



Groupe d'Etats contre la corruption
Group of States against corruption



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS

Strasbourg, 1 June 2007

Public
Greco Eval III (2006) 1E Rev2

Third Evaluation Round

Questionnaire on the incriminations provided for in the Criminal Law Convention on Corruption (ETS 173), its Additional Protocol (ETS 191) and Guiding Principle 2 (GPC 2)

Adopted by GRECO
at its 29th Plenary Meeting
(Strasbourg, 19-23 June 2006)

General Structure of the Questionnaire

The questions asked in respect of almost each of the provisions under consideration follow the same pattern:

- Reservation/Declaration (if applicable)
- Legal Definition
- Court Decisions/Case Law
- Sanctions and
- Legislative Amendments

This approach will facilitate both your and the evaluators' task: Obviously, if your answer to a given question would be the same as the answer you have already given to a previous question, you will only have to refer back to the answer you have given before.

Legislation

Whenever a question refers to legislation please provide the text of the **relevant section(s)** in the legislation:

- in **English or French**, and
- in the original language, if this is not English or French.

Please also indicate the **title** of the legislation in which this section can be found.

Court Decisions/Case Law

Whenever a question refers to court decisions/case law, this relates to (preferably) decisions of superior courts which lower courts are likely to follow. In the absence of relevant decisions of superior courts, you may also provide exemplary decisions of lower courts.

Please provide only those court decisions/case law

- which are especially indicative of the issues under consideration and
- only in as far as they clarify or otherwise have added value to the use made of the elements/concepts in the relevant legal provisions.

Do not provide the entire decision, but only the **relevant section(s)** in the decision and clearly indicate the **date** of the decision and the **competent court**.

Please provide the text of the relevant section(s) in the decision:

- in **English or French** and
- in the original language, if this is not English or French.

If different elements/concepts are clarified in the same decision, please provide the relevant section of the court decision only once and refer back to it whenever necessary.

Legal Amendments

Whenever a question refers to legal amendments please report on any steps taken to legislate on the subject: for instance, whether a Bill (draft law) exists or whether there are plans for legislation, the state of progress of parliamentary proceedings (etc.)?

A. CRIMINAL LAW CONVENTION ON CORRUPTION (ETS 173) AND GPC 2¹

1. BRIBERY OF DOMESTIC PUBLIC OFFICIALS

Article 1 – Use of terms

For the purposes of this Convention:

a 'public official' shall be understood by reference to the definition of 'official', 'public officer', 'mayor', 'minister' or 'judge' in the national law of the State in which the person in question performs that function and as applied in its criminal law;

b the term 'judge' referred to in sub-paragraph a above shall include prosecutors and holders of judicial offices;

(...)

Article 2 – Active bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

Article 3 – Passive bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 19 – Sanctions and measures²

1. Having regard to the serious nature of the criminal offences established in accordance with this Convention, each Party shall provide, in respect of those criminal offences established in accordance with Articles 2 to 14, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

(...)

1.1 Definition of the offence

1.1.1 Please provide the text of the relevant section(s) in your legislation on the criminal offences "active and passive bribery of domestic public officials".

1.1.2 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined³ in relation to these criminal offences? Please indicate if all the functions/categories of persons mentioned in Article 1 (a) and (b) of the Criminal Law Convention on Corruption (ETS 173) are covered by your legal provision(s).

¹ Guiding Principle 2: "To ensure co-ordinated criminalisation of national and international corruption".

² This article is of relevance to all questions in this questionnaire on sanctions, including questions on the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).

³ If this concept is not defined as such in the law but is otherwise covered or further clarified in (for example) explanatory reports to the law, please also provide a translation of the relevant sections in these texts.

- (Domestic) public official

1.1.3 Please explain if and how the following elements/concepts are implemented in your legislation in connection with active and passive bribery of domestic public officials (Please also refer to the relevant section in your legislation).

- promising, offering or giving (*for active bribery*)
- request or receipt, acceptance of an offer or promise (*for passive bribery*);
- any advantage⁴;
- directly or indirectly;
- for himself or herself or for anyone else;
- to act or refrain from acting in the exercise of his or her functions.

1.1.4 Is the application of the provisions on active and passive bribery of domestic public officials in any way restricted by use of the following concepts? If so, please indicate if and how these concepts are defined.

- undue⁵ (advantage).
- committed intentionally

1.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures⁶ that apply to the offences of active and passive bribery of domestic public officials. Please also provide information on the level of sanctions for other comparable crimes (such as fraud, embezzlement, abuse of power etc.).

