

NOTE

Disparate Domestic Definitions: The EU’s Muddled Attempt to Harmonize Corruption Offenses

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Introduction

Political corruption is a pervasive and complicated problem. Generally, corruption is defined as the abuse of power, public office, or entrusted authority for private gain.¹ Though corruption is an obvious issue in developing nations, such as Somalia, Venezuela, and Syria, it is also a persistent and growing problem in the European Union (EU).² This is particularly alarming because EU membership is conditional, meaning that its member states must meet and maintain certain democratic standards.³ However, even with conditional membership and supranational governmental oversight, many EU member states experience democratic backsliding and deteriorating corruption controls.⁴

Corruption breeds economic inefficiency, authoritarianism, and public distrust or dissatisfaction with the government. Corruption has negative empirical effects, such as reduced foreign direct investment, decreased economic growth, distorted competition, and curbed innovation.⁵ Corruption also has a positive relationship with organized crime, shadow economies, and decreases in tax revenue in relation to GDP.⁶ On a broad scale, corruption is linked to decreased competition and low involvement in international trade, both of which are indicative of poor economic health.⁷

Despite an explicit commitment to effective corruption controls in its foundational documents, the EU and many of its member states struggle to uphold key principles of good governance.⁸ For example, Greece and Italy have high rates of corruption, leading to rising support for populism and anti-EU public sentiment.⁹ In Bulgaria, corruption is often the top issue

1. Alina Mungui-Pippidi, *The Good, the Bad, and the Ugly: Controlling Corruption in the European Union 4* (European Rsch. Ctr. For Anti-corruption and State-building, Working Paper No. 35, 2013).

2. Transparency Int'l, *Corruption Perceptions Index*, TRANSPARENCY INT'L (2024), <https://www.transparency.org/en/cpi/2024> [<https://perma.cc/N4XM-X7BD>].

3. See Consolidated Version of the Treaty on European Union, art. 49, July 7, 2016 O.J. (C 202) 43.

4. See generally Mert Kartal, *Accounting for the Bad Apples: The EU's Impact on National Corruption Before and After Accession*, 21 J. EUR. PUB. POL'Y 941 (2014).

5. Jorge Farinha & Oscar Lopez-de-Foronda, *The Impact of Corruption on Investment and Financing in the European Union: New Insights*, 30 EUR. J. OF FIN. 339, 339–40(2024).

6. DOMINIK H. ENSTE & CHRISTINA HELDMAN, CAUSES AND CONSEQUENCES OF CORRUPTION—AN OVERVIEW OF EMPIRICAL RESULTS 33–34 (Cologne Inst. for Econ. Rsch., 2017).

7. *Id.* at 14–15.

8. Kartal, *supra* note 4, at 944.

9. Mert Kartal, *The Unintended) Consequences of Ineffective Corruption Control on Populism in Europe*, 48 W. EUR. POL. 1428, 1437–38(2025).

of voter concern.¹⁰ Consequently, Bulgarian populist parties gained public support by campaigning on anti-corruption platforms and promising to fix the rampant corruption that their opposition and the EU failed to address.¹¹ Likewise, in Cyprus, new populist party ELAM presented itself as a novel political group capable of fixing the corruption and economic crises that plagued traditional parties.¹² Because decreased corruption control is linked to increased voter support for populist parties, “enhancing corruption control is crucial to rebuilding public trust in democratic institutions at both national and European levels.”¹³ Moreover, EU member states in Central and Eastern Europe generally demonstrate improved corruption controls pre-accession, but many experience backsliding post-accession as the EU’s political leverage declines.¹⁴

Newsworthy corruption scandals are on the rise, even in member states with historically low levels of corruption. Corruption scandals in member states with traditionally strong corruption controls are particularly worrisome for the future of the rule of law in the EU because they indicate a deep-rooted and growing problem. Austria joined the EU in 1995 and was a consistent high-achiever in corruption controls for over a decade; however, in recent years, Austria has seen significant backsliding in its corruption controls and rule of law.¹⁵

For example, in 2020, former Austrian finance minister Karl Heinz-Grasser was sentenced to eight years in prison for embezzlement, receiving bribes, and falsification of evidence.¹⁶ Grasser passed information regarding bids during a scheme to privatize 60,000 publicly-owned apartments, resulting in kickbacks of over €9 million.¹⁷ The court found that the winning bidder’s success “was achieved through bribery and was only possible because of [Grasser’s] intentional abuse of authority.”¹⁸ Grasser’s sentence is one of the longest ever given to a high-profile political actor in Austria, and his guilty verdict was upheld by the Austrian Supreme Court in 2025.¹⁹ Austria, formerly a prime example of good governance, now faces rapidly growing public dissatisfaction with both the function of its democracy and the prevalence of corruption scandals.²⁰

10. EUROPEAN CENTER FOR POPULISM STUDIES, 2024 EP ELECTIONS UNDER THE SHADOW OF RISING POPULISM 80 (Gilles Ivaldi & Emilia Zankina eds., 2024).

11. *Id.* at 76–77.

12. *Id.* at 108.

13. Kartal, *supra* note 9, at 1449.

14. Kartal, *supra* note 4, at 953.

15. Transparency Int’l, *Corruption Perception Index: Austria*, TRANSPARENCY INT’L. (Mar. 2024), <https://www.transparency.org/en/countries/austria> [<https://perma.cc/TSU4-ZPW8>].

16. *Austria: Former Finance Minister Grasser Jailed for Corruption*, BBC (Dec. 4, 2020), <https://www.bbc.com/news/world-europe-55195397> [<https://perma.cc/HZK3-58R8>].

17. *Id.*

18. *Id.*

19. *Former Austrian Finance Minister Grasser Handed Four-Year Prison Term*, REUTERS (Mar. 25 2025), <https://www.reuters.com/world/europe/former-austrian-finance-minister-grasser-handed-four-year-prison-term-2025-03-25/> [<https://perma.cc/SDZ5-HPW5>].

20. Katrin Praprotnik, *Austria: Political Developments and Data in 2022* 62 EUR. J. POL. DATA Y.B. 30, 30–31 (2023).

A. Research Question and Roadmap

There are many complex, country-specific reasons for public corruption in the EU. My goal in this Note therefore is not to discuss what causes corruption, as the answer varies drastically across different member states. Rather, this Note will explore the extent to which there is harmony, or a lack thereof, within the EU about what constitutes corruption, and whether the EU's most recent tool for fighting corruption, its 2023 Directive, will be effective in harmonizing corruption definitions. The Directive establishes minimum definitions and sanctions for corruption offenses to "effectively prevent and combat corruption. . . by means of criminal law."²¹

This Note will contribute to the existing scholarship through an examination of member states' domestic legal definitions for bribery and other corruption offenses with reference to the European Commission's anti-corruption Directive. Effective corruption control is essential for good governance and economic prosperity; however, true corruption control first requires a common understanding of what constitutes corruption. This idea is clear from a logical perspective, but is also evident from the EU's current approach to corruption control, the 2023 Directive, which seeks to harmonize the definitions of corruption offenses across member states. Notably, the EU can only take action if the "objectives of the proposed action cannot be sufficiently achieved by Member States in the framework of their national legal systems."²² The EU therefore knows that it suffers from a lack of cohesion with respect to corruption definitions across member states and believes that its objective, improved corruption control, can only be achieved by EU legislation, rather than by countries acting alone. Currently, the EU is trying to solve the growing problem of corruption with the 2023 Directive's standardized definitions for corruption offenses. This Note will answer the following question: will the 2023 Directive's proposed standard legal definitions for bribery and other offenses effectively fight corruption in the EU?

