

# Second Questionnaire in the context of the Commission proposal for a Directive on combating corruption by criminal law

Fields marked with \* are mandatory.

## **Second questionnaire in the context of the Commission proposal for a Directive on combating corruption by criminal law**

### **Introduction**

The Commission intends to adopt a proposal for a Directive on combating corruption by criminal law in 2023. The proposal would aim at setting minimum rules on the definitions and sanctions of corruption offences. The Commission is also considering including minimum rules on limitation periods, as is the case in Directive 2017/1371 on the protection of the EU's financial interests by criminal law. The aim of this questionnaire is to inform and guide the Commission in this process.

**Given the time constraints, we kindly ask you to reply to us as soon as possible but no later than 8 February**

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### **Personal Information**

\* Please indicate the EU Member State you represent

PT - Portugal

\* First Name

António

\* Last Name

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\* Function

Legal Adviser

\* Your contact information

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**Question 1**

Could you please provide in the table below the legal provisions in your national legislation covering, in full or partially, the following criminal offences:

[The reference of the offences categories is the United Nations Convention Against Corruption, to which the EU and its member states are parties.]

	Reference and text of national provision(s)
Criminal Code	
Chapter IV	
Crimes committed in the exercise of public functions	
Section I	
Corruption	
Article 372	
Undue receiving or offering of an advantage	
1 - The official who, in the course of his duties or because of them, by himself or through another person, upon his consent or ratification, either requests or accepts, for himself or a third party, any undue advantage, whether patrimonial or non-patrimonial, shall be punished with a prison sentence of up to five years or with a fine of up to 600 days.	
2 - Whoever, by himself or through another person, with his consent or ratification, gives or promises to an official, or to a third party with the former's knowledge thereof, any undue advantage, whether patrimonial or non-patrimonial, in the course of his duties or because of them, shall be punished with a prison sentence of up to three years or with a fine of up to 360 days.	
3 - Excluded from the preceding paragraphs are the conducts socially appropriate and in accordance with the custom and usage.	
Article 373	
Passive corruption	
1 - The official who, by himself or through another person, with his consent or ratification, either requests or accepts, for himself or a third party, any undue advantage, whether patrimonial or non-patrimonial, or the promise thereto, for any act or omission contrary to the duties inherent to the office he holds, even if prior to such request or acceptance, shall be punished with a prison sentence of one to eight years.	
2 - If the act or omission is not contrary to the duties of the office and the advantage is not due to him, the agent shall be punished with a prison sentence of one to five years.	
Article 374	

Active corruption

1 - Whoever by himself, or through another person, with his consent or ratification, either gives or promises to an official, or to a third party with the former's knowledge thereof, an advantage, whether patrimonial or non-patrimonial, for the purpose mentioned in article 373(1), shall be punished with a prison sentence of one to five years.

2 - If the purpose aimed at is the one referred to in article 373(2), the agent shall be punished with a prison sentence of up to three years or with a fine of up to 360 days.

Article 374--A

Aggravation

1 - If the advantage referred to in articles 372 to 374 is of a high value, the agent shall be punished with the penalty applicable to the respective crime aggravated by a quarter in its minimum and maximum limits.

2 - If the advantage referred to in articles 372 to 374 is of a considerably high value, the agent shall be punished with the penalty applicable to the respective crime aggravated by one third in its minimum and maximum limits.

3 - For the purposes of the provisions of the preceding paragraphs, the provisions of subparagraphs a) and b) of article 202 shall correspondingly apply.

4 - Without prejudice to the provisions of article 11, where the agent acts under the terms of article 12, he shall be punished with the penalty applicable to the respective crime aggravated by one third in its minimum and maximum limits.