1.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of domestic public officials in connection with the elements/concepts mentioned in questions 1.1.2 to 1.1.4? If so, please provide excerpts/relevant sections of these decisions.

2. BRIBERY OF MEMBERS OF DOMESTIC PUBLIC ASSEMBLIES

Article 4 – Bribery of members of domestic public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers.

2.0 Reservations

2.0.1 Have you made any reservations, as provided for by Article 37 of the Criminal Law Convention on Corruption (ETS 173), to the abovementioned article? If so, please provide further details.

⁴ Please explain whether both material and immaterial advantages are covered by the concept of 'advantage' in your legislation.

⁵ Please explain - for example - whether certain advantages are considered not to be 'undue' (for instance, gifts below a certain value) and would therefore not lead to criminal liability of the public official concerned.

⁶ For example, deprivation of certain rights, disqualification from any future position in the public service (with regard to passive bribery) and disqualification from acting in a managerial position in a legal person (with regard to active bribery).

2.1 Definition of the offence

2.1.1 Is active and passive bribery of members of domestic public assemblies a criminal offence under domestic law?

If yes:

2.1.2 Please provide the text of the relevant section(s) in your legislation.

2.1.3 Is the following concept used in connection with active and passive bribery? If yes, how is this concept defined in relation to these criminal offences?

- (members of) a domestic public assembly;

2.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of members of domestic public assemblies. If so, please provide further details.

2.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures⁷ that apply to the offences of bribery of members of domestic public assemblies.

2.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of members of domestic public assemblies in connection with the elements/concepts mentioned in questions 2.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

3. BRIBERY OF FOREIGN PUBLIC OFFICIALS

Article 5 – Bribery of foreign public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving a public official of any other State.

3.0 Reservations and declarations

3.0.1 Have you made any declarations, as provided for by Article 36 of the Criminal Law Convention on Corruption (ETS 173), in relation to the abovementioned article? If so, please provide further details.

3.0.2 Have you made any reservations, as provided for by Article 37 of the Criminal Law Convention on Corruption (ETS 173), to the abovementioned article with regard to passive bribery of foreign public officials? If so, please provide further details.

⁷ For example, deprivation of certain rights, ineligibility to stand for election to become a member of a domestic public assembly in future (with regard to passive bribery) and disqualification from acting in a managerial position in a legal person (with regard to active bribery).

3.1 Definition of the offence

3.1.1 Is active and passive bribery of foreign public officials a criminal offence under domestic law?

If yes:

3.1.2 Please provide the text of the relevant section(s) in your legislation.

3.1.3 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined in relation to these criminal offences?

- Foreign public official

3.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of foreign public officials. If so, please provide further details.

3.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures⁸ that apply to the offences of bribery of foreign public officials.

3.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of foreign public officials in connection with the elements/concepts mentioned in questions 3.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

4. BRIBERY OF MEMBERS OF FOREIGN PUBLIC ASSEMBLIES

Article 6 – Bribery of members of foreign public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any public assembly exercising legislative or administrative powers in any other State.

4.0 Reservations

Have you made any reservations, as provided for by Article 37 of the Criminal Law Convention on Corruption (ETS 173), to the abovementioned article? If so, please provide further details.

4.1 Definition of the offence

4.1.1 Is active and passive bribery of members of foreign public assemblies a criminal offence under domestic law?

⁸ For example, deprivation of certain rights and disqualification from acting in a managerial position in a legal person (with regard to active bribery).

If yes:

4.1.2 Please provide the text of the relevant section(s) in your legislation.

4.1.3 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined in relation to these criminal offences?

- (members of) a foreign public assembly;

4.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of members of foreign public assemblies. If so, please provide further details.

4.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures⁹ that apply to the offences of bribery of members of foreign public assemblies.

4.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of members of foreign public assemblies in connection with the elements/concepts mentioned in questions 4.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

5. BRIBERY IN THE PRIVATE SECTOR

Article 7 – Active bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 8 – Passive bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

5.0 Reservations

Have you made any reservations, as provided for by Article 37 of the Criminal Law Convention on Corruption (ETS 173), to the abovementioned article? If so, please provide further details.

⁹ For example, deprivation of certain rights and disqualification from acting in a managerial position in a legal person (with regard to active bribery).

5.1 Definition of the offence

5.1.1 Is active and passive bribery in the private sector a criminal offence under domestic law?

If yes:

5.1.2 Please provide the text of the relevant section(s) in your legislation.

5.1.3 Please explain if and how the following concept is implemented in your legislation in connection with active and passive bribery in the private sector.

