

ECBA Spring Conference Budapest, 6 & 7 May 2011
Defence Practitioners' Panel
EU Anti-Corruption Activity and Policy

At EU level there is no specific EU anti-corruption legislation, so far. Article 83(1)TFEU provides by way of primary law that directives may be adopted to

“(…) establish minimum rules concerning the definition of offences and sanctions in areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following (...) money laundering, corruption (...) and organised crime.”

Corruption is thus specifically contemplated by the new Treaty framework.

There is an anti-corruption policy. The website of the Home Affairs DG of the Commission states that:

“The publication of a **Communication on a comprehensive policy against corruption in 2003** represented a milestone in building up a solid framework for an EU anti-corruption policy.

In 2005 the **Council adopted a Resolution** on the Communication, and called the Commission to consider all viable options to develop a mutual evaluation and monitoring mechanism, such as participation in the **Council of Europe's Group of States against Corruption (GRECO)** or a mechanism to evaluate and monitor EU instruments.

This intention is now revived in the Commission's Communication on the Stockholm programme and endorsed by Member States: to look into the possibility of putting in place **a mechanism for periodical evaluation of efforts in the fight against corruption across EU** . With this in mind, an impact assessment is being conducted which should result in a second **Communication on a comprehensive policy against corruption by mid 2011** including a proposal for the Commission Decision setting up an evaluation mechanism. This anti-Corruption package will be an integrated part of a strategic initiative of the European Commission to protect the licit economy

In November 2008, the EC has (sic) ratified the most comprehensive global instrument to fight against corruption, **the United Nations Convention against Corruption (UNCAC)**. The Commission will have to report on the implementation of the Convention by the EC/EU.

In October 2008, the Council adopted a Decision on establishing **a contact-point network against corruption (EACN)** which provides for the establishment of national contact points in each of the

MS so that a network could exchange information on effective measures to prevent and fight corruption. This network builds on the existing informal network **European Partners against Corruption (EPAC)**. The Commission co-hosted a meeting of the network in early 2010 in Brussels together with the Secretariat of EPAC/EACN.

DG Home Affairs leads **an inter-service group on corruption**, a forum for sharing initiatives in this field with a view to develop an integrated policy at EU level and in its relation with third countries.”

(see (http://ec.europa.eu/home-affairs/policies/crime/crime_corruption_en.htm#part_2)).”

Recent Developments

1.

Agreement for the Establishment of The International Anti-Corruption Academy as an International Organization (54 Ratifications)

Initial Partners

UN Office on Drugs and Crime (UNODOC)
BMI, Austria (Ministry for European and International Affairs)
OLAF
Diplomatische Akademie, Wien
Interpol

Contributing partners

Motorola : 250,000 USD
Siemens Integrity Initiative : 2,018,997 USD over five years from 2010

2.

Establishment of the Anti-Corruption Academy as of 8 March 2011

3.

Budapest 2011 Declaration of EPAC (European Partners against Corruption)

Questions from the Chair

The UK Bribery Act may be one of the toughest anti-corruption legislative measures in the world. Enforcing it will cause distortions to competition and deflection of trade among undertakings competing for business if British undertakings lose business to competitors from within the EU who

are not prohibited by their national law and/or enforcement policy from using bribery or facilitation payments to obtain commercial contracts.

In order to eliminate distortions to competition and deflections of trade as among the EU Member States should there not be common principles common sanctions and a coordinated global or at least EU approach?

Should therefore there not be uniform anti-corruption legislation within the EU

Should there not also be uniform enforcement?

Should this obvious need be recognized, then especially given the relatively lawless Member States, this points towards the establishment of the Office of the European Public Prosecutor (EPPO).

Does this not then eventually lead to consideration of a European Criminal Court and a European code of criminal procedure in addition to the EPPO, already postulated by Professor André Klip of Maastricht University during the Strategic Seminar “Eurojust and the Lisbon Treaty: Towards More Effective Action”, Bruges 20-22 September 2010 (Reported in full in NJECL, Volume 2, Issue 1, pp 100 to 119 @ p 107).

Budapest, 7 May 2011

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