

## RESPONSES TO THE CONSULTATION PAPER ON THE REVIEW OF THE OECD ANTI-BRIBERY INSTRUMENTS

### Comments from OLAF (European Anti-Fraud Office, European Commission) (Unit Legislation and Legal Affairs)

I refer to your conversation in Bremen with Mr. Kuhl, my Head of Unit at the European Anti-Fraud office (OLAF), as concerns the Consultation on the Review of the OECD Anti-Bribery Instruments. He asked me to provide you with considerations from our side on the OECD's consultation, limited to the criminal law area. I would like to thank you for this occasion for us to contribute to the OECD's consultation process.

You may be aware that the EU established instruments similar to the OECD Convention on combating bribery of foreign public officials in international business transactions, in particular the Protocol to the Convention on the protection of the European Communities' financial interests, OJEC C 313, 23.10.1996, p. 2, and the EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States, OJEC C 195, 25.6.1997, p. 2. The main purpose of the corruption offences defined by these EU-Instruments is to ensure that corruption in one Member State is also penalised if committed by Community officials or officials of another Member State. To this end, they contain a wide definition of Community and national officials. The corruption offences set out in the Protocol are confined to acts or omissions which damage or are likely to damage the European Communities' financial interests. The EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States requires criminalisation of the same corruptive conduct without this additional element. The 1st Protocol and the EU corruption Convention alike penalise conduct that includes performance of or abstention from any act within the powers of the holder of the office or function in so far as they are carried out in breach of the official's duties.

However, the EU-instruments differ from the OECD Convention which generally extends the obligation to criminalise corruption to officials of foreign countries, but is limited to business transactions.

Still you may be interested to hear that the Commission undertook in 2004 and in 2008 an evaluation exercise on the implementation of these EU-instruments, which focus amongst others of EU-Member States compliance with regard to

- the criminalisation of corruption offences (which may be of interest for Sections 1.1 to 1.5 of the OECD consultation paper),
- the liability of legal persons (which may be of interest for Sections 2.1 to 2.3 of the OECD consultation paper),
- the sanctions including confiscation (which may be of interest for Section 3.1 of the OECD consultation paper),
- jurisdiction for corruption offences (which may be of interest for Sections 4.1 to 4.2 of the OECD consultation paper) and finally

- money-laundering (which may be of interest for Section 7 of the OECD consultation paper).

The Commission reports on implementation and on an outlook of what rests to be done via a short summary, called the report and a more detailed document, called the Commission Staff Working Paper. The latter may be of more interest to you, insofar as it sets out a detailed evaluation of the processes under way and the possible short-comings. The annexes of the Commission Staff Working Paper contain detailed overviews on the national implementing legislation.

The 2004 report covering the then EU-15 Member States is available at [http://ec.europa.eu/dgs/olaf/mission/legal/709final\\_en.pdf](http://ec.europa.eu/dgs/olaf/mission/legal/709final_en.pdf), the related Commission Staff Working Paper at [http://ec.europa.eu/dgs/olaf/mission/legal/annex709final\\_en.pdf](http://ec.europa.eu/dgs/olaf/mission/legal/annex709final_en.pdf). The interesting sections are to be found on the following pages:

- corruption offences including sanctions, pages 35 to 45,
- liability of legal persons, pages 53 to 60,
- confiscation, pages 60 to 62,
- jurisdiction for corruption offences, pages 68 to 72 and
- money-laundering, pages 45 to 49.

The more recent complementing 2008 report giving an update on the EU-15 Member States and extending the evaluation to the now EU-27 Member States is available at [http://ec.europa.eu/dgs/olaf/legal/doc/2008\\_77\\_en.pdf](http://ec.europa.eu/dgs/olaf/legal/doc/2008_77_en.pdf), the related Commission Staff Working Paper at [http://ec.europa.eu/dgs/olaf/legal/doc/2008\\_188.pdf](http://ec.europa.eu/dgs/olaf/legal/doc/2008_188.pdf). The interesting sections are to be found on the following pages:

- update on developments in the Member States with regard to corruption between 2004 and 2007, page 17
- corruption offences including sanctions, pages 35 to 42,
- liability of legal persons, pages 47 to 53,
- confiscation, pages 53 to 56,
- jurisdiction for corruption offences, pages 59 to 62 and
- money-laundering, pages 42 to 45.

I would like to underline that OLAF is naturally interested to keep in touch with you also on other issues such as the detection and prevention of corruption and corruption in procurement procedures.