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TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

ON
A UNION POLICY AGAINST CORRUPTION

CONTENTS

Part I: INTRODUCTION

- I.1 THE NEED FOR A STRONGER EUROPEAN UNION POLICY AGAINST CORRUPTION
- I.2 THE DIMENSIONS OF CORRUPTION

Part II: FIGHTING CORRUPTION IN SPECIFIC POLICY AREAS

- II.1 CORRUPTION AND CRIMINAL LAW
- II.2 TAX DEDUCTIBILITY
- II.3 THE SINGLE MARKET AND OTHER INTERNAL POLICIES
 - II.3.1 Public Procurement Directives
 - II.3.2 Financial Transactions
 - II.3.2.a Company accounts
 - II.3.2.b Financial institutions
 - II.3.3 Other measures and policies
 - II.3.3.a Blacklisting
 - II.3.3.b Commitments against corruption
 - II.3.3.c Civil remedies
 - II.3.3.d Whistle blowers
- II.4 EXTERNAL ASSISTANCE AND CO-OPERATION
 - II.4.1 Preventing Corruption in Third Countries Benefiting from EC Assistance
 - II.4.2 Anti-corruption programmes
 - II.4.3 "Good governance" and anti-corruption clauses
- II.5 CO-OPERATION IN INTERNATIONAL FORA

ANNEX I INTERNATIONAL INITIATIVES

Part I: INTRODUCTION

I.1 THE NEED FOR A STRONGER EUROPEAN UNION POLICY AGAINST CORRUPTION

1. The purpose of this Communication is to set out the main elements of a comprehensive Union Policy against Corruption: The need to combat corruption at EU level has already been recognised and a number of initiatives have been taken which are relevant to the fight against corruption. However these do not address all concerns and were not part of an integrated approach. A number of developments point to the need to take further and more co-ordinated action:

- The **European Parliament** in its resolution on corruption of 15 December 1995 (rapporteur Mrs Salisch) called on the Commission as well the Council and Member States, to take action against corruption in a wide variety of areas. That report, which was not restricted to corruption affecting the ECs' financial interests, emphasised the threat posed by corruption, its links with organised crime and the need for a Union policy on corruption.
- The report of the High Level Group on Organised Crime commissioned by the **European Council** stresses the importance of enhancing the fight against corruption.
- The question of corruption is currently under discussion in a significant number of international fora including the **G7, OECD, Council of Europe, United Nations and the World Trade Organization** (see Annex 1). The outcome of these discussions will have implications for the Union and it is becoming increasingly clear that the Union has to act in a coordinated way if it is to safeguard its interests effectively.

2. The interests of the Union are affected by corruption as it

- undermines sound decision making,
- distorts competition and challenges principles of open and free markets, in particular the proper functioning of the internal market;
- damages the financial interests of the European Communities;
- adversely affects external policies in respect of a number of states receiving assistance; and
- is at variance with the transparent and open conduct of international trade.

3. **The Union has an interest in formulating a coherent strategy on corruption both within and outside its borders while fully respecting international legal rules on jurisdiction. Such a strategy should encompass international trade and competition, Community expenditure abroad, Community own resources, development co-operation policies and the pre-accession strategy.**

I.2 THE DIMENSIONS OF CORRUPTION

4. Corruption relates to any abuse of power or impropriety in the decision making process brought about by some undue inducement or benefit. This general notion of corruption may be considered in the context of a number of parameters.

- Different forms of misconduct may affect the decision making process. In legal terms they may fall under different categories e.g. abuse, fraud, trafficking in influence, bribes, commissions. Not all these kind of practices are necessarily criminal offences in every Member State. There is no single uniform definition of all the constituent elements of corruption. There are examples of practices which are not criminal offences in one Member State but which are still regarded as corrupt in other Member States, for example the provision of gifts where there is a tacit expectation that the person providing gifts may receive favourable treatment.
 - All acts of corruption involve at least two parties, the party who offers the bribe - the offence of **active corruption** - and the party who accepts the bribe - the offence of a **passive corruption**. Active corruption can involve either a private individual, or a legal entity (such as a company) offering bribes. Passive corruption can involve the acceptance of bribes by public officials, politicians, employees, etc. It can also include persons who do not make decisions themselves but have influence over the decision maker.
 - Corruption is not limited to the **public sector**. Also in the **private sector** a bribe may induce a person to act in breach of a contractual, administrative or ethical obligation.
 - Corruption can be international. Bribes can involve payments in other states. It may also involve payments, on the national territory, to foreign officials and officials of the EC or international organisations.
 - Certain policy areas may be viewed as particularly vulnerable to corruption. The legislator may wish to concentrate on these areas which have special characteristics. An example is the EU instrument dealing only with corruption which damages the ECs' financial interests. Clearly a specific Union level approach was required. Work in the OECD has concentrated on corruption in international business transactions because this type of corruption has particular implications for economic transactions involving OECD members.
5. All Member States criminalise the **bribery of their own public officials**¹ but not in a similar way.