- Persons who direct or work for, in any capacity, private sector entities

5.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery in the private sector. If so, please provide further details.

5.1.5 Is the application of the provisions on active and passive bribery in any way restricted by use of the following concepts? If so, please indicate if and how this concept is defined.

- In the course of business activity
- (To act or refrain from acting) in breach of [their¹⁰] duties

5.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures¹¹ that apply to the offences of bribery in the private sector.

5.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery in the private sector in connection with the elements/concepts mentioned in questions 5.1.3, 1.1.3, 1.1.4 and 5.1.5, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

¹⁰ By the persons who direct or work for, in any capacity, private sector entities

¹¹ For example, deprivation of certain rights and disqualification from acting in a managerial position in a legal person (with regard to active bribery).

6. BRIBERY OF OFFICIALS OF INTERNATIONAL ORGANISATIONS

Article 9 – Bribery of officials of international organisations

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any official or other contracted employee, within the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such official or agents.

6.0 Declarations

Have you made any declarations, as provided for by Article 36 of the Criminal Law Convention on Corruption (ETS 173), in relation to the abovementioned article? If so, please provide further details.

6.1 Definition of the offence

6.1.1 Is active and passive bribery of officials of international organisations a criminal offence under domestic law? If yes:

6.1.2 Please provide the text of the relevant section(s) in your legislation.

6.1.3 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined in relation to these criminal offences? Please indicate if all the categories of persons mentioned in article 9 of the Criminal Law Convention on Corruption (ETS 173) (i.e. contracted employees, seconded personnel, persons carrying out functions corresponding to those performed by such officials or agents etc.) are covered by your legal provisions?

- Official of an international organisation

6.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of officials of international organisations. If so, please provide further details.

6.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures¹² that apply to the offences of bribery of officials of international organisations.

6.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of officials of international organisations in connection with the elements/concepts mentioned in questions 6.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

¹² For example, deprivation of certain rights, disqualification from any future position in the domestic public service (with regard to passive bribery) and disqualification from acting in a managerial position in a legal person (with regard to active bribery).

7. BRIBERY OF MEMBERS OF INTERNATIONAL PARLIAMENTARY ASSEMBLIES

Article 10 – Bribery of members of international parliamentary assemblies
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Article 4 when involving any members of parliamentary assemblies of international or supranational organisations of which the Party is a member.

7.0 Reservations

Have you made any reservations, as provided for by Article 37 of the Criminal Law Convention on Corruption (ETS 173), to the abovementioned article? If so, please provide further details.

7.1 Definition of the offence

7.1.1 Is active and passive bribery of members of international parliamentary assemblies a criminal offence under domestic law?

If yes:

7.1.2 Please provide the text of the relevant section(s) in your legislation.

7.1.3 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined in relation to these criminal offences?

- (members of) an international parliamentary assembly;

7.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of members of international parliamentary assemblies. If so, please provide further details.

7.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures¹³ that apply to the offences of bribery of members of international parliamentary assemblies.

7.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of members of international parliamentary assemblies in connection with the elements/concepts mentioned in questions 7.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

¹³ For example, deprivation of certain rights, ineligibility to stand for election to become a member of a public assembly in future (with regard to passive bribery) and disqualification from acting in a managerial position in a legal person (with regard to active bribery).

8. BRIBERY OF JUDGES AND OFFICIALS OF INTERNATIONAL COURTS

Article 11 – Bribery of judges and officials of international courts

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3 involving any holders of judicial office or officials of any international court whose jurisdictions is accepted by the Party.

8.0 Declarations

Have you made any declarations, as provided for by Article 36 of the Criminal Law Convention on Corruption (ETS 173), in relation to the abovementioned article? If so, please provide further details.

8.1 Definition of the offence

8.1.1 Is active and passive bribery of judges and officials of international courts an offence under domestic law?

If yes:

8.1.2 Please provide the text of the relevant section(s) in your legislation.

8.1.3 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined in relation to these criminal offences?

- Holders of judicial office or officials of any international court (whose jurisdiction is accepted by the party)

8.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of judges or officials of international courts. If so, please provide further details.

8.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures¹⁴ that apply to the offences of bribery of judges and officials of international courts.

8.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of judges and officials of international courts in connection with the elements/concepts mentioned in questions 8.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

¹⁴ For example, deprivation of certain rights and disqualification from acting in a managerial position in a legal person (with regard to active bribery).