5 - Without prejudice to the provisions of the preceding paragraphs, an official holding a high public office shall be punished:

a) With a prison sentence of 1 to 5 years, where the crime is the one provided for in article 372(1);

b) With a prison sentence of 2 to 8 years, where the crime is the one provided for in article 373(1);

c) With a prison sentence of 2 to 5 years, where the crime is the one provided for in article 373(2);

6 - Notwithstanding the provisions of paragraphs 1 to 4, where the official is a holder of a high public office, he shall be punished:

a) With a prison sentence of up to 5 years or with a fine of up to 600 days, in the situations provided for in article 372(2);

b) With a prison sentence of 2 to 5 years, in the situations provided for in article 374(1); or

c) With a prison sentence of up to 5 years, in the situations provided for in article 374(2);

7 - An official holding a high public office who, in the course of his duties or because of them, by himself or through another person, with his consent or ratification, gives or promises to an official, an official holding a high public office or a holder of a political office, or to a third party with the his knowledge, any undue advantage, whether patrimonial or non-patrimonial, shall be punished with a sentence of 2 to 8 years if the purpose is the one set forth in article 373(1) and of 2 to 5 years if the purpose is the one set out in article 373(2).

8 - The following are considered to be holders of high public office:

a) Public managers and members of the management body of a public limited company, exercising executive functions;

b) Holders of the management bodies of State owned companies, when designated by the State

c) Members of the management bodies of companies that are part of the regional or local business sectors;

1. Bribery in the public sector

- d) Members of the governing bodies of public institutes;
- e) Members of the board of directors of an independent administrative entity;
- f) Holders of 1st and 2nd level senior management positions and equivalent, and top managers of municipal councils and municipal services, where they exist.

Law 34/87, of 16 July

On the liability crimes of political officeholders

#### Article 17

##### Passive corruption

1 — The political officeholder who, in the course of his duties or because of them, by himself, or through another person, with his consent or ratification, either requests or accepts, for himself or a third party, any undue patrimonial or non-patrimonial advantage, or the promise thereof, for any act or omission contrary to his duties, even if prior to that request or acceptance, is punished with a prison sentence of 2 to 8 years.

2 — If the act or omission is not contrary to the duties of his office and if the advantage is not due to him, the political officeholder shall be punished with a prison sentence of 2 to 5 years.

#### Article 18

##### Active corruption

1 — Whoever, by himself or through another person, with his consent or ratification, gives or promises to a political officeholder or to a third party, by his suggestion and with his knowledge, any undue patrimonial or non-patrimonial advantage for the purpose set out in article 17 (1), is punished with a prison sentence of 2 to 5 years.

2 — If the purpose aimed at is the one mentioned in article 17(2), the agent is punished with a prison sentence of up to 5 years.

3 — The political officeholder who, in the course of his duties or because of them, by himself or through another person, with his consent or ratification, gives or promises to an official, to a holder of high public office or to another political officeholder, or to a third party with his knowledge, any undue patrimonial or non-patrimonial advantage for the purpose mentioned in article 17, shall be punished with the penalties provided for in this article.

#### Article 19

##### Aggravation

1 - If the advantage referred to in articles 16 to 18 is of high value, the perpetrator shall be punished with the penalty applicable to the respective crime aggravated by a quarter in minimum and maximum limits.

2 - If the advantage referred to in articles 16 to 18 is of a considerably high value, the perpetrator shall be punished with the penalty applicable to the respective crime aggravated by one third in the minimum and maximum limits.

	<p>3 - For the purposes of the provisions of the preceding paragraphs, the provisions of paragraphs a) and b) of article 202 of the Criminal Code shall apply accordingly.</p> <p>4 - Without prejudice to the provisions of article 11 of the Criminal Code, when the perpetrator acts under the terms of article 12 of this Code, he or she shall be punished with the penalty applicable to the respective crime aggravated by one-third the minimum and maximum limits.</p> <p>Law 20/2008 of 21 April</p> <p>Establishing the new criminal regime to combat corruption in international trade and in the private sector</p> <p>Article 7</p> <p>Active corruption in international trade</p> <p>Whoever, either by himself or through another person, with his consent or ratification, gives or promises to give to a national or foreign public official or an official of an international organization, or to a holder of a political office, national or international, or to a third party with knowledge of those foregoing, any undue patrimonial or non-patrimonial advantage, in order to obtain or maintain a business, a contract or any other undue advantage in the international trade, shall be punished with a prison sentence of one to eight years.</p>
	<p>Law 20/2008 of 21 April</p> <p>Establishing the new criminal regime to combat corruption in international trade and in the private sector</p> <p>Article 8</p> <p>Passive corruption in the private sector</p> <p>1 - A private sector employee who, either by himself or through another person, with his consent or ratification, requests or accepts for himself or a third party, any undue patrimonial or non-patrimonial advantage, or the promise thereof, for any act or omission that constitutes a breach of his functional duties, shall be punished with a prison sentence of up to five years or with a fine of up to 600 days.</p> <p>2 - If the act or omission provided for in the preceding paragraph is likely to cause a distortion of the competition or any patrimonial damage to third parties, the agent shall be punished with a prison sentence of one and eight years.</p> <p>Article 9</p> <p>Active corruption in the private sector</p> <p>1 - Whoever, either by himself or through another person, with his consent or ratification, either gives or promises to the person referred to in the preceding article, or to a third party, with the former's knowledge thereof, an undue patrimonial or non-patrimonial advantage, in order to pursue the purpose indicated therein, shall be punished with a prison sentence of up to three years or with a fine.</p>