¹ The following definitions of passive and active corruption of public officials have been used in the draft convention on the fight against corruption involving officials of the EC or officials of Member States of the European Union and give an indication of the constituent elements which are common to the 15 Member States.

"The deliberate action of an official who requests or receives, directly or through a third party, 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**.

The deliberate action of whosoever promises or gives, directly or through a third party, 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**."

- In some Member States if a bribe is paid on behalf of a company, then the company itself may be criminally liable while in other states the company will have no liability, only the natural persons involved will have committed an offence even if it was for the benefit of the company.
 - In certain states, elected officials, Ministers or members of Parliament will not be regarded as public officials and will not be subject to the same laws against corruption.
 - In some states paying a bribe to a person who has influence over an official is not necessarily an offence. The bribe must be paid to the official who makes the actual decision before any criminal offence is committed.
 - In some states the officials must act in breach of his official duties. So no crime may be committed when an official accepts a bribe to award a contract to a company which should have got the contract in any event.
6. At present in the majority of Member States it is not an offence to bribe a **foreign official or officials of international organisations** in any circumstances. Even in the four Member States who can prosecute the bribery of foreign officials, different approaches are taken.
- One approach is the application of **territoriality**. If corruption of a foreign official occurs on the territory of such a Member State both the active and passive parties are liable to criminal prosecution even if the bribe is not a criminal offence under the law of the foreign official's home. However no offence will have been committed in that Member State if the act of corruption occurs abroad
 - Some countries take a broad approach to the question of territoriality. They will take jurisdiction if any **element of the offence** has occurred on their territory. Other countries have a more strict approach. They require the substantive part of the offence must have been committed on their territory before they will take jurisdiction.
 - Another approach, which can be in addition to the territorial approach, is to establish jurisdiction on the basis of **nationality**. It is then an offence for a national of that Member State to bribe a foreign official even if no element of the offence is committed on its territory. The offence may be limited to the Member State's national who paid the bribe (active corruption only). There may be a requirement that the conduct is also a criminal offence under the law of the state of the foreign official who was bribed (dual criminality).
7. A significant number of Member States do have criminal offences involving **private sector corruption** but the differences in approach between Member States is even more marked than that found with the corruption of public officials.
8. This Communication is not advocating that there should be complete harmonisation of Member States' laws and policies on corruption. However there are certain key issues where a common approach at Union level is desirable.

PART II: FIGHTING CORRUPTION IN SPECIFIC POLICY AREAS

II.1 CORRUPTION AND CRIMINAL LAW

9. One of the essential elements in combating corruption is to ensure that it is criminalised. In addition to its deterrent and repressive effect, criminalising corruption represents a clear and unequivocal statement that those practices are not acceptable and are against the public interest. Ideally the criminal law within the Union should address the bribery of EC officials, the bribery of officials of other Member States, the bribery of officials from states outside the Union and private sector corruption.

10. In most Member States it is not an offence to bribe EC officials or officials of other Member States. This poses a particular problem where the EC budget is being affected. In 1995 Spain proposed what became the **First Protocol to the Convention on the protection of the European Communities' financial interests**². This Protocol makes active and passive corruption involving an official of the Community or any Member State a criminal offence in all Member States if it damages the ECs' financial interests. The Protocol is not yet in force. No target date for its implementation has been set. Its ratification is linked to the ratification of the Convention on the Protection of the financial interests of the Union.

11. Member States should commit themselves to ratifying and implementing the First Protocol by mid-1998.

12. The First Protocol was limited to corruption affecting the ECs' financial interests. Italy, therefore, proposed in 1996 a draft convention to ensure that active and passive corruption involving officials of EU institutions or officials of Member States will be criminalised even if the EU's financial interests are not affected. The substance of this draft convention was agreed upon quickly but there have been delays in its adoption.

