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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Questionnaire

**Protocol to Criminal Law Convention on Corruption:
Non-profit sectors**

**Protocole à la Convention pénale sur la corruption :
secteurs à but non lucratif**

Feasibility / faisabilité

Replies / Réponses

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QUESTIONS

1. Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?
2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?
3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?
4. What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?

* * *

1. Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays?
2. A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière?
3. Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?
4. Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale?

AUSTRIA / AUTRICHE

1. Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?

The Austrian criminal law provisions against private (business) sector corruption, which are in line with Articles 7 and 8 of the Convention, are also applicable on the private non-profit sector.

2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?

See the first answer; since there are no legal lacunae, there are no plans to address them.

3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?

No.

4. What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?"

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AZERBAIJAN / AZERBAIDJAN

1. Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?

In our country, like in other non-profit sectors as well as in sport, any corrupt practices/phenomena are covered by the relevant legal provisions on bribery of the Criminal Code of the Republic of Azerbaijan.

The concepts of taking bribe (passive bribery) and giving bribe (active bribery) is explained in Articles 311 and 312 of the Criminal Code of the Republic of Azerbaijan and criminal liability on officials and other persons committing such offence is determined therein.

The meaning of the term "official person" is explained in Article 308 of the Criminal Code. Leaders and employees of state and municipal establishments, offices and organizations, and non-profit organizations, as well as persons with special authority performing organizational management or administrative economic functions in non-profit organizations are included in this category.

There is no need to answer following questions because of these practice/phenomena are covered relevant legal provisions.

2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?

3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?

4. What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?

BELARUS / BELARUS

1. The Criminal Code of the Republic of Belarus contains all necessary provisions concerning criminalization of corruption (Art. 424 (abuse of power or official position), Art. 430 (bribe taking), Art. 431 (bribe giving), Art. 432 (mediation in bribery), Art. 252 (commercial bribing), Art. 253 (bribing of participants and organizers of professional sport competitions and entertainment commercial contest), etc.). The definition of "public official" in CC covers public officials both in public and private sectors. Moreover, the term "public official" in CC also covers persons authorized to perform legal significant actions (e.g. notary, etc.).
2. At present there is not any visible necessity to make any amendments to the Belarusian criminal legislation taking into consideration the fact that CC contains all necessary provisions on corruption crimes.
3. The information on scientific researches held in Belarus in respect of corruption in sport is not available.
4. It should be noted that there is the difference between corruption in sport and doping in sport: doping in sport is often not connected with abuse of power by sport managers or public officials. Such actions are closely connected with professional activity of coaches, and this activity is not carried out by using official power.

BELGIUM / BELGIQUE

1. *Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays?*

En Belgique, la corruption dans le secteur privé est régie par les articles 504bis et 504ter du Code pénal.

- Art.504bis.

§ 1er. Est constitutif de corruption privée passive le fait pour une personne qui a la qualité d'administrateur ou de gérant d'une personne morale, de mandataire ou de préposé d'une personne morale ou physique, de solliciter ou d'accepter, directement ou par interposition de personnes, une offre, une promesse ou un avantage de toute nature, pour elle - même ou pour un tiers, pour faire ou s'abstenir de faire un acte de sa fonction ou facilité par sa fonction, à l'insu et sans l'autorisation, selon le cas, du Conseil d'administration ou de l'Assemblée générale, du mandant ou de l'employeur.

§ 2. Est constitutif de corruption privée active la fait de proposer, directement ou par interposition de personnes, à une personne qui a la qualité d'administrateur ou de gérant d'une personne morale, de mandataire ou de préposé d'une personne morale ou physique, une offre, une promesse ou un avantage de toute nature, pour elle-même ou pour un tiers, pour faire ou s'abstenir de faire un acte de sa fonction ou facilité par sa fonction, à l'insu et sans l'autorisation, selon le cas, du Conseil d'administration ou de l'Assemblée générale, du mandant ou de l'employeur.

- 504ter

§1er. En cas de corruption privée, la peine sera un emprisonnement de six mois à deux ans et une amende de 100 euros à 10 000 euros ou une de ces peines.

§ 2. Dans le cas où la sollicitation visée à l'article 504bis, § 1er, est suivie d'une proposition visée à l'article 504bis, § 2, de même que dans le cas où la proposition visée à l'article 504bis, § 2, est acceptée, la peine sera un emprisonnement de six mois à trois ans et une amende de 100 euros à 50 000 euros ou une de ces peines.

Ces articles ont un champ d'application très large et s'appliquent également au secteur des activités des entreprises ou commercial, ainsi qu'aux relations d'emploi (personnes ayant un statut d'indépendant ou qui sont mandatées pour effectuer une mission particulière). Ainsi, ces articles sont, en général, à la base d'une condamnation pénale en cas de fraude liée au sport.

2. *A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière?*

Le système belge tel qu'il est prévu actuellement en ce qui concerne la corruption dans le secteur privé fonctionne de façon satisfaisante. Aucune initiative législative n'est entamée à l'heure actuelle mais la question est envisagée (note analytique en préparation) depuis la recommandation du GRECO sur la corruption dans le secteur privé dans le rapport d'évaluation du Troisième cycle du 15 mai 2009.

3. *Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?*

Une seule pré-étude sur le sujet a été entreprise par l'Office Central pour la Répression de la Corruption (OCRC) de la police fédérale, portant sur le football en particulier.

4. *Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale?*

Premièrement, les articles sur la corruption visent soit l'administrateur d'une personne morale, soit le préposé d'une personne morale ou physique. S'il est possible de poursuivre un gérant, entraîneur ou footballeur d'un club de football, en revanche, avec cette définition, il n'est pas possible de poursuivre une personne qui ne fait pas partie d'une personne morale et qui a agi de son propre chef.

Deuxièmement, le GRECO a conclu dans son rapport d'évaluation du Troisième Cycle que l'article 504bis exige, pour que l'infraction soit constituée, que l'agissement soit commis « à l'insu et sans autorisation » des responsables (selon le cas le conseil d'administration ou de l'assemblée générale, le mandant ou l'employeur). Cette restriction ne constitue pas une solution entièrement satisfaisante : le dispositif risque d'empêcher d'appréhender par exemple les cas de corruption-entente entre organes dirigeants de deux entités (clubs sportifs, sociétés) en vue de fausser les règles du jeu ou du marché. Le risque existe qu'un employé puisse être « couvert » ou disculpé a posteriori (après qu'il ou elle ait commis une infraction de corruption) par ses supérieurs dès lors qu'ils affirmeraient avoir eu connaissance des agissements réprimés par la justice.

BOSNIA AND HERZEGOVINA / BOSNIE ET HERZEGOVINE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Within the criminal legislation in Bosnia and Herzegovina there are no specific provisions related to bribery in sport.

However, there are rulebooks on disciplinary liability in force which provide basis for sanctions to collaborators of such conduct.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

Few debates on this issue have been carried out. However, there is still no concrete initiative on legal reform in order to incriminate bribery in sport as a criminal offence.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No available data on such kind of study.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

There are no specific legal difficulties that have been identified.

Existence of a unique international instrument (Convention or Protocol) on this matter could be a helpful tool and good basis for strengthening of national legal framework related to corruption in sport.

CYPRUS / CHYPRE

1. *Which corrupt practices / phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Legal criminal provisions on bribery in sports essentially cover all aspects of corrupt practices under the Cyprus Sports Organization Law (Law 41/1969, article 24).

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

The Cyprus Sports Organization Law is currently under revision to be amended. In this context, its criminal provisions regarding corrupt practices in sports may be strengthened and/or revised.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No.

4. *What are, in your view, the (perceived) legal difficulties in criminalizing these practices/ phenomena?*

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CZECH REPUBLIC / REPUBLIQUE TCHEQUE

- *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

The Criminal Code of the Czech republic covers criminalisation of corrupt practices in both public and private (including non-profit) sectors. There is an extensive jurisprudence with regard to criminal proceedings in cases of match-fixing criminalized under bribery provisions already.

- *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

No, there were no lacunae identified.

- *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No, unfortunately there are no studies.

- *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?"*

According to our experience, there are no difficulties, provided all special investigative means are used in accordance with law.

ESTONIA / ESTONIE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Estonian legislation on bribery does not explicitly exclude non-profit sector. However we have no practical experience with regard bribery in non-profit sector.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

There are no plans so far. Meantime we had a recommendation by the GRECO to amend the current wording of bribery offence, but this is not related to the current issue.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No studies on the subject have been carried out in Estonia so far.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?"*

We haven't analysed this issue yet. Anyway we might have a question whether sports activities could be considered to be economical activity, which is the precondition to have a bribery case and whether the agreement between sportsmen or players would be sufficient as well.

FINLAND / FINLANDE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

In Finland, bribery in the private sector expressly refers to bribery in business. The objectives are different compared with the public sector. The objective of protection in the private sector is healthy competition, that is, the financial benefit of those engaged in business. According to various country evaluations by the mechanisms of the international conventions against corruption the legislation against corruption in Finland covers most of the cases in public and private sector situations.

In sports, there have been few cases of match-fixing (mainly football) taken to court procedure in last few years in Finland. It has turned out that in higher-level various organisations where the whole work of the organisation is seen mainly business-based or/and professional the private sector legislation of bribery covers these situations according to the court praxis. Another question is a situation where lower-level organisations act more hobby-based and not like business-oriented. We do not have court praxis on this and it is possible that our legislation does not cover these situations. It has turned out lately that also these lower-level matches are a target for betting or gambling often by foreign actors.

