



C/2024/1048

9.2.2024

Opinion of the European Committee of the Regions — EU Anti-Corruption Framework

(C/2024/1048)

Rapporteur General:	Jean-Luc VANRAES (BE/Renew Europe), Member of Uccle Municipal Council
Reference documents:	Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council COM(2023) 234 final Joint Communication to the European Parliament, the Council and the European Economic and Social Committee on the fight against corruption JOIN(2023) 12 final

I. RECOMMENDATIONS FOR AMENDMENTS

COM(2023) 234 final

Amendment 1

Recital 24

Text proposed by the European Commission	CoR amendment
Members of Parliament and other public officials may have immunity or legal protection from investigation or prosecution, which helps strengthen their independence by protecting them against unfounded complaints, in particular with regard to opinions expressed or votes cast in the course of performing their functions. However, such immunities may hamper effective investigation and prosecution of corruption offences, including by affecting the detection and investigation or prosecution of other persons who do not enjoy immunity and may have participated in the offence. Moreover, the application of immunity without appropriate procedures to lift immunity in cases where there are grounds to suspect participation in criminal acts undermines the credibility of public institutions. There should therefore be an appropriate balance between, on the one hand, any immunities or jurisdictional privileges accorded to public officials for acts performed in the exercise of their functions, and on the other hand, the possibility of effectively investigating, prosecuting and adjudicating corruption offences.	Members of Parliament and other public officials may have immunity or legal protection from investigation or prosecution, which helps strengthen their independence by protecting them against unfounded complaints, in particular with regard to opinions expressed or votes cast in the course of performing their functions. However, such immunities may hamper effective investigation and prosecution of corruption offences, including by affecting the detection and investigation or prosecution of other persons who do not enjoy immunity and may have participated in the offence. Moreover, the application of immunity without appropriate procedures to lift immunity in cases where there are grounds to suspect participation in criminal acts undermines the credibility of public institutions. There should therefore be an appropriate balance between, on the one hand, any immunities or jurisdictional privileges accorded to public officials for acts performed in the exercise of their functions, and on the other hand, the possibility of effectively investigating, prosecuting and adjudicating corruption offences, if and as long as this is in keeping with the legal and constitutional system of the Member State concerned.

Reason

Such arrangements must always be in keeping with the Member States' political and constitutional structures.

Amendment 2

Recital 33

Text proposed by the European Commission	CoR amendment
To combat corruption effectively, efficient exchange of information between competent authorities responsible for the prevention, detection, investigation or prosecution of corruption offences is crucial. Member States should ensure that information is exchanged in an effective and timely manner in accordance with national and Union law. This Directive, which aims to lay down common definitions of corruption offences, should serve as a benchmark for information exchange and cooperation between the competent national authorities under Directives (EU) XX/2023 ⁵² , (EU) 2019/1153 ⁵³ , (EU) 2016/681 ⁵⁴ of the European Parliament and of the Council, Regulations (EU) 2018/1240 ⁵⁵ , (EU) 2018/1862 ⁵⁶ and (EU) 603/2013 ⁵⁷ of the European Parliament and of the Council, Council Decision 2008/633/JHA ⁵⁸ .	To combat corruption effectively, efficient exchange of information between competent authorities responsible for the prevention, detection, investigation or prosecution of corruption offences is crucial. Member States should ensure that information is exchanged in an effective and timely manner <i>between the competent federal, state and regional and local authorities within a Member State, as well as between them and those of other Member States</i> in accordance with national and Union law. This Directive, which aims to lay down common definitions of corruption offences, should serve as a benchmark for information exchange and cooperation between the competent national authorities under Directives (EU) XX/2023 ⁵² , (EU) 2019/1153 ⁵³ , (EU) 2016/681 ⁵⁴ of the European Parliament and of the Council, Regulations (EU) 2018/1240 ⁵⁵ , (EU) 2018/1862 ⁵⁶ and (EU) 603/2013 ⁵⁷ of the European Parliament and of the Council, Council Decision 2008/633/JHA ⁵⁸ .

Reason

An integrated approach to combating corruption requires information exchange to flow smoothly not only between the Member States but also within the Member States where regional or local governments are entrusted with relevant powers, as well as between such sub-national governments of different Member States, especially in cases of cross-border corruption.