To answer this question, I will first assess the domestic legal definitions of corruption offenses in member states and review their compatibility with one another and with EU law through comparative analyses. I will focus on two member states from each of the following categories: role models (consistently high corruption control), achievers (increased corruption control over time), underperformers (consistently low corruption control), and backsliders (decreased corruption control over time). In particular, I will highlight bribery, which is central to both current EU anti-corruption legislation and to many member states' domestic anti-corruption legal framework. Of the six corruption offenses addressed in the Directive, bribery is the only one currently

21. Proposal for a Directive of the European Parliament and of the Council on Combating Corruption, Replacing Council Framework Decision 2003/568/JHA and the Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union and Amending Directive (EU) 2017/1371 of the European Parliament and of the Council, at 21, 30, COM (2023), 234 final (May 3, 2023) [hereinafter "Commission"].

22. PATRYCJA SZAREK-MASON, *THE EUROPEAN UNION'S FIGHT AGAINST CORRUPTION* 47 (CAMBRIDGE UNIV. PRESS, 2010).

criminalized in all surveyed member states, making it a prime candidate for in-depth comparative analysis.

However, with its 2023 Directive, the EU also wants to expand its scope of corruption offenses to cover other offenses, such as misappropriation, trading in influence, abuse of functions, obstruction of justice, and illicit enrichment.²³ Therefore, in addition to the more detailed analysis of legal definitions of bribery, I will also determine whether each surveyed member state defines and criminalizes the same additional corruption offenses as the 2023 Directive. Finally, I will conclude with an analysis of how the inconsistencies between the 2023 Directive and countries' domestic definitions will affect prosecutors' ability to fight corruption, as well as the repercussions for the efficacy of the Directive. Even if the EU wishes to combat corruption with the Directive's universal minimum definitions for offenses, if the EU's proposed definitions are narrower or weaker than the existing domestic definitions, then the Directive will fail to achieve its stated goal and will not help the EU or national prosecutors in the fight against corruption.

I. Current EU Anti-Corruption Framework

In the *acquis communautaire*, the body of EU law that member states must adopt before accession, the EU states that it seeks to promote the "prevention and deterrence of corruption."²⁴ However, the EU offers little in terms of explicit guidance for member states on the definitions of corruption offenses or the fight against corruption. The 1997 Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States offers a limited definition of corruption.²⁵ The Convention defines "passive corruption" as "the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties."²⁶ Similarly, "active corruption" is "the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties."²⁷ The Convention required member states to "take the necessary measures" to criminalize passive and active corruption and to ensure that corruption was "punishable by effective, proportionate, and dissuasive criminal penalties."²⁸ However, the Convention does not define any other corruption offenses, such

23. Commission, *supra* note 21, at 6.

24. Kartal, *supra* note 4, at 944.

25. *Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*, 1997 (O.J.) (C195) (EU)

26. *Id.*

27. *Id.*

28. *Id.*

as misappropriation or abuse of functions, and its narrow definition certainly does not encompass the wide range of corrupt activity occurring across the EU. Moreover, the Convention lacked a cohesive enforcement plan, instead delegating responsibility for the criminal prosecution of corruption to domestic authorities.²⁹ Consequently, the current type and severity of punishment for corruption offenses varies widely between member states.

The Treaty of Amsterdam, which entered into force in 1999, explicitly recognized the fight against corruption as one of the EU's objectives and introduced common positions and framework decisions to supplement the existing ineffective anti-corruption mechanisms.³⁰ In contrast to conventions, framework decisions have deadlines for implementation and monitoring mechanisms.³¹ Additionally, although they require the implementation of changes for national legislation, framework decisions do not have to be approved or ratified at the national level.³²

Throughout the 2000s and 2010s, the EU addressed corruption through various communications, introduced initiatives to fight corruption and financial crimes, and established entities to prosecute financial crimes and increase coordination among member states.³³ The EU's goal of harmonizing, or approximating, domestic definitions of corruption offenses was stated in the Vienna Action Plan, the Tampere European Council, the EU Strategy for the Beginning of the New Millennium, the Treaty of Lisbon and a 2003 Framework Decision that aimed to approximate private sector corruption.³⁴

In 2020, the European Commission established the Rule of Law Report, which is released annually to "monitor significant developments. . . relating to the rule of law in Member States. It covers four pillars: the justice system, the anti-corruption framework, media pluralism, and other institutional issues related to checks and balances."³⁵ The Rule of Law Reports are an important step in the fight against corruption because they put institutional pressure on member states to address corruption and good governance, but they lack the much-needed force of a cohesive body of anti-corruption law.

II. Proposed Anti-Corruption Directive

Despite previous plans to harmonize corruption offenses, the EU still lacks a coherent or effective strategy to fight public corruption in its member states, instead adopting an ad hoc approach that is only effective when national governments are willing to cooperate.³⁶ The EU's poor approach to corruption

29. *See id.*

30. SZAREK-MASON, *supra* note 22, at 58–59.

31. *Id.* at 60.

32. *Id.*

33. *See* ALINA MUNGIU-PIPIDI, EUROPE'S BURDEN: PROMOTING GOOD GOVERNANCE ACROSS BORDERS 68–73 (2014).

34. SZAREK-MASON, *supra* note 22, at 61–62.

35. *Annual Rule of Law Cycle*, EUR.COMM'N, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/annual-rule-law-cycle_en [<https://perma.cc/H355-EWV8>] (last visited Mar. 18, 2026).

36. Kartal, *supra* note 9, at 1437; SZAREK-MASON, *supra* note 22, at 62.

controls has “inadvertently amplifie[d] an anti-EU sentiment across Europe.”³⁷ Only recently did the EU take concrete steps to fight corruption, and even now, it continues to use methods that are proven ineffective, and to shift blame to the member states and their citizens.³⁸

However, the European Commission’s 2023 Directive aimed to strengthen the EU’s legal anti-corruption framework, stating that further EU action is necessary to “[approximate] criminal law of Member States, [contribute] to ensuring a common playing field between Member States, as well as coordination and common standards.”³⁹ The Directive briefly outlines the corruption offenses criminalized by member states (e.g., bribery in the public sector, bribery in the private sector, embezzlement, abuse of functions, illicit enrichment), but it also notes that “definitions have many variations, in particular when looking at embezzlement or abuse of functions. It can certainly not be concluded that Member States cover the full scope of corruption offenses as defined in the [United Nations Convention Against Corruption].”⁴⁰ The Directive establishes minimum rules for the definitions of criminal corruption-related offenses and sanctions, but it does not provide any details as to whether its definitions are compatible with each member state’s preexisting legal definitions of corruption.⁴¹ It also fails to set forth any concrete solutions or targeted anticorruption strategies. Moreover, the Directive has not actually been implemented. Once it is finalized and implemented, it will likely take several years to determine whether it will be effective and whether it will actually strengthen the member states’ domestic anticorruption legislation. Even so, the Directive and its harmonized definitions are the EU’s most current mechanisms for corruption control, so it is important to know whether its legal definitions for bribery and other offenses will help or hinder the fight against corruption.

