Commission Proposes New Anti-Corruption Directive

Thomas Wahl

eucrim
European Law Forum: Prevention • Investigation • Prosecution

News

AUTHOR

Thomas Wahl
Senior Researcher
Max Planck Institute for the Study of Crime, Security and Law

Published in
2023, Vol. 18(2) eucrim pp 140 – 141
ISSN: 1862-6947
https://eucrim.eu

On 3 May 2023, the Commission tabled a proposal for a directive which would establish new rules on combating corruption in the EU. The directive is set to replace Council Framework Decision 2003/568/JHA that lays down requirements on the criminalisation of corruption concerning the private sector, and the 1997 Convention on the fight against corruption involving EU officials or officials of EU Member States. It would also amend the PIF Directive (Directive 2017/1371).

In the explanatory memorandum, the Commission set out the reasons for this new legislative initiative:

- Previous calls by the European Parliament and Council for more EU action to combat corruption;
- Need for an update of the existing EU legal framework on combating corruption taking into account the evolution of corruption threats and the legal obligations on the Union and Member States under international law as well as the evolution of national criminal legal frameworks;
- Enforcement gaps at national level and obstacles in the cooperation in corruption cases between the competent authorities in different Member States;
- Addressing failings in integrity, undisclosed conflicts of interests or serious breaches of ethical rules that can lead to corrupt activities.

The draft directive combines preventive and repressive anti-corruption elements in one single EU act. It takes up provisions of the United Nations Convention Against Corruption (UNCAC) while at the same time going beyond international obligations in certain aspects. The directive includes several obligations for Member States that are based on three major pillars: prevention of corruption, harmonisation of the criminal law regarding corruption offences, better law enforcement . The main obligations and contents are summarised in the following:

Prevention of corruption

- Raising awareness of corruption by carrying out information and awareness-raising campaigns, research, and education programmes;
- Ensuring the highest degree of transparency and accountability in public administration and public decision-making;
- Putting in place key preventive tools, including effective rules on access to information, on conflicts of interests in the public sector, on assets of public officials and their interaction with the private sector;
- Performing regular assessments to identify the sectors most at risk of corruption;

- Setting up specialised anti-corruption bodies and ensuring adequate resources and training for authorities responsible for preventing and fighting corruption.

Harmonisation of criminal law

- Clarifying the definitions of and penalties for corruption offences;
- Making all offences under the UNCAC mandatory under EU law and bringing together public and private sector corruption;
- Covering the full range of corruption offences and extending the list (beyond the more classic bribery in the public and private sector) to: misappropriation, trading in influence, abuse of functions, obstruction of justice and illicit enrichment from corruption offences;
- Establishing consistent penalty levels for natural persons and setting standards for the liability of and sanctions for legal persons;
- Harmonising aggravating and mitigating circumstances.

Enforcement aspects

- Defining minimum limitation periods for corruption offences that allow for sufficient time to effectively investigate, prosecute, trial and decide on corruption offences;
- Ensuring that privileges and immunity can be lifted during corruption investigations through an effective and transparent process pre-established by law, and in a timely manner;
- Ensuring that national law enforcement and prosecutors have appropriate investigative tools to fight corruption.

Lastly, the draft directive also includes a provision to have better statistical data on corruption offences. The provision lists, in a non-exhaustive manner, the statistical data that should be collected by the Member States and obliges them to publish such data annually.

The next step is to negotiate the anti-corruption package in the EU Parliament and Council.

The proposal for a new anti-corruption directive is a core initiative that came in parallel with the presentation of other anti-corruption tools, including a Communication on combating corruption and a proposal for establishing a dedicated CFSP sanctions regime to target serious acts of corruption worldwide (→ related link).

About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and "criministrative" law.
All news items are freely accessible at: https://eucrim.eu/news/
Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.
The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).

Co-funded by
the European Union