Amendment 3

Article 2

Definitions

Text proposed by the European Commission	CoR amendment
For the purposes of this Directive, the following definitions apply: 1. ‘prevention of corruption’ refers to the detection and elimination of the causes of and conditions for corruption, through development and implementation of a system of appropriate measures, as well as deterrence against corruption-related acts. 2. ‘property’ means funds or assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets.	For the purposes of this Directive, the following definitions apply: 1. ‘prevention of corruption’ refers to the detection and elimination of the causes of and conditions for corruption, through development and implementation of a system of appropriate measures, as well as deterrence against corruption-related acts. 2. ‘property’ means funds or assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets.

Text proposed by the European Commission	CoR amendment
3. 'public official' means: (a) a Union official or a national official of a Member State or of a third country, (b) any other person assigned and exercising a public service function in Member States or third countries, for an international organisation or for an international court.	3. 'public official' means: (a) a Union official or a national official of a Member State or of a third country, whether appointed or elected, permanent or temporary, paid or unpaid; (b) any other person assigned and exercising a public service function in a Member State or in a third country, vested with public authority or subject to the control or supervision of public authorities; (c) any person working in enterprises owned by the state, regional or local government, or in asset management foundations and privately owned companies performing public service functions; (d) any other person assigned and exercising a public service function for an international organisation or for an international court.
4. 'Union official' means a person who is: (a) a member of an institution, body, office or agency of the Union and the staff of such bodies shall be assimilated to Union officials. (b) an official or other servant engaged under contract by the Union within the meaning of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (the 'Staff Regulations'); (c) seconded to the Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants.	4. 'Union official' means a person who is: (a) a member of an institution, body, office or agency of the Union and the staff of such bodies shall be assimilated to Union officials. (b) an official or other servant engaged under contract by the Union within the meaning of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (the 'Staff Regulations'); (c) seconded to the Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants.
5. 'national official' means any person holding an executive, administrative, or judicial office at national, regional or local level, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority. Any person holding a legislative office at national, regional or local level is considered a national official for the purpose of this Directive.	5. 'national official' means any person holding an executive, administrative, or judicial office at national, regional or local level, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority. Any person holding a legislative office at national, regional or local level is considered a national official for the purpose of this Directive.

Text proposed by the European Commission	CoR amendment
6. ‘breach of duty’ covers as a minimum any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business of a person who in any capacity directs or works for a private sector entity.	6. ‘breach of duty’ covers as a minimum any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business of a person who in any capacity directs or works for a private sector entity.
7. ‘legal person’ means any entity having legal personality under the applicable national law, except for States or public bodies in the exercise of State authority and for public international organisations.	7. ‘legal person’ means any entity having legal personality under the applicable national law, except for States or public bodies in the exercise of State authority and for public international organisations.
8. ‘high level officials’ are heads of state, heads of central and regional government, members of central and regional government, as well as other political appointees who hold a high level public office such as deputy ministers, state secretaries, heads and members of a minister’s private office, and senior political officials, as well as members of parliamentary chambers, members of highest Courts, such as Constitutional and Supreme Courts, and members of Supreme Audit Institutions.	8. ‘high level officials’ are heads of state, heads of central and regional government, members of central and regional government, as well as other political appointees who hold a high level public office such as deputy ministers, state secretaries, heads and members of a minister’s private office, and senior political officials, as well as members of parliamentary chambers, members of highest Courts, such as Constitutional and Supreme Courts, and members of Supreme Audit Institutions.

Reason

The amendment brings the definition in line with recital 9 of the proposal.

Amendment 4

Article 5

Resources

Text proposed by the European Commission	CoR amendment
Member States shall take the necessary measures to ensure that national authorities competent for the detection, investigation, prosecution or adjudication of the criminal offences referred to in this Directive are continually provided with an adequate number of qualified staff and the financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.	Member States shall take the necessary measures to ensure that national, regional and local authorities competent for the detection, investigation, prosecution or adjudication of the criminal offences referred to in this Directive are continually provided with an adequate number of qualified staff and the financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.

Reason

The amendment seeks to reflect the fact that in some Member States the relevant powers are devolved to the sub-national levels of governance.