13. Member States should commit themselves to adopting the draft convention on the fight against corruption involving officials of the EC or officials of Member States of the European Union as soon as possible with a view to its ratification by end 1998.

14. The initiatives taken so far do not address the corruption of officials from third countries even where Community funds are at risk. As regards **corruption outside the Union** a step forward would be to criminalise the active corruption of a foreign official. This would cover those persons within the EU who bribe officials of non Member States. Any proposal has to respect international rules on jurisdiction. Therefore it should address offences committed in part or in whole on the territory of a Member State and possibly also offences committed abroad by a national of a Member State. The question of dual criminality and the definition to be used requires further consideration.

² Signed on of 27/9/96

15. It is important that any agreement on criminalising bribery of foreign officials involves as many countries as possible. This would ensure that Union enterprises subject to a law against the bribery of foreign officials are not put at a disadvantage compared to their competitors from other countries. There were attempts in 1978/1979 to draw up a UN convention. The Council of Europe is at present drawing up a comprehensive convention which will address this issue. The OECD is also looking at this issue. A draft instrument is to be discussed at this year's OECD Ministerial. It is limited to corruption affecting international business transactions. This will be a valuable step forward. It would however not address all types of corruption notably those affecting EU external financial and technical assistance.

16. The Commission supports the adoption of a common position under Title VI of the TEU favouring the criminalisation of the bribery of foreign officials with that objective to be pursued in the Council of Europe/OECD.

17. **Private sector corruption** has not yet been addressed within the EU. It occurs when for example a person in a private economic entity is bribed to act in a way which is in breach of his or her duties. Some Member States already criminalise private corruption to some degree³. In other Member States civil or administrative measures are the only remedies applicable. Private corruption is being discussed in the Council of Europe. Because of its implications, notably for competition, the Union has an interest in combating this form of corruption.

18. The Commission is in favour of criminalising private corruption using Title VI of the TEU and, as a starting point, supports the adoption of a common position for the purposes of the negotiations currently underway in the Council of Europe.

19. Criminal sanctions alone are not a sufficient method of combating corruption. Only a modest number of corruption cases are successfully prosecuted. A wide variety of measures, such as improved transparency and socio-economic conditions, are also required. The following sections refer to some of the more relevant non-criminal measures against corruption.

II.2. TAX DEDUCTIBILITY

20. In calculating taxable business profits, it is normally permissible to deduct from the business receipts those expenses that are associated with earning the income. This is a

³ 7 Member States have provisions criminalising the bribery of the employees or agents of private sector companies. In some, although it is a criminal offence it is dealt with under the law on labour, unfair competition or unfair business practices. An example of this is the *Code du travail Français, article L.152-6* which makes it a criminal offence for a manager or employee to solicit or accept, directly or indirectly, without the knowledge and authorisation of his employer offers or promises of gifts, discounts or consideration to carry out or abstain from carrying out an act relating to his position or facilitated by his position. In others, the general criminal law applies to corruption in both the public and private sectors. For example section 1(1) of the U.K. Prevention of Corruption Act 1906 applies to all "agents" whether in the public or private sector.

widely-accepted principle of taxation. That said, not all current expenses are universally deductible. For example, some countries specifically disallow tax deductions for certain categories of expenditure, such as payments which are illegal under the laws of that country, or entertainment expenses.

21. Only a few Member States' tax codes provide for the outright disallowance of corrupt payments made to foreign officials. Apart from such a total disallowance, the main existing grounds for not allowing tax deductions in some countries include the nature of the payments themselves (gifts and entertainment, etc. may not be tax deductible, irrespective of whether their acceptance is corrupt or not); the difficulties in substantiating such payments; or their illegality (whether in the country of the payer, or in that of the recipient).

22. A number of Member States specifically permit tax deductions for the bribery of foreign officials if the bribes are recognised as being customary business practice in the territory in question. In such circumstances, the giving of the tax allowance may be made conditional upon the disclosure to the tax authorities of the identity of the recipient.

23. The two major EU trading partners have differing grounds for disallowing tax deductions for the bribery of foreign officials. The USA does not allow deductions for bribes paid to foreign officials if the payments constitute criminal offences under its Foreign Corrupt Practices Act of 1977. In Japan, however, bribes are disallowed for other reasons.