When it comes to humanitarian aid, it can be stated that present regulation and lower-level guidance is quite satisfactory. In public procurement and development aid we have been recommended by OECD to take black lists of international organisations in use and it would need perhaps adjusting/amendment of present legislation.

In politics we have a need for a new legislation on trading in influence and also for regulations on lobbying and use of lobbying-registers for members of Parliament. In municipal level politics there is a need for an obligation to report allegations of bribery to law-enforcement officials, general reporting of connections to business and clearer disqualification rules in local decision-making organisations.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

There are plans to take trading in influence into Criminal Code as soon as possible. Also other questions have been discussed but there are not yet any concrete plans for other questions mentioned in point 1.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

Research on these topics is quite minimal. In sports there is one doctoral thesis in process. There is one research made on the gambling market in Finland this year by Turku School of Economics. Last year the new Government of Finland made an action programme where it is mentioned that risk-sectors of corruption should be mapped out. It will be done possibly next year and it has been discussed that sports could be taken there as one of the risk-sectors.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

There are some difficulties in trading in influence with clear wording and simultaneously drawing the lines between appropriate and inappropriate actions. More than legal difficulties in criminalising these there is a need for awareness raising in these questions and then a need for positive and active implementation of international best practices.

FRANCE

1. *Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays?*

Tous les secteurs visés par cette question sont actuellement couverts par la législation française en matière de corruption qui vise à la fois le secteur public et le secteur privé.

Il convient par ailleurs de préciser que la loi n°2012-158 du 1er février 2012 visant à renforcer l'éthique du sport et les droits des sportifs, a notamment abouti à l'insertion, dans le code pénal, d'un article 445-1-1, incriminant spécifiquement la corruption sportive.

"les peines prévues à l'article 445-1 sont applicables à toute personne qui promet ou offre, sans droit, à tout moment, directement ou indirectement, des présents, des dons ou des avantages quelconques, pour lui-même ou pour autrui, à un acteur d'une manifestation sportive donnant lieu à des paris sportifs, afin que ce dernier modifie, par un acte ou une abstention, le déroulement normal et équitable de cette manifestation."

2. *A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière?*

Au regard de la réponse à la question n°1, cette question est sans objet pour la France.

3. *Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?*

Rien à signaler

4. *Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale?*

Sans objet

GEORGIA / GEORGIE

1. *Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays?*

La perpétration d'acte de corruption dans les secteurs à but non lucratif est pénalisée par l'article 221 du code pénal de la Géorgie. Cet article fait mention à «un autre type d'organisation» dans le cadre duquel sont commis les actes de corruption.

Version anglaise:

“Article 221 (Commercial Bribery) of the Criminal Code of Georgia

1. Promising, offering, giving or rendering money, securities, other property or render property service or/and other illegitimate benefits directly or indirectly to a person who holds managerial, representative or other special position or works in a commercial or other type of organization, in order to ensure that such person performs or abstains to perform any activity in the abuse of his official capacity, for the interest of the briber or a third person, is punished by fine or restriction of liberty up to two years and/or deprivation of liberty up to three years, by deprivation of the right to occupy a position or pursue a particular activity for the term not extending three years or without it.

2. (-----)

3. Request or receipt of offering, promising or giving, directly or indirectly, for the interest of himself/herself or other person, of money, securities, property or any undue advantage or rendering property service by a person who exercises managerial, representative or other special authority in a commercial or other type of organization or works in such organization, in order that person to act or refrain from acting in breach of his/her duties, for the interest of the bribe giver or other person, shall be punished by restriction of liberty up to three years and/or deprivation of liberty from two to four years, by deprivation of the right to occupy a position or pursue a particular activity up to three years term.”

2. *A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière?*

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3. *Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?*

Non

4. *Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale?*

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GERMANY / ALLEMAGNE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

In Germany, criminal law tackles the issue of corruption from two angles.

In the public sector, the so-called criminal offences committed by officials, i.e. active bribery and granting a benefit, criminalise acts directed against the fairness of the public service and the general public's confidence in this fairness.

The criminal offences of passive and active bribery (sections 332 and 334 CC) will have been committed if a benefit is granted in return for the performance of a specific official act which violates the duties of the public official involved.

However, for the offences of acceptance of a benefit and granting a benefit (sections 331 and 333 CC) to be established, it is not necessary for a specific official act to be obtained or for the public official concerned to have been made to act in breach of his duties. If a public official demands, accepts or allows himself to be promised a benefit in return not for a specific official act, but for the performance of his official duties, the offence is already deemed to have been committed.

The offences of passive bribery and acceptance of a benefit can only be committed by a public official (section 11 (1) no. 2 CC) or by a "person entrusted with special public service functions" (section 11 (1) no. 4 of the Criminal Code). Judges and arbitrators in arbitration proceedings can also be perpetrators of such offences.

In the context of sports events, such criminal offences can cover, for example, the bribery of public officials in the awarding of a contract (for example for building a stadium or other services). The invitation to a sports event must also be regarded as a benefit, the acceptance of which is only permitted under certain circumstances.

In the private sector, the criminalisation of active and passive bribery in commercial practice (section 299 CC) protects free competition. Pursuant to this provision, any person who grants a benefit, such as a bribe, to an employee or an agent of a business in return for being accorded an unfair preference in the competition, for example in the awarding of a contract, incurs criminal liability. The term "commercial practice" does not presuppose the intention of making a profit. Section 299 also covers non-profit, social or cultural institutions and thus also businesses owned by trade unions or political parties as well as public enterprises, as long as they carry out economic activities.

However, the above-mentioned provisions do not cover conducts in the area of sports by which benefits are granted to referees or players for the purpose of game manipulation, because the judges and players are not public officials and/or the bribery does not take place in the sphere of commercial transactions.

However, such conduct mostly occurs in connection with sports betting and is thus covered by the elements of the offence of fraud (section 263 CC) and/or accessoryship to fraud.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

There are no plans to extend the criminal provisions on corruption to include "corrupt" acts by specific groups of persons (for example sports referees, sportspeople, trade union members, journalists), among other reasons in order to avoid over-criminalisation. Instead, it should again be pointed out that corrupt acts committed in these areas are already punishable as fraud or criminal breach of trust under the currently applicable provisions.

Insofar as the criminal offences of sections 299, 300 and 331-337 do not apply, corrupt acts outside the sphere of commercial transactions may also fall under section 263 CC, which is not limited to a specific circle of offenders. According to court rulings, the financial loss necessary for the offence of fraud to be established also covers the concrete danger of a future loss. Fraud in respect of sporting bets, in which a person placing a bet influences the subject of the betting contract (e.g. the result of a sports fixture) in his favour and conceals this fact when concluding the betting contract, is also covered by the offence of fraud under section 263 CC.

Corrupt conduct may also be covered by section 266 CC (breach of trust) or sections 253 and 255 CC (blackmail). Both offences are not restricted to a specific circle of offenders and, as in the case of fraud, the definitional element "financial loss" also covers the concrete danger of a future loss.

There is thus no need for legislative action.

3. *Are you aware of any studies on these practices / phenomena that have been carried out in your country?*

We are currently not aware of any relevant studies.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices / phenomena?*

There are no such legal difficulties in Germany (cf. reply to questions 1 and 2).

GREECE / GRECE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

To the extent of our knowledge, there are not any corrupt practices - in the context with which the term is used by CoE - that would not fall in the ambit of the existing criminal provisions on bribery, fraud bribery in order to temper with the outcome of a match. Besides the general provisions of the Greek Criminal Code, article 132 of Law 2725/1999 as amended by Law 4049/2012 (Government Gazette A' 35/23th of February 2012), criminalises "any undue intervention with the intent to influence the course, form or outcome of any contest of individual or team sport" through, amongst other manners, "offering or accepting gifts of other benefits or any other award or the promise thereof" to any person and in particular to "an athlete, coach, referee, executive of other individual in any way associated to the athlete, the referee, the league, the AAT or TAA (administrative authorities regulating and overseeing professional sport events)". Sentences range from imprisonment for 1 to 10 years and fines from 100.000 € to 1.000.000 €.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

Such practices are explicitly criminalized by the aforementioned provision of art. 132 L. 2725/1999.

Recently, a criminal organization which used to fix football games in order to profit from the respective legal betting conducted via Organization of Football Prognostics, was disorganized. According to conclusions drawn from this operation, Law 2725/1999 has been amended so that any lacunae or investigation difficulties to be dealt with.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

Transparency International Greece has dealt with corruption in sports. The president of the aforementioned NGO has published in 9th of September 2011 an article to the newspaper Kathimerini named "Football and corruption" stating that the main problem of the corrupt practices in football is the lack of any internal control mechanism. The football world - in Greece as in other countries - is an organization that is "self-regulated". FIFA is supposed to be controlled by the football federations of 208 countries and the Greek Football Federation (EPO) from the football clubs. This is precisely the paradox: the controller (national federations) are economically dependent to the controlled (FIFA). In essence, there is no independent authority, no shareholder within the football domain able to exercise effective control.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

Regarding sports - especially football - it is common view that it is difficult to prove the correlation of illegal betting and the predetermination of results in sporting competitions by agents, referees and athletes, or the money laundering through the players' transactions and the corrupt practices that are used. Yet, these difficulties regard mainly prosecution of such practices and substantiation of charges, and not the criminalization itself. In terms of substantive law, we are not aware of any open issues regarding the criminalization of match-fixing.