Amendment 5

Article 7

Bribery in the public sector

Text proposed by the European Commission	CoR amendment
Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence, when committed intentionally :	Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offence:
(a) the promise, offer or giving, directly or through an intermediary, of an advantage of any kind to a public official for that official or for a third party in order for the public official to act or refrain from acting in accordance with his duty or in the exercise of that official's functions (active bribery);	(a) the promise, offer or giving, directly or through an intermediary, of an advantage of any kind to a public official for the benefit of that official or of a third party with the intention of inducing the public official to perform or refrain from performing their official duty or any act in the course of their official duties in a way that is contrary to their official responsibilities (active bribery);
(b) the request or receipt by a public official, directly or through an intermediary, of an advantage of any kind or the promise of such an advantage for that official or for a third party, in order for the public official to act or to refrain from acting in accordance with his duty or in the exercise of that official's functions (passive bribery).	(b) the request or receipt of an advantage of any kind or accepting the promise of such an advantage by a public official, directly or through an intermediary, for the benefit of that official or of a third party, in return for the public official performing or refraining from performing their official duty or any act in the course of their official duties in a way that is contrary to their official responsibilities (passive bribery).

Reason

The amendment seeks to clarify the definition linguistically, having regard to the different language versions of legal texts on which the definition is based, namely Article 3 of the 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, and Article 4(2)(a) and (b) of Directive (EU) 2017/1371 of the European Parliament and of the Council⁽¹⁾ on the fight against fraud to the Union's financial interests by means of criminal law.

Amendment 6

Article 8

Bribery in the private sector

Text proposed by the European Commission	CoR amendment
Member States shall take the necessary measures to ensure that the following conduct shall be punishable as a criminal offence, when committed intentionally and in the course of economic, financial, business or commercial activities:	Member States shall take the necessary measures to ensure that the following conduct shall be punishable as a criminal offence, when committed intentionally and in the course of economic, financial, business or commercial activities:

⁽¹⁾ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

Text proposed by the European Commission	CoR amendment
(a) the promise, offer or giving, directly or through an intermediary, an undue advantage of any kind to a person who in any capacity directs or works for a private-sector entity, for that person or for a third party, in order for that person to act or to refrain from acting , in breach of that person's duties (active bribery);	(a) the promise, offer or giving, directly or through an intermediary, an undue advantage of any kind to a person who in any capacity directs or works for a private-sector entity, for the benefit of that person or of a third party with the intention to induce that person to perform an act in breach of that person's duties or to refrain from performing an act in breach of that person's duties (active bribery);
(b) the request or receipt by a person, directly or through an intermediary, of an undue advantage of any kind or the promise of such an advantage, for that person or for a third party, while in any capacity directing or working for a private-sector entity, to act or to refrain from acting , in breach of that person's duties (passive bribery).	(b) the request or receipt by a person, directly or through an intermediary, of an undue advantage of any kind or accepting the promise of such an advantage, for the benefit of that person or of a third party, while in any capacity directing or working for a private-sector entity, in return for performing an act which is in breach of that person's duties or for refraining from performing an act in a way which breaches that person's duties (passive bribery).

Reason

The amendment seeks to clarify the definition linguistically, having regard to the different language versions of the legal text on which the definition is based, namely Council Framework Decision 2003/568/JHA ⁽²⁾ of 22 July 2003 on combating corruption in the private sector.

Amendment 7

Article 15a (NEW)

Prohibition of pardons and amnesties

Text proposed by the European Commission	CoR amendment
	<i>In accordance with the subsidiarity principle, Member States shall take the necessary measures to provide clear definitions for pardons, amnesties and acts of grace for any of the criminal offences referred to in this Directive, and Member States shall determine the mechanisms and circumstances governing their application.</i>

Reason

In accordance with the principle of subsidiarity, it is up to the Member States to determine their application.

Amendment 8

Article 19

Immunity or privileges from investigation and prosecution of corruption offences

Text proposed by the European Commission	CoR amendment
Member States shall take the necessary measures to ensure that privileges or immunities from investigation and prosecution granted to national officials for the offences referred to in this Directive can be lifted through an objective, impartial, effective and transparent process pre-established by law, based on clear criteria, and that is concluded within a reasonable timeframe.	<i>As long as it is compatible with their legal system and the principles of their constitution</i> , Member States shall take the necessary measures to ensure that privileges or immunities from investigation and prosecution granted to national officials for the offences referred to in this Directive can be lifted through an objective, impartial, effective and transparent process pre-established by law, based on clear criteria, and that is concluded within a reasonable timeframe.

⁽²⁾ OJ L 192, 31.7.2003, p. 54.

