

GIBSON DUNN



White Collar Defense & Investigations Update

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EU Adopts Anti-Corruption Directive

The Directive establishes an EU-wide framework for corruption-related criminal offenses, harmonizing the current fragmented legal framework across the Member States, which has created certain loopholes and, at times, hindered coherent and effective enforcement across the EU.

On April 21, 2026, following a protracted legislative process, the Council of the European Union adopted a directive on combating corruption (the Directive), a significant development in the EU's efforts to strengthen and further harmonize its anti-corruption regime. First proposed by the European Commission in May 2023 amid a series of corruption scandals involving EU institutions, the Directive establishes an EU-wide framework for corruption-related criminal offenses, harmonizing the current fragmented legal framework across the Member States, which has created certain loopholes and, at times, hindered coherent and effective enforcement across the EU.

Among other things, the Directive:

- harmonizes the definition of nine corruption offenses across the EU, thereby facilitating cross-border enforcement in the EU;
- introduces a standalone offense of trading in influence, criminalizing the purchase of undue influence over a public official that can create heightened risk for companies that engage lobbyists, political consultants, and similar intermediaries;

- requires Member States to establish a form of corporate liability, including in certain “failure to prevent” scenarios, which will represent a significant change in at least some jurisdictions;
- mandates substantial penalties for legal entities, including fines of up to 5% of worldwide turnover, materially altering the enforcement landscape in some Member States; and
- permits Member States to assert jurisdiction over certain extraterritorial offenses, creating potential exposure for companies headquartered outside the EU but with operations or business interests within the EU, even where the underlying conduct occurred elsewhere.

In light of these developments, companies should consider taking steps now to assess their compliance frameworks in their EU-based entities. In particular, they should scrutinize relationships with lobbyists, political consultants, and similar third parties in view of the new trading in influence offense, and ensure that related contracting, due diligence, monitoring, and training measures are robust. Companies should also confirm that relevant personnel in Europe receive appropriate anti-corruption training and that compliance programs are effective across their European operations.

Once formally published, Member States will have 24 months to transpose the criminal law provisions into national law and 36 months to implement the preventive measures. The extent to which the Directive will require changes to existing national legal frameworks will vary across Member States. In addition, because the Directive sets minimum standards, Member States remain free to adopt more stringent rules, meaning a degree of divergence in national anti-corruption regimes is likely to persist.

Harmonization of Criminal Offenses

The Directive harmonizes the definition of nine corruption offenses across the EU, including bribery in the public and private sectors, misappropriation, unlawful exercise of public functions, obstruction of justice, and enrichment derived from corruption offenses.

Notably, it also introduces a standalone offense of trading in influence. That offense targets arrangements in which a person intentionally purchases improper influence over public officials to obtain an undue advantage. Trading in influence as a standalone offense will be new at least in some Member States, including Germany, and - create heightened risk for companies that retain lobbyists, consultants, or other advisers with political or government connections. Although the Directive makes clear that legitimate representation aimed at influencing public decision-making should fall outside the scope of the offense where it does not involve an undue exchange of advantages, the line between lawful advocacy and criminal conduct may prove difficult to draw in practice. The key question will often be whether the intermediary is engaged because of his subject-matter expertise or because of his privileged access to a decision-maker to secure an improper advantage.

The Directive also introduces a single overarching definition of “public official”, covering national officials as well as staff of EU institutions, international organizations and courts.

Corporate Liability

The Directive requires Member States to establish a regime of corporate liability for corruption offenses. This will represent a significant change at least for some Member States.

Under the Directive's regime, legal entities may be held liable where an offense is committed for their benefit by a person in a leading position, whether acting individually or as part of a governing body, on the basis of authority to represent the entity, take decisions on its behalf, or exercise control within it.

The Directive also introduces a "failure to prevent" model of liability. Under this approach, a company may be held liable where a corruption offense is committed for its benefit and the company failed to put in place appropriate preventive measures.

Significant Penalties

The Directive also requires Member States to establish significant penalties for both legal entities and individuals, in some cases exceeding those currently available under existing national regimes, including the German regime. For legal entities, Member States must provide for maximum penalties of at least 3% to 5% of worldwide turnover, or fixed amounts ranging from EUR 24 million (approximately USD 28 million) to EUR 40 million (approximately USD 47 million), depending on the offense. For individuals, the Directive requires maximum terms of imprisonment of at least three to five years, again depending on the offense.

Importantly, the Directive expressly recognizes a number of mitigating factors that may support reduced penalties. These include cooperation with the authorities during an investigation, the implementation of effective internal controls and compliance programs before or after the misconduct, and voluntary disclosure and remediation upon discovery of the offense. In doing so, the Directive formally acknowledges that an effective corporate compliance program may serve as a mitigating factor in enforcement.

Jurisdiction

Member States are required to establish jurisdiction over offenses committed within their territory and by their nationals. The Directive makes clear that territorial jurisdiction may also extend to misconduct carried out through information systems used within a Member State, regardless of whether the underlying technology infrastructure is physically located there.

That reference to information systems may prove significant for companies that rely on cloud-based or centralized IT infrastructure, as it suggests that a digital nexus alone could, in some circumstances, be sufficient to support jurisdiction in a particular Member State.

The Directive also permits Member States to assert jurisdiction over certain conduct occurring outside their territory, including where the offender is a habitual resident, the offense is committed against one of their nationals, or the conduct benefits a legal person established in that Member State. As a result, companies headquartered outside the EU, but with operations or commercial interests in the EU, could face enforcement exposure in a Member State even where the underlying conduct occurred elsewhere.

Recommendations

For companies, the Directive is expected to bring greater consistency and legal alignment across the EU, providing increased clarity for businesses operating in multiple Member States. At the same time, by harmonizing key corruption offenses, raising applicable penalties, and strengthening cooperation mechanisms among enforcement authorities, the Directive is likely to facilitate cross-border enforcement and may lead to a greater number of multi-jurisdictional investigations involving several national authorities.

In light of these developments, companies should review their anti-corruption compliance frameworks now. In particular, they should carefully assess engagements with lobbyists, political consultants, and similar third parties in view of the new trading in influence offense, and ensure that related contracting, due diligence, oversight, and training measures are robust. Companies should also confirm that employees in the EU receive appropriate anti-corruption training tailored to the evolving EU enforcement landscape. Now there is also an opportunity to streamline and align anti-bribery policies issued for various EU member states by referring to the new set of definitions of the nine corruption offenses that will now become relevant across the entire territory of the EU.

The following Gibson Dunn lawyers prepared this update: Katharina Humphrey, Alena Anisenco, Karla Böltz, and Anna Helmer.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. If you wish to discuss any of the matters set out above, please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of Gibson Dunn's White Collar Defense & Investigations practice group, or the authors:

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