IRELAND / IRLANDE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

The Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906 Acts are the foundation blocks of Irish anti-corruption law. The Prevention of Corruption Act 1906 provides active and passive bribery offences for the private and public sectors. The Acts have been amended and extended by other Acts in 1916, 1995, 2001, 2005 and 2010. In addition to the written legislative Acts of parliament, the Irish legal system recognises the traditional offences enforced and interpreted by the courts in accordance with common law.

The offences in the Prevention of Corruption Act 1906 are premised on the corruption of the relationship of an "agent" to his/her "principal". However, the term "agent" as described within the corruption legislation is broader than the ordinary meaning of the word, and includes "any person acting for another". , as well as the Attorney General, the Director of Public Prosecutions, employees, members of public administration within the State and abroad, judges within Ireland and abroad, and other parties where the relationship is not predicated on the traditional agent/ principal connection such as "In the course of business activity", "...in breach of duties".

The offences in the Prevention of Corruption Acts are not restricted to a breach of duty or, directly, business activity. Instead the impact of the bribe can be the doing or the abstention from doing "any act in relation to his or her principal's affairs or business". Accordingly the flexibility of the agent and principal relationship under current Irish corruption legislation means it also provides for corruption in non-profit sectors as well as the public and private sectors. Additionally, Common Law recognises the corruption related offence of conspiracy to defraud.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

The Government approved the general scheme of the Criminal Justice (Corruption) Bill 2012 in June 2012. The Bill, when enacted, will clarify and strengthen the law criminalising corruption in Ireland and replace seven overlapping corruption Acts. The Bill provides for a wide range of offences addressing acts of active and passive corruption. The active corruption offence will apply to any person corruptly offering a bribe to a person for doing an act in relation to his or her office, employment, position or business. The passive corruption offence will similarly apply to any person corruptly accepting a bribe for doing an act in relation to his or her office, employment, position or business. It is intended that these offences will be sufficiently broad to cover the non-profit sectors as well as the public and private sectors.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No, however Ireland has continued on an ongoing basis to observe discussions at European level in this regard.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

The primary legal difficulty may not be in fact criminalising these practices, but in the operational difficulties in successfully prosecuting the offences. For example, providing sufficient evidence to the prosecution concerning the causal links between the related acts and the transfer of money or proving the fact that a player has deliberately underperformed will be difficult.

ITALY / ITALIE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

In Italy corruption in non-profit sector in general is not directly covered by Criminal Law provisions on bribery but can be punished through other Criminal Law provisions such as those on fraud, embezzlement or false accounting. Against this background, the manipulation of sport results ("match-fixing") is specifically incriminated since 1989 through the Law 13th December 1989, n. 401 (see annex in the French version) which punishes (with imprisonment up to 1 year and a pecuniary sanction) any sort of manipulation of results in sport competitions, also providing for aggravating circumstances and accessory sanctions.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

Also due to the incoming elections in Italy, we're not aware of any plan to go further the legal framework already described.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

We are not informed of any specific study in this field.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

The Italian experience seems to have worked quite well; since the entry into force of the Law in 1990, not less than 225 final sentences have been pronounced with reference to art. 1 of the Law (incriminating frauds in sport competitions).

If this is true at the internal level, some recent cases of investigations which also present a transnational dimension could incite to look deeper into the aspects of international cooperation in criminal matters to check if any specific instrument in this field, beyond the already existing legal instruments of a general nature, could be considered as needed or desirable.

LATVIA / LETTONIE

5. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

There are no specific legal provisions on bribery that deals with non-profit sector in Latvia. All bribery and corruption cases are dealt under the provisions of Criminal law not specifying the sector in which the crime has been committed.

6. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

No, there are no plans to adopt specific legislative framework in order to separate conduct related to manipulating sport results or address these practices/phenomena. Besides, manipulating sport results can be realized in framework of other criminal and administrative offences.

7. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No, we are not aware of any studies that have been carried out in Latvia on these practices/phenomena.

8. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

The difficulties are mostly based on the fact that the term „conduct of manipulating sport results” includes wide range of different possible offences with diverse seriousness, some applicable offences fall under criminal, some – under administrative offences.

Criminal liability is provided in cases, when offences are most serious and dangerous to the public, but administrative liability is provided in less serious or dangerous cases. Therefore proportionate sanctions and different types of legal liability are provided.

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In Latvia existing legal framework cover corrupt practices also in non-profit organisations through the provisions applicable in private sector. Namely bribery offences in these sectors are criminalised by the Criminal Law Article 198 and Article 199 (Article 198 Unauthorised Receipt of Benefits, Article 199 Commercial Bribery).

There have not been any studies on corruption phenomena in Latvia related to non-profit organisations so far. Taking into account large amounts of money allocated from the state budget to sport organisations, the State Audit Office and the Corruption Prevention and Combating Bureau pays attention to spending and reporting about use of this money to avoid possible corruption risks. In 2009 the State Audit Office carried out revision on how public funds allocated for sports activities are administrated. It is not intended to introduce new provisions in order to criminalise corrupt practices in separate sectors of non-profit sector or different types of organisation operating in this sector. Discussion has been raised in relation to establishing more strict control mechanisms in administration of state funds allocated to sport.

LITHUANIA / LITUANIE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.) if any, are not covered by the existing legal provisions on bribery in your country?*

In Lithuania, all corrupt practices theoretically are to be covered by existing legal regulation. It is important to notice that corruption in the private sector in Lithuania is not narrowed to profit-seeking activities as it is recommended to do in Criminal Law Convention on Corruption (1999 ETS No. 173): "First of all, Article 7 restricts the scope of private bribery to the domain of "business activity", thus deliberately excluding any non-profit oriented activities carried out by persons or organizations, e.g. by associations or other NGO's. This choice was made to focus on the most vulnerable sector, i.e. the business sector." Lithuania chose to broaden private sector by not indicating that the necessary feature of the private sector's bribery should be profit-seeking. Such an alternative is possible also according to the said Explanatory Report: "nothing would prevent a signatory State from implementing this provision without the restriction to "in the course of business activities". However, theoretical covering has not much in common with the practical incrimination of bribery. For instance, there was not a single case in which anyone would have been sentenced for sports bribery in Lithuania.

2. *Are there any plans and intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

Currently there aren't any plans and intentions to draft or submit to the legislator any legislation providing responsibility for bribery in non-profit sectors.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

Yes, there are certain studies (scientific articles) on such phenomena:

Gutauskas, A. Korupcinio pobūdžio nusikalstamų veikų baudžiamojo teisinio vertinimo aspektai (Engl. Corruption Related Offences and the Aspect's of its Criminal Legal Evaluation). *Current Issues of Business and Law*, 2008, 2, 23–33. http://s3.amazonaws.com/zanran_storage/www.ttvam.lt/ContentPages/2471085240.pdf

Burda, R. Korupcija privačiame sektoriuje: apibrėžties ir teisinio reguliavimo galimybės (Engl. Corruption in the private sector: definition and regulatory options). *Current Issues of Business and Law*, 2012 7(1), 201–220. ISSN 1822-9530 <http://journals.indexcopernicus.com/abstracted.php?level=5&icid=1003099>

Zaksaitė S. Korupcijos privačiame sektoriuje kriminalizavimo problemos. (Engl. Corruption in Private Sector: Issues On Criminalization). *Current Issues of Business and Law*. 2012 7 (2), ISSN 1822-9530 (upcoming issue).

Zaksaitė S. Korupcijos privačiame sektoriuje kriminalizavimo, kvalifikavimo ir įrodinėjimo problemos: kai kurių praktinių pavyzdžių analizė. (Engl. Criminalization, qualification and proving of corruption in the private sector: analysis of some practical cases.) ISSN 2029-4239 (online). *Teisės apžvalga. Law review*. No 2 (9) 2012. (upcoming issue)

Zaksaitė S. Sukčiavimo sporto srityje samprata ir kriminalizavimo ypatybės (Engl. Concept of cheating in sports and its criminalization peculiarities). *Mokslo darbai. Teisė* 79 2011 ISSN

1392-1274, 157-171. <http://www.leidykla.eu/en/journals/law/law-2011-vol-79/zaksaitė-s-concept-of-cheating-in-sport-and-its-criminalization-peculiarities/>

Zaksaitė S. Cheating in sport: Lithuanian case for legal regulation. *US-China Law Review*. Volume 7, Number 2, February 2010. ISSN 1548-6605, 56-64. <http://www.davidpublishing.com/davidpublishing/journals/J8/falv2011/lawreview2011/388.html#>

4. *What are, in your view, the (perceived) legal difficulties in criminalizing these practices/phenomena?*

To our view, there are two main problems in criminalizing these phenomena: 1) the lack of clarity concerning concepts of “person equated to public official”, “public administration authorities” and “public services”; 2) the lack of clarity concerning the concept of “big harm”.

4.1 The attributes of “person equated to public official”, “public administration authorities” and “public services” are necessary in order to incriminate corpus delicti of active or passive bribery and other corruption-related crimes (Abuse of position, Trading of influence and Negligent failure to perform duties).