9. TRADING IN INFLUENCE

Article 12 – Trading in influence

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

9.0 Reservations

Have you made any reservations, as provided for by Article 37 of the Criminal Law Convention on Corruption (ETS 173), to the abovementioned article? If so, please provide further details.

9.1 Definition of the offence

9.1.1 Is trading in influence an offence under domestic law?

If yes:

9.1.2 Please provide the text of the relevant section(s) in your legislation.

9.1.3 Please explain if and how the following element/concept is implemented in your legislation in connection with active and passive trading in influence. (Please also refer to the relevant section in your legislation).

- Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]

9.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive trading in influence? If so, please provide further details.

9.1.5 In order to apply the legal provisions on trading in influence is it relevant whether the influence

- is exerted or not?
- leads to the intended result or not?

9.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures¹⁵ that apply to the offences of active and passive trading in influence.

¹⁵ For example, deprivation of certain rights.

9.3 Court decisions/case law

Are there any court decisions/case law on active and passive trading in influence in connection with the elements/concepts mentioned in questions 1.1.3 and 1.1.4 and the elements/concept mentioned in questions 9.1.3 and 9.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

B. ADDITIONAL PROTOCOL TO THE CRIMINAL LAW CONVENTION ON CORRUPTION (ETS 191)

10. BRIBERY OF DOMESTIC ARBITRATORS

Article 1 – Use of terms

For the purpose of this Protocol:

1. *The term "arbitrator" shall be understood by reference to the national law of the States Parties to this Protocol, but shall in any case include a person who by virtue of an arbitration agreement is called upon to render a legally binding decision in a dispute submitted to him/her by the parties to the agreement.*

2. *The term "arbitration agreement" means an agreement recognised by the national law whereby the parties agree to submit a dispute for a decision by an arbitrator.*

(...)

Article 2 – Active bribery of domestic arbitrators

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to an arbitrator exercising his/her functions under the national law on arbitration of the Party, for himself or herself or for anyone else, for him or for her to act or refrain from acting in the exercise of his or her functions.

Article 3 – Passive bribery of domestic arbitrators

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by an arbitrator exercising his/her functions under the national law on arbitration of the Party, directly or indirectly, of any undue advantage for himself or herself or for anyone else, or the acceptance of an offer or promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

10.1 Definition of the offence

10.1.1 Is active and passive bribery of domestic arbitrators a criminal offence under domestic law?

If yes:

10.1.2 Please provide the text of the relevant section(s) in your legislation.

10.1.3 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined in relation to these criminal offences?

- Domestic arbitrator / arbitrator exercising his/her functions under the national law on arbitration;

10.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of domestic arbitrators. If so, please provide further details.

10.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures¹⁶ that apply to the offences of bribery of domestic arbitrators.

10.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of domestic arbitrators in connection with the elements/concepts mentioned in questions 10.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

11. BRIBERY OF FOREIGN ARBITRATORS

Article 4 – Bribery of foreign arbitrators

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving an arbitrator exercising his/her functions under the national law on arbitration of any other State.

11.0 Reservations and declarations

11.0.1 Have you made any declarations, as provided for by Article 9, paragraph 1, of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), in relation to the abovementioned article? If so, please provide further details.

11.0.2 Have you made any reservations, as provided for by Article 9, paragraph 2, of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), to the abovementioned article with regard to passive bribery of foreign arbitrators? If so, please provide further details.

11.1 Definition of the offence

11.1.1 Is active and passive bribery of foreign arbitrators a criminal offence under domestic law?

If yes:

11.1.2 Please provide the text of the relevant section(s) in your legislation.

¹⁶ For example, deprivation of certain rights.

11.1.3 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined in relation to these criminal offences?

- Foreign arbitrator / arbitrator exercising his/her functions under the national law on arbitration of any other State;

11.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of foreign arbitrators. If so, please provide further details.

11.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures¹⁷ that apply to the offences of bribery of foreign arbitrators.

11.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of foreign arbitrators in connection with the elements/concepts mentioned in questions 11.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

12. BRIBERY OF DOMESTIC JURORS

Article 1 – Use of terms

For the purpose of this Protocol:

(...)

3. *The term "juror" shall be understood by reference to the national law of the States Parties to this Protocol but shall in any case include a lay person acting as a member of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial.*

Article 5 – Bribery of domestic jurors

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person acting as a juror within its judicial system.