- 2 - If the conduct provided for in the preceding paragraph is designed to obtain or cause a distortion of the competition or any patrimonial damage to third parties, the agent shall be punished with a prison sentence of up to five years or with a fine of up to 600 days.
- 3 - The attempt is punishable.

Law 50/2007 of 31 August

Establishes a new regime of criminal liability for behaviour likely to affect the truth, fairness and correctness of competition and its outcome in the sporting activity

Article 8

Passive corruption

A sports agent who, by himself or through another person, with his consent or ratification, requests or accepts for himself or a third party, any undue patrimonial or non-patrimonial advantage, or the promise thereof, for any act or omission designed to alter or distort the result of a sporting competition, even if prior to that request or acceptance, shall be punished with a prison sentence of 1 to 8 years.

Article 9

Active corruption

1 - Whoever, by himself or through another person, with his consent or ratification, gives or promises a sports agent, or a third party with the former's knowledge thereof, any undue patrimonial or non-patrimonial advantage, for the purposes set out in the preceding paragraph, shall be punished with a prison sentence of 1 to 5 years.

2 - The attempt is punishable.

Article 10-A

Undue offering or receiving of an advantage

1 - A sports agent who, by himself or through another person, with his consent or ratification, through a third party, requests or accepts, for himself or for another person, directly or indirectly, in the course of his duties or because of them, any undue patrimonial or non-patrimonial advantage, or the promise thereof, from an agent who has had, has or may come to have a claim dependent on the exercise of his functions, shall be punished with a prison sentence of up to 5 years or a fine of up to 600 days.

2 - Whoever, by himself or through another person, with his consent or ratification, gives or promises to a sports agent, or to a third party upon the former's suggestion and with his knowledge, any undue patrimonial or non-patrimonial advantage, in the course of his duties or because of them, shall be punished with a prison sentence of up to 3 years or with a fine of up to 360 days.

3 - Excluded from the preceding paragraphs are the conducts socially appropriate and in accordance with the custom and usage.

	<p>Article 12</p> <p>Aggravation</p> <p>1 - The penalties provided for in article 8, article 10(1) and article 10-A(1) shall be aggravated by one third in their minimum and maximum limits if the offender is a sports manager, sports referee, sports entrepreneur or sports legal person.</p> <p>2 - If the crimes under article 9, article 10, paragraph 2 and article 10-A paragraph 2 are committed by a sports agent or in relation to a person referred to in the previous paragraph, the offender shall be punished with the penalty that would be applicable to the case, aggravated by one third in its minimum and maximum limits.</p> <p>3 - If the advantage referred to in articles 8, 9, 10 and 10-A is of high value, the offender will be punished with the penalty applicable to the respective crime, aggravated by a quarter in minimum and maximum limits.</p> <p>4 - If the advantage referred to in articles 8, 9, 10 and 10-A is of a considerably high value, the offender shall be punished with the penalty applicable to the respective crime, aggravated by one third in its minimum and maximum limits.</p> <p>5 - For the purposes of paragraphs 3 and 4, the provisions of article 202 a) and b) of the Criminal Code shall apply.</p> <p>6 - If more than one of the circumstances referred to in the previous numbers concur in the same conduct, only the one with the stronger aggravating effect shall be considered in determining the applicable penalty, and the other or others shall be considered in determining the penalty.</p>
	<p>Criminal Code</p> <p>Article 375</p> <p>Embezzlement</p> <p>1 - The official who unlawfully appropriates, for his own benefit or for the benefit of another person, money or any movable or immovable property or animal, public or private, which has been handed over to him, is in his possession or is accessible to him by virtue of his duties, shall be punished with a prison sentence of 1 to 8 years, if a more serious penalty does not apply under any other legal provision.</p> <p>2 - If the values or objects referred to in the preceding paragraph are of slight value, pursuant to sub-paragraph c) of article 202, the agent shall be punished with a prison sentence of up to 3 years or with a fine.</p> <p>3 - If the official grants a loan, pledges or otherwise encumbers values or objects referred to in paragraph 1, he shall be punished with a prison sentence of up to 3 years or with a fine, if a more serious penalty does not apply under any other legal provision.</p> <p>Article 376</p> <p>Embezzlement for use</p> <p>1 - The official who makes use or allows another person to make use, for purposes other than those to which they are designed, of vehicles or other movable property or animals of considerable value, whether public or private, which have been handed over to him, are in his possession or are accessible to him by virtue of his duties, shall be punished with a prison sentence of up to 1 year or with a fine of up to 120 days.</p>