III. Directive Definition Compared to Domestic Definitions

This section will discuss the domestic definitions of bribery in eight EU member states: Austria, Denmark, France, Ireland, Germany, Greece, Poland, and Romania. This section is divided into four subsections, each discussing two member states: role models (Denmark and Germany), achievers (France and Ireland), underperformers (Poland and Romania), and backsliders (Austria and Greece). I will discuss the definition of bribery in each member state, highlighting important features of each definition, the definitions’ practical implications for corruption control, and each definition’s compatibility with the definitions of bribery from the EU’s 2023 Directive. Where the Directive is narrower or weaker than the member state’s existing definition for bribery, the EU’s forced harmonization will not be effective in combatting or prosecuting corruption.

37. Kartal, *supra* note 9, at 1436–37.

38. *Id.* at 1438–1439.

39. Commission, *supra* note 21, at 2.

40. *Id.* at 12.

41. *See id.* Interestingly, although the Directive discusses a lack of consistency in domestic definitions of embezzlement, it does not include a standardized definition for embezzlement.

The full table summarizing the elements in each member state's bribery definition, as well as the definitions from the 1997 Convention and 2023 Directive, are found in Appendix A. This table clearly shows which elements are present in each surveyed member state, as well as their compatibility with the Directive.

A. Key Elements of Bribery Definitions

My statutory analysis of the legal definitions of bribery from the eight surveyed member states, the 2023 Directive, and the 1997 Convention revealed nine key elements that were either present or absent in each definition.⁴²

1. *Passive and Active Bribery*

First, all definitions, including the Directive, included both passive and active bribery. This means that the person who offers the bribe is guilty of active bribery, and the person who accepts the bribe is guilty of passive bribery.

2. *Specific Acts*

The next element is a requirement for a specific, isolated act or omission. This means that the official must take, or fail to take, a single, identifiable action. Generally, if a definition of bribery requires a specific act, it uses phrases like "any act," and if a definition does not require a specific act, it uses phrases like "acting in accordance." A specific act requirement narrows the definition because it means that an official or a private citizen offering a bribe cannot be prosecuted for a general pattern of favorable treatment.

The 2023 Directive does not require a specific act or omission.⁴³ This expands the definition of some member states, as prosecutors following the Directive's definition do not have to pinpoint a single corrupt action, but instead may prosecute based on more general favorable treatment or a series of actions that, when viewed together, constitute bribery. The absence of a specific act requirement means that prosecutors can combine acts or omissions that alone may not constitute bribery, but together fulfill the requirements.

3. *Indirect Bribes*

Some definitions include both indirect bribes and direct bribes. The 2023 Directive does include indirect bribes, which means that a private citizen who gives a bribe through an intermediary (e.g., plans the bribe but does not technically offer it to the public official), will also be guilty of active bribery.⁴⁴ Similarly, a public official who has someone else accept a bribe on their behalf

42. Notably, the definition for bribery in the 1997 Convention and the 2023 Directive contain all the same elements and are, in practice, identical. The EU's newest mechanism to fight corruption does not build on its previous framework, which, as discussed, was highly ineffective. Because they contain the same elements, for the purposes of this section, references to the 2023 Directive also refer to the 1997 Convention.

43. See Commission, *supra* note 21, at 33.

44. *Id.*

will also likely be guilty. Member states that do not explicitly include indirect bribes will have a more difficult time prosecuting actors who give or receive bribes through intermediaries, as the defendants will argue that they did not personally accept or offer a bribe, and therefore fall outside the scope of the legal definition. Failure to include indirect bribes may lead to the acquittal of higher-ups in bribery schemes, because they may orchestrate the plan but are unlikely to offer or accept the bribes themselves.

4. *Acts or Omissions Outside the Scope of the Official's Duties*

Almost all surveyed bribery definitions, including the 2023 Directive's, encompass acts or omissions outside the scope of the official's duties.⁴⁵ This means that if an official performs an act or omission that violates or falls outside the scope of his legal duties in exchange for a bribe, he is guilty of passive bribery. Denmark is the only member state that does not encompass acts performed for a bribe that fall outside the scope of an official's duties.

5. *Lawful Acts within the Scope of the Official's Duties*

Conversely, most definitions, including the 2023 Directive's definition, include acts that are otherwise lawful, but become unlawful when performed for a bribe.⁴⁶ This means that an official who acts in accordance with his duties, but does so in exchange for a bribe, will still be guilty of passive bribery. Germany is the only member state that does not include otherwise lawful acts in its definition. To be guilty of bribery, German officials must violate their duties by more than just accepting a bribe; the act in question must already fall outside the scope of their duties.

6. *Intent*

A particularly important element is the intent requirement. In most surveyed countries, bribery does not require intent. This means that a prosecutor does not have to find that the defendant purposefully or knowingly acted wrongfully or in violation of the law; the mere act of giving or accepting the bribe is sufficient for conviction. However, the EU's Directive adds an intent requirement to bribery (and all other corruption offenses), meaning that defendants may now offer a failure of proof defense if the government does not demonstrate that they intentionally gave or accepted a bribe.⁴⁷ For example, a defendant could successfully argue that he is not guilty of bribery because he did not know that accepting concert tickets in exchange for voting a certain way constituted accepting a bribe. Of the surveyed member states, only Austria shares the EU's proposed intent requirement.⁴⁸

45. See *id.*

46. See *id.*

47. See *id.* at 33–35.

48. See Laura Viechtbauer & Bernd Wiesinger, *Bribery & Corruption Laws and Regulations 2026 – Austria*, GLOBAL LEGAL INSIGHTS (Dec. 18, 2025), <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/austria/> [<https://perma.cc/4NSM-L46P>]; DLA Piper, *Austria – Global Bribery Offenses Guide* (Nov. 3, 2025), <https://www>.

7. Incentives for Future Acts or Omissions

All definitions of bribery, including the 2023 Directive's definition, encompass bribes given for future acts or omissions.

8. Rewards for Past Acts or Omissions

However, many definitions, including the 2023 Directive's definition of bribery, do not cover rewards given for past acts or omissions. Many bribery definitions are forward-looking and therefore do not encompass officials who accept bribes for something they have already done or failed to do. In the United States, the law distinguishes between bribes (forward-looking) and illegal gratuities (backward-looking), criminalizing both.⁴⁹ However, some member states cover both incentives for future acts/omissions and rewards for past acts/omissions in the same offense.