Reason

In accordance with TEU Article 4(2), such measures must always be in keeping with the Member States' political and constitutional structures.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS (CoR),

1. Stresses that the fight against corruption is essential in order to guarantee the rule of law. Warns that, according to the latest special Eurobarometer ⁽³⁾ on corruption, almost three quarters of Europeans (74 %) think there is corruption in the national public institutions in their country, and 73 % of Europeans consider that there is corruption in the local or regional public institutions in their country;
2. Calls for addressing this threat at all levels of governance — local, regional, national and EU, as the citizens expect high standards of probity from public officials. Warns that corruption cases at EU level seriously undermine public trust in EU institutions;
3. Emphasises that by joining the European Union, each Member State made a commitment in this regard, as well-functioning and stable democratic institutions, an independent judiciary, respect for human rights, and the fight against corruption and organised crime are all prerequisites falling under the rule of law requirement of the Copenhagen criteria against which all EU candidate countries are measured;
4. Reiterates that corruption poses a major threat to local and regional governance and democracy in Europe and the fight against corruption is crucial to safeguarding the European democratic values as well as to protecting the healthy functioning and growth of the European Single Market;
5. Points out that individuals living in regions with higher levels of experienced corruption, all else being equal, report on average a lower life satisfaction. Recognises the significant impact of corruption on less developed regions, impeding their progress and exacerbating inequalities, and emphasises the need for targeted anti-corruption initiatives in these regions to promote social and economic development;
6. Approves the general objective of the anti-corruption directive proposed by the European Commission to harmonise the relevant legislation across the Member States. The proposal properly reflects Article 83 of the Treaty on the Functioning of the European Union, which qualifies corruption as a 'euro-crime', that is, a particularly serious crime with a cross-border dimension, in which case the EU may in certain circumstances, adopt minimum rules in this area. The cross-border dimension of corruption and the stark disparity in the scope of Member States' criminal law necessitate a stronger coordination and definition of common standards across the EU. Acknowledges by the same token that the full implementation of the directive into national criminal law will be a difficult and long-lasting process;
7. Considers that, given that corruption undermines European democracy and the integrity of elections at all levels of government, the additional sanction proposed by the directive of deprivation of the right to stand in elections on the basis of a common definition of corruption across the EU is to be welcomed, especially since the proposal only requires that the national legislator envisages the possibility of these additional or alternative sanctions and measures listed in Article 15(4);
8. Is convinced that, because of the transnational dimension of corruption and its growing link with cross-border organised crime, and taking into account already existing EU legislation, EU-level action is better suited than action taken by Member States individually. Therefore, the proposal appears compatible with the principle of subsidiarity. Moreover, the proposal is in line with the proportionality principle because it is limited to what is necessary and proportionate to efficiently prevent and combat corruption and to implement international obligations and standards. Furthermore, since the proposal takes the form of a directive, it gives Member States sufficient latitude in its implementation;

⁽³⁾ Citizens' attitudes towards corruption in the EU in 2023 — July 2023 — Eurobarometer survey (<https://europa.eu/eurobarometer/surveys/detail/2658>).