For instance, corpus delicti of bribery requires a specific subject. The subject of bribery shall be state person or person who is equated to state person. The subject of bribery could also be a private person (also, working in non-profit sector), however – this person must have the power of public administration or the right to allot public services. Such people as athletes usually do not execute administrative powers – they do not have subordinates, do not distribute financial resources, do not rule staff – therefore, *stricto sensu* they cannot be a subject of bribery. From another point of view, some top players have some (unofficial) authority that is similar to public administration. Also, the officials of sports federations always have public authorities; therefore, it is possible to incriminate corpus delicti of bribery in such cases where not only single athletes, but, for instance, the officials from federation are involved.

4.2 Another serious problem is related with the concept of “big harm”. This attribute is necessary in order to incriminate corpus delicti of the abuse of position which is, in principle, the most general corruption-related crime. However, there is no explicit interpretation what is to be regarded as “big harm”. It is complicated to imply this feature mostly because the harm might occur after relatively long period of time and sometimes it might not be clearly seen at all. It should also be pointed out that “big harm” (which might hardly be estimated) is a necessary feature in order to separate these crimes from the disciplinary or administrative offences.

**THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA /
L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE**

Macedonian criminal legislation criminalizing acts of active and passive bribery of domestic public officials with Articles 357 and 358 of the Criminal Code of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 37/96, 80/99, 4/2002, 43/2003, 19/2004, 60/2006, 73/2006, 7/2008 and 139/2008) which read

"Receiving a bribe

Article 357

(1) An official who requests or accepts a gift or other benefit or accepts the promise of a gift or other benefit to execute within his official authority official action that one should not perform or not to perform an official act that would had to perform shall be punished with imprisonment

from one to ten years.

(2) An official who requests or accepts a gift or other benefit or accepts the promise of a gift or other benefit, to perform within the framework of his official authorization official action that would have to perform or not to perform an official act that one should not perform shall be punished with imprisonment

from six months to five years.

(3) An official who in the performance or non-performance of the official act referred to in paragraphs 1 and 2 in connection with it requests or receives a gift or other benefit, shall be punished with imprisonment

from three months to three years.

(4) The punishment referred to in paragraphs 1,2 and 3 will be imposed on the responsible person, and the person performing the public interest, if the work performed in connection with the acquisition, exercise or taking away rights established by law, or to obtain an advantage or causing harm to another responsible person in a foreign entity and a foreign official that the work you do to the detriment of the Republic, its citizens or legal person.

(5) The received gift or property gain shall be confiscated.

Giving bribes

Article 358

(1) A public official shall give or promise a gift or other benefit to execute within his official authority official action that one should not perform or not to perform an official act which he should perform or that mediates this

shall be punished with imprisonment

from six months to five years.

(2) The officer shall give or promise a gift or other benefit to execute within his official authority official action that would have to perform or not to perform an official act that one should not perform or that mediates this

shall be punished by a fine or

with imprisonment up to three years.

(3) For the offense referred to in paragraphs 1 and 2 shall not be punished, he who gave or promised a bribe at the request of the officer, and it was reported before to know that the work is revealed.

(4) The provisions of paragraphs 1, 2 and 3 shall also apply when the bribe is given or promised to a responsible person, the responsible person of a foreign legal entity, person performing work in the public interest and foreign public official in relation to the offense referred to in Article 357 .

(5) If the crime from item 1 is committed by a legal person, shall be punished by a fine.

(6) The given gift or property gain shall be confiscated, and in the case referred to in paragraph 3 shall be returned to the person who gave the bribe. "

In September 2009, adopted amendments to the Criminal Code ("Official Gazette of RM", No. 114/2009) to delay the implementation of six months or more they will apply from 23 March 2010. They read as follows:

"Article 103

In Article 357 paragraphs (1) and (2) are changed as follows:

"(1) An official who directly or indirectly requests or accepts a gift or other benefit or accepts the promise of a gift or other benefit for themselves or another to perform within his official authority official action that one should not perform or not to perform an official act which he should perform,

shall be punished with imprisonment of four to ten years.

(2) An official who directly or indirectly requests or accepts a gift or other benefit or accepts the promise of a gift or other benefit for himself or another, to execute within his official authority official action that would have to perform or not to perform an official act that one should not perform

shall be punished with imprisonment of one to five years. "

After paragraph (3), two new paragraphs (4) and (5) which read as follows:

"(4) If the offense is obtained greater financial advantage, the offender shall be punished with imprisonment at least four years.

(5) If the work is a significant property gain obtained, shall be punished with imprisonment at least five years. "

Paragraph (4) becomes paragraph (6) is amended as follows:

"(6) The punishment referred to in paragraphs (1), (2) and (3) of this Article shall be imposed on the responsible person performing activities of public interest, the responsible person of a foreign legal entity, as well as foreign public official if the work is committed a violation of its powers in relation to acquiring, exercising or taking away rights established by law or to obtain an advantage or causing harm to another. "

Paragraph (5) shall become paragraph (7).

Article 104

In Article 358 paragraphs (1) and (2) are changed as follows:

"(1) A person who directly or indirectly officer shall give, promise or offer a gift or other benefit for himself or for another to perform within his official authority official action that one should not perform or Sun perform an official act that he would have to perform or that mediates this

shall be punished with imprisonment from one to five years.

(2) A person who directly or indirectly officer shall give, promise or offer a gift or other benefit for himself or for another to perform within his official authority official action that would have to perform or not to perform official action that one should not perform or he mediates this

shall be punished by a fine or with imprisonment up to three years. "

b) Bribery of Foreign Public Officials

From the analysis of Articles 357 and 358 of the Criminal Code in accordance with the definition of "foreign official" under Article 122, it turns out that bribery of foreign public officials is incriminated. In addition, we remind remarks on the definition of "officer" and this is clarified above.

c) trading in influence

Actions of the criminal offense of "trading in influence" criminalized under Article 359 of the Criminal Code ("Official Gazette of the Republic of Macedonia" No. 37/96, 80/99, 4/2002, 43/2003, 19/2004, 60/2006, 73 / 2006, 7/2008 and 139/2008) which reads:

"Trading in influence

Article 359

(1) A person who receives a prize or other benefit by taking advantage of his official or social position and influence to mediate to perform or not to perform an official act shall be punished by a fine or with imprisonment up to three years.

(2) A person who, by taking advantage of his official or op- socially position or influence to mediate to perform an official act that one should not perform or not to perform an official act that would have to be made, shall be punished with imprisonment from six months to five years.

(3) If the offense referred to in paragraph 2 has been committed in connection with the initiation or conduct of criminal proceedings against a person, the perpetrator shall be punished with imprisonment from one to five years.

(4) A person who by using his official position or another, general reputation or influence, reward or other benefit mediate with the responsible person, the responsible person of a foreign legal entity that carries on business in the Republic of Macedonia or a person who performs public interest perform or not to perform an act that is contrary to his duty or to a foreign official to perform or not to perform an act that is contrary to his duty to the detriment of the Republic, its citizens or legal person, shall be punished by a fine or with imprisonment up to one year.

(5) If the offense referred to in paragraph 4 were due to unlawful acquisition or loss of rights or gaining greater financial advantage or causing more damage to other domestic or foreign legal person, the perpetrator shall be punished with imprisonment from three months to three years.

(6) If the mediation of attitudes 2i3e application prize or other benefit, the perpetrator shall be punished with imprisonment from one to ten years. "

In September 2009, adopted amendments to the Criminal Code ("Official Gazette of RM", No. 114/2009) to delay the implementation of six months or more they will apply from 23 March 2010. They read as follows:

"Article 105

In Article 359, paragraph (4) the words: "damage to the Republic of Macedonia," are deleted. After paragraph (6) a new paragraph (7), which reads:

"(7) If the violation of this Article is committed by a legal person, shall be punished with a fine."

private sector bribery (or commercial)

In terms of private sector bribery, bribery is covered in the book "giving bribes" from Article 358 of the Criminal Code, given that it provides for liability of any natural or legal person.

As far as passive bribery in the private sector, it is partially covered by a given that the perpetrator can be a responsible person in the legal entity "performing activities of public

interest," "responsible person in a foreign legal entity" or "foreign official person "or as follows:

The punishment referred to in paragraphs 1,2 and 3 will be imposed on the responsible person, and the person performing the public interest, if the work performed in connection with the acquisition, exercise or taking away rights established by law, or for the purpose of acquiring benefit or harm of another responsible person in a foreign entity and a foreign official that the work you do to the detriment of the Republic, its citizens or legal person. "(Article 358, paragraph 3 of the Criminal Code ("Official Gazette of the Republic of Macedonia" No. 37/96, 80/99, 4/2002, 43/2003, 19/2004, 60/2006, 73/2006, 7/2008 and 139/2008)).

The punishment referred to in paragraphs (1), (2) and (3) of this Article shall be imposed on the responsible person performing activities of public interest, the responsible person of a foreign legal entity, as well as foreign public official if the work is committed a violation of its powers in relation to acquiring, exercising or taking away rights established by law or to obtain an advantage or causing harm to another. "(Article 103 of the Law on Amending Criminal Code br.114/2009 which will apply by March 23, 2010).

Macedonian criminal legislation provides for criminal liability of legal persons for bribery, in the book "giving bribes" in Article 358, paragraph 5 of the Criminal Code.

