# EUROPEAN PARLIAMENT

*2004* *2009*

*Committee on Civil Liberties, Justice and Home Affairs*

PROVISIONAL
**2006/0023(CNS)**

12.9.2006

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# DRAFT REPORT

on the proposal for a Council decision on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption (COM(2006)0082 – C6-0105/2006 – 2006/0023(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Giusto Catania

### *Symbols for procedures*

| | |
|---|---|
| * | Consultation procedure<br>*majority of the votes cast* |
| **I | Cooperation procedure (first reading)<br>*majority of the votes cast* |
| **II | Cooperation procedure (second reading)<br>*majority of the votes cast, to approve the common position*<br>*majority of Parliament's component Members, to reject or amend the common position* |
| *** | Assent procedure<br>*majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty* |
| ***I | Codecision procedure (first reading)<br>*majority of the votes cast* |
| ***II | Codecision procedure (second reading)<br>*majority of the votes cast, to approve the common position*<br>*majority of Parliament's component Members, to reject or amend the common position* |
| ***III | Codecision procedure (third reading)<br>*majority of the votes cast, to approve the joint text* |

(The type of procedure depends on the legal basis proposed by the Commission.)

### *Amendments to a legislative text*

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption (COM(2006)0082 – C6-0105/2006 – 2006/0023(CNS))**

**(Consultation procedure)**

*The European Parliament*,

– having regard to the proposal for a Council decision (COM(2006)0082),

– having regard to the UN Convention against Corruption of 31 October 2003,

– having regard to the EC Treaty, and in particular Articles 47(2), 57(2), 95, 107(5), 179, 181a, 190(5), 195(4), 199, 207(3), 218(2), 223 final paragraph, 224 penultimate paragraph, 225a penultimate paragraph, 245(2), 248(4) final paragraph, 255(2), 255(3), 260 second paragraph, 264 second paragraph, 266 final paragraph, 279, 280, 283 and 300(2) first subparagraph thereof,

– having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0105/2006),

– having regard to Rules 51 and 83(7) of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgetary Control (A6-0000/2006),

1. Approves the proposal for a Council decision as amended and approves conclusion of the agreement;

2. Instructs its President to forward its position to the Council and Commission.

| Text proposed by the Commission | Amendments by Parliament |
|---|---|
| | Amendment 1<br>Recital 4 a (new) |
| | ***(4a) It would be desirable for all Member States that have not yet done so to accede to the Convention.*** |

## EXPLANATORY STATEMENT

### Introduction

Corruption undermines the human rights, the democratic institutions, the rule of law, the judicial system. It allows organized crime to flourish.

Corruption is detrimental to the transparent management of public affairs. It undermines confidence in and the credibility of democratic institutions. It is often used as a means of influencing or speeding up political and administrative decision-making. It therefore thrives on excessive bureaucracy and the lack of linearity of decision-making processes used by public administrations.

It hurts the poor harder and has devastating effect on development: corruption leads to reduced aid effectiveness, malnutrition, deficient health and education systems, greater business risk and less foreign direct investment.

For these reasons, fighting corruption has become in the last years one of the highest political priorities of the EU, both in its internal affairs and in its relations with candidate and third countries.

### The United Nations Convention against Corruption (UNCAC)

The UN General Assembly decided in 2000[1] to establish an ad hoc committee to draw up an international legal instrument against corruption which would be independent of the UN Convention against Transnational Organised Crime. The ad hoc committee met in Vienna and negotiated the Convention between January 2002 and October 2003. The Commission represented the European Community's interests and considers that the objectives set by the Council have been attained. The text of the UNCAC was adopted in October 2003. The treaty entered into force in December, 2005, following the 30th ratification.

On 15 September 2005 the European Commission and the Council Presidency signed the Convention on behalf of the European Community. All the current EU member states and acceding states have signed the convention, with the exception of Sweden, Slovenia and Estonia. Ratification has already been received from: Austria, Finland, France, Hungary, Latvia, Slovakia, Spain, UK and from the acceding country Romania.

The convention is a further building block in a world strategy for combating organised crime and dovetails perfectly with the United Nations Convention against Transnational Organised Crime. It is therefore of decisive importance, with a view to ensuring effective action to eliminate organised crime, for both conventions to be ratified by all the Member States as well as by the EU.

[1] Resolution 55/61.

The EU's signing of the UNCAC and the wish to approve its final conclusion are fully in keeping with the furtherance of the policy of establishing a common area of freedom, security and justice.

It should be remembered that Article 29(2) of the TEU (Maastricht, 7 February 1992) includes corruption among the types of crime that need to be prevented and combated with a view to implementing the common area.

Furthermore, the formulation of an overall policy against corruption was highlighted as a priority goal in the Action plan to combat organised crime adopted by the Council on 28 April 1997.

**Content of the Convention**

The Convention applies to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences.