9. Emphasises that comprehensive instruments already exist at international, European and national level to combat corruption but their effectiveness continues to be hampered by implementation and enforcement gaps and obstacles in cooperation which is where more effort is needed;
10. Stresses the importance of timely implementation of the Corporate Sustainability Reporting Directive (CSRD) ⁽⁴⁾ into the legal systems of Member States, in particular as regards the requirement for undertakings to disclose governance factors such as business ethics and corporate culture, including their anti-corruption and anti-bribery measures and the protection of whistleblowers. Acknowledges the vital role of education, reskilling, and upskilling programmes in fostering ethical values, integrity, and anti-corruption awareness among citizens, and calls for increased investments in educational initiatives aimed at promoting a culture of integrity and accountability;
11. Supports efforts to disseminate good practices applied by many regions or local administrations particularly as regards public procurement, transparency standards, asset disclosure, prevention and sanctioning of conflicts of interests, as well as control of public spending. Insists in this respect on the importance of public access to documents as a means to enhance transparency and accountability;
12. Points out the close cooperation between the Committee of the Regions and the Congress of Local and Regional Authorities of the Council of Europe on combatting corruption, for example, by having organised a joint conference on the role of local and regional authorities in preventing corruption and promoting good governance;
13. Highlights the European Code of Conduct for all Persons Involved in Local and Regional Governance adopted by the Congress of Local and Regional Authorities of the Council of Europe as an excellent example of making the fight against corruption a long-term priority for local and regional governments and their associations; points to Resolution 433 (2018) ⁽⁵⁾ in which the Congress invites local and regional authorities to adopt this Code themselves or to draw up and promote similar codes of conduct;
14. Calls on the promotion and the follow-up of this Code to be conducted jointly by the CoR and the Congress through an annual dialogue and a follow-up report as an effective tool to monitor the fight against corruption;
15. Recommends that local and regional authorities reflect on their on existing ethics and integrity frameworks and the use of whole range of activities and tools in order to better combat any potentially corrupt practices and reinsure citizens of high ethical standards;
16. Calls on the local and regional authorities to take inspiration from the Code and guidelines proposed by the Congress and develop or revise their anti-corruption strategies and codes of conduct addressing, inter alia, the areas of transparency and open methods of governance, prevention of conflicts of interest and clientelism through maintenance of registers of financial and non-financial interests of public officials, a clear protection of whistle-blowers in order to strengthen reporting behaviour, combatting of nepotism, cronyism or favouritism, ensuring full transparency of public procurement processes and preventing abuse of administrative resources in election campaigns;
17. Stresses that in the enlargement process, alignment with existing EU law, adherence to the rule of law and anti-corruption reforms largely determine the pace of candidate countries' progress towards accession to the EU. Local and regional authorities in the candidate countries should prioritise their own anti-corruption strategies and promote high standards of integrity and transparency in public bodies they manage and supervise;
18. Warns that construction linked to urban development, as well as waste management, ports management (including the threat of corruption related to drug trafficking) and public procurement, are among the sectors most prone to corruption at local level and need to be specifically addressed through targeted anti-corruption strategies. Calls for the establishment of accessible and user-friendly online portals in Member States, providing comprehensive information on public procurement, budgets and expenditure at the local and regional levels, fostering transparency and enabling citizens to scrutinise the use of public funds;

⁽⁴⁾ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (OJ L 322, 16.12.2022, p. 15).

⁽⁵⁾ <https://rm.coe.int/european-code-of-conduct-for-all-persons-involved-in-local-and-regional/16808d3295>

19. Commends the existing efforts of local and regional authorities to prevent corruption and generate trust in democracy and rule of law in the communities across the European Union, such as setting up integrity committees, promoting good practices, transparency, accountability, scrutiny of investment and procurement practices, digitalisation of workflows, ensuring fair competition conditions, and equally enforcing local regulations and improving public services overall;
20. Commends civil society initiatives which have also had a beneficial effect on the accountability of public administrations with regard to transparency of public spending. Encourages the active participation of civil society organisations in anti-corruption efforts, fostering collaboration between local governments, civil society, and citizens;
21. Calls for adequate remuneration for mayors and councillors, in particular of small municipalities, to recognise their role as a full-time position of employment in order to strengthen good administration and integrity in governance from bottom up;
22. Stresses that declarations of interests and assets should be simplified and centralised so as to relieve the administrative burden on the reporting persons and entities, while access to such declarations should reflect a careful balance between protection of privacy and the public's expectation of transparency;
23. Stresses the importance of a regular follow-up reporting on the implemented codes of conduct and the need for regular training and sectoral risk assessments for public administrations and guides on interaction between the public and private sector at local and regional level. Encourages Member States to establish standardised reporting mechanisms, ensuring that transparency practices are consistent across different sectors. Transparency reports should be made publicly available and easily accessible, empowering citizens to hold authorities accountable for their actions;
24. Calls for the introduction of strong preventive measures, including through accompanying information and research programs to strengthen public awareness;
25. Commends the role of media in fighting corruption while adhering to the principles of responsible journalism and ethical conduct, in particular as regards the fundamental right of presumption of innocence. Encourages the development and implementation of digital solutions, such as online platforms for reporting corruption, to facilitate anonymous reporting and improve public awareness about corruption-related issues;
26. Is committed to playing an active role in the establishment of the inter-institutional Ethics Body and developing transparency rules applicable across the EU institutions and bodies. Commits to supporting initiatives aimed at enhancing accountability and ethical conduct within the EU institutions and bodies. Encourages the establishment of a comprehensive and uniform framework for reporting and addressing ethical violations across all EU institutions, ensuring consistency and fairness in dealing with integrity-related matters;
27. Supports the idea of revising its own Code of Conduct as an example of institutional integrity and transparency;
28. Expresses its keen interest in participating in the works of the EU network against corruption established by the European Commission, in the firm belief that the local and regional perspective is key to effectively fighting corruption.

Brussels, 29 November 2023.

*The President
of the European Committee of the Regions*
Vasco ALVES CORDEIRO