence.

*EE meets the requirements of Article 5(3)*

### **Ireland**

Ireland informed that the requirements of Art. 5(3) are satisfied as criminal proceedings against natural persons in respect of such offences are not precluded under Irish law, without submitting the legislation referred. However, Ireland was compliant with the requirements under article 5(3) in 2005 and no changes have been mentioned.

*IE appears to meet the requirements of Article 5(3)*

### **Greece**

Art. 10 par. 1 law 3560/2007 foresees that liability of legal person shall be, "in addition to the criminal liability of the [...] natural person", making express reference to natural persons "acting either as perpetrator, instigator or accessory".

*EL meets the requirements of Article 5(3)*

### **France**

Art. 121-2 of the Criminal Code states,

*"La responsabilité pénale des personnes morales n'exclut pas celle des personnes physiques auteurs ou complices des mêmes faits, sous réserve des dispositions du quatrième alinéa de l'article 121-3."*

It therefore clearly underlines that liability of legal person does not exclude criminal proceedings against natural persons who are involved as perpetrators, instigators or accessories.

*FR meets the requirements of Article 5(3)*

### **Italy**

See discussion above.

*IT does not meet the requirements of Article 5(3)*

### **Cyprus**

CY in its Law Ratifying the Criminal Law Convention of Corruption of the CoE expressly refers to the art. 18 of the Convention, introducing the concept of corporate liability into domestic legislation. Art. 18 (3) states that liability of legal persons does not exclude criminal proceedings against natural persons involved as perpetrators, instigators or accessories.

*CY meets the requirements of the Art 5(3).*

### **Latvia**

Section 12, Chapter I General Part provides for the criminal liability of a natural person who has committed a criminal offence, even where in the service of a legal person.

*LV meets the requirements of Article 5(3)*

### **Luxembourg**

Art. 34 of the Penal code provides

*"La responsabilité pénale des personnes morales n'exclut pas celle des personnes physiques auteurs ou complices des mêmes infractions."*

*LU meets the requirements of Article 5(3)*

### **Hungary**

Prosecution of a legal person does not preclude prosecution of the natural person, as can be deduced from Art. 3. 2

*"The measures specified in paragraph (1) shall also apply where the criminal act produced a financial advantage for the legal person, but the perpetrator cannot be punished because of his death or his mental state."*

It seems that the legal person shall be liable even though the natural person is not, that suggests that criminal proceedings against natural persons are not excluded. There is however no clear reference and is unclear if the natural person is considered just the perpetrator or even the instigator or accessory.

*HU appears to meet the requirements of Article 5(3)*

### **Malta**

No specific provision was submitted addressing Article 5(3), FD. The relevant legislation referred, Article 121 D and Article 121(3) do not make any reference to the possibility of proceed against the legal person and also against the natural persons who are involved in the committed crime. But the art 121 D states that – where a natural person was found guilty for the offences laid down in the FD, this person "shall (...) be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents 1,164,686.70). This appears to meet the requirements of the FD.

*MT meets the requirements of Article 5(3)*

### **The Netherlands**

No specific provision was submitted. However, NL was fully compliant according to the previous report and no further modifications in the legislation were referred.

*NL meets the requirements of Article 5(3)*

## **Austria**

Section 3(4) of the New Law on Liability of Associations provides that "an association's liability for an act and the possibility of punishing decision-makers or employees on account of the same act shall not be mutually exclusive."

*AT meets the requirements of Article 5(3)*

## **Poland**

PL made reference to the same Articles provided for the previous report according to which Polish legislation was fully compliant to the requirements. The full text of the mentioned articles was not provided, however, no further modifications in the legislation were referred.

*PL meets the requirements of Article 5(3)*

## **Portugal**

Portugal informed that the Commission that the relevant legislation is Article 4 of Law No 20/2008 of 21 April (liability of legal persons) which establishes liability and refers to the general provisions of the Criminal Code. In addition, according to the previous report "Article 2, Decree-Law No. 28/84 provides that a person representing a legal person is themselves liable for an offence undertaken on the legal person's behalf, while Article 3(3) provides that even if the legal person is liable, this does not preclude the liability of the individual perpetrator(s)."

Moreover, art. Article 12 of the Criminal Code states that" Whoever acts voluntarily as head of an organ of a corporation, society or mere de facto association, or in legal or voluntary representation of another, is punishable, even when the respective crime type requires:

- a) Certain personal elements and these are only present in the person of the represented; or
- b) That the agent executes the act in its own interest and the representative acts in the interest of the represented"

*PT meets the requirements of Article 5(3)*

## **Romania**

Art. 5(3) is transposed by Article 19<sup>1</sup>(2) of the Criminal Code.

"(2) Criminal liability of the legal entity does not exclude the criminal liability of the natural person who contributed by any means to the commitment of the same offence."

*RO meets the requirements of Article 5(3)*

## **Slovenia**

Article 5(2) of the ZOPOKD-B expressly provides that the liability of a legal person does not exclude a criminal liability of natural persons or persons responsible for the committed

criminal offence. As a general rule, for the same criminal offence, a procedure against the legal entity is initiated and conducted together with the procedure against the perpetrator.

‘Article 5

(1) Subject to the conditions in the preceding Article, a legal person shall be liable for a criminal offence even when the perpetrator is not guilty or when he committed the offence under force or threat by the legal entity.

(2) The liability of a legal person does not preclude criminal liability of natural persons or responsible persons for the committed criminal offence.

[..]

(4) If a legal person has no other body besides the perpetrator who could lead or supervise the perpetrator, the legal person shall be liable for the committed criminal offence within the limits of the perpetrator’s guilt.’

*SI meets the requirements of Article 5(3)*

### **Slovakia**

See discussion above on art 5(1).

*There is no sufficient information to assess whether SK meets the requirements of Article 5(3).*

### **Finland**

No specific provision was provided in this respect.

*There is insufficient information to assess whether FI meets the requirements.*

### **Sweden**

The legislation supplied by SE does not appear to include a specific provision in this regard. However, it is noted that Chapter 36 - Section 10 sets out a number of criteria for remission or reduction of the corporate penalty, one of which is where the relevant natural person has received a penalty. This would seem to imply that liability of the legal person does not exclude criminal proceedings against natural persons.

*SE meets the requirements of Article 5 (3), FD.*

### **United Kingdom**

UK explains that with regard to 5(3), FD, the liability of a legal person does not preclude criminal proceedings against natural persons who are involved in the commission of an offence of the type referred to in Articles 2 and 3 of the FD.

*UK meets the requirements of Article 5 (3), FD.*

## 1.5. Article 6 – Penalties for legal persons

### 1.5.1. General comments

**1.5.2. This article requires Member States to establish effective, proportionate sanctions for legal persons (criminal or non-criminal) for active and passive corruption, instigation and abetting and for lack of supervision or control, which made the commission of the offence possible. It also gives examples of sanctions which may be imposed, such as exclusion from public benefits or aids, disqualification from the practice, judicial supervision or judicial winding-up order.**

### 1.5.3. Summary table of the transposing legislation adopted by Member States

MS	Legislation	Measures which appeared relevant to Commission's analysis (where different to MS' citations)
BE	Art. 7 bis, 41bis, and 50ter of Criminal Code  Art. 2 Law 26 June 2000 in relation to the introduction of Euro in the legislation concerning the subject covered by art. 78 Constitution.	
BG	Art. 83a penal code	
CZ	Bill to be laid before the Parliament	
DK	-	Section 25, Criminal Code (2007 report)
DE	§§ 30 and 130 Law on Administrative offences (OWiG)	
EE	Penal code art. 293, 294, 297, 298	
IE	Section 9 Act 2001 in conjunction with Corruption Acts 1899-2001  Section 1	
EL	Art. 10 par. 1,2,3 law 3560/2007	
ES	-	
FR	Art. 131-9, 445-4 Criminal Code	
IT	No provision to address this Article	
CY	No particular provisions	
LV	Chapter VII "Coercive measures applicable to legal persons" Criminal Law	
LT	No provision	Articles 43, 47, 52 and 53, Criminal Code,

		(2007 report)
LU	Draft legislation to provide for the penalty of fines is under preparation	
HU	Art. 3 Act CIV of 2001 on the Criminal Law measures applicable to legal persons	
MT	Art. 121D Criminal Code	
NL	Sections 23, 51 Criminal Code as well as the provisions cited in relation to Articles 2 and 3, FD	
AT	Law on Corporate Criminal Liability	
PL	Criminality Liability of Bodies Corporate Act of 28 October 2002, article, 7, 8, 9.	
PT	No provision to address this Article	Article 7-8, Decree-Law no. 28/84 (2007 report)
RO	Art. 53 Criminal Code	New penal code: title Vi Criminal Liability of Juridical Persons
SI	Art. 12 ZOPOKD-B	
SK	Draft legislation is under preparation	
FI	Criminal code, chapter 9, section 5, 6, and 8.	
SE	Chapter 36, section 7-10 Criminal Code	
UK	Interpretation Act 1978	

#### 1.5.4. Summary account of the transposition

Since both Articles 5 and 6 deal with liability of legal persons, as in 2007, the difficulties and gaps in Member States legislation or in the information supplied, impacted on the rate of transposition of Article 6.

16 MS (BE, DK, DE, IE, EL, FR, LT, LU, NL, AT, PL, PT, RO, SI, SE, UK) transposed the Article 6. Further clarification however is required from RO and UK.

5 MS (BG, EE, LV, HU, FI) have partly met the requirements of the Article 6. FI was requested to provide further clarifications as to the limitations of corporate liability. 4 MS (CZ, IT, CY, MT) did not transpose the Article 6, ES did not supply any information, and SK did not supply its new law on criminal liability of legal persons, therefore it was impossible to assess whether or not SK meets the requirements of this Article.