	<p>2 - If the official, without any special and justifiable reason of public interest, uses public money for a public purpose other than that for which it is legally intended, shall be punished with a prison sentence of up to 1 year or with a fine of up to 120 days.</p> <p>Article 377</p> <p>Economic participation in business</p> <p>1 - The official who, with the purpose to obtain, for himself or another person, an unlawful economic participation, harms in a legal transaction the patrimonial interests whose management, supervision, defence or execution are, in whole or in part, by virtue of his duties, incumbent upon him, shall be punished with prison sentence of up to 5 years.</p> <p>2 - The official who, by any manner, receives for himself or another person, a patrimonial advantage as a result of a legal-civil act in respect of interests whose disposal, management or supervision were, by virtue of his duties, at the time of the commission of the act, either totally or partially, assigned to him, even if harm has not been caused to such interests, shall be punished with a prison sentence of up to 6 months or with a fine of up to 60 days.</p> <p>3 - The penalty provided for in the preceding paragraph is also applicable to the official who receives, for himself or another person, by any manner, a patrimonial advantage as a result of the recovery, collection, liquidation or payment which, by virtue of his duties, he is, totally or partially, in charge of ordering or executing, provided that no loss to the National Treasury or to the interests entrusted to him has been caused.</p> <p>Law 34/87, of 16 July</p> <p>On the liability crimes of political officeholders</p> <p>Article 20</p> <p>Embezzlement</p> <p>1 —A holder of political office who, in the course of his duties, unlawfully appropriates, either for himself or for another person, money or any movable or immovable thing, public or private, which has been handed over to him, is in his possession or is accessible to him on account of his duties, shall be punished with a prison sentence of three to eight years and with a fine of up to 150 days, if a more serious penalty does not apply under any other legal provision.</p> <p>2 —Where the agent grants a loan, pledges or in any way encumbers any of the objects referred to in the preceding paragraph, with the awareness of damaging or being able to damage the State or its owner, shall be punished with a prison sentence of one to four years and with a fine of up to 80 days.</p> <p>Article 21</p> <p>Embezzlement for use</p> <p>1 —The holder of political office who uses or allows another person to use, for purposes other than those for which they were intended, immovable property, vehicles or other movable things of considerable value, whether public or private, which were handed</p>
3. Embezzlement, misappropriation and other diversion of property by a public official	

over to him, are in his possession or are accessible to him on account of his duties, shall be punished with a prison sentence of up to two years or with a fine of up to 240 days.

2 —The holder of political office who uses public money for a public purpose other than that for which it is legally intended is punished with a prison sentence of up to two years or with a fine of up to 240 days.

#### Article 22

Embezzlement due to someone else's mistake

The holder of political office who, in the course of his duties, but taking advantage of the error of another, receives, for himself or for a third party, taxes, fees or other amounts not due or higher than those due, shall be punished with a prison sentence of up to three years or with a fine of up to 150 days.

#### Article 23

Economic participation in business

1 — The holder of political office who, with the intention of obtaining illicit economic participation, for himself or for a third party, harms in a legal transaction the patrimonial interests that, in whole or in part, he has the duty, by reason of his office, to administer, supervise, defend or perform, shall be punished with a prison sentence of up to 5 years.

