

22 July 2010

Implementation of UNCAC by the former EC/EU

The UN Convention Against Corruption (UNCAC) constitutes a landmark, as the only worldwide legal framework for measures against corruption, and the Commission on behalf of the former European Community/EU ratified it by Council Decision 2008/801/EC⁽¹⁾ of 25 September 2008 on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption.

1. The UN Secretariat distributed a self-assessment questionnaire in 2007, before the ratification of UNCAC by the former European Community/EU in 2008. Can the Commission confirm that to date the self-assessment has not yet been sent to the UNODC Secretariat? If so, can the Commission indicate a clear roadmap for fulfilling this obligation on behalf of the EU institutions and the estimated date for sending it without further delay to the UNODC Secretariat?
2. The Lisbon Treaty has extended the scope and exercise of EU competence. Will the self-assessment reflect the new competence of the former EC/EU referred to in the Declaration of Competence (Annex II to Council Decision 2008/801/EC) as amended by the Lisbon Treaty? What steps has the Commission taken to amend the Declaration to bring it into line with the legal provisions of the Lisbon Treaty?
3. The Commission is representing the former EC/EU in relation to UNCAC. Could the Commission therefore, in particular, provide the information based on Article 8, paragraph 6, of UNCAC on whether there were any disciplinary cases for violations of codes of conduct or standards by public officials working for the EU institutions, in the period 2007-09, as well as on follow-up measures taken by the institutions?
4. In particular, could the Commission provide information on whether the appeals mechanism required by Article 9(d) of UNCAC exists and, if so, what was the number of cases initiated and processed by the system referred to in the article concerned in the period 2007-09 and what was the average time (in days) to make a decision in these cases?
5. Could the Commission provide information on measures taken pursuant to Article 12(c) of UNCAC to promote transparency among private entities?
6. Could the Commission provide information on measures taken under Article 35 of UNCAC to ensure that entities or persons that have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation?

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Answer by Cecilia Malmström on behalf of the Commission

United Nations Convention against Corruption (UNCAC) was indeed approved in September 2008 by the former European Community (now replaced by the EU) through Council Decision 2008/801/EC⁽¹⁾. Therefore, the legal obligation to self assessment only applies from that moment on.

In the case of the EU, the process of self assessment is more complex than for other State Parties to UNCAC, as it involves cooperation between all EU institutions and bodies, as well as with Member States in matters falling under a shared competence. The Commission initiated this process last year and the self assessment process is still ongoing with the view to finalise it by late 2010. The Commission is now assessing the extent of the modifications of the Union's competence with regards to all the matters governed by the UNCAC after entry into force of the Lisbon Treaty. This assessment is being carried out in light of potential completion or amendment of the declaration of competences in accordance with Article 67(3) of the UNCAC, as provided in point 4 of this declaration. The self-assessment will reflect the EU competence as declared to the Secretary-General of the United Nations.

As regards disciplinary proceedings, during the period under consideration, 42 of these proceedings were launched against Commission officials or agents for breach of their obligations under the Staff Regulations. In 2007, the Appointing Authority decided to open 6 disciplinary cases and to impose 7 penalties varying from reprimand to removal from post.

In 2008, 15 disciplinary cases were opened and 3 sanctions imposed varying from written warning to removal from post.

In 2009, 21 disciplinary proceedings were launched and 30 penalties imposed varying from written warning to removal from post.

It should be noted that none of these sanctions was concerning facts of corruption. However, some disciplinary proceedings concerning alleged corruption prosecuted by national judicial authorities have been suspended waiting for a final judgment by a national court before being closed by a disciplinary decision.

With regard to transparency of private entities respectively legal persons (Article 12 para 2c UNCAC), the anti-money laundering Directive (AMLD)⁽²⁾ requires the entities subject to the AMLD to undertake customer due diligence (CDD) measures. This includes the obligation to identify beneficial owners (Article 8 AMLD). The term 'beneficial owner' is defined in Article 3 (6) of the AMLD and refers to the 'natural person(s) who ultimately own(s) or control(s) the customer and/or the natural person on whose behalf a transaction or activity is

being conducted'; this definition then further explains who at least should be considered as a beneficial owner in case of corporate entities, legal entities and legal arrangements. Furthermore, the AMLD requires the obliged entities of 'taking risk-based and adequate measures to understand the ownership and control structure of the customer' (Article 8) which also adds to promote transparency of legal entities.

EU legislation provides for the obligation of each Member State to 'ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner'⁽³⁾.

Such provision covers in principle also the right of natural persons to initiate legal proceedings against those responsible for damage suffered as a result of an act of corruption in order to obtain compensation, in accordance with principles of domestic law, as foreseen in Article 35 UNCAC.

As Article 82 TFEU⁽⁴⁾ envisages the establishment of minimum rules concerning, *inter alia*, the rights of victims of crime to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the Commission intends to propose in the first half of 2011 a comprehensive package of measures to improve the rights of victims of crime throughout the EU.

Moreover, the Stockholm Programme⁽⁵⁾ underlines the need for an integrated and coordinated approach to victims, and calls on the Commission and Member States to examine how to improve legislation and practical support measures in the field, as well as to examine the opportunity of making one comprehensive legal instrument on the protection of victims, including compensation.

(1) Council Decision of 25 September 2008 on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption, 2008/801/EC, OJ L 287, 29.10.2008.

(2) Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005.

(3) Article 9 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, 2001/220/JHA, OJ L 82, 22.3.2001.

(4) Treaty on the Functioning of the European Union.

(5) The Stockholm Programme – An open and secure Europe serving and protecting citizens, OJ C 115, 4.5.2010.