24. Taxation policy is classically regarded as being morally neutral. This view is not justified where allowances are granted for what is a criminal activity in the state in which the bribe is accepted. This can be seen as endorsing criminal acts committed in other jurisdictions. Moreover, tax allowances which may induce bribery have implications for competition, and may distort the single market and international trade. It also affects the economic and social development of third countries. The practice may engender scepticism in candidate and third countries as to real aims of the Union when EU enterprises are seen to be receiving tax allowances for bribing officials of these countries in the pursuit of business.

25. The criminalisation of the bribery of foreign officials will have some positive effect. In countries where payments are tax deductible as long as they were not illegal, the criminalisation will automatically put an end to tax deductibility. But it could be some time before such a criminalisation takes place. Even when it does, it will not necessarily resolve all the issues.

- A state might allow tax deductibility unless a criminal offence has been proved. In practice, a requirement for proof could mean very little improvement over the existing position.
- There will still be cases where a bribe paid to an official of a third country constitutes a criminal offence in that third country but not in the EU Member State. This could be so where a substantive part of the offence was committed abroad, or because the requirement for dual criminality has not been met.
- There are dubious practices which, for various reasons, will not be criminal offences. The absence of criminalisation does not remove the moral case for disallowing tax deductibility for such payments. The practical difficulties in doing so should however not be underestimated.

26. There are calls from a number of fora for the abolition of such tax deductibility which may favour bribery (UN, the Council of Europe, the OECD and the European Parliament). All 15 Member States have adopted the OECD recommendation that "countries which do not disallow the deductibility of bribes to foreign officials re-examine such treatment with the intention of denying this deductibility". It would appear therefore that all Member States are in principle in favour of disallowing such tax deductibility. Some Member States are, however, concerned that they will be at a competitive disadvantage if other major trading nations continue to allow it. Furthermore, it may be easier for an affected Member State to introduce changes in response to an EU instrument rather than to initiate reform on its own, at national level.

27. The Union has an interest in a common approach to the abolition of tax allowances that may induce corruption.

- The fact that corruption can distort competition is already recognised by international organisations such as the OECD and the Council of Europe, as well as being already reflected to some degree in the laws of certain Member States (e.g. German and Austrian legislation against unfair competition). The purpose of bribery in a business context is to gain an illicit advantage which distorts competition.
- State measures which effectively encourage the use of bribery by allowing the deductibility of bribes to foreign officials give exporting enterprises in those Member States an unfair advantage both over domestically-orientated competitors and over enterprises in Member States where no such deductibility is allowed. The external dimension of an action against bribery therefore has to be taken into account.
- The question of tax deductibility of bribes for foreign officials is not just relevant for competition and commerce. Clearly any policy measure relating to the bribery of foreign officials has implications for development co-operation and potentially affects developing countries.

28. The Union should also exploit to the full existing channels for the exchanges of information between taxation authorities so far as corrupt payments are concerned. In so far as a bribe may affect the tax liability of the recipient, the Mutual Assistance Directive⁴ provides a framework for the provision of information to the taxation authorities of the Member State in which the recipient of a bribe resides. Ensuring that the recipient is at least taxed on sums received would act as a deterrent to bribery, even if the taxation authorities may not pass the information on to the judicial authorities in the state concerned.

29. As an initial approach the Commission will raise the question of the tax deductibility for bribes with the Member States in the appropriate fora, with a view to reaching consensus to abolish such provisions in the framework of a joint concerted move.

⁴ (Directive 77/799/EEC)

II.3 THE SINGLE MARKET AND OTHER INTERNAL POLICIES

30. The free movement of goods and services is based on the principles of non-discrimination and free competition. Corruption runs against these principles. There is a case for examining the rules protecting the free movement in a number of areas to see whether specific measures aimed at combating corruption may be proposed.

II.3.1 Public Procurement Directives

31. These directives aim at assuring transparency and equality of access for public procurement.

The existing directives⁵ on public contracts under the heading 'Criteria for qualitative selection' lay down that any enterprise/supplier may be excluded from participation in the contract

- who has been convicted of an offence concerning his professional conduct by a judgement which has the force of res judicata;
- who has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify.

These provisions cover corruption.

32. The Commission Green Paper entitled "Public Procurement in the European Union: Exploring the Way Forward" of November 1996 recognises that fair, transparent and non-discriminatory award procedures, together with the possibility for suppliers to have recourse to national courts to assert their rights limit the risks of fraud and corruption. Even though the fight against corruption may not be the primary objective, any improvement in the existing situation regarding public procurement could usefully contribute to that fight. One particularly relevant idea put forward in the Green Paper is that of a statement of personal accountability by the responsible national official that the Union's public procurement rules have been followed.