2 — The political officeholder who, in any event, receives a patrimonial advantage as a result of a civil-legal act related to interests which, by virtue of his office at the time of the act, he has, in whole or in part, the duty to dispose of, to administer or to supervise, even without harming them, shall be punished with a prison sentence of up to 6 months or with a fine of up to 150 days.

3 —The penalty provided for in the preceding paragraph shall also apply to the holder of political office who receives, in any way, an economic advantage as a result of the recovery, collection, liquidation or payment of which, by reason of his duties, in whole or in part, he is in charge of ordering or doing so, provided that there is no economic damage to the Public Treasury or to the interests that he is effecting.

<p>4. Embezzlement in the private sector</p>	<p>Criminal Code Article 205</p> <p>Breach of trust</p> <p>1 - Whoever unlawfully appropriates movable property which has been handed over to him/her by a title pursuant to which the property is not transferred is punished with imprisonment for not more than three years or with a fine.</p> <p>2 - An attempt is punishable.</p> <p>3 - Criminal proceedings depend upon complaint.</p> <p>4 - If the property referred to in paragraph 1 is:</p> <p>a) Of high value, the offender is punished with imprisonment for not more than five years or with a fine for not more than 600 days;</p> <p>b) Of considerably high value, the offender is punished with imprisonment from one to eight years.</p> <p>5 - If the offender has received the property for deposit imposed by law due to his/her occupation, employment or profession or in the capacity of legal guardian, trustee or receiver, he/she is punished with imprisonment from one to eight years.</p> <p>Article 208</p> <p>Unauthorized use of vehicle</p> <p>1 - Whoever uses a car or another motor vehicle, aircraft, vessel or bicycle, without authorization of the rightful owner, is punished with imprisonment for not more than two years or with a fine for not more than 240 days, unless a more severe penalty applies by virtue of another legal provision.</p> <p>2 - An attempt is punishable.</p> <p>3 - Criminal proceedings depend on a complaint or, in the cases provided for in article 207, on a private prosecution.</p>
	<p>Criminal Code Article 335</p> <p>Trading in influence</p> <p>1 - Whoever, by himself or through another person, with his consent or ratification, either requests or accepts, for himself or a third party, an advantage, whether patrimonial or non-patrimonial, or the promise thereto, to abuse his influence, real or alleged, before any public entity, national or foreign, shall be punished:</p> <p>a) With a prison sentence of 1 to 5 years, if a more serious penalty does not apply under any other legal provision, if the purpose is to obtain any unlawful favourable decision;</p> <p>b) With a prison sentence of up to 3 years or with a fine, if a more serious penalty does not apply under any other legal provision, if the purpose is to obtain any lawful favourable decision.</p> <p>2 - Whoever, by himself or through another person, with his consent or ratification, either gives or promises, an advantage, whether patrimonial or non-patrimonial, to the persons referred to in the preceding paragraph:</p> <p>a) For the purposes provided for in subparagraph a), shall be punished with a prison sentence of up to 3 years or with a fine.</p>

- b) For the purposes provided for in subparagraph b), shall be punished with a prison sentence of up to 2 years or with a fine of up to 240 days.
- 3 - The attempt is punishable.
- 4 - The provisions of article 374-B shall apply accordingly.

Law 50/2007 of 31 August

Establishes a new regime of criminal liability for behaviour likely to affect the truth, fairness and correctness of competition and its outcome in the sporting activity

