

Editorial

Corruption – Abroad and at Home

The OECD Member States recently reached a common position on a binding instrument on making corruption abroad an offence. On 21 May the European Commission adopted a Communication on combating corruption, and the Council have already adopted a protocol and will soon adopt a convention making bribery affecting the EU budget a criminal offence. The Council of Europe is discussing the introduction of legislation concerning civil actions by enterprises against competitors awarded a contract through the use of corruption. Several European countries have recently reformed their corruption laws or are presently in the process of doing so. The reforms seem to bring about broader statutory offences with limited defences, covering both the private and public sectors.

The United States has had a long battle with the other major industrialised countries in the OECD. US business has claimed that the Foreign Corrupt Practices Act from the 1980s has put it at a disadvantage. The reluctance, and contrived justifications, offered by the ministries of industry or economy in Japan or Europe may support that claim. Sweden, followed by Norway, were the only OECD countries to support a binding instrument on criminalising corruption abroad. In fact, most countries still allow bribes abroad as a legitimate business expense for the purpose of tax deduction and have no requirements as to financial reporting.

The UK Government first claimed that it could not risk harming British business abroad. Then without much conviction, the official position was that English criminal law was very restrictive and extended to bribery abroad and did not need reform. The recent consultation paper by the English Law Commission has clearly demonstrated that the English corruption laws are in a mess and proposes a complete reform, including an extension of the territorial jurisdiction compared with the present law. The Law Commission has, however, avoided any discussion of bribery abroad: its concern remains corruption with its primary effects in the UK. The recent proposals from the Nolan Committee about a corruption offence for Members of Parliament are, as could be expected, concerned with UK MPs. Without the OECD initiative, UK business would remain free to bribe MPs in other countries.

The Communication by the European Commission concerns a broad range of actions, including criminalising corruption, dismantling tax deductibility for bribes, tighter rules on public procurement, more effective company auditing, blacklisting and criminalising laundering of bribes. The focus is on the internal market but the Communication also includes an anticorruption strategy towards developing and transition countries.

The legal position in the EU is as follows. All Member States criminalise corruption involving their own officials acting within their own countries. A special protocol has been signed in the Council on criminalising EU and

Member State officials involved in bribery affecting the EU budget. A Convention criminalising EU and Member States officials involved in corruption with EU or national budgets throughout the Union is making progress in Council.

The Commission suggests two common positions on corruption. One concerns criminalisation of foreign officials by EU enterprises, and the other will suggest criminalisation of private sector corruption. The Commission also raises the issue of tax deductibility for bribes with a view to abolish such provisions.

The Commission will present another Communication with proposals on amendments to the Accounting and Auditing Directives to make them more effective tools in the fight against corruption. Clear rules on transparency are mentioned as an example of the reforms that will be proposed. The Commission will also propose a Common Position on civil remedies to a wronged company in the context of the Council of Europe discussions.

The anti-corruption strategy for developing and transition countries includes support for transparency, good governance and an independent judiciary. The Commission promises assistance in improving legislation and procurement and control mechanisms. One more direct measure is a review of procurement and contract rules for foreign aid. The candidates for membership in central and eastern Europe are particularly targeted.

Corruption distorts both the internal market and international trade. Corruption abroad cannot be dealt with as a method of export promotion. The OECD and EU measures are to welcomed. It is shameful that the measures met with such strong opposition and that it took so long to reach agreement on the basic issues.

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