The level of implementation of the art. 6(1), obliging MS to establish liability of legal persons for active/passive bribery was higher than for Art 6 (2) since 20 MS have implemented its provisions. As regard Art. 6 (2) 4 MS (LV, BG, HU, SK) did not provide sufficient information or did not refer to liability in cases of lack of supervision at all.

#### 1.5.4.1. Summary table of the transposition

MS	Article 6(1)	Article 6(2)	Comments
BE	Meets the requirements	Meets the requirements	BE has transposed Article 6
BG	Meets the requirements	There is insufficient information to assess whether BG meets the requirements	BG has partly transposed Article 6
CZ	Does not meet the requirements	Does not meet the requirements	CZ has not transposed Article 6
DK	Met the requirements in the 2007 assessment	Met the requirements in the 2007 assessment	DK has transposed Article 6 (2007)
DE	Meets the requirements	Meets the requirements	DE has transposed Article 6
EE	Meets the requirements	Does not meet the requirements	EE has partly transposed Article 6
IE	Meets the requirements	Meets the requirements	IE has transposed Article 6
EL	Meets the requirements	Meets the requirements	EL has transposed Article 6
ES	-	-	There is insufficient information to assess whether ES has transposed Article 6
FR	Meets the requirements	Meets the requirements	FR has transposed Article 6
IT	Does not meet the requirements	Does not meet the requirements	IT has not transposed Article 6
CY	Does not meet the requirements	Does not meet the requirements	CY did not transpose Article 6
LV	Meets the requirements	Does not meet the requirements	LV has partly transposed Article 6
LT	Met the requirements in the 2007 assessment	Met the requirements in the 2007 assessment	LT has transposed Article 6
LU	Meets the requirements	Meets the requirements	LU has transposed Article 6

MS	Article 6(1)	Article 6(2)	Comments
HU	Meets the requirements	There is insufficient information to assess whether HU meets the requirements	HU has partly transposed Article 6
MT	Meets the requirements	Does not meet the requirements	MT has not transposed Article 6
NL	Meets the requirements	Meets the requirements	NL has transposed Article 6
AT	Meets the requirements	Meets the requirements	AT has transposed Article 6
PL	Meets the requirements	Meets the requirements	PL has transposed Article 6
PT	Meets the requirements	Meets the requirements	PT has transposed Article 6
RO	Meets the requirements	Appears to meet the requirements, further clarifications needed	RO appears to have transposed Article 6
SI	Meets the requirements	Meets the requirements	SI has transposed Article 6
SK	New law not provided	New law not provided	There is insufficient information to assess whether SK has transposed Article 6
FI	Partly meets the requirements	Partly meets the requirements	FI has partly transposed Article 6
SE	Meets the requirements	Appears to meet the requirements	SE has transposed Article 6
UK	Appears to meet the requirements (clarification on Scotland required)	Meets the requirements	UK appears to have transposed Article 6

#### 1.5.5. Article 6(1) Analysis of Member States

##### **Belgium**

The relevant articles are the following: art. 7 bis, 41 bis and 504 ter of the Penal Code and the art. 2 of the Law of 26 June 2000 on introduction of Euro, Royal decree no 22 of 24 October 1934 and the Law of 15 June 2000 on public procurement.

Article 7bis, Criminal Code provides that a fine can be imposed on a legal entity which is convicted of an offence, including a criminal offence, and Article 41bis, Criminal Code provides further information on the level of such fines. The fine's level is dependent on the sanction available under the individual Article which creates the offence. For example, if the specific article foresees a penalty and a fine, or only one of these penalties – the minimal fine

of 500 Euro multiplied by the number of months of the minimum imprisonment penalty is applied. However this amount cannot be lesser than the minimum fine foreseen for the offence. The maximum fine equals 2000 Euro multiplied by the number of months of the maximum imprisonment penalty, and at least double of the maximum of the fine provided for the offence.

Art. 504 ter provides "*En cas de corruption privée, la peine sera un emprisonnement de six mois à deux ans et une amende de 100 francs à 10 000 francs ou une de ces peines. § 2. Dans le cas où la sollicitation visée à l'article 504bis, § 1er, est suivie d'une proposition visée à l'article 504bis, § 2, de même, que dans le cas où la proposition visée à l'article 504bis, § 2, est acceptée, la peine sera un emprisonnement de six mois à trois ans et une amende de 100 francs à 50 000 francs ou une de ces peines.*"

Art.2 of the Law of 26 June 2000 in introduction of Euro states that the amounts of fines expressed in Belgian francs are to be multiplied by 5,5.

In addition, accessory sanctions may be applied, and they include disqualification for a period between 3 to 10 years from the practice and exclusion from participation to public procurement.

*BE meets the requirements of Article 6(1), FD.*

### **Bulgaria**

Art. 83 a provides that a legal person can be held liable, and a fine of one million BGN shall be imposed, and in any case not less than an amount equal to the corporeal advantage derived; where the advantage is incorporeal or its value cannot be determined, a fine from 5000 to 100 000 BGN shall be imposed.

A fine shall also be imposed on a legal person where persons having a power of representation, monitoring or supervising of the legal person have incited or aided the perpetration of the crime or attempted crime. The maximum amount of the fine is one million BGN, but not less than an amount equal to the corporate advantage derived shall be imposed; where the advantage is incorporeal or its value cannot be determined, a fine from five thousand BGN up to a maximum of one hundred thousand BGN shall be imposed.

*BG meets the requirements of Article 6(1)*

### **Czech Republic**

See discussion on art. 5

*CZ does not meet the requirements of Article 6(1), FD.*

Denmark

Was considered compliant in 2007 report

Germany

With regard to the binding provision contained in Article 6(1) of the Framework Decision, a fine is provided for by German law under § 30 Law on Administrative Offences undertakings

where corruption offences are committed in the private sector. Insofar as Article 6(1) makes provision for further optional penalties, DE explains that it has not made any use of such penalties. However, German law does also recognise other non-criminal measures against legal persons, including for example a prohibition on trading or the winding-up of a legal person. However, DE authorities make no clear reference to the mentioned alternative measures, nor do they supply the text.

According to the art. 30 (2) of the above mentioned law, the fine shall amount to:

1. a maximum of one million euros in the case of a criminal offence committed with intent,
2. a maximum of five hundred thousand euros in the case of a criminal offence committed recklessly"

*DE meets the requirements of Article 6(1)*

### **Estonia**

With regard to active corruption, the penalty in respect of a legal person which grants or promises a gratuity is a fine (section 297(3), Criminal Code). The penalty in respect of a legal person which grants or promises a bribe is a fine (section 298 (3), Criminal Code) and, if committed at least twice, is a fine or compulsory dissolution (section 298 (4), Criminal Code).

With regard to passive corruption, the penalty in respect of a legal person, which accepts a gratuity, whether committed once, twice or more often, whether the gratuity was demanded, whether it was accepted by a group or on a large-scale basis, is a fine (section 293, Criminal Code). The penalty in respect of a legal person which accepts a bribe is punishable by a fine (section 294(3), Criminal Code). If committed two or more times, if demanded, if accepted by a group or on a large-scale.

An act provided for in § 293 (1) or (2), § 294(1), § 297 (1) or (2) or § 298(1), if committed by a legal person, is punishable by a pecuniary punishment. An act provided for in § 194(2) or § 298(2), if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

Of the penalties indicated on the FD, in Estonia, relevant bans exist under public procurement law and state aid law, related to the possibility to entitle public benefits or aid; judicial winding-up order are possible under aggravating circumstances for accepting/giving bribe, while temporary or permanent disqualification from the practice of commercial activities and placing under judicial supervision are not available.

*EE meets the requirements of Article 6(1)*

### **Ireland**

The requirements of Article 6(1) are met by section 9 of the Act of 2010, in conjunction with the penalties laid down in the Prevention of Corruption Acts 1889-2001. These sections, when taken together, enable a fine without a predetermined maximum level to be imposed where a legal person is found liable.

*IE meets the requirements of Article 6(1)*

## **Greece**

Article 10 of the law 3560/2007 at paragraph 1 provides that the following sanctions shall be imposed on the legal person:

- a) an administrative fine up to three times the value of the advantage achieved or pursued, or
- b) temporary, or, in case of recidivism, permanent disqualification from the practice of business activities; or
- c) temporary or permanent expulsion from entitlement to public benefits or aid."

At paragraph 3 provides that the aforementioned sanctions do not exclude the possibility of other sanctions.

*EL meets the requirements of Article 6(1)*

## **France**

Article 445-4 provides for penalties for a legal person convicted of active or passive corruption which, FR informs the Commission, is a fine of 5 times that for a natural person, namely 375,000 Euros (article 131-38 criminal code).

FR provided all the relevant legislation mentioned in the previous report and not submitted then. They provide for a number of additional sanctions, such as for example winding-up order, temporary or permanent disqualification, judicial supervision, exclusion from participation to public procurement. Further analysis of these provisions allows to conclude that:

FR meets the requirements of Article 6(1)

## **Cyprus**

Although the concept of corporate liability has been introduced into CY legislation following the Ratification of the CoE Convention on Corruption, implementing measures as to the level and nature of the sanctions are still needed. A new Bill to address these issues is currently under preparation.