Article 10

Trading in influence

5. Trading in influence

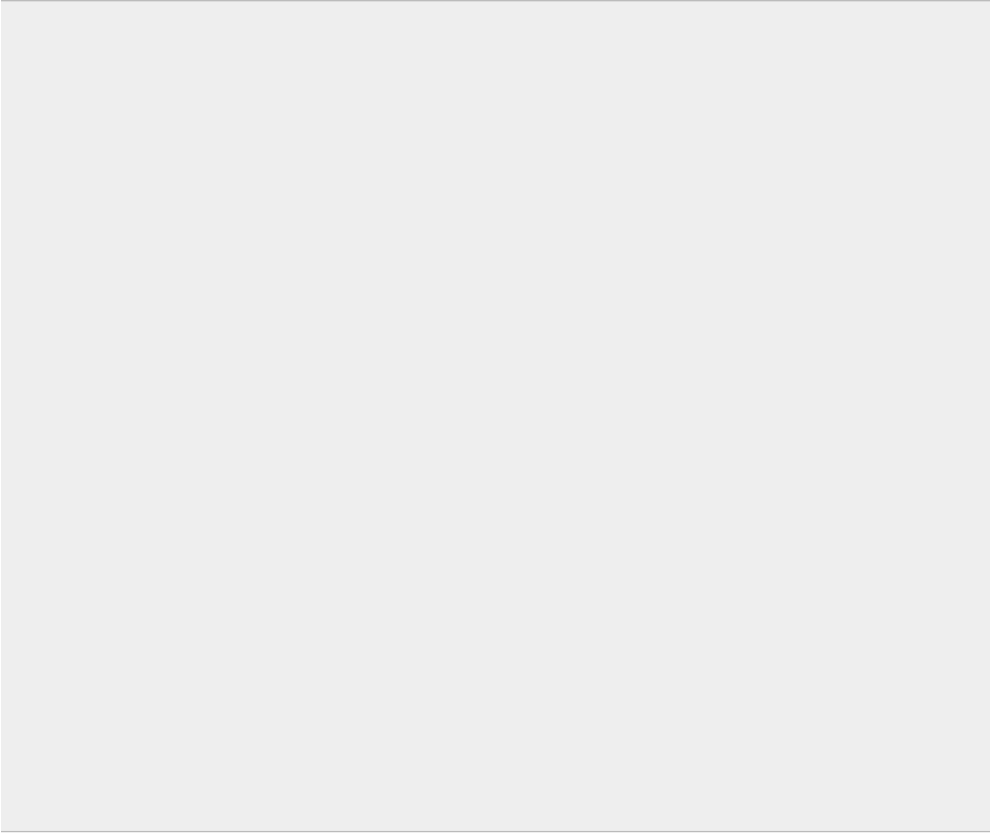
- 1 - Whoever, by himself or through another person, with his consent or ratification, requests or accepts, for himself or a third party, any patrimonial or non-patrimonial advantage, or the promise thereof, in order to abuse his real or alleged influence over any sports agent, with the purpose of obtaining any decision designed to alter or distort the result of a sporting competition, shall be punished with a prison sentence of 1 to 5 years, if a more serious penalty does not apply under any other legal provision.
- 2 - Whoever, by himself or through another person, with his consent or ratification, gives or promises any patrimonial or non-patrimonial advantage to a third party for the purpose referred to in the preceding paragraph, shall be punished with a prison sentence of up to 3 years or with a fine, if a more serious penalty does not apply under any other legal provision.
- 3 - The provisions of article 13 shall accordingly apply.

Article 12

Aggravation

- 1 - The penalties provided for in article 8, article 10(1) and article 10-A(1) shall be aggravated by one third in their minimum and maximum limits if the offender is a sports manager, sports referee, sports entrepreneur or sports legal person.
- 2 - If the crimes under article 9, article 10, paragraph 2 and article 10-A paragraph 2 are committed by a sports agent or in relation to a person referred to in the previous paragraph, the offender shall be punished with the penalty that would be applicable to the case, aggravated by one third in its minimum and maximum limits.
- 3 - If the advantage referred to in articles 8, 9, 10 and 10-A is of high value, the offender will be punished with the penalty applicable to the respective crime, aggravated by a quarter in minimum and maximum limits.
- 4 - If the advantage referred to in articles 8, 9, 10 and 10-A is of a considerably high value, the offender shall be punished with the penalty applicable to the respective crime, aggravated by one third in its minimum and maximum limits.
- 5 - For the purposes of paragraphs 3 and 4, the provisions of article 202 a) and b) of the Criminal Code shall apply.
- 6 - If more than one of the circumstances referred to in the previous numbers concur in the same conduct, only the one with the

