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Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union

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CONVENTION drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 26 May 1997,

WHEREAS the Member States consider the improvement of judicial cooperation in the fight against corruption to be a matter of common interest, coming under the cooperation provided for in Title VI of the Treaty;

WHEREAS by its Act of 27 September 1996 the Council drew up a Protocol directed in particular at acts of corruption involving national or Community officials and damaging or likely to damage the European Communities' financial interests;

WHEREAS, for the purpose of improving judicial cooperation in criminal matters between Member States, it is necessary to go further than the said Protocol and to draw up a Convention directed at acts of corruption involving officials of the European Communities or officials of the Member States in general;

DESIROUS of ensuring consistent and effective application of this Convention throughout the European Union,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1 Definitions

For the purposes of this Convention:

(a) 'official' shall mean any Community or national official, including any national official of another Member State;

(b) 'Community official' shall mean:

- any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities,
- any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants.

Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials,

inasmuch as the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities do not apply to them;

(c) 'national official' shall be understood by reference to the definition of 'official' or 'public officer' in the national law of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.

Nevertheless, in the case of proceedings involving a Member State's official initiated by another Member State, the latter shall not be bound to apply the definition of 'national official' except insofar as that definition is compatible with its national law.

Article 2 Passive corruption

1. For the purposes of this Convention, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute passive corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

Article 3 Active corruption

1. For the purposes of this Convention, the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute active corruption.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

Article 4 Assimilation

1. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences referred to in Articles 2 and 3 committed by or against its Government Ministers, elected members of its parliamentary chambers, the members of its highest Courts or the members of its Court of Auditors in the exercise of their functions apply similarly in cases where such offences are committed by or against Members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities respectively in the exercise of their duties.

2. Where a Member State has enacted special legislation concerning acts or omissions for which Government Ministers are responsible by reason of their special political position in that Member State, paragraph 1 may not apply to such legislation, provided that the Member State ensures that Members of the Commission of the European Communities are also covered by the criminal legislation implementing Articles 2 and 3.

3. Paragraphs 1 and 2 shall be without prejudice to the provisions applicable in each Member State concerning criminal proceedings and the determination of the competent court.

4. This Convention shall apply in full accordance with the relevant provisions of the Treaties establishing the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statutes of the Court of Justice and the texts adopted for the purpose of their implementation, as regards the withdrawal of immunity.

Article 5 Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3, and participating in and instigating the conduct in question, is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

2. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against national officials or Community officials. In determining the penalty to be imposed, the national criminal courts may, in accordance with the principles of their national law, take into account any disciplinary penalty already imposed on the same person for the same conduct.

Article 6 Criminal liability of heads of businesses

Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of corruption, as referred to in Article 3, by a person under their authority acting on behalf of the business.

Article 7 Jurisdiction

1. Each Member State shall take the measures necessary to establish its jurisdiction over the offences it has established in accordance with the obligations arising out of Articles 2, 3 and 4 where:

- (a) the offence is committed in whole or in part within its territory;
- (b) the offender is one of its nationals or one of its officials;
- (c) the offence is committed against one of the persons referred to in Article 1 or a member of one of the European Community institutions referred to in Article 4 (1) who is at the same time one of its nationals;
- (d) the offender is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State in question.

2. Each Member State may declare, when giving the notification provided for in Article 13 (2), that it will not apply or will apply only in specific cases or conditions one or more of the jurisdiction rules laid down in paragraph 1 (b), (c) and (d).

Article 8 Extradition and prosecution

1. Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with the obligations arising out of Articles 2, 3 and 4, when committed by its own nationals outside its territory.

2. Each Member State shall, when one of its nationals is alleged to have committed in another Member State an offence established in accordance with the obligations arising out of Articles 2, 3 and 4 and it does not extradite that person to that other Member State solely on the ground of his nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6 of the European Convention on Extradition of 13 December 1957. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

3. For the purposes of this Article, the term 'national' of a Member State shall be construed in accordance with any declaration made by that State under Article 6 (1) (b) of the European Convention on Extradition and with paragraph 1 (c) of that Article.

Article 9 Cooperation

1. If any procedure in connection with an offence established in accordance with the obligations arising out of Articles 2, 3 and 4 concerns at least two Member States, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.

2. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member State where possible.

Article 10 Ne bis in idem

1. Member States shall apply, in their national criminal laws, the ne bis in idem rule, under which a person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that if a penalty was imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing State.