*CY does not meet the requirements of Article 6(1)*

## **Latvia**

Section 70(2)(3) provides that only a monetary levy may be applied to a legal person which has committed an offence under the Special Part of this Law (thereby including the offences listed at sections 196 and 199 of Chapter XIX Special Part), where that offence is at the level of a *criminal violation* (which carries a term of imprisonment of less than 2 years) (section 7(2), Chapter II, Criminal Offences) or of a *less serious crime* (which carries a term of imprisonment exceeding 2 years) (section 7(3), Chapter II, Criminal Offences). In the case of

*serious crimes and especially serious crimes*, there is provision for a range of penalties: liquidation, limitation of rights, and confiscation of property or the application of a monetary levy (section 7(4), Chapter II, Criminal Offences).

*LV meets the requirements of Article 6(1)*

### **Luxembourg**

Art. 34 of the Penal Code, as amended by the law of 3 March 2010, provides that legal persons can be held liable and the penalties are foreseen in Art. 35-38:

*"Art. 35. Les peines criminelles ou correctionnelles encourues par les personnes morales sont:*

*l'amende, dans les conditions et suivant les modalités prévues par l'article 36;*

*la confiscation spéciale;*

*l'exclusion de la participation aux marchés publics;*

*l'exclusion du bénéfice d'un avantage ou d'une aide publique;*

*la dissolution, dans les conditions et suivant les modalités prévues par l'article 38.*

*Art 36. L'amende en matière criminelle et correctionnelle applicable aux personnes morales est de 500 euros au moins. En matière criminelle le taux maximum de l'amende applicable aux personnes morales est de 750 000 Euro. En matière correctionnelle est égal au double de celle prévue pour les personnes physiques.*

*Lorsqu'aucune amende n'est prévue à l'égard des personnes physiques par la loi qui réprime l'infraction, le taux maximum de l'amende applicable aux personnes morales ne peut excéder le double de la somme obtenue par multiplication du maximum, de la peine privative de liberté prévue, exprimée en jours, par le montant pris en considération en matière de contrainte par corps."*

If the legal person is held liable for private corruption, passive and active the maximum fines provided for in art. 36 are multiplied by 5.

Art. 38 provides that in case of particular serious crime, the dissolution of the legal person can be pronounced by the Court.

*LU meets the requirements of Article 6(1)*

### **Hungary**

There is no indication of possibility of placing the legal entity under judicial supervisor, but exclusion from public benefits and aid, disqualification and judicial winding-up order are foreseen in the art. 4, 5 and 6 of the Act CIV 2001.

*HU meets the requirements of Article 6(1)*

### **Italy**

In its notification IT stated there was no provision to cover this article.

*IT does not meet the requirements of Article 6 (1)*

## **Malta**

Art. 121D of the Criminal Code provides that "Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70)"

None of the other additional penalties is foreseen.

*MT meets the requirements of Article 6(1)*

## **The Netherlands**

No particular provision was submitted for this particular Article, however NL was compliant with the requirements for the previous report. The Commission assumes that no further changes occurred.

*NL meets the requirements of Article 6(1)*

## **Austria**

Art. 1 § 4. of the law on the Liability of Associations provides that if an association is liable for a criminal offence, it shall be subject to a corporate fine. The corporate fine shall be determined in per diem rates. It shall amount to at least one per diem rate. The per diem rate shall be determined according to the income situation of the association, with due regard for its general economic performance. It shall be set at an amount corresponding to 1/360<sup>th</sup> of the annual income, or a figure which is no more than one-third above or below that amount, but subject to a minimum of EUR 50 and a maximum of EUR 10 000. If the association is for charitable, humanitarian or religious purposes (§§ 34 to 47 of the *Bundesabgabenordnung* [Austrian Fiscal Code], BGBl. No. 194/1961) or is otherwise not-for-profit, the per diem rate shall be set at a minimum of EUR 2 and a maximum of EUR 500.

It is not indicated whether other types of penalty such as those listed at (a) – (d) of Article 6(1), FD are available.

*AT meets the requirements of Article 6(1)*

## **Poland**

Article 7 (1), Criminal Liability of Bodies Corporate Act of 28 October 2002 provides for the imposition on a body corporate of a fine ranging from one thousand to 20 million PLN (ZLOTY), provided that such a fine does not exceed 10% of its revenue in the financial year during which the offence was committed.

Articles 8 and 9, Criminal Liability of Bodies Corporate Act of 28 October 2002 respectively, provide for various other penalties including confiscation orders and orders prohibiting them

from carrying out certain activities and/or receiving state aid and/or competing for public tenders etc. Prohibition orders are issued for a period of 1 to 5 years (Article 9 (2) refers).

*PL meets the requirements of Article 6(1)*

### **Portugal**

The Article 4 of Law No 20/2008 of 21 April (liability of legal persons) establishes liability and refers to the general provisions of the Criminal Code. Article 10 of the Criminal Code states that: " When a legal type of crime includes a certain result, the fact comprises not only the action proper to produce it, as the omission of the action proper to avoid it, except if the intention of the law is different. The commission of a result by omission is only punishable when the omissive person is under a legal duty that personally obliges him to avoid that result."

In 2007 PT referred to the art. 7 of the Decree Law No 28/84 providing for sanctions such as warning, a fine and dissolution. Article 8 sets out a list of additional sanctions, such as confiscation of property, guarantee of good conduct, injunction, temporary ban on carrying on certain activities or professions, temporary loss of the right to take part in public procurement procedures, loss of the right to subsidies or grants awarded by public entities or departments, loss of the right to take part in trade fairs or markets, loss of the right to be supplied via civil-service or public-sector entities, temporary or permanent closure of the establishment or publication of the conviction.

Furthermore, the art 47 of the Criminal Code provides more specific rules on how a fine penalty is fixed (with reference to days, where each day corresponds to a fine from one to 498.80 Euro)

*PT meets the requirements of Article 6(1)*

### **Romania**

Article 6(1) has been transposed partially by Article 53(3) of the Criminal Code which provides for the complementary sanctions applicable to the legal entity. Romanian criminal law does not provide for the possibility to place the legal person under judicial supervision.

There are the following types of sanctions applicable to a legal person:

-a principal sanction - a fine of RON 2,500 to RON 2,000,000.(one RON equal approx 0.2 Euro)

- a complementary sanction, such as the winding up of the legal person, temporary disqualification from the practice of commercial activities for a period between 3 months to one year, the disqualification from the practices connected to the offence for a period between 3 months to 3 years, temporary closure of some of the offices for a period between 3 months to 3 years, temporary ban on taking part in public procurement procedures for a period between one to three years or the publication of the conviction.

RO informs the Commission that the placing of the legal entity under judicial supervision is provided for by the draft new Criminal Code, adopted by the Government on 25 February 2009.

*RO meets the requirements of Article 6(1)*

### **Slovenia**

Pursuant to Article 12 of the law ZOPOKD-B, the following penalties may be issued against a legal entity:

- fine;
- confiscation of property;
- winding-up order;
- prohibition from participating in public procurement tenders;
- prohibition from trading in financial instruments.

The minimum fine that may be issued is 10.000 Euro and the maximum fine is 1.000.000 Euro. Where the criminal offence caused pecuniary loss to another or where a legal person acquired unlawful pecuniary benefit, the maximum fine that can be issued is 200 times the amount of such loss or benefit.

Half or more of the property or the entire property of the legal entity may be confiscated. Confiscation of property may be ordered for criminal offences for which a punishment of five years imprisonment or more is prescribed.

Winding-up of a legal entity may be ordered when the activity of a legal entity is fully or predominantly used for committing criminal offences. Aside from ordering winding-up of the legal entity, a court may also issue the penalty of confiscation of property. Upon issuing the penalty of winding-up a legal entity, the court motions the start of winding-up proceedings.

The two new secondary penalties, namely the prohibition from participating in public procurement tenders and the prohibition from trading in financial instruments allow, informs SI, for greater flexibility in punishing legal persons in light of the criminal offence committed.

*SI meets the requirements of Article 6(1)*

### **Slovakia**

See discussion on art 5 (1)

*There is insufficient information to assess whether SK meets the requirements of Article 6(1)*

### **Finland**

The relevant legislation is Sections 5, 6 and 8, Chapter 9 of the Criminal Code.

A corporate fine is imposed as a lump sum. The corporate fine is at least 850 Euros and at most 850,000 Euros.

In 2007 FI was requested by the Commission to provide clarification on the limitation on corporate liability (waiving of punishments and waiving of bringing of charges, section 4, 7 chapter 9), but no clarification has been submitted.

*FI partly meets the requirements of Article 6(1)*

### **Sweden**

Chapter 36 - Section 8, Criminal Code provides for a range of fine of between 5,000 Swedish crowns and 10 million Swedish crowns, the amount of which, according to section 9, is determined by the nature and extent of the crime and its relation to the business activity. Section 10 sets out a number of criteria for remission or reduction of the penalty, one of which is where the relevant natural person has received a penalty. Section 4, Trading Prohibition Act (1986:436) provides for the issue of an injunction against trading against natural persons of a specified status, where business activities have been conducted by a legal entity and provided such persons committed the crime in respect of business activities. The injunction may be imposed for a period of 3 to 10 years. Details of its scope are provided at section 6, and include a prohibition on conducting business activities.

*SE meets the requirements of Article 6(1)*

### **United Kingdom**

UK authorities informed the Commission that relating to Article 6, the relevant legislation is the Interpretation Act 1978, legal persons are subject to the same penalties as natural persons. They would thus be liable to unlimited fines in cases taken on indictment. However UK does not submit the text of the mentioned legislation.

In the previous report, a doubt was raised concerning Scotland, because neither a commentary nor the text of the Criminal Procedure (Scotland) Act 1995, was supplied. The text was not supplied so it is impossible to clarify the doubt. It seems that the Bribery Act 2010 could be relevant in this regard, but further clarification is required.