	<p>stronger aggravating effect shall be considered in determining the applicable penalty, and the other or others shall be considered in determining the penalty.</p>
6. Abuse of functions	<p>Criminal Code Article 382 Abuse of power</p> <p>The official who, excluding the cases provided for in the preceding articles, abuses the powers or breaches the duties inherent to his office, with the purpose to obtain, for himself or a third party, an unlawful benefit or to cause harm to another person, shall be punished with a prison sentence of up to 3 years or with a fine, if a more serious penalty does not apply under any other legal provision.</p> <p>Law 34/87, of 16 July On the liability crimes of political officeholders Article 26 Abuse of power</p> <p>1 —The holder of political office who abuses the powers or breaches the duties inherent to his office, with the intention of obtaining, for himself or for a third party, an illegitimate benefit or causing damage to another person, shall be punished with a prison sentence of six months to three years or with a fine of 50 to 100 days, if a more serious penalty does not apply under any other legal provision.</p> <p>2 —The holder of political office who fraudulently grants concessions or enters into contracts for the benefit of a third party or to the detriment of the State shall incur in the penalties provided for in the preceding paragraph.</p>
7. Illicit enrichment	<p>There is no so-called “obstruction of justice” offence in the Portuguese Criminal Law. However, the goal of Article 25 of the UNCAC is reached through the application of other provisions in the Portuguese Criminal Law:</p> <ul style="list-style-type: none"> <li>- Use of physical force, threats or intimidation: Articles 143, 144, 153, 154, 154-A and 155 of the Criminal Code.</li> <li>- Promise or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a criminal proceeding: Article 363 (articles 359 and 360) of the Criminal Code.</li> </ul> <p>Criminal Code Article 143 Bodily injury</p> <p>1 – Whoever harms the body or the health of another person is punished with imprisonment for not more than three years or with fine.</p> <p>2 – The criminal proceedings depend upon complaint, unless the harm is committed against agents of the security forces or services, in the performance of their duties or because of them.</p>



3 – The court may discharge without punishment:

- a) In the case of reciprocal injuries, and if it was not proved which one of the contenders has attacked in first place; or
- b) In the case where the offender has solely exercised verbal retaliation over the aggressor.

Article 144

Grievous bodily injury

Whoever harms the body or the health of another person in a way that:

- a) Deprives him/her from an important organ or limb, or deforms him/her in a serious and permanent manner;
  - b) Takes away or affects, in a serious way, his/her work ability, his/her intellectual, procreative or sexual enjoyment capacities or his/her possibility to use the body, the senses or the language;
  - c) Causes him/her a particularly painful or permanent disease, or grievous or incurable mental disorder; or
  - d) Endangers his/her life;
- is punished with imprisonment from two to ten years.

Article 153

Threat

1 – Whoever threatens another person with the commission of a criminal offence against life, physical integrity, personal freedom, self-determination or property of considerable value, in an adequate way to cause him/her fear or worry or to impair his/her liberty of determination, is punished with imprisonment for not more than one year or with fine for not more than 120 days.

2 - The criminal proceedings depend upon complaint.

Article 154

Coercion

1 - Whoever, by means of violence or threat of causing considerable harm, constrains another person to perform an action or omission or to bear an activity, is punished with imprisonment for not more than three years or with fine.

2 - An attempt is punishable.

3 - The act is not punishable:

- a) if the use of the means to accomplish the intended purpose is not censurable; or
- b) if it aims to avoid suicide or the commission of a typical unlawful act.

4 - If the act occurs between spouses, ascendants and descendants, adoptive person and adopted child, or between persons of the same or another gender living in a civil partnership, the criminal proceedings depend upon complaint.

Article 154-A

Persecution

- 1 - Whoever repeatedly pursues or harasses another person, by any means, directly or indirectly, in a manner adequate to cause him /her fear or unease or to impair his/her freedom of determination, shall be punished by a maximum imprisonment of three years or a fine, if a more serious penalty is not applicable under any other legal provision.
- 2 – An attempt shall be punishable.
- 3 - In the cases provided for in paragraph 1, additional penalties may be applied to the defendant, such as prohibition of contact with the victim for a period of between 6 months and 3 years and the obligation to attend specific programmes for the prevention of behaviours typical of stalking.
- 4 - The accessory penalty of prohibition of contact with the victim should include the removal from the victim's residence or workplace and its compliance should be monitored by technical means of remote control.
- 5 - The criminal procedure shall depend upon complaint.