9. Benefit from Bribe

The final element is whether the public official must benefit from the bribe. In most cases, including the 2023 Directive's definition, the official must receive some gift or benefit, monetary or otherwise, to be guilty of bribery.⁵⁰ However, in a few countries, there must be consideration, but not necessarily an advantage. This means that a private citizen can offer anything, even if it does not benefit the official, and be guilty of passive bribery.

B. Role Models

The first category, role models, includes member states who "have consistently outperformed others in controlling corruption."⁵¹ These countries generally have low levels of corruption coupled with strong civil rights, low crime rates, and effective constraints on government power (e.g., judicial independence).⁵² The two member states analyzed below, Denmark and Germany, both rank exceptionally high on the World Justice Project's Rule of Law Index (scoring first and sixth, respectively), largely due to their strong corruption controls.⁵³

dlapiper.com/en-at/insights/publications/2019/09/global-bribery-offenses-guide/Austria [https://perma.cc/P5DB-D4UY].

49. See 18 U.S.C. §201 (2018).

50. See Commission, *supra* note 21, at 33.

51. Mert Kartal, PROMOTING INTEGRITY: THE EU'S APPROACH TO CORRUPTION CONTROL 3 (2025) (unpublished manuscript).

52. *Overall Index Score – Denmark*, WORLD JUSTICE PROJECT (2025), <https://worldjusticeproject.org/rule-of-law-index/factors/2025/Denmark/> [https://perma.cc/4JUN-MYYT].

53. *Overall Index Score – Germany*, WORLD JUSTICE PROJECT (2025), <https://worldjusticeproject.org/rule-of-law-index/factors/2025/Germany/> [https://perma.cc/2TER-25H4].

1. Denmark

Danish anti-corruption law distinguishes between active bribery (giving a bribe) and passive bribery (accepting a bribe).⁵⁴ Active bribery is defined as unlawfully promising, providing, or offering a gift or other advantage to a person serving in a Danish, foreign, or international public office to induce them to act or refrain from acting in their official duties.⁵⁵ Active and passive bribery include both acts and omissions occurring in the exercise of an official's course of duties.⁵⁶ The definition for active bribery only includes bribes given for future acts, not rewards given for past acts; however, passive bribery encompasses the unlawful receipt, demand, or acceptance of a gift or advantage, implicitly including rewards for past acts.⁵⁷ Therefore, Danish law criminalizes more passive bribes than active bribes, focusing more on the public officials who accept unlawful advantages. Many other member states criminalize active and passive bribery equally, meaning that both giving a reward for a past act and accepting a reward for a past act are crimes. However, the Danish definition of bribery does not require the exchange of an advantage for a *specific* act, as many member states do. Because a bribe does not have to be linked to a single, isolated act, Danish law encompasses broad patterns of more general activity or favorable treatment given in exchange for a gift or advantage.

Like the Directive, Denmark criminalizes both active and passive bribery, does not require a specific act, does not encompass rewards for past acts, and requires the public official to benefit from the exchange. Denmark expands the definition of bribery from the Directive, as it does not require defendants to act with intent, meaning that public officials and private citizens or entities cannot claim ignorance or innocent intentions as a defense to bribery. However, the Danish definition of bribery is narrower than the Convention's because the Danish definition of bribery includes only acts within the scope of the official's duties, whereas the Convention criminalizes bribery for acts and omissions both within and contrary to an official's duties. Denmark is the only member state that does not criminalize acts or omissions done in exchange for a bribe that fall outside a public official's designated duties.

2. Germany

Like Danish law, German law distinguishes between active and passive bribery, requires that the public official benefit from the transaction, and does not require a specific act. However, unlike Denmark, Germany criminalizes both the gift and receipt of rewards for past actions.⁵⁸ Like Denmark, Germany

54. Simon Evers Hjelmberg et al., *Anti-Corruption 2026*, CHAMBERS AND PARTNERS (Dec. 4, 2025), <https://practiceguides.chambers.com/practice-guides/anti-corruption-2026/Denmark> [<https://perma.cc/D77M-K6B4>]; DLA Piper, *Denmark – Global Bribery Offenses Guide* (Nov. 3, 2025), <https://www.dlapiper.com/en-us/insights/publications/2019/09/global-bribery-offenses-guide/denmark> [<https://perma.cc/3U8Y-6KNW>].

55. *Id.*

56. *Id.*

57. *Id.*

58. Daniel Zapf & Joline Kuhn, *Bribery & Corruption Laws and Regulations 2026 – Germany*, GLOBAL LEGAL INSIGHTS (Dec. 18, 2025), <https://www.globallegalinsights.com>.

does not include indirect bribes, meaning that a public official or private citizen could escape liability by acting through a third-party.⁵⁹

As long as his or her superior approves, a public official does not violate German law for accepting a benefit or advantage for the lawful exercise of his duties.⁶⁰ This is unique among the surveyed member states; almost all member states criminalize accepting or offering a bribe for acts or omissions performed in accordance with an official's duties, whether or not they are lawful. Therefore, the German definition of bribery does not include general favorable treatment, accelerating or delaying an action, or even omitting an action, as long as the treatment, action, or omission does not violate the law. Under this more lenient standard, an official may accept a reward for voting in favor of a company's interest, provided that his principal approves of the transaction. Only those acts or omissions that already violate the official's duties will be punished.

Germany aligns with the Directive because it criminalizes both passive and active bribery, criminalizes acts done for a bribe that are outside the official's duties, and requires that the official benefit from the exchange. However, Germany deviates significantly from the Directive in its overt acceptance of an official who accepts an advantage for otherwise lawful actions within the scope of his responsibilities. Germany also differs from the Directive because it does not require intent, but it does criminalize granting rewards for past actions.

C. Achievers

The second category of member states are the achievers, which are countries that have consistently improved or maintained their corruption controls through the years.⁶¹ Though the achievers have done fairly well, there is still room for further progress in the fight against corruption.⁶² The achievers discussed below, France and Ireland, rank twenty-first and fifteenth, respectively, on the World Justice Project's Absence of Corruption Index.⁶³ France and Ireland have effective constraints on government power and decent protection for fundamental rights, but they do not demonstrate the same top-tier good governance as the role models.⁶⁴

com/practice-areas/bribery-and-corruption-laws-and-regulations/germany/ [https://perma.cc/Q9SA-FT3G]; Andreas Lohner & Nicolai Behr, *Anti-Corruption in Germany*, GLOBAL COMPLIANCE NEWS, <https://www.globalcompliancenesws.com/anti-corruption/handbook/anti-corruption-in-germany/> [https://perma.cc/WF43-GGKB]; Willkie Compliance, *Public Sector Corruption*, WILLKIE FARR & GALLAGHER LLP, <https://complianceconcourse.willkie.com/resources/public-sector-corruption/> [https://perma.cc/C3QE-Q729] (last visited Mar. 18, 2026).

59. See *id.*

60. Lohner & Behr, *supra* note 58.

61. Kartal, *supra* note 51, at 3.

62. *Id.*

63. *Overall Index Score – France*, WORLD JUSTICE PROJECT (2025), <https://worldjusticeproject.org/rule-of-law-index/factors/2025/France/> [https://perma.cc/2WZL-MGRJ]; *Overall Index Score – Ireland*, WORLD JUSTICE PROJECT (2025), <https://worldjusticeproject.org/rule-of-law-index/factors/2025/Ireland/> [https://perma.cc/6BGN-Z43Q].