33. Areas which could be explored further include blacklisting, anti-corruption commitments and civil remedies. There are provisions in the public procurement directives⁶ dealing with attestation and civil remedies but only in respect of the authority which awards the contract. In an international context it is very much in the Union's interest to promote greater transparency in the area of public procurement. This objective can be pursued in the OECD and the WTO where work is on going at present

34. Following the consultation launched by the Green Paper, the Commission will explore how the application of provisions in the area of public procurement relevant to the fight against corruption can be improved.

⁵ (93/36/EEC, 93/37/EEC and 92/50/EEC)

⁶ (Directive 92/13/EEC)

II.3.2 Financial Transactions

35. Corruption frequently involves a transfer in cash or kind. Cash transactions, particularly those involving large sums of money, can leave traces as the money moves from the body paying the bribe to the person receiving it. The bribe has to be sourced from somewhere to be transferred and finally the recipient has to deposit the bribe (e.g. a bank account) or convert it into goods, services or property. As bribes are generally illegal, any measure which allows the payment of bribes to become known serves as a preventive measure, deterring the payment of bribes, as well as facilitating the confiscation of illicit money paid to public officials.

II.3.2.a Company accounts

36. If a company uses its assets to pay bribes then these payments must be accounted for in some way. The existence of "slush funds" in companies are a key element in the corruption process. This may be countered to some degree by rules on the transparency of company accounts. Work in the Council of Europe has drawn attention to the importance of auditors and company accounts in combating corruption. The OECD has recommended that accounting requirements and practices should provide for adequate recording of relevant payments. In July 1996, the Commission presented a Green Paper on "the role, the position and the liability of the statutory auditor within the European Union". That paper also addresses the role of the auditor in detecting corruption in the company accounts. A series of follow-up actions, based on co-operation with the representative bodies of the accounting profession, will be undertaken, to be monitored by the Contact Committee on the Accounting Directives.

37. **Following the Green Paper consultative phase the Commission will present a Communication with concrete proposals on how the Accounting and Auditing Directives and their application can be made more effective in the fight against corruption.**

II.3.2.b Financial institutions

38. A bribe is normally routed at some stage in the transaction through a financial institution. The OECD has recommended that banking and financial institutions should be required to maintain adequate records for inspection and investigation in cases of corruption. The Second Banking Directive already requires every credit institution to have a sound administrative and accounting procedures and adequate internal control mechanisms. The question of access to those records by police or judicial authorities is normally determined by national law.

39. The Money Laundering Directive applies to the proceeds of drugs offences and to the proceeds of other offences designated by Member States. Banks and other financial institutions would have to keep and make available customer identification and transaction details for use as evidence in any investigation into money laundering and would also be obliged to report suspicious transactions. The Commission has already proposed a "Second Protocol" to the

Convention on the Protection of financial interests of the Community which makes it a criminal offence to launder the proceeds of corruption in relation to the EC budget.

40. Member States should establish as a criminal offence the laundering of the proceeds of corruption. The Commission has already formally proposed this as regards corruption affecting the Communities financial interests in the draft "Second Protocol".

II.3.3 Other measures and policies

41. In any particular sector such as agriculture, structural funds, the transit regime, specific measures may contribute to combat corruption. This section explores the application of certain anti-corruption measures which might be of value in various areas where Community policies involve large scale expenditure with a potential for corruption or other forms of abuse.

II.3.3.a Blacklisting

42. Blacklisting provides a mechanism to recognise an undertaking which has been convicted of having committed some infringement. In this regard it may also be envisaged to identify companies who represent a substantiated risk of non-reliability as regards corruption. Blacklisting can be used to prevent such undertakings from competing for or being awarded further contracts/subventions or it may be used merely to alert people to possible risks in dealing with such an undertaking.

43. A Council Regulation⁷ provides for measures against blacklisted operators, such as exclusion from entitlements under the FEOGA guarantee section. This Regulation deals with irregularities in respect of Community provisions. It does not, however, cover every form of corruption committed in connection with FEOGA funds. Furthermore nothing prevents a particular company, which has previously been excluded under this Regulation because of corrupt practices from applying for a contract or entitlement which is funded by another part of the Community budget.