In terms of what constitutes "legal person", the Criminal Code determines the meaning of the same Article 122 as follows:

The legal entity shall mean: the Republic of Macedonia, local governments, political parties, public enterprises, companies, institutions and other organizations, funds, financial institutions and other legally certain organizations registered as legal persons and other communities – which have been recognized as the property of a legal entity. Under a foreign legal entity means a public enterprise, institution, fund, bank, company or other form of organization under the laws of a foreign country in conducting economic, financial, banking, trade, service or other activities, which has its headquarters in another state, or representative office in the Republic of Macedonia, or is established as an international company, fund, bank or institution. "

Currently, the penalties that can be imposed on legal entities, in accordance with Article 96 of the Criminal Code, are as follows.

- 1) fine;
- 2) temporary prohibition for performing professional activity;
- 3) permanent prohibition for performing professional activity and
- 4) termination of the legal person.

The amendments to the Criminal Code of 2009 ("Official Gazette" No. 114/2009) fully modified provisions to punish legal entity and made additions. Besides the fine, which is the main, in accordance with Article 10 of the Law on Amending the Criminal Code, may impose the following minor penalties:

- 1) Ban on obtaining a permit, license, concession, authorization or other law established by a special law;
- 2) A ban on participation in public tender procedures, award contracts for a purchase a contract for public-private partnership;
- 3) a prohibition on the establishment of new legal entities;
- 4) ban on the use of subsidies and other favorable loans;
- 5) withdrawal of the permit, license, concession, authorization or other right established by a special law;
- 6) temporary prohibition of professional activity;

- 7) permanent prohibition of professional activity and
- 8) termination of the legal person.

Crime of "giving bribes" under Article 358 of the Criminal Code provides for the responsibility of each individual for the actions giving bribes. It follows that active bribery of foreign public officials is incriminated in the Macedonian criminal legislation.

The phenomena of Match – fixing should be consider in Macedonia, our opinion is that for detailed incrimination of these questions we do not have legal obstacles. In our new amendments of CC (which are in parliamentarian procedure) we have articles for Match – fixing, violence on sports matches, and corruption in sport.

MONTENEGRO

In Montenegro, the corrupt practices in non-profit sectors are incriminated by Article 423, paragraph 6 and Article 424, paragraph 5 of the Criminal Code* by regulating bribery of responsible persons in non-profit organizations and institutions (for example, schools, hospitals, trade unions) and they refer only to non-profit legal persons and do not include subjects and business organizations that deal in an economic activity.

Passive Bribery

Article 423

(1) A person in official capacity who directly or indirectly requests or receives a gift or any other benefit, or who accepts a promise of gift or any benefit for himself/herself or another person for agreeing to perform an official or other act s/he should not perform, or not to perform an official or other act which s/he must perform, shall be punished by an imprisonment sentence of two to twelve years.

(6)... A responsible or other person in a non-commercial institution or other entity who commits an offence referred to in paragraphs 1, 2 and 4 of this Article, shall be punished by a sentence laid down for such an offence.

Active Bribery

Article 424

(1) Anyone who gives, offers or promises a gift or other benefit to a person in official capacity or other person who agrees to perform an official or other act s/he should not perform or not to perform an official or other act s/he must perform, or a person who mediates in such bribery of a person in official capacity, shall be punished by an imprisonment sentence of six months to five years.

(5)... Provisions of paragraphs 1, 2 and 4 of this Article shall also be applied when a gift or other benefit was given, offered or promised to a responsible or other person of a non-commercial institution or other entity.

Also, draft amendments of the CC among other things, are predicting an introduction of new Article (244a):

Agreeing an outcome of competition

member 244a

(1) Anyone who agreed an outcome of sport or other competition with the intention of acquiring any benefit for himself/herself or another person, shall be punished with imprisonment sentence up to three years.

(2) Where the offences under paragraph 1 above resulted in material gain exceeding ten thousand euros, the perpetrator shall be punished by a imprisonment sentence of six months to five years.

(3) Where the offences under paragraph 1 above resulted in material gain exceeding forty thousand euros, the perpetrator shall be punished by a imprisonment sentence of one to ten years.

(4) An attempted offense referred to in paragraph 1 of this Article shall be punished.

In addition, The National Strategy for fight against corruption and organized crime for 2010-2014 identified in the section titled Civil Society, Media, and Sport, objectives in this area, namely:

Efficient cooperation is in place among public authorities and non-governmental organizations in the implementation of anti-corruption activities; Financial operation of non-governmental organizations is transparent; Clear criteria and procedures are established for

the allocation of budget funds to non-governmental organizations at national and local levels, which guarantees transparency of procedures and control of spending of such donations; Intensify participation of citizens and other stakeholders in public consultations on legislative projects; Issuance of licenses, the work of booking offices, and entire sports financial operations are transparent and controlled, and Legal and institutional framework is improved to ensure proper control. Strategy can be found on the Directorate for anticorruption initiative's webpage (www.antikorupcija.me)

* („Official Gazette of the Republic of Montenegro“, No. 70/03 and 47/06 and „Official Gazette of Montenegro“, No. 40/08; 25/10 and 32/11)

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

1. *Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays ?*

Le 02.12.2011 le Parlement de la République de Moldova a adopté la Loi n° 245 (entrée en vigueur le 03.02.2012) qui a eu comme objectif la mise en oeuvre des recommandations du troisième cycle du GRECO sur les incriminations de la corruption et d'aligner les dispositions légales aux exigences de la Convention pénale sur la corruption et son Protocole additionnel.

Malgré ces derniers amendements au Code Pénal dans l'activité quotidienne on a eu connaissance de diverses manifestations illégales qui ne tombent pas sous l'incidence de ces prévisions.

Ainsi on s'est rendu compte que les différentes catégories d'arbitres, les agents des sportifs, les organisateurs de toutes sortes de compétitions et paris ne peuvent pas être sujets des infractions de corruption dans le secteur privé car ils ne dirigent pas et ils ne travaillent pas pour une entité quelconque du secteur privé.

2. *A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière?*

Tenant compte de ces faits ainsi que de la Recommandation du CM REC (2011)10 sur la promotion de l'intégrité du sport pour lutter contre la manipulation des résultats notamment les matchs arrangés, le Centre National Anticorruption en commun avec le Parquet Anticorruption, les représentants des sociétés sportives et de la société civile ont élaboré un projet de loi sur la modification du Code Pénal. Ce projet propose de compléter le Code Pénal par 2 articles intitulés « Manipulation d'un événement » et « Paris arrangés ». Les dispositions de ces articles incriminent les faits d'encourager, influencer un participant à un événement sportif ou à un événement suivi de paris pour qu'il accomplisse des actions qui pourraient vicier les résultats de cet événement dans le but d'obtenir des biens, services, privilèges ou avantage sous n'importe quelle forme. Le fait d'arranger des paris illégaux, d'informer et convaincre des personnes de participer aux paris truqués est aussi érigé en infraction. On complète aussi la liste des sujets de ces infractions par les entraîneurs, l'agent du sportif, le propriétaire du club sportif, ainsi que tout participant à un événement sportif ou événement sous pari.

Ce projet de Loi a été examiné en première lecture par Le Parlement le 6 décembre 2012. Dès l'adoption, le cas échéant, on pourrait vous envoyer le texte de cette Loi.

3. *Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?*

Actuellement on ne mène pas de recherches, d'études sur le problème soulevé par vous.

Au mois de décembre une étude consacrée au sujet des infractions de corruption dans le secteur public et privé a été publiée, son auteur est le procureur Mr. Ruslan Popov.

4. *Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale ?*

/

NETHERLANDS / PAYS-BAS

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

This question is nearly impossible to answer. Before going any further serious attempts should be made to clarify further which behaviour under which circumstances is envisaged. Abstract terms like phenomena cannot be used in the context of legislation.

As long as we do not know which problem should be addressed, questionnaires on legislation will not result in clear answers.

We limit our answer to the remark that the scope of our legislation is broad enough to cover public and private corruption.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

See answer 1

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

See answer 1.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

See answer 1.

POLAND / POLOGNE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

In Poland legal provisions cover corruption in non-profit sector under following presumes:

- A person or organization in question performs public function, i.e. the decision taken by them are of public meaning or an organization operates with public resources.
- Sport is fully covered by anti- corruption law (an Act on Sport of 2010/6/25).

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

There is intention to ratify an Additional Protocol to the Criminal Law Convention on corruption.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

Analysis were carried out as a follow-up to the III and the IV round evaluation of GRECO with a view to ensure a coherent interpretation and application of national law in this field (political parties, public officials, parliamentarians, judges, prosecutors).

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

No major difficulties have been perceived.

PORTUGAL

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Portuguese legislation is comprehensive regarding the prevention and fight against corruption. Provisions are in force covering corruption in the public sector (Criminal Code) and corruption in the private sector and in international business transactions (Law nr. 20/2008, of 21 April).

Other laws are in force related to the corruption in sports (Law nr. 50/2007, of 31 August) and corruption of individuals holding political positions (Law nr. 34/87, of 16 July). Mentioned legislation has been updated in the last recent years.

Mentioned laws are applicable a broad spectrum of activities and illegal conducts.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

No legislative plans or intentions are foreseen by the time being to address mentioned practices/phenomena.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

No legal difficulties apparently exist in the public authorities decide to criminalize where necessary the identified practices/phenomena.

