



Anti-Corruption Legislation in Selected Jurisdictions

European Union • Austria • Belgium • Bulgaria •
Croatia • Cyprus • Czech Republic • Denmark •
Estonia • Finland • France • Germany • Greece •
Hungary • Ireland • Italy • Latvia • Lithuania •
Luxembourg • Poland • Romania • Slovakia •
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Introduction

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This report describes the anti-corruption laws of thirty-one jurisdictions, including the European Union (EU), the twenty-eight member states of the EU, and two non-European jurisdictions, Canada and Japan. It surveys each jurisdiction's law regarding bribery and related crimes, and identifies related international agreements to which it is a party.

Much of the development of anti-corruption legislation globally in the last two decades has been driven by international conventions. The Organisation for Economic Co-operation and Development's (OECD's) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was the first international convention focused on anti-corruption.¹ It was intended to globalize the norms against transnational bribery embodied in the United States' Foreign Corrupt Practices Act of 1977² by making it a crime in the leading economic countries to bribe foreign public officials.³ An OECD working group monitors member states' compliance with the Convention and recommends improvements in laws and enforcement efforts.⁴

The OECD Anti-Bribery Convention was followed by several regional conventions, including the Council of Europe's Criminal Law Convention on Corruption,⁵ which has been ratified by all EU members,⁶ and which requires members to adopt measures against bribery of domestic and foreign public officials as well as officials of supranational and international organizations. An

¹ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <http://perma.cc/W4NZ-3BRC>.

² Pub. L. No. 95-213, 91 Stat. 1494 (1977), codified as amended at 15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3, 78m, 78ff (2012), <http://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter2B&edition=prelim>, archived at <https://perma.cc/9UWH-9CFU>.

³ Elizabeth K. Spahn, *Implementing Global Anti-Bribery Norms: From the Foreign Corrupt Practices Act to the OECD Anti-Bribery Convention to the U.N. Convention Against Corruption*, 23 *IND. INT'L & COMP. L. REV.* 1, 4-6 (2013), <https://journals.iupui.edu/index.php/iiclr/article/view/17871/17838>, archived at <https://perma.cc/2NGF-W79H>.

⁴ *OECD Working Group on Bribery in International Business Transactions*, OECD, <http://www.oecd.org/corruption/anti-bribery/anti-briberyconvention/oecdworkinggrouponbriberyininternationalbusinesstransactions.htm> (last visited Feb. 23, 2018), archived at <https://perma.cc/QZ5M-WZY6>.

⁵ Criminal Law Convention on Corruption, Jan. 27, 1999, C.E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/US4Q-925P>.

⁶ *Chart of Signatures and Ratifications of Treaty 173*, COUNCIL OF EUROPE TREATY OFFICE (as of Feb. 2, 2018), https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173/signatures?p_auth=kz7ekil8, archived at <https://perma.cc/EZT7-4MTR>.

Additional Protocol extends its scope to domestic and foreign arbitrators and jurors.⁷ The EU's Council Framework Decision on Combating Corruption in the Private Sector requires the Member States to adopt criminal penalties against bribery.⁸ All EU members participate in the Group of States against Corruption (GRECO), a Council of Europe initiative that monitors countries' compliance with anti-corruption standards.⁹

The United Nations Convention Against Corruption,¹⁰ which entered into force in 2005, has been ratified by almost all countries throughout the world except a few.¹¹ It requires members to criminalize particular forms of corruption, adopt policies geared toward prevention, cooperate internationally in prevention and enforcement efforts, and cooperate in the recovery of illegally acquired assets.¹²

The jurisdictional surveys in this report reflect this internationalization of anti-corruption norms. The surveyed countries typically have laws criminalizing bribery in its active form (giving or promising bribes) and passive form (receiving bribes) in both public and private settings, and cover offenses committed by both natural and legal persons both domestically and extra-territorially.

While the surveyed jurisdictions mostly criminalize the same types of corruption, each survey describes particular aspects of the anti-corruption laws of each jurisdiction, such as penalties for different types of corruption, which vary greatly among the jurisdictions.

⁷ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, C.E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/FG78-CKJW>. The Council of Europe also has adopted a Civil Law Convention against Corruption, which requires parties to provide for civil law remedies for private persons injured by corruption; not all EU members have ratified it. Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://rm.coe.int/168007f3f6>, archived at <http://perma.cc/3Z2F-LUJ4>. *Chart of Signatures and Ratifications of Treaty 174*, COUNCIL OF EUROPE TREATY OFFICE (as of Feb. 23, 2018), https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/174/signatures?p_auth=sduBQ7Mw, archived at <https://perma.cc/L63E-PDDK>.

⁸ Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector, 2003 O.J. (L 192) 54, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003F0568&from=EN>, archived at <http://perma.cc/54DW-3TCJ>.

⁹ *About GRECO: A Priority for the Council of Europe*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/greco/about-greco> (last visited Feb. 23, 2018), archived at <https://perma.cc/UDS5-WGY2>.

¹⁰ UN Convention against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/LQR7-N53F>.

¹¹ *United Nations Convention against Corruption Signature and Ratification Status*, U.N. OFFICE ON DRUGS & CRIME (Oct. 3, 2017), <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, archived at <https://perma.cc/6PX5-3PRL>.

¹² *United Nations Convention against Corruption*, U.N. OFFICE ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/corruption/uncac.html> (last visited Feb. 23, 2018), archived at <https://perma.cc/6MQV-LYKX>.

European Union

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SUMMARY Anti-corruption legislation, as part of criminal law, falls primarily within the competence of the individual Member States of the European Union (EU), but the competencies of the EU to legislate in this area have evolved over time. Since 2009, the “area of freedom, security and justice,” which includes criminal matters, is listed among the shared competences of the EU and the Member States. However, given that the EU has no exclusive competence in the area of corruption, many anti-corruption measures have been “soft law” instruments that recommend certain action to be taken by the Member States. The main “hard law” instruments are the Convention on the Fight against Corruption involving Officials of the EU or Officials of Member States and the Council Framework Decision on Combating Corruption in the Private Sector. Both require Member States to implement measures to criminalize active and passive corruption, and the Framework Decision applies to both natural and legal persons. Other sectoral legislation, for example in the areas of public procurement, money laundering, and disclosure, addresses corruption indirectly.

I. Introduction

In 2017, the European Commission published its biannual Eurobarometer survey, which measures the perceived level of corruption in the European Union (EU) by businesses in the energy, mining, oil and gas, and chemicals; healthcare and pharmaceutical; engineering, electronics, and motor vehicles; construction and building; telecommunications and information technologies; and financial services, banking, and investment sectors.¹ The survey found that four out of ten companies considered corruption to be a problem when doing business in the EU, but it was not considered to be the main problem. The results differed significantly in the individual Member States, with 85% of companies in Romania considering corruption a problem when doing business compared to only 2% in Denmark, 8% in Sweden and Ireland, and 9% in the United Kingdom.² Results also varied across the different sectors, with companies in the construction sector reporting the highest level, and with regard to the size of companies, whereby smaller companies reported more problems.³ The EU recognizes corruption as a serious cross-border crime⁴ and has committed itself to developing a comprehensive EU anti-corruption

¹ EUROPEAN COMMISSION, FLASH EUROBAROMETER 457. REPORT. BUSINESSES’ ATTITUDES TOWARDS CORRUPTION IN THE EU (Oct. 2017), <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/81005>, archived at <http://perma.cc/HHD4-D4A8>.

² *Id.* at 4.

³ *Id.* at 5.

⁴ Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) art. 83, para. 1, 2016 O.J. (C 202) 47, http://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_3&format=PDF, archived at <http://perma.cc/8TVM-PUJW>.

policy, promoting high anti-corruption standards across the EU, and assisting the Member States in their efforts.

II. Legislative Competence of the European Union in Criminal Matters

The EU may only “act within the limits of the competences conferred upon it by the Member States in the Treaties⁵ to attain the objectives set out therein” (principle of conferral).⁶ The different areas of competency of the EU are divided into exclusive, shared, and supporting competences.⁷ Competencies not conferred upon the EU remain with the Member States.⁸ Exclusive competencies are areas in which only the EU may legislate,⁹ whereas both the EU and the Member States may adopt legislation in areas of shared competency, subject to the principles of subsidiarity and proportionality.¹⁰ The principle of subsidiarity states that in policy areas in which the EU and the Member States share competences, the EU may only act if an EU objective can be better achieved at the EU level than at the national level.¹¹ The principle of proportionality provides that EU action must be limited to what is necessary to achieve the objectives of the Treaties.¹² In some areas, the EU may only carry out actions to support, coordinate, or supplement the actions of the Member States.¹³

Criminal law falls primarily within the competence of the Member States, but the competencies of the EU have evolved over time. Originally, the EU was generally not competent to legislate in the area of criminal law or criminal procedure.¹⁴ Criminal matters were reserved to intergovernmental cooperation in the former “third pillar.”¹⁵ In 2005, however, the European

⁵ The term “the Treaties” is used for EU primary law. Primary law is made up of the founding treaties, now after several amendments called the Treaty of European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), the amending EU treaties, the protocols annexed to the founding and amending treaties, and the accession treaties for new EU Member States (collectively, “the Treaties”). See *Primary Law*, EUROPEAN UNION, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:114530> (last updated Aug. 12, 2010), archived at <http://perma.cc/LF39-XXEH>.

⁶ Consolidated Version of the Treaty on European Union (TEU) art. 5, 2016 O.J. (C 202) 13, http://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_2&format=PDF, archived at <http://perma.cc/V92F-NZZG>.

⁷ TFEU, *supra* note 4, arts. 2–6.

⁸ TEU, *supra* note 6, art. 4, para. 1.

⁹ TFEU, *supra* note 4, arts. 2, 3.

¹⁰ *Id.* art. 4; TEU, *supra* note 6, art. 4, para. 1.

¹¹ TEU, *supra* note 6, art. 5, para. 3.

¹² *Id.*

¹³ TFEU, *supra* note 4, art. 6.

¹⁴ Case C-176/03, Commission v. Council, 2005 E.C.R. I-07879, ECLI:EU:C:2005:542, para. 47, <http://curia.europa.eu/juris/celex.jsf?celex=62003CJ0176&lang1=en&type=TEXT&ance>, archived at <http://perma.cc/RYW2-97QC>.

¹⁵ Cooperation in criminal matters was codified in arts. 29–31 of the TEU. See Consolidated Version of the Treaty on European Union and of the Treaty Establishing the European Community, 2006 O.J. (C 321E) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2006/321E/01&from=EN>, archived at <http://perma.cc/V9JH-J2X2>. The Treaty of Maastricht in 1992 altered the structure of the treaties and created the

Court of Justice (ECJ) held that even though the European Community (EC)—the predecessor of the EU—generally had no competence to adopt legislation in criminal matters, it could take measures that related to criminal law of the Member States if they were “necessary in order to ensure that the [EC] rules which it lays down for environmental protection are fully effective.”¹⁶ The exact definition of this competence and whether it applied to areas outside of environmental protection were the subject of controversy.¹⁷

The Treaty of Lisbon,¹⁸ however, which entered into force December 1, 2009, amended the existing legislative framework and explicitly listed the “area of freedom, security and justice,” which includes criminal matters, among the shared competences of the EU.¹⁹ Articles 82 and 83 of the Treaty of the Functioning of the European Union (TFEU) deal with criminal procedure and substantive criminal law, respectively. Article 83 provides that the European Parliament and the Council may adopt directives to establish minimum rules concerning the definition of criminal offenses and sanctions in the areas of particularly serious crime with a cross-border dimension (sometimes called “euro-crimes”). The provision provides a list of areas of crime that are covered, among them corruption.²⁰ Directives must be transposed into national law by the Member States. They are only binding with regard to the goal that the EU countries must achieve. The means are up to the Member States.²¹

Article 83 of the TFEU also includes an “emergency brake” to assure Member States that the national sovereignty of their criminal law will not be threatened. If a Member State considers that a draft directive would affect fundamental aspects of its criminal justice system, it may request a referral to the European Council.²² In such a case, the ordinary legislative procedure is suspended and the draft is discussed in the European Council. The legislative procedure will only be reinstated if there is a consensus in the European Council.²³

III. Anti-Corruption Measures

Given that the EU has no exclusive competence in the area of corruption, many of its measures have been “soft law” instruments that recommend certain action be taken by the Member States.

EU, which consisted of three pillars (policy areas): the European Communities (first pillar), the Common Foreign and Security Policy (CFSP) (second pillar), and cooperation in the field of justice and home affairs (JHI) (third pillar). The Treaty of Lisbon in 2007 changed the structure radically by abolishing the pillar structure and reallocating the competencies between the EU and the Member States.

¹⁶ Case C-176/03 at 48.

¹⁷ Simone White, *Harmonisation of Criminal Law under the First Pillar*, 31 EUR. L. REV. 81, 91 (2006) (with further references).

¹⁸ Treaty of Lisbon, 2007 O.J. (C 306) 1, http://publications.europa.eu/resource/ellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19.

¹⁹ TFEU, *supra* note 4, art. 4, para. 2(j).

²⁰ *Id.* art. 83, para. 1

²¹ *Id.* art. 288, para. 3.

²² *Id.* art. 83, para. 3.

²³ *Id.*

The Stockholm Programme, which set out the EU's priorities in the area of justice, freedom, and security for the period 2010–14, called for increased coordination between EU Member States in the framework of the United Nations Convention against Corruption (UNCAC), the Group of States against Corruption (GRECO), and the Organisation for Economic Co-operation and Development (OECD) in the fight against corruption. It also called on the Commission to develop a comprehensive anti-corruption policy in close cooperation with GRECO.²⁴

Furthermore, EU membership has oftentimes been made conditional on compliance with the international anti-corruption framework, in particular in post-communist candidate countries in Eastern Europe.²⁵ The progress in implementing the necessary reforms may also be tracked after the country's accession to the EU.²⁶

A. International Conventions

1. *United Nations Convention against Corruption (UNCAC)*

The EU itself and all its Member States are parties to the UNCAC.²⁷ The EU signed the Convention on September 15, 2005, and it was approved on November 12, 2008.²⁸ Article 12 of the UNCAC addresses private sector corruption. It requires state parties to take measures to prevent corruption involving the private sector; enhance accounting and auditing standards in the private sector; and provide effective, proportionate and dissuasive civil, administrative, or criminal penalties for failure to comply with such measures.

2. *Group of States against Corruption (GRECO)*

GRECO monitors the implementation of two anti-corruption conventions adopted by the Council of Europe—the Civil Law Convention on Corruption²⁹ and the Criminal Law Convention on Corruption.³⁰ All EU Member States individually participate in GRECO and participation at the

²⁴ European Council, The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, 2010 O.J. (C 115) 1, para. 4.4.5., [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504(01)&from=EN), archived at <http://perma.cc/VC2T-CSWC>.

²⁵ See, e.g., for Bulgaria, EUROPEAN COMMISSION, REGULAR REPORT FROM THE COMMISSION ON BULGARIA'S PROGRESS TOWARDS ACCESSION 9 (1998), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/archives/pdf/key_documents/1998/bulgaria_en.pdf, archived at <http://perma.cc/PH9Z-K9WQ>.

²⁶ See *The Reports on Progress in Bulgaria and Romania*, EUROPEAN COMMISSION, https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en (last visited Jan. 31, 2018), archived at <http://perma.cc/8VYB-JZSQ>.

²⁷ United Nations Convention against Corruption (UNCAC), Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, archived at <http://perma.cc/ZF87-MYVS>.

²⁸ *Signature and Ratification Status*, UNITED NATIONS OFFICE ON DRUG AND CRIME (UNODC), <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (last updated Oct. 3, 2017), archived at <https://perma.cc/4FKX-UENC>.

²⁹ Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://rm.coe.int/168007f3f6>, archived at <http://perma.cc/3Z2F-LUJ4>.

³⁰ Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://rm.coe.int/168007f3f5>, archived at <http://perma.cc/CKW4-JK49>.

EU level is currently being debated, in particular the type of participation (full participant or full member).³¹

B. EU-Level Anti-Corruption Legislation

As mentioned above, the EU's competence to legislate in criminal matters has been gradually enhanced over time. At the beginning, the EU focused on protecting EU financial interests when addressing corruption, but has since moved on to combating corruption in the private sector. Corruption is also addressed indirectly in EU legislation pertaining to other areas, such as anti-money laundering, public procurement, and disclosure.

1. *Convention on the Fight against Corruption involving Officials of the EU or Officials of Member States*

The Convention on the Fight against Corruption involving Officials of the EU or Officials of Member States was adopted in 1997 and entered into force in 2005.³² It requires Member States to criminalize passive and active corruption.³³ Furthermore, the Convention obliges Member States to take necessary measures to allow heads of businesses, or any person having power to take decisions or exercise control within a business, to be declared criminally liable in cases of active corruption by a person under their authority, or by a person acting on behalf of the business.³⁴ Passive corruption is defined as

the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties.³⁵

Active corruption is defined as

the deliberate action of promising or giving, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties.³⁶

³¹ *Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee. Participation of the European Union in the Council of Europe Group of States against Corruption (GRECO)*, COM (2012) 604 final (Oct. 19, 2012), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/http%3A//ec.europa.eu/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/com_eu_participation_in_greco_2012_604_final_en.pdf, archived at <http://perma.cc/7VLQ-35TM>.

³² Convention Drawn Up on the Basis of Article K.3 (2) (c) of the Treaty on European Union on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, 1997 O.J. (C 195) 2, [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:41997A0625\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:41997A0625(01)&from=EN), archived at <http://perma.cc/QU4X-CR5J>.

³³ *Id.* arts. 2 & 3.

³⁴ *Id.* art. 6.

³⁵ *Id.* art. 2.

³⁶ *Id.* art. 3.

In December 1998, the Council adopted an explanatory report that provides detailed commentary on the Convention.³⁷

2. Council Framework Decision on Combating Corruption in the Private Sector

a. Content

In 2003, the EU started tackling corruption in the private sector and issued a framework decision. Council framework decisions were the main legal instrument in the “third pillar” before the Treaty of Lisbon changed the structure of the EU and abolished the pillar structure in 2009. They were binding upon the Member States as to the result to be achieved, but left the choice of form and methods to the Member States. Framework decisions had no direct effect.³⁸ The Council Framework Decision on Combating Corruption in the Private Sector³⁹ requires the Member States to introduce effective, proportional, and dissuasive criminal penalties for active and passive corruption and to ensure that both natural and legal persons are held responsible.⁴⁰ It applies to corruption within both for-profit and nonprofit entities.⁴¹

The Council Framework Decision defines “active corruption” in the private sector as “promising, offering or giving directly or through an intermediary to a person who in any capacity directs or works for a private sector entity, an undue advantage of any kind, for that person or for a third party in order that that person should perform or refrain from performing any act in breach of that person’s duties.”⁴² “Passive corruption” is defined as “directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one’s duties.”⁴³ At the time the Framework Decision was passed, Member States had the option to declare a limit on the scope of the provision and restrict it to conduct that involves, or could involve, a distortion of competition in relation to the purchase of goods or commercial services.⁴⁴

³⁷ Explanatory Report on the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, 1998 O.J. (C 391) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51998XG1215&from=EN>, archived at <http://perma.cc/7GXN-6E54>.

³⁸ TEU, *supra* note 15, former art. 34, para. 2(b).

³⁹ Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector, 2003 O.J. (L 192) 54, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003F0568&from=EN>, archived at <http://perma.cc/54DW-3TCJ>.

⁴⁰ *Id.* recital 10.

⁴¹ *Id.* art. 2, para. 2.

⁴² *Id.* art. 2, para. 1(a).

⁴³ *Id.* art. 2, para. 1(b).

⁴⁴ *Id.* art. 2, para. 3.

The validity of such a declaration was limited to five years from July 22, 2005.⁴⁵ The Council did not extend the period of validity.⁴⁶

Instigating, aiding, and abetting active and passive corruption must also be criminalized.⁴⁷

“Legal person” is understood as any entity having such status under the applicable national law.⁴⁸ “Breach of duty” is defined according to national law, but must at least cover any disloyal behavior constituting a breach of a statutory duty or a breach of professional regulations or instructions.⁴⁹

Member States must ensure that natural persons who are found liable for corruption receive a maximum sentence of at least one to three years of imprisonment and that persons with a leading position are temporarily prohibited from carrying on the business activity.⁵⁰ Penalties for legal persons may include criminal or noncriminal fines and other penalties, such as exclusion from entitlement to public benefits or aid, temporary or permanent disqualification from the practice of commercial activities, being placed under judicial supervision, or being subject to a judicial winding-up order.⁵¹

b. Evaluation of the Implementation of the Council Framework Decision

In 2007, the Commission reviewed the implementation of the Council Framework Decision into national law for the first time and found that most Member States, with the exception of Belgium and the United Kingdom, did not correctly transpose the framework decision into domestic law, in particular with regard to article 2, which requires Member States to criminalize active and passive corruption in the private sector and the provisions on the liability of legal persons.⁵²

A second evaluation was completed in 2011.⁵³ It found that problems with the transposition of the provisions to criminalize active and passive corruption in the private sector continued to exist

⁴⁵ *Id.* art. 2, para. 4.

⁴⁶ *Id.* art. 2, para. 5; *Report from the Commission to the European Parliament and the Council Based on Article 9 of Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector* para. 2.1.1., COM (2011) 309 final (June 6, 2011), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0309&from=EN>, archived at <http://perma.cc/7A89-P8C5>.

⁴⁷ Council Framework Decision 2003/568/JHA, *supra* note 38, art. 3.

⁴⁸ *Id.* art. 1.

⁴⁹ *Id.*

⁵⁰ *Id.* art. 4, paras. 2, 3

⁵¹ *Id.* art. 6, para. 1.

⁵² *Report from the Commission to the Council based on Article 9 of the Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector*, COM (2007) 328 (June 18, 2007), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0328&from=EN>, archived at <http://perma.cc/PZ5A-DXM2>.

⁵³ *Report from the Commission to the European Parliament and the Council Based on Article 9 of Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector*, COM (2011)

and that only nine Member States had correctly transposed all elements.⁵⁴ Even though most Member States had introduced legislation providing for the liability of legal persons, the Commission considered the transposition unsatisfactory.⁵⁵

The current status of implementation can be viewed on the website of the European Judicial Network in criminal matters (EJN), a network of national contact points in the EU Member States for the facilitation of judicial cooperation in criminal matters.⁵⁶

3. *EU Anti-Corruption Reports*

In 2011, the Commission announced that it would publish a biannual EU Anti-Corruption Report to monitor and assess the Member States' anti-corruption efforts.⁵⁷ The first report was published in 2014.⁵⁸ It is supposed to serve as a basis for debate between the EU and the Member States and to facilitate the exchange of best practices.⁵⁹ Problems that the report found were that anti-corruption rules are not always vigorously enforced, that systemic problems are not tackled effectively, and that the relevant institutions do not always have sufficient capacity to enforce the rules. Results varied, however, across the Member States.

4. *Directive 2014/95/EU on Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups*

In October 2014, the EU amended the nonfinancial and diversity information disclosure rules applicable to corporations operating in the EU. Directive 2014/95/EU requires large public-interest companies with an average of five hundred employees to include in their management reports a nonfinancial statement containing information on their activity relating to, among others, anti-corruption and bribery. The statement must include a description of policies, results, and risks related to those matters. If a company does not have such policies in place, it must give a clear and reasoned explanation for not doing so.⁶⁰ The deadline for implementing Directive

309 final (June 6, 2011), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0309&from=EN>, archived at <http://perma.cc/7A89-P8C5>.

⁵⁴ *Id.* at 2.

⁵⁵ *Id.* at 6.

⁵⁶ *Status of Implementation of Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector*, EJN, https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=90, archived at <http://perma.cc/BG37-KJV7>.

⁵⁷ *Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee. Fighting Corruption in the EU*, COM (2011) 308 final (June 6, 2011), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0308&from=EN>, archived at <http://perma.cc/PK6T-5FBT>.

⁵⁸ *Report from the Commission to the Council and the European Parliament. EU Anti-Corruption Report*, COM (2014) 38 final (Feb. 3, 2014), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf, archived at <http://perma.cc/GM54-XLKE>.

⁵⁹ *Id.* at 2 & 4.

⁶⁰ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and

2014/95/EU into national law by the EU Member States was December 6, 2016.⁶¹ Companies are required to include nonfinancial statements in their annual reports from 2018 onwards.⁶²

5. *Fourth Anti-Money Laundering Directive*

The Fourth Anti-Money Laundering Directive, which entered into force on June 26, 2017, addresses corruption indirectly.⁶³ It requires Member States, *inter alia*, to ensure that corporate and other legal entities incorporated within their territory obtain and hold information on their beneficial ownership. It also criminalizes money laundering with respect to a catalog of offenses, among them corruption.⁶⁴

Groups, 2014 O.J. (L 330) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN>, archived at <http://perma.cc/4N8X-Q7BA>.

⁶¹ *Id.* art. 4.

⁶² *Id.*

⁶³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Fourth Anti-Money Laundering Directive), 2015 O.J. (L 141) 73, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN>, archived at <http://perma.cc/27VC-4PL9>.

⁶⁴ *Id.* art. 3, para. 4; art. 14.

EU Countries

Austria

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SUMMARY Austria is a state party to the main international anti-corruption conventions and has implemented the relevant EU legislation on that topic. Anti-corruption regulations are mostly codified in the Austrian Criminal Code. Both passive and active commercial bribery as well as bribery of public officials is prohibited. Austrian criminal law may apply extra-territorially to the crimes of corruption and related criminal acts irrespective of the criminal law of the foreign state where the crime was committed. Legal persons can be held criminally liable, including for corruption and bribery offenses.

I. Introduction

An anti-corruption report published by the European Commission in 2014 named Austria one of the best-rated countries for the deterrent effects of successful prosecutions in corruption cases and commended it for the strengthening of its institutional efforts in preventing and prosecuting corruption.¹ However, the report highlighted that more needs to be done to ensure the necessary capacity of specialized prosecutors to process domestic and foreign corruption cases and to improve the procedure allowing access to bank-account information in cases of suspicion of corruption.²

Forty percent of businesses perceive corruption to be a problem for their company when doing business in Austria, which is above the average of 37% in the twenty-eight Member States of the EU.³

II. International Conventions

Austria ratified the United Nations Convention against Corruption (UNCAC) in 2006⁴ and the Council of Europe Criminal Law Convention on Corruption, including the Additional Protocol,

¹ EUROPEAN COMMISSION, AUSTRIA, ANNEX TO THE EU ANTI-CORRUPTION REPORT 5, 10 (2014), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_austria_chapter_en.pdf, archived at <http://perma.cc/8GJA-SFPB>.

² *Id.*

³ EUROPEAN COMMISSION, FLASH EUROBAROMETER 457. REPORT. BUSINESSES' ATTITUDES TOWARDS CORRUPTION IN THE EU 25 (Oct. 2017), <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/81005>, archived at <http://perma.cc/HHD4-D4A8>.

⁴ United Nations Convention against Corruption (UNCAC), Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, archived at <http://perma.cc/ZF87-MYVS>; *UN Convention against Corruption, Signature and Ratification Status. Status as of 3 October 2017*, UNODC, <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, archived at <http://perma.cc/4FKX-UENC>.

in 2013.⁵ The Council of Europe Civil Convention against Corruption was ratified in 2006.⁶ Austria has been a state party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions since 1999.⁷

Furthermore, Austria is a founding member of the International Anti-Corruption Academy (IACA), an international organization whose purpose it is “to promote effective and efficient prevention and combating of corruption” by providing anti-corruption education and research.⁸ Members hope to enable more effective implementation of the UNCAC.⁹ The IACA is comprised of seventy-two State Parties and fifty-three original signatories.¹⁰

III. National Legislation

Preventing and fighting corruption and bribery in Austria is mostly dealt with in the Austrian Criminal Code,¹¹ but some rules on anti-corruption applicable to businesses domiciled in Austria are codified in other laws.

⁵ Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://rm.coe.int/168007f3f5>, archived at <http://perma.cc/CKW4-JK49>; *Treaty List for a Specific State, Austria*, COUNCIL OF EUROPE, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/AUS?p_auth=RUyc94LG (last updated Feb. 6, 2018), archived at <http://perma.cc/C8ZG-V77K>.

⁶ Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://rm.coe.int/168007f3f6>, archived at <http://perma.cc/3Z2F-LUJ4>; *Treaty List for a Specific State, Austria*, *supra* note 5.

⁷ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <http://perma.cc/W4NZ-3BRC>; *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Ratification Status as of May 2017*, OECD, <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>, archived at <http://perma.cc/LB3Q-QZ89>.

⁸ Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization (IACA Agreement), art. II, Sept. 2, 2010, 2751 U.N.T.S. 102, <https://www.iaca.int/files/49/Agreement/89/IACA-Agreement---ENGLISH.pdf>, archived at <http://perma.cc/BCZ5-GJHB>.

⁹ Press Release, International Anti-Corruption Academy Established in Austria, UNDOC (Oct. 14, 2008), <http://www.unodc.org/unodc/en/frontpage/international-anti-corruption-academy-established-in-austria.html>, archived at <http://perma.cc/HQ66-SPXX>.

¹⁰ *Parties and Signatories*, IACA, <https://www.iaca.int/constituency/parties-signatories.html> (last updated Nov. 7, 2017), archived at <http://perma.cc/F5GM-ZFUF>.

¹¹ STRAFGESETZBUCH [STGB] [AUSTRIAN CRIMINAL CODE], Jan. 23, 1974, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I No. 60/1974, as amended, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296>, archived at <http://perma.cc/N6YE-XABK>, English translation in STRAFGESETZBUCH = AUSTRIAN CRIMINAL COD (Andreas Schloenhardt & Frank Höpfel eds., 2016), *bibliographic information at* <https://lccn.loc.gov/2017375019>.

A. Criminal Code

1. *Extra-Territorial Jurisdiction*

Austrian criminal law applies to the crimes of corruption and related criminal acts, irrespective of the criminal law of the foreign state where the criminal act was committed, in the following cases:¹²

- Offenses committed against or by Austrian government officials; public officials as defined in section 74, para. 1, no. 4a;¹³ or domestic or foreign arbitrators¹⁴ during or because of the execution of their duties;
- Criminal violations of official duties, corruption, and related offenses¹⁵ if the perpetrator was a national of Austria at the time the act was committed or if the crime was committed for the benefit of an Austrian public official or arbitrator.

2. *Liability of Legal Persons*

Legal persons can be held criminally liable, including for corruption and bribery offenses.¹⁶ If a criminal offense applies to Austrian citizens or Austrian residents who commit the offense abroad, it is also applicable to a legal person that is registered in Austria or has its place of operation or establishment in Austria.¹⁷ If a legal person is criminally liable, a fine will be imposed.¹⁸ The fine assessed against a legal person is calculated based on daily rates. Daily rates are calculated based on the profit of the legal person, taking into account its economic potential. It equals 1/360th of the annual profit, but at least €50 and not more than €10,000 (about US\$62 to US\$12,359).¹⁹

3. *Commercial Bribery*

Section 309 of the Austrian Criminal Code deals with passive and active bribery of employees or agents of a company acting or refraining from acting in breach of their duties. It prohibits

¹² CRIMINAL CODE § 64, para. 1.

¹³ See Part III(A)(4)(a) for the definition of “public officials.”

¹⁴ CRIMINAL CODE § 74, para. 1, no. 4c.

¹⁵ *Id.* §§ 302–309.

¹⁶ Bundesgesetz über die Verantwortlichkeit von Verbänden für Straftaten (Verbandsverantwortlichkeitsgesetz – VbVG) [Federal Act on the Liability of Legal Persons for Criminal Offenses] [Corporate Criminal Liability Act], § 12, para. 1, BGBl. I No. 151/2005, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004425>, archived at <http://perma.cc/LRL5-EAW5>, English translation of some relevant provisions in OECD, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN AUSTRIA (Dec. 2012), Annex 3, at 62, <http://www.oecd.org/daf/anti-bribery/Austriaphase3reportEN.pdf>, archived at <http://perma.cc/WA6G-9BWY>.