44. The provisions in the directives on public contracts under the heading 'Criteria for qualitative selection' lay down that an enterprise may be excluded from participation in a contract in the case of certain infringements⁸. These provisions cover corruption. They apply equally to contracts awarded by the Commission or its services.

45. Establishing some form of comprehensive blacklisting system applicable to areas where Community finances are at risk could be considered. This would include the area of external assistance. The use of that list would vary from sector to sector. In some cases it may be appropriate for a blacklisted enterprise to be automatically excluded from certain benefits for a

⁷(Council reg. 1469/95, Commission reg. 745/96)

⁸The Criteria for qualitative selection lay down that any enterprise may be excluded from participation in the contract

- who has been convicted of an offence concerning his professional conduct by a judgment which has the force of res judicata;
- who has been guilty of grave professional misconduct proven by any means which the contracting authorities can justify. (See also section II.3.1 above.)

set period. In other cases such as public procurement, blacklisting would be for information purposes. The deciding authority, having been alerted to the past record, might have the option to determine what action should be taken. Alternatively a register of legal and natural persons who have been blacklisted could be established so that national and Commission services could be alerted to the dangers of dealing with those particular operators. Data bases could identify who is behind firms and be readily accessible.

46. An important consideration to be taken into account when exploring the possibility of establishing a system of blacklisting would be the need to respect data protection principles as well as the principles⁹ of proportionality, subsidiarity and the rights of the individual.

II.3.3.b Commitments against corruption

47. All competitors for a specific project might be required to give a written undertaking that they will not use bribery to obtain the contract. This commitment discourages bribery and can leave the enterprise open to a civil action for damages or a contractual fine. Another approach is to restrict certain tenders to enterprises who have adopted special codes of conduct or practices against the use of corruption in seeking to obtain contracts. Caution would have to be exercised with this latter approach to ensure that it does not unduly restrict fair competition for tenders.

48. The Commission will work on a scheme of blacklisting and commitments against corruption applicable to areas where Community finances are at risk. It would allow for an inter-sectorial exchange of information on persons and enterprises who have engaged in corruption while respecting data protection requirements.

II.3.3.c Civil remedies

49. A criminal or administrative sanction does not compensate the undertaking who was not awarded a contract because of corrupt practices by a competitor. A civil action would provide some remedy for such loss. It would also allow an injured competitor to take action against a corrupt competitor on his own initiative and as such might reduce the need for administrative action. It would be self policing.

50. Although not specifically aimed at corruption, the possibility of civil remedies does exist under the Public Procurement Directives for an enterprise which has lost out on a contract due to an irregularity in the procedures followed in awarding the contract. However such action is limited to the public procurement area and lies against the body awarding the contract and not against the competitor who actually paid the bribe. A more general approach for civil action by enterprises against competitors who have paid bribes is being examined by the Council of Europe.

⁹ Directive 95/46/EC

51. At an appropriate stage the Commission will propose the adoption of a common position on the question of civil remedies against corruption in the context of the discussions going on in the Council of Europe.

II.3.3.d. Whistle Blowers

52. Whistle blowers are employees working for corrupt enterprises who alert the authorities to the fact that their firm is engaged in corrupt practices. Such "whistle blowers" are often left without the appropriate legal protection and can be victimised for their actions. The report entitled "Whistleblowing, fraud and the European Union" published in February 1996 by Public Concern at Work (London) called for by the European Parliament and sponsored by the Commission addresses many of the issues involved. The Commission is carrying out a study on national legislation and practices regarding the individual rights of workers to be consulted on internal company matters, including the worker's rights to be protected against any prejudice arising from a legitimate complaint put forward by a worker to a public authority.

53. Member States should review and, where appropriate, amend their existing law to ensure that individuals who report instances of corruption are adequately protected from victimisation.

II.4 EXTERNAL ASSISTANCE AND CO-OPERATION

II.4.1 Preventing Corruption in Third Countries Benefiting from EC Assistance

54. The Commission has included the fight against corruption in its external co-operation and assistance policies. Funding is provided for a range of projects which relate to the fight against corruption directly (regional seminars) or indirectly (improving the judicial structure and administrative transparency). Initiatives are taken to combat corruption such as the organisation of seminars on rules of origin and workshops aimed at improving financial management and the fight against fraud.

55. The fight against corruption requires a balanced approach. The conditionality linked to the fight against fraud and corruption must be part of a coherent development strategy. There is a case for greater coherence between the Union's anti-corruption policies taking account of regional differences.