*UK appears to meet the requirements of Article 6(1)*

#### *1.5.6. Article 6(2) Analysis of Member States*

### **Belgium**

See discussion on the art. 5(2)

*BE meets the requirements of Article 6(2)*

### **Bulgaria**

In view of the discussion of Article 5(2), where the Commission invites BG to provide further commentary on the extent to which its legislation (Article 83a, Criminal Code) addresses the requirement that the legal person would be liable in situations where there has been a lack of supervision or control, it is not possible to assess whether or not BU meets the requirements of Article 6(2).

*There is insufficient information to assess whether BG meets the requirements of Article 6(2), FD.*

### **Czech Republic**

See discussion on Art 5.

*CZ does not meet the requirements of Article 6(2)*

### **Denmark**

Was considered compliant in 2007 report

### **Germany**

In the event of supervisory breaches of duty for the purposes of Article 5(2) of the Framework Decision, German law likewise provides for a fine imposed on the legal person under §§ 30 and 130 Law on Administrative offences.

*DE meets the requirements of Article 6(2)*

### **Estonia**

Estonian authorities inform that, given that no explicit rules exist concerning the lack of supervision/ duty of care, the sanctions provided for these acts are comparable to the sanctions provided for other offences of similar gravity.

When discussing the Art. 5 (2), the Commission considered that the situation remained unclear and invited Estonia to provide explicitly for liability of legal persons in cases of lack of supervision or control.

*EE does not meet the requirements of Article 6(2)*

### **Ireland**

Section 9 (1) of the Act of 2001 as amended by the Act of 2010, states that "where an offence (...) has been committed by a body corporate and is proved to have been committed with the consent (...) or to have been attributable to any neglect (...)"

Section 1 of the 1906 Act, as amended by section 2(4) of the Act of 2001, sets out the penalties for an offence of corruption. It provides that the penalty for an offence of corruption on summary conviction is a fine not exceeding €2.362.69 or imprisonment for a term not exceeding 12 months, or both. The penalty for a conviction on indictment is a fine or imprisonment for a term not exceeding 10 years or both.

*IE meets the requirements of Article 6(2)*

### **Greece**

Article 10 of the law 3560/2007 at paragraph 2 provides that the same sanctions indicated in paragraph 1 (administrative fine, disqualification from practice of business activities, expulsion from entitlement to public benefits) shall be imposed on the legal person where the lack of supervision or control by a natural person has made possible the commission of the criminal offences by a natural person under its authority.

*EL meets the requirements of Article 6(2)*

### **France**

Art. 445-4 criminal Code provides for a fine of up to 375.000€, and complementary penalties for legal persons.

*FR meets the requirements of Article 6(2)*

### **Cyprus**

See discussion on Article 6 (1)

*CY does not meet the requirements of Article 6 (2)*

### **Latvia**

As stated earlier, LV did not appear to meet the requirements of Article 5(2), since it was unclear from its legislation whether, under Section 70(8) of Chapter VIII, a court could hold a legal person liable where its lack of supervision or control has made possible the commission of the offence, as required by Article 5(2). In absence of further clarifications:

*LV does not appear to meet the requirements of Article 6(2)*

### **Luxembourg**

As discussed in relation to Article 5 (2), FD, legal persons are liable for the criminal acts of active and passive corruption without any limiting requirement as to the absence of supervision or control. For sanctions, see discussion on Article 6(1).

*LU meets the requirements of Article 6(2)*

### **Hungary**

HU did not provide any specific information relating to penalties or measure which applies in case of art. 5(2) of the FD.

*There is insufficient information to assess whether HU meets the requirements of Article 6(2), FD.*

### **Italy**

In its notification IT stated there was no provision to cover this article.

*IT does not meet the requirements of Article 6 (2)*

### **Malta**

As stated above, the relevant legislation is article 121D of the Criminal Code, which does not seem to encompass measures in case of lack of supervision or control by a person with a power of representation.

*MT does not appear to meet the requirements of Article 6(2).*

## **The Netherlands**

NL did not provide any new provisions, however, it was found to be fully compliant with Art.6 (2) in the 2007 report. As no subsequent changes to the legislation have been communicated, the Commission assumes no further changes have taken place.

*NL meets the requirements of Article 6(2)*

## **Austria**

The fines indicated in the new Law on Liability of Associations § 4 apply according to § 3 which defines the liability. At § 3 (3) In the case of criminal offences by employees, the association shall be liable if:

The commission of the offence was made possible or considerably easier because decision-makers failed to exercise the reasonable care required by the circumstances, particularly by failing to take essential technical, organizational or staff measures to prevent such acts. "

At § 5 there is the indication on how to determine corporate fine, according to aggravating (greater damage or risk for which the association is liable, greater advantage gained by the association, the greater degree to which unlawful behavior by employees was tolerated or encouraged) and mitigating (precautions to prevent such acts, association liable only for criminal offences by employees, contribution towards establishing the truth, remediation, prevention for the future, act already conferred serious legal disadvantage on the association) circumstances.

AT meets the requirements of Article 6(2)

## **Poland**

As stated already in 2007 report, PL appears to be compliant with Article 5(2) and the same applies for the penalties and measures taken to pursue the conduct described in art. 5(2)

*PL meets the requirements of Article 6(2)*

## **Portugal**

As stated in the discussion on Article 6(1), the Article 4 of Law No 20/2008 of 21 April (liability of legal persons) establishes liability and refers to the general provisions of the Criminal Code. Article 10 of the Criminal Code states that: " When a legal type of crime includes a certain result, the fact comprises not only the action proper to produce it, as the omission of the action proper to avoid it, except if the intention of the law is different. The commission of a result by omission is only punishable when the omissive person is under a legal duty that personally obliges him to avoid that result."

In 2007 PT referred to the art. 7 of the Decree Law No 28/84 providing for sanctions such as warning, a fine and dissolution. Article 8 sets out a list of additional sanctions, such as confiscation of property, guarantee of good conduct, injunction, temporary ban on carrying on certain activities or professions, temporary loss of the right to take part in public procurement procedures, loss of the right to subsidies or grants awarded by public entities or departments, loss of the right to take part in trade fairs or markets, loss of the right to be supplied via civil-

service or public-sector entities, temporary or permanent closure of the establishment or publication of the conviction.

Furthermore, the art 47 of the Criminal Code provides more specific rules on how a fine penalty is fixed (with reference to days, where each day corresponds to a fine from one to 498.80 Euro):

*"A fine penalty is fixed with reference to days, in accordance with the criterion established in number 1 under the article 71, and generally has a minimum limit of 10 days and a maximum of 360 days*

*2- Each day corresponds to a fine from €1 to €498.80, which the tribunal fixes in regard to the economic and financial conditions of the convict and his personal duties.*

*3- Whenever it is justifiable by the economic and financial conditions of the convict, the tribunal may authorize the payment of fine within a term not exceeding 1 year, or allow the payment by means of instalments, the last of which not exceeding 2 years subsequent to the date of the definite sentence of conviction.*

*4- Within the limits referred to in the previous number and when posterior motives justify it, the period of payment initially established may be altered"*

*PT meets the requirements of article 6(2)*

### **Romania**

The penalties are provided by Article 53(1) and (2) of the Criminal Code which provide for the principal penalty applicable. However, it is not clear if the relevant article 19 fully encompasses the case of liability for lack of supervision or control.

*RO appears to meet the requirements of Article 6(2), but as for the art 5(2) further clarification is required.*

### **Slovenia**

The offence is provided for at Articles 4(2) and (4), Criminal Liability of Legal Entities Act which does not however specify the level of penalty for these offences. It would appear that for that information, one must refer to the offence carried out by the perpetrator, and that the penalty which may be imposed on the legal person will vary accordingly.

*SI meets the requirements of Article 6(2)*

### **Slovakia**

See previous discussion on art 5(1)

*There is insufficient information to assess whether SK meets the requirements of Article 6(2)*

### **Finland**

Details about corporate fines, including their method of calculation, are provided at section 5-

9, chapter 9, Criminal Code. The level of corporate fine ranges from € 850 to € 850.000. However, due to the doubts as to the limitations referred to in discussion on art. 5 and 6(1):

*FI partly meets the requirements of Article 6(2)*

### **Sweden**

The penalty available with respect to an offence of active or passive corruption arising from lack of supervision is the imposition of a corporate fine (Chapter 36 - section 7, Criminal Code) ranging from 5,000 Swedish crowns to 10 million Swedish crowns (Chapter 36 - section 8, Criminal Code), which may be remitted or reduced in certain circumstances (Chapter 36 - section 10, Criminal Code), and an injunction against trading (section 4, Trading Prohibition Act 1986:436).

Chapter 36 - section 7, Criminal Code provides for a penalty of a fine where a crime has been committed by a legal person in the exercise of business activities. One of the two conditions to be met is a requirement that the legal person has not done what could reasonably be required of it to prevent the crime, which appears broad enough to meet the intention of Article 5(2).

*SE appears to meet the requirements of Article 6(2)*

### **United Kingdom**

See discussion on Article 5(2). The new Bribery Act foresees that a person guilty of the offence (failure to prevent bribery) is liable on conviction on indictment to a fine. UK informed the Commission that relating to Article 6, the relevant legislation is the Interpretation Act 1978, legal persons are subject to the same penalties as natural persons. They would thus be liable to unlimited fines in cases taken on indictment

*UK meets the requirements of Article 6(2)*

## **PART 2: Article 7 – Jurisdiction**

### **General comments**

Only 9 MS (BE, CZ, DK, DE, IE, LU, HU, NL, UK) fully transposed Article 7. It seems that 15 MS (BG, EE, EL, FR, IT, CY, LV, MT, PL, PT, RO, SI, SK, FI, SE) have partly transposed the Article, but in many cases there was not enough information on every provision to fully assess the compliance. 10 MS (DK, DE, EE, FR, LT, HU, AT, FI, SE, UK) decided not to apply certain jurisdiction rules (when offence has been committed by one of the nationals or when it was committed for the benefit of a legal person that has its head office in the territory of a given MS). In general, considering the lack of information provided, it was not possible for the Commission to draw a clear picture of the implementation of this Article. MS are required to submit more precise information in order to allow the Commission to carry out an in-depth evaluation.