¹⁷ Verbandsverantwortlichkeitsgesetz § 12, para. 2.

¹⁸ *Id.* § 4.

¹⁹ *Id.*

employees and agents from “demanding, accepting, or accepting the promise of an advantage for him/herself or a third person in return for the execution or omission of a legal act in the course of business transactions” (passive bribery).²⁰ It also criminalizes active bribery, defined as “offering, promising, or providing an advantage to an employee or agent of a company in return for the execution or omission of a legal act in the course of business transactions.”²¹ Advantages are to be understood as pecuniary and nonpecuniary benefits.²²

The crime is punishable by a term of imprisonment of up to two years.²³ If the crime involved an advantage exceeding €3,000 (around US\$3,715) or €50,000 (around US\$61,914) in value, the term of imprisonment is increased to up to three years, or to six months to five years, respectively.²⁴

4. *Bribery of Public Officials*

a. Definition of Public Officials

“Public officials” within the meaning of the bribery offenses are organs and employees who discharge tasks of legislation, administration, or justice for the Austrian Federation, an Austrian state, an association of municipal corporations, a municipality or other legal entity under public law, or a foreign state or international organization;²⁵ others who have been authorized to perform official functions in the execution of laws on behalf of the aforementioned bodies; and anyone who acts as an organ or employee of a corporation in which one or more domestic or foreign territorial corporate bodies directly or indirectly hold at least 50% of the share, stock, or equity capital, where such a territorial corporate body is either the sole or joint operator with other such territorial corporate bodies or has de facto control.²⁶

b. Acting or Refraining from Acting in Breach of Duties

Both passive and active bribery of public officials and arbitrators²⁷ are criminalized. Section 304 criminalizes passive bribery involving a breach of duties of a public official or arbitrator. “Passive bribery” is defined as “demanding, accepting, or accepting the promise of an advantage for him/herself or a third person in return for acting or refraining from acting in relation to the performance of official duties.” It is punishable by a term of imprisonment of up to three years.²⁸

²⁰ CRIMINAL CODE § 309, para. 1.

²¹ *Id.* § 309, para. 2.

²² See Nationalrat [NR] [National Council], Gesetzgebungsperiode [GP] [Legislative Period] 20, Beilage [Blg] [Supplement] No. 1230, at 26, https://www.parlament.gv.at/PAKT/VHG/XX/I/I_01230/fname_140124.pdf, archived at <http://perma.cc/BPG4-DMDA>.

²³ CRIMINAL CODE § 309, paras. 1, 2.

²⁴ *Id.* § 309, para. 3.

²⁵ The term “international organization” includes the European Union. See Nationalrat, *supra* note 22, at 15.

²⁶ CRIMINAL CODE § 74, para. 1, no. 4a.

²⁷ *Id.* § 74, para. 1, no. 4c.

²⁸ *Id.* § 304, para. 1.

If the crime involved an advantage exceeding €3,000 or €50,000 in value, the term of imprisonment is increased to six months to five years, and to one year to ten years, respectively.²⁹

Active bribery of public officials or arbitrators in breach of their official duties is codified in section 307. It criminalizes “offering, promising, or providing an advantage to a public official or arbitrator in return for acting or refraining from acting in relation to the performance of official duties.”³⁰ It is punishable by a term of imprisonment of up to three years.³¹ Legal persons may be fined up to a maximum of €850,000 (around US\$1.05 million).³²

c. Performing or Refraining from Performing in Accordance with Duties

Acting or refraining from acting in accordance with the official’s duties is only criminalized with regard to the lesser crime of accepting and giving undue advantages. Section 305 states that it is prohibited for a public official or an arbitrator to “demand, accept, or accept the promise of an undue advantage for him/herself or a third person.”³³ What constitutes an “undue advantage” is negatively defined.³⁴ Undue advantage does not include

- benefits that can be lawfully accepted or are provided in the context of events in which there is an official or factual interest to participate;
- benefits for charitable causes if the public official or arbitrator has no influence on their use; and
- local or customary courtesies of low value.

The crime is punishable with a term of imprisonment of up to two years.³⁵ If the crime involved an advantage exceeding €3,000 (around US\$3,715) or €50,000 (around US\$61,914) in value, the term of imprisonment is increased to up to three years, and to six months to five years, respectively.³⁶

Section 307a states that it is a crime to “offer, promise, or grant an undue advantage to a public official or an arbitrator for him/herself or for a third person in return for performing or refraining from performing an official act.” The crime is punishable with a term of imprisonment of up to two years.³⁷ Legal persons may be fined up to a maximum of €700,000 (around US\$863,846).³⁸

²⁹ *Id.* § 304, para. 2.

³⁰ *Id.* § 307, para. 1.

³¹ *Id.*

³² Corporate Criminal Liability Act § 4.

³³ CRIMINAL CODE § 305, para. 1.

³⁴ *Id.* § 305, para. 4.

³⁵ *Id.*

³⁶ *Id.* § 305, para. 3.

³⁷ *Id.* § 307a, para. 1.

If the crime involved an advantage exceeding €3,000 (around US\$3,715) or €50,000 (around US\$61,914) in value, the term of imprisonment is increased to up to three years, and to six months to five years, respectively.³⁹ Legal persons may be fined up to a maximum of €50,000 (around US\$1.05 million) or €1 million (around US\$1.2 million), respectively.⁴⁰

d. Giving Undue Advantages with the Intention of Influencing a Public Official

Apart from active bribery and giving undue advantages, Austria also criminalizes “offering, promising, or granting an undue advantage to a public official or arbitrator with the intention of influencing him/her in his activity as a public official.” The crime applies to situations in which the person is trying to build or strengthen a relationship with a public official, but has no specific future action in mind. It is punishable by a term of imprisonment of up to two years.⁴¹ Legal persons may be fined up to a maximum of €700,000 (around US\$863,846).⁴² If the crime involved an advantage exceeding €3,000 (around US\$3,715) or €50,000 (around US\$61,914) in value, the term of imprisonment is increased to up to three years, and to six months to five years, respectively.⁴³ Legal persons may be fined up to a maximum of €50,000 (around US\$1.05 million) or €1 million (around US\$1.2 million), respectively.⁴⁴

e. Trading in Influence

Trading in influence is also criminalized in Austria.⁴⁵ This section criminalizes the conduct of “demanding, accepting, or accepting a promise of an advantage for him/herself or a third person for knowingly exercising undue influence on a public official or an arbitrator.”⁴⁶ Promising, offering, or giving an advantage to another so that the other person will actively trade in influence is equally prohibited.⁴⁷ Influence is considered “undue” if it is aimed at the execution or omission of official duties in breach of duty or if it is associated with an offer, a promise, or the provision of undue advantages.⁴⁸

The crime is punishable by a term of imprisonment of up to two years.⁴⁹ Legal persons may be fined up to a maximum of €700,000 (around US\$863,846).⁵⁰ If the crime involved an advantage

³⁸ Corporate Criminal Liability Act § 4.

³⁹ CRIMINAL CODE § 307a, para. 2.

⁴⁰ Corporate Criminal Liability Act § 4.

⁴¹ CRIMINAL CODE § 307b, para. 1.

⁴² Corporate Criminal Liability Act § 4.

⁴³ CRIMINAL CODE § 307b, para. 2.

⁴⁴ Corporate Criminal Liability Act § 4.

⁴⁵ CRIMINAL CODE § 308.

⁴⁶ *Id.* § 308, para. 1.

⁴⁷ *Id.* § 308, para. 2.

⁴⁸ *Id.* § 308, para. 4.

⁴⁹ *Id.* § 308, paras. 1, 2.

exceeding €3,000 (around US\$3,715) or €50,000 (around US\$61,914) in value, the term of imprisonment is increased to up to three years, and to six months to five years, respectively.⁵¹ Legal persons may be fined up to a maximum of €50,000 (around US\$1.05 million) or €1 million (around US\$1.2 million), respectively.⁵² If the actions are punishable with a higher penalty under another provision, a person will not be liable for trading in influence.⁵³

B. Non-Financial Reporting for Companies

In 2017, Austria implemented the EU Corporate Social Responsibility Directive.⁵⁴ The implementing act obligates certain large companies with more than five hundred employees to include a nonfinancial statement with their management report containing information on their activity relating to, among others, combating corruption and bribery.⁵⁵

C. Implementation of the Fourth Anti-Money Laundering Directive of the EU

Austria has also implemented the Fourth Anti-Money Laundering Directive of the EU, which addresses corruption indirectly.⁵⁶ The implementing act establishes a central register containing information about the beneficial owners of companies, other legal persons, and trusts.⁵⁷

⁵⁰ Corporate Criminal Liability Act § 4.

⁵¹ CRIMINAL CODE § 308, para. 3.

⁵² Corporate Criminal Liability Act § 4.

⁵³ CRIMINAL CODE § 308, para. 4.

⁵⁴ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups, 2014 O.J. (L 330) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN>, archived at <http://perma.cc/4N8X-Q7BA>.

⁵⁵ Bundesgesetz, mit dem zur Verbesserung der Nachhaltigkeits- und Diversitätsberichterstattung das Unternehmensgesetzbuch, das Aktiengesetz und das GmbH-Gesetz geändert werden [Nachhaltigkeits- und Diversitätsverbesserungsgesetz, NaDiVeG] [Federal Act which Amends the Commercial Code, the Stock Corporation Act and the Limited Liability Companies Act in Order to Improve Reporting on Sustainability and Diversity] [Sustainability and Diversity Improvement Act], BGBl. I No. 20/2017, https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_20/BGBLA_2017_I_20.html, archived at <http://perma.cc/M7NK-LM3V>.

⁵⁶ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Fourth Anti-Money Laundering Directive), 2015 O.J. (L 141) 73, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN>, archived at <http://perma.cc/27VC-4PL9>.

⁵⁷ Bundesgesetz über die Einrichtung eines Registers der wirtschaftlichen Eigentümer von Gesellschaften, anderen juristischen Personen und Trusts [Wirtschaftliche Eigentümer Registergesetz – WiEReG] [Act to Establish a Register for Beneficial Owners of Companies, other Legal Persons, and Trusts] [Beneficial Owner Register Act], BGBl. I No. 150/2017, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009980>, archived at <http://perma.cc/MDS2-ZG5P>.

Belgium

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I. Definition of Corruption

Corruption is addressed in Chapter IV (articles 246 to 252) of the Belgian Penal Code.¹ Belgian law criminalizes both “passive” and “active” corruption. Passive corruption “is the act by a public official, directly or indirectly, of requesting or accepting an offer, promise or benefit for himself or for a third party, in exchange for performing, or refraining from performing, any act falling within the scope of his responsibilities.”² Active corruption “is the act of offering, promising or giving a benefit, directly or indirectly, to a public official, to his own benefit or that of a third party, in order to induce him to perform or refrain from performing any act falling within the scope of his responsibilities.”³ Corruption also includes influence peddling—i.e., bribing a public official to use his or her influence (real or supposed) to sway the decision of a government agency or other public authority one way or another.⁴

II. Penalties

Corruption is punishable by jail time and/or fines. The Belgian Penal Code does not appear to make any distinction between domestic and foreign officials with regard to the potential length of sentences. At the bottom end of the range, bribery of an official for the performance of an act where the outcome was nonetheless just (fair) is punishable by six months to one year of jail time.⁵ Similarly, influence peddling is punishable by six months to one year in jail.⁶ If an official was bribed to perform an act that was unjust, the potential sentence is between six months and two years of jail time.⁷ When an official was bribed to perform an illegal act and he or she accepts the bribe, the potential sentence is between two and five years of jail time.⁸ At the upper end of the spectrum, corruption of a judge is punishable by five to ten years of imprisonment.⁹

¹ CODE PÉNAL [PENAL CODE] arts. 246–252, <http://www.ejustice.just.fgov.be/eli/loi/1867/06/08/1867060850/justel>, archived at <https://perma.cc/QJT9-VHYE>.

² BAKER & MCKENZIE, GLOBAL OVERVIEW OF ANTI-BRIBERY LAWS 2016, at 194 (translating text of C. PENAL art. 246).

³ *Id.*

⁴ C. PENAL art. 247.

⁵ *Id.* art. 247 § 1.

⁶ *Id.* art. 247 § 4.

⁷ *Id.* art. 247 § 2.

⁸ *Id.* art. 247 § 3.

⁹ *Id.* art. 249 § 3.

With regard to potential fines, the Penal Code makes a distinction between Belgian public officials and officials of foreign governments or international public organizations. When it is a foreign official who is being corrupted, the minimum fines are tripled and the maximum fines are quintupled.¹⁰ Thus, at the bottom end of the range, bribery of an official for the performance of an act that was just is punishable by a fine of between €100 and €10,000 (approximately US\$124 and US\$12,400, respectively) in cases concerning a Belgian public official, and between €300 and €50,000 (US\$373 and US\$62,160) in cases concerning a foreign or international public official.¹¹ At the upper end of the range, bribery of an official for the performance of an illegal act is punishable by a fine of between €500 and €100,000 (US\$621 and US\$124,300) in cases concerning a Belgian public official, and between €1,500 and €500,000 (US\$1,865 and US\$621,600) in cases concerning a foreign or international public official.¹²

Corporations are subject to the same fines but are also subject to additional fines to replace the jail time that physical persons are subject to. These additional fines are calculated as such: the minimum possible fine is equal to €500 (US\$621) multiplied by the number of months that constitute the minimum jail sentence that a physical person would incur, and the maximum possible fine is equal to €2,000 (US\$2,490) multiplied by the number of months that constitute the maximum jail sentence that a physical person would incur.¹³ For example, in cases where a physical person would be sentenced to between six months and one year of jail time, a corporation would have to pay between €3,000 and €24,000 (US\$3,730 and US\$29,840) in additional fines.

Furthermore, Belgian law provides for the confiscation of any sum or thing that was the object of the infraction, served to commit the infraction, or was the product of the infraction (such as the profit gained from corruption).¹⁴ If the object, means, or product of the infraction is a thing that is no longer in the person's or the corporation's possession, the perpetrator (person or corporation) must pay a sum of money of equivalent value.¹⁵

III. International Conventions

Belgium is party to the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions,¹⁶ the UN Convention against Corruption,¹⁷ the Council of

¹⁰ *Id.* art. 250.

¹¹ *Id.* arts. 247 § 1 & 250.

¹² *Id.* arts. 247 § 3 & 250.

¹³ *Id.* art. 41bis.

¹⁴ *Id.* art. 42.

¹⁵ *Id.* art. 43bis.

¹⁶ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/2ZNM-58SM>.

¹⁷ UN Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/P5HK-RZWR>.

Europe's Criminal Law Convention on Corruption,¹⁸ and the Additional Protocol to the Criminal Law Convention on Corruption.¹⁹

¹⁸ COE Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/54YU-WZEQ>.

¹⁹ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

Bulgaria

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I. Foreign Bribery Offense

Foreign bribery is criminalized by article 304 of the Bulgarian Penal Code, which applies to “a person who offers, promises, or gives a gift or any other undue benefit to an official in order to perform or not to perform an act within the scope of his service, or because he has performed or has not performed such an act.”¹ Paragraph 3 of article 304 clarifies that the same punishment “shall also be inflicted on any person who offers, promises or gives a bribe to a foreign public official.”

According to an OECD report,² Bulgaria’s foreign bribery offense largely meets the requirements of the Anti-Bribery Convention,³ except that (1) it does not appear to cover all cases of bribery where an official acts outside his/her authorized competence, and (2) the offense does not expressly cover bribes given to third-party beneficiaries. The second issue appears to have been resolved with the addition of article 304c in 2015,⁴ which provides that the above punishment must also be imposed when the gift of benefit was promised or given to another person with the consent of a foreign official.

Bulgaria has ratified the OECD Anti-Bribery Convention,⁵ the UN Convention against Corruption,⁶ the Council of Europe’s Civil and Criminal Law Conventions on Corruption,⁷ and the Additional Protocol to the Criminal Law Convention on Corruption.⁸

¹ NAKAZATELEN KODEKS [PENAL CODE], DERZHAVEN VESTNIK [DV] [OFFICIAL GAZETTE] No. 26 of Apr. 2, 1968, available at <https://lex.bg/bg/laws/ldoc/1589654529> (in Bulgarian), archived at <https://perma.cc/Q978-AR4Q>, unofficial English translation available at http://www.legislationline.org/download/action/download/id/7578/file/Bulgaria_Criminal_Code_1968_am2017_ENG.pdf, archived at <https://perma.cc/KPK2-EVDE> (all translations by author).

² OECD WORKING GROUP ON BRIBERY, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN BULGARIA 10 (Mar. 2011), <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Bulgariaphase3reportEN.pdf>, archived at <https://perma.cc/936U-36ZM>.

³ Organization for Economic Co-operation and Development, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), Dec. 17, 1997, 37 I.L.M. 1, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

⁴ DV No. 74 of Sept. 26, 2015, <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=97604> (in Bulgarian), archived at <https://perma.cc/A8L5-J5TB>.

⁵ OECD Anti-Bribery Convention, *supra* note 3.

⁶ UN Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

⁷ Council of Europe, Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; Council of Europe, Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173,

II. Legal Persons

Bulgaria introduced liability of legal persons for foreign bribery in 2005 by enacting articles 83a through 83f of the Law on Administrative Offenses and Sanctions.⁹ According to the OECD report, the regime of liability of legal persons under this law raises significant procedural uncertainty.¹⁰

III. Sanctions

Foreign bribery is punishable by six years' imprisonment and a fine of BGN5,000 (approximately US\$3,200). Increased maximum penalties are available for aggravated domestic bribery, but not foreign bribery.

Legal persons are punishable by a fine of up to BGN1 million (approximately US\$635,000) for foreign bribery.

IV. Enforcement

One of the bribery cases prosecuted in Bulgaria involved a bribe of US\$270,000 paid in 2000 by the manager of a Bulgarian company to Zambia's Ministry of Health. Bulgaria commenced a preliminary inquiry in 2007 after the conviction of the Zambian official but terminated pretrial proceedings after the alleged bribe-giver died in 2009.¹¹ The second case involved a small bribe of €20 paid by a Bulgarian truck driver to a Slovenian border official. The court convicted the driver of foreign bribery and fined him BGN200 (approximately US\$127).¹²

In practice, incarceration remained an unlikely sanction in corruption offenses: from 2009 to the first half of 2010, 245 conviction for various domestic and foreign bribery offenses yielded only eight prison sentences.¹³

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

⁸ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

⁹ Zakon Za Administrativnite Narusheniia I Nakazaniia [Administrative Violations and Sanctions Act], DV No. 92 of Nov. 28, 1969, available at <https://www.lex.bg/laws/ldoc/2126821377> (in Bulgarian), archived at <https://perma.cc/89Y8-FR9A>, unofficial English translation available at <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan016457.pdf>, archived at <https://perma.cc/AHW4-JUF4>.

¹⁰ OECD WORKING GROUP ON BRIBERY, *supra* note 2, at 14.

¹¹ *Id.* at 7.

¹² *Id.*

¹³ *Id.* at 15.

According to the OECD report, which was published in 2011, Bulgaria has not made discernable efforts to enforce anti-corruption regulations against legal entities and there have been no investigations or prosecutions of legal persons for any crime from 2005 to the first half of 2010, despite 563 convictions of natural persons for domestic bribery in the same time period.¹⁴

¹⁴ *Id.* at 14.

Croatia

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I. Foreign Bribery Offense

Foreign bribery offenses are contained in the Criminal Code¹ of Croatia, which criminalizes offering a bribe (article 294) and influence peddling bribery (article 296). Article 294 also covers mediation of bribery. In addition, the Code provides penalties for the corresponding passive offenses of taking a bribe (article 293) and influence peddling (article 295).

Article 87 of the Criminal Code provides a definition of a “public official” and expressly states that it also covers individuals who exercise similar powers in foreign countries.

Croatia has ratified the UN Convention against Corruption² and the Council of Europe’s Civil and Criminal Law Conventions on Corruption,³ as well as the Additional Protocol to the Criminal Law Convention on Corruption.⁴ Croatia is not a party to the OECD Anti-Bribery Convention.⁵

II. Legal Persons

According to the Croatian Act on the Responsibility of Legal Persons for Criminal Offenses,⁶ a legal person “shall be punished for a criminal offence of a responsible person if such offence

¹ KAZNENI ZAKON [CRIMINAL CODE], NARODNE NOVINE [OFFICIAL GAZETTE] No. 125/2011, Nov. 7, 2011, Item 2498, https://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html, archived at <https://perma.cc/KN4H-BTTN>.

² United Nations Convention against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

³ COE Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; COE Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

⁴ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

⁵ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

⁶ Zakon o Odgovornosti Pravnih Osoba za Kaznena Djela [Act on the Responsibility of Legal Persons for Criminal Offenses], NARODNE NOVINE No. 151/2003, Sept. 24, 2003, Item 2178, https://narodne-novine.nn.hr/clanci/sluzbeni/2003_09_151_2178.html, archived at <https://perma.cc/NQU7-9RAB>, unofficial English translation available at http://www.vsrh.hr/custompages/static/hrv/files/legislation_responsibility-legal-persons-co.pdf, archived at <https://perma.cc/56DQ-L4DQ>.

violates any of the duties of the legal person or if the legal person has derived or should have derived illegal gain for itself or a third person.”⁷

A “responsible person” is a “natural person in charge of the operations of the legal person or entrusted with the tasks from the scope of operation of the legal person.”⁸ This definition does not include all employees but only those with powers of representation, decision-making, and supervision.⁹

The law also provides for the possibility of initiating and conducting proceedings against a legal person “if no criminal proceedings may be initiated or conducted against the responsible person for legal or any other reasons.”¹⁰

III. Sanctions

Giving a bribe or bribery related to influence peddling is punishable by imprisonment for a term of one to eight years if the bribe is offered in exchange for unlawful action or inaction, or for a term of six months to five years if it is offered in exchange for lawful action or inaction.¹¹

Legal persons convicted of giving bribes may be punished by fines of HRK 15,000 to 12 million (approximately US\$2,500 to \$2 million).¹² Additional penalties that may be imposed on legal entities include mandatory dissolution;¹³ a ban on the performance of certain activities or transactions for up to three years;¹⁴ a ban on obtaining licenses, authorizations, concessions, or subsidies for up to three years;¹⁵ a ban on transactions with beneficiaries of national or local budgets for up to three years;¹⁶ and publication of the judgment.¹⁷

IV. Enforcement

Between 2010 and 2012 at least twelve legal persons were indicted in cases where the investigation had been carried out by the Office of the Suppression of Corruption and Organized

⁷ *Id.* art. 3(1).

⁸ *Id.* art. 4.

⁹ OECD ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA, LIABILITY OF LEGAL PERSONS FOR CORRUPTION IN EASTERN EUROPE AND CENTRAL ASIA 22 (2015), <https://www.oecd.org/corruption/ACN-Liability-of-Legal-Persons-2015.pdf>, archived at <https://perma.cc/W5BU-TKRV>.

¹⁰ Zakon o Odgovornosti Pravnih Osoba za Kaznena Djela art. 23(2).

¹¹ KAZNENI ZAKON arts. 294, 296.

¹² Zakon o Odgovornosti Pravnih Osoba za Kaznena Djela art. 10.

¹³ *Id.* art. 12.

¹⁴ *Id.* art. 16.

¹⁵ *Id.* art. 17.

¹⁶ *Id.* art. 18.

¹⁷ *Id.* art. 21.

Crime.¹⁸ The maximum fine applied to a legal person for a criminal offense was €67,000 (approx. US\$831,000).¹⁹

¹⁸ OECD ANTTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA, *supra* note 9, at 23.

¹⁹ *Id.* at 38.

Cyprus

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I. International Agreements

Cyprus is a state party to several international agreements relating to anti-corruption, including the UN Convention Against Corruption,¹ the Council of Europe's Criminal Law Convention on Corruption,² and the Additional Protocol to the Criminal Law Convention on Corruption.³

II. Domestic Law

A 1920 law, the Prevention of Corruption Law, prohibits public employees from accepting bribes, and prohibits others from giving bribes to them; those convicted are punishable by up to two years' imprisonment and a fine.⁴ Corruption associated with government contracts is punishable by up to seven years' imprisonment.⁵ Corruption is presumed when a gift is given to a public official by a person seeking a government contract.⁶

¹ UN Convention against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/LQR7-N53F>. Cyprus ratified the Convention February 23, 2009. *United Nations Convention against Corruption Signature and Ratification Status*, U.N. OFFICE ON DRUGS & CRIME (Oct. 3, 2017), <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, archived at <https://perma.cc/6PX5-3PRL>.

² Criminal Law Convention on Corruption, Jan. 27, 1999, C.E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/US4Q-925P>. Cyprus ratified this Convention on January 17, 2001. *Chart of Signatures and Ratifications of Treaty 173*, COUNCIL OF EUROPE TREATY OFFICE (as of Feb. 2, 2018), https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173/signatures?p_auth=kz7ekil8, archived at <https://perma.cc/EZT7-4MTR>.

³ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, C.E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/FG78-CKJW>. Cyprus ratified this Convention on November 21, 2006. *Chart of Signatures and Ratifications of Treaty 191*, COUNCIL OF EUROPE TREATY OFFICE (as of Feb. 2, 2018), https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/191/signatures?p_auth=kz7ekil8, archived at <https://perma.cc/7D9L-PTE9>.

⁴ Prevention of Corruption Law § 3, Cap. 161 of 1920, <http://www.cylaw.org/nomoi/arith/CAP161.pdf>, archived at <https://perma.cc/CY8Z-WMBZ>.

⁵ *Id.* § 4.

⁶ *Id.* § 5.

The Criminal Code of Cyprus includes several articles on corruption and abuse of office.⁷ For example:

- Section 100 makes it a crime for a public employee to take a bribe, or for anyone to give a public employee a bribe, punishable by five years' imprisonment and a fine.
- Section 101 makes extortion by a public employee a crime punishable by three years' imprisonment and a fine.
- Section 102 makes it a crime for a public official to show favoritism in exchange for a benefit from an interested person, punishable by two years' imprisonment and a fine.
- Section 103 makes it a crime for public officers charged with administering a property or business of a special character from acquiring a private interest in it and thereafter discharging duties with respect to it, punishable by one year's imprisonment.

In ratifying the Council of Europe's Criminal Law Convention Against Corruption, Cyprus transposed the crimes listed in that Convention into domestic law, including the active and passive bribery of domestic officials, foreign officials, members of domestic and foreign public assemblies, and officials of international organizations (including international parliamentary assemblies and international courts); active and passive bribery in the private sector; trading in influence; money laundering of proceeds from corruption offenses; accounting offenses; participatory acts; and corporate liability.⁸

A UN Implementation Review Group found that Cyprus's legal and institutional framework is generally consistent with the UN Convention against Corruption, but noted that the domestic provisions described above overlap and include differing substantive requirements, which gives rise to questions of inconsistency and legal certainty.⁹ It also observed that Cyprus faces challenges regarding the Convention's implementation.¹⁰

⁷ CRIMINAL CODE §§ 100–105 & 126, cap. 154, *as amended*, English translation available at [https://track.unodc.org/LegalLibrary/LegalResources/Cyprus/Laws/Cyprus Criminal Code \(Excerpts\).pdf](https://track.unodc.org/LegalLibrary/LegalResources/Cyprus/Laws/Cyprus%20Criminal%20Code%20(Excerpts).pdf) (last visited Feb. 5, 2018), archived at <https://perma.cc/R79K-SEHT>.

⁸ Law to Ratify the Convention of the Council of Europe for the Penalization of Corruption § 4, Law 23(III) of 2000, English translation available at [https://track.unodc.org/LegalLibrary/LegalResources/CyprusLaws/Cyprus Criminal Code \(Excerpts\).pdf](https://track.unodc.org/LegalLibrary/LegalResources/CyprusLaws/Cyprus%20Criminal%20Code%20(Excerpts).pdf) (scroll to pages 2–3) (last visited Feb. 5, 2018), archived at <https://perma.cc/R79K-SEHT>.

⁹ CONFERENCE OF THE STATES PARTIES TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION, IMPLEMENTATION REVIEW GROUP, REVIEW OF IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION, EXECUTIVE SUMMARY, CYPRUS 2 (2016), <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1604727e.pdf>, archived at <https://perma.cc/EQ2K-E8FN>.

¹⁰ *Id.* at 9.

Czech Republic

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I. Foreign Bribery Offense

Active bribery is criminalized in section 332 of the Czech Republic's new Criminal Code, which provides penalties for "[w]hoever provides, offers, or promises a bribe for another person in relation to procuring matters of general interest, or whoever provides, offers, or promises a bribe to another person or for another person in relation to conducting [his/her] own business or the business of another."¹ Bribing a public official is an aggravated form of bribery provided by paragraph 2 of the same section. According to section 334, "public official" means any person holding an office with the legislative branch, judicial branch, or other public authority of a foreign state.

The Czech Republic has ratified the OECD Anti-Bribery Convention,² the UN Convention against Corruption,³ and the Council of Europe's Civil and Criminal Law Conventions against Corruption.⁴ It has also signed but not ratified the Additional Protocol to the Criminal Law Convention on Corruption.⁵

II. Legal Persons

The Act on Criminal Liability of Legal Persons,⁶ which entered into force on January 1, 2012, establishes criminal liability of legal persons for a number of criminal offenses, including bribing foreign officials.

¹ TRESTNÍ ZÁKONÍK [CRIMINAL CODE] No. 40/2009, Feb. 9, 2009, SBIRKA ZAKONU No. 11/2009, <http://www.zakonyprolidi.cz/cs/2009-40> (in Czech), archived at <https://perma.cc/5V5K-JD76>, available in English at [http://www.ejtn.eu/PageFiles/6533/Criminal Code of the Czech Republic.pdf](http://www.ejtn.eu/PageFiles/6533/Criminal%20Code%20of%20the%20Czech%20Republic.pdf), archived at <https://perma.cc/BLT3-V96W> (all translations by author).

² OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, 37 I.L.M. 1, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

³ UN Convention against Corruption, 2349 U.N.T.S. 41, available at https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

⁴ Council of Europe, Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; Council of Europe, Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

⁵ *Chart of Signatures and Ratifications of Treaty 191, Additional Protocol to the Criminal Law Convention on Corruption, Status as of 21/02/2018*, COE, https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/191/signatures?p_auth=r5JWIDSX, archived at <https://perma.cc/G7LU-FG6U>.

⁶ Zákon o trestní odpovědnosti právnických osob a řízení proti nim [Law on Criminal Liability of Legal Persons and Proceedings against Them] No. 418/2011, SBIRKA ZAKONU No. 146/2011 of Dec. 22, 2011, <https://www.zakonyprolidi.cz/cs/2011-418/> (in Czech), archived at <https://perma.cc/NS5J-CCXB>.

III. Sanctions

Under section 332 of the Criminal Code, active bribery of a domestic or foreign public official is punishable by imprisonment for one to six years. A pecuniary penalty may be imposed concurrently with imprisonment. The Code provides that a pecuniary penalty must be imposed in daily rates in the amount of at least 20 and at most 730 whole daily rates and that “a daily rate shall amount to at least CZK100 and at most CZK50,000.”⁷ In other words, the amount of the fine may range from CZK2,000 (approximately US\$98) to CZK36.5 million (approximately US\$1.8 million).

IV. Enforcement

According to an OECD report,⁸ there have been no convictions for foreign bribery in the Czech Republic.

Between 2012 and October 2016, ninety-eight individuals were sanctioned for offering, promising, or giving bribes to domestic public officials. Of these, four offenders (4.1%) received prison terms, seventy-nine (80.6%) received suspended prison sentences, and fifteen (15.3%) were not sentenced to prison.⁹ In addition, monetary fines were applied to twenty-five individuals (25.5%), while confiscation was imposed on nineteen individuals (19.4%). Of the fines, 76% were less than or equal to CZK100,000 (approximately US\$4,900) and 96% were less than or equal to CZK200,000 (approximately US\$9,800).¹⁰

As to legal persons, two financial institutions were convicted of domestic corruption between 2013 and 2017 and were fined CZK5 million (approximately US\$245,000) and CZK3 million (approximately US\$147,000), respectively.¹¹

⁷ TRESTNÍ ZÁKONÍK § 68.