56. Any strategy should:

- support the creation of appropriate legalisation and control mechanisms and institutions by way of providing the necessary technical assistance,

- improve the functioning and transparency of public procurement,
- take performance regarding the management of public resources into account when deciding on initiatives based on financing from Community funds,
- support the improvement of the socio-economic environment.

57. The Commission will establish a coherent anti-corruption strategy in the area of its co-operation with Third countries which benefit from EC assistance or have concluded co-operation or assistance agreements with the EC.

The Commission will further its support for the prevention of corruption, in particular by promoting conditions favouring transparency, good governance and an independent judiciary and by providing technical assistance for establishing appropriate legislation and efficient procurement and control mechanisms.

The Commission will review its procurement and contract rules in the field of foreign aid with a view to introducing more effective measures against corruption. It will seek to harmonise rules applied in different groups of countries. This revision will include the question of sanctions against firms which engage in corrupt practices.

II.4.2. Anti-Corruption Programmes

58. Certain candidate countries for EU membership in Central and Eastern Europe face problems with corruption during the transition to full market economies. It is important that the Union helps these countries to overcome these problems. It affects their own reform programme and furthermore corrupt practices may spill over to neighbouring states in the context of an enlarged Union.

59. In addition to concerns about the effect of corruption on third countries themselves, the Union, as a major provider of aid, has to be concerned if EU financial support is diverted from its intended purpose due to corruption. The European Parliament, the Court of Auditors and Member States are keen to see better management control and cost-effectiveness. This issue is currently discussed at the Personal Representatives Group on SEM 2000. The recent reorientation of the PHARE programme puts emphasis on the fight against irregularities and fraud.

60. Technical assistance for containing corruption in the public sector in Eastern Europe has already been provided to a limited degree under the PHARE programme (e.g. the joint Council of Europe/ EU OCTOPUS programme on corruption and organised crime in Central and Eastern Europe). The joint SIGMA project with the OECD which addresses the problem of public procurement is also relevant. The Newly Independent States have their own problems with corruption which are affecting their process of economic and democratic transition. A special initiative under the TACIS programme could be of relevance.

61. In the case of Mediterranean third countries, there is a movement towards free trade and strong links with the single market. The 27 Euromed partners specifically committed themselves in the Barcelona Declaration of 28 November 1995 to fight jointly against corruption. Moreover the Council MEDA regulation¹⁰, which establishes co-operation procedures, defines strict and precise standards for the transparent management of financial and technical assistance to Mediterranean third countries.

62. Special anti-corruption programmes should be established, particularly in the applicant countries in Central and Eastern Europe in line with the protocols to the Europe Agreements on opening of programmes and in connection with the envisaged Accession Partnership established around a national programme for the implementation of the acquis..

II.4.3 "Good Governance" and anti-corruption clauses

63. The Lomé IV Convention, as revised by the agreement signed in Mauritius on 4 November 1995 now includes "good governance" as one of its basic principles. A more widespread application of this principle is required if the Union is to pursue a comprehensive strategy.

64. The principle of "good governance" should be considered for inclusion in all international agreements of assistance, co-operation and development.

65. The inclusion of anti corruption clauses could be envisaged in all specific contracts which are aid funded. For example in March 1990 it was agreed with the ACP States to include specific clauses aimed at fighting corruption in the general conditions for all contracts financed through the European Development Fund. The Commission is now reviewing such clauses to see how their effectiveness can be improved.

This particular issue is receiving attention at an international level. The World Bank has strengthened its approach in this area and the Development Aid Committee of the OECD made recommendations in 1996 on the inclusion of anti-corruption clauses in aid funded contracts.

66. The Commission, in co-operation with the OECD, the World Bank and remaining multilateral donors, will ensure that anti corruption clauses are included in aid funded contracts.

¹⁰ (n° 1488/96)

II.5 CO-OPERATION IN INTERNATIONAL FORA

67. If the EU is to adopt strong anti-corruption measures which may have implications for trade, it is in the interest of the EU that action be agreed at the widest possible level in order to achieve synergy benefits and to avoid a competitive disadvantage.

The EU must also seek to ensure compatibility between internal rules aimed primarily at the single market and external policies which aim notably at strengthening the open multilateral trading system. The absence of such compatibility could be costly for trade and industry.