12.1 Definition of the offence

12.1.1 Is active and passive bribery of domestic jurors a criminal offence under domestic law?

If yes:

12.1.2 Please provide the text of the relevant section(s) in your legislation and indicate the title of the legislation in which this section can be found.

12.1.3 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined in relation to these criminal offences?

¹⁷ For example, deprivation of certain rights.

- Domestic juror / person acting as a juror within its judicial system ;

12.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of domestic jurors. If so, please provide further details.

12.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures¹⁸ that apply to the offences of bribery of domestic jurors.

12.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of domestic jurors in connection with the elements/concepts mentioned in questions 12.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

13. BRIBERY OF FOREIGN JURORS

Article 6 – Bribery of foreign jurors

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person acting as a juror within the judicial system of any other State.

13.0 Reservations and declarations

13.0.1 Have you made any declarations, as provided for by Article 9, paragraph 1, of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), in relation to the abovementioned article? If so, please provide further details.

13.0.2 Have you made any reservations, as provided for by Article 9, paragraph 2, of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), to the abovementioned article with regard to passive bribery of foreign jurors? If so, please provide further details.

13.1 Definition of the offence

13.1.1 Is active and passive bribery of foreign jurors a criminal offence under domestic law?

If yes:

13.1.2 Please provide the text of the relevant section(s) in your legislation.

13.1.3 Is the following concept used in connection with active and passive bribery? If so, how is this concept defined in relation to these criminal offences?

- Foreign juror / any person acting as a juror within the judicial system of any other State;

¹⁸ For example, deprivation of certain rights.

13.1.4 Please indicate if the elements/concepts mentioned in questions 1.1.3 and 1.1.4 are implemented in a different way with regard to active and passive bribery of foreign jurors. If so, please provide further details.

13.2 Sanctions

Please describe the nature and level of the criminal sanctions and measures¹⁹ that apply to the offences of bribery of foreign jurors.

13.3 Court decisions/case law

Are there any court decisions/case law on active and passive bribery of foreign arbitrators in connection with the elements/concepts mentioned in questions 13.1.3, 1.1.3 and 1.1.4, other than the decisions to which you have already referred above? If so, please provide excerpts/relevant sections of these decisions.

C. OTHER QUESTIONS

14. PARTICIPATORY ACTS

ETS 173

Article 15 – Participatory acts²⁰

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

14 Definition

Please provide the text of the relevant section(s) in your legislation on aiding and abetting the commission of all of the abovementioned offences.

¹⁹ For example, deprivation of certain rights.

²⁰ This Article also applies to the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191). To this end Article 8, paragraph 2, of the Additional Protocol provides: "The provisions of the Convention shall apply to the extent that they are compatible with the provisions of this Protocol", and paragraph 40 of the explanatory report clarifies that "Paragraph 2 should be understood as making Articles 12 to 23 of the Convention applicable to this Protocol".

15. JURISDICTION

ETS 173

Article 17 – Jurisdiction²¹

1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:

- a the offence is committed in whole or in part in its territory;
- b the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies;
- c the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.

2 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 b and c of this article or any part thereof.

3 If a Party has made use of the reservation possibility provided for in paragraph 2 of this article, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another Party, solely on the basis of his nationality, after a request for extradition.

4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with national law.

15.1 Jurisdiction

15.1.1 Have you established jurisdiction over all of the aforementioned bribery and trading in influence offences, including those referred to in ETS 191, when they are committed in whole or in part in your territory? If yes, please attach the relevant legislation.

15.1.2 Have you established jurisdiction over all of the aforementioned bribery and trading in influence offences, when the offender is one of your nationals, one of your public officials, a member of one of your domestic public assemblies, one of your domestic arbitrators or one of your domestic jurors?

a) If yes, please attach the relevant legislation.

b) If not, have you made any reservations to article 17 (1) (b) of the Criminal Law Convention on Corruption (ETS 173)? If you have made a reservation, please provide further details on this reservation and the reasons for making it and explain which measures you have taken to establish jurisdiction in cases where the alleged offender is present on your territory and you do not extradite him to another Party, solely on the basis of his/her nationality.

15.1.3 Have you established jurisdiction over all of the aforementioned bribery and trading in influence offences, when the offence involves one of your public officials or members of your domestic public assemblies, or domestic arbitrators or domestic jurors, or officials of international organisations, members of international parliamentary

²¹ *Idem.*

assemblies or judges and officials of international courts who is at the same time a national of your country?