64. See *id.*

1. *France*

France defines bribery as offering (directly or indirectly) any gift, present, or other advantage to induce a public official to perform or omit (or to reward a public official for already having performed or omitted) any act within or facilitated by their position.⁶⁵ Though the French definition for bribery requires a specific act, the French anti-corruption legislation also notes that bribery implies the improper use of authority associated with one's position, expanding the scope of activity beyond isolated acts.⁶⁶ France also criminalizes both passive and active bribery. The French definition of bribery explicitly includes indirect bribes, meaning that public officials or private citizens offering bribes cannot escape liability by acting through an intermediary.⁶⁷ French public officials are criminally liable for passive bribery if they accept an offer, gift, or advantage for performing their duties, even if those duties are otherwise lawful and within the scope of their powers.⁶⁸ Because the French definition of bribery includes offers, promises, gifts, and advantages, the French official does not even have to benefit from the transaction to be guilty of bribery. This means that evidence of a mere consideration will suffice for a bribe, even if the official does not receive an advantage.

The French definition of bribery is similar to the Directive's in that they both criminalize both passive and active bribery, explicitly include indirect bribes, and encompass actions or omissions both in accordance with and contrary to an official's duties. However, like most other member states, the French definition of bribery does not have an intent requirement. Unlike the Directive, France requires a specific, isolated act or omission, narrowing the scope of activity encompassed by bribery. However, France expands the definition of bribery by criminalizing both rewards for past acts and transactions in which the public official does not necessarily benefit.

2. *Ireland*

Ireland does not define bribery; rather, Irish law defines "corruption" in terms comparable with other member states' definitions of bribery.⁶⁹ First, Ireland defines corruptly as "acting with an improper purpose personally or by influencing another person, whether by . . . making a false or misleading statement. . . withholding, concealing, altering, or destroying a document or other

65. Eric Lasry et al., *Anti-Corruption in France*, GLOBAL COMPLIANCE NEWS – BAKER MCKENZIE, <https://www.globalcompliancencews.com/anti-corruption/handbook/anti-corruption-in-france/> [https://perma.cc/6S25-P5C6] (last visited Mar. 18, 2026); Kami Haeri et al., *Bribery & Corruption Laws and Regulations 2026 – France*, GLOBAL LEGAL INSIGHTS (Dec. 18, 2025), <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/france/> [https://perma.cc/WNE9-RZJW] (last visited Mar. 18, 2026); DLA Piper, *France – Global Bribery Offenses Guide* (Nov. 3, 2025), <https://www.dlapiper.com/en/insights/publications/2019/09/global-bribery-offenses-guide/France> [https://perma.cc/JEJ6-6H25].

66. *Id.*

67. *Id.*

68. *Id.*

69. Criminal Justice (Corruption Offences) Act 2018 (Act No. 9/2018) (Ir.).

information, or by other means.”⁷⁰ Then, like France and most other member states, Ireland distinguishes between active and passive activity, criminalizing both forms of corruption. The Irish definition of corruption includes gifts, consideration, and advantages given as either as an inducement or a reward, encompassing both past and future acts.⁷¹ The inclusion of consideration is rare among member states; most require a gift or an advantage, meaning that the public official must benefit from the bribe. However, in Ireland, the definition of corruption includes mere consideration, or the exchange or promise of one thing for another, without the additional requirement that the official benefit from the transaction. This encompasses a broader range of activities, since the exchange does not need to make the official better off in any way. Moreover, the Irish definition for corruption includes all acts done in relation to the public official’s office.⁷² Therefore, under Irish law, an official could be prosecuted for accepting a gift or advantage for an act outside the scope of his duties, as long as it is at least related to his position. However, like France, Ireland requires that the gift, consideration, or advantage be given in exchange for “an act,” rather than for general favorable treatment or exercise of influence. The Irish definition of bribery does not distinguish between direct or indirect bribery, instead only referring to the “person who corruptly requests/offers, or corruptly gives or agrees to give/accept, a gift, consideration, or advantage.”⁷³ Therefore, under Irish law, a defendant who uses an intermediary to give or accept a bribe likely would not be guilty.

Both Irish anti-corruption law and the 2023 Directive criminalize active and passive bribery, require a specific act, criminalize indirect bribes, and include acts or omissions both within and outside the scope of the official’s duties. Ireland also expands the Convention’s definition of bribery by not requiring intent, criminalizing rewards given for past acts or omissions, and not requiring the public official to benefit from the transaction.

D. Underperformers

The third group is composed of the underperformers, member states who have shown little to no progress in corruption control over the last few decades.⁷⁴ These member states, including Poland and Romania, struggle with good governance and therefore have higher levels of corruption and diminished fundamental and civil rights.⁷⁵ Systemic institutional corruption limits both Poland and Romania’s efforts to strengthen the rule of law and combat corruption.⁷⁶

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. Kartal, *supra* note 51, at 5.

75. *Overall Index Score – Poland*, WORLD JUSTICE PROJECT (2025) <https://worldjusticeproject.org/rule-of-law-index/factors/2025/Poland/> [<https://perma.cc/4ULK-64DN>]; *Overall Index Score – Romania*, WORLD JUSTICE PROJECT (2025), <https://worldjusticeproject.org/rule-of-law-index/factors/2025/Romania/> [<https://perma.cc/NZ8E-7928>].

76. Kartal, *supra* note 51, at 5.

1. Poland

Poland distinguishes between active and passive bribery, encompassing both the private citizen or entity who offers a bribe and the public official who accepts it.⁷⁷ The Polish definition includes bribes given as inducement and bribes given as rewards, covering both past and future acts.⁷⁸ The actions must be associated with or related to the official's role, but they do not need to be included in the official's duties, as they do in Denmark or Germany. Polish law does not stipulate whether indirect bribes or transactions conducted through an intermediary are included in the definition of bribery.⁷⁹ Active bribery is defined as "providing a public official with a financial or personal benefit" in exchange for an act or omission, and it is unclear whether individuals or entities who act through an intermediary are included in this definition.⁸⁰ The definition for passive bribery is clearer; it only encompasses a "public official who accepts or demands a financial or personal benefit," meaning that if a public official acted through a third party, he would likely not be included under the definition for active bribery.⁸¹ Poland does require a benefit, meaning that an exchange that did not benefit a public official would not constitute a bribe.⁸² Like most member states, the Polish definition for bribery requires the exchange of a benefit for a specific act or omission, meaning that the prosecutor must link the bribe to an isolated action.⁸³

Poland aligns with the 2023 Convention in several key ways: both criminalize active and passive corruption, require a specific act, include acts or omissions in and outside the official's scope of duties, and require the official to benefit from the exchange. Additionally, Poland criminalizes rewards for past acts and omissions and does not require intent, expanding the Convention's scope of bribery. However, Poland does not include indirect bribes, meaning that an actor could potentially escape liability by acting through an intermediary.