SLOVENIA / SLOVENIE

1. Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?

Since May 2012, the fields of non-profit sector that coincide with the new definition of "economic activity" in Article 99 of Slovene Criminal Code are covered with corruption criminal offences in private sector (Articles 241 and 242 of CC). The definition of economic activity is very broad and includes in-between any organized activity performed for an agreed or prescribed payment (there is no court practice yet, but in theory this should include also non-profit sector in the field of education, sport, health etc.). Here are the relevant articles of CC:

Criminal Code (as amended in May 2012):

Article 99

"(10) For the purpose of this Code, "**economic activity**" means:

- 1) any activity that is performed on the market for payment;
- 2) any activity performed as part of profession for an agreed or prescribed payment or **any organised activity performed for an agreed or prescribed payment.**

(11) Pursuant to this Code, **performing economic activity or commercial operation** shall include:

- 1) implementation, governance, decision-making, representation, management and supervision within the framework of the activity referred to in paragraph 10 of this Article;
- 2) management of immovable and movable property, funds, income, claims, capital assets, other forms of financial assets, and other assets of legal entities governed by public or private law, the use of these assets and control over them.

Forbidden Acceptance of Gifts Article 241

(1) Whoever, in the performance of an economic activity, requests or agrees to accept for himself or any third person forbidden award, gift or other property benefit, or a promise or offer for such benefit, in order to neglect the interests of his organisation or other natural person or to cause damage to the same when concluding or retaining a contract or other forbidden benefit, shall be sentenced to imprisonment for not less than six months and not more than five years.

(2) The perpetrator of the offence under the preceding paragraph of this Article, who requests or agrees to accept forbidden award, gift or other property benefit, or a promise or offer for such benefit, for himself or any third person in exchange for making or retaining a contract or other benefit, shall be sentenced to imprisonment for not less than three months and not more than five years.

(3) The perpetrator of the offence under paragraph 1 of this Article who requests or agrees to accept forbidden award, gift or other property benefit after the contract is concluded or service performed, or other forbidden benefit is acquired for himself or any third person, shall be sentenced to imprisonment for not more than two years.

(4) The accepted gift, award, or any other benefit shall be seized.

Forbidden Giving of Gifts Article 242

(1) Whoever promises, offers, or gives forbidden award, gift or any other property benefit to a person performing an economic activity, intended for such a person or any third person with a view to obtaining any unjustified benefit for himself or any third person when concluding or retaining a contract or other forbidden benefit under paragraph 1 of Article 241, shall be sentenced to imprisonment for not less than six months and not more than five years.

(2) Whoever promises, offers, or gives forbidden award, gift or any other property benefit to a person performing an economic activity, intended for such a person or any third person in exchange for making or retaining a contract or other benefit, shall be sentenced to imprisonment for not more than three years.

(3) If the perpetrator under the previous paragraphs who gave the forbidden award, gift or any other property benefit upon request, declares the offence before it was detected or he knew it had been detected, his punishment may be remitted.

(3) The given award, gift or other property benefit shall be seized, while in the case under the preceding paragraph, the same may be returned to the person who gave it.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

New (broad) definition of economic activity in Article 99 CC was meant to solve the problem of certain (also non-profit) sectors that were not covered with corruption criminal offences.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?"*

Criminal offences from Articles 241 and 242 CC include "forbidden" acceptance and giving of gifts and other benefits. This indicates that there is also allowed (acceptable) acceptance and giving of gifts in private (also non-profit) sector. However, the line between allowed and forbidden gifts and benefits in private sector is very unclear (not only on national, but also international (global) level), so it is hard to establish legal basis and court practice that would ensure equal and fair treatment of all cases.

SWEDEN / SUEDE

1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Sweden has recently undertaken a review of its bribery legislation by convening a Committee of Inquiry, which issued a report in June 2010 that formed the basis for new amendments to Sweden's bribery offences, which came into force on 1 July 2012.

The new legislation introduces two new offences and re-organizes all bribery-related offences by placing them in five sections within Chapter 10 of the Swedish Penal Code: passive bribery (section 5a); active bribery (section 5 b); gross passive or active bribery (Section 5c); trading in influence (Section 5d); and negligent financing of bribery (Section 5e).

Section 5a, the passive bribery offence, provides that "[a]nyone who is employed or performs a function and receives, agrees to receive or requests an undue advantage for the performance of his or her employment or function shall be sentenced for taking a bribe to a fine or imprisonment for at most two years."

Section 5b is the active bribery offence. It provides that "[a]nyone who gives, promises or offers an undue advantage to a person mentioned in section 5a, and under circumstances described therein, shall be sentenced for giving a bribe to a fine or imprisonment for at most two years."

The new text of the offences covers a broader range of public officials and private individuals than the previous legislation. While the previous legislation specifically defined the classes of persons who were covered, the new legislation broadly prohibits bribery in respect of "anyone who is employed or performs a function". Individuals who "owe a duty to a constituency" but are not employed would also be covered. Thus the phrase "for the performance of his or her employment function" also covers the employee's non-performance of duties within his or her scope of responsibility. It should further be noted that the new bribery offence contains a specific provision applying to contestants and officials in sports and other competitions. Beyond the scope of the new legislation the sanctions available within the sports movement to take measures against bribery, for example suspension, also protect the gaming market and sports movement against organized crime which engages in betting on the outcome of fixed matches.

Section 5c retains the offence of gross bribery, which also existed in Sweden's previous legislation. As in the previous legislation, gross bribery carries a sentence of between six months and six years. The new legislation, however, provides factors to determine whether an offence is "gross bribery", such as "whether the offence constituted a misuse or an infringement on a function entailing particular responsibility, involved a substantial amount of money or formed part of criminal activities carried out systematically or on a large scale or whether the offence was otherwise of a particularly dangerous nature". Each factor could independently contribute to a finding that misconduct constituted gross bribery; for instance, gross bribery could entail a small bribe to an official with significant responsibilities. "A substantial amount of money" could refer either to the amount of the bribe or the relative amount of gain that was expected from the bribe.

The amendments contain two new offences: trading in influence and negligent financing of bribery. The trading in influence statute criminalizes the receipt of an undue advantage for

the purpose of influencing a third person (e.g. a foreign public official) in connection with the exercise of public authority or a public procurement. The provision on negligent financing of bribery is not relevant for the purposes covered by the present questionnaire.

The consequence of the new legislation is that, in essence, all corrupt practices/phenomena in relation to anyone who is employed or performs a function are covered by the legal provisions.

Needless to say, there is nothing to prevent the sports movement and/or betting companies to take measures of a self-regulatory character in order to strengthen even further the protection against manipulation of sports results.

2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?

No, the legislation has very recently been revised and is deemed to be comprehensive. Thus, there is no need for legislative measures.

3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?

We are not aware of any national studies of the kind.

4. What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?

Corrupt practices are built on an understanding between the active and the passive part of a deal. It is by nature hidden and hard to detect. The mischief can be serious yet hard to detect for those not immediately involved.

SWITZERLAND / SUISSE

1. *Quels phénomènes ou pratiques frauduleux/frauduleuses éventuellement observé(e)s dans les secteurs à but non lucratif (tels que le sport, l'aide humanitaire, la politique, les syndicats, etc.) ne sont pas couvert(e)s par les dispositions juridiques existantes sur la corruption dans votre pays ?*

Les dispositions suisses sur la corruption privée sont limitées dans leur champ d'application, principalement par deux restrictions. D'une part, la corruption doit viser un acte en relation avec une activité professionnelle ou commerciale et, d'autre part, la corruption doit constituer un comportement de concurrence déloyale (art. 4a Loi fédérale contre la concurrence déloyale, RS 241). La question de savoir dans quelles circonstances les organisations sportives peuvent tomber sous le coup de la deuxième condition, est particulièrement discutée en Suisse, sans qu'une réponse claire ne se dégage.

2. *A-t-on pour projet ou pour intention, dans votre pays, de prendre des mesures pour réagir à ces pratiques/phénomènes et remédier à d'éventuels vides juridiques en la matière ?*

Le gouvernement suisse a décidé d'entamer des travaux législatifs dans le cadre de la mise en œuvre des recommandations du GRECO (3e cycle). Ces travaux doivent notamment déterminer comment clarifier la portée de la norme sur la corruption privée.

3. *Avez-vous connaissance de la conduite d'éventuelles études sur ces pratiques/phénomènes dans votre pays ?*

Le gouvernement suisse a adopté, en date du 7 novembre 2012, un rapport intitulé « Lutte contre la corruption et les matchs truqués dans le sport ». Celui-ci aborde différents problèmes, notamment la corruption au sein des fédérations sportives internationales et la manipulation de résultats sportifs.

http://www.baspo.admin.ch/internet/baspo/fr/home/aktuell/bundesrat_genehmigt_korruption_bericht.html

4. *Selon vous, quelles sont les difficultés juridiques (ressenties) pour ériger ces pratiques/phénomènes en infraction pénale ?*

A nos yeux, il est difficile d'étendre la portée de la norme incriminant la corruption privée tout en évitant qu'elle ne porte atteinte à la liberté et à la vie privée des citoyens, dans des situations où il n'existe pas de nécessité de légiférer (principe de proportionnalité). Au vu des différents travaux en cours au sein du Conseil de l'Europe, une difficulté réside également dans la nécessité de bien coordonner ces différents travaux, en gardant ce principe de proportionnalité à l'esprit, afin de trouver une solution adéquate et adaptée aux spécificités du problème en cause.

