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Addendum

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Questionnaire

Protocol to Criminal Law Convention on Corruption: Match-fixing

**Protocole à la Convention pénale sur la corruption : les matchs
arrangés**

Replies / Réponses

ADDENDUM

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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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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.

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).

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/zaksaites-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.