

Combating corruption in the private sector. Framework Decision. Initiative Denmark

2002/0817(CNS) - 06/06/2011 - Follow-up document

In accordance with Council Framework Decision 2003/568/JHA on combating corruption in the private sector, the Commission presents a report on the transposition and implementation of the Framework Decision. It recalls that in 2007 the Commission completed the first implementation report but that the answers provided by Member States indicated that the level of implementation was very poor. In 2007 only two Member States had correctly transposed its provisions into their domestic legislation.

Since then, the [Stockholm Programme](#) has been adopted, calling upon the Commission to develop a comprehensive anti-corruption policy and establish a mechanism to evaluate Member States' efforts to fight corruption. It therefore seemed necessary to evaluate the implementation of this important instrument in Member States.

At the time of drafting, all Member States except Spain, Denmark and Lithuania had notified their transposition measures. Spain did not provide any information in 2007 or for the current report. In the absence of new information, the evaluation of Denmark and Lithuania remains the same as for the 2007 report.

The report concentrates on **Articles 2 to 7**. The evaluation criteria adopted by the Commission for this report are the general criteria adopted in 2001 to evaluate the implementation of framework decisions (practical effectiveness, clarity and legal certainty, full application and compliance with the time limit for transposition).

The Commission notes that the assessment is limited to the transposition of specific provisions into the domestic legislation. Due to lack of comparable statistics and figures on cases of corruption in the private sector, **it was not possible to assess the practical impact of the transposition of the provisions of this Framework Decision.**

As far as the **transposition itself** is concerned, **it is still not satisfactory**, despite some progress achieved. The main problem lies in weak transposition of some elements of Articles 2 and 5.

Article 2: active and passive corruption in the private sector: Article 2 is a key provision of the Framework Decision. **It defines offences involving active and passive corruption, when carried out in the course of business activities.** The scope of application of Article 2 includes business activities in both profit and non-profit entities.

However, Member States could declare that they would limit the scope to conduct involving a distortion of competition in relation to the purchase of goods or commercial services. The declarations were valid till June 2010. Since the Council did not take a decision to extend their validity, the Commission assumes that they are no longer valid, so the Member States that have submitted such a declaration will have to amend their national legislation. As in 2007, implementation of Article 2 proved highly problematic for Member States. In 2007, only 2 Member States had correctly transposed all elements of the offence. Currently 9 Member States have correctly transposed all of them. Member States found it particularly difficult to capture the full meaning of the phrases 'directly or through an intermediary' and 'a person who in any capacity directs or work' in their national legislation.

Article 5: Article 5 provides for the liability of legal persons in relation to both active and passive corruption. In 2007 only five Member States had fully transposed Article 5. While there has been significant progress since 2007, overall poor transposition of Article 5 is still a matter of concern for the Commission. 15 Member States have fully transposed Article 5 and 8 Member States have transposed it partly. The assessment of the transposition of Article 5 was mainly carried out against the national criminal law provisions, as notified by the Member States. Although aware that the sanctions referred to in Article 5 may also be of administrative or civil nature, the current assessment relied only on the available data notified by the Member States.

In **conclusion**, the Commission recalls the importance of fighting corruption in the private sector and calls upon Member States to adopt without delay all the necessary measures in this regard. The Commission invites all Member States to consider this report and to provide all further relevant information to the Commission and to the Council. In addition, the Commission invites Member States that have since adopted new legislation to notify these measures to the Commission and to the Council.