TURKEY / TURQUIE

- **Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?**

Turkey is a party to many of the instruments concluded on the international platform on corruption. In this concept, article 252 regulating the bribery offence in the Turkish Criminal Code No. 5237 has been amended by taking into consideration the recommendations to our country within the scope of GRECO Third Evaluation Round Theme I.

The enacted provision of article 252 of the Code No. 5237 regulates:

"(1) Any person who secures, directly or through other persons, an undue advantage to a public official or another person indicated by the public official to perform or not to perform a task with regard to his/her duty shall be sentenced to a penalty of imprisonment for a term of four years to twelve years.

(2) Any public official who secures, directly or through other persons, an undue advantage to him/herself or another person indicated by the public official to perform or not to perform a task with regard to his/her duty shall be sentenced to the same penalty stipulated by the paragraph 1.

(3) Where the parties agree upon a bribe, they shall be sentenced as if the offence was completed.

(4) In the case where the public official requests a bribe but it is not accepted by the person, or the person offers or promises an undue advantage to the public official but it is not accepted by the public official, the penalty to be imposed on the perpetrator according to the provisions of paragraphs 1 and 2 shall be reduced by half.

(5) Any person who mediates the offer or conveys the request to the other party, closing the bribery agreement or providing the bribe shall be punished as accomplice, irrespective of being a public official.

(6) Any third person who is provided with the benefit or authorised person of a legal person who accepts the benefit shall be punished as accomplice, irrespective of being a public official.

(7) Where a person who receives or requests a bribe or agrees to such is a person in a judicial capacity, an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed shall be increased by one-third to one-half.

(8) The provisions of the present article shall also apply where, irrespective of being a public official, an undue advantage is obtained by, offered or promised directly or through intermediaries to the persons acting on behalf of:

a) occupational organisation in the character of public entity,

b) corporations established in association of public institutions or organisations or occupational organisations in the character of public entity,

c) foundations acting within the body of public institutions or organisations or occupational organisations in the character of public entity,

d) public benefit associations,

e) cooperatives,

f) open joint stock companies,

to perform or not to perform a task with regard to their duties; an undue advantage is requested or accepted by these persons; these acts are mediated; an undue advantage is provided for another through this relation.

(9) The provisions of the present article shall also apply where an undue advantage is obtained by, offered or promised directly or through intermediaries to;

a) public officials elected or appointed in a foreign country,

b) judges, jury members or other officials acting in international or supranational or foreign state courts,

c) members of international or supranational parliament,

d) persons performing public activities for a foreign country, including public institutions or public corporations,

e) citizens or foreign arbitrators appointed within the framework of arbitration procedure applied for solution of a legal dispute,

f) officials or representatives of international or supranational organisations established based on an international agreement,

to perform or not to perform a task with regard to their duties or to obtain or preserve a work or an unjust benefit due to international commercial transactions, or where an undue advantage requested or accepted by these persons.

(10) Where the offence of bribery that falls within the scope of paragraph 9 is committed, although by an alien abroad, with regard to a dispute to which;

a) Turkey,

b) a public institution in Turkey,

c) a private law legal person established according to Turkish laws,

d) a Turkish citizen,

is a party, or to perform or not to perform a transaction concerning these institutions or persons, ex officio investigation and prosecution are initiated against the persons who receive, request, accept the offer or promise of a bribe, mediate these, obtain an undue advantage for him/herself in connection with bribery relationship, if they are present in Turkey.”

According to the mentioned provision, although, virtually, the person requesting or is requested to receive a bribe should be a public official for constitution of the bribery offence, within the framework of compliance with the provisions of international conventions, under

paragraphs 8 and 9, term for having the person who requests or is requested to receive a bribe to be a public official is not stipulated for constitution of the bribery offence.

In this case, according to paragraph 8, where an undue advantage is obtained by, offered or promised directly or through intermediaries to the persons acting on behalf of the institutions and organisations enumerated in the paragraph to perform or not to perform a task with regard to their duties, they may be investigated or prosecuted for the bribery offence irrespective of being a public official.

Similarly, paragraph 9 allows for investigation or prosecution of public officials listed under the paragraph who obtain an undue advantage or who are offered or promised an undue advantage directly or through intermediaries to perform or not to perform a task with regard to their duties or to obtain or preserve a work or an unjust benefit due to international commercial transactions, irrespective of being public official.

On the other hand, paragraph 1 of article 11 of the Law No. 6222 on the Prevention of Violence and Disorder in Sports dated 31/03/2011 stipulates;

“(1) Those persons who provide financial profit or other advantages to another person in order to influence a specific sports competition shall be sentenced to a penalty of imprisonment for a term of one to three years and a judicial fine up to twenty thousand days. The person to whom the benefit is provided shall also be penalised as an accomplice to this offence. In the case where an agreement is reached for provision of financial profit or other advantages, the penalty shall be imposed as if the offence is completed.”

Paragraph 5 of the same article stipulates, “In the case where the offence is committed by furnishing or promising incentive pay for the team to be successful in a competition, the penalty to be imposed as per the provisions of the present article shall be reduced by half.”

Pursuant to article 11 of the Law No. 6222, request or offer of an undue advantage in order to influence the outcome of a sports event constitutes the offence of “match-fixing”; commission of this offence by furnishing or promising incentive pay for the team to be successful in a competition constitutes the offence of “incentive”, and it is not required for one of the parties to be a public official. In other words, bribery offence is distinctively regulated in our sports law under the names of match-fixing and incentive.

Unions and political parties in our country do not carry the title of public legal person, but they are in the character of private law legal persons. Unions and political parties are not listed, under paragraph 8 and 9 of article 252 of the Turkish Criminal Code, among the exceptional institutions officials of which could be accused of the bribery offence even if they do not carry the title of public official.

On the other hand, the revised Union Law has been enacted in Turkey on 18/10/2012 according to the criteria stipulated by the EU and the ILO Convention. In article 28 of the Union Law subtitled supervision and transparency, supervision of unions by state institutions has been lifted and supervision power has been vested on independent supervisors.

Under article 78/1-d of the same Law, acts removing supervision and transparency have been stipulated as offence. Accordingly;

It is forbidden for Labour and Employer Unions to receive aid and donation from public institutions and organisations, craftsman and little artisan organisations and other public professional organisations; for labour organisations from employers and employer organisations established according to this Law and other laws; for employer organisations from labourers and labour organisations established according to this Law and other laws.

It has been permitted for labour and employer unions to receive aid and donation from persons, institutions and organisations abroad with a prior notification to the Ministry. Receiving aids and donations in cash through banks has become obligatory.

It has been adopted that in the case of violation of these rules and prohibitions, responsible executives of the institutions will be penalised with a fine for one thousand five hundred Turkish liras, and in the case of repetition of the act, with an additional fine at the amount of donation.

Regarding the political parties; although a separate bribery offence is not regulated under the Law on Political Parties, in order to penalise corrupt practices, punitive sanctions which are regulated under the Union Law and which are not in violation of the Law on Political Parties have been made applicable to the political parties and their executives by referral to the Union Law. In this context, under article 32 of the Union Law No. 5253 adopted on 04/11/2004, it was regulated that offence of "misuse of trust" regulated under article 155 of the Turkish Criminal Code would be constituted by the persons who illegally dispose the assets of the union. Because of the reference made to the Union Law in the Law on Political Parties, article 155 of the Turkish Criminal Code is also applicable to the political parties and their executives.

When the above legal framework is taken into consideration, corrupt practices in the areas of sports, humanitarian aid, politics and unions are sanctioned, may be not under the name of bribery but, under the offence types such as fraud, misuse of trust, influence peddling, and etc.

- **Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?**

Pre-determined strategies containing measures and activities are important for increasing transparency and ensuring success in the fight against corruption. This way, it becomes possible to determine primary areas in the fight against corruption and to reach to a conclusion in a determinate and effective way. Besides, fight against corruption is not a periodical effort, but a complement of activities requiring continuance according to the developments in economic and social life. In this framework, by a Prime Ministerial Circular in our country and by participation of all the relevant sectors, "Strategy for Increasing the Transparency and Strengthening the Fight against Corruption" has been developed. In preparation of the Strategy for Increasing the Transparency and Strengthening the Fight against Corruption (Strategy), Turkish National Program for the Adoption of the European Union Acquis and evaluations of various international institutions regarding our country have been utilised. Basic components of the Strategy which is to be implemented between 2010 and 2014 are collected under three main titles as; Preventive Measures, Implementation of Sanctions and Increasing the Social Awareness.