⁸ OECD, IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION, PHASE 4 REPORT: CZECH REPUBLIC 33 (June 2017), <http://www.oecd.org/daf/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>, archived at <https://perma.cc/88UW-DEFH>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 34.

Denmark

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SUMMARY Denmark is a party to several international instruments on corruption and in 2017 ranked as the least corrupt country in the world. Denmark criminalizes passive and active bribery, including bribing foreign officials or representatives of international organizations. The Act applies extra-territorially, provided the person or entity is a resident, citizen or incorporated in Denmark. Legal entities may be monetarily sanctioned for crimes committed by its employees or representatives. There are no minimum or maximum monetary fines for companies that violate Danish bribery legislation.

I. Introduction

Denmark has been deemed the least corrupt country in the world according to the World Transparency index for four years in a row.¹ Also, the biannual Eurometer published in October of 2017 pegged Denmark as the least corrupt European Union (EU) Member State.² Features of Denmark's legal system and political culture to which the low level of corruption may be attributed include freedom of the press, government openness, transparency, and accountability.³

II. International Conventions

Denmark is a party to the Organisation for Economic Co-operation and Development (OECD) Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions,⁴ the United Nations Convention Against Corruption (UNCAC),⁵ the Council of

¹ *Corruption Perceptions Index 2016*, TRANSPARENCY INTERNATIONAL (Jan. 25, 2017), https://www.transparency.org/news/feature/corruption_perceptions_index_2016, archived at <https://perma.cc/P3V3-GAZC>; *Denmark Is the Least Corrupt Country in the World*, BUSINESS INSIDER NORDIC (Jan. 26, 2017), <http://nordic.businessinsider.com/denmark-is-the-least-corrupt-country-in-the-world-2017-1/>, archived at <https://perma.cc/F74R-HHP8>; *Denmark Corruption Report*, GAN BUSINESS ANTI-CORRUPTION PORTAL (Dec. 2017), <https://www.business-anti-corruption.com/country-profiles/denmark>, archived at <https://perma.cc/FWC9-ZPD9>.

² EUROPEAN COMMISSION, FLASH EUROBAROMETER 457, BUSINESSES' ATTITUDES TOWARDS CORRUPTION IN THE EU (Oct. 2017), <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/81005>, archived at <https://perma.cc/4TRV-Q7E8>.

³ Marie Chêne, *What Makes New Zealand, Denmark, Finland, Sweden and Others "Cleaner" than Most Countries?*, TRANSPARENCY INTERNATIONAL (Dec. 7, 2011), <http://blog.transparency.org/2011/12/07/what-makes-new-zealand-denmark-finland-sweden-and-others-%E2%80%9Ccleaner%E2%80%9D-than-most-countries/>, archived at <https://perma.cc/KX9S-M7FZ>.

⁴ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/2ZNM-58SM>.

⁵ United Nations Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/P5HK-RZWR>.

Europe's Criminal Law Convention on Corruption,⁶ and the Additional Protocol to the Criminal Law Convention on Corruption.⁷ It is also a member of the Group of States Against Corruption (GRECO).⁸

III. Domestic Legislation

Denmark regulates corruption, specifically bribery, in its Criminal Code.⁹ Corruption provisions are not regulated in a separate act or chapter but can be found in different parts of the Danish Criminal Code,¹⁰ such as Chapter 14 on Crimes Against Public Agencies etc. and Chapter 16 on Crimes Carried Out During Public Office or Service etc., both of which contain provisions on bribery.¹¹

Denmark prohibits the giving and receiving of bribes, as well as requesting, offering, or promising to pay a bribe.¹² Danish law does not distinguish between bribes and facilitation payments.¹³ There is no established monetary threshold for a gift to be considered a bribe.¹⁴ Nonmonetary compensation, such as the award of a honorary titles, awards, or other benefit to the receiver, may also be considered a bribe.¹⁵

Whether a gift is unlawful is determined by the capacity of the recipient and the purpose for which it is received. An official need not receive a bribe personally, but the bribe must be given for the official to act or not to act in violation of his or her duties.¹⁶ The gift must also have been given or received with intent.¹⁷

⁶ Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/54YU-WZEO>.

⁷ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>. Note that the Additional Protocol does not apply to the Faeroe Island or Greenland. *Reservations and Declarations for Treaty No. 191 – Additional Protocol to the Criminal Law Convention on Corruption, Status as of 09/02/2018*, COUNCIL OF EUROPE, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/191/declarations?p_auth=LOF6rXY, archived at <https://perma.cc/XZT7-6CGD>.

⁸ *What is GRECO?*, OECD, <https://www.coe.int/en/web/greco/about-greco/what-is-greco> (last visited Feb. 9, 2018), archived at <https://perma.cc/TN3C-9UB5>.

⁹ STRAFFELOVEN (Lovbekendtgørelse [LBK] 1920/80), <https://www.retsinformation.dk/Forms/R0710.aspx?id=192080>, archived at <https://perma.cc/8YRB-XESE>.

¹⁰ §§ 122, 144, 145, 299 STRAFFELOVEN.

¹¹ Chs. 14 (§ 122) and 16 (§ 144, 145) STRAFFELOVEN.

¹² Comments on §§ 122, 144, 145, 299 STRAFFELOVEN in KARNOV LOVSAMLING 2016, at 6187.

¹³ *Id.*

¹⁴ See §§ 122, 144, 145, 299 STRAFFELOVEN.

¹⁵ § 122 STRAFFELOVEN (also criminalizing the granting and receipt of *anden fordel* [other benefits]).

¹⁶ § 122 STRAFFELOVEN.

¹⁷ See § 19 STRAFFELOVEN.

Officials acting in the service of “Denmark, a foreign country, or an international organization” may be prosecuted under Danish law.¹⁸ The bribery provisions thus apply extraterritorially, provided that the person or legal entity prosecuted is either a Danish citizen, resident, or legal entity domiciled in Denmark.¹⁹ Section 122 specifically provides that the term “official” includes a Danish official, foreign official, or official of an international organization.²⁰ There is not a special crime for bribing a member of Parliament.²¹

IV. Sanctions for Individuals

A natural person who gives a bribe may be sanctioned with either a fine or no more than six years of imprisonment.²² These sanctions span all levels of bribery, as there is no special crime of aggravated bribery under Danish law. Likewise, receiving a bribe is punishable with either a fine or no more than six years of imprisonment, depending on the severity of the crime.²³ A civil servant who initially in good faith accepts or receives a gift and then keeps it following a realization that the gift was improper may be punished with a fine or imprisonment for no more than two years.²⁴

V. Corporate Sanctions

Legal entities may be held responsible for violations of the Danish Criminal Code.²⁵ For a Danish legal entity to be fined there must have been a violation of law performed by one or more individuals who can be tied to the legal entity.²⁶ For bribery crimes this means that the person receiving, giving, or facilitating the bribe must be associated with the legal entity. No minimum or maximum fines are established by law.

VI. Whistle-Blower Protections

Denmark has no separate law that specifically protects whistle-blowers. Whistle-blowers are indirectly protected through legislation on freedom of speech, and by the right for reporters to withhold information on their sources.²⁷

¹⁸ § 144 STRAFFELOVEN.

¹⁹ § 7 STRAFFELOVEN. Note that citizens and residents of Nordic countries (Finland, Iceland, Norway, and Sweden) who are present in Denmark are treated as Danish citizens for purposes of the Criminal Code.

²⁰ § 122 STRAFFELOVEN.

²¹ Compare Finland report.

²² § 122 STRAFFELOVEN.

²³ § 144 STRAFFELOVEN.

²⁴ § 145 STRAFFELOVEN.

²⁵ § 306 STRAFFELOVEN.

²⁶ § 27 STRAFFELOVEN.

²⁷ Freedom of speech is protected in both the Danish Constitution and the Criminal and Civil Procedure Act. § 77 GRUNDLOVEN [DANISH CONSTITUTION] (LOV nr 169 af 05/06/1953), <https://www.retsinformation.dk/Forms/R0710.aspx?id=45902>, archived at <https://perma.cc/PEF3-M4MQ>; § 172 Retsplejeloven [Criminal and Civil

Procedure Act] (LBK nr 1101 af 22/09/2017), <https://www.retsinformation.dk/Forms/R0710.aspx?id=192286>,
archived at <https://perma.cc/5FVJ-T4B2>.

Estonia

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I. Foreign Bribery Offense

The Estonian Penal Code¹ criminalizes giving a bribe (section 298), arranging a bribe (section 296), and accepting a bribe (section 294). “Influence peddling” is a separate offense provided for in section 298.1 of the Code and is defined as requesting or giving property or other advantage in exchange for one’s actual or alleged influence peddling over an official with the intention of getting unequal or unjustified advantages from the point of view of public interest.

Section 288 of the Penal Code expressly states that bribery-related offenses (sections 293 to 298) extend to foreign officials, defining “foreign official” as

an elected or appointed person who performs the functions of the legislative, executive, or judicial power of a foreign state or an administrative unit of any level thereof, or who performs public law functions for a foreign state, its administrative unit, public institution, or public undertaking, as well as a public servant or representative of an international organization in public law, including a member of an international representative body or court.

Estonia has ratified the OECD Anti-Bribery Convention,² the UN Convention against Corruption,³ and the Council of Europe’s Civil and Criminal Law Conventions against Corruption,⁴ but did not sign the 2003 Additional Protocol to the Criminal Law Convention on Corruption.⁵

¹ KARISTUSSEADUSTIK [PENAL CODE], RIIGI TEATAJA [OFFICIAL GAZETTE] RT I 2001, No. 61, item 364, <https://www.riigiteataja.ee/akt/130122017029> (in Estonian), archived at <https://perma.cc/7GP8-SUWA>, English translation available at <https://www.riigiteataja.ee/en/eli/522012015002/consolide>, archived at <https://perma.cc/6T7X-FTRV>.

² OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, 37 I.L.M. 1, available at https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

³ UN Convention against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

⁴ Council of Europe, Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; Council of Europe, Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

⁵ See *Chart of Signatures and Ratifications of Treaty 191, Additional Protocol to the Criminal Law Convention on Corruption, Status as of 12/02/2018*, COE, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/191/signatures?p_auth=LuIUNzez, archived at <https://perma.cc/3GHZ-9JMZ>.

II. Legal Persons

The general rules on the liability of legal persons are contained in section 14 of the Penal Code. It states that a legal person must be held responsible for an act committed in the interests of the legal person by its body, a member thereof, or a senior official or competent representative. Subsection (3) of section 298 expressly provides for the liability of legal persons for the act of active bribery.

III. Sanctions

Natural persons may be sentenced to a fine or a term of imprisonment of up to five years for giving or promising a bribe to a domestic or a foreign public official.⁶ “Aggravated bribery” is defined as one committed at least twice, by a group, or on a large-scale basis and is punishable by imprisonment for one to ten years.⁷ Arranging a bribe is punishable by a fine or up to five years of imprisonment.⁸ Influence peddling is punishable by a fine or up to three years of imprisonment.⁹

Monetary fines are applied as an alternative to imprisonment or as a supplementary punishment.¹⁰ Such fines must not be less than €300 (approximately US\$373) although they can be reduced in special circumstances.¹¹ The Penal Code does not set a maximum amount for fines.

Legal persons are generally punished by monetary fines. The amount of the fine applied to a legal person must be in the range of €1,000 to €16 million (approximately US\$4,970 to US\$19.9 million).¹²

IV. Enforcement

As of 2014 when the OECD Working Group issued its report, Estonia had not investigated or detected any cases of bribery of foreign public officials.¹³

For domestic bribery offenses thirty-four legal persons were investigated in the 2010–2012 period. The sanctions applied in these cases were €3,195 to €16,617 (approximately US\$3,995 to US\$20,780) for giving a bribe and €10,000 (approximately US\$12,500) for arranging a bribe.¹⁴

⁶ KARISTUSSEADUSTIK § 298.

⁷ *Id.*

⁸ *Id.* § 296.

⁹ *Id.* § 298.1.

¹⁰ *Id.* § 44(6).

¹¹ *Id.* § 44(2).

¹² *Id.* § 44(8).

¹³ OECD WORKING GROUP ON BRIBERY, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN ESTONIA 9 (June 2014), <http://www.oecd.org/daf/anti-bribery/EstoniaPhase3ReportEN.pdf>, archived at <https://perma.cc/77W7-WJVE>.

¹⁴ *Id.* at 22.

Finland

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SUMMARY Finland is a party to several international agreements on corruption and ranks among the least corrupt countries in the world. Finland criminalizes passive and active bribery, as well as bribery of foreign officials. It exercises extraterritorial jurisdiction for crimes of bribery committed abroad by a Finnish citizen, resident, or legal entity. Finland also has separate crimes for bribing a Member of Parliament (MP) and for that MP to receive a bribe. All bribery crimes are either of a “normal” degree or an aggravated degree, with the aggravated offense being criminalized separately with explicitly defined minimum sanctions. Legal entities receive monetary fines capped at €850,000 (approximately US\$1.05 million) for bribery crimes committed by their representatives. Companies domiciled in Finland are required to include a corruption report in their annual reports.

I. Introduction

Finland is considered a country with a low level of corruption, and is ranked as one of least corrupt countries in the world by Transparency International.¹ Among other factors, one feature of Finnish society credited for the low level of corruption is the high number of small businesses.² Despite its relatively low level of corruption, the Organisation for Economic Co-operation and Development (OECD) has criticized Finland for not successfully prosecuting international bribery cases, and for not having sufficient whistle-blower protections.³

II. International Conventions

Finland is a signatory to the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions,⁴ the United Nations Convention against

¹ *Corruption Perceptions Index 2016*, TRANSPARENCY INTERNATIONAL (Jan. 25, 2017), https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table, archived at <https://perma.cc/Y2PW-KB25>; see also *Finland Corruption Report*, GAN BUSINESS ANTI CORRUPTION PORTAL (Jan. 2018), <https://www.business-anti-corruption.com/country-profiles/finland>, archived at <https://perma.cc/DKV4-LGMZ>.

² OECD, IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION, PHASE 4 REPORT: FINLAND 15 (2017), <http://www.oecd.org/corruption/anti-bribery/Finland-Phase-4-Report-ENG.pdf>, archived at <https://perma.cc/8EV3-WJTU>; see also EUROPEAN PARLIAMENT, CORRUPTION IN THE EUROPEAN UNION 39 (Sept. 2017), [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/608687/EPRS_STU\(2017\)608687_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/608687/EPRS_STU(2017)608687_EN.pdf), archived at <https://perma.cc/GPW3-G7KE>.

³ OECD ANTI-BRIBERY CONVENTION PHASE 4 REPORT: FINLAND, *supra* note 2, at 11, 14.

⁴ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/M5E5-GZA3>.

Corruption,⁵ the Council of Europe's Criminal Law Convention on Corruption,⁶ and the Additional Protocol to the Criminal Law Convention on Corruption.⁷ In 2012, it revoked its earlier reservation attached to the additional Protocol to the Criminal Law Convention concerning jurisdiction over bribery offenses within the private sector, meaning that Finland now recognizes article 17 of the Additional Protocol, and no longer requires that the act of bribery also be criminalized where it takes place in order for Finland to have jurisdiction.⁸

III. Domestic Legislation

Finland's criminalization of bribery reflects its obligations under the international conventions mentioned above. As such, Finnish law distinguishes between passive and active corruption, and also criminalizes negligent corruption where a bribe is given without intent.⁹ Finland thus prohibits both the giving and receiving of bribes.¹⁰ It also has a separate crime for giving a bribe to a Member of Parliament (MP).¹¹ The crimes of bribing an MP and aggravated bribery of an MP are new provisions added in 2011 to meet Finland's obligations under the Additional Protocol to the Criminal Law Convention on Corruption.¹²

A bribe given to an MP needs not be given to the parliamentarian personally, but may be given to a third party in exchange or as reward for the MP acting or not acting in a certain way, and must be meant to undermine the impartial execution of the office.¹³ In addition, Finland criminalizes aggravated bribery of an MP.¹⁴ A bribery crime is considered aggravated if it is of great value or if the acts to be performed by the MP would considerably benefit the person for

⁵ United Nations Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/LES6-A3ZY>.

⁶ Criminal Law Convention on Corruption, Jan., 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/58WG-F2J9>.

⁷ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/8FQJ-LQB2>.

⁸ Regeringens Proposition [rp] 79/2010, https://www.eduskunta.fi/SV/vaski/HallituksensEsitys/Documents/rp_79+2010.pdf, archived at <https://perma.cc/5MDM-ETGE>.

⁹ STRAFFLAGEN [CRIMINAL CODE] (Finsk författningssamling [FFS] 1889/39), <http://www.finlex.fi/sv/laki/ajantasa/1889/18890039001>, archived at <https://perma.cc/2GQ3-X36L>, unofficial English translation incorporating amendments to 2015 available at <https://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>, archived at <https://perma.cc/R4TE-E4KK> (reflecting latest amendments regarding bribery and corruption).

¹⁰ 16 kap. 13§; 30 kap. 7, 7a, 8§§ STRAFFLAGEN.

¹¹ 16 kap. 14a § STRAFFLAGEN.

¹² Act of 10.6.2011/637. For further reading see Riksdagens Svar 373/2010 rd [Parliamentary Response 373/2010 rd], https://www.eduskunta.fi/SV/vaski/EduskunnanVastaus/Documents/rsv_373+2010.pdf (in Swedish), archived at <https://perma.cc/4F2U-DEWP>.

¹³ 16 kap. 14a § STRAFFLAGEN.

¹⁴ 16 kap. 14b § STRAFFLAGEN.

whose benefit the bribe was provided.¹⁵ When determining whether an act of bribery is aggravated the court must look at the totality of the circumstances, and find that on the whole the action is aggravating compared to a lesser crime of bribery.¹⁶ There are no set limits on how large a bribe should be to be considered aggravated.¹⁷

Finland specially criminalizes bribes given as part of commercial activities and also has an aggravated crime for bribery committed as part of commercial activities under chapter 30 of the Finnish Criminal Code.¹⁸ The reason for having these separate bribery offenses is mainly organizational, as chapter 30 of the Criminal Code deals with commercial crimes, whereas chapter 16 deals with crimes against public authorities and agencies.¹⁹

Receiving, or planning to receive, bribes either as a public official or civil servant, or in connection with a commercial activity, is also criminalized.²⁰ Persons who may be punished for receiving bribes in connection with a commercial activity include employees, board members, contractors, or arbitrators, or persons with similar duties and responsibilities.²¹ It is also illegal for an MP to receive a bribe, and such crime may be deemed aggravated.²² Public officials who in giving or receiving a bribe do not meet the requirements for a proper bribe crime may be convicted of a bribery misdemeanor.²³

Finnish Tax Law specifically states that it does not allow for the deduction of costs for bribes, facilitation payments, or gifts given with the intent of committing bribery.²⁴

IV. Sanctions

The act of bribery is criminalized with regard to both the briber and the person bribed. Providing a bribe either to a government official or to a person employed with a private company carries a sentence ranging from fines to imprisonment for no more than two years.²⁵ The penalty for receiving a bribe ranges from fines to more than two years of imprisonment.²⁶ For aggravated

¹⁵ 16 kap. 17 § STRAFFLAGEN.

¹⁶ 16 kap. 17 § 2 st STRAFFLAGEN.

¹⁷ *See id.*

¹⁸ 30 kap. 7, 7a, and 8 §§ STRAFFLAGEN.

¹⁹ 16 & 30 kap. STRAFFLAGEN.

²⁰ 40 kap. 1 § and 30 kap. 8 § STRAFFLAGEN.

²¹ 30 kap. 8 § STRAFFLAGEN.

²² 40 kap. 4 and 4a §§ STRAFFLAGEN.

²³ 40 kap. 3 § STRAFFLAGEN.

²⁴ 2 kap. 16 § 8 p. LAG OM BESKATTNING AV INKOMST AV NÄRINGSVERKSAMHET [ACT ON TAXATION OF COMMERCIAL ACTIVITY] (FFS 1968/360), <http://finlex.fi/sv/laki/ajantasa/1968/19680360>, archived at <https://perma.cc/D7XE-PH7J>.

²⁵ 16 kap. 14 § 14a § and 30 kap. 7 § STRAFFLAGEN.

²⁶ 30 kap. 8 § STRAFFLAGEN.

acts, the sanctions range from a minimum of four months to a maximum of four years of imprisonment.²⁷ Bribery misdemeanors are sanctioned with a fine of no more than six months imprisonment.²⁸

In addition to a fine or imprisonment, a public official or civil servant who accepts a bribe may also be removed from his or her position.²⁹

V. Corporate Sanctions

The Finnish Criminal Code includes special provisions on the legal responsibility of legal entities,³⁰ which also apply in cases of bribery.³¹ These provide that legal entities may receive a *samfundsbót* (corporate fine) when in violation of the Criminal Code (including the bribery provisions).³² The amount of the *samfundsbót* is a minimum of €85 (approximately US\$105) and maximum of €50,000 (approximately US\$1.05 million).³³ The amount of the corporate fine is determined by examining the culpability of the legal entity as well as the financial standing of the entity.³⁴ Moreover, all bribes given or received are forfeited.³⁵ However, the state may choose not to prosecute or fine a legal entity.³⁶

VI. Protection of Whistle-Blowers

Finnish law provides only indirect protections for whistle-blowers.³⁷ There is no legislation specifically on whistle-blowers in Finland. There are also no rules for agreements not to prosecute if a person who has engaged in bribery comes forward.

VII. Reporting Requirements

Finland requires all companies domiciled in Finland to complete annual reports.³⁸ Finland further requires that all companies include a “bribery-combating” report in their annual report, which must specify how they work to prevent corruption.³⁹ This information is publicly available.⁴⁰

²⁷ 16 kap. 14b §; 30 kap. 7a §; 30 kap. 8a § STRAFFLAGEN.

²⁸ 40 kap. 3 § STRAFFLAGEN.

²⁹ 40 kap. 1 § 3 st STRAFFLAGEN.

³⁰ 9 kap. STRAFFLAGEN.

³¹ 16 kap. 18 § STRAFFLAGEN.

³² 9 kap. 1 § STRAFFLAGEN.

³³ 9 kap. 5 § STRAFFLAGEN.

³⁴ 9 kap. 6 § STRAFFLAGEN.

³⁵ 10 kap. 3 § 5 p. STRAFFLAGEN.

³⁶ 9 kap. 4 § STRAFFLAGEN.

³⁷ See Constitutional protections of freedom of expression (including the right to disseminate information) and the constitutional requirement that dismissal of employees must have legal grounds, 12 § and 18 § 3 st GRUNDLAGEN [FINNISH CONSTITUTION] (FFS 1999/731), <http://www.finlex.fi/sv/laki/ajantasa/1999/19990731>, archived at <https://perma.cc/X48A-PP57>.

³⁸ 1 kap. 1 § BOKFÖRINGSLAG [ACT ON FINANCIAL REPORTING] (FFS 1997/1336), <http://www.finlex.fi/sv/laki/ajantasa/1997/19971336>, archived at <https://perma.cc/Q5RX-WFX8>.

³⁹ 3a kap. 2 § BOKFÖRINGSLAG.

⁴⁰ 2 kap. 12 § 2st GRUNDLAG [FINNISH CONSTITUTION] (FFS 1999/731), <http://www.finlex.fi/sv/laki/ajantasa/1999/19990731>, archived at <https://perma.cc/A5Z8-URA9>. For further information in English see *What Information Does the Trade Register Contain?*, FINNISH PATENT & REGISTRATION OFFICE (Dec. 13, 2017), https://www.prh.fi/en/kaupparekisteri/rekisterointipalvelut/rekisterin_tietosisalto.html, archived at <https://perma.cc/HE92-RLD9>.

France

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I. Introduction

The French Penal Code prohibits corruption in a fairly straightforward and well-defined way.¹ The Penal Code deals with domestic and overseas corruption in separate sections. The corruption of foreign officials, specifically, is prohibited by articles 435-1 through 435-15.² Any French national, or anyone (natural person or corporation) who is domiciled in France or exercises some of his or her (or its) economic activity on French territory, is liable to be prosecuted by French authorities if he or she (or it) engages in the corruption of foreign officials.³

II. Definition of Corruption of a Foreign Official

Under articles 435-1 through 435-4 of the Penal Code, “corruption of a foreign official” is defined as the act of

proffering, without any right, at any moment, directly or indirectly, offers, promises, gifts, presents or any other advantage, to a person who is a public official (i) in a foreign country; or (ii) in an international public organization, to perform or not perform (or for having performed or not performed) any act within his or her occupation or position, or office, or facilitated by his or her occupation, position or office.⁴

Institutions of the European Union are considered international public organizations under these provisions.⁵

“Influence peddling,” which is a separate offense but nonetheless closely related to corruption, is defined as bribing someone to use his or her influence (real or supposed) to sway a public official or a judge’s decision to confer distinctions, offer employment, grant contracts, or make any other decision falling within that official’s or judge’s authority.⁶

France, like other countries, distinguishes between “passive” and “active” corruption. Passive corruption is the offense committed by a public official or judge who receives a bribe, while

¹ CODE PENAL [PENAL CODE] arts. 433-1 to 433-2-1, 435-1 to 435-15, https://www.legifrance.gouv.fr/telecharger_pdf.do?cidTexte=LEGITEXT000006070719, archived at <https://perma.cc/ADP8-BG59>.

² C. PENAL arts. 435-1 to 435-15.

³ *Id.* art. 435-6-2.

⁴ BAKER & MCKENZIE, GLOBAL OVERVIEW OF ANTI-BRIBERY LAWS 2016, at 240 (translating the text of C. PENAL art. 435-3).

⁵ C. PENAL art. 435-5.

⁶ *Id.* arts. 435-2, 435-4, 435-8, 435-10.

active corruption is the offense committed by a person who bribes a public official.⁷ Influence peddling is similarly divided into a passive form and an active form as separate offenses.⁸

III. Sanctions

Both passive corruption and active corruption are punishable by up to ten years of prison and a fine of up to €1 million (approximately US\$1.243 million).⁹ Influence peddling (whether active or passive) is punishable by up to five years of prison and a fine of €500,000 (approximately US\$621,500).¹⁰ These fines may be increased to an amount that is up to double the perpetrator's profit as a result of the corruption or influence peddling.¹¹ Furthermore, these fines may be quintupled for corporate entities.¹²

For physical persons, additional sanctions may include: the loss of civic rights (such as the right to vote or the right to run for office); the loss of the right to be a minor's guardian; a prohibition, for a period of up to five years, on exercising the office or activity in which the perpetrator committed the offense; publication of the court's judgment; and the confiscation of anything that was used (or was supposed to be used) to commit the offense or to profit from it.¹³ For corporate entities, additional sanctions may include: a prohibition on exercising certain activities; judicial monitoring; closure of the branches that served to commit the offense; being excluded from public contracts; a prohibition on issuing public offers of financial securities; limits on the perpetrator's ability to issue checks; the confiscation of anything that was used (or was supposed to be used) to commit the offense or to profit from it; and publication of the court's judgment.¹⁴

A physical person who commits (or is accomplice to) an offense of corruption or influence peddling, but who then tells the authorities and either helps to stop the ongoing offense or helps the authorities identify other perpetrators or accomplices may have his or her prison sentence reduced by half.¹⁵

⁷ *Id.* arts. 435-1, 435-3, 435-7, 435-9; BAKER & MCKENZIE, GLOBAL OVERVIEW OF ANTI-BRIBERY LAWS 2016, at 240.

⁸ C. PENAL arts. 435-2, 435-4, 435-8, 435-10.

⁹ *Id.* arts. 435-1, 435-3, 435-7, 435-9.

¹⁰ *Id.* arts. 435-2, 435-4, 435-8, 435-10.

¹¹ *Id.* arts. 435-1 through 435-4, 435-7 through 435-10.

¹² *Id.* arts. 131-38, 435-15.

¹³ *Id.* art. 435-14.

¹⁴ *Id.* art. 435-15.

¹⁵ *Id.* art. 435-6-1.

IV. International Conventions

France is party to the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions,¹⁶ the United Nations Convention against Corruption,¹⁷ the Council of Europe's Criminal Law Convention on Corruption,¹⁸ and the Additional Protocol to the Criminal Law Convention on Corruption.¹⁹

¹⁶ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/2ZNM-58SM>.

¹⁷ UN Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/P5HK-RZWR>.

¹⁸ COE Criminal Law Convention on Corruption, Jan., 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/54YU-WZEQ>.

¹⁹ COE Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

Germany

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SUMMARY Germany is a state party to the main international anti-corruption conventions and has implemented the relevant EU legislation on that topic. Anti-corruption regulations are mostly codified in the German Criminal Code, which contains rules for the public sector, private sector (commercial practice and health care), and elected officials. Legal persons cannot be held criminally liable, but can be fined under the Administrative Offenses Act. Bribery in the course of business activity applies to acts committed in Germany as well as abroad. German criminal law applies extraterritorially in the case of bribery of public officials. Germany recently established a register that lists companies convicted of corruption offenses and bans them from participating in public procurements.

I. Introduction

Germany consistently ranks among the top countries in the European Union (EU) and in the international context with regard to preventing and fighting corruption.¹ The Organisation for Economic Co-operation and Development (OECD) has commended Germany for its robust enforcement efforts in foreign bribery cases.² Twenty-eight percent of businesses perceive corruption to be a problem for their company when doing business in Germany, which is below the average of 37% in the twenty-eight Member States of the EU.³ Due to a number of investigations against global German companies, the most famous example being Siemens AG, many companies have put comprehensive anti-corruption compliance procedures and policies into place.⁴ A report published by the German Federal Criminal Police Office found that the number of corruption crimes in 2016 had declined by 25% in comparison to the previous year.⁵

¹ European Commission, *Germany, Annex to the EU Anti-Corruption Report*, at 9, COM (2014) 38 final (Feb. 3, 2014), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_germany_chapter_en.pdf, archived at <http://perma.cc/AB8G-UZP2>.

² OECD, GERMANY: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS 3 (Apr. 2013), <http://www.oecd.org/daf/anti-bribery/GermanyPhase3WrittenFollowUpEN.pdf>, archived at <http://perma.cc/WM8V-8XB2>.

³ EUROPEAN COMMISSION, FLASH EUROBAROMETER 457. REPORT. BUSINESSES' ATTITUDES TOWARDS CORRUPTION IN THE EU 25 (Oct. 2017), <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/81005>, archived at <http://perma.cc/HHD4-D4A8>.

⁴ Karl Sidhu, *Anti-Corruption Compliance Standards in the Aftermath of the Siemens Scandal*, 10 GERMAN L. J. 1343 (2009), https://germanlawjournal.squarespace.com/s/GLJ_Vol_10_No_08_Sidhu.pdf, archived at <http://perma.cc/6J3M-XURB>.

⁵ BUNDESKRIMINALAMT [BKA] [FEDERAL CRIMINAL POLICE OFFICE], KORRUPTION. BUNDESLAGEBILD 2016 [CORRUPTION. FEDERAL SITUATION SURVEY 2016] 3 (2016), https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Korruption/korruptionBundeslagebild2016.pdf?__blob=publicationFile&v=4, archived at <http://perma.cc/DEP2-QLQC>.

However, an anti-corruption report published by the European Commission found, *inter alia*, that Germany needs to increase awareness of the risks of foreign bribery among small and medium-sized enterprises and expand the legislation transposing Framework Decision 2003/568/JHA on Combating Corruption in the Private Sector with regard to some elements of the corruption offense.⁶

II. International Conventions

Germany ratified the United Nations Convention against Corruption (UNCAC) in 2014⁷ and the Council of Europe Criminal Law Convention on Corruption, including the Additional Protocol, in 2017.⁸ It signed the Council of Europe Civil Convention against Corruption in 1999, but has not ratified it.⁹ Germany is also a State Party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.¹⁰

III. National Legislation

Preventing and fighting corruption and bribery in Germany is mostly dealt with in the Criminal Code.¹¹ Several acts mentioned below were passed to align German criminal law with the requirements of the international treaties that Germany ratified and with EU legislation. Anti-corruption provisions exist for the public sector, the private sector (commercial practice and health care), and elected officials.