#### Article 155

##### Aggravation

1 - When the facts provided for in articles 153 to 154-C are carried out:

- a) By means of a threat with the commission of a crime punishable by imprisonment for more than three years; or
  - b) Against a particularly defenceless person, due to age, disability, illness or pregnancy;
  - c) Against one of the persons referred to in Article 132(2)(l), in the performance of his or her duties or because of them;
  - d) By an official with serious abuse of authority;
  - e) By determination of the circumstance set out in subparagraph (f) of article 132(2);
- the agent shall be punished with a prison sentence of up to two years or with a fine of up to 240 days in the cases provided for in articles 153 and 154-C, with a prison sentence of between one and five years in the cases provided for in article 154(1) and 154-A and with a prison sentence of between one and eight years in the case of article 154-B.
- 2 - The same penalties shall be applied if, as a result of the threat, coercion, persecution or forced marriage, the victim or the person on whom the harm is intended commits suicide or attempts suicide.

#### Article 359

##### False testimony or statement

- 1 - Whoever makes false statements in a party testimony in relation to facts about which he/she must testify, after having taken an oath and been warned of the criminal consequences to which he/she is exposed should he give a false testimony, is punished with imprisonment for not more than three years or with a fine.
- 2 - The same penalty applies to the private prosecutor and to the civil parties regarding statements given in the scope of a criminal procedure, as well as the offender as regards statements about his/her identity and criminal record.
- 3 - The representative of a legal person or equivalent entity charged in criminal proceedings who fails to respond or responds falsely as to his/her identity or the identity of the legal person or equivalent entity shall incur a prison sentence of up to three years or a fine.

Article 360

Falsity of testimony, expertise, interpretation or translation

1 - Whoever, as a witness, expert, technician, translator or interpreter, before a court or competent official to receive as evidence, testimony, report, information or translation, gives a false testimony, report, information or translation, shall be punished with a penalty of six months to three years imprisonment or a fine of not less than 60 days.

2 - The same penalty shall be imposed on those who, without just cause, refuse to testify or to present a report, information or translation.

3 - If the fact referred to in paragraph 1 is committed after the perpetrator has taken an oath and has been warned of the criminal consequences to which he or she is exposed, the penalty shall be imprisonment of up to five years or a fine of up to 600 days.

Article 363

Bribery

Whoever persuades or attempts to persuade another person, through a gift or promise of an advantage, whether patrimonial or non-patrimonial, to commit the acts provided for in articles 359 or 360, without such acts ever being committed, is punished with imprisonment for not more than two years or with a fine for not more than 240 days.



Additional Comments (only if needed)

Question 2

For the same offences as in question 1, could you please provide a) the relevant maximum length of imprisonment in months and b) the duration of the limitation period that enables the investigation, prosecution, trial and judicial decision after the commission of the offence in months?

We are aware there are different possibilities per crime in each Member States, depending on the system used. However, we are looking only for **one number (the highest possible)** to increase comparability.

[The reference of the offences categories is the United Nations Convention Against Corruption, to which the EU and its member states are parties.]

	A. Maximum available length of imprisonment in months	B. Duration of the limitation period after the commission of the offence in months
1. Bribery in the public sector	128	270
2. Bribery in the private sector	128	270
3. Embezzlement, misappropriation and other diversion of property by a public official	96	270

4. Embezzlement in the private sector	96	180
5. Trading in Influence	80	270
6. Abuse of Functions	36	270
7. Illicit Enrichment		
8. Obstruction of Justice	120	180

Additional Comments (only if needed)

\* The limitation period is normally extended due to interruption causes established by law in article 121 of the CC. Whenever one of those causes arises (being the constitution as a defendant in the criminal proceedings one of the most common ones), the counting will start all over again. There is a limitation, however, in article 121(3) of the CC, establishing that this extension cannot go beyond the limitation period established in general (118 CC) plus half this period. This maximum length is the one reflected in the answer above as regards the duration of the limitation period.

\*\* However, time can additionally be added to the limitation period plus the extension provided due to interruption causes (as referred in \*): there are rules of suspension of the counting (120 CC) which, in some cases, may operate with no time limit (for example, if the defendant is in prison abroad), or provide for important extensions of time (for example, after a conviction that has been notified to the defendant, during the time that the appeals will last, up until 20 years in the most serious cases – 120(5) of the CC). This could be added do B, extending further the deadlines we refer to.

## **Contact**

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