### **Article 7(1) Summary table of the transposing legislation**

<b>MS</b>	<b>Legislation</b>	<b>Comments by the Commission</b>
<b>BE</b>	<b>7(1)(a) Art. 3, Criminal Code</b> <b>7(1)(b) Art. 7, 12, 12bis Law 17 April 1878</b> <b>7(1)(c) Art.3, 5, Criminal Code; Art. 23, 24, 62bis &amp; 139, Criminal Procedure Code</b>	
<b>BG</b>	<b>Art. 3, 4, 5, 6 Penal code</b>	
<b>CZ</b>	<b>Section 17, 18, 20, 21 Act No 140/1961, Crime Act</b> <b>Section 4, 6, 8, 10 of Act No 40/2009, Criminal Code</b>	
<b>DK</b>		<b>DK cited sections 9-9, Criminal Code for 2007 report.</b>
<b>DE</b>	<b>Section 3,7, 9 Criminal Code</b>	<b>It is noted that DE does not apply the jurisdiction rules in Article 791(9c) in cases where the criminal offence was committed for the benefit of a legal person which has its head of office in Germany territory.</b>
<b>EE</b>	<b>Art. 6, 7 Criminal code</b>	
<b>IE</b>	<b>Section 6 Act 2001</b> <b>Bill 2008</b>	<b>Prevention of Corruption Act 2010</b>
<b>EL</b>	<b>Art. 9 Law 3560/2007</b>	
<b>ES</b>	<b>No reply</b>	

<b>MS</b>	<b>Legislation</b>	<b>Comments by the Commission</b>
<b>FR</b>	<b>Art. 113-2, 113-6, 113-7, 113-8, 121-2, Criminal code</b>	<p>It is noted that FR applies art. 7(b)(1) just according to the following conditions:</p> <ul style="list-style-type: none"> <li>- the offences are punished in the country where have been committed,</li> <li>- the offence has been the subject of a complaint by the victim or his dependant, or there has been an official denunciation in front of the authority of the country where the offence was committed.</li> </ul>
<b>IT</b>	<b>Art. 6-9 Criminal Code</b>	Section 8 is not relevant as it deals with political offences.
<b>CY</b>		<p>Law No 23 (III)/2000 in connection with the art. 17 of the CoE Convention.</p> <p>Art 5 of the Criminal Code (text not provided)</p>
<b>LV</b>	<b>Sections 2-4, Chapter I, General provisions</b>	
<b>LT</b>		LT cited Articles 4 and 5, Criminal Code for the 2007 report.
<b>LU</b>	<b>Art. 26 - 29 Code of Criminal procedure</b>	Article 5, code of Criminal Procedure
<b>HU</b>	<b>Art. 3 Act IV 1978</b>	
<b>MT</b>	<b>Art. 121C Criminal Code</b>	
<b>NL</b>	<b>Art. 2, 5 Criminal Code</b>	
<b>AT</b>	<b>Section 62 and 67 Code of Criminal Procedure</b>	It is noted that in so far as Article 7(1)(b) is not in any case transposed by section 65 of the Criminal Code, use is made of the exception allowed under Article 7(2), and Article 7(1)(b) is confined to cases punishable in both jurisdictions.
<b>PL</b>	<b>Articles 5, 109, 112 and 113 Criminal Code</b>	
<b>PT</b>	<b>Articles 4, 5 Criminal Code</b>	

MS	Legislation	Comments by the Commission
RO	Art. 3, 4 Criminal Code	It is noted that in regard to paragraph 1(c) of Article 7, the legal entity which has the registered central office in Romania is a Romanian legal entity which is subject to the application of the Romanian law, including the criminal law.
SI	KZ-1and ZOPOKD-B art.3, 10,11,12,14	
SK	Section 3,4, 7 Criminal Code	
FI	Section 1, 6, chapter 1, Criminal code	It is noted that by virtue of Article 7(2) and in accordance with Article 7(4), FI does not apply Articles 7(1)(b) and (c) as the sole basis for the jurisdiction.
SE	Chapter 2 Criminal Code	It is noted the SE not apply the jurisdiction rule in Article 7(1)(c)
UK	1906 Act Part 12 of Anti-terrorism, crime and Security Act 2001	Bribery Act 2010

### Article 7(1) Summary account of transposition

7 MS (BE, CZ, DK, DE, HU, NL, UK) have fully transposed Article 7(1).

As mentioned previously, the lack of information supplied by MS hindered assessment of the extent to which Article 7(1) has been transposed to the national legislation of MS and leads to the conclusion, in want of more specific information, that transposition of the Article is incomplete in several MS.

In the case of AT, while relevant legislation was cited, the text of the law was not provided, thus rendering the assessment of whether these MS meet the requirements of Article 7(1). Certain recurrent omissions from reports were noted among MS. 6 MS did not provide legislation that would ensure liability for offences committed partly in their territory under Article 7(1)(a) (BG, EE, LV, RO, SI, FI). 9 MS (BG, EL, FR, IT, LV, MT, AT, PL, SK) were found to not be compliant with Article 7(1)(c) due to a failure to mention the liability of a legal person that has its head office in the territory of that MS.

### Article 7(1): Summary table of transposition

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
BE	Art. 3 Criminal Code	Art. 7 and 12, art. 12 bis of Law 17 April 1878	Art. 3 and 5, Criminal Code, art. 23,24, 62bis, 69,139	BE has transposed Article 7(1).

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p>Belgian law does not define the place where offences takes place, the theory of ubiquity is used (one of the elements committed in the territory).</p> <p><i>BE meets the requirements.</i></p>	<p>containing preliminary chapter of Criminal Code.</p> <p>These articles establish Belgian jurisdiction for crimes (as defined in EU law) committed by its nationals abroad.</p> <p><i>BE meets the requirements.</i></p>	<p>Criminal Procedural Code.</p> <p>The relevant provisions of the Criminal Procedural Code establish Belgian jurisdiction over crimes committed for the benefit of a legal person that has its headquarters in Belgium.</p> <p><i>BE meets the requirements.</i></p>	
BG	<p>Art.3(1) of the Penal Code states "The Penal Code shall apply to all crimes committed in the territory of the Republic of Bulgaria." It does not mention whether this also applies to crimes committed in part in its territory.</p> <p><i>BG partly meets the requirements</i></p>	<p>Art.4(1) of the Penal Code establishes jurisdiction over Bulgarian citizens for crimes they commit abroad. Art.4(2) specifies that Bulgarian citizens may only be deported when this is provided for by an international treaty which Bulgaria has ratified.</p> <p><i>BG meets the requirements</i></p>	<p>The wording of Art. 3(1) does not appear sufficient to cover the requirement of crimes benefiting a legal person that has its head office in Bulgaria, as it specifies crimes committed within its territory.</p> <p><i>BG does not appear to meet the requirements</i></p>	BG has partly transposed Article 7(1).
CZ	<p>Section 4, Act 40/2009 Criminal Code: "(1) The criminality of an act committed in the territory of the Czech Republic</p>	<p>Section 6(3), Criminal Code: "The criminality of an act committed abroad by a citizen of the Czech Republic ... shall also be assessed in</p>	<p>Section 8, Criminal Code: "(2) The criminality of an act committed by a foreign national ... shall also be assessed in</p>	CZ has transposed Article 7(1).