⁶ European Commission, *supra* note 1, at 9; Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector, art. 2, 2003 O.J. (L 192) 54, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003F0568&from=EN>, archived at <http://perma.cc/54DW-3TCJ>.

⁷ United Nations Convention against Corruption (UNCAC), Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, archived at <http://perma.cc/ZF87-MYVS>; *UN Convention against Corruption, Signature and Ratification Status, Status as of 3 October 2017*, UNODC, <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, archived at <http://perma.cc/4FKX-UENC>.

⁸ Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://rm.coe.int/168007f3f5>, archived at <http://perma.cc/CKW4-JK49>; *Treaty List for a Specific State, Germany*, COUNCIL OF EUROPE, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/GER?p_auth=xsLVQIsT (last updated Feb. 1, 2018), archived at <http://perma.cc/FQS4-AT9B>.

⁹ Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://rm.coe.int/168007f3f6>, archived at <http://perma.cc/3Z2F-LUJ4>; *Treaty List for a Specific State, Germany*, *supra* note 8.

¹⁰ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <http://perma.cc/W4NZ-3BRC>; *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Ratification Status as of May 2017*, OECD, <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>, archived at <http://perma.cc/LB3Q-QZ89>.

¹¹ STRAFGESETZBUCH [STGB] [CRIMINAL CODE] Nov. 13, 1998, BGBL. I at 3322, as amended, <https://www.gesetze-im-internet.de/stgb/>, archived at <http://perma.cc/SNY5-6GCF>, unofficial English translation at https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.pdf (English version current through Oct. 10, 2013), archived at <http://perma.cc/5QVB-66V9>.

A. Act on Combating International Bribery, EU Bribery Act, and Act on Combating Corruption

The Act on Combating International Bribery¹² implements the OECD Anti-Bribery Convention. The EU Bribery Act¹³ implements the Council Act Drawing up a Protocol to the Convention on the Protection of the European Communities' Financial Interests¹⁴ and the EU Convention on the Fight against Corruption involving Officials of the EU or Officials of Member States.¹⁵ The Act on Combating Corruption¹⁶ implements the Council of Europe Criminal Law Convention on Corruption and its Additional Protocol, as well as the EU Framework Decision on Corruption in the Private Sector.

B. Criminal Code

The German Criminal Code contains several anti-corruption provisions relevant for companies domiciled in Germany when conducting business abroad. It should be noted that only natural persons can be held criminally liable under German law and that there is no criminal liability of legal persons. However, a corporation can be held liable under the Administrative Offenses Act for an act of corruption committed by its agent or other person in a leading function as a result of which duties incumbent on the legal person are violated or where the legal person has been enriched or was intended to be enriched.¹⁷ However, imposing an administrative fine as well as determining the amount of the fine falls within the discretion of the Public Prosecutor's Office.

¹² Gesetz zur Bekämpfung internationaler Bestechung [IntBestG] [Act on Combating International Bribery], Sept. 10, 1998, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] II at 2327, as amended, <https://www.gesetze-im-internet.de/intbestg/IntBestG.pdf>, archived at <http://perma.cc/ZK3E-PUH2>.

¹³ EU-Bestechungsgesetz [EUBestG] [EU Bribery Act], Sept. 10, 1998, BGBl. II at 2340, as amended, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl298s2340.pdf, archived at <http://perma.cc/L6FK-JDJE>.

¹⁴ Council Act of 27 September 1996 Drawing up a Protocol to the Convention on the Protection of the European Communities' Financial Interests, 1996 O.J. (C 313) 1, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996F1023\(01\)&from=DE](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996F1023(01)&from=DE), archived at <http://perma.cc/9X8Y-HHDR>.

¹⁵ Convention Drawn up on the Basis of Article K.3 (2) (c) of the Treaty on European Union on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, 1997 O.J. (C 195) 2, [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:41997A0625\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:41997A0625(01)&from=EN), archived at <http://perma.cc/QU4X-CR5J>.

¹⁶ Gesetz zur Bekämpfung der Korruption [Act on Combating Corruption], Nov. 20, 2015, BGBl. I at 2025, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl115s2025.pdf, archived at <http://perma.cc/VM55-53AY>.

¹⁷ Gesetz über Ordnungswidrigkeiten [OWiG] [Act on Administrative Offenses], Feb. 19, 1987, BGBl. I at 602, as amended, http://www.gesetze-im-internet.de/owig_1968/OWiG.pdf, archived at <http://perma.cc/JL8Q-9BQC>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_owig/englisch_owig.pdf (English version updated through May 13, 2015), archived at <http://perma.cc/LFZ3-94QA>.

1. Bribery in the Course of Business Activity

Section 299 of the Criminal Code criminalizes active and passive bribery in the course of business activity. The provision makes it a crime for an employee or agent of a business to accept or demand a benefit for him/herself or a third person in the course of business activity in return for awarding an unfair competitive advantage (passive bribery).¹⁸ Furthermore, offering, promising, or granting an employee or agent of a business a benefit for him/herself or a third person in a business transaction with the intent of obtaining an unfair competitive advantage (active bribery) is prohibited.¹⁹ The offense covers all forms of advantages, irrespective of value.²⁰ An amendment in 2015 extended the scope of the provision to include bribery cases in which acting or refraining from acting leads to a violation of the employee's duties towards the business. The employee must act without the consent of his /her company.²¹ A distortion of competition is unnecessary. Before the amendment, Germany had been criticized because the crime only covered advantages given or taken in return for obtaining an unfair competitive advantage.²²

The provision applies to acts committed in Germany as well as abroad.²³ The crimes are punishable by a term of imprisonment of up to three years or by a fine. In addition, administrative fines of up to €10 million (around US\$12.44 million) can be imposed on legal persons or on the agent acting on behalf of the legal person.²⁴ However, the administrative fine imposed may exceed the statutory maximum amount if the economic advantages gained also exceed the maximum amount.²⁵

Aggravated cases of taking and giving bribes in the course of business activity are listed in section 300 of the Criminal Code. An aggravated case exists if a major benefit is given or received or if the perpetrator acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offenses. Aggravated cases are punishable by a term of imprisonment of three months to five years.

¹⁸ CRIMINAL CODE § 299, para. 1, no. 1. Please note that the English translation is not current and does not reflect the renumbering of the paragraphs.

¹⁹ *Id.* § 299, para. 2, no. 1.

²⁰ BUNDESGERICHTSHOF [BGH] [FEDERAL COURT OF JUSTICE], May 23, 2002, 47 ENTSCHIEDUNGEN DES BUNDESGERICHTSHOFES IN STRAFSACHEN [BGHST] [DECISIONS OF THE FEDERAL COURT OF JUSTICE IN CRIMINAL MATTERS] 295, 304, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=503ac94537d32a1828f38e3449895b44&nr=22068&pos=0&anz=1>, archived at <http://perma.cc/9L5S-5MML>. The court states that “an advantage . . . is to be understood as any benefit to which the public official has no right and which in objective terms improves his/her economic, legal, or even only personal situation . . . an immaterial improvement of the situation may suffice.”

²¹ CRIMINAL CODE § 299, para. 1, no. 2, § 299, para. 2, no. 2.

²² GROUP OF STATES AGAINST CORRUPTION (GRECO), THIRD EVALUATION ROUND, SECOND COMPLIANCE REPORT ON GERMANY (2016), nos. 18–22, <https://rm.coe.int/16806c6398>, archived at <http://perma.cc/T4T3-W9SX>.

²³ CRIMINAL CODE § 299, paras. 1, 2.

²⁴ Act on Administrative Offenses § 30.

²⁵ *Id.* § 17, para. 4.

The crimes of active and passive bribery in the course of business activity will only be prosecuted upon request, unless the Prosecutor's Office considers prosecution to be in the public interest.²⁶ A request for prosecution may be submitted by the victim as well as by every competitor, Chambers of Industry and Commerce, Chambers of Crafts and Trades, and by the associations listed in section 8, paragraph 3, no. 2 of the Act Against Unfair Competition.²⁷

2. *Bribery in the Health Care Sector*

Sections 299a and 299b of the Criminal Code²⁸ criminalize active and passive bribery in the health care sector, reflecting a recent amendment introduced by the Act on Combating Corruption in the Health Care Sector in 2016.²⁹ The provisions apply in the course of business activity in Germany and abroad. Aggravated cases are the same as for bribery in the course of business activity.³⁰

3. *Bribing Public Officials*

The crimes of active and passive bribery of public officials, judges, and arbitrators are codified in sections 331 to 337 of the German Criminal Code. The anti-corruption provisions have extraterritorial application.³¹ The law differentiates between bribery where the bribed person acts in accordance with his or her official duties³² and bribery where the bribed person acts in breach of his/her official duties.³³

A "public official" is defined as "a civil servant or judge; anyone who otherwise carries out public official functions; or anyone who has otherwise been appointed to serve with a public authority or other agency or who has been commissioned to perform public administrative services."³⁴ The crime covers domestic, European, and certain³⁵ foreign and international public officials, judges, and arbitrators. Acting and refraining from acting are both covered.³⁶

²⁶ CRIMINAL CODE § 301, para. 1.

²⁷ *Id.* § 301, para. 2; Gesetz gegen den unlauteren Wettbewerb [UWG] [Act Against Unfair Competition], Mar. 3, 2010, BGBl. I at 254, as amended, http://www.gesetze-im-internet.de/uwg_2004/UWG.pdf, archived at <http://perma.cc/6CFW-HD2G>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_uwg/englisch_uwg.pdf (English version updated through Feb. 17, 2016), archived at <http://perma.cc/273B-MSXF>.

²⁸ New crimes, not yet contained in English translation of the Code.

²⁹ Gesetz zur Bekämpfung von Korruption im Gesundheitswesen [Act on Combating Corruption in the Health Care Sector], May 30, 2016, BGBl. I at 1254, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl116s1254.pdf, archived at <http://perma.cc/NM9T-8G2S>.

³⁰ CRIMINAL CODE § 300.

³¹ *Id.* § 5, no. 15. Please note that this is a new version, which is not yet reflected in the English translation of the Code.

³² *Id.* §§ 331, 333.

³³ *Id.* §§ 332, 334.

³⁴ *Id.* § 11, para. 1, no. 2.

The crime of bribing a public official acting in accordance with his or her official duties is punishable by a term of imprisonment not exceeding three years or a fine, whereas the crime of bribing a judge or arbitrator is punishable by up to five years in prison or a fine.³⁷ If the bribe is given or taken in return for the official acting or refraining from acting in breach of his/her official duties or in return for an official act that is at the discretion of the public official,³⁸ the punishment will be a term of imprisonment of three months to five years.³⁹ In cases of judges and arbitrators, the term of imprisonment ranges from one to ten years.⁴⁰

Section 335 of the Criminal Code regulates punishment for aggravated active and passive bribery. Such aggravated cases may also lead to a conviction for money laundering.⁴¹ Aggravated cases are treated the same as bribery in the course of business activities. They are punishable by a term of imprisonment of one to ten years, and by a term of imprisonment of at least two years in cases of passive bribery of judges and arbitrators.⁴²

Section 337 of the Criminal Code clarifies that the remuneration of arbitrators only constitutes a benefit for the application of the bribery offenses if the arbitrator demands the fees, accepts a promise of such a fee, or accepts them from one party unbeknown to the other, or if one party offers, promises, or grants them to him/her unbeknown to the other party.

C. Federal “Black List” for Corrupt Companies

In 2017, Germany passed a law that establishes a nationwide electronic register of corrupt companies.⁴³ Companies that have been convicted of certain crimes and administrative offenses are listed in the register and are banned from public procurement.⁴⁴ Crimes that are covered include corruption, bribery, money laundering, tax evasion, nonpayment and misuse of wages and salaries, and bid rigging. Administrative fines of more than €50,000 (about US\$62,602) imposed on companies are also entered into the register. Public contracting entities must consult

³⁵ Judges and other members of foreign and international courts, foreign public officials, officials of international organizations, and soldiers of foreign states or NATO troops are equivalent to domestic public officials. *See* CRIMINAL CODE § 335a. Please note that § 335a is not yet contained in the English translation of the Code.

³⁶ *Id.* § 336.

³⁷ *Id.* § 331, paras. 1, 2; § 333, paras. 1, 2.

³⁸ With regard to active and passive bribery for violating one’s duties, only employees and judges of the International Criminal Court are covered provided that the bribe is given for a future official or judicial act. *See* CRIMINAL CODE § 335a. Please note that § 335a is not yet contained in the English translation of the Code.

³⁹ *Id.* § 332, para. 1; § 334, para. 1.

⁴⁰ *Id.* § 332, para. 2; § 334, para. 2.

⁴¹ *Id.* § 261.

⁴² *Id.* § 335, para. 1.

⁴³ Gesetz zur Einrichtung und zum Betrieb eines Registers zum Schutz des Wettbewerbs um öffentliche Aufträge und Konzessionen [Wettbewerbsregistergesetz – WRegG] [Competition Register Act], July 18, 2017, BGBl. I at 2739, <http://www.gesetze-im-internet.de/wregg/WRegG.pdf>, archived at <http://perma.cc/DU76-4FTQ>.

⁴⁴ *Id.* § 2.

the register before awarding a contract with a value of more than €30,000 (about US\$37,518). In all other cases, consulting the register is voluntary.⁴⁵

More serious crimes result in a five-year ban, whereas less serious offenses result in a three-year ban.⁴⁶ If a company successfully implements internal controls and preventive measures (“self-cleansing”), it may apply to be removed from the register before such time.⁴⁷

Several German states already had such “black lists,” but it was difficult to share information across state lines and the criteria varied.

D. Non-Financial Reporting for Companies

In 2017, Germany implemented the EU Corporate Social Responsibility Directive,⁴⁸ which obligates certain large companies to include a nonfinancial statement with their management report containing information on their activity relating to, among others, anti-corruption and bribery.⁴⁹

E. Implementation of the Fourth Anti-Money Laundering Directive of the EU

Germany has also implemented the Fourth Anti-Money Laundering Directive of the EU.⁵⁰ The implementing act establishes a central electronic transparency register containing information about the beneficial owners of companies.⁵¹

⁴⁵ *Id.* § 6.

⁴⁶ *Id.* § 7.

⁴⁷ *Id.* § 8.

⁴⁸ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups, 2014 O.J. (L 330) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN>, archived at <http://perma.cc/4N8X-Q7BA>.

⁴⁹ Gesetz zur Stärkung der nichtfinanziellen Berichterstattung der Unternehmen in ihren Lage- und Konzernlageberichten [Act to Strengthen the Non-Financial Reporting Requirements of Companies in their Management Reports], Apr. 11, 2017, BGBl. I at 802, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl117s0802.pdf, archived at <http://perma.cc/Q6QK-QN4T>.

⁵⁰ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Fourth Anti-Money Laundering Directive), 2015 O.J. (L 141) 73, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN>, archived at <http://perma.cc/27VC-4PL9>.

⁵¹ Gesetz zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen [Act to Implement the Fourth EU Anti-Money Laundering Directive, to Carry Out the EU Transfer of Funds Regulation, and to Reorganize the Financial Intelligence Unit], June 23, 2017, BGBl. I at 1822, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl117s1822.pdf, archived at <http://perma.cc/KA9X-Z86T>.

Greece

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SUMMARY Greece is a state party to several anti-corruption conventions, and it has enacted criminal law provisions to implement these conventions. Recent reviews of Greece's compliance with international standards have found positive developments but also room for improvement.

I. International Agreements

Greece is a state party to several international agreements relating to anti-corruption. Among the most important are the UN Convention against Corruption,¹ the OECD Anti-Bribery Convention,² the Council of Europe's Criminal Law Convention on Corruption,³ and the Additional Protocol to the Criminal Law Convention on Corruption.⁴

II. Domestic Law

The Greek Penal Code criminalizes bribery and corruption. An official who convicted of requesting or receiving any "undue advantage" in exchange for an action or omission (i.e., who takes a bribe) must be punished by at least one year of imprisonment and a fine up to €50,000 (about US\$61,000).⁵ The punishment is increased to up to ten years and up to €100,000 if the

¹ United Nations Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/LQR7-N53E>. Cyprus ratified the Convention February 23, 2009. *United Nations Convention against Corruption Signature and Ratification Status*, U.N. OFFICE ON DRUGS & CRIME (Oct. 3, 2017), <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, archived at <https://perma.cc/6PX5-3PRL>.

² Organisation for Economic Co-Operation and Development, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 18, 1997, 37 I.L.M. 1, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/87FS-DP23>. Greece ratified this Convention on February 5, 1999. *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: Ratification Status as of May 2017*, OECD, <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>, archived at <https://perma.cc/4QDE-KVL4>.

³ Criminal Law Convention on Corruption, Jan. 27, 1999, C.E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/US4Q-925P>. Cyprus ratified this Convention on January 17, 2001. *Chart of Signatures and Ratifications of Treaty 173*, COUNCIL OF EUROPE TREATY OFFICE (as of Feb. 2, 2018), https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173/signatures?p_auth=kz7ekil8, archived at <https://perma.cc/EZT7-4MTR>.

⁴ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, C.E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/FG78-CKJW>. Cyprus ratified this Convention on November 21, 2006. *Chart of Signatures and Ratifications of Treaty 191*, COUNCIL OF EUROPE TREATY OFFICE (as of Feb. 2, 2018), https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/191/signatures?p_auth=kz7ekil8, archived at <https://perma.cc/7D9L-PTE9>.

⁵ GREEK CRIMINAL CODE art. 235(1) (updated through amendment of Apr. 14, 2014), *English translation reprinted in UN OFFICE OF DRUGS AND CRIME, COUNTRY REVIEW REPORT OF GREECE 20 (2015)*, <http://www.unodc.org/>

bribery is committed “in a professional or a habitual way,” or if it is of a significantly high value.⁶

Acceptance of a bribe in contravention of an official’s duties is punishable by up to ten years’ incarceration and a fine of up to €150,000.⁷ Acceptance of bribes in a professional or habitual way or where bribes are of a significantly high value are punishable by up to fifteen years and a fine of up to €150,000.⁸ Supervisors who fail to prevent persons under their control from accepting bribes are subject to imprisonment.⁹

Conviction for the giving or offering of a bribe must be punished by at least one year of imprisonment and a fine up to €50,000.¹⁰ Where the bribe contravenes the duties of the official, the penalty for giving or offering it is up to ten years’ incarceration and a fine of up to €150,000.¹¹ A person who controls a business who negligently fails to prevent a person under his or her supervision from committing bribery is subject to imprisonment.¹²

A judge or arbitrator who accepts a bribe, or a person who offers a bribe to a judge or arbitrator, is subject to imprisonment and a fine of up to €150,000.¹³ A person who controls a business who negligently fails to prevent a person under his or her supervision from bribing a judge is subject to imprisonment.¹⁴

The foregoing provisions cover foreign and international officials.¹⁵

The Greek Criminal Code has separate provisions criminalizing the taking of bribes by, or giving bribes to, the Prime Minister, members of government, deputy ministers, prefects, deputy prefects and mayors, members of Parliament, local government councils and their committees, and members of the European Commission and the European Parliament. The penalty in such cases is imprisonment and a fine of up to €150,000.¹⁶

[documents/treaties/UNCAC/CountryVisitFinalReports/2015_12_04_Greece_Final_Country_Report.pdf](https://perma.cc/XM62-MXE5), archived at <https://perma.cc/XM62-MXE5>.

⁶ *Id.*

⁷ *Id.* art. 235(2).

⁸ *Id.*

⁹ *Id.* art. 235(4).

¹⁰ *Id.* art. 236(1), *English translation reprinted in UN OFFICE OF DRUGS AND CRIME, COUNTRY REVIEW REPORT OF GREECE, supra* note 5, at 21.

¹¹ *Id.* art. 236(2).

¹² *Id.* art. 236(3).

¹³ *Id.* art. 237(1) & (2).

¹⁴ *Id.* art. 237(3).

¹⁵ *Id.* art. 263A, *English translation reprinted in UN OFFICE OF DRUGS AND CRIME, COUNTRY REVIEW REPORT OF GREECE, supra* note 5, at 21–22.

¹⁶ *Id.* arts. 159 & 159A, *English translation reprinted in UN OFFICE OF DRUGS AND CRIME, COUNTRY REVIEW REPORT OF GREECE, supra* note 5, at 22–23.

An official's abuse of position to obtain an undue advantage is punishable by imprisonment for up to two years.¹⁷

Bribery in the private sector is punishable by imprisonment for at least one year.¹⁸ Private-sector embezzlement is punishable by imprisonment of up to two years; if what was embezzled is of especially significant value, the term of imprisonment must be no less than one year. When the total value exceeds €20,000 (about US\$147,000) embezzlement may be punished by incarceration for up to ten years.¹⁹

Money laundering is subject to a range of terms of imprisonment and fines, depending on a variety of detailed factors.²⁰

The OECD's recent reports on Greece's compliance with the OECD's Anti-Bribery Convention²¹ have found positive developments but have also noted opportunities for improvement, particularly regarding the need for greater emphasis on enforcement against foreign bribery,²² and compliance with the Convention's requirement that domestic law criminalize foreign bribery by corporate entities.²³ Legislation was pending in December 2017 to provide for such corporate liability.²⁴

The prominence of anti-corruption efforts in Greece is illustrated by a current scandal in which Greek prosecutors have alleged that ten former Greek ministers, including two prime ministers, accepted bribes from a foreign pharmaceutical company in exchange for fixing the price of its drugs and increasing the company's access in the Greek market.²⁵

¹⁷ *Id.* art. 259, *English translation reprinted in UN OFFICE OF DRUGS AND CRIME, COUNTRY REVIEW REPORT OF GREECE, supra* note 5, at 33.

¹⁸ *Id.* art. 237B, *English translation reprinted in UN OFFICE OF DRUGS AND CRIME, COUNTRY REVIEW REPORT OF GREECE, supra* note 5, at 37–38.

¹⁹ *Id.* art. 275, *English translation reprinted in UN OFFICE OF DRUGS AND CRIME, COUNTRY REVIEW REPORT OF GREECE, supra* note 5, at 38.

²⁰ Law 3691/2008 art. 45, *English translation reprinted in UN OFFICE OF DRUGS AND CRIME, COUNTRY REVIEW REPORT OF GREECE, supra* note 5, at 40.

²¹ OECD, *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, supra* note 2.

²² OECD WORKING GROUP ON BRIBERY, *PHASE 3BIS REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN GREECE 6* (Mar. 2015), <http://www.oecd.org/daf/anti-bribery/Greece-Phase-3bis-Report-EN.pdf>, archived at <https://perma.cc/ZH4X-FTDD>.

²³ OECD WORKING GROUP ON BRIBERY, *GREECE: FOLLOW-UP TO THE PHASE 3BIS REPORT & RECOMMENDATIONS 4* (Aug. 2017), <http://www.oecd.org/corruption/anti-bribery/Greece-Phase3bis-Follow-up-Report-ENG.pdf>, archived at <https://perma.cc/8MCT-L2GH>.

²⁴ OECD WORKING GROUP ON BRIBERY, *PHASE 3 FOLLOW-UP: ADDITIONAL WRITTEN REPORT BY GREECE 2–3* (Jan. 5, 2018), [https://one.oecd.org/document/DAF/WGB\(2017\)69/en/pdf](https://one.oecd.org/document/DAF/WGB(2017)69/en/pdf), archived at <https://perma.cc/SVG4-TTWE>.

²⁵ Niki Kitsantonis, *Greek Politicians May Have Taken Bribes from Drug Maker, Prosecutors Say*, N.Y. TIMES (Feb. 9, 2018), <https://www.nytimes.com/2018/02/09/world/europe/greece-novartis.html>.

Hungary

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I. Foreign Bribery Offense

Article 293 of Hungary's new Criminal Code¹ criminalizes foreign bribery by providing penalties for "any person who attempts to bribe a public official by giving or promising unlawful advantage to such person or to another person for influencing such official's actions in an official capacity." According to paragraph 3 of the same article, any person who commits the crime in connection with a foreign public official is also subject to penalties.

Hungary has ratified the OECD Anti-Bribery Convention,² the UN Convention against Corruption,³ the Council of Europe's Civil and Criminal Law Conventions on Corruption,⁴ and the Additional Protocol to the Criminal Law Convention on Corruption.⁵

An OECD report describes Hungary's legal framework on foreign bribery as "comprehensive, robust and workable" insofar as it applies to individuals, despite the lack of practical experience in applying the law.⁶

¹ 2012. évi C. törvény a Büntető Törvénykönyvről [Act C of 2012 on the Criminal Code], MAGYAR KÖZLÖNY [OFFICIAL GAZETTE] No. 2012/92, July 13, 2012, p. 13450, <http://kozlonyok.hu/nkonline/MKPDF/hiteles/mk12092.pdf>, archived at <https://perma.cc/G2PP-NLJR>, unofficial English translation available at <http://www.refworld.org/docid/4c358dd22.html>, archived at <https://perma.cc/XTY5-SDVX>.

² OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

³ United Nations Convention against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

⁴ COE Civil Law Convention on Corruption, Council of Europe, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; COE Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

⁵ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

⁶ OECD WORKING GROUP ON BRIBERY, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN HUNGARY 11 (Mar. 16, 2012), <http://www.oecd.org/daf/anti-bribery/Hungaryphase3reportEN.pdf>, archived at <https://perma.cc/CSB4-B5HC>.

II. Legal Persons

A legal person has been subject to criminal responsibility for foreign bribery under Hungarian law since 2001.⁷ However, as pointed by the OECD report, in virtually all cases Hungarian law requires conviction and punishment of the natural person who perpetrated the offense before the legal person's liability can be triggered.⁸ Another OECD concern was related to the fact that legal persons may avoid responsibility by committing an act of foreign bribery through an intermediary.⁹

III. Sanctions

An act of foreign bribery is punishable by imprisonment not exceeding three years.¹⁰ The aggravated form of the crime, where the public official is induced to breach his official duty, exceed his competence, or otherwise abuse his position of authority, is punishable by imprisonment for one to five years.¹¹ Alternative sanctions against individuals include custodial arrest, community service, fines, a prohibition on exercising professional activity, a prohibition on residing in a particular area, expulsion, etc.¹²

According to section 50 of the Criminal Code, a fine must be imposed on a person who is sentenced to a fixed-term imprisonment for a criminal offense committed with the purpose of financial gain and has sufficient income or property. The amount of the applicable fine can be in the range of HUF30,000 to 270 million (approximately US\$120 to \$1 million).¹³

The prescribed sanctions against legal persons include

- winding up the legal entity,
- limiting the legal entity's activities, and
- fines.

The maximum amount of a fine that can be imposed on a legal person is three times the value of the assets gained or sought through the commission of the offense, but not less than HUF500,000 (approximately US\$2,000).¹⁴

⁷ 2001. évi CIV. Törvény a jogi személlyel szemben alkalmazható büntetőjogi intézkedésekről [Act CIV of 2001 on Criminal Sanctions in Connection with the Criminal Liability of Legal Persons], MAGYAR KÖZLÖNY No. 2001/153, Dec. 24, 2001, p. 11428, available at https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=a0100104.tv, archived at <https://perma.cc/6YB9-BC5B>.

⁸ OECD WORKING GROUP ON BRIBERY, *supra* note 6, at 12.

⁹ *Id.*

¹⁰ 2012. évi C. törvény a Büntető Törvénykönyvről § 293.

¹¹ *Id.*

¹² *Id.* § 33.

¹³ *Id.* § 50.

¹⁴ 2001. évi CIV. Törvény a jogi személlyel szemben alkalmazható büntetőjogi intézkedésekről § 6.

IV. Enforcement

Between 1999 and 2012 Hungary prosecuted and convicted twenty-six individuals for foreign bribery. However, all of these convictions involved small payments, most of them between US\$30 and \$60, paid by truck drivers to customs officials in the Slovak Republic in connection with obtaining licenses.¹⁵ Hungary has reportedly not charged, prosecuted, or convicted any legal entity of foreign bribery.¹⁶

¹⁵ OECD WORKING GROUP ON BRIBERY, *supra* note 6, at 7.

¹⁶ *Id.* at 8.

Ireland

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SUMMARY The Irish Parliament is considering a bill that would reform and consolidate the laws that govern corruption in Ireland. Currently, relevant provisions are contained in a number of statutes enacted in three different centuries, and in the common law. Under existing law, corporations may be held liable for foreign acts of bribery, but such cases have not been actively prosecuted. Ireland has been criticized by the Organisation for Economic Co-operation and Development for its delay in updating legislation. The OECD has also expressed concern that Ireland is not actively investigating and prosecuting instances of foreign bribery by companies.

I. Introduction

Ireland has legislation pending that would reform the laws that govern corruption. Currently, the laws are contained in the common law and multiple statutes enacted over the course of almost 130 years.¹ The result is a series of laws that are “unruly and cumbersome in terms of their content.”² An OECD working group has criticized Ireland for the length of time it is taking to reform its anti-corruption and bribery laws, particularly regarding provisions that apply to Irish companies conducting business overseas.³ Concerns have been raised over Ireland’s inaction to implement the recommendations of the OECD to reform its laws on corporate liability, as well as the lack of prosecution of cases of foreign bribery.⁴

¹ Public Bodies Corrupt Practices Act 1889, 52 & 53 Vict. c. 69, <http://www.irishstatutebook.ie/eli/1889/act/69/enacted/en/print.html>, archived at <https://perma.cc/387L-AA6U>; Prevention of Corruption Act 1906, 6 Edw. VII c. 34, <http://revisedacts.lawreform.ie/eli/1906/act/34/revised/en/html>, archived at <https://perma.cc/6MAW-FD5G>; Prevention of Corruption Act 1916, 6 & 7 Geo. V c. 64, <http://www.irishstatutebook.ie/eli/1916/act/64/enacted/en/print.html>, archived at <https://perma.cc/254V-Y8UF>; Ethics in Public Office Act 1995, No. 22 of 1995, <http://www.irishstatutebook.ie/eli/1995/act/22/enacted/en/print.html>, archived at <https://perma.cc/8ZW7-E2LS>; Prevention of Corruption (Amendment) Act 2001, No. 27 of 2001, <http://www.irishstatutebook.ie/eli/2001/act/27/enacted/en/print>, archived at <https://perma.cc/GP2S-E4KS>; Criminal Justice (Theft and Fraud) Offences Act 2001, No. 50 of 2001, <http://www.irishstatutebook.ie/eli/2001/act/50/enacted/en/print.html>, archived at <https://perma.cc/46ZA-MZMW>; Prevention of Corruption (Amendment) Act 2010, No. 33 of 2010, <http://www.irishstatutebook.ie/eli/2010/act/33/enacted/en/print.html>, archived at <https://perma.cc/42LA-JULC>.

² SHELLEY HORAN, CORPORATE CRIME, 2011, ¶ 9.07.

³ *Statement of OECD Working Group on Bribery: Ireland’s Laws for Combating International Bribery Need Urgent Reform*, OECD (Oct. 11, 2016), <http://www.oecd.org/corruption/statement-of-oecd-working-group-on-bribery-ireland-s-laws-for-combating-international-bribery-need-urgent-reform.htm>, archived at <https://perma.cc/B2N5-ZCDY>.

⁴ *Id.*

II. Bribery Offenses

As noted above, corruption offenses in Ireland are currently provided for in both the common law and statute. The common law provides that it is an offense to “bribe a public officer to act otherwise than in accordance with his or her duty.”⁵ The Public Bodies Corrupt Practices Act 1889 further provides that it is an offense to bribe public officials. Specifically, section 1(2) of this Act provides as follows:

Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of an office holder or his or her special adviser or a director of, or occupier of a position of employment in, any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such officeholder or public body as aforesaid is concerned, shall be guilty of a misdemeanor.⁶

The Prevention of Corruption Act 1906 criminalizes active bribery, meaning the offer or giving of a bribe, as well as passive bribery, which involves the solicitation or receiving of a bribe.⁷ Specifically, section 1 provides that it is an offense for

1. (1) [a]n agent⁸ or any other person who —
 - (a) corruptly accepts or obtains, or
 - (b) corruptly agrees to accept or attempts to obtain,

⁵ *Ireland: Bribery and Corruption 2018*, GLOBAL LEGAL INSIGHTS, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/ireland>, archived at <https://perma.cc/AVB8-JAKQ>.

