

Civil Law Convention on Corruption

Preamble

The member States of the Council of Europe, the other States and the European Community, signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Conscious of the importance of strengthening international co-operation in the fight against corruption;

Emphasising that corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the proper and fair functioning of market economies;

Recognising the adverse financial consequences of corruption to individuals, companies and States, as well as international institutions;

Convinced of the importance for civil law to contribute to the fight against corruption, in particular by enabling persons who have suffered damage to receive fair compensation;

Recalling the conclusions and resolutions of the 19th (Malta, 1994), 21st (Czech Republic, 1997) and 22nd (Moldova, 1999) Conferences of the European Ministers of Justice;

Taking into account the Programme of Action against Corruption adopted by the Committee of Ministers in November 1996;

Taking also into account the feasibility study on the drawing up of a convention on civil remedies for compensation for damage resulting from acts of corruption, approved by the

Committee of Ministers in February 1997;

Having regard to Resolution (97) 24 on the 20 Guiding Principles for the Fight against Corruption, adopted by the Committee of Ministers in November 1997, at its 101st Session, to Resolution (98) 7 authorising the adoption of the Partial and Enlarged Agreement establishing the “Group of States against Corruption (GRECO)”, adopted by the Committee of Ministers in May 1998, at its 102nd Session, and to Resolution (99) 5 establishing the GRECO, adopted on 1st May 1999;

Recalling the Final Declaration and the Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their 2nd summit in Strasbourg, in October 1997,

Have agreed as follows:

Chapter I – Measures to be taken at national level

Article 1 – Purpose

Each Party shall provide in its internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.

Article 2 – Definition of corruption

For the purpose of this Convention, “corruption” means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

Article 3 – Compensation for damage

1 Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.

2 Such compensation may cover material damage, loss of profits and non-pecuniary loss.

Article 4 – Liability

1 Each Party shall provide in its internal law for the following conditions to be fulfilled in order for the damage to be compensated:

i the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption;

ii the plaintiff has suffered damage; and

iii there is a causal link between the act of corruption and the damage.

2 Each Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable.

Article 5 – State responsibility

Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party's appropriate authorities.

Article 6 – Contributory negligence

Each Party shall provide in its internal law for the compensation to be reduced or disallowed having regard to all the circumstances, if the plaintiff has by his or her own fault contributed to the damage or to its aggravation.

Article 7 – Limitation periods

1 Each Party shall provide in its internal law for proceedings for the recovery of damages to be subject to a limitation period of not less than three years from the day the person who has suffered damage became aware or should reasonably have been aware, that damage has occurred or that an act of corruption has taken place, and of the identity of the responsible person. However, such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.

2 The laws of the Parties regulating suspension or interruption of limitation periods shall, if appropriate, apply to the periods prescribed in paragraph 1.

Article 8 – Validity of contracts

1 Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void.

2 Each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.

Article 9 – Protection of employees

Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who

have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

Article 10 – Accounts and audits

1 Each Party shall, in its internal law, take any necessary measures for the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position.

2 With a view to preventing acts of corruption, each Party shall provide in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company's financial position.

Article 11 – Acquisition of evidence

Each Party shall provide in its internal law for effective procedures for the acquisition of evidence in civil proceedings arising from an act of corruption.

Article 12 – Interim measures

Each Party shall provide in its internal law for such court orders as are necessary to preserve the rights and interests of the parties during civil proceedings arising from an act of corruption.

Chapter II – International co-operation and monitoring of implementation

Article 13 – International co-operation

The Parties shall co-operate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence

abroad, jurisdiction, recognition and enforcement of foreign judgements and litigation costs, in accordance with the provisions of relevant international instruments on international co-operation in civil and commercial matters to which they are Party, as well as with their internal law.

Article 14 – Monitoring

The Group of States against Corruption (GRECO) shall monitor the implementation of this Convention by the Parties.

Chapter III – Final clauses

Article 15 – Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, by non-member States that have participated in its elaboration and by the European Community.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which fourteen signatories have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any such signatory, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, acceptance or approval, shall automatically become a member on the date the Convention enters into force.

4 In respect of any signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into

force on the first day of the month following the expiration of a period of three months after the date of the expression of their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any signatory, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, acceptance or approval, shall automatically become a member on the date the Convention enters into force in its respect.

5 Any particular modalities for the participation of the European Community in the Group of States against Corruption (GRECO) shall be determined as far as necessary by a common agreement with the European Community.

Article 16 – Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Parties to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Parties entitled to sit on the Committee.

2 In respect of any State acceding to it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe. Any State acceding to this Convention shall automatically become a member of the GRECO, if it is not already a member at the time of accession, on the date the Convention enters into force in its respect.

Article 17 – Reservations

No reservation may be made in respect of any provision of this Convention.

Article 18 – Territorial application

1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 19 – Relationship to other instruments and agreements

1 This Convention does not affect the rights and undertakings derived from international multilateral instruments concerning special matters.

2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it or, without prejudice to the

objectives and principles of this Convention, submit themselves to rules on this matter within the framework of a special system which is binding at the moment of the opening for signature of this Convention.

3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate these relations accordingly, in lieu of the present Convention.

Article 20 – Amendments

1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the non member States which have participated in the elaboration of this Convention, to the European Community, as well as to any State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 16.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Legal Co-operation (CDCJ) which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Legal Co-operation (CDCJ) and, following consultation of the Parties to the Convention which are not members of the Council of Europe, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 21 – Settlement of disputes

1 The European Committee on Legal Co-operation (CDCJ) of the Council of Europe shall be kept informed regarding the interpretation and application of this Convention.

2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Legal Co-operation (CDCJ), to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

Article 22 – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 23 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council and any other signatories and Parties to this Convention of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Convention, in accordance with Articles 15 and 16;

d any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 4th day of November 1999, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community, as well as to any State invited to accede to it.