

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

LUXEMBOURG

(Information as of 8 March 2010)

Date of deposit of instrument of ratification/acceptance or date of accession

On 17 December 1997, the Grand Duchy of Luxembourg signed the OECD Convention of 21 November 1997 on bribery of foreign public officials. The Convention was approved by Luxembourg by an Act of 15 January 2001, adopted by the Luxembourg parliament on 14 December 2000, and confirmed and promulgated by the Grand Duke on 15 January 2001. The Act entered into force on 11 February 2001. The Grand Duchy of Luxembourg deposited its instrument of ratification with the OECD on 21 March 2001. The Convention came into force in Luxembourg 60 days after that date.

Implementing legislation

The Act of 15 January 2001 introduces into Luxembourg law, or modifies, the notions of misappropriation, destruction of deeds and securities, embezzlement, taking unlawful interest, and bribery. Amendments were made to the Criminal Code and the Criminal Investigation Code and to the Act of 4 December 1967 on income tax.

Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations

Since then, the following laws and regulations have been adopted:

- Act of 30 March 2001 approving:
 1. the Convention, based on Article K.3 of the European Union Treaty on the **Protection of the Financial Interests of the European Communities**, signed in Brussels on 26 July 1995;
 2. the Protocol, based on article K.3 of the European Union Treaty, to the Convention on the Protection of the Financial Interests of the European Communities, signed in Dublin on 27 September 1996;
 3. the Protocol, based on article K.3 of the European Union Treaty, on the preliminary interpretation by the Court of Justice of the European Communities of the Convention on the Protection of the Financial Interests of the European Communities, signed in Brussels on 29 November 1996 and amending other legal provisions.

In addition to approving these three instruments, the Act amended the Criminal Code so as to make it an offence to engage in any misappropriation of subsidies, indemnities or allocations or in any fraudulent acts or manoeuvres designed to reduce illegally an international institution's contribution to the budget.

- Act of 23 May 2005 approving:

1. the Convention, based on article K.3 of the European Union Treaty, on **the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union**, signed in Brussels on 26 May 1997;
2. the second Protocol, based on article K.3 of the European Union Treaty, to the Convention on the Protection of the Financial Interests of the European Communities, signed in Brussels on 19 June 1997;
3. the Criminal Law Convention on Corruption, signed in Strasbourg on 27 January 1999;
4. the Additional Protocol to the Criminal Law Convention on Corruption, signed in Strasbourg on 15 May 2003;

and amending and completing certain provisions of the Criminal Code.

This Act transposed into Luxembourg law all the instruments relating to the punishment of corruption under the criminal law adopted by the European Union and the Council of Europe in the years 1997-2003, including the Framework-Decision 2003/568/JAI of the Council of 22 July 2003 on combating corruption in the private sector, by introducing into the Criminal Code Articles 310 and 310-1 which make corruption in the private sector a criminal offence.

- Act of 1 August 2007: 1. approving the **“Merida” Convention of the United Nations Against Corruption**, adopted by the General Assembly of the United Nations in New York on 31 October 2003 and opened for signature in Merida (Mexico) on 9 December 2003; 2. amending Section 12.5 of the Income Tax Act of 4 December 1967, as amended.

This Act approved the Convention in question and set up the Corruption Prevention Committee (« COPRECO ») in Luxembourg. COPRECO is an interministerial body responsible in particular for preparing and proposing to the Government measures to combat corruption and for co-ordinating within the public administration the enforcement of any measures adopted.

- Act of 18 December 2007 approving the **“Palermo” Convention of the United Nations against transnational organized crime**, adopted by the General Assembly of the United Nations in New York, on 15 November 2000.
- Grand-Ducal Regulation of 15 February 2008 determining the **composition and functioning of the Corruption Prevention Committee**.

This Regulation lays down the rules relating to the composition and functioning of the Corruption Prevention Committee, in implementation of the legal provision setting up the Committee, i.e. Section 2 of the Act of 1 August 2007 approving the « Merida » Convention of the United Nations against corruption, adopted by the General Assembly of the United Nations in New York on 31 October 2003.

- Act of 17 July 2008 **transposing Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing**, transposing Directive 2006/70/EC of the Commission of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of “politically exposed persons” and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, and amending:

1. the Act of 12 November 2004 on combating money laundering and terrorist financing, as amended;
2. the Act of 7 March 1980 on organisation of the judiciary, as amended;
3. the Act of 5 April 1993 on the financial sector, as amended;
4. the Act of 6 December 1991 on the insurance sector, as amended;
5. the Act of 9 December 1976 on organisation of the profession of notary, as amended;
6. the Act of 10 August 1991 on the profession of barrister, as amended;
7. the Act of 28 June 1984 on organisation of the profession of company auditor, as amended;
8. the Act of 10 June 1999 on the organisation of the profession of accountant.

This Act transposes into Luxembourg law the 3rd money laundering Directive (dealing with professional obligations) and introduces in particular a legal definition of the concept of “politically exposed persons”. Inasmuch as the offence of bribery is one of the primary offences of money laundering, this Act helps to reinforce the fight against corruption.

- Act of 17 July 2008 on the **fight against money laundering and terrorist financing**, and amending:
 1. Article 506-1 of the Criminal Code,
 2. the Act of 14 June 2001
 1. approving the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990;
 2. amending certain provisions of the Criminal Code;
 3. amending the Act of 17 March 1992;
 1. approving the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20 December 1988;
 2. amending and completing the Act of 19 February 1973 on the sale of drug substances and the fight against drug addiction;
 3. amending and completing certain provisions of the Criminal Investigation Code.

This Act adapts the criminal offence of money laundering in Luxembourg law to the requirements laid down in the 3rd money laundering Directive in particular.

- Act of 4 February 2010 introducing **the responsibility of legal persons** in the Criminal Code, and amending the Criminal Code , the Criminal Procedure Code, and certain other legal provisions.

This Act aims to bring Luxembourg in compliance with the requirements under the OECD Convention of 21 November 1997 on Bribery of Foreign Public Officials in International Business Transactions in general, and with the Phase 2 and Phase 2bis evaluation reports in particular, by picking up the recommendations adopted by the Working Group on Bribery.

- Bill of 25 January 2010 **reinforcing the means to combat bribery** and amending (1) the Labour Code; (2) the general statute applicable to State officials; (3) the amended Act of 24 December 1985 on the general statute applicable to local officials; (4) the Code of Criminal Procedure; and (5) the Criminal Code.

This Bill will enable, once it is passed into law, the effective protection of whistleblowers in the public and private sector, in conformity with the requirements under the OECD Anti-Bribery Convention in general, and the Phase 2 and Phase 2bis evaluation reports in particular.

Other information

The competent authorities in the fight against corruption are the Grand Duchy police, the public prosecutors and the examining magistrates.

The central authority for mutual legal assistance is the Prosecutor General (Section 2 of the Act of 8 August 2000 on mutual legal assistance).

On 18 July 2008, the Government adopted a plan of action against corruption. The objective of this plan is use « COPRECO » to co-ordinate all the anti-corruption measures existing at national level in order to make them more effective.

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (February 2001)
<http://www.oecd.org/dataoecd/39/40/2019732.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (June 2004)
<http://www.oecd.org/dataoecd/55/4/32017636.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (August 2006)
<http://www.oecd.org/dataoecd/22/27/37308306.pdf>

Phase 2bis: Second report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2008)
<http://www.oecd.org/dataoecd/4/21/40322335.pdf>

Phase 2bis: Follow-up Report on the Implementation of the Phase 2bis Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (October 2009)
<http://www.oecd.org/dataoecd/55/21/44023684.pdf>