⁶ Public Bodies Corrupt Practices Act 1889, § 1(2).

⁷ Prevention of Corruption Act 1906, § 1.

⁸ The Prevention of Corruption Act 1906, § 1(5)(b), defines an “agent as”:

(a) any person employed by or acting for another, (b)(i) an office holder or director (within the meaning, in each case, of the Public Bodies Corrupt Practices Act, 1889, as amended) of, and a person occupying a position of employment in, a public body (within the meaning aforesaid) and a special adviser (within the meaning aforesaid), (ii) a member of Dáil Éireann [the lower house of the Oireachtas, the Irish Parliament] or Seanad Éireann [the upper house of the Oireachtas], (iii) a person who is a member of the European Parliament by virtue of the European Parliament Elections Act, 1997, (iv) an Attorney General (who is not a member of Dáil Éireann or Seanad Éireann), (v) the Comptroller and Auditor General, (vi) the Director of Public Prosecutions, (vii) a judge of a court in the State, (viii) any other person employed by or acting on behalf of the public administration of the State, and (c)(i) a member of the government of any other state, (ii) a member of a parliament, regional or national, of any other state, (iii) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act, 1997), (iv) a member of the Court of Auditors of the European Communities, (v) a member of the Commission of the European Communities, (vi) a public prosecutor in any other state, (vii) a judge of a court in any other state, (viii) a judge of any court established under an international agreement to which the State is a party, (ix) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party, . . . (x) any other person employed by or acting on behalf of the public administration of any state (other than the State), including a person under the direct or indirect control of the government of any such state, and (xi) a member of, or any other person employed by or acting for or on behalf of, any international organisation established by an international agreement between states to which the State is not a party.

for himself or herself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

(2) A person who —

(a) corruptly gives or agrees to give, or

(b) corruptly offers,

any gift, consideration or advantage to an agent or any other person, whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

(3) A person who knowingly gives to any agent, or an agent who knowingly uses with intent to deceive his or her principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge is intended to mislead the principal shall be guilty of an offence.⁹

The term “corruptly” was defined for the first time in section 2 of the Prevention of Corruption (Amendment) Act 2010 as follows:

“Corruptly” includes acting with an improper purpose, personally or by influencing another person, whether by means of making a false or misleading statement, by means of withholding, concealing, altering or destroying a document or other information, or by any other means.¹⁰

Section 9 of the Proceeds of Crime (Amendment) Act 2001 provides that corporate bodies that commit an offense under the Prevention of Corruption Acts can be liable, provided it has been proven that the offense was

committed with the consent or connivance of or to be attributable to any willful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity.¹¹

Whistle-blowers are offered some protections under the Protected Disclosures Act 2014.¹² Ireland does not have a specialized body that investigates corruption. Responsibility for these crimes falls to An Garda Síochána (Ireland's national police force and security service), the Garda Bureau of Fraud Investigation, and the National Bureau of Criminal Investigation.¹³ The

⁹ Prevention of Corruption Act 1906, § 1.

¹⁰ Prevention of Corruption (Amendment) Act 2010, No. 33 of 2010, § 2, <http://www.irishstatutebook.ie/eli/2010/act/33/enacted/en/print.html>, archived at <https://perma.cc/42LA-JULC>.

¹¹ SEÁN E. QUINN, THEFT AND FRAUD OFFENCES 147 (2003).

¹² Protected Disclosures Act 2014, No. 14 of 2014, <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/pdf>, archived at <https://perma.cc/WSG7-V5ZC>.

¹³ HORAN, *supra* note 2, ¶ 9.130.

Garda National Economic Crime Bureau is responsible for investigating cases of foreign bribery.¹⁴

III. Extraterritorial Application

The offenses contained in the Public Bodies Corrupt Practices Act 1889 and 1906 may be tried in Ireland if any part of an act that constitutes the offense was committed within Ireland.¹⁵ Acts committed outside the country¹⁶ that constitute an offense under section 1 of the 1906 Act may be prosecuted in Ireland, and are punishable with up to ten years' imprisonment and/or an unlimited fine.¹⁷

The Prevention of Corruption (Amendment) Act 2010 extended the definition of “persons” under section 7 to include an Irish citizen; a person ordinarily resident in Ireland; a company registered in Ireland, a corporate body otherwise established under the laws of Ireland; and a “relevant agent” of such corporate body.¹⁸ This provisions makes it clear that corporations can be liable under the Prevention of Corruption (Amendment) Act 2001 for acts of corruption that occur outside of Ireland.¹⁹

The Criminal Justice (Theft and Fraud) Offences Act 2001 provides for both active and passive bribery offenses that affect the financial interests of the European Community.²⁰ Section 45 provides that it is an offense for an Irish citizen, a national official, or a European Community official, to engage in corrupt activities outside Ireland that affect the financial interests of the European Community. In cases of active corruption, the act must be directed toward an official specified in the Act,²¹ who must also be an Irish citizen.²² Specifically, section 45 states as follows:

¹⁴ *Ireland: Bribery and Corruption 2018*, *supra* note 5.

¹⁵ Prevention of Corruption (Amendment) Act 2001, § 6.

¹⁶ “Office holder” is defined by section 2 of the Ethics in Public Office Act 1995.

¹⁷ Prevention of Corruption (Amendment) Act 2010, § 7.

¹⁸ Public Bodies Corrupt Practices Act 1889, § 7.

¹⁹ Prevention of Corruption (Amendment) Act 2010, § 3(2).

²⁰ Criminal Justice (Theft and Fraud) Offences Act 2001, § 42, <http://www.irishstatutebook.ie/eli/2001/act/50/enacted/en/print.html>, archived at <https://perma.cc/46ZA-MZMW>.

²¹ These institutions are specified as follows in section 40 of the Criminal Justice (Theft and Fraud) Offences Act 2001:

“national official”, for the purposes of the application in the State of Article 1.1(c) of the First Protocol, means any one of the following persons:(a) a Minister of the Government or Minister of State;(b) an Attorney General who is not a member of Dáil Éireann or Seanad Éireann;(c) the Comptroller and Auditor General;(d) a member of Dáil Éireann or Seanad Éireann;(e) a judge of a court in the State;(f) the Director of Public Prosecutions;(g) any other holder of an office who is remunerated wholly or partly out of moneys provided by the Oireachtas;(h) any person employed by a person referred to in any of paragraphs (d) to (g) in the performance of that person’s official functions; and(i) a director of, or an occupier of a position of employment in, a public body as defined in the Ethics in Public Office Act, 1995 ,and, for the purposes of the application in the State of Article 4.2 of the First Protocol, any one of the following persons shall be treated as a national official:(i) a member of the Commission of the European Communities;(ii) a member of the European Parliament;(iii) a member of the Court of Justice of the European Communities;(iv) a member of the Court of Auditors of the European Communities.

45.—(1) It is an offence for a person to commit fraud affecting the Communities’ financial interests or to commit the offence of money laundering, or to participate in, instigate or attempt any such fraud or offence, outside the State if—

- (a) the benefit of the fraud or offence is obtained, or a pecuniary advantage is derived from it, by a person within the State, or
- (b) a person within the State knowingly assists or induces the commission of the fraud or offence, or
- (c) the offender is an Irish citizen, a national official or a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the State.

(2) Active or passive corruption committed by a person outside the State is an offence if—

- (a) the offender is an Irish citizen, a national official or a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters within the State, or
- (b) in the case of active corruption, it is directed against an official, or a member of one of the institutions mentioned in paragraphs (i) to (iv) of the definition of “national official” in section 40, who is an Irish citizen.²³

The penalty for this offense is up to five years’ imprisonment and/or an unlimited fine.²⁴

Ireland also continues to follow the common-law doctrine of identification, which provides that corporations are liable if

the intention to commit a criminal act on behalf of the “directing mind and will” of the company can be attributed to the company [It] effectively is a means of finding companies liable for offences that require the prosecution to show that the accused had the requisite *mens rea*.²⁵

This doctrine has been criticized as giving rise to uncertainty in the application of the language “directing mind and will,” and for “fail[ing] to capture the complexities of modern corporations.”²⁶ An OECD working group has also criticized this theory as being inadequate to meet the OECD Anti-Bribery Convention’s requirements for corporate liability.²⁷

²² HORAN, *supra* note 2, ¶ 9.127.

²³ Criminal Justice (Theft and Fraud) Offences Act 2001, § 45.

²⁴ *Id.* § 43.

²⁵ HORAN, *supra* note 2, ¶ 2.07.

²⁶ *Id.* ¶ 2.15.

²⁷ OECD, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN IRELAND 5 (Dec. 2013), <http://www.oecd.org/daf/anti-bribery/IrelandPhase3ReportEN.pdf>, archived at <https://perma.cc/N4M5-EWUV>.

IV. Criticisms

The OECD working group observed generally that Ireland's statutes governing corruption contain many inconsistencies, such as different levels of penalties, that "have still not been consolidated and harmonised in a way that is in compliance with Article 1 of the Anti-Bribery Convention."²⁸ Ireland has stated that the differences in the language of its statutes were intentional, that they implement different conventions, and that the common law and criminal law provisions complement each other.²⁹

Ireland's low corporate tax rate has attracted a number of Irish-registered nonresident companies. The OECD working group expressed concern over Ireland's willingness or ability to investigate and prosecute such nonresident companies for acts of foreign bribery due to, for example, difficulties obtaining evidence abroad. The working group stated, however, that in the absence of specific cases, "it is difficult to assess whether this is indeed an area of concern."³⁰

V. Legal Developments

The Criminal Justice (Corruption Offences) Bill 2017 is currently progressing through the Irish Parliament.³¹ The bill would enable Ireland to better comply with the OECD's Convention on Bribery of Foreign Public Officials.³²

The bill would repeal and replace the Prevention of Corruption Acts and provide clarity, describe a number of new offenses, and provide for stronger penalties. If enacted, clause 18 of the Bill would provide for a new strict-liability offense, where corporations would be held liable for the actions of directors, managers, and employees who engage in acts of bribery for the benefit of the company. The bill provides that it is a defense for a company "to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence."³³

²⁸ *Id.* at 5.

²⁹ *Id.* ¶ 46.

³⁰ *Id.* ¶ 98.

³¹ Criminal Justice (Corruption Offences) Bill 2017, No. 122 of 2017, <https://www.oireachtas.ie/documents/bills28/bills/2017/12217/b12217d.pdf>, archived at <https://perma.cc/FDL2-E6Q8>.

³² OECD DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS, PHASE 3 FOLLOW-UP: ADDITIONAL WRITTEN REPORT BY IRELAND, DAF/WGB(2017)68, at 2 (Jan. 5, 2018), [https://one.oecd.org/document/DAF/WGB\(2017\)68/en/pdf](https://one.oecd.org/document/DAF/WGB(2017)68/en/pdf), archived at <https://perma.cc/XJ4P-ZPFF>.

³³ Criminal Justice (Corruption Offences) Bill 2017, No. 122 of 2017, cl. 18(2), <https://www.oireachtas.ie/documents/bills28/bills/2017/12217/b12217d.pdf>, archived at <https://perma.cc/FDL2-E6Q8>.

VI. International Conventions

Ireland is a party to the OECD Anti-Bribery Convention, the United Nations Convention against Corruption, the Criminal Law Convention on Corruption, and the Additional Protocol to the Criminal Law Convention on Corruption.³⁴

³⁴ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/2ZNM-58SM>; UN Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/P5HK-RZWR>; COE Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/54YU-WZEQ>; Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

Italy

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SUMMARY The Italian Criminal Code addresses basic anticorruption crimes and their penalties. Further Italian legislation enacted in 2001 gives broad criminal jurisdiction to Italian authorities to prosecute anticorruption crimes committed abroad by individuals and legal entities incorporated or headquartered in Italy. In addition to domestic legislation, Italy is a party to several international anticorruption instruments. Several cases of prosecution for anticorruption crimes occurring abroad have lately been reported in Italy.

I. Domestic Law

A. Criminal Code

The Italian Criminal Code¹ establishes several crimes related to corruption:

- *Corruption during the Performance of Duties*: The Criminal Code punishes a public official or any person in charge of a public service² who, within the performance of his or her functions or powers, unduly receives or promises to receive money or other benefits for him/herself or for a third party.³
- *Corruption by an Act Contrary to Official Duties*: The Criminal Code punishes a public official or any person in charge of a public service⁴ who receives or promises to take, for him/herself or a third party, money or other benefits in exchange for omitting or delaying an official duty, or to accomplish an act contrary to his/her official duties.⁵ The penalties are increased when the perpetrator's intent is to grant public employment, stipends, or pensions, or to encourage the signing of contracts in which the public administration has an interest.⁶ Penalties also increase when the purpose of the corrupting act is to obtain the undue payment or reimbursement of taxes.⁷

¹ CODICE PENALE [C.P.] [CRIMINAL CODE], available at <http://www.ipsoa.it/codici/cp/12/t2>, archived at <https://perma.cc/6XHV-YLBK>.

² *Id.* art. 320.

³ *Id.* art. 318.

⁴ *Id.* art. 320.

⁵ *Id.* art. 319.

⁶ *Id.* art. 319 Bis.

⁷ *Id.*

- *Corruption in Judicial Acts*: The Criminal Code raises the penalties when one of the above-mentioned crimes is carried out to favor or prejudice a party in a civil, criminal, or administrative procedure and the crime results in an unfair conviction.⁸

The Criminal Code punishes the “corruptor” in the aforementioned crimes, defined as the person “who gives or promises to give money or another benefit to the public official or to the person in charge of a public service” for the purposes set forth in the description of each crime.⁹

Additionally, the Criminal Code punishes the “instigation to corruption”—that is, the offer or promise to give money or another undue benefit to a public official or to a person in charge of a public service in exchange for the exercise of his or her functions or powers, even when the offer or promise is not accepted.¹⁰ This penalty also applies to the public official and to the person in charge of a public service who requests a promise to give or the giving of money or another benefit in exchange for the exercise of his/her functions or powers.¹¹

B. Italian Extraterritorial Jurisdiction over Corruption Crimes

Legislative Decree No. 231 of 2001¹² establishes the criminal jurisdiction of the Italian authorities over certain crimes committed abroad by entities headquartered in Italy.¹³ Legislative Decree No. 231 provides that legal entities (including partnerships and stock corporations)¹⁴ registered in Italy or another European Union (EU) Member State are criminally responsible for the crimes established in articles 7, 8, 9, and 10 of the Criminal Code committed abroad when the country where the act was committed does not prosecute such legal entities.¹⁵ Articles 7 to 10 of the Italian Criminal Code provide the following:

⁸ *Id.* art. 319 Ter.

⁹ *Id.* art. 321.

¹⁰ *Id.* art. 322, para. 1.

¹¹ *Id.* art. 322, para. 3.

¹² Decreto legislativo 8 giugno 2001, n. 231 Disciplina della Responsabilita' Amministrativa delle Persone Giuridiche, delle Societa' e delle Associazioni anche Prive di Personalita' Giuridica, a norma dell'articolo 11 della Legge 29 settembre 2000, n. 300 [L.D. No. 231] [Legislative Decree No. 231 of 2001 Regulat[ing] the Administrative Responsibility of Legal Entities, Companies, and also Associations Deprived of Legal Personality, Pursuant to Article 11 of Law No. 300 of September 29, 2000], GAZZETTA UFFICIALE [G.U.] [OFFICIAL GAZETTE] June 19, 2001, n. 140, <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2001-06-08:231!vig>, archived at <https://perma.cc/2GFK-JSUJ>.

¹³ L.D. No. 231, art. 1(1) & (3). Legislative Decree No. 231 regulates the responsibility of entities for illicit administrative acts that depend on a crime, but do not apply to the state, to public territorial entities, other non-economic public entities, or entities that perform functions of a constitutional nature.

¹⁴ Raffaele Cantone, *Corruzione Internazionale e Ordinamento Giuridico Italiano: la L. 231 e il Profilo della Responsabilita' Penale delle Aziende Private* [International Corruption and Italian Legal Order: L.D. No. 231 and the Profile of the Criminal Responsibility of Private Companies], Address During the IVth Ministerial OECD Anticorruption Conference (Paris, Mar. 15, 2016), <https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Comunicazione/Interventi/int.Cantone.Ocse.Parigi.15.03.16.pdf>, archived at <https://perma.cc/RRH2-SQSL>.

¹⁵ L.D. No. 231, art. 4(1).

- Article 7 of the Criminal Code lists certain crimes committed abroad by Italian citizens or foreign subjects, including¹⁶
 - crimes against the personality of the Italian state;
 - crime of counterfeiting, and use of the seal of the state;
 - crime of falsehood related to the coin of legal course in the territory of Italy, or regarding stamp values or values with legal tender in Italy;
 - crimes committed by public officials at the service of the state while abusing their power or violating the duties inherent to their functions; and
 - any other crime for which special legal provisions or international treaties establish the application of Italian criminal laws.
- Article 8 of the Criminal Code refers to political crimes committed abroad.¹⁷
- Article 9 of the Criminal Code covers ordinary crimes committed by Italian citizens abroad, in particular those that are punished by Italian law.¹⁸ In the case of crimes that are prejudicial to the European Community, a foreign state, or an individual, the convicted is punished at the request of the Italian Minister of Justice, provided that extradition of the suspect has not been granted, or that his/her prosecution is not accepted by the government of the foreign state where the crime was committed.¹⁹
- Article 10 of the Criminal Code also punishes ordinary crimes committed abroad by an Italian citizen or foreign individuals in a foreign territory, to the prejudice of the Italian state.²⁰

New legislation enacted in 2012 and 2014 amended and complemented Legislative Decree No. 231 of 2001 to, among other things, include within anti-corruption legislation companies controlled by the state, private entities controlled by the central administration of the state, and private legal entities subject to the control of the regions, autonomous provinces, and local municipalities.²¹

¹⁶ C.P. art. 7(1)–(5).

¹⁷ *Id.* art. 8.

¹⁸ *Id.* art. 9, para. 2.

¹⁹ *Id.* art. 9, para. 3.

²⁰ *Id.* art. 10.

²¹ Decreto legislativo 25 maggio 2016, n. 97, Revisione e Semplificazione delle Disposizioni in materia di Prevenzione della Corruzione, Pubblicità e Trasparenza, Correttivo della Legge 6 Novembre 2012, n. 190 e del Decreto Legislativo 14 marzo 2013, n. 33, ai sensi dell'articolo 7 della Legge 7 agosto 2015, n. 124, in materia di Riorganizzazione delle Amministrazioni Pubbliche [Legislative Decree No. 97 of May 25, 2016, Review and Simplification of the Provisions on the Prevention of Corruption, Publicity and Transparency, in accordance with Law No. 190 of November 6, 2012, and Legislative Decree No. 33 of March 14, 2013, and Article 7 of Law No. 124 of August 7, 2015, Concerning the Reorganization of the Public Administrations], G.U. June 8, 2016, n. 132, <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2016-05-25:97!vig>, archived at <https://perma.cc/ZWH6-PVAS>; Decreto-Legge 24 giugno 2014, n. 90 Misure Urgenti per la Semplificazione e la Trasparenza Amministrativa e per l'Efficienza degli Uffici Giudiziari [Decree-Law No. 90, Urgent Measures for Administrative Simplification and Transparency and for the Efficiency of Judicial Offices], G.U. June 24, 2014,

The criminal responsibility of the legal entities mentioned above may co-exist with that of the individuals involved.²²

The general requirements for prosecution under Legislative Decree No. 231 are that (a) the crime is committed for interest or advantage of a regulated subject;²³ and (b) the adoption of effective implementation of compliance programs at the company level is lacking.²⁴ More specifically, for a prosecution under Legislative Decree No. 231 to proceed,²⁵

- the crime must have been committed abroad by the regulated subject;
- the entity must be headquartered in Italy;
- the entity's activity must fall within the terms established in articles 7, 8, 9, and 10 of the Italian Criminal Code;
- the country where the crime took place has not prosecuted the offending legal entity; and
- when the law provides that the suspect is to be punished at the request of the Ministry of Justice, the prosecution of the entity takes place only if a request for a criminal investigation is also formulated against the legal entity.²⁶

II. International Instruments on Anticorruption to which Italy is a Party

Italy is a party to the following international anticorruption treaties and conventions:

- OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions of 1997²⁷
- United Nations Convention against Corruption of 2003²⁸
- Criminal Law Convention on Corruption of 1999²⁹

n. 144, <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2014-06-24;90!vig>, archived at <https://perma.cc/9W84-SWRZ>.

²² Cantone, *supra* 14, at 2.

²³ L.D. No. 231, art. 5.

²⁴ *Id.* arts. 6–7.

²⁵ *Id.* art. 4.

²⁶ Maurizio Arena, *La Responsabilità dell'Ente per Reati Commessi all'Estero [Liability of Entities for Crimes Committed Abroad]*, I REATI SOCIETARI (Jan. 11, 2005), <http://www.reatisocietari.it/index.php/profili-dlgs-2312001/64-24>, archived at <https://perma.cc/A83L-QYK7>.

²⁷ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/2ZNM-58SM>, ratified by Italy in 2000, <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>, archived at <https://perma.cc/9UCY-TMNF>.

²⁸ United Nations Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/P5HK-RZWR>, ratified by Italy in 2009, <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, archived at <https://perma.cc/48H7-9MBH>.

- Additional Protocol to the Criminal Law Convention on Corruption of 2003³⁰

III. Recent Prosecutions Involving Companies Domiciled in EU Member States Conducting Business Abroad

From the date of entry into effect in Italy in 2000 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions to December 2015, fifty-seven criminal investigations on corruption crimes falling under the OECD Convention and Legislative Decree No. 231 were initiated in Italy, with one conviction reported during the same period.³¹ A 2017 news report also stated that, pursuant to Legislative Decree No. 231, a German company doing business in Italy was subject to an injunctive measure banning it from entering into public procurement contracts in Italy for one year.³²

²⁹ Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/54YU-WZEQ>, ratified by Italy in 2013, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173/signatures?p_auth=tlKRPGgH, archived at <https://perma.cc/RAD5-WQT2>.

³⁰ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>, signed by Italy in 2003 but not yet ratified, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/191/signatures?p_auth=tlKRPGgH, archived at <https://perma.cc/D6QV-JRHS>.

³¹ Cantone, *supra* 14, at 2.

³² Gianluca L., *L'Applicazione del D.Lgs. 231/2001 per Reati Commessi da Aziende con Sedi all'Estero* [The Application of Legislative Decree No. 231/2001 for Crimes Committed by Companies Headquartered Abroad], M231 (Sept. 14, 2017), <http://mondo231.it/novita-legge-231/applicazione-del-d-lgs-2312001-per-reati-commessi-da-aziende-con-sedi-all-estero>, archived at <https://perma.cc/BAP9-WABP>.

Latvia

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I. Foreign Bribery Offense

Giving of bribes is a crime pursuant to section 323 of the Criminal Code of Latvia.¹ It is defined as

giving or offering or promising, if requested, of bribes, that is, material values, properties, or benefits of another nature, in person or through intermediaries to a public official in order that he or she, using his or her official position, performs or fails to perform some act in the interests of the giver or person offering or promising the bribe, or in the interests of other persons, irrespective of whether the bribe promised, offered, or given is for this public official or for any other person.

The Code also criminalizes other corruption-related crimes such as misappropriation of a bribe,² intermediation in bribery,³ unlawful giving of benefits to a state employee who is not a public official,⁴ and trading with influence.⁵

According to section 316 of the Code, the concept of a public official also includes officials or agents of international organizations, as well as any person holding a legislative, administrative, or judicial office of a foreign state or of any its administrative units, as well as any person exercising a public function for a foreign state, including for any of its administrative units or for a public agency or public enterprise.

Latvia has ratified the OECD Anti-Bribery Convention,⁶ the UN Convention against Corruption,⁷ and the Council of Europe's Civil and Criminal Law Conventions on Corruption,⁸

¹ KRIMINĀLLIKUMS [CRIMINAL CODE], LATVIJAS VĒSTNESIS [OFFICIAL GAZETTE] 199/200 (1260/1261), July 8, 1998, <https://likumi.lv/ta/id/88966-kriminallikums>, archived at <https://perma.cc/6C5Z-MDHJ>, English translation available at <https://likumi.lv/ta/en/id/88966-the-criminal-law> (paste URL in browser), archived at <https://perma.cc/V2DQ-GHFU>.

² *Id.* § 321.

³ *Id.* § 322.

⁴ *Id.* § 326.3.

⁵ *Id.* § 326.1.

⁶ OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

⁷ United Nations Convention against Corruption (UNCAC), Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

⁸ COE Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; COE

as well as the Additional Protocol to the Criminal Law Convention on Corruption.⁹ According to an OECD report, Latvia's legislation largely conforms to the standards of the Anti-Bribery Convention.¹⁰

II. Legal Persons

Section 12 of the Criminal Code states that a natural person who has committed a criminal offense acting in the interest of a legal person, for the benefit of the legal person, or as a result of insufficient supervision or control thereof must be held criminally liable, but coercive measures may be applied to the legal person. Section 70.1 further states that coercive measures may be applied if the natural person was able to represent the legal person, take decisions on its behalf, or implement control with the legal person.

III. Sanctions

Giving of bribes is punishable by deprivation of liberty (imprisonment) for a period of up to five years, temporary deprivation of freedom for up to three months, community service of forty to 280 hours, or a fine of €4,300 to €860,000 (approx. US\$5,300 to \$1,064,000).

The aggravated form of the crime exists when bribes were given or offered on a large scale, by a public official, by a group of persons according to a prior agreement, or by an organized group. Such crimes are punishable by deprivation of liberty for a period of up to ten years, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a period of up to five years, with probationary supervision for a period of up to three years.¹¹

Coercive measures applicable to a legal person may include liquidation, restriction of rights, confiscation of property, or recovery of money (a fine).¹² Fines for bribery may be in the range of €8,600 to €43 million (approx. US\$10,600 to \$53 million).

IV. Enforcement

According to an OECD report, as of 2015 there were five known allegations of bribery of foreign public officials that could implicate Latvian individuals or companies. However, none had led to formal investigations.

Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

⁹ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

¹⁰ OECD WORKING GROUP ON BRIBERY, PHASE 2 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN LATVIA 53 (Oct. 14, 2015), <http://www.oecd.org/daf/anti-bribery/Latvia-Phase-2-Report-ENG.pdf>, archived at <https://perma.cc/J27R-M97Y>.

¹¹ KRIMINĀLLIKUMS § 232.

¹² *Id.* § 70.2.

From 2010 to 2014, 231 persons were convicted of domestic bribery but only eighteen received custodial sentences. Other sanctions applied were community service (109), suspended prison sentences (61), and fines (40).¹³ As to the liability of legal persons for active domestic bribery, in one case a company was fined €6,400 (approximately US\$7,900) for offering to pay €8,520 (approximately US\$10,540) in bribes, while in another case a company was fined €1.6 million (approximately US\$2 million) for paying almost €7 million (approximately US\$8.6 million) to win a government contract.¹⁴

¹³ OECD WORKING GROUP ON BRIBERY, *supra* note 10, at 69.

¹⁴ *Id.* at 70.

Lithuania

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I. Foreign Bribery Offense

Giving or promising bribes to civil servants in exchange for a desired lawful or unlawful act or omission is a criminal offense under article 227 of Lithuania's Criminal Code.¹ According to article 230 of the Code, a person who performs the functions of a government representative, a person who has administrative powers or otherwise ensures the implementation of public interest at an institution or body of a foreign state, or a legal person or other organization controlled by a foreign state is deemed equivalent to a civil servant.

Lithuania deposited its instrument of accession to the OECD's Anti-Bribery Convention² on May 16, 2017, and became the forty-second party to the Convention on July 15, 2017. Lithuania has also ratified the UN Convention against Corruption,³ the Council of Europe's Civil and Criminal Law Conventions on Corruption,⁴ and the Additional Protocol to the Criminal Law Convention on Corruption.⁵

II. Legal Persons

Article 227, paragraph 8, of the Criminal Code expressly states that a legal entity shall be held liable for the acts of bribery defined in the same article.

¹ BAUDŽIAMOJO KODEKSO [CRIMINAL CODE], Law No. VIII-1968 of Sept. 26, 2000, VALSTYBĖS ŽINIOS [OFFICIAL GAZETTE] No. 89-2741 of Oct. 25, 2000, available at <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555> (in Lithuanian), archived at <https://perma.cc/7Q5L-N6AZ>, unofficial English translation available at <http://www.legislationline.org/documents/id/17832>, archived at <https://perma.cc/874W-PREH>.

² OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, 37 I.L.M. 1, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

³ UN Convention Against Corruption, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

⁴ Council of Europe, Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; Council of Europe, Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

⁵ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

III. Sanctions

Giving or promising bribes in excess of €12,500 (approximately US\$15,620) is an aggravated form of bribery punishable by a fine of up to €200,000 (approximately US\$250,000) or imprisonment for up to seven years.⁶ Giving or promising bribes below €12,500 is punishable by a fine of up to €100,000 (approximately US\$125,000) and restrictions of liberty, including detention or imprisonment for up to four years, if the bribe was in return for lawful actions or inaction,⁷ or by a fine of up to €100,000 (approximately US\$125,000) and detention or imprisonment for up to five years if the bribe was in return for illegal actions or inaction.⁸

The maximum fine for a legal person amounts to €5 million (approximately US\$6.25 million).⁹ Moreover, a court may order the liquidation of the legal entity¹⁰ or restrict its operation by prohibiting it from engaging in certain activities and ordering it to close a certain unit for a period of one to five years.¹¹ Legal persons are subject to confiscation of property.¹² A judgment by which a court imposes a penalty for bribery on a legal person must be announced in the media.¹³

IV. Enforcement

As of 2017 Lithuania had two ongoing foreign bribery cases, one involving an aircraft engineering company in connection with helicopter maintenance contracts with the US Army and the other involving a frozen food company in connection with exporting food products to Russia.¹⁴

Between 2013 and 2015 seven legal persons were convicted of active domestic bribery with sanctions including fines of €7,530 to 11,295 (approximately US\$9,410 to \$14,120) and company liquidation.¹⁵

Between 2013 and 2017, five individuals were convicted of aggravated foreign bribery and were sentenced to imprisonment for one to three years.¹⁶ According to media reports, the average fine

⁶ BAUDŽIAMOJO KODEKSO art. 227(3).

⁷ *Id.* art. 227(1).

⁸ *Id.* art. 227(2).

⁹ *Id.* art. 47(4).

¹⁰ *Id.* art. 43.

¹¹ *Id.* art. 52.

¹² *Id.* art. 67(5).

¹³ *Id.* art. 43.

¹⁴ OECD WORKING GROUP ON BRIBERY, PHASE 2 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN LITHUANIA 10 (Dec. 2017), <http://www.oecd.org/corruption/anti-bribery/Lithuania-Phase-2-Report-ENG.pdf>, archived at <https://perma.cc/TMM7-HW3G>.

¹⁵ *Id.* at 73.