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p>shall be assessed in accordance with the law of the Czech Republic.</p> <p>(2) An offence shall be regarded as committed in the territory of the Republic</p> <p>(a) if the offender commits the act here, even if the violation of or threat to an interest protected by the Crime Act occurs or is intended to occur in whole or in part abroad, or</p> <p>(b) if the offender violates or threatens an interest protected by the Crime Act here, or if the consequence is intended to occur at least in part here, even if the act is committed abroad."</p> <p><i>CZ meets the requirements.</i></p>	<p>accordance with the law of the Czech Republic."</p> <p><i>CZ meets the requirements.</i></p>	<p>accordance with the law of the Czech Republic if the act is committed for the benefit of a legal person having its registered office or organisational unit in the Czech Republic, or a natural person who is an entrepreneur and has his undertaking, an organisational unit thereof, or place of business in the Czech Republic.</p> <p>(3) However, a punishment more stringent than that provided by the law of the State in whose territory an offence is committed may not be imposed on the offender."</p> <p><i>CZ meets the requirements.</i></p>	
DK	<p>For the previous report, DK cited the following.</p> <p>Section 6(1), Criminal Code, provides for DK jurisdiction where an offence takes place fully or partly in DK. Attempts and participatory acts committed in DK also fall under</p>	<p>For the previous report, DK notified the Commission that it has opted to make jurisdiction conditional to the offence being punishable in the country in which it was committed (dual criminality). DK also states that acts committed outside DK by a</p>	<p>DK has opted not to apply this rule.</p>	<p>DK was found, in the 2007 assessment, to have transposed Article 7(1).</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p><b>DK jurisdiction under this provision even if the relevant offence is carried out or intended to be carried out abroad. In addition, Section 8, Criminal Code, provides that, under certain circumstances, acts committed abroad come under DK jurisdiction irrespective of where the offender resides.</b></p> <p><i>DK meets the requirements.</i></p>	<p><b>person holding DK citizenship, resident in DK or a person holding the citizenship or right of residence in another Nordic country who is staying in DK, come under DK jurisdiction where the offence is punishable under legislation regarding the place of the crime.</b></p> <p><i>DK meets the requirements.</i></p>		
DE	<p><b>This is addressed by Section 3 in conjunction with Section 9, Criminal Code.</b></p> <p><b>Section 3 states that: "German criminal law shall apply to offences committed within Germany,"</b></p> <p><b>while Section 9 specifies that an offence "is deemed to have been committed at the place where the perpetrator acted or, in the case of an omission, should have acted, or at the place where the result forming a constituent of the offence occurred or where the offender intended it to</b></p>	<p><b>Under German law, offences committed in other countries by German nationals are punishable, irrespective of whether or not the offences are subject to penalties at the time and in the place of their commission (§ 7(2)(1) StGB). The constituent elements of the criminal offence under § 299 StGB are also expressly applicable to criminal offences relating to foreign competition (§ 299(3) StGB).</b></p>	<p><b>The jurisdiction rules in Article 7(1)(c) are not applied in cases where the criminal offences was committed for the benefit of a legal person which has its head office in German territory.</b></p>	<p><b>DE has transposed Article 7 (1).</b></p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p>occur." The reference to both acting and effects appears to cover the "in whole or in part" requirement of the FD.</p> <p><i>DE meets the requirements.</i></p>	<p><i>DE meets the requirements.</i></p>		
EE	<p>Art. 6 Penal Code</p> <p>EE informs, "the penal law of Estonia applies to acts committed within the territory of Estonia." However, it remains unclear as to whether this also applies to crimes committed in part within the territory.</p> <p><i>EE partly meets the requirements</i></p>	<p>Art. 7 penal code</p> <p>EE informs, "the penal law of Estonia applies to an act committed outside the territory of Estonia if such act constitutes a criminal offence pursuant to the penal law of Estonia and is punishable at the place of commission of the act, or if no penal power is applicable at the place of commission of the act and if:</p> <p>2) the offender is a citizen of Estonia at the time of commission of the act or becomes a citizen of Estonia after the commission of the act, or if the offender is an alien who has been detained in Estonia and is not extradited. The penal law of</p>	<p>EE states: "No explicit regulation exists except in foreign bribery cases. Legal persons registered in Estonia might be considered Estonian nationals."</p> <p>The decision to not apply Art.7(1)(c) of the FD, though not confirmed, is assumed by the Commission to still be valid.</p> <p><i>EE meets the requirements</i></p>	<p>EE has partly transposed Article 7(1)</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
		<p><b>Estonia applies: 2) to giving bribe or granting of gratuities to a foreign official, or influence peddling by a foreign official, or any offence connected to these offences, if committed by a citizen of Estonia, or an alien who has been detained in Estonia and is not extradited, or a legal person registered in Estonia."</b></p> <p><i>EE meets requirements.</i></p>		
IE	<p><b>Section 6 Act 2001</b></p> <p><b>IE informs that this article "provides that a person may be tried in Ireland for a corruption offence if any element of the offence occurred in the State."</b></p> <p><i>IE meets the requirements</i></p>	<p><b>Section 3 Prevention of Corruption Act 2010</b></p> <p><i>IE meets the requirements</i></p>	<p><b>Section 3 Prevention of Corruption Act 2010</b></p> <p><i>IE meets the requirements</i></p>	<p><b>IE has transposed Article 7(1)</b></p>
EL	<p><b>Art. 9, Law 3560/2007</b></p> <p><b>Provides for Ipso Jure prosecution as follows, "(1) Greek Courts shall have jurisdiction over the criminal</b></p>	<p><b>Art. 9 law 3560/2007</b></p> <p><b>Article 17.1 of the Criminal Law Convention to which this provision in Greek law makes reference also</b></p>	<p><b>The provisions cited by EL do not make specific mention of jurisdiction over legal persons having their head office on Greek territory.</b></p>	<p><b>EL has partly transposed Article 7(1).</b></p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p>offences referred to in article 17, par.1, in combination with articles 2 to 14 of the Convention ratified hereby." The relevant article in the Criminal Law Convention on Corruption establishes jurisdiction where "(a) the offence is committed in whole or in part in its territory."</p> <p><i>EL meets the requirements</i></p>	<p>establishes jurisdiction where "(b) the offender is one of its nationals."</p> <p><i>EL meets the requirements.</i></p>	<p><i>There is insufficient information to assess whether EL meets the requirements.</i></p>	
ES	-	-	-	-
FR	<p>Art. 113-2 and 121-2 Criminal Code</p> <p>French legislation stipulates, "La loi pénale française est applicable aux infractions commises sur le territoire de la République. L'infraction est réputée commise sur le territoire de la République dès lors qu'un de ses faits constitutifs a eu lieu sur ce territoire."</p> <p><i>FR meets the requirements</i></p>	<p>Art.113-6, 113-7 and 113-8, Criminal Code</p> <p>It is noted that FR applies art. 7(b)(1) just according to the following conditions:</p> <ul style="list-style-type: none"> <li>- the offences are punished in the country where have been committed,</li> <li>- the offence has been the subject of a complaint by the victim or his dependant, or there has been an official denunciation in front of the authority of the country where the offence was</li> </ul>	<p>FR does not supply any information on this provision.</p> <p><i>There is insufficient information to assess whether FR meets the requirements.</i></p>	<p>FR has partly transposed Article 7(1).</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
		<p>committed.</p> <p><i>The declaration is noted</i></p>		
IT	<p>Section 6, Criminal Code provides that an offence is considered to have been committed in IT territory if the act or omission constituting it occurred there in whole or in part or the effects of the act or omission were felt and recorded there.</p> <p><i>IT meets the requirements</i></p>	<p>Section 9, Criminal Code provides for jurisdiction in relation to offences against ordinary law committed outside IT by an IT citizen, including offences where the penalty is a period of imprisonment of 3 years or more. As the penalty under section 2635, Civil Code is for a period "not exceeding 3 years" this penalty appears to just barely meet this criterion, and in this case the penalty can be imposed if the person is found in Italian territory.</p> <p>Where a lesser custodial penalty has been imposed, section 9, Criminal Code provides that the person be sentenced either on application by the Ministry of Justice or on a complaint from the victim of the offence.</p> <p>In view of these limitations,</p> <p><i>IT does not meet the</i></p>	<p>Has supplied no provisions in this regard, nor has it informed the Commission that it has taken a decision not to apply Article 7 (1) (c), in accordance with Articles 7 (2) and 7 (4).</p> <p><i>There is insufficient information to assess whether IT meets the requirements</i></p>	<p>IT has partly transposed Article 7 (1).</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
		<i>requirements</i>		
CY	<p>CY refers to the Law 23 (III)/2000 referring to the art. 17 of the CoE, and it seems that jurisdiction rules has been established. Further clarifications would be welcomed.</p> <p><i>CY seems to meet the requirements</i></p>	<p>CY refers to the Law 23 (III)/2000 referring to the art. 17 of the CoE, and it seems that jurisdiction rules has been established. Further clarifications would be welcomed.</p> <p><i>CY seems to meet the requirements</i></p>	<p><i>There is insufficient information to assess whether CY meets the requirements</i></p>	<p><i>CY seems to have partly transposed Article, clarifications needed</i></p>
LV	<p>Section 2, Criminal Code provides for the principle of territoriality but with no reference to offences occurring <i>in part</i> on LV territory.</p> <p><i>LV partly meets the requirements</i></p>	<p>Section 4, Criminal Code provides for jurisdiction over LV citizens or noncitizens who hold a residence permit for LV.</p> <p><i>LV meets the requirements</i></p>	<p>LV does not provide information.</p> <p><i>There is insufficient information to assess whether LV meets the requirements</i></p>	<p>LV has partly transposed Article 7(1).</p>
LT	<p><i>There is insufficient information to assess whether LT meets the requirements</i></p>	<p><i>There is insufficient information to assess whether LT meets the requirements</i></p>	<p><i>There is insufficient information to assess whether LT meets the requirements</i></p>	<p>There is insufficient information to assess whether LT has transposed Article 7</p>
LU	<p>As noted in the 2007 assessment (art 3 Code Penal)</p> <p><i>LU meets the requirements</i></p>	<p>As noted in the 2007 assessment, in accordance with the Art. 5 of the Code of Criminal Procedure,</p> <p><i>LU meets the requirements</i></p>	<p>Art 26(1) and art 29 of the Code of Criminal Procedure</p> <p>Sont compétents le procureur d'Etat du lieu de l'infraction, celui de la</p> <p>résidence, au moment de la poursuite, de l'une</p>	<p>LU has transposed Article 7</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
			<p>des personnes physiques soupçonnées d'avoir participé à l'infraction, celui du lieu d'arrestation d'une de ces personnes, même lorsque cette arrestation a été opérée pour une autre cause, celui du siège de la personne morale".</p> <p>" Art. 29. (1) (L. 3 mars 2010) Sont compétents le juge d'instruction du lieu de l'infraction, celui de la résidence, au moment de la poursuite, de l'une des personnes physiques soupçonnées d'avoir participé à l'infraction, celui du lieu d'arrestation d'une de ces personnes, même lorsque cette arrestation a été opérée pour une autre cause, celui du siège de la personne morale"</p> <p><i>LU meets the requirements</i></p>	
HU	<p>Art. 3.1 Act IV 1978 states</p> <p>"Hungarian law</p>	<p>Art. 3.1 Act IV 1978 states</p> <p>"Hungarian law</p>	<p>Hungarian criminal law does not contain the jurisdiction rule</p>	<p>HU has transposed Article 7(1).</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p>shall apply to all criminal acts committed within Hungary."</p> <p><i>HU meets the requirements</i></p>	<p>shall apply ... to any act deemed to be a crime under Hungarian law which is committed abroad by a Hungarian citizen."</p> <p><i>HU meets the requirements</i></p>	<p>under Article 7(1)(c), therefore Hungary does not apply it in accordance with Article 7(2)</p> <p><i>HU declaration has been noted</i></p>	
MT	<p>Art. 121C Criminal Code states</p> <p>"the Maltese courts shall have jurisdiction over the offences laid down in this subtitle where: (a) only part of the action giving execution to the offence took place in Malta."</p> <p><i>MT meets the requirements</i></p>	<p>Art. 121C(b) Criminal Code</p> <p>"the offender is a Maltese national"</p> <p><i>MT meets the requirements</i></p>	<p>No provisions</p> <p><i>There is insufficient information to assess whether MT meets the requirements</i></p>	<p>MT has partly transposed Article 7(1).</p>
NL	<p>Dutch criminal law applies the principle of territoriality, laid down in Article 2 of the Criminal Code, as a general starting point for the exercise of jurisdiction. Under the 'ubiquity doctrine' Article 2 of the Criminal Code also extends to conduct which has taken place partially in the Netherlands and partially abroad. The Netherlands then also has</p>	<p>The active personality principle has been laid down in Article 5 of the Criminal Code. This means that the Dutch criminal law applies to a Dutch person who has carried out abroad an act which is criminal under Dutch law. An example of the application of this in a case of corruption in the private sector is provided by Gerechtshof</p>	<p>The culpability of a legal person – Article 51 of the Criminal Code – is accepted in Dutch law on the basis of the circumstance that the criminal offence provides an advantage for the legal person (cf. Hoge Raad, 27 January 1948, NJ 1948, 197). The active personality principle also applies to the conduct of Dutch legal persons abroad.</p>	<p>NL has transposed Article 7(1).</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p>jurisdiction over actions abroad (see Hoge Raad 6 April 1954, NJ 1954, 368 and Hoge Raad 30 September 1997, NJ 1998, 117).</p> <p><i>NL meets the requirements</i></p>	<p>Amsterdam, 4 April 2003, NJ 2003, 291, in which a Dutch person had bribed an employee of a British company. The active personality principle also applies to the conduct of Dutch legal persons abroad (Hoge Raad, 18 October 1988, NJ 1989, 496).</p> <p><i>NL meets the requirements</i></p>	<p><i>NL meets the requirements</i></p>	
AT	<p>Art. 62 – 67 Criminal law (text not provided)</p> <p><i>There is insufficient information to assess whether AT meets the requirements</i></p>	<p>Article 65, Code of Criminal Procedure and otherwise the exception Clause of Article 7(2) is used.</p> <p><i>AT meets the requirements</i></p>	<p>No provision</p> <p><i>There is insufficient information to assess whether AT meets the requirements</i></p>	<p>There is insufficient information to assess whether AT has transposed Article 7(1).</p>
PL	<p>Article 5, Criminal Code provides for jurisdiction in respect of persons who commit offences in PL. It is not clear whether this provision also covers offences committed partly in PL.</p>	<p>Article 109, Criminal Code provides for jurisdiction in respect of PL citizens who commit offences abroad. Article 112 (14) (5), Criminal Code provides that, without a requirement of dual criminality, PL criminal law shall apply to PL</p>	<p>No provision</p> <p><i>There is insufficient information to assess whether PL meets the requirements</i></p>	<p>PL has partly transposed Article 7(1).</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<i>PL partly meets the requirements</i>	<p>citizens and foreigners who commit an offence from which they have received, even indirectly, material benefits in PL, while Article 113, Criminal Code provides that, without a requirement of dual criminality, PL Criminal law shall apply to PL citizens and foreigners whom it has decided not to extradite and who have committed, outside PL, an offence which PL is bound to pursue by virtue of international agreements.</p> <p><i>PL meets the requirements</i></p>		
PT	<p>As per the 2007 assessment,</p> <p><i>PT partly meets the requirements</i></p>	<p>As per the 2007 assessment,</p> <p><i>PT meets the requirements</i></p>	<p>PT does not provide any information in relation to Article 7 (1)(c).</p> <p><i>There is insufficient information to assess whether PT meets the requirements</i></p>	<p>PT has partly transposed Article 7 (1).</p>
RO	<p>Art. 3 Criminal Code applies to offences committed on the territory of Romania, but is unclear if it applies</p>	<p>Art. 4 Criminal Code stipulates</p> <p>"The criminal law shall apply to offences committed</p>	<p>It is noteworthy that the legal entity which has the registered central office in Romania is a Romanian legal</p>	<p>RO has partly transposed Article 7 (1).</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p>also to offences committed partly on the territory of Romania.</p> <p><i>RO partly meets the requirements</i></p>	<p>outside the territory of the country if the perpetrator is a Romanian citizen."</p> <p><i>RO meets the requirements</i></p>	<p>entity which is subject to the application of the Romanian law, including the criminal law.</p> <p><i>RO meets the requirements</i></p>	
SI	<p>Article 10, Criminal Code provides for jurisdiction in respect of offences committed in the territory of SI, on domestic vessels and flights etc regardless of location. However, this does not appear to extend to offences committed partly on its territory.</p> <p><i>SI partly meets the requirements</i></p>	<p>Articles 12, 11, 14, Criminal Code</p> <p>SI informs that, according to Art.12, its criminal law applies to Slovenian nationals who commit crimes abroad with two qualifications. First, Article 14(3) poses a requirement of double criminality. Second, Article 14(2) forbids double jeopardy.</p> <p><i>SI partly meets the requirements</i></p>	<p>Art. 3 Criminal Liability of Legal Entities Act.</p> <p>SI informs that national and foreign legal persons are liable for criminal offences committed both in the territory of SI and abroad, if the legal person has its seat in Slovenia.</p> <p><i>SI meets the requirements</i></p>	<p>SI has partly transposed Article 7 (1).</p>
SK	<p>Section 3 Criminal Code states "(2) A criminal offence shall also be deemed to have been committed on the territory of the Slovak Republic</p>	<p>Section 4 Criminal Code states, "The punishability of an offence committed outside the territory of the Slovak Republic by a Slovak national</p>	<p>No provision communicated.</p>	<p>SK has partly transposed Article 7 (1).</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p>when the perpetrator: (a) committed at least part of the offence on the territory of the Slovak Republic, if the interest protected by this Act would have been violated or endangered, whether fully or in part, abroad."</p> <p><i>SK meets the requirements</i></p>	<p>or a foreign national permanently residing in the territory of the Slovak Republic shall also be judged under this Act."</p> <p><i>SK meets the requirements</i></p>	<p><i>There is insufficient information to assess whether SK meets the requirements</i></p>	
FI	<p>Criminal Code, chapter 1, section 1 establishes jurisdiction of crimes committed within Finnish territory. It is, however, unclear whether this extends to crimes committed in part within Finnish territory.</p> <p><i>FI partly meets the requirements</i></p>	<p>Criminal code, chapter 1, section 6. by virtue of Article 7(2), and in accordance with Article 7(4), Finland informs the Commission that, in situations covered by Article 7(1)(b), it may require an order for prosecution from the Prosecutor-General or double criminality, unless the action in the latter case seriously harms or endangers Finnish political, military or economic rights or interests.</p> <p><i>FI's declaration is noted</i></p>	<p>By virtue of article 7(2) and in accordance with article 7(4), Finland informs the Commission that it does not apply Article 791)(c) as the sole basis for jurisdiction.</p> <p><i>FI's declaration is noted</i></p>	<p>FI has partly transposed Article 7(1).</p>
SE	Chapter 2 Criminal	Chapter 2 Criminal	SE informed the	SE has partly