Goals planned to be carried out within this scope can be lined as follows:

- *Improvement of implementations concerning clarity and transparency and activating supervision in financing of political parties and election campaigns*
- *Completion of the works regarding political ethics*
- *Completion of enactment process of the Court of Accounts Law Proposal*
- *Revision of the provisions in the Law No. 3628 on Asset Declaration, Fight against Bribery and Corruption regarding asset declaration and other implementations*

- *Revision of effectiveness of legal regulations and implementation regarding the works that cannot be done by former public officials*
- *Completion of the works regarding state secrets and commercial secrets*
- *Increasing transparency and accountability of local administrations in the processes of works such as construction, permit, etc.*
- *Revision of effectiveness of supervisory mechanisms of local administrations on their subsidiaries*
- *Determination of ethical principles and observation mechanisms for the ones elected at local administrations*
- *Strengthening the capacity of supervisory units*
- *Based on supervision reports, determination of the risk areas open to corruption, and taking necessary measures*
- *Determination of separate ethical principles for each profession group within public administrations by the guidance of Board of Ethics for Public Officials, and prevention of conflicts of interest*
- *Increasing transparency and preventing corruption in private sector institutions*
- *Increasing transparency and preventing corruption in non-governmental organisations*
- *Determination of the risk areas by utilising database established regarding outcomes of proceedings concerning corruption offences and public officials who received disciplinary punishment in the State Personnel Administration*

In order to realise these goals, the plans for 2013-2014 are as follows:

- There is still a draft law regarding GRECO Third Evaluation Round Theme II recommendations for improvement of implementations concerning clarity and transparency and activating supervision in the financing of political parties and election campaigns awaiting for enactment in our country.
- By revising the provisions regarding asset declaration and other implementations in the Law No. 3628 on Asset Declaration, Fight against Bribery and Corruption, studies are underway for;

having central executives, provincial heads and district (*only for the districts within the borders of metropolitan municipality*) heads of political parties and executive/supervision board members and the responsible directors of the visual and auditory media organisations to make asset declarations;

organisation of asset declaration forms to enable comparison;

receiving asset declaration forms through electronic environment;

whether to include offences such as rigging performance of execution, influence peddling, laundering proceeds of crime in the scope of the Law No. 3628;

increasing efficiency in control and comparison of the asset declarations of the Ethical Boards.

- Determining whether a standardisation could be provided in the authorisation system by reviewing laws of Institutions and Organisations (such as Higher Education Council, soldiers, lawyers) stipulating special investigation and permission systems against their personnel for the purpose of reviewing permission system in the investigations against public officials, and evaluation of the administrative and judicial jurisdiction in the investigations carried out according to the Law No. 4483 are planned.
 - Determining whether there should be a rewarding system to ensure reveal of corrupt practices for the purpose of establishing regulations concerning prevention of informants of corrupt practices in the public institutions and organisations and private sector and non-governmental organisations to the competent authorities; whether there is a need for legislation/regulation instructing to show necessary sensitivity on prevention of public officials informing corrupt practices; performing evaluations regarding paid leave or assignment to another unit to prevent the public official informing the corrupt practices at the investigation stage are planned.
- **Are you aware of any studies on these practices/phenomena that have been carried out in your country?**

First of all, as a result of the studies carried out by the working group established under the responsibility of the Prime Ministry Public Relations Department to increase social sensitivity on such practices/phenomena in our country, it has been planned to draw a brochure by the public institutions and organisations containing information on the rights vested on the citizens by laws and administrative regulations for the citizens' applications and processes before public institutions, and to publish this on internet sites and at visible sites in their institutions.

It has been planned by the Department of Turkish Statistical Institute to prepare "Draft Questions for Questionnaire on Perception of Corruption" to ensure regular implementations of corruption questionnaires aimed to determine how the corruption is perceived in the society.

- **What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?**

The major difficulty in criminalising these practices/phenomena lies under evidencing the acts constituting offence. To be able to overcome this difficulty, various studies have been carried out for protection of informants in our country. Within the scope of the "Strategy for Increasing the Transparency and Strengthening the Fight against Corruption (2010-2014)" numbered 2010/56 that was adopted by the Council of Ministers on 01/02/2010 and the "Action Plan for Increasing the Transparency and Strengthening the Fight against Corruption" drawn in line with this Strategy, it has been aimed for "Revision of the provisions in the Law No. 3628 on Asset Declaration, Fight against Bribery and Corruption regarding asset declaration and other implementations" and "establishing regulations concerning prevention of informants of corrupt practices in the public institutions and organisations and private sector and non-governmental organisations to the competent authorities".

In this framework, it has been deemed necessary to amend the Law No. 3628 and several relevant laws to bring obligation of asset declaration to the persons in certain offices, and also to amend several laws regarding prevention of informants of corrupt practices in the

public institutions and organisations and private sector and non-governmental organisations to the competent authorities.

In this context, several measures are foreseen and legal amendments are instructed thereto such as provisional assignment of the informant public official to other institutions by his/her consent, abandoning the practice of evaluation of the informant public official by his/her chief, approaching and extending the awarding system for ensuring further reveal of corrupt practices as a whole, measure of issuance of Prime Ministry Circular so as to encourage public institutions to show necessary sensitivity to prevention of public officials revealing corrupt practices.

One of the legal difficulties discerned in criminalising corrupt practices/phenomena in non-profit sectors is that, as well as criminal sanction-based differences in cases where corrupt act is not considered as bribery, some methods such as intercepting, detection, recording of telecommunication, technical tracking regulated by the Criminal Procedure Code in obtaining evidence only for certain offences cannot be utilised for the other corrupt practices in non-profit sectors.

UKRAINE

1. *Which corrupt practices/ phenomena in non-profit sector (such as sport, humanitarian aid, politics, trade unions, etc.) if any, are not covered by the existing legal provisions on bribery in your country?*

In accordance with the national legislation of Ukraine, including the Law of Ukraine "On Prevention and Combating Corruption" the subjects for corruption offenses are those who permanently or temporarily hold positions related to performing organizational-administrative or administrative and economic functions or persons specifically authorized to perform such duties in private law legal entities regardless of its form of incorporation (paragraph 3 of Part 1 of Article 4 of the Law), as well as officials of legal entities and physical persons - if illegal profit is received from them by the persons referred to in paragraphs 1 and 2 of Part 1 of Article 4 of the Law or with the assistance of those persons by the others (paragraph 4 of Article 4 of the Law). So Ukrainian legislation covers the whole range of people who could potentially commit corruption offenses, including those people who work in the areas such as sports, humanitarian aid, trade union activities and others.

For violations set by Article 6 (Restrictions for abuse of official position) and Article 16 (Requirements for transparency of information) of the Law, and corruption offenses committed by persons mentioned above, including giving by them of illegal profit, it is stipulated administrative responsibility (Article 172-2 (Violation of restrictions as for abuse of official position), Article 172-3 (Offering or giving illegal profit), Article 212-3 (Violation of the right to information) of the Code of Ukraine on Administrative Offenses) and criminal responsibility (Chapter XVII (Criminal Offenses in the sphere of official and professional activities related to public services) of the Criminal Code of Ukraine). It should be noted that restriction on the combining main job with the instructor and the judicial practice in sport (Paragraph 1 of Part 1 of Article 7 of the Law) is not applied towards magistracy and other subjects for corruption offenses, and the restriction for the work of close relatives is not applied to the persons of the mentioned category who work in the sphere of physical culture and sports (Paragraph 4 of Part 1 of Article 9 of the Law).

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

The Ministry of Interior of Ukraine has examined the issue as for concretization of corruptive offenses in each individual kind of sport. In particular, the Ministry has taken part in working out of the draft law of Ukraine "On Preventing and Counteracting achieving the fixed (contractual) results and other corruptive offenses in football," proposed by the people's deputy of Ukraine, Mr.Kolesnichenko V.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

No, we aren't.

4. *What are, in your view, the (perceived) legal difficulties in criminalizing these practices/phenomena?*

During drafting the Additional Protocol to the Criminal Law Convention on Corruption it is necessary to pay special attention to the definition of terms that will be used for the purposes of this Protocol, as in paragraph a) of Article 1 of the Criminal Law Convention on Corruption the term "public official" is applied to the person who, in accordance with national legislation and criminal law of the Country, fulfils certain functions, while Article 7 (Public sector) of the UN Convention against Corruption regulates the public service.

There are also doubts about the appropriateness of referring the sphere of sports, especially professional sports, to nonprofit sector, as international and national sports organizations (federations), some individual professional sportsmen receive profits (income) from the sale of tickets, advertising, giving permissions for the use of symbols and logos, etc. In particular, the only source of funding for the International Olympic Committee, whose income in 2008 was 2.4 billion dollars, is the private sector, including television companies (selling the rights to broadcast the Olympic Games - 53% of income, sponsors - 34%, as well as ticket sales - 11% and licensing - 2%).

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1. *Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?*

Bribery in non-profit sectors is covered by the current UK criminal law – the Bribery Act 2010. By virtue of section 3 (2) the general offences at section 1 (bribing another person) and section 2 (being bribed) apply to “any function of a public nature, any activity connected with business, any activity performed in the course of a person’s employment,” and “any activity performed by or on behalf of a body of persons (whether corporate or unincorporated”.

In addition, section 42 of the Gambling Act 2005 makes it an offence to cheat at gambling or do anything to enable or assist another person to cheat at gambling. Agreeing with others to pursue a course of conduct that would amount to the commission of an offence by any of the group amounts to conspiracy to commit that offence under section 1(1) of the Criminal Law Act 1977.

2. *Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?*

Not as regards the criminal law.

3. *Are you aware of any studies on these practices/phenomena that have been carried out in your country?*

We are not aware of studies into possible legal lacunae related to corrupt practices in non-profit sectors not covered by the existing legal provisions on bribery in the UK.

4. *What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?*

Ensuring the criminal law possesses clarity and certainty while also providing a comprehensive and all-embracing legal framework.