¹⁶ *Id.*

for serious bribery offenses between 2015 and 2017 was under €5,000 (approximately US\$6,250).¹⁷

¹⁷ *Id.*

Luxembourg

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I. Domestic Law

Luxembourg's Penal Code addresses corruption in articles 246 to 250 and article 252.¹ Under article 246, a public official who directly or indirectly solicits, receives, or accepts, without a right to do so, any offer, promise, gift, or advantage of any sort in exchange for doing or refraining from doing something within his or her duties or authority, or in exchange for abusing his or her influence (real or supposed) in connection with a government decision, may be punished by five to ten years in jail and a fine of €500 to €187,500 (approximately US\$621 to US\$232,000).² Article 247 applies the same punishment for anyone who is guilty of proposing or giving, without a right to do so, any offer, promise, gift, or advantage of any sort to a public official in exchange for that official's performance (or abstinence from performing) of an act within his or her duties or authority, or in exchange for abusing his or her influence (real or supposed) in connection with a government decision.³

When the bribe occurs after the performance (or abstinence of performance) of the act, as a reward for the public official's performance of or abstinence from said act, the potential jail sentence is increased to between five and ten years.⁴ When the person being corrupted is a judge, magistrate, arbitrator, or expert in a judicial process, the punishment is increased to ten to fifteen years in jail and a fine of €2,500 to €250,000 (US\$3,094 to US\$309,400).⁵

Influence peddling—i.e., bribing someone to use his or her influence to sway a government decision one way or another or being bribed to so use one's influence—is punishable by six months to five years in jail, and a fine of €500 to €25,000 (US\$621 to US\$154,700).⁶

Additionally, Luxembourg law provides for the confiscation of any property, title, or document that was the object of the infraction, served to commit the infraction, or was the product of the infraction, including any profits gained.⁷

The provisions described above also apply to corporations, except that the fines for corporations are raised to a maximum of €3.75 million (US\$4.64 million).⁸ Furthermore, corporate entities

¹ CODE PÉNAL [C. PÉNAL] [PENAL CODE] arts. 246–250, 252, <http://legilux.public.lu/eli/etat/leg/code/penal/20170905>, archived at <https://perma.cc/5GMR-UJNY>.

² *Id.* art. 246.

³ *Id.* art. 247.

⁴ *Id.* art. 249.

⁵ *Id.* art. 250.

⁶ *Id.* art. 248.

⁷ *Id.* arts. 31, 40.

may be dissolved if they were created for the purpose of committing the infraction or were diverted from their original purpose in order to commit the infraction.⁹

Article 252 of the Penal Code provides that the provisions described above also apply to cases involving foreign government officials or officials of international public organizations, including institutions of the European Union.¹⁰

II. International Conventions

Luxembourg is party to the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions,¹¹ the UN Convention against Corruption,¹² the Council of Europe's Criminal Law Convention on Corruption,¹³ and the Additional Protocol to the Criminal Law Convention on Corruption.¹⁴

⁸ *Id.* art. 37; BAKER & MCKENZIE, GLOBAL OVERVIEW OF ANTI-BRIBERY LAWS 2016, at 309.

⁹ C. PÉNAL art. 38.

¹⁰ *Id.* art. 252.

¹¹ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/2ZNM-58SM>.

¹² UN Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/P5HK-RZWR>.

¹³ COE Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/54YU-WZEQ>.

¹⁴ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

Malta

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Malta's Criminal Code provides for the offense of bribery.¹ Article 115 states that it is an offense to bribe a public officer or servant, or a member of the House of Representatives. To help aid reporting, whistleblowers are offered some protections under the Protection of the Whistleblowers Act.²

The anti-corruption provisions of the Criminal Code focus on domestic public officials accepting bribes, abuse of office, extortion and embezzlement, and the related offenses of being an accomplice to these acts if an individual attempts to bribe an official.³ The maximum punishment for being an accomplice to one of these offenses where the official does not accept the bribe is up to four years of imprisonment.⁴ In cases where the bribe is accepted, the penalty is up to eight years of imprisonment.⁵

Article 121 provides for corporate liability for bribery offenses. If a director, manager, secretary, principal officer, or individual who has the authority to make decisions or has control on behalf of the corporate body commits the offense of bribery, trading in influence, "embracery" (an attempt to wrongly influence a judge or juror), or corruption for the benefit, either in whole or part, of the corporate body, that individual "shall . . . be deemed to be vested with the legal representation of the same body corporate."⁶ The corporate body is then liable to pay a fine that ranges from €20,000 (approximately US\$25,000) to €2 million (approximately US\$2.5 million). The court may also order the forfeiture of any proceeds of the offense that have been received by a corporation.⁷

¹ CRIMINAL CODE, cap 9, art. 115, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>, archived at <https://perma.cc/L7WW-SN3V>.

² Protection of the Whistleblowers Act, cap. 527, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12073&l=1>, archived at <https://perma.cc/F9GW-AW5Q>.

³ CRIMINAL CODE, cap 9, arts. 115–119.

⁴ *Id.* art. 120.

⁵ *Id.* art. 115.

⁶ *Id.* art. 121D.

⁷ *Id.* art. 23B.

Malta is a party to the United Nations Convention against Corruption, the Criminal Law Convention on Corruption, and the Additional Protocol to the Criminal Law Convention on Corruption.⁸

⁸ United Nations Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/P5HK-RZWR>; Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/54YU-WZEQ>; Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

Netherlands

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SUMMARY The Netherlands is a state party to the main international anti-corruption conventions and has implemented the relevant EU legislation on that topic. Anti-corruption regulations are mostly codified in the Dutch Criminal Code. They may be applied extraterritorially in certain cases. Both natural and legal persons may be held criminally liable for active and passive bribery of public officials and commercial bribery. Foreign and domestic officials are treated equally. The crimes are punishable by a term of imprisonment of between four and nine years or a fine of up to €3,000 (around US\$102,685) for natural persons, or up to €30,000 (around US\$1.02 million) or up to 10% of the annual turnover for legal persons.

I. Introduction

The Netherlands has been praised by the Organisation for Economic Co-operation and Development (OECD) for its efficient regime for confiscation of criminal proceeds, its initiatives to raise awareness of the offense of foreign bribery in the public and private sectors, and its measures to facilitate the reporting of foreign bribery.¹ However, the OECD has criticized the lack of enforcement of the Dutch foreign bribery laws and the inadequate resources of law enforcement.² An anti-corruption report published by the European Commission in 2014 found, inter alia, that the Netherlands needs to increase capacity to investigate and prosecute foreign bribery in a more proactive manner and raise fines and sanctions for legal persons.³

Nineteen percent of businesses perceive corruption to be a problem for their company when doing business in the Netherlands, which is below the average of 37% in the twenty-eight Member States of the EU.⁴

¹ OECD, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN THE NETHERLANDS 5 (Dec. 2012), <http://www.oecd.org/daf/anti-bribery/Netherlandsphase3reportEN.pdf>, archived at <http://perma.cc/HC7T-JLFN>.

² *Id.*

³ EUROPEAN COMMISSION, NETHERLANDS, ANNEX TO THE EU ANTI-CORRUPTION REPORT 9 (2014), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_netherlands_chapter_en.pdf, archived at <http://perma.cc/65FM-XP9Z>.

⁴ EUROPEAN COMMISSION, FLASH EUROBAROMETER 457. REPORT. BUSINESSES' ATTITUDES TOWARDS CORRUPTION IN THE EU 25 (Oct. 2017), <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/81005>, archived at <http://perma.cc/HHD4-D4A8>.

II. International Conventions

The Netherlands ratified the United Nations Convention against Corruption (UNCAC) in 2006⁵ and the Council of Europe (COE) Criminal Law Convention on Corruption, including the Additional Protocol, in 2002 and 2005, respectively.⁶ The COE Convention against Corruption was ratified in 2007.⁷ The Netherlands is also a state party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.⁸

III. National Legislation

Preventing and fighting corruption and bribery in the Netherlands is mostly dealt with in the Criminal Code,⁹ but some rules on anti-corruption applicable to businesses domiciled in the Netherlands are codified in other laws. The Criminal Code differentiates between commercial bribery and bribing public officials.

A. Criminal Code

1. Commercial Bribery

a. Natural Persons

Article 328ter of the Dutch Criminal Code deals with commercial bribery and criminalizes both passive and active bribery. It is applicable to anyone who is not a public official and who is an employee or an agent of the employer. Passive bribery is defined as “accepting or requesting a gift or promise or service in consideration for certain acts he/she has undertaken or has refrained

⁵ United Nations Convention against Corruption (UNCAC), Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf, archived at <http://perma.cc/ZF87-MYVS>; *UN Convention against Corruption, Signature and Ratification Status as of 3 October 2017*, UNODC, <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, archived at <https://perma.cc/48H7-9MBH>.

⁶ Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://rm.coe.int/168007f3f5>, archived at <http://perma.cc/CKW4-JK49>; *Treaty List for a Specific State, Netherlands*, COUNCIL OF EUROPE, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/NET?p_auth=5oDpA540 (last updated Feb. 5, 2018), archived at <http://perma.cc/5Y4C-YA9A>.

⁷ Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://rm.coe.int/168007f3f6>, archived at <http://perma.cc/3Z2F-LUJ4>; *Treaty List for a Specific State, Netherlands*, *supra* note 6.

⁸ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <http://perma.cc/W4NZ-3BRC>; *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Ratification Status as of May 2017*, OECD, <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>, archived at <http://perma.cc/LB3Q-QZ89>.

⁹ WETBOEK VAN STRAFRECHT [CRIMINAL CODE], Mar. 13, 1881, as in effect on Jan. 1, 2018, <http://wetten.overheid.nl/BWBR0001854/2018-01-01>, archived at <http://perma.cc/ZQ4T-C76J>, unofficial English translation available at <http://www.legislationline.org/documents/section/criminal-codes/country/12> (text as in effect on Oct. 1, 2012), archived at <http://perma.cc/WUG6-39DT>.

from undertaking or will undertake or will refrain from undertaking in breach of his/her duties as employee or agent.”¹⁰ Active bribery is defined as

giving a gift or making a promise or rendering or offering a service to an employee or agent in consideration for certain acts he/she has undertaken or has refrained from undertaking or will undertake or will refrain from undertaking when the person might reasonably assume that receiving the gift, promise, or service is in breach of the employee’s or agent’s duties.¹¹

Acting in “breach of duty” means that the employee or agent does not disclose the gift or promise to his/her employer or principal in violation of the principle of good faith.¹² Employees or agents are therefore only liable if they conceal the gift or promise from the employer.

Both passive and active bribery are punishable by a term of imprisonment not exceeding four years or a fine of the “fifth category,” which means an amount of up to €3,000 (around US\$102,685).¹³ Maximum fines are adjusted every two years.¹⁴ Legal persons may be fined up to €30,000 (around US\$1.02 million) or up to 10% of their yearly turnover.¹⁵

b. Legal Persons

Legal persons may be held criminally liable under Dutch law to the same extent as natural persons.¹⁶ Actions of an employee or an agent may be imputed to the company if the conduct took place within the “scope” of the corporation. The Dutch Supreme Court has held that there are four situations in which conduct may be imputed to the company:

- An act or an omission of an employee
- Where the conduct concerned is part of the normal business of the corporation
- If the corporation gained profit from the conduct concerned
- Where the course of action was at the “disposal” of the corporation, and the corporation has “accepted” the conduct¹⁷

¹⁰ *Id.* art. 328ter, para. 1.

¹¹ *Id.* art. 328ter, para. 2.

¹² *Id.* art. 328ter, para. 3. Please note that the English translation does not yet reflect the renumbering of the paragraphs.

¹³ *Id.* art. 23, para. 4, art. 328ter, paras. 1, 2. The longer penalty of four years is not reflected in the English translation.

¹⁴ *Fines and Damages*, GOVERNMENT OF THE NETHERLANDS, <https://www.government.nl/topics/sentences-and-non-punitive-orders/fines-and-damages> (last visited Feb. 5, 2018), archived at <http://perma.cc/F5VL-WPME>.

¹⁵ CRIMINAL CODE art. 23, para. 7.

¹⁶ *Id.* art. 51, para. 1.

¹⁷ Hoge Raad [HR] [Dutch Supreme Court], Oct. 21, 2003, NEDERLANDSE JURISPRUDENTIE [NJ] 2006, 328, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:PHR:2003:AF7938>, archived at <http://perma.cc/22Z5-DN97>.

It further stated that “acceptance” of the conduct in question includes a failure to take reasonable steps to prevent the conduct that was performed.¹⁸

2. *Bribery of Public Officials*

Both active and passive bribery of public officials is prohibited.¹⁹ The distinction between acting or not acting in accordance with one’s official duties and acting or not acting in breach of one’s official duties has been abolished.²⁰ “Active bribery” includes both offering a gift or service with the intention to induce the public official to act or refrain from acting and offering a gift or service subsequently or as a result of a certain act or omission.²¹ “Passive bribery” is defined as accepting a gift or service before or after the act or omission as well as asking for a gift or service before or after the act or omission.²²

“Public officials” include civil servants, members of general representative bodies, judges, arbitrators, administrative law judges, and members of the armed services.²³ Furthermore, according to the Dutch Supreme Court, the term “public official” encompasses “anyone who, under the supervision and responsibility of the government, has been appointed to carry out an undeniably public function and as such carries out (part of) the powers of the state or its agencies.”²⁴ Foreign public officials are treated equally with domestic public officials. The Dutch Criminal Code provides that the term “civil servants” includes persons in the public service of a foreign state or of an international organization, whereas “judges” includes judges of foreign states or an international organization.²⁵

Active and passive bribery of public officials is punishable with imprisonment of up to six years or a fine of the fifth category, meaning up to €3,000 (around US\$102,685).²⁶ Active and passive bribery of national and international judges is punishable by a term of imprisonment not exceeding nine years or a fine of the fifth category.²⁷ Legal persons may be fined up to €30,000(around US\$1.02 million) or up to 10% of their yearly turnover.²⁸

¹⁸ *Id.*

¹⁹ CRIMINAL CODE arts. 177, 178, 363, 364.

²⁰ Please note that that amendment (abolishment of art. 177a) is not reflected in the English translation.

²¹ CRIMINAL CODE art. 177, para. 1.

²² *Id.* art. 363, para. 1.

²³ *Id.* art. 84.

²⁴ HR, Jan. 30, 1911, WEEKBLAD VAN HET RECHT [W] No. 9149, at 5 et seq..

²⁵ CRIMINAL CODE arts. 178a, 364a.

²⁶ *Id.* art. 23, para. 4, art. 177, para. 1, art. 363, para. 1. Please note that the longer penalty of six years is not reflected in the English translation.

²⁷ *Id.* art. 23, para. 4, art. 178, para. 1, art. 178a, 364, para. 1, 364a, para. 3. The longer penalty of nine years is not reflected in the English translation.

²⁸ *Id.* art. 23, para. 7.

3. Extraterritorial Corruption

As a general rule, Dutch criminal law may be applied extraterritorially to a Dutch citizen or a foreign national with a permanent place of residence or temporary residence in the Netherlands if the criminal act qualifies as an offense both under Dutch law and the law of the state where the act was committed.²⁹ Furthermore, in the case of corruption offenses, Dutch criminal law applies to

- Dutch citizens and foreign nationals with a permanent place of residence or temporary residence in the Netherlands who commit active bribery abroad;³⁰ and
- Dutch public officials and judges who are bribed outside of the Netherlands (passive bribery).³¹

B. Nonfinancial Reporting for Companies

In March 2017, the Netherlands implemented the EU Corporate Social Responsibility Directive.³² The implementing act obligates certain large companies to include a nonfinancial statement with their management report containing information on their activity relating to, among others, anti-corruption and bribery.³³

C. Implementation of the Fourth Anti-Money Laundering Directive of the EU

The Netherlands has also implemented the Fourth Anti-Money Laundering Directive of the EU, which addresses corruption indirectly.³⁴ The implementing act obligates financial service

²⁹ *Id.* art. 7, paras. 1, 3.

³⁰ *Id.* art. 7, paras. 2, 3.

³¹ *Id.* art. 8.

³² Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups, 2014 O.J. (L 330) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN>, archived at <http://perma.cc/4N8X-Q7BA>.

³³ Besluit bekendmaking niet-financiële informatieve [Non-Financial Information (Disclosure) Decree], Mar. 23, 2017, STAATSBAD VAN HET KONINKRIJK DER NEDERLANDEN [STB.] [OFFICIAL GAZETTE OF THE KINGDOM OF THE NETHERLANDS] 2017, No. 100, <http://wetten.overheid.nl/BWBR0039355/2017-03-24>, archived at <http://perma.cc/TB4K-GK6G>.

³⁴ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Fourth Anti-Money Laundering Directive), 2015 O.J. (L 141) 73, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN>, archived at <http://perma.cc/27VC-4PL9>.

providers to verify the identity of their customers, to confirm who the beneficial owner of a transaction is, and to check if there are any sanctions against the beneficiary.³⁵

³⁵ Wet ter voorkoming van witwassen en financieren van terrorisme [Wwft] [Money Laundering and Terrorist Financing Prevention Act], July 15, 2008, STB. 2008, No. 303, <http://wetten.overheid.nl/BWBR0024282/2016-08-11>, archived at <http://perma.cc/2KBX-4GZY>.

Poland

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I. Foreign Bribery Offense

Poland's foreign bribery law is contained in article 229 of the Penal Code¹ and applies to anyone who "gives a material or personal benefit or promises to provide it to a person performing public functions in connection with his official capacity." Paragraph 5 of the same article provides that those who give or promise such benefits to "a person performing public functions in another country or an international organization in connection with these functions" is also subject to penalties.

Poland has ratified the OECD Anti-Bribery Convention,² the UN Convention against Corruption,³ and the Council of Europe's Civil and Criminal Law Conventions against Corruption,⁴ but did not sign the 2003 Additional Protocol to the Criminal Law Convention on Corruption.⁵

II. Legal Persons

The liability of legal persons is provided by the Liability of Collective Entities Act,⁶ which also applies to state-owned and controlled organizations.

¹ KODEKS KARNY [PENAL CODE], June 6, 1997, DZIENNIK USTAW [OFFICIAL GAZETTE] No. 88/1997, Item 553, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf>, archived at <https://perma.cc/4H6X-UR29>, English translation available at https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf, archived at <https://perma.cc/5ZQN-U7DX>.

² OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, 37 I.L.M. 1, available at https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

³ UN Convention against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

⁴ Council of Europe, Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; Council of Europe, Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

⁵ See *Chart of Signatures and Ratifications of Treaty 191, Additional Protocol to the Criminal Law Convention on Corruption, Status as of 12/02/2018*, COE, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/191/signatures?p_auth=LuIUNzez, archived at <https://perma.cc/3GHZ-9JMZ>.

⁶ Ustawa o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary Kodeks Karny [Act on the Liability of Collective Entities for Acts Prohibited Under Punishment], Oct. 28, 2002, DZIENNIK USTAW No. 197/2002, Item 1661, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20021971661/U/D20021661Lj.pdf>, archived at <https://perma.cc/6V3C-M37T>.

As pointed out in an OECD report, a legal entity can be held liable only after a natural person is convicted of the crime or the proceedings are discontinued.⁷ In particular, article 4 of the Act states that the natural person who committed the offense must either have been convicted or pleaded guilty, or the proceedings must have been discontinued because circumstances made prosecution of the perpetrator impossible.

It is expected that in 2018 the Public Sector Transparency Act will be enacted, requiring medium and large businesses to implement internal anti-corruption procedures or face penalties of up to PLN10 million (approximately US\$3 million) and a five-year ban on participation in public tenders.⁸

III. Sanctions

A natural person may be subject to imprisonment and fines for foreign bribery. The term of imprisonment can be in the range of six months to twelve years.⁹ A fine may be imposed by the court if the individual committed the crime to gain a material benefit¹⁰ or where the prison sentence is suspended.¹¹ The court may impose a fine as an alternative to imprisonment if the bribery is of “lesser significance.”¹² The amount of the fine can be in the range of PLN100 to 1.08 million (approximately US\$30 to \$323,000). The sanctions for foreign and domestic bribery are identical and comparable to other economic crimes.¹³

Under the Liability of Collective Entities Act, a legal person may be sentenced to a fine of between PLN1,000 and 5 million (approximately US\$300 to \$1.5 million). The maximum amount of the fine was reduced from PLN20 million (approximately US\$6 million), and the cap was also reduced from 10% to 3% of the revenue the legal entity generated in the tax year when the offense was committed.¹⁴

IV. Enforcement

Sixteen people were reportedly convicted for foreign bribery between 2001 and 2014.¹⁵ In 2010–11, almost 90% of the sentences imposed on natural persons for active bribery involved between

⁷ OECD WORKING GROUP ON BRIBERY, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN POLAND 17 (June 14, 2013), <http://www.oecd.org/daf/anti-bribery/Polandphase3reportEN.pdf>, archived at <https://perma.cc/84ZM-MCFP>.

⁸ Tomasz Konopka, *Poland*, in THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW (Mark F. Mendelsohn ed., 6th ed. Nov. 2017), Jan. 2018 online posting available at <https://thelawreviews.co.uk/edition/the-anti-bribery-and-anti-corruption-review-edition-6/1151861/poland>, archived at <https://perma.cc/7WY3-TZ57>.

⁹ KODEKS KARNY art. 229.

¹⁰ *Id.* art. 33.

¹¹ *Id.* art. 71.

¹² *Id.* art. 229

¹³ OECD WORKING GROUP ON BRIBERY, *supra* note 7, at 21.

¹⁴ *Id.* at 5.

¹⁵ Konopka, *supra* note 8.

one and two years of imprisonment.¹⁶ Approximately 98% of fines imposed were for bribes that amounted to less than PLN5,000 (approximately US\$1,500). The vast majority of sentences in the form of both imprisonment and fines were suspended.¹⁷

Between 2006 and 2011 there were only forty-seven convictions of legal persons in Poland, mostly related to tax fraud, according to the OECD.¹⁸ Sanctions imposed on legal persons were also described as “extremely low.”¹⁹ The highest fine imposed during this period was PLN12,000 (approximately US\$3,600) and the lowest was PLN1,000 (approximately US\$300).²⁰

¹⁶ OECD WORKING GROUP ON BRIBERY, *supra* note 7, at 22.

¹⁷ *Id.*

¹⁸ *Id.* at 20.

¹⁹ *Id.* at 22.

²⁰ *Id.*

Portugal

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SUMMARY Portugal enacted a new law in 2008 to transpose into its legal system a decision issued by the Council of the European Union on combating corruption. In addition, several provisions of the Portuguese Penal Code, coupled with other domestic laws and international instruments to which Portugal is a party, provide the legal framework available in the country for fighting corruption domestically and in international trade.

I. Introduction

In 2003 the European Union issued Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.¹ The aim of the Framework Decision is to ensure that both active and passive corruption in the private sector are criminal offenses in all Member States, that legal persons may also be held responsible for such offenses, and that these offenses incur effective, proportionate, and dissuasive penalties.²

To comply with Council Framework Decision 2003/568/JHA, on April 21, 2008, Portugal enacted Law No. 20 of April 21, 2008, which creates a regime of criminal liability for crimes of corruption committed in international trade and in the private sector.³

II. Law No. 20 of April 21, 2008

With regard to active corruption in international trade, article 7 of Law No. 20 determines that a person who acts or promises to act through an intermediary to obtain or retain a business, contract, or other improper advantage in international trade for an official, national, foreigner, international organization, or holder of political, national, or foreign office (or a third party with such person's knowledge) is punishable with imprisonment for one to eight years.⁴

For passive corruption in the private sector, article 8 of Law No. 20 establishes that a private-sector employee who acts or promises to act through an intermediary to solicit or accept, for him/herself or for a third party, an undue advantage (*vantagem patrimonial ou não-patrimonial*) in the form of an act or omission that constitutes a violation of his/her functional duties is

¹ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, 2003 O.J. (L 192) 54, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003F0568&from=PT>, archived at <https://perma.cc/QAA2-X58T>.

² *Id.*, Whereas clause (10).

³ Lei No. 20/2008, de 21 de Abril, art. 1, http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=983&tabela=leis, archived at <https://perma.cc/C3QD-BEXP>.

⁴ *Id.* art. 7.

punishable with imprisonment for up to five years or a fine of up to six-hundred days.⁵ (Article 47(2) of the Penal Code determines that each day of a fine corresponds to an amount between € and €500 (about US\$6.20 and US\$620), which the court determines according to the economic and financial situation of the convicted person and his personal expenses.⁶) If the mentioned act or omission is likely to distort competition or damage the assets of third parties, the act is punishable with imprisonment for one to eight years.⁷

Law No. 20 punishes active corruption in the private sector with imprisonment for up to three years or a fine. Active corruption occurs when a person who, by him/herself or through a third party, promises a private-sector employee or a third party with knowledge of that person an undue advantage to pursue the purpose indicated therein.⁸

If such conduct is intended to obtain or is likely to cause a distortion of competition or property damage to third parties, the agent (perpetrator) is punishable with imprisonment for up to five years or with a fine of up to six hundred days.⁹ Attempt to commit the crime is also punishable.¹⁰

Without prejudice to the general system of the application of criminal law and as established in matters of international judicial cooperation, this law is also applicable

(a) In the case of the charge referred to in article 7 . . . of Law No. 20, to acts committed by Portuguese or foreigners found in Portugal, irrespective of where they were committed;

(b) In the case of the offenses referred to in articles 8 and 9 . . . of Law No. 20, irrespective of the place where the acts were committed, when the person giving, promising, requesting, or accepting the benefit or undertaking is a national official or holder of a national political office or, being a Portuguese national, is an official of an international organization.¹¹

Legal entities are responsible, in general terms, for the crimes provided for in Law No. 20.¹²

The punishment for the crimes defined in Law No. 20 may be reduced if the agent specifically assists in the collection of decisive evidence for the identification or capture of other offenders or in some way contributes decisively to the discovery of the truth.¹³ In addition, the agent may be exempted from punishment if he/she voluntarily repudiates the offer or promise he/she agreed to

⁵ *Id.* art. 8(1).

⁶ *Id.* art. 47(2).

⁷ *Id.* art. 8(2).

⁸ *Id.* art. 9(1).

⁹ *Id.* art. 9(2).

¹⁰ *Id.* art. 9(3).

¹¹ *Id.* art. 3.

¹² *Id.* art. 4.

¹³ *Id.* art. 5(a).

accept and provides restitution for the actual advantage received, or in the case of a fungible thing its value.¹⁴

The punishments established in Law No. 20 only apply if the fact does not grant a more severe punishment under other legal provisions.¹⁵ The provisions of the Penal Code are also applicable to the crimes provided for in Law No. 20.¹⁶

III. Penal Code

Article 372 of the Penal Code determines that an official who requests or accepts for him/herself or a third party an undue advantage in the exercise of his/her functions, acting by him/herself or through an intermediary, may be punished with a prison sentence of up to five years or a fine of up to six-hundred days.¹⁷

A person who, by him/herself or through an intermediary, gives or promises to give an undue advantage to an official, or to a third party by indication or knowledge of the official, in the performance of the official's duties or because of them, may be punished with imprisonment for up to three years or a fine of up to 360 days.¹⁸ Socially appropriate conduct that conforms to use and customs are excluded from punishment, however.¹⁹

Article 373(1) of the Penal Code determines that an official who, by him/herself or through an intermediary, solicits or accepts for him/herself or third parties an advantage (or promise of an advantage) for the practice of any act or omission contrary to the duties of the post, even before that request or acceptance, may be punished with imprisonment from one to eight years.²⁰ In addition, article 373(2) further determines that if the act or omission is not contrary to the duties of the office and the advantage is not due, the agent may be punished with imprisonment for one to five years.²¹

As determined by article 374 of the Penal Code, a person who by him/herself or through an intermediary gives or promises to an official, or to a third party by indication or with knowledge of that official, an advantage for the purpose indicated in article 373(1) of the Penal Code may be punished with imprisonment for one to five years.²² If the purpose is the one defined in article

¹⁴ *Id.* art. 5(b).

¹⁵ *Id.* art. 6(1).

¹⁶ *Id.* art. 6(2).

¹⁷ CÓDIGO PENAL, Decreto-Lei No. 48/95, de 15 de Março, *as amended by* Lei No. 94/2017, de 23 de Agosto, art. 372(1), [¹⁸ *Id.* art. 372\(2\).](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis&ficha=1&pagina=1&so_miolo, archived at https://perma.cc/9AJA-CAD3.</p></div><div data-bbox=)

¹⁹ *Id.* art. 372(3).

²⁰ *Id.* art. 373(1).

²¹ *Id.* art. 373(2).

²² *Id.* art. 374(1).

373(2) of the Penal Code, the agent may be punished with a prison sentence of up to three years or a fine of up to 360 days.²³ An attempt to commit such a crime is also punishable.²⁴

Pursuant to article 374-A(1) of the Penal Code, if the advantage referred to in articles 372 to 374 is of “high value,” the agent may be punished with the penalty applicable to the respective crime increased by a quarter.²⁵ If the advantage referred to in articles 372 to 374 of the Penal Code is of a “considerable high value,” the agent may be punished with the penalty applicable to the respective offense, increased by one-third.²⁶ Article 202(a) of the Penal Code defines “high value” as one that exceeds fifty units of account (*unidades de conta*) (approximately €5,242, or US\$6,509) as evaluated at the time of the act, and article 202(b) of the Penal Code defines “considerable high value” as one that exceeds 200 units of account (approximately €20,970, or US\$26,039).²⁷

In addition, without prejudice to the provisions of article 11 of the Penal Code defining the liability of natural persons and legal entities, when an agent acts under the terms of article 12 of the Penal Code, which criminalizes whoever performs an act on behalf of others, the agent may be punished with the penalty applicable to the respective crime, increased by one-third.²⁸

An agent may be exempted from punishment whenever

- a) He/she has denounced the crime within a maximum period of 30 days after the practice of the act and always before the initiation of criminal proceedings, provided that he/she voluntarily restitutes the advantage or, in the case of a fungible thing or animal, its value; or
- b) Before doing so, voluntarily repudiates the offer or promise he/she has accepted, or restitutes the advantage, or, in the case of a fungible thing or animal, its value; or
- c) Before doing so, withdraws the promise or refuses to offer the advantage or requests its return.²⁹

The punishment is especially mitigated if the person,

- (a) Until the closing of the deciding hearing in trial court, specifically assists in obtaining or producing the decisive evidence for the identification or capture of others responsible; or
- b) Has practiced the act at the request of the official, directly or through an intermediary.³⁰

²³ *Id.* art. 374(2).

²⁴ *Id.* art. 374(3).

²⁵ *Id.* art. 374-A(1).

²⁶ *Id.* art. 374-A(2).

²⁷ *Id.* art. 374-A(3).

²⁸ *Id.* art. 374-A(4).

²⁹ *Id.* art. 374-B(1).

³⁰ *Id.* art. 374-B(2).

An official who causes damages to the interests of business that he/she, in whole or in part, administers, supervises, defends, or carries out, with the intention of obtaining for him/herself or for third parties unlawful economic participation may be punished by imprisonment for up to five years.³¹

An official who, in any way, receives, for him/herself or for third parties, an advantage by virtue of a legal-civil act concerning assets (*interesses*) that at the time of the act, he/she had at his/her disposal, administration, or supervision, in whole or in part, by virtue of his/her duties, even without damaging such assets, may be punished with imprisonment for up to six months or with a fine of up to sixty days.³²

The same punishment also applies to an official who receives, for him/herself or for third parties, an asset advantage for the purpose of collection, liquidation, or payment, and is in charge of orders or collection, liquidation, or payment, even if there is no damage to the public treasury or to the interests entrusted to it.³³

IV. Law No. 36 of September 29, 1994

Pursuant to article 1 of Law No. 36 of September 29, 1994, the Public Prosecutor's Office and the Judiciary Police, through the Central Directorate for the Fight against Corruption, Fraud and Economic and Financial Infringements (Direcção Central para o Combate à Corrupção, Fraudes e Infracções Económicas e Financeiras), must carry out preventive actions regarding corruption, embezzlement, and economic participation in business, without prejudice to the jurisdiction of other authorities.³⁴

In the course of the actions described in article 1 of Law No. 36, as soon as elements appear that indicate the commission of a crime, the corresponding criminal proceedings must be started.³⁵ For this purpose, as soon as the Judicial Police collect evidence to confirm the suspicion of a crime, communication and denunciation to the Public Prosecution Service is mandatory.³⁶

V. International Instruments

Portugal is a signatory to several international instruments on anticorruption, including, but not limited to, the United Nations Convention Against Corruption, which was signed on December

³¹ *Id.* art. 377(1).

³² *Id.* art. 377(2).

³³ *Id.* art. 377(3).