- a) If yes, please attach the relevant legislation.
- b) If not, have you made any reservations to the abovementioned article 17 (1) (c)? If you have made a reservation, please provide further details on this reservation and the reasons for making it and explain which measures you have taken to establish jurisdiction in cases where the alleged offender is present on your territory and you do not extradite him to another Party, solely on the basis of his/her nationality.

15.2 Court decisions/case law

Are there any court decisions/case law in connection with jurisdiction over bribery and trading in influence offences? If so, please provide excerpts/relevant sections of these decisions.

16. STATUTE OF LIMITATIONS

16.1 Length of statute

Please indicate for each of the offences mentioned above (in chapters 1-13) the statute of limitations. Please attach the relevant legislation.

16.2 Court decisions/case law

Are there any court decisions/case law on the statute of limitations in connection with any of the abovementioned offences, that clarify the relevant legal provision(s) on the statute of limitations? If so, please provide excerpts/relevant sections of these decisions.

17. DEFENCES

17.1 Defences

7.1.1 Which special defences²² are available under your substantive criminal law with regard to the offences mentioned in this questionnaire? Please attach the relevant legislation and explain reasons for introducing such defences.

17.1.2 What would the result be (e.g. discontinuation of proceedings or mitigation of the sentence) if such a defence was successfully invoked?

17.2 Court decisions/case law

Are there any court decisions/case law on special or other defences in connection with any of the offences mentioned in this questionnaire, that clarify or otherwise add value to the relevant legal provision(s)?

²² For example, is there a provision in your substantive criminal law that exempts an individual from criminal liability if s/he has consented to the solicitation for a bribe by an official but reports it to the relevant authorities, is there a provision that exempts the briber of a foreign public official from criminal liability if the advantage is lawful in the foreign public official's country, or if the bribe was given under threat?

18. DATA

18 Data

If possible, please indicate the number of investigations, prosecutions and convictions for all of the abovementioned offences over the last three years.

19. LEGISLATIVE AMENDMENTS

19 Legislative amendments

Are there any legislative amendments under preparation regarding the matters addressed in this questionnaire? If yes, please explain and indicate the state of progress of work on these amendments.

20. TRANSPOSITION INTO DOMESTIC LAW (ETS 173)

Offence / definition	Article Convention	Reservation	Declaration	Corresponding article(s) in national law (if any) and title(s) of national law(s)
definition of public official	article 1 (a)			
definition of judge	article 1 (b)			
definition of foreign public official	article 1 (c)			
active bribery of domestic public officials	article 2			
passive bribery of domestic public officials	article 3			
active bribery of members of domestic public assemblies	article 4	yes/no		
passive bribery of members of domestic public assemblies	article 4	yes/no		
active bribery of foreign public officials	article 5		yes/no	
passive bribery of foreign public officials	article 5	yes/no	yes/no	
active bribery of members of foreign public assemblies	article 6	yes/no		
passive bribery of members of foreign public assemblies	article 6	yes/no		
active bribery in the private sector	article 7	yes/no		
passive bribery in the private sector	article 8	yes/no		
active bribery of officials of international organisations	article 9		yes/no	
passive bribery of officials of international organisations	article 9		yes/no	
active bribery of members of international parliamentary assemblies	article 10	yes/no		
passive bribery of members of international parliamentary assemblies	article 10	yes/no		
active bribery of judges and officials of international courts	article 11		yes/no	
passive bribery of judges and officials of international courts	article 11		yes/no	
active trading in influence	article 12	yes/no		
passive trading in influence	article 12	yes/no		
aiding and abetting to bribery and trading in influence offences	article 15	yes/no		
territorial jurisdiction	article 17(1)(a)			
active nationality jurisdiction	article 17(1)(b)	yes/no		
passive nationality jurisdiction	article 17(1)(c)	yes/no		

21. TRANSPOSITION INTO DOMESTIC LAW (ETS 191)

Offence/definition	Article Convention	Reservation	Declaration	Corresponding article(s) in national law (if any) and title(s) of national law(s)
definition of arbitrator	article 1 (1)			
definition of juror	article 1 (2)			
active bribery of domestic arbitrators	article 2			
passive bribery of domestic arbitrators	article 3			
active bribery of foreign arbitrators	article 4		yes/no	
passive bribery of foreign arbitrators	article 4	yes/no	yes/no	
active bribery of domestic jurors	article 5			
passive bribery of domestic jurors	article 5			
active bribery of foreign jurors	article 6		yes/no	
passive bribery of foreign jurors	article 6	yes/no	yes/no	