2. A Member State may, when giving the notification referred to in Article 13 (2), declare that it shall not be bound by paragraph 1 of this Article in one or more of the following cases:

(a) if the facts which were the subject of the judgment rendered abroad took place in its own territory either in whole or in part; in the latter case this exception shall not apply if those facts took place partly in the territory of the Member State where the judgment was rendered;

(b) if the facts which were the subject of the judgment rendered abroad constitute an offence directed against the security or other equally essential interests of that Member State;

(c) if the facts which were the subject of the judgment rendered abroad were committed by an official of that Member State contrary to the duties of his office.

3. If a further prosecution is brought in a Member State against a person whose trial, in respect of the same facts, has been finally disposed of in another Member State, any period of deprivation of liberty served in the latter Member State arising from those facts shall be deducted from any sanction imposed. To the extent permitted by national law, sanctions not involving deprivation of liberty shall also be taken into account insofar as they have been enforced.

4. The exceptions which may be the subject of a declaration under paragraph 2 shall not apply if the Member State concerned in respect of the same facts requested the other Member State to bring the prosecution or granted extradition of the person concerned.

5. Relevant bilateral or multilateral agreements concluded between Member States and relevant declarations shall remain unaffected by this Article.

Article 11 Internal provisions

No provision in this Convention shall prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.

Article 12 Court of Justice

1. Any dispute between Member States on the interpretation or application of this Convention which it has proved impossible to resolve bilaterally must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution. If no solution has been found within six months, the matter may be referred to the Court of Justice of the European Communities by one of the parties to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning Article 1, with the exception of point (c), or Articles 2, 3 and 4, insofar as it concerns a question of Community law or the Communities' financial interests, or involves members or officials of Community institutions or bodies set up in accordance with the Treaties establishing the European Communities, which it has proved impossible to settle through negotiation, may be submitted to the Court of Justice by one of the parties to the dispute.

3. Any court in a Member State may ask the Court of Justice to give a preliminary ruling on a matter concerning the interpretation of Articles 1 to 4 and 12 to 16 raised in a case pending before it and involving members or officials of Community institutions or bodies set up in accordance with the Treaties establishing the European Communities, acting in the exercise of their functions, if it considers that a decision on that matter is necessary to enable it to give judgment.

4. The competence of the Court of Justice provided for in paragraph 3 shall be subject to its acceptance by the Member State concerned in a declaration to that

effect made at the time of the notification referred to in Article 13 (2) or at any subsequent time.

5. A Member State making a declaration under paragraph 4 may restrict the possibility of asking the Court of Justice to give a preliminary ruling to those of its courts against the decisions of which there is no judicial remedy under national law.

6. The Statute of the Court of Justice of the European Community and its Rules of Procedure shall apply. In accordance with those Statutes, any Member State, or the Commission, whether or not it has made a declaration pursuant to paragraph 4, shall be entitled to submit statements of case or written observations to the Court of Justice in cases which arise under paragraph 3.

Article 13 Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the procedures laid down by their respective constitutional requirements for adopting this Convention.

3. This Convention shall enter into force ninety days after the notification, referred to in paragraph 2, by the last Member State to fulfil that formality.

4. Until the entry into force of this Convention, any Member State may, when giving the notification referred to in paragraph 2 or at any time thereafter, declare that this Convention, with the exception of Article 12 thereof, shall apply to it in its relationships with those Member States which have made the same declaration. This Convention shall become applicable in respect of the Member State that makes such a declaration on the first day of the month following the expiry of a period of ninety days after the date of deposit of its declaration.

5. A Member State that has not made any declaration as referred to in paragraph 4 may apply this Convention with respect to the other contracting Member States on the basis of bilateral agreements.

Article 14 Accession of new Member States

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State acceding to it ninety days after the date of deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of ninety days.

5. If this Convention has not yet entered into force when the instrument of accession is deposited, Article 13 (4) shall apply to acceding States.

Article 15 Reservations

1. No reservation shall be authorized with the exception of those provided for in Articles 7 (2) and 10 (2).
2. Any Member State which has entered a reservation may withdraw it at any time in whole or in part by notifying the depositary. Withdrawal shall take effect on the date on which the depositary receives the notification.

Article 16 Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.
2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, declarations and reservations and any other notification concerning this Convention.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hand.

Done at Brussels, on the twenty-sixth day of May in the year one thousand nine hundred and ninety-seven in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.