³⁴ Lei No. 36/94, de 29 de Setembro, art. 1(a), http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=145&tabela=leis, archived at <https://perma.cc/7FET-893W>.

³⁵ *Id.* art. 3(1).

³⁶ *Id.* art. 3(2).

11, 2003, and ratified by Portugal on September 28, 2007;³⁷ the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which it ratified on November 23, 2000;³⁸ the Council of Europe Criminal Law Convention on Corruption, which was signed on April 30, 1999, and ratified on May 7, 2002;³⁹ and the Council of Europe Additional Protocol to the Criminal Law Convention on Corruption, which was signed on May 15, 2003, and ratified on March 12, 2015.⁴⁰

³⁷ *United Nations Convention Against Corruption, Signature and Ratification Status as of 3 October 2017*, UNODC, <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, archived at <https://perma.cc/5DH8-JPSE>.

³⁸ *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Ratification Status as of May 2017*, OECD, <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>, archived at <https://perma.cc/N7SW-MC38>.

³⁹ *Chart of Signatures and Ratifications of Treaty 173, Criminal Law Convention on Corruption, Status as of 01/02/2018*, COE https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173/signatures?p_auth=kz7ekil8, archived at <https://perma.cc/452W-GNTW>.

⁴⁰ *Chart of Signatures and Ratifications of Treaty 191, Additional Protocol to the Criminal Law Convention on Corruption, Status as of 01/02/2018*, COE, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/191/signatures?p_auth=kz7ekil8, archived at <https://perma.cc/G7LU-FG6U>.

Romania

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I. Foreign Bribery Offense

Legal provisions on foreign bribery are contained in Title V of the Criminal Code of Romania,¹ which deals with corruption and other offenses in public positions. Giving a bribe is punishable under article 290 of the Criminal Code and is defined as promising, giving, or offering money or other benefits to a public servant in exchange for performing, not performing, speeding up an action, or delaying the performance of an action that falls under the purview of the public servant's professional duties, or with respect to the performance of an action contrary to his/her professional duties.

Another act of active bribery established by the Criminal Code is "buying influence," which is defined in article 292 as

[t]he promise, the supply, or the giving of money or other benefits, for oneself or for another, directly or indirectly, to a person who has influence or who alleges they have influence over a public servant to persuade the latter to perform, fail to perform, speed up, or delay the performance of an act that falls under the latter's professional duties or to perform an act contrary to such duties.

The Criminal Code also criminalizes the respective passive offenses of taking a bribe (article 289) and influence peddling (article 291).

Article 294 of the Code expressly provides that corruption-related provisions apply to officials of a foreign state.

Romania has ratified the UN Convention against Corruption² and the Council of Europe's Civil and Criminal Law Conventions against Corruption,³ as well as the Additional Protocol to the

¹ CODUL PENAL [CRIMINAL CODE], MONITORUL OFICIAL [OFFICIAL GAZETTE] No. 510, July 24, 2009, *available at* <http://legislatie.just.ro/Public/DetaliiDocument/109855>, *archived at* <https://perma.cc/YTE8-PXNG>, unofficial English translation *available at* <http://www.legislationline.org/documents/section/criminal-codes/country/8> (click "Criminal Code of the Republic of Romania (2009, amended 2012) (English version)," *archived at* <https://perma.cc/BHJ4-YT6E>.

² United Nations Convention against Corruption (UNCAC), Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, *archived at* <https://perma.cc/UC5V-B6ZR>.

³ COE Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, *archived at* <https://perma.cc/494K-YDS9>; COE Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, *archived at* <https://perma.cc/UW5W-B33C>.

Criminal Law Convention on Corruption.⁴ Romania is not a party to the OECD Anti-Bribery Convention.⁵

II. Legal Persons

According to article 135 of the Criminal Code, legal entities, except for state and public authorities, are criminally liable for offenses committed in the performance of the object of activity of legal entities, in their interest, or on their behalf. The law does not determine the specific persons whose acts trigger the legal entity's liability.⁶

III. Sanctions

Giving a bribe or buying influence is punishable by a term of imprisonment of two to seven years and a prohibition on exercising certain rights.⁷ Article 112.1 of the Code provides for extended confiscation of assets upon conviction for a corruption offense.

The maximum fine that can be imposed on a legal entity for a corruption offense is RON1.5 million (approximately US\$400,000), although this amount can double if the convicted entity is a repeat offender and the offense resulted in material gain to the entity.⁸ In addition, the following ancillary penalties may be applied to legal entities:

- Dissolution⁹
- Suspension of activity for up to three years¹⁰
- Closure of the operation's location for up to three years¹¹
- Exclusion from public procurement¹²

⁴ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

⁵ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

⁶ OECD ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA, LIABILITY OF LEGAL PERSONS FOR CORRUPTION IN EASTERN EUROPE AND CENTRAL ASIA 24 (2015), <https://www.oecd.org/corruption/ACN-Liability-of-Legal-Persons-2015.pdf>, archived at <https://perma.cc/W5BU-TKRV>.

⁷ CODUL PENAL arts. 290, 292.

⁸ *Id.* art. 137.

⁹ *Id.* art. 139.

¹⁰ *Id.* art. 140.

¹¹ *Id.* art. 142.

¹² *Id.* art. 143.

- Placement under judicial supervision for up to three years¹³
- Publication of the conviction sentence¹⁴

IV. Enforcement

The total number of legal persons indicted in Romania between 2010 and 2013 was 463 (most recent data available).¹⁵ Only fifteen of them were prosecuted for bribery.¹⁶ The maximum fine imposed on a legal entity was €35,000 (approximately US\$43,600).¹⁷

Between 2010 and 2013, 1,742 individuals were prosecuted for bribery in Romania.¹⁸

¹³ *Id.* art. 144.

¹⁴ *Id.* art. 145.

¹⁵ OECD ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA, *supra* note 6, at 33.

¹⁶ *Id.* at 34.

¹⁷ *Id.* at 38.

¹⁸ *Id.* at 34.

Slovakia

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I. Foreign Bribery Offense

According to section 334 of the Slovak Criminal Code¹, the offense of foreign bribery exists when a person provides, offers or promises, directly or through an intermediary, a bribe to a foreign public official or another person in connection with the performance of the official obligations or in connection with the discharge of their office of a foreign public official, with the intention to obtain or maintain a disproportionate advantage.

A “foreign public official” is defined as

- (2) . . . a person
- (a) acting in the legislative, executive, judicial or arbitral bodies or in another public administration body of a foreign State, including the Head of State;
 - (b) having a post, employed or working in an international organization or a supranational organization established by States or other bodies governed by public international law in its organ or institution, or empowered to act on their behalf,
 - (c) having a position in, or employed or working in, an international judicial authority or empowered to act on its behalf; or
 - (d) acting in a legal person in which the foreign State has a decisive influence if the exercise of such a function is connected with the procurement of public affairs and the offense has been committed in connection with that jurisdiction or through the exercise of its status.²

Slovakia has ratified the OECD Anti-Bribery Convention,³ the UN Convention against Corruption,⁴ and the Council of Europe’s Civil and Criminal Law Conventions on Corruption,⁵ as well as the Additional Protocol to the Criminal Law Convention on Corruption.⁶

¹ TRESTNÝ ZÁKON [CRIMINAL CODE], No. 300/2005 Coll., May 30, 2005, ZBIERKA ZÁKONOV [OFFICIAL GAZETTE], July 2, 2005 <http://www.zakonypreludi.sk/zz/2005-300>, archived at <https://perma.cc/MFU2-ERWB>.

² *Id.* § 128(2).

³ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

⁴ United Nations Convention against Corruption (UNCAC), Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

⁵ COE Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; COE Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

II. Legal Persons

The Act on the Criminal Liability of Legal Persons⁷ entered into force on July 1, 2016. Under section 4 of the Act, a legal person is liable for a criminal offense if it is committed

for [the legal person's] benefit, on its behalf, [or] as part of or through its activities by (a) its statutory body or a member of its statutory body; (b) a person performing control or supervision within the legal person; or (c) another person authorized to represent the legal person or make decisions on its behalf.

III. Sanctions

Foreign bribery is punishable by a prison sentence of two to five years. Foreign bribery is aggravated if the amount of the bribe exceeds €133,000 (approximately US\$164,000),⁸ and in such cases is punishable by a longer prison sentence of five to twelve years.⁹ A pecuniary penalty of €160 to €331,930 (approximately US\$198 to \$409,790) may also be imposed on the perpetrator.¹⁰ Moreover, the Criminal Code provides for mandatory forfeiture of property in cases of aggravated foreign bribery.¹¹

Penalties applicable to legal persons convicted of foreign bribery may include

- dissolution of the legal person,
- forfeiture of property,
- forfeiture of a thing,
- a pecuniary penalty of €1,500 to €1.6 million (approximately US\$1,850 to \$1.98 million),
- a prohibition on performing professional activities,
- a prohibition on accepting grants and subsidies,
- a prohibition on accepting help and support from the funds of the European Union,

⁶ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

⁷ Zákon o Trestnej Zodpovednosti Právnických Osôb a o Zmene a Doplnení Niektorých Zákonov [Act on Criminal Liability of Legal Persons and on Amendments of Certain Acts], No. 91/2016 Coll., Nov. 13, 2015, ZBIERKA ZÁKONOV, Feb. 25, 2016, <http://www.zakonypreludi.sk/zz/2016-91>, archived at <https://perma.cc/3H87-7ZQB>, unofficial English translation available in OECD WORKING GROUP ON BRIBERY, IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION, PHASE 1BIS REPORT, LIABILITY OF LEGAL PERSONS, SLOVAK REPUBLIC 22 (Oct. 17, 2017), <http://www.oecd.org/corruption/anti-bribery/Slovak-Republic-Phase-1bis-Report-ENG.pdf>, archived at <https://perma.cc/GPX6-4Q7Q>.

⁸ OECD ANTI-BRIBERY CONVENTION, PHASE 1BIS REPORT, *supra* note 7, at 8.

⁹ TRESTNÝ ZÁKON § 334.

¹⁰ *Id.* § 56.

¹¹ *Id.*

- a prohibition on participating in public procurement, and
- publication of the judgment of conviction.¹²

IV. Enforcement

No foreign bribery cases had been concluded in Slovakia as of 2012.¹³ More recent information is not available. Between 2006 and 2010, 445 natural persons were convicted of domestic bribery, and property forfeiture was applied in 227 cases.¹⁴

As of 2017 Slovakia had not prosecuted any legal persons under the 2016 Act on Criminal Liability of Legal Persons.¹⁵

¹² Zákon o Trestnej Zodpovednosti Právnických Osôb § 10.

¹³ OECD WORKING GROUP ON BRIBERY, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN THE SLOVAK REPUBLIC 10 (June 15, 2012), <http://www.oecd.org/daf/anti-bribery/SlovakRepublicphase3reportEN.pdf>, archived at <https://perma.cc/HL9Z-RGUT>.

¹⁴ *Id.* at 25.

¹⁵ OECD ANTI-BRIBERY CONVENTION, PHASE 1BIS REPORT, *supra* note 7, at 6.

Slovenia

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I. Foreign Bribery Offense

Section 262 of the Criminal Code of Slovenia¹ criminalizes “giving of bribes.” Penalties apply to those who promise, offer or give an award, gift, or other benefit to a public official or a public employee in exchange for a lawful or unlawful action or inaction, or those who serve as agents for the purpose of bribing a public official or public employee. “Giving of gifts for illegal intervention” is a separate offense provided by section 264.

According to section 99 of the Code, the term “public official” also means a person in a foreign country carrying out legislative, executive, or judicial functions, or any other official duty at any level, provided he/she exercises a public function with management powers and responsibilities within a state authority, an authority of a self-governing local community, or any other entity governed by public law.

Slovenia has ratified the OECD Anti-Bribery Convention,² the UN Convention against Corruption,³ and the Council of Europe’s Civil and Criminal Law Conventions on Corruption,⁴ as well as the Additional Protocol to the Criminal Law Convention on Corruption.⁵

II. Legal Persons

Article 4 of the Liability of Legal Persons for Criminal Offenses Act⁶ states that a legal person is liable for a criminal offense committed by the perpetrator in the name of, on behalf of, or in favor of the legal person, if

¹ KAZENSKI ZAKONIK [CRIMINAL CODE], May 20, 2008, URADNI LIST [OFFICIAL GAZETTE] No. 50/12, June 4, 2008, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050>, archived at <https://perma.cc/MND5-MWT7>, unofficial English translation available at http://www.wipo.int/wipolex/en/text.jsp?file_id=180880, archived at <https://perma.cc/29GP-M5YD>.

² OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/4NHS-Y9US>.

³ United Nations Convention against Corruption (UNCAC), Oct. 31, 2003, 2349 U.N.T.S. 41, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/UC5V-B6ZR>.

⁴ COE Civil Law Convention on Corruption, Nov. 4, 1999, E.T.S. No. 174, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>, archived at <https://perma.cc/494K-YDS9>; COE Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/UW5W-B33C>.

⁵ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

- the criminal offense committed involved carrying out an unlawful resolution, order, or endorsement of its management or supervisory bodies;
- its management or supervisory bodies influenced the perpetrator or enabled him/her to commit the criminal offense;
- the legal person has at its disposal unlawfully obtained property benefits or uses objects obtained through a criminal offense; and
- its management or supervisory bodies have omitted due supervision of the legality of the actions of employees subordinate to them.

III. Sanctions

Giving of bribes is punishable by imprisonment for six months to three years if the requested action or inaction is lawful, and by imprisonment of one to five years and a fine if the requested action or inaction is unlawful.⁷ The amount of the fine is based on the offender's pecuniary circumstances and may not exceed €1.5 million (approximately US\$1.85 million).⁸ Certain additional sanctions may be applied to a natural person, such as a ban on involvement in the person's professional occupation or on serving as a board member or manager.⁹

Legal persons may be subject to fines in the range of €10,000 to €1 million (approximately US\$12,350 to \$1.23 million). If the criminal offense resulted in causing damage to another's property or in obtaining an unlawful benefit, the maximum fine that may be imposed is two hundred times the amount of such damage or benefit.¹⁰ In the case of foreign bribery confiscation of property may be applied instead of a fine.¹¹ In addition, the court may order the mandatory dissolution of the legal person.¹²

⁶ Zakon O Odgovornosti Pravnih Oseb Za Kazniva Dejanja [Liability of Legal Persons for Criminal Offenses Act], July 6, 1999, URADNI LIST No. 59/99, July 23, 1999, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1259>, archived at <https://perma.cc/4CDG-33BY>, unofficial English translation available at http://www.wipo.int/wipolex/en/text.jsp?file_id=180808, archived at <https://perma.cc/G8EH-XT34>.

⁷ KAZENSKI ZAKONIK art. 262.

⁸ *Id.* art. 47.

⁹ OECD WORKING GROUP ON BRIBERY, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN SLOVENIA 21 (June 5, 2014), <http://www.oecd.org/daf/anti-bribery/SloveniaPhase3ReportEN.pdf>, archived at <https://perma.cc/X8NW-RB3K>.

¹⁰ Zakon O Odgovornosti Pravnih Oseb Za Kazniva Dejanja art. 13.

¹¹ *Id.* art. 26.

¹² *Id.*

IV. Enforcement

As of June 2014 Slovenia had not prosecuted any foreign bribery cases.¹³ There were sixteen convictions of natural persons for domestic bribery between 2009–2012, resulting in eight prison sentences (ranging from six to nineteen months), twelve suspended sentences, and fifteen fines, with the maximum fine being only €6,634 (approximately US\$8,190).¹⁴

There were no convictions of legal persons for either foreign or domestic bribery.¹⁵ A total of forty-one legal persons were sanctioned from 2009 to 2012. In only eight cases fines were equal to or more than €50,000 (approximately US\$62,000). The maximum fine imposed was €15,500 (approximately US\$142,600).¹⁶ Other sanctions, such as winding up, publication of judgment, or a probationary period of up to three years, were also applied in many cases.¹⁷

¹³ OECD WORKING GROUP ON BRIBERY, *supra* note 9, at 9.

¹⁴ *Id.* at 21.

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 22.

¹⁷ *Id.*

Spain

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I. Introduction

In order to implement the mandates of international anti-corruption instruments, including the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions,¹ Spain has strengthened its anti-bribery and anti-corruption legislation by updating its Penal Code.²

II. Domestic Law

Domestic bribery is extensively regulated in the Penal Code, including provisions on passive bribery of domestic public officials who ask for or receive a bribe,³ and active bribery, when an individual or entity gives the bribe to the domestic public official.⁴

Regarding corruption in international business transactions, the Penal Code prohibits offering, promising, or granting any improper benefit or advantage, whether pecuniary or otherwise, or corrupting or attempting to corrupt, directly or through intermediaries, a public authority or official for his or her own benefit or that of a third person, in order for the authority/official to take action or refrain from action with regard to his/her public functions, when undertaken for the purpose of obtaining or keeping a contract, business, or any other competitive advantage in the performance of international economic activities.⁵ Persons who engage in such activity are punishable with a three- to six-year term of imprisonment, unless they are sanctioned with a more serious penalty under another provision of the Penal Code, and may also be subject to a fine of twelve to twenty-four months calculated on the basis of a daily quota specified by law,⁶ unless the undue benefit obtained was greater than the calculated amount, in which case the applicable fine may be tripled.⁷

¹ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf archived at <https://perma.cc/2K7S-VPME>, ratified by Spain, BOLETIN OFICIAL DEL ESTADO [B.O.E.] Feb. 22, 2002, <https://www.boe.es/boe/dias/2002/02/22/pdfs/A07155-07159.pdf>, archived at <https://perma.cc/8FKV-T68Y>.

² Ley Orgánica 10/1995, CÓDIGO PENAL [PENAL CODE], B.O.E. Nov. 24, 1995, as last updated Apr. 28, 2015, <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444&tn=1&p=20150428#a286ter>, archived at <https://perma.cc/T9GK-KE4M>.

³ *Id.* arts. 419-420.

⁴ *Id.* art. 421.

⁵ *Id.* art. 286 Ter.1.

⁶ *Id.* art. 50. Fines of twelve months to twenty-four months are equivalent to €720 to €144,000, and €1,440 to €288,000 (approximately US\$882 to \$176,000, and US\$1,765 to \$353,000).

⁷ *Id.* art. 286 Ter.1.

In addition to the above penalties, an offender is prohibited from receiving government contracts and is disqualified from obtaining public subsidies or assistance, tax incentives, or social security benefits.⁸ Additionally, the offender is prohibited from participating in commercial transactions of public significance for seven to twelve years.⁹

An aggravated form of the crime applies when the actions constituting the bribe are of special seriousness, which would be punishable with the upper half of the penalty range.¹⁰ Actions are deemed of special seriousness when

- the benefit or advantage is of a specially high value,
- the action carried out by the offender is not merely occasional,
- the actions were perpetrated within a criminal group or organization, or
- the purpose of the business transaction involved humanitarian or basic-needs goods or services.¹¹

The Penal Code defines “foreign public official” as

- anyone who holds a legislative, administrative, or judicial office in a European Union (EU) country or any other foreign country, either through appointment or election;
- anyone who exercises a public duty for a country of the EU or any other foreign country, including a public body or a public company; and
- any officer or agent of the EU or an international public organization.¹²

III. International Treaties

Spain is a party to the following anti-corruption international instruments:

- United Nations Convention Against Corruption¹³
- OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions¹⁴

⁸ *Id.* art. 286 Ter.1 para 2.

⁹ *Id.*

¹⁰ *Id.* art. 286 Quater.

¹¹ *Id.*

¹² *Id.* art. 427.

¹³ United Nations Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/9RLZ-5JDU>, ratified by Spain, B.O.E. July 19, 2006, <https://www.boe.es/boe/dias/2006/07/19/pdfs/A27132-27153.pdf>, archived at <https://perma.cc/EZ35-C5Z5>.

¹⁴ OECD Convention, *supra* note 1.

- Council of Europe's Criminal Law Convention on Corruption¹⁵
- Council of Europe's Additional Protocol to the Criminal Law Convention¹⁶

¹⁵ Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/MLW6-AP57>, ratified by Spain, B.O.E. July 28, 2010, <https://www.boe.es/boe/dias/2010/07/28/pdfs/BOE-A-2010-12135.pdf>, archived at <https://perma.cc/GF66-DZZG>.

¹⁶ Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/FH7S-67QH>, ratified by Spain, B.O.E. Mar. 7, 2011, <https://www.boe.es/boe/dias/2011/03/07/pdfs/BOE-A-2011-4192.pdf>, archived at <https://perma.cc/PVB6-X932>.

Sweden

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SUMMARY Sweden is a party to several international conventions on corruption and ranks among the least corrupt countries. Sweden criminalizes both passive and active bribery, including bribing foreign officials. Private individuals are penalized with fines or imprisonment. Legal entities may receive monetary fines capped at 10 million SEK for bribery-related crimes committed by its representatives. Companies domiciled in Sweden are required to include a corruption report in their annual reports. Legal protection is provided to whistleblowers who expose corrupt practices. Industry is also making efforts to self-regulate anti-corruption practices.

I. Introduction

Sweden has been referred to as one of the least corrupt countries in the world by Transparency International, ranking number four on the list of least corrupt countries in 2016.¹ Public perception of corruption is also low, and only 1% of Swedes admitted to having paid or received a bribe when asked by Transparency International in 2014.² Commentators have, however, questioned whether Sweden may be more corrupt than Swedes realize.³ These commentators point out that Sweden has had several cases annually where individuals are convicted of corruption.⁴ In 2014 Sweden was criticized for being ill-prepared to deal with bribery situations,⁵ even as two large corporate corruption scandals shook the country—one involving Ericsson and the other Telia Sonera. A study conducted in 2013 showed that nearly every other Swede (47%) believed that Swedish corporations with operations abroad gave bribes as part of facilitating their business interests.⁶ The OECD has also called for “urgent reform” with regard to Sweden’s implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in

¹ *Corruption Perceptions Index 2016*, TRANSPARENCY INTERNATIONAL (Jan. 25, 2017), https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table, archived at <https://perma.cc/TET4-SPSN>.

² *Global Corruption Barometer: Citizens’ Voices from around the World*, TRANSPARENCY INTERNATIONAL (Nov. 14, 2017), https://www.transparency.org/news/feature/global_corruption_barometer_citizens_voices_from_around_the_world, archived at <https://perma.cc/VT54-2TZ3>.

³ Annakaisa Suni, *Sverige mer korrupt än vi tror* [Sweden More Corrupt Than We Think], DAGENS INDUSTRI (Oct. 20, 2016), <https://unv.is/di.se/nyheter/forskare-sverige-mer-korrupt-an-vi-tror>, archived at <https://perma.cc/P2HG-93AE>.

⁴ *Id.*

⁵ Jonas Cullberg, *Dålig beredskap mot mutor i Sverige*, ETC (Apr. 10, 2014), <https://www.etc.se/inrikes/dalig-beredskap-mot-mutor-i-sverige>, archived at <https://perma.cc/3UJK-9CPN>.

⁶ *Varannan svensk tror att svenska företag mutar sig fram utomlands*, FOLKSAM (Mar. 6, 2013), <https://media.folksam.se/sv/2013/03/06/varannan-svensk-tror-att-svenska-foretag-mutar-sig-fram-utomlands/> archived at <https://perma.cc/8K23-VYUH>.

International Business Transactions, particularly criticizing the cap on monetary fines applicable to corporations.⁷

II. International Conventions

Sweden is party to the aforementioned OECD Anti-Bribery Convention,⁸ as well as the United Nations Convention against Corruption,⁹ the Criminal Law Convention on Corruption, and the Additional Protocol to the Criminal Law Convention on Corruption.¹⁰

III. Domestic Legislation

Bribery is criminalized in chapter 10 of the Swedish Penal Code (Brottsbalken).¹¹ It prohibits both the receiving and giving of bribes.¹² The provision on giving bribes applies to private citizens as well as government officials,¹³ whereas the provision on receiving a bribe only applies to persons who act in their official capacity.¹⁴ There is no general provision prohibiting corruption.¹⁵ The Penal Code makes no distinction between domestic and foreign bribes.

⁷ *Sweden's Laws on Corporate Responsibility for International Bribery need Urgent Reform*, OECD (Oct. 25, 2017), <http://www.oecd.org/corruption/sweden-s-laws-on-corporate-responsibility-for-international-bribery-need-urgent-reform.htm>, archived at <https://perma.cc/6F8M-KQHX>. For further discussion see Part VI of this report.

⁸ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/SE7Z-P2GN>. Sweden ratified this Convention on June 8, 1999. *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: Ratification Status as of May 2017*, OECD, http://www.oecd.org/daf/anti-bribery/WGBRatification_Status.pdf, archived at <https://perma.cc/4QDE-KVL4>.

⁹ UN Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/DB2T-5GZY>; Proposition [Prop.] 2006/07:74 Sveriges tillträde till Förenta nationernas konvention mot corruption [Government Bill 2006/07:74 Sweden's Accession to the United Nations Convention Against Corruption] (implementing legislation and legal history), <https://data.riksdagen.se/fil/D71E539E-1708-40CD-9360-4FFD135E82BE>, archived at <https://perma.cc/T395-DYSC>.

¹⁰ Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/7YS3-SB56>; Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/C2HV-D7U4>; Regeringens proposition [Prop.] 2003/04:70 Europarådets straffrättsliga konvention om korruption, m.m. [Government Bill 2003/04:70, The European Convention on Corruption etc.] (Swedish implementation), <https://data.riksdagen.se/fil/E7923F47-3AB8-4F34-8730-F9953FAD2CC5>, archived at <https://perma.cc/NU48-FESX>.

¹¹ BROTTSBALK [BRB] [PENAL CODE] (Svensk författningssamling [SFS] 1962:700), <http://www.notisum.se/mp/sls/lag/19620700.htm>, archived at <https://perma.cc/Z32N-KD7R>.

¹² 10 kap. 5a § and 5b § BrB.

¹³ 10 kap 5b § BrB.

¹⁴ 10 kap. 5a § BrB.

¹⁵ BrB *e contratio*.

Sweden has adopted extraterritorial jurisdiction for bribery, allowing for the trial of Swedish citizens and residents for acts committed abroad, provided that the country where the bribe was made also prohibits bribery.¹⁶

Sweden does not distinguish between facilitation payments and other bribes.¹⁷ Both monetary and non-monetary gifts are considered bribes.¹⁸ Also, hospitality payments may be considered a bribe.¹⁹ There are no monetary thresholds for what may constitute a bribe.²⁰

The taking of bribes is not limited to cases where the person is employed by a Swedish entity.²¹ Until 2012 an enumerated list of persons who were considered persons of influence (and therefore could not receive gifts) was provided in the Penal Code (20 kap 2 § BrB). The list included persons with special position, assignment, or function (such as a board member).²² That list continues to provide a good indication of who is considered a person of influence.²³

The National Anti-Corruption Unit (Riksenheten mot korruption) of the Swedish Prosecution Office was established in 2013 to prosecute crimes linked to corruption and work with the OECD to fight corruption.²⁴

IV. Protections for Whistle-Blowers

Swedish law protects persons who expose corrupt practices (whistle-blowers).²⁵ A special act, the Act of Special Protection against Employer Sanctions, took effect in January 2017.²⁶ This law protects both internal whistle-blowing where a person reports on the crime within the organization as well as external whistle-blowing where the person reports the crime to a Swedish

¹⁶ 2 kap. 2 § 2 st BrB. Sweden also has a general criminal provision allowing for the prosecution of crimes that are not a violation of the criminal law at the place of the crime, but it only applies to crimes that Swedish law punishes with at least a minimum four-year prison sentence. 2 kap. 3§ 7 p. BrB. The minimum sentence in Sweden for aggravated bribery is six months' imprisonment, 10 kap. 5c § BrB, so aggravated bribery would not be actionable under this general provision, and thus extraterritorial bribery can only be prosecuted in Sweden only if it is illegal in the country where it occurred.

¹⁷ See 10 kap. 5a § and 10 kap 5b § BrB.

¹⁸ Sandra Friberg, *in* KARNOV LOVSAMLING 2017/2018, comment 487, at 2681.

¹⁹ See 10 kap. 5a § and 10 kap 5b § BrB.

²⁰ *Id.*

²¹ Friberg, *supra* note 20, comment 482.

²² *Id.* comment 483.

²³ *Id.*

²⁴ *Corruption Crimes*, SWEDISH PROSECUTION AUTHORITY, <https://www.aklagare.se/en/crime/type-of-offence/corruption-crimes/> (last visited Feb. 13, 2018), archived at <https://perma.cc/32GP-ZJD6>.

²⁵ LAG OM SÄRSKILT SKYDD MOT REPRESALIER [ACT ON SPECIAL PROTECTION AGAINST EMPLOYER SANCTIONS] (SFS 2016:749), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2016749-om-sarskilt-skydd-mot-repressalier_sfs-2016-749, archived at <https://perma.cc/6PM3-TS6F>.

²⁶ *Id.*

government authority or agency, or to the media.²⁷ However, for the external protections to take effect there must be a reason for the person to expose the crime externally, unless he or she first made an internal notification.²⁸ Prior to the adoption of the 2017 law, general protections for employees who acted as whistle-blowers were provided for in the Act on Employment Protections.²⁹ The Swedish Parliamentary Committee on Justice noted that a special act on whistle-blowing protections was needed to meet its international obligations as early as 2010.³⁰

Swedish law also contains a number of non-criminal provisions relating to bribery. For example, companies that operate abroad must include their anti-corruption plan/agenda in their annual reports to ensure they are taking bribery seriously and actively combating corruption practices.³¹ The report must include information on the company's corruption policy, a plan to implement the policy, a description of the special risks associated with the company's activities, and a description of any claims against the company.³² Corruption is further regulated in the Public Procurement Act,³³ which prohibits companies that have been convicted of *bestickning* (bribery) from entering into the procurement process.³⁴ Moreover, the Swedish tax law specifies that costs for bribes are not deductible.³⁵

V. Industry Self -Regulation

Since its creation in 1923, the Swedish nonprofit organization Institutet mot Mutor (Swedish Anti-Corruption Institute) has aimed to self-regulate bribery-related crimes.³⁶ It has collaborated with stakeholders (industry participants) to create what it calls the Näringslivskoden (Code on Gifts, Rewards and other Benefits in Business), which it published in August 2012 and amended

²⁷ *Id.*

²⁸ *Id.*

²⁹ LAGEN OM ANSTÄLLNINGSSKYDD [LAS] [ACT ON EMPLOYMENT PROTECTIONS] (SFS 1982:80), <http://www.notisum.se/rnp/sls/lag/19820080.htm>, archived at <https://perma.cc/RP5L-N6HR>.

³⁰ Statens Offentliga Utredningar (SOU 2010:38) Mutbrott [Bribery Crimes] at 171, <http://www.regeringen.se/49bb8a/contentassets/37e4a64fd578431198f6edd5887fb3ae/mutbrott-sou-201038>, archived at <https://perma.cc/5JW9-WMQS>.

³¹ 6 kap. 12§ ÅRSREDOVISNINGSLAG [ANNUAL REPORT ACT] (SFS 1995:1554), <http://www.notisum.se/rnp/sls/lag/19951554.htm>, archived at <https://perma.cc/Q4X7-JS3E>.

³² *Id.* 6 kap 12 § 2 through 5 p.

³³ LAG OM OFFENTLIG UPPHANDLING [ACT ON PUBLIC PROCUREMENT] (SFS 2106:1145), <http://www.notisum.se/rnp/sls/lag/20161145.htm>, archived at <https://perma.cc/8L4V-GE6A>.

³⁴ 13 kap. 5 § LAG OM OFFENTLIG UPPHANDLING.

³⁵ 9 kap. 10 § INKOMSTSKATTELAGEN [INCOME TAX ACT] (SFS 1999:1229), <http://www.notisum.se/rnp/sls/lag/19991229.htm>, archived at <https://perma.cc/238U-F29V>.