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. The Convention (Articles 5 to 14) contains measures such as:

- codes of conduct for public officials, measures to secure the independence of the judiciary,
- objective criteria for the recruitment and promotion of civil servants, for public procurement,
- promotion of the transparency and accountability in the management of public finances and in the private sector,
- participation of civil society.

The Articles 15 to 42 concern the creation of criminal offences in relation to corruption.

The Articles 43 to 50 concern international co-operation and provide for an effective system of mutual legal assistance. At present, many anti-corruption causes are abandoned because the lack of cooperation between countries makes it impossible to follow the money trail. In this aspect, the convention is ground-breaking in including for the first time the concept of international cooperation in the recovery of stolen assets. The States Parties are to cooperate in criminal matters in a variety of situations described by the Convention. The States Parties can also conduct joint investigations and make use of special investigative techniques such as electronic surveillance.

The Articles 51 to 59 contain measures to promote the recovery of assets. The return of assets is a fundamental principle of the Convention. The convention raises hopes that funds transferred abroad by corrupt leaders who have plundered the national wealth can be brought back to the countries from where they were looted. This is a particularly important issue for many developing countries.

Financial institutions are encouraged to verify the identity of owners of high-value accounts, in order to make it more difficult for corrupt officials to hide their illicit gains.

The convention establishes the right of people who have suffered damage from the corruption

to initiate legal proceedings against the responsible parties.

Finally, a conference of the States Parties is established to improve the cooperation between States Parties, to achieve the objectives set forth in the Convention and to promote and review its implementation.

**The proposed Council Decision**

The draft Council Decision provides for the conclusion, on behalf of the European Community, of the Convention. The proposal approves the Convention and authorises the President of the Council to designate a person to deposit the instrument of ratification and to make a declaration of Community competence.

The text of the declaration is set out in Annex II to the Decision. It notes that the Community has exclusive competence in relation to its own public administration, to develop standards of conduct for its officials and prevent corruption. The declaration also states that the Community has competence in relation to the internal market and for this purpose has adopted measures to ensure equal access to the award of public contracts and markets, to provide for standards in accounting and auditing and measures on money-laundering.

**The Rapporteur's view**

The UNCAC is not another declaration on corruption; rather, it is a document that deals explicitly with critical aspects of the corruption issue. In our globalised world, it is the first truly global instrument designed to tackle corruption.

Yet, the Convention is the result of difficult negotiations and it is not perfect. Despite this, it is essential for it to be finally adopted and implemented.

The rapporteur regrets the fact that the UNCAC does not satisfactorily cover issues such as the criminalisation of passive bribery of international public officials and the effective monitoring of the convention.
However, the convention's potential is considerable and it is a good start. At this stage, a prompt ratification by the EU is important because it will ensure its participation in the conference which will meet to decide on the implementation of the UNCAC.

Corruption undermines democratic principles, and the Convention can be a means of combating transnational organised crime, which is why all the instruments provided for in the Treaties need to be brought to bear with a view to making approval of the Convention a significant factor in assessing the efficiency of public administration.

The rapporteur considers that, with a view to ensuring the effectiveness of the instruments provided for in the Convention, all necessary measures should be taken to ensure that public administrations operate in a transparent manner and to step up cooperation between Member States in all areas of the fight against corruption, including prevention and enforcement.

Furthermore, a body made up of lawyers, legal academics and recognised experts should be set up within the Commission, to stand as guarantor of the transparency and impartiality of the EU administration and ensure that proper checks are made on the assets of employees of the Community institutions, with due respect for the principle of confidentiality.

Similar bodies could be set up at national and decentralised levels of public administrations. They could assess information and data on failure to fulfil the duty of impartiality and possible revenue losses caused by public officials.

Public employees who are the subject of legal proceedings could be transferred to another post, to guard against any repeat of the alleged offence. If, however, anyone is convicted of an offence prejudicial to public administration, it should be possible to dismiss them.

The recovery of assets is one of the main stated aims of the UNCAC (Article 1(b), as reiterated in Article 51). Special attention should therefore be paid to checking on the assets of public officials.

The rapporteur considers that attention should be focused not just on the employees of all the EU institutions, but also on political circles. The assets of MEPs and Members of the Commission should also be made public.

Lastly, the rapporteur takes the view that companies engaging in corrupt practices should be blacklisted, whatever country they come from.

The Convention is an outstanding achievement that has already received great support, given the large number of countries that have already signed. But the Convention's impact will depend on its effective implementation. The diplomatic undertakings must be transformed into real action and an anti-corruption culture must be created at all levels of the society.

Monitoring will also be essential. Therefore, the EU should find a solution: either to participate in the GRECO, or to install an EU evaluation mechanism, based on peer reviews.

The rapporteur calls on the member States and the European Union institutions to confirm their commitment in the fight against corruption, in the name of honesty, respect for the rule of law, accountability and transparency, for a better world for all.