2. Romania

Romania's definition of bribery is more expansive than most other surveyed member states because in addition to acts and omissions, Romania explicitly includes accelerating or delaying the performance of an action either

77. Bartłomiej Jankowski et al., *Bribery & Corruption Laws and Regulations 2025 – Poland*, GLOBAL LEGAL INSIGHTS (May 12, 2024), <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/poland/> [https://perma.cc/XEX7-CD8E]; Marcin Cieminski et al., *Poland: Bribery & Corruption*, THE IN-HOUSE LAWYER (2018), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2018/06/the-poland-chapter-of-the-legal-500bribery-corruption-comparative-guide.pdf> [https://perma.cc/JBQ6-VS9F]; DLA Piper, *Poland – Global Bribery Offenses Guide* (Nov. 3, 2025), <https://www.dlapiper.com/en/insights/publications/2019/09/global-bribery-offenses-guide/Poland> [https://perma.cc/Z7H2-W6ZP].

78. *Id.*

79. *See id.*

80. *Id.*

81. *Id.*

82. *See id.*

83. *See id.*

associated with or contrary to a public official's duties.⁸⁴ This means that a public official can be punished for accepting a benefit to speed up the performance of a lawful action, within the scope of his duties, that he already intended to perform. Consequently, favorable treatment, rather than just distinct acts or omissions effectuated for the sole purpose of receiving a bribe, are included under Romania's bribery definitions. Like most other member states, the Romanian definition for bribery distinguishes between passive and active bribery.⁸⁵ Romania's definition also encompasses both direct and indirect bribery, so public officials and private citizens and entities who act through third-party intermediaries will still be guilty of bribery.⁸⁶ It is likely that rewards for past acts, in addition to promises for future acts, are also encompassed under the definitions for passive and active bribery. Like most member states (but unlike Ireland and France), Romania requires that the bribe make the official better off in some way ("money or other benefits"), meaning an exchange that does not benefit the official will not constitute bribery.⁸⁷ Though Romania has poor corruption control, its definitions for active and passive bribery have a wider scope than almost all other surveyed member states.

Romania's definition of bribery is also broader than the definition of bribery in the Directive, as it includes rewards for past acts and omissions and does not require intent. Like the Directive, Romania defines both active and passive bribery, does not require a specific act or omission to be exchanged for an advantage, includes indirect bribes, encompasses acts outside the scope of the official's duties, and requires the official to benefit from the exchange.

E. Backsliders

The fourth category of member states are the backsliders, member states who have experienced significant declines in their corruption controls over time.⁸⁸ Many of the backsliders showed even further deterioration after their accession to the EU, which is particularly concerning because candidates for EU membership are supposed to meet baseline requirements for the rule of law and democratic good governance. As mentioned above, Austria used to be a role model for corruption controls, but a recent rise in corruption scandals led to a deterioration in the rule of law and in Austria's reputation for good governance. Although Greece was never a prime example of corruption control, it experienced similar significant declines in corruption control through the last few decades.

84. See Simona Enache-Pirtea & Madalin Enache, *Bribery & Corruption Laws and Regulations 2026 – Romania*, GLOBAL LEGAL INSIGHTS (Dec. 8, 2025), <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/romania/> [https://perma.cc/QNP2-8GG6]; Popescu & Asociatii, *Bribery and Corruption in Romania*, CEE LEGAL MATTERS (Apr. 29, 2025), <https://ceelegalmatters.com/bribery-corruption-2025/romania-bribery-corruption-2025> [https://perma.cc/XG9V-EGLP].

85. See *id.*

86. See *id.*

87. *Id.*

88. Kartal, *supra* note 51, at 5.

1. Austria

Austria's anti-corruption legislation is unique among the surveyed member states in two ways. First, Austria is the only member state whose definition of bribery requires intent.⁸⁹ This means the person offering the bribe must genuinely believe it is possible that they are offering or giving an advantage to a public official in exchange for the performance or omission of an official act. Lack of intent is therefore a defense to bribery, making it harder to prosecute than in member states without an intent requirement.⁹⁰ Second, Austria distinguishes between bribery and corruptibility, rather than between active and passive bribery. The definitions are similar to other member states' definitions for active and passive bribery, but the terms themselves are nonetheless different. It is unclear whether the intent requirement extends to corruptibility (passive bribery), or whether it is limited to bribery (active bribery). The Austrian definition of bribery/corruptibility includes rewards and incentives for both past and future acts, as well as acts or omissions contrary to the official's duties.⁹¹ However, the act or omission must be specific, so offering a reward for general favorable treatment without a discrete act would not fulfill the requirements for bribery.⁹² Austria also does not distinguish between direct and indirect bribery, so it is unclear whether bribes given through a third-party intermediary would be included under the framework.⁹³

Austria is the only surveyed member state that aligns with the Directive's intent requirement, at least for active bribery. Moreover, like the Directive, Austria distinguishes between active and passive bribery (or corruptibility), includes acts in and outside the scope of the official's duties, and requires that the official benefit from the exchange. Austria expands the scope of bribery by including rewards for past acts, but narrows it by requiring a specific act and not including indirect bribes.

2. Greece

Greece distinguishes between passive and active bribery, meaning that both the private citizen or entity who offers the bribe and the public official who accepts it are culpable.⁹⁴ The Greek definition of bribery includes advantages

89. See Laura Viechtbauer & Bernd Wiesinger, *Bribery & Corruption Laws and Regulations 2065 – Austria*, GLOBAL LEGAL INSIGHTS (Dec. 18, 2025), <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/austria/> [<https://perma.cc/4NSM-L46P>]; DLA Piper, *Austria – Global Bribery Offenses Guide*, (Nov. 3, 2025), <https://www.dlapiper.com/en-at/insights/publications/2019/09/global-bribery-offenses-guide/Austria> [<https://perma.cc/P5DB-D4UY>].

90. See *id.*

91. See *id.*

92. See *id.*

93. See *id.*

94. Ilias G. Anagnostopoulos & Jerina Zapanti, *Greece: Bribery & Corruption*, LEGAL 500 (2025), <https://www.legal500.com/guides/chapter/greece-bribery-corruption/> [<https://perma.cc/5KKW-AY22>]; Ovvadias S. Namias et al., *Bribery & Corruption Laws and Regulations 2026 – Greece*, GLOBAL LEGAL INSIGHTS (Dec. 18, 2025), <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/greece/> [<https://perma.cc/GJK2-UMNX>]; Ilias Anagnostopoulos et al., *Anticorruption Laws*, GREEK LAW DIGEST (Apr. 1, 2019), <https://www.greeklawdigest.gr/topics/tax/item/124-anti-corruption-laws> [<https://perma.cc/E92V-FDKH>].

given or promised for both past and future acts, as well as actions and omissions in accordance with and against an official's duties.⁹⁵ However, the public official must benefit or gain something from the transaction.⁹⁶ Indirect bribes are also included under the Greek legal framework.⁹⁷ Like many member states, Greek anti-bribery law requires the bribe to be exchanged for a specific act or omission, rather than for mere favorable treatment, such as accelerating or delaying an action.⁹⁸

Both the Greek definition of bribery and the Directive's definition of bribery criminalize active and passive corruption, include indirect bribes, require an isolated act, include acts contrary to the official's position, and require the official to benefit from the exchange. However, Greece also prohibits giving rewards for past acts or omissions and does not require intent.