³⁶ *Om Näringslivskoden*, INSTITUTET MOT MUTOR, <http://www.institutetmotmutor.se/skrifter/naringslivskoden/> (last visited Feb. 6, 2018), archived at <https://perma.cc/2WF9-KEL9>.

in November 2014.³⁷ The purpose of the Code is to supplement the Penal Code to give corporations guidance on how to interpret the Penal Code and avoid violating bribery laws.³⁸

VI. Sanctions

Under Swedish law both active and passive bribery crimes carry prison sentences of up to two years.³⁹ For aggravated bribery (*grovt mutbrott*) the minimum sentence is six months and the maximum six years.⁴⁰

Sweden imposes monetary sanctions on legal entities whose representatives have made or received bribes.⁴¹ For monetary sanctions to be imposed the following conditions must apply:

- The bribe must have been made as part of the commercial activity of the entity, and
- The legal entity must have failed to do what was necessary to prevent the bribe from happening, or
- The crime was carried out by a person who could represent the company.⁴²

Unlike some other countries that have open-ended monetary sanctions for companies that violate anti-bribery provisions, Sweden has capped its monetary fines for legal entities at 10 million SEK (approximately US\$1.3 million).⁴³ Corruption watchdog groups have criticized this cap by arguing that it is too low to effectively deter corruption abroad.⁴⁴

³⁷ Institutet Mot Mutor, Code on Gifts, Rewards and other Benefits in Business (2014), http://3afvm642sqoq9muh73hsqhtz.wpengine.netdna-cdn.com/wp-content/uploads/2017/07/141120-IMM_Code_of_Business_Conduct.pdf, archived at <https://perma.cc/CA2H-2F63>.

³⁸ *Id.*

³⁹ 10 kap. 5a and 5b §§ BrB.

⁴⁰ 10 kap 5c. § BrB.

⁴¹ 36 kap. 7 § BrB.

⁴² 36 kap. 7 § BrB.

⁴³ 36 kap. 8 § BrB.

⁴⁴ *Sweden's Laws on Corporate Responsibility for International Bribery Need Urgent Reform*, OECD (Oct. 25, 2017), <http://www.oecd.org/corruption/sweden-s-laws-on-corporate-responsibility-for-international-bribery-need-urgent-reform.htm>, archived at <https://perma.cc/LPF8-N88L>.

United Kingdom

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I. Domestic Provisions

The United Kingdom has introduced some of the most stringent anti-corruption legislation in the world, and has focused on enhancing transparency as well as establishing criminal offenses to punish both individuals and corporations who engage in acts of bribery.¹ In early 2017, the Organisation for Economic Cooperation and Development (OECD) commended the UK for significantly increasing enforcement actions in cases of companies that engage in bribery overseas.² Whistleblowers are offered protection through the Public Interest Disclosure Act 1998.³ In 2010 the UK updated and enhanced its anti-corruption laws with the enactment of the Bribery Act.⁴ This Act addressed the requirements of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions,⁵ which the UK ratified on December 14, 1998, and entered into force in the UK via implementing legislation on February 14, 2002.⁶

Anti-corruption measures that apply to companies domiciled in the UK include the criminal offense of bribery. The Act provides for extraterritorial jurisdiction, enabling UK authorities to prosecute individuals who commit bribery overseas, provided they are either UK nationals or ordinarily resident in the UK, or are UK corporate bodies.⁷

¹ *The Bribery Act*, TRANSPARENCY INTERNATIONAL UK, <http://www.transparency.org.uk/our-work/business-integrity/bribery-act/#.WnHGBf6ouM8> (last visited Jan. 31, 2018), archived at <https://perma.cc/X34B-NN82>.

² OECD, IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION, PHASE 4 REPORT: UNITED KINGDOM 5 (2017), <http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf>, archived at <https://perma.cc/HD8K-FT7L>.

³ Public Interest Disclosure Act 1998, c. 23, <https://www.legislation.gov.uk/ukpga/1998/23>, archived at <https://perma.cc/MB56-HB92>.

⁴ Bribery Act 2010, c. 23, <https://www.legislation.gov.uk/ukpga/2010/23>, archived at <https://perma.cc/9M9G-ZNYW>; Bribery Act 2010, Explanatory Notes, https://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpgaen20100023_en.pdf, archived at <https://perma.cc/6MZX-A6G4>.

⁵ OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, S. Treaty Doc. No. 105-43, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf, archived at <https://perma.cc/2ZNM-58SM>.

⁶ *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions Ratification Status as of May 2017*, OECD, <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>, archived at <https://perma.cc/XG5D-38YC>; Anti-Terrorism, Crime and Security Act 2001, c. 24, pt. 12, <http://www.legislation.gov.uk/ukpga/2001/24>, archived at <https://perma.cc/D5ZF-FK8F>; Anti-terrorism, Crime and Security Act 2001 (Commencement No. 3) Order 2002, SI 2002/228, <http://www.legislation.gov.uk/uksi/2002/228/made>, archived at <https://perma.cc/WVK2-3HG5>.

⁷ Bribery Act 2010, c. 23 § 18.

The Bribery Act 2010 provides that it is a criminal offense, punishable by up to ten years' imprisonment and/or a fine, to bribe, or receive a bribe.⁸ This applies to bribes given or received by public officials and private citizens alike. The Act also establishes an additional offense of bribing a foreign public official with the intention of influencing his/her official capacity. This new offense complies with the OECD Convention.⁹

Section 7 of the Bribery Act 2010 provides that it is a criminal offense for a commercial organization (defined as a body incorporated under the law of any part of the UK) or a partnership formed in the UK that conducts business anywhere in the world to fail to prevent a person associated with the organization from bribing a person with the "intention of obtaining or retaining business or an advantage in the conduct of business for [the commercial organization]".¹⁰ Unlike the other offenses under the Bribery Act, the penalty for this offense is an unlimited fine. The Act provides that it is a defense to this provision if the commercial organization can prove that it had "adequate procedures designed to prevent persons associated with [it] from undertaking such conduct."¹¹

If the bribery offense is committed by a body corporate or Scottish partnership and with the "consent or connivance" of a senior officer of this body or partnership, being a director, manager, secretary or similar officer, or with a person suggesting they are acting in this capacity, this person too will be guilty of the offense.¹²

The UK has used deferred prosecution agreements to resolve some foreign bribery cases.¹³ Deferred prosecution agreements are court-approved agreements between a prosecutor and a legal person that enable prosecution to be suspended for a set period of time, provided the legal person meets the conditions specified in the agreement. Such conditions in bribery cases can include "disgorgement of profits; payment of a fine, compensation and costs; cooperation in any prosecution of individuals; and implementation of a compliance programme, if necessary with a monitor appointed."¹⁴

The aim behind deferred prosecution agreements is to avoid long and costly trials, and to enable corporate bodies "to make full reparation for criminal behaviour without the collateral damage of a conviction (for example sanctions or reputational damage that could put the company out of

⁸ *Id.* § 1.

⁹ OECD Convention, *supra* note 5, art. 1.

¹⁰ Bribery Act 2010, c. 23, Explanatory Notes, ¶ 50, https://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpgaen_20100023_en.pdf, archived at <https://perma.cc/6MZX-A6G4>.

¹¹ *Id.* § 7(2).

¹² *Id.* § 14.

¹³ Crime and Courts Act 2013, c. 22, sched. 17, <http://www.legislation.gov.uk/ukpga/2013/22/enacted>, archived at <https://perma.cc/7KLJ-PV5N>.

¹⁴ OECD PHASE 4 REPORT, *supra* note 2, ¶ 147.

business and destroy the jobs and investments of innocent people).”¹⁵ The Serious Fraud Office has stated that only companies that cooperate with investigations are able to seek a deferred prosecution agreement.¹⁶

II. International Conventions

As noted above, the UK is party to the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions. It is also party to the United Nations Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption, and the Additional Protocol to the Criminal Law Convention on Corruption.¹⁷

¹⁵ *Deferred Prosecution Agreements*, SERIOUS FRAUD OFFICE, <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/deferred-prosecution-agreements/> (last visited Feb. 6, 2018), archived at <https://perma.cc/E2BA-JLEB>.

¹⁶ *Id.*

¹⁷ OECD Convention, *supra* note 5; UN Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004), http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, archived at <https://perma.cc/P5HK-RZWR>; COE Criminal Law Convention on Corruption, Jan. 27, 1999, E.T.S. No. 173, available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5>, archived at <https://perma.cc/54YU-WZEQ>; Additional Protocol to the Criminal Law Convention on Corruption, May 15, 2003, E.T.S. No. 191, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370e>, archived at <https://perma.cc/K8CL-JHUK>.

Selected Non-EU Countries

Canada

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SUMMARY In Canada, the Corruption of Foreign Public Officials Act, 1988 is the principal legislation for combatting bribery of foreign public officials. The Royal Canadian Mounted Police is responsible for investigating alleged violations of the Corruption of Foreign Public Officials Act. Both territorial and nationality jurisdiction apply to offenses under the CFPOA. Two offenses are stipulated under the CFPOA. The first is in section 3(1) of the Act, which prohibits bribing a foreign public official. The second is found in section 4(1) of the Act, which establishes accounting offenses, commonly referred to as “books and records” offenses. There appear to have been four convictions under the CFPOA to date, and there are currently four ongoing cases in which charges have been laid but the cases have not yet concluded.

I. Legal Framework

A. Key Provisions

In Canada anti-corruption is mainly regulated by two pieces of legislation: the Corruption of Foreign Public Officials Act, 1998 (CFPOA),¹ and the Criminal Code, 1985.² Canada is also a party to the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery in International Business Transactions, which was ratified in 1997 and came into force in Canada on February 15, 1999.³

The CFPOA, which took effect on February 14, 1999, was enacted to “implement Canada’s obligations under the OECD Convention into Canadian law.”⁴ The CFPOA is therefore “Canada’s principal legislation combatting bribery or foreign public officials with respect to international business transactions.”⁵

¹ Corruption of Foreign Public Officials Act (CFPOA), S.C. 1998, c. 34, <http://laws-lois.justice.gc.ca/eng/acts/C-45.2/FullText.html>, archived at <https://perma.cc/585F-RSLX>.

² CRIMINAL CODE, R.S.C. 1985, c. C-46, <http://laws-lois.justice.gc.ca/eng/acts/C-46/FullText.html>, archived at <https://perma.cc/PS55-BB7V>.

³ *Ratification Status as of May 2017*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>, archived at <https://perma.cc/Y7CM-ZMHB>.

⁴ *Bribery and Corruption*, GLOBAL AFFAIRS CANADA, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corruption.aspx?lang=eng> (last updated Oct. 27, 2017), archived at <https://perma.cc/5W4R-8Q7J>.

⁵ John Bodrug & Stéphane Eljarrat, Davies Ward Phillips & Vineberg LLP, *Canada Repeals Facilitation Payments Exception in Corruption of Foreign Public Officials Act*, LEXOLOGY (Oct. 30, 2017), <https://www.lexology.com/library/detail.aspx?g=546325d6-f9cc-4d29-93f2-27c8d615422b>, archived at <https://perma.cc/4PW3-CLUN>.

In 2013, the CFPOA underwent some major amendments through the enactment of the Fighting Foreign Corruption Act,⁶ which “greatly enhanced the corruption regulation regime in Canada.”⁷ These amendments

- (a) increase[d] the maximum sentence of imprisonment applicable to the offence of bribing a foreign public official;
- (b) eliminate[d] the facilitation payments exception to that offence;
- (c) create[d] a new offence relating to books and records and the bribing of a foreign public official or the hiding of that bribery; and
- (d) establish[ed] nationality jurisdiction that would apply to all of the offences under the Act.⁸

The Criminal Code contains specific offenses relating to corruption and bribery committed in Canada or by Canadian entities or individuals. Sections 119 through 125, 380, and 426 “create offences for bribery of judges, Members of Parliament, police officers and government officials (among others), fraud, municipal corruption, and secret commissions.”⁹

Enforcement of the OECD Convention in signatory states is monitored by the OECD Working Group on Bribery. On March 18, 2011, the Working Group completed its Phase 3 Report on Canada’s enforcement of the OECD Convention.¹⁰ According to anti-corruption compliance lawyer Henry Chang, “[a]lthough [the report] acknowledged Canada’s recent enforcement efforts, it stated that several recommendations contained in its June 2006 report had still not been implemented.”¹¹

B. Sector-Specific Legislation

On June 1, 2015, the Extractive Sector Transparency Measures Act¹² came into force, which is “designed to further Canada’s international commitments in the fight against corruption by establishing reporting obligations regarding payments made by extractive sector companies to

⁶ Fighting Foreign Corruption Act, S.C. 2013, c. 26, http://laws-lois.justice.gc.ca/eng/annualstatutes/2013_26/FullText.html, archived at <https://perma.cc/LH6F-ZY4Q>.

⁷ Derek Hoffman et al., MLT Aikins LLP, *Anti-Corruption Regulation in Canada: Why It Matters for Your Business*, LEXOLOGY.COM (Jan. 10, 2017), <https://www.lexology.com/library/detail.aspx?g=2fd007d9-f60d-4e5a-bdf2-ecde94f7f5a4>, archived at <https://perma.cc/69Q3-HLR7>.

⁸ Fighting Foreign Corruption Act S.C. 2013, summary.

⁹ Hoffman et al., *supra* note 7.

¹⁰ OECD WORKING GROUP ON BRIBERY, PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN CANADA (Mar. 2011), <https://www.oecd.org/canada/Canadaphase3reportEN.pdf>, archived at <https://perma.cc/CLK7-HS7T>.

¹¹ Henry Chang, *Canada Enacts Amendments to the Corruption of Foreign Public Officials Act*, BLANEY MCMURTRY (July 8, 2013), <http://www.blaney.com/articles/canada-enacts-amendments-to-the-corruption-of-foreign-public-officials-act>, archived at <https://perma.cc/3MML-6ELA>.

¹² Extractive Sector Transparency Measures Act, S.C. 2014, c. 39, s. 376, <http://laws-lois.justice.gc.ca/eng/acts/E-22.7/FullText.html>, archived at <https://perma.cc/WTW7-7YNN>.

foreign and domestic governments (and government officials), including aboriginal governments.”¹³

C. Investigative Authority

The Royal Canadian Mounted Police (RCMP) has the mandate to investigate alleged violations of the CFPOA. The RCMP and local and provincial police forces investigate anti-corruption provisions of the Criminal Code. In Quebec, “anti-corruption investigations are managed by the Permanent Anti-corruption Unit, with the assistance of local and provincial police forces.”¹⁴

II. Jurisdiction

Both territorial and nationality jurisdiction apply to offenses under the CFPOA.¹⁵ The CFPOA’s territorial reach is “established in Canada when the offense is committed in whole or in part within its territory.”¹⁶ The CFPOA may also apply based on nationality jurisdiction.¹⁷ Therefore, according to section 5(1) of the Act “[r]egardless of whether the individual or entity may be subject to Canada’s territorial jurisdiction,”¹⁸ the CFPOA applies to

- (a) a Canadian citizen;
- (b) a permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act who, after the commission of the act or omission, is present in Canada; or
- (c) a public body, corporation, society, company, firm or partnership that is incorporated, formed or otherwise organized under the laws of Canada or a province.¹⁹

¹³ Alexandra Luchenko et al., Blake Cassels & Graydon LLP, *Anti-Corruption & Bribery in Canada*, LEXOLOGY.COM (Aug. 3, 2017), <https://www.lexology.com/library/detail.aspx?g=4948c5db-58c8-4844-868b-dc5e708e9754>, archived at <https://perma.cc/2Q7B-VPUJ>.

¹⁴ *Id.*

¹⁵ Stuart H. Deming, *Canada’s Corruption of Foreign Public Officials Act and Secret Commissions Offense*, 29(2) AM. U. INT’L L. REV. 369, 376 (2014), <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1811&context=auilr>, archived at <https://perma.cc/8SKX-G3YH>.

¹⁶ *Id.*

¹⁷ *Id.* at 377–78.

¹⁸ *Id.*

¹⁹ *Id.* (quoting CFPOA § 5(1)(a)–(c)).

III. Offenses

A. Bribing a Foreign Public Official

1. Section 3(1)

There are two offenses stipulated under the CFPOA. The first is section 3(1) of the Act, which prohibits bribing a foreign public official:

Bribing a foreign public official

3 (1) Every person commits an offence who, in order to obtain or retain an advantage in the course of business, directly or indirectly gives, offers or agrees to give or offer a loan, reward, advantage or benefit of any kind to a foreign public official or to any person for the benefit of a foreign public official

(a) as consideration for an act or omission by the official in connection with the performance of the official's duties or functions; or

(b) to induce the official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or functions.²⁰

The Act defines a “person” according to section 2 of the Criminal Code,²¹ which states that “every one, person and owner, and similar expressions, include Her Majesty and an organization; (*quiconque, individu, personne et propriétaire*).”²² The term “business” under the Act means “any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere (*affaires*).”²³ This definition “applies to all businesses (including NGOs and other not-for-profit organizations) and individuals that engage in corrupt practices with a ‘foreign public official.’ ”²⁴ “Foreign public official” means

(a) a person who holds a legislative, administrative or judicial position of a foreign state;^[25]

(b) a person who performs public duties or functions for a foreign state, including a person employed by a board, commission, corporation or other body or authority that is established to perform a duty or function on behalf of the foreign state, or is performing such a duty or function; and

²⁰ *Id.* § 3(1).

²¹ *Id.* § 2.

²² CRIMINAL CODE § 2.

²³ CFPOA § 2.

²⁴ Hoffman et al., *supra* note 7.

²⁵ Section 2 of the CFPOA defines a “foreign state” as a country other than Canada, including

(a) any political subdivision of that country;

(b) the government, and any department or branch, of that country or of a political subdivision of that country; and

(c) any agency of that country or of a political subdivision of that country. (*État étranger*).

(c) an official or agent of a public international organization that is formed by two or more states or governments, or by two or more such public international organizations. (*agent public étranger*)²⁶

This crime is an indictable offense and a person who contravenes this provision is liable to imprisonment for a term of not more than fourteen years.²⁷

2. Defenses

Section 3(3) provides for certain defenses for an offense under the CFPOA. First, no person is guilty of bribing a foreign public official if the loan, reward, advantage, or benefit “is permitted or required under the laws of the foreign state or public international organization for which the foreign public official performs duties or functions.”²⁸ Secondly, it is also a defense if the benefit was received as payment for reasonable expenses incurred in good faith by or on behalf of the foreign public official that are directly related to

- (i) the promotion, demonstration or explanation of the person’s products and services, or
- (ii) the execution or performance of a contract between the person and the foreign state for which the official performs duties or functions.²⁹

B. Accounting Offense

Section 4(1) of the Act establishes accounting offenses, commonly referred to as “books and records” offenses.³⁰ The type of offense that falls under this section includes forging accounting records to facilitate or conceal the bribery of a foreign public official.³¹ The section stipulates as follows:

Accounting

4 (1) Every person commits an offence who, for the purpose of bribing a foreign public official in order to obtain or retain an advantage in the course of business or for the purpose of hiding that bribery,

- (a) establishes or maintains accounts which do not appear in any of the books and records that they are required to keep in accordance with applicable accounting and auditing standards;
- (b) makes transactions that are not recorded in those books and records or that are inadequately identified in them;

²⁶ *Id.* § 2.

²⁷ *Id.* § 3(2).

²⁸ *Id.* § 3(3)(a).

²⁹ *Id.* § 3(3)(b)(i)–(ii).

³⁰ Hoffman et al., *supra* note 7.

³¹ *Id.*

- (c) records non-existent expenditures in those books and records;
- (d) enters liabilities with incorrect identification of their object in those books and records;
- (e) knowingly uses false documents; or
- (f) intentionally destroys accounting books and records earlier than permitted by law.³²

IV. Enforcement

Since the CFPOA was enacted in 1998, Canada has produced a “limited number of decisions reprimanding corruption by individuals and businesses.”³³ According to an article published by the law firm McCarthy Tétrault, there have been three foreign bribery convictions on guilty pleas—Hydro-Kleen Group (2005 – \$25,000 fine), Niko Resources (2011 – \$9.499 million fine plus a three-year monitoring order), and Griffiths Energy International Inc. (2013 – \$10.35 million fine)—and one trial conviction of an individual, Nazir Karigar.³⁴

The Hydro-Kleen Group was involved in *R. v. Watts*,³⁵ which was summarized in an article by law firm MLT Aikins as follows:

A lenient decision was rendered in *R v Watts*, [2005] A.J. No. 568. In that case, the corporation, its president and an employee were charged with bribing a foreign public official contrary to the CFPOA. Payments totaling nearly \$30,000 were made to a US immigration officer to facilitate immigration of the corporation’s employees into the US. The corporation was fined a mere \$25,000 and the corporation’s president and employee did not face any personal conviction.³⁶

More severe punishments have been rendered since the *Watts* decision:

In both *R v Niko Resources Ltd.* (2011), 101 WCB (2d) 118 and *R v Griffiths Energy International*, [2013] A.J. No. 412, a corporation was found guilty of bribing a foreign public official contrary to the CFPOA. In *Niko*, the corporation had provided a \$200,000 vehicle and travel expenses to a State Minister of Bangladesh in order to influence his decision regarding compensation payments to villagers whose community had been damaged by a blowout of the corporation’s oil wells in that country. The corporation in *Griffiths* had paid the wife of Chad’s ambassador to Canada [Can]\$2 million to persuade the ambassador to use his influence to secure a production contract for the corporation in Chad. Both corporations incurred fines close to \$10 million, including a 15% victim surcharge fine.³⁷

³² John W. Boscarriol et al., McCarthy Tétrault LLP, *Canada Continues Efforts in Battling Foreign Corruption – 2017 in Review and What to Expect for 2018*, LEXOLOGY.COM (Jan. 16, 2018), <https://www.lexology.com/library/detail.aspx?g=17ea201b-0781-44b9-9c7d-8b39e9bd20b2>, archived at <https://perma.cc/Z9DZ-U6TQ>.

³³ Hoffman et al., *supra* note 7.

³⁴ Boscarriol et al., *supra* note 32. All dollar figures in this report are in Canadian dollars. The current exchange rate is Can\$1 = US\$.80.

³⁵ *R. v. Watts* 2005 A.J. No. 568 (A.B.Q.B.).

³⁶ Hoffman et al., *supra* note 7.

³⁷ *Id.*

The only case in which an individual was convicted after a trial is that of *R v Karigar*³⁸ in 2014:

The individual in that case had conspired with employees of a corporation to pay out [Can]\$450,000 in bribes to assist the corporation in winning a multi-million dollar contract with Air India. A sentence of three years' imprisonment was imposed on the individual. It is important to note that the amendments increasing the maximum penalty for bribery from 5 years to 14 years' imprisonment had not yet been implemented at the time of the *Karigar* decision.³⁹

The 2016 *Seventeenth Annual Report to Parliament on Canada's Fight against Foreign Bribery* noted that “[t]here are currently 10 active investigations, four convictions and four cases in which charges have been laid but not yet concluded under the CFPOA.”⁴⁰ The 2017 report states that “[t]here have been four convictions under the CFPOA to date and there are four ongoing cases in which charges have been laid but not yet concluded.”⁴¹ According to an article published by the law firm McCarthy Tétrault,

2017 continued to see a trend towards increased scope and enforcement of the CFPOA, Canada's primary foreign corruption law. This trend picks up on the June 2013 amendments to the CFPOA which bolstered the CFPOA with the introduction of a nationality-based jurisdiction and a books and records offence—powerful enforcement tools which have yet to be used in prosecution.⁴²

³⁸ *R. v. Karigar*, 2014 O.N.S.C. 3093 (CanLII), <https://www.canlii.org/en/on/onpsc/doc/2014/2014onpsc3093/2014onpsc3093.pdf>, archived at <https://perma.cc/A7F5-6TZ6>.

³⁹ Hoffman et al., *supra* note 7.

⁴⁰ GLOBAL AFFAIRS CANADA, CANADA'S FIGHT AGAINST FOREIGN BRIBERY, SEVENTEENTH ANNUAL REPORT TO PARLIAMENT, IMPLEMENTATION OF THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE ENFORCEMENT OF THE CORRUPTION OF FOREIGN PUBLIC OFFICIALS ACT (SEPTEMBER 2015 – AUGUST 2016), <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-17.aspx?lang=eng>, archived at <https://perma.cc/8JLB-5TLA>.

⁴¹ GLOBAL AFFAIRS CANADA, CANADA'S FIGHT AGAINST FOREIGN BRIBERY, EIGHTEENTH ANNUAL REPORT TO PARLIAMENT, IMPLEMENTATION OF THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE ENFORCEMENT OF THE CORRUPTION OF FOREIGN PUBLIC OFFICIALS ACT (SEPTEMBER 2016 – AUGUST 2017), <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-18.aspx?lang=eng>, archived at <https://perma.cc/4MXJ-TX7S>.

⁴² Boscarriol et al., *supra* note 32.

Japan

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SUMMARY Japan's Penal Code and the Unfair Competition Prevention Act are the principal anti-corruption laws in the country. Employees of certain public enterprises are also subject to company-specific anti-corruption regulations. The Act on Elimination and Prevention of Involvement in Bid Rigging addresses corruption in public procurement.

I. Anti-Corruption Legislation

Japan's Penal Code¹ and Unfair Competition Prevention Act² are its principal anti-corruption laws, but other laws are also relevant.

A. Penal Code

Articles 197, 197-2, 197-3, and 197-4 of Japan's Penal Code prohibits bribery by public officials. Juridical persons are not liable for bribery under the Penal Code.³ Non-Japanese nationals are liable for bribery under the Penal Code if the crime is committed within Japan.⁴ Japanese public officials are liable for accepting bribes outside Japan.⁵ Punishments for public officials vary depending on the type of the act. The punishment for acceptance of a bribe by a public official is imprisonment for not more than five years and confiscation of the bribe or its monetary value.⁶ Where such public official acts illegally or refrains from acting in the exercise of his or her duties in response to the bribe, he or she is punishable by imprisonment for one to twenty years.⁷

The law also prohibits a person from offering or promising to give a bribe to a public official, and such acts are punishable by imprisonment for not more than three years or a fine of not more

¹ 刑法 [PENAL CODE], Act No. 45 of 1907, amended by Act No. 72 of 2017, English translation as amended by Act No. 54 of 2007 available at <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=penal&x=0&y=0&ia=03&ky=&page=4&vm=02>, archived at <https://perma.cc/RUK9-RTEW>. Most of the provisions relevant to this report have not been changed and are current, with the exception of article 3, referenced *infra* note 9.

² 不正競争防止法 [Unfair Competition Prevention Act], Act No. 47 of 1993, amended by Act No. 54 of 2016, English translation as amended by Act No. 54 of 2015 available at <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=1&re=02&dn=1&x=0&y=0&co=01&ia=03&ky=unfair+competition&page=32&vm=02>, archived at <https://perma.cc/326B-MCR9>.

³ 日高義博 [YOSHIHIRO HIDAKA], 刑法総論 [PENAL CODE GENERAL PROVISIONS] 107-9 (2015).

⁴ PENAL CODE art. 1.

⁵ *Id.* art. 4.

⁶ *Id.* art. 197, para. 1 & art. 197-5.

⁷ *Id.* art. 12 & art. 197-3, para. 1.

than 2.5 million yen (about US\$23,000).⁸ A Japanese national is subject to the provision for acts committed abroad.⁹

B. Unfair Competition Prevention Act

Article 18 of the Unfair Competition Prevention Act criminalizes bribery of foreign public officials. Japanese nationals are subject to this provision while abroad.¹⁰ Juridical persons are also subject to this provision.¹¹ The penalty for bribery of a foreign public official is imprisonment for not more than five years and/or a fine of not more than 5 million yen (about US\$46,000).¹² Juridical persons are subject to a fine of not more than 300 million yen (about US\$2.75 million).¹³

The Ministry of Economy, Trade and Industry issued the Guidelines to Prevent Bribery of Foreign Public Officials in 2004 in order to encourage Japanese companies involved in international commercial transactions to take voluntarily action to prevent bribery of foreign public officials.¹⁴

C. Company-Specific Acts

Under various other laws, employees of certain public enterprises are prohibited from receiving bribes. Bribing such employees is also prohibited. Those enterprises include Japan Tobacco Inc.,¹⁵ the Nippon Telegraph and Telephone Corporation,¹⁶ the Japan Railway and Freight Railway Company,¹⁷ and the Japan Post Company.¹⁸

⁸ *Id.* art. 198.

⁹ *Id.* art. 3, item 6.

¹⁰ Unfair Competition Prevention Act art. 21, para. 2., item 7 & art. 21, para. 8.

¹¹ *Id.* art. 22.

¹² *Id.* art. 21, para. 2.

¹³ *Id.* art. 22, para. 1, item 3.

¹⁴ Ministry of Economy, Trade and Industry, Guidelines for the Prevention of Bribery of Foreign Public Officials § 1.2 (May 26, 2004, last revised July 30, 2015), http://www.meti.go.jp/policy/external_economy/zouwai/pdf/GuidelinesforthePreventionofBriberyofForeignPublicOfficials.pdf, archived at <https://perma.cc/R99H-7Z6R>.

¹⁵ 日本たばこ産業株式会社法 [Act on Japan Tobacco Inc.], Act No. 69 of 1984, arts. 14–15, http://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=359AC000000069#53, archived at <https://perma.cc/2TXR-LJML>.

¹⁶ 日本電信電話株式会社等に関する法律 [Act on Nippon Telegraph and Telephone Corporation], Act No. 85 of 1984, amended by Act No. 91 of 2014, art. 19, http://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=359AC000000085&openerCode=1#87, archived at <https://perma.cc/HTV9-G8V8>.

¹⁷ 旅客鉄道株式会社及び日本貨物鉄道株式会社に関する法律 [Act on Japan Railway and Freight Railway Company], Act No. 88 of 1986, amended by Act No. 36 of 2015, arts. 16–17, http://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=361AC000000088 (in Japanese), <https://perma.cc/TWT6-BZ2W>.

¹⁸ 日本郵政株式会社法 [Act on Japan Post Company], Act No. 98 of 2005, amended by Act No. 30 of 2012, arts. 17–19, http://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=417AC000000098#D, archived at <https://perma.cc/DRT7-VQL5>.

D. Public Procurement

The Act on Elimination and Prevention of Involvement in Bid Rigging addresses corruption in public procurement.¹⁹ Based on the Act, when the Fair Trade Commission discovers conduct by public servants that harms the fairness of the bidding process, it may ask the government agency to take measures to eliminate the unfair conduct.²⁰ In such cases, the head of the agency conducts an investigation. If the head of the agency finds that the employees are involved in bid rigging that caused damage due to willful or gross negligence, the head demands that the employees provide compensation for the damage.²¹ The head also take disciplinary action against the employees.²² Public employees who engage in such activity may face criminal sanctions if the activity harmed the fairness of bidding in respect to procurement by inciting any entrepreneur or person to conduct bid rigging, informing any entrepreneur or person of the target price or any other secret concerning such bidding, or by any other method, in breach of the employees' duties. The punishment is imprisonment not exceeding five years or a fine not exceeding 2.5 million yen (about US\$23,000).²³

II. International Instruments on Anti-Corruption

Japan has ratified the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions.²⁴ It also recently ratified the UN Convention against Corruption.²⁵

¹⁹ 入札談合等関与行為の排除及び防止並びに職員による入札等の公正を害すべき行為の処罰に関する法律 [Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, etc.], Act No. 101 of 2002, amended by Act No. 54 of 2017, English translation as amended by Act No. 110 of 2006 available at <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=Bid+Rigging&ia=03&x=64&y=11&ky=&page=1&vm=02>, archived at <https://perma.cc/J4TN-MSSV>.

²⁰ *Id.* art. 3.

²¹ *Id.* art. 4.

²² *Id.* art. 5.

²³ *Id.* art. 8.

²⁴ *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Ratification Status as of May 2017*, OECD, <http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>, archived at <https://perma.cc/4ULU-GB8A>.

²⁵ *Signature and Ratification Status*, UNODC (Oct. 3, 2017), <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, archived at <https://perma.cc/BS8C-J73E>.