68. The issue of corruption and transparency arises regularly in international organisations such as the G7, World Trade Organisation (WTO), the United Nations, the OECD and the Council of Europe. It is also high on the agenda of the EU's major trading partners, particularly the USA. A UN declaration on "Corruption and Bribery in Transnational Commercial Activities" was adopted in December 1996, which calls on Member States to criminalise bribery (domestic or transnational) and prohibit tax deductibility of bribes. A Model Procurement Law of the United Nations Commission of International Trade Law (UNCITRAL) has been developed.

69. The new WTO Government Procurement Agreement (GPA) entered into force on 1 January 1996. As the GPA is "plurilateral", not all WTO members are signatories. At this stage, it does not include certain key markets in Asia, the Americas, Eastern and Central Europe and Africa.

At their Singapore meeting of December 1996, WTO Ministers agreed to establish a working group on the subject of transparency in government procurement practices with a view to developing elements for inclusion in an appropriate agreement.

70. The Commission, will also press for an ambitious and co-ordinated policy line to combat corruption in all appropriate international fora including the G-7 in Denver in June 1997.

ANNEX 1

INTERNATIONAL INITIATIVES

- The **G7** heads of State in Lyon on 28 June 1996 stated that:
"... we are resolved to combat corruption in international business transactions, which is detrimental to transparency and fairness and imposes heavy economic and political costs. In keeping with the commitment of OECD Ministers to criminalise such bribery in an effective and co-ordinated manner, we urge that the OECD further examine the modalities and appropriate international instruments to facilitate criminalisation and consider proposals for action in 1997."

The G7 Finance Ministers on 27 April 1997 made reference to question of bribery and corruption and the issue is likely to come up again at the Denver G7 /P 8 summit in June 1997.

- The **OECD** Ministerial Council on 11 April 1996 adopted a recommendation against tax deductibility for bribes to foreign government officials. This was in addition to recommendations on corruption adopted earlier in May 1994. It also asked that a report and proposals on the criminalisation of the bribery of foreign officials in line with the G7/P8 summit statement in Lyon be submitted to it in 1997. The issue is on the agenda of the May 1997 Ministerial Council.

- A **World Trade Organisation** agreement on Government Procurement entered into force on 1 January 1996 laying down various provisions on transparency, openness and legal challenge which will help alleviate the problem of corruption in the area of public procurement. This agreement, while relevant for key trading partners of the Community does not apply, however, to all WTO countries. QUAD countries have therefore tried to increase compliance at the WTO level. At the Singapore Ministerial Conference December 1996, negotiations were launched on a new interim agreement on transparency, openness and due process (legal challenge). Following these efforts, further work will be undertaken in the WTO to develop an agreement on transparency.

- The **Council of Europe** has established a special multidisciplinary group on corruption (GMC). A detailed action programme has been adopted. The group is now discussing draft instruments in the civil, penal and administrative areas. The theme of the next Justice Ministerial meeting in Prague, June 1997 is Corruption and Organised Crime.

- The **United Nations** have addressed the issue of corruption on a number of occasions. Most recently, in December 1996 as part of a resolution on Action against Corruption, the General Assembly adopted an International Code of Conduct for Public Officials. They also adopted a declaration against Corruption and Bribery in International Commercial Transactions which addresses inter alia the question of bribery of foreign officials, tax deductible bribes, extraterritorial jurisdiction and bank secrecy.

- The **World Bank** in August 1996 introduced specific anti-corruption provisions in their procurement guidelines which apply to all goods and services financed from bank funds. Later in 1996 a decision was made that the Bank should treat corruption as a development issue and internal groups were established to review the situation under a range of headings.

- The **International Monetary Fund** has recently stressed the importance of fighting corruption and has focused on the promotion of good governance.
- In March 1996 the **Organisation of American States (OAS)** adopted a convention against corruption.
- The Transatlantic Agenda and the **Joint EU-US Action Plan** includes a specific commitment to combating corruption and bribery. The US and European business communities at a meeting of the **Transatlantic business dialogue** in Chicago 8-9 November 1996 included a reference in their declaration deploring bribery and corruption and stating that the issue would remain on their agenda for 1997.
- In May 1996 the **International Chamber of Commerce** strengthened its rules of conduct on bribery in international business transactions and urged greater action at national and international level against corruption.
- **Transparency International**, a non-governmental organisation dedicated to curbing corruption in international business transactions, has presented a paper advocating that action in a number of areas should be taken by the EU against corruption