IV. Bribery in the Directive: Strengths and Weaknesses

The Directive aims to combat corruption by harmonizing corruption offenses across member states. However, where the Directive's mandatory minimum standard definition aligns with the weakest definitions (in other words, the lowest common denominators), rather than strengthening the definitions for struggling member states, it fails to achieve its stated objective. A minimum EU definition for bribery requiring less than the existing domestic definitions is pointless, and certainly will not help prosecutors fight corruption.

A. Strengths

Two main elements of the 2023 Directive will generally strengthen member states' definitions; the Directive doesn't require an isolated act or omission and it includes indirect bribes.⁹⁹ Five member states currently require a specific act or omission, meaning that more generalized patterns of corrupt behavior may not constitute bribery. Four member states do not include indirect bribes in their definitions, meaning that individuals who act through third parties may escape a guilty verdict.

In Greece, bribery requires proof of a specific act. This loophole, as well as frequent acquittals of corruption defendants, may contribute to the staggering 90% of Greek citizens who believe that Greek society shows tolerance towards corruption.¹⁰⁰

95. *See id.*

96. *See id.*

97. *See id.*

98. *See id.*

99. The Directive's definitions establish minimum rules for member states, meaning that it sets a floor, rather than a rigid set of guidelines. Commission, *supra* note 21, at 33. This floor, however, is far too low. This means that in most member states, the Directive's requirements will not improve corruption controls. Moreover, the weaknesses outlined in the subsequent section enable member states to adopt weaker definitions and still be compliant with the EU Directive, thereby defeating its purpose.

100. Apostolos Lakasas, *Widespread Perceptions of Corruption Persist in Greece*, EKATHIMERINI (Dec. 9, 2025), <https://www.ekathimerini.com/politics/1289139/widespread-perceptions-of-corruption-persist-in-greece/> [https://perma.cc/Y5Y5-3XDB].

For example, the Court of Appeals in Athens acquitted a Swiss banker on corruption charges “in connection with an alleged bribery scheme involving high-ranking officers. . . and intermediaries.”¹⁰¹ This case highlighted the gaps in Greece’s bribery definition that the Directive seeks to fill; it is more difficult to prosecute defendants involved in broad schemes (rather than individual instances of bribery). Acquittals like the one seen in Athens are also more common in countries where defendants can argue that they are innocent because they acted through an intermediary. Prosecutors in member states that do not include indirect bribes or require isolated acts are therefore less likely to be able to capture the entire network involved in a bribery scheme, particularly the higher-ups who may control the general operation but do not offer the bribes or who cannot be traced to an individual transaction. The Directive’s harmonized definition of bribery fills both gaps by explicitly including bribes given or received through intermediaries and through its lack of a requirement for an isolated act.

B. Weaknesses

Though the Directive has valuable strengths, they are outweighed by its two major weaknesses: rewards for past acts or omissions (gratuities) are not included and intent is required. First, seven of the eight surveyed member states criminalize accepting rewards or gratuities in exchange for past acts or omissions. However, the 2023 Directive criminalizes only accepting bribes to “act or refrain from acting,” meaning that it does not encompass rewards or kickbacks for given for prior acts or omissions. In most member states, the adoption of the EU’s standardized definition would narrow the scope of bribery, as prosecutors could no longer seek bribery convictions for people who offer or accept rewards for past behavior.

The more concerning weakness is that the 2023 Directive requires bribery, as well as all other enumerated corruption offenses, be committed intentionally. The first glaring issue with the EU’s intent requirement is that it is currently shared by only one other member state, Austria. Austria requires that the perpetrator genuinely believe it is possible that he is offering an advantage to the public official in exchange for the performance of an official act. The other seven surveyed member states do not include a requisite mental state, meaning that it does not matter if the perpetrator intends or genuinely believes that his bribe will result in the performance of an official act. If member states added an mental state requirement like the Directive’s, it would be more difficult to prosecute corruption offenses. This is because, in addition to the objective conduct elements of the crime, the government would also have to prove that the defendant acted intentionally.

The consequences of an intent requirement have been on display in Austria, where several high-profile corruption defendants were recently acquitted based on their failure of proof defenses, where they, in part, argued the government failed

101. *Athens Court Clears Swiss Banker of Money Laundering Charges* ANAGNOSTOPOULOS (July 23, 2025), <https://iag.gr/athens-court-clears-swiss-banker-of-money-laundering-charges/> [<https://perma.cc/V5EW-PZ7J>].

to establish that they knew or intended, to partake in a bribe. In 2022, a Vienna court acquitted former Vice Chancellor Heinz-Christian Strache on corruption charges.¹⁰² Strache's party accepted cash donations from businessman Siegfried Stieglitz, in exchange giving Stieglitz a position at Austria's state-owned highway management corporation, "which plans, finances, builds, maintains, and collects tolls on the country's freeways."¹⁰³ However, Vice Chancellor Strache and Stieglitz were acquitted because the Court could not conclusively prove that they were aware of the bribery scheme, even though Strache's party accepted the donations in exchange for Stieglitz's new advantageous position. Although the conduct elements of bribery were satisfied, Austria's intent requirement prevented the Court from holding either defendant accountable for their actions because the Court could not prove that they intended to partake in a bribe.

The other issue with the EU's intent requirement is that it does not define the term "intentionally." The only background offered for the term is, "This Directive aims to [criminalize] corruption offenses when committed intentionally. Intent and knowledge may be inferred from objective and factual circumstances."¹⁰⁴ It is therefore unclear whether the Directive's corruption offenses are general or specific-intent crimes. General intent crimes require "more than a mere voluntary act. At the very least, they require some basic knowledge – or imputed knowledge – of the surrounding circumstances."¹⁰⁵ For example, for the general intent crime of being a felon in possession of a gun, the felon must know that the thing he possesses is a gun, but not necessarily that his possession is wrongful or unlawful.¹⁰⁶ Specific-intent crimes require more than knowledge of the surrounding circumstances; they usually require proof that the "defendant intended to bring about the social harm at which the statute is targeted."¹⁰⁷ In other words, the broad distinction between general and specific-intent offenses is the difference between someone who actively wants to cause social harm and someone who "merely accepts the possibility of bringing about social harm."¹⁰⁸ Specific-intent crimes can also refer to offenses that require proof that the defendant intends to do some further act.¹⁰⁹

Under the Directive's definition, bribery would be a general intent crime if the government only had to prove that the defendant knew he was accepting money or another advantage in exchange for an official act or omission. Bribery would be a specific-intent crime if, for example, the government had to meet the higher bar of proving the defendant knew he was accepting an advantage for an official act or omission, and also knew that his actions were in violation of anti-bribery laws targeting public sector corruption. However, the Directive does not provide any guidance on whether corruption offenses,

102. *Austria's Ex-Deputy Chancellor Cleared of Graft*, DEUTSCHE WELLE (July 29, 2022), <https://www.dw.com/en/austrian-former-deputy-chancellor-strache-acquitted-of-corruption-charges/a-62649992> [<https://perma.cc/JV9V-CPXF>].

103. *Id.*

104. Commission, *supra* note 21, at 22.

105. Eric A. Johnson, *Understanding General and Specific Intent: Eight Things I Know for Sure*, 13 OHIO ST. J. CRIM. L. 521, 531 (2016).

106. *See id.* at 532.

107. *Id.* at 527.

108. *Id.*

109. *Id.*

including bribery, are general or specific-intent crimes. Without further clarification, the EU leaves the door open for defendants to argue that bribery is a specific-intent crime, and therefore that the government must prove that they knew their act was wrongful (e.g., furthering corruption) or that their act furthered the social harm of corruption (e.g., violated the anti-bribery laws). If member states modified their own definitions to match the Directive's intent requirement, their laws would be narrower and susceptible to the same ambiguities.

A third, albeit less serious, flaw with the Directive's bribery definition is that it requires the official to benefit from the exchange.¹¹⁰ Six of the eight surveyed member states have the same provision, stipulating that for a public official to be guilty of bribery, he must gain an advantage or personal benefit from the transaction. However, Ireland and France require only that the official receive something, a quid pro quo - not that he or she actually *gain* something from the exchange. The French and Irish definitions, requiring mere consideration instead of a benefit, would expand the scope of bribery and prevent officials from arguing that they are not guilty of bribery because they did not benefit from a transaction (e.g., they were merely receiving what was owed). The Directive's definition would be more effective if it required only a quid pro quo, rather than an advantage.

Moreover, in December 2025, EU legislators agreed on a "watered down" final version of the 2023 Directive's original text.¹¹¹ The biggest change from the December 2025 negotiations is the removal of the explicit mention of "abuse of office" crimes, which was replaced by a requirement that member states criminalize "at least serious violations of the law in the performance of or failure to perform an act by a public official in the exercise of his functions."¹¹² The abuse of office offense was removed due to strong opposition from Italy, Germany, and the Netherlands.¹¹³ The changes do not affect the bribery definition, but they include "much-reduced minimum penalties, many optional clauses, and wording that leaves ample room for countries to forge their own interpretations."¹¹⁴ This assessment aligns with the weaknesses identified in this section; a vague intent requirement and narrow provisions do little to advance the EU's goal of harmonizing domestic definitions of bribery.

V. Other Offenses in the Directive

In addition to bribery, the 2023 Directive also proposed standardized definitions for misappropriation, trading in influence, abuse of functions, obstruction of justice, and enrichment from corruption offenses (illicit enrichment).¹¹⁵

110. See Commission, *supra* note 21, at 33.

111. Max Grier, *EU Agrees Bare-Bones Anti-Corruption Law*, POLITICO (Dec. 2, 2025), <https://www.politico.eu/article/eu-anti-corruption-law-negotiations-italy-giorgia-meloni/> [<https://perma.cc/84PC-4F8L>].

112. *Id.*

113. *Id.*

114. *Id.*

115. See Commission, *supra* note 21, at 33–35.

Interestingly, the Directive does not mandate that member states criminalize embezzlement. Bribery is the only offense currently covered by all eight surveyed member states, although as discussed, these definitions vary greatly. Misappropriation, trading in influence, and abuse of functions are criminalized by all member states except for Germany.¹¹⁶ Obstruction of justice is not criminalized in Ireland, and it is unclear whether it is criminalized in Poland. The table noting which offenses are criminalized in the surveyed member states is found in Appendix B.

A. Illicit Enrichment

Illicit enrichment, or enrichment from corruption offenses, is not criminalized in Germany, Greece, and Romania. Notably, Greece is a backslider and Romania is an underperformer, and both countries have high rates of perceived corruption. The EU defines enrichment from corruption offenses as “the intentional acquisition, possession or use by a public official of property that that official knows is derived from the commission of [enumerated corruption offenses].”¹¹⁷ Alternatively, illicit enrichment can be defined as “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.”¹¹⁸ The main idea of illicit enrichment is that “any increase in property must have its legal basis.”¹¹⁹ Illicit enrichment criminalizes the behavior of those at the margins of corruption schemes who seek to benefit without necessarily participating in the scheme itself, broadening the scope of anti-corruption legislation to encompass those who profit from corrupt activities.

Member states that do not criminalize illicit enrichment may struggle to prosecute defendants who benefit from the proceeds of corruption offenses, but who cannot necessarily be linked to the offenses themselves. If direct evidence of a suspicious asset’s origin is unavailable, illicit enrichment provisions can expedite the confiscation and punishment proceedings.¹²⁰ Some scholars argue that illicit enrichment provisions lower the bar for criminal liability to the point that they risk infringing on the principles of due process and proportionality.¹²¹ For example, in its far-reaching illicit enrichment provision, Lithuania criminalized “the unexplained enrichment of any person, including enrichment without any links to criminal offenses.”¹²² However, the Directive’s definition is limited to public officials who know their property originated in

116. Explicit mentions of the abuse of function offense were removed from the Directive during December 2025 negotiations due to opposition from several member states. See Max Griera, *EU Agrees Bare-Bones Anti-Corruption Law*, POLITICO (Dec. 2, 2025), <https://www.politico.eu/article/eu-anti-corruption-law-negotiations-italy-giorgia-meloni/> [https://perma.cc/84PC-4F8L].

117. See Commission, *supra* note 21, at 35.

118. Aleksandar Stevanović & Laura Maria Stănilă, *Illicit Enrichment as a Criminal Offense: Possibility of Implementation in the National Criminal Legislations*, INST. AND PREVENTION OF FIN. CRIMES 205, 208 (2021).

119. *Id.*

120. Skirmantas Bikelis, *Confiscation Beyond the All-Crime Approach and the Proportionality Principle – A Case of the Lithuanian Illicit Enrichment Offence Concept*, 14 *LAWs* 1–2 (2025).

121. See *id.* at 2; Stevanović & Stănilă, *supra* note 118, at 207.

122. Bikelis, *supra* note 120, at 2.

corrupt activities. Therefore, the EU's narrow definition is unlikely to face accusations of disproportionality or violations of constitutional rights.¹²³

Member states that do not define enrichment from corruption offenses will likely see more acquittals in corruption cases. For example, in 2022, the Criminal Court of Appeal in Athens acquitted twenty defendants in a bribery case regarding contracts for security systems for the 2004 Summer Olympics.¹²⁴ The Court noted, "The illegal increase in the wealth of public servants did not arise or was not proven."¹²⁵ Greece's lack of an adequate provision criminalizing illicit enrichment likely contributed to the acquittals; it was difficult for the Court to find illegal enrichment from corruption offenses because such enrichment is not explicitly criminalized.

Illicit enrichment is the Directive's most promising definition. Almost half of the surveyed member states do not criminalize illicit enrichment, and its addition would likely strengthen corruption controls and enable the prosecution to punish more of the corruption network. Moreover, the limited construction of the offense