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
	<p style="text-align: center;"><b>Code</b></p> <p style="text-align: center;">As noted in the 2007 assessment,</p> <p style="text-align: center;"><i>SE meets the requirements</i></p>	<p style="text-align: center;"><b>Code</b></p> <p style="text-align: center;">As noted in the 2007 assessment,</p> <p style="text-align: center;"><i>SE meets the requirements</i></p>	<p>Commission that it would not apply the jurisdiction rule in Article 7 (1) (c). It is therefore not clear how SE addresses those provisions of section 4, the Trading Prohibition Act (1986:436) which state that injunctions against trading can be imposed against the chief executive officer of such entities as European Economic Interest Groupings which have their registered office in SE and against members and alternate members of the managerial, administrative or supervisory organ, the managing director and the deputy managing director of European companies which have their registered office in SE.</p> <p>Sweden is invited to clarify its position in respect of Article 7 1(c), FD.</p> <p><i>There is insufficient</i></p>	<p>transposed Article 7(1).</p>

MS	Article 7(1)(a)	Article 7(1)(b)	Article 7(1)(c)	Comments
			<i>information to assess whether SE meets the requirements</i>	
UK	<p>Section 12(1) of the 2010 Bribery Act states</p> <p>"An offence is committed under section 1, 2 or 6 in England and Wales, Scotland or Northern Ireland if any act or omission which forms part of the offence takes place in that part of the United Kingdom."</p> <p><i>UK meets the requirements</i></p>	<p>Part 12 anti-terrorism Act, Section 109 Crime and Security Act 2001</p> <p><i>UK meets the requirements</i></p>	<p>The UK exercises its right, under Article 7.2, not to apply this rule in full. Section 109 of the 2001 Act extends our jurisdiction to cover offences committed outside the UK <i>by</i> bodies incorporated under UK law, so that most of the Article 7.1 (c) cases will be covered. However the concept of jurisdiction based on the issue of who <i>benefits</i> from a crime is alien to our system: and a jurisdiction based on the location of a head office would in some cases give a different result to our system of jurisdiction based on incorporation under UK law.</p> <p><i>UK declaration is noted</i></p>	UK has transposed Article 7(1).

1.5.7. Article 7(2) Table of Declarations

MS	Article to which Declaration relates	Terms of Declaration

<b>MS</b>	<b>Article to which Declaration relates</b>	<b>Terms of Declaration</b>
<b>BE</b>	<b>No declaration</b>	
<b>BG</b>	<b>No declaration</b>	
<b>CZ</b>	<b>No declaration</b>	
<b>DK</b>	<b>Art. 7(1)(c)</b>	<b>Had, in the 2007 report, decided not to apply the jurisdiction rules.</b>
<b>DE</b>	<b>Art. 7(1)(c)</b>	<b>The jurisdiction rules in Article 7(1)(c) are not applied in cases where the criminal offences was committed for the benefit of a legal person which has its head office in German territory.</b>
<b>EE</b>	<b>Art. 7(1)(c)</b>	<b>No explicit regulation exists except in foreign bribery cases. Legal persons registered in Estonia might be considered Estonian nationals.</b>
<b>IE</b>	<b>No declaration</b>	
<b>EL</b>	<b>No declaration</b>	
<b>ES</b>	<b>No reply</b>	
<b>FR</b>	<b>Art. 7(1)(b)</b>	<p><i>"Conformément aux dispositions des paragraphes 2 et 4 de l'article 7, la République française déclare qu'elle n'établira sa compétence, dans le cas visé au paragraphe 1 point b) de l'article 7, que dans les cas ou conditions suivants:</i></p> <p><i>- lorsque les faits sont punis par la législation du pays où ils ont été commis</i></p> <p><i>et</i></p> <p><i>- lorsqu'ils ont fait l'objet d'une plainte de la victime ou de ses ayants droit, ou d'une dénonciation officielle par l'autorité du pays où ils ont été commis."</i></p>
<b>IT</b>	<b>No declaration</b>	
<b>CY</b>	<b>No declaration</b>	
<b>LV</b>	<b>No declaration</b>	
<b>LT</b>	<b>7(1)(C)</b>	<b>LT had, for the 2007 report, decided not to apply the jurisdiction rules.</b>
<b>LU</b>	<b>No declaration</b>	
<b>HU</b>	<b>Art. 7(1)(c)</b>	<b>Hungarian criminal law does not contain the jurisdiction rule under Article 7(1) (c), therefore Hungary does not apply it in accordance with Article 7(2).</b>
<b>MT</b>	<b>No declaration</b>	

MS	Article to which Declaration relates	Terms of Declaration
NL	No declaration	
AT	Art. 7(1)(b)	To the extent that Article 7 (1)(b) is not already implemented by Section 65 of the Criminal Code, AT has decided, in accordance with article 7(2) of the Framework decision, to make jurisdiction in the cases defined in Article 7(1)(b) (own nationals) dependent upon whether the offence is also punishable under the law of the country in which it has been committed (double criminality).
PL	No declaration	
PT	No declaration	
RO	No declaration	
SI	No declaration	
SK	No declaration	
FI	Art. 7(1)(b)  Art. 7(1)(c)	Criminal code, chapter 1, section 6. by virtue of Article 7(2), and in accordance with Article 7(4), Finland informs the Commission that, in situation covered by Article 7(1)(b), it may require an order for prosecution from the Prosecutor-General or double criminality, unless the action in the latter case seriously harms or endangers Finnish political, military or economic rights or interests.  By virtue of article 7(2) and in accordance with article 7(4), Finland informs the Commission that it does not apply Article 7(1)(c) as the sole basis for jurisdiction
SE	Art. 7(1)(c)	Has decided not to apply the jurisdiction rules. However, the Commission wonders how SE intends to address those provisions of section 4, the Trading Prohibition Act (1986:436) which state that injunctions against trading can be imposed against the chief executive officer of such entities as European Economic Interest Groupings which have their registered office in Sweden and against members and alternate members of the managerial, administrative or supervisory organ, the managing director and the deputy managing director of European companies which have their registered office in Sweden.
UK	Art. 7(1)(c)	As regards Article 7.1 (c) the UK exercises its right, under Article 7.2, not to apply this rule in full. Section 109 of the 2001 Act extends our jurisdiction to cover offences committed outside the UK by bodies incorporated under UK law, so that most of the Article 7.1 (c) cases will be covered. However the concept of jurisdiction based on the issue of who <i>benefits</i> from a crime is alien to our system: and a jurisdiction based on the location of a

MS	Article to which Declaration relates	Terms of Declaration
		head office would in some cases give a different result to our system of jurisdiction based on incorporation under UK law.

#### 1.5.8. Article 7(3) Table of Member States' comments

MS	Comments
BE	No comment on extradition; BE has transposed all elements of Art.7 (1)
BG	Art.4(1) of the Bulgarian Penal Code states: "The Penal Code shall also apply to Bulgarian citizens for the crimes committed by them abroad." According to art. 4(2)(2) (Amended - SG 75 / 2006) "Citizens of the Republic of Bulgaria may not be deported to another state or to an international tribunal for prosecution, unless this is provided for in an international treaty which has been ratified, promulgated and entered into force for Bulgaria."
CZ	Section 21 of Act 140/1961 and Section 10 of Act 40/2009 provide that a citizen of Czech Republic cannot be extradited to a foreign State unless otherwise provided by the law or a promulgated international treaty. The Czech authorities inform however that they have enshrined the European arrest warrant in their legal system and according to section 6 of Act 40/2009 a crime committed abroad by a Czech citizen shall be assessed in accordance with the law of Czech Republic.
DK	DK stated, for the 2007 report, that it extradites its own nationals under Danish law where certain conditions are met (Act No. 378 of 6 June 2002 refers). Denmark has also updated its legislation to make provision for the European Arrest Warrant and the surrender procedures between MS (Act No. 433 of 10 June 2003 refers).
DE	DE makes recourse Art.7(2) of the FD to stipulate that it does not apply Art.7(1)(c) of the FD. No comments on surrendering German nationals under domestic law were offered.
EE	EE makes recourse Art.7(2) of the FD to stipulate that it does not apply Art.7(1)(c) of the FD. No comments on surrendering Estonian nationals under domestic law were offered.
IE	No comment on extradition; art 7.1 transposed
EL	No comment on extradition; unclear whether Art.7(1)(c) is fully transposed.
ES	-
FR	No comment on extradition; declaration limiting Art.7(1)(b); unclear whether Art.7(1)(c) is fully transposed.
IT	IT refers the Commission to its ratification of the European Extradition Convention of 13 December 1957.
CY	No comments provided
LV	No comment on extradition; unclear whether Art.7(1)(c) is fully transposed.

<b>LT</b>	<b>LT stated, for the 2007 report, that it implements Article 7(3), FD, by means of national legal acts relating to the surrender of persons, including nationals of the Republic of Lithuania, in accordance with a European Arrest Warrant.</b>
<b>LU</b>	<b>No comment on extradition; unclear whether Art.7(1)(c) is fully transposed.</b>
<b>HU</b>	<b>Art. 3 act IV 1978 act deemed to be a crime under Hungarian law which is committed abroad by Hungarian citizen are punished following Hungarian laws.</b>
<b>MT</b>	<b>No comment on extradition; unclear whether Art.7(1)(c) is fully transposed.</b>
<b>NL</b>	<b>No comment on extradition; NL has transposed all elements of Art.7(1).</b>
<b>AT</b>	<b>No comment on extradition; unclear whether Art.7(1)(c) is fully transposed.</b>
<b>PL</b>	<b>No comment on extradition; unclear whether Art.7(1)(c) is fully transposed.</b>
<b>PT</b>	<b>Portugal informs the Commission that jurisdiction outside its territory is also governed by the rules of the European Arrest Warrant in the context of the European Union and Article 32(5) of Law No. 144/91 as regards international jurisdiction outside the EU, pursuant to which, where extradition is refused, criminal proceedings are instituted in respect of the acts on which the request is based, with the requesting State asked to provide the necessary facts.</b>
<b>RO</b>	<b>RO refers to Article 4 of the Criminal Code, "The criminal law shall apply to offences committed outside the territory of the country if the perpetrator is a Romanian citizen or if, having no citizenship, he has the domicile in the country."</b>
<b>SI</b>	<b>SI notes: "the Republic of Slovenia has jurisdiction to prosecute cases falling under Points b and c of Paragraph 1 [Art.7 of the FD]. Considering that the criminal offence of corruption is included in Article 2(2) of the Council Framework Decision (2002/584/JHA) of 13 June 2002 on the European arrest warrant and the surrender procedures, Paragraphs 3 and 4 are not applicable."</b>
<b>SK</b>	<b>"Section 7 Applicability under international treaties (1) The punishability of an act shall also be judged in accordance with this Act where so stipulated by an international treaty binding on the Slovak Republic which has been ratified and promulgated as required under Slovak legislation. (2) The provisions of Sections 3 to 6 shall not apply where such application is not permitted under an international treaty binding on the Slovak Republic which has been ratified and promulgated as required under Slovak legislation.</b>
<b>FI</b>	<b>No comment on extradition; declaration limiting scope of application of Articles 7(1) (b) and (c).</b>
<b>SE</b>	<b>No comment on extradition; declaration limiting the scope of art. 7(1) (c)</b>
<b>UK</b>	<b>UK stands ready to extradite its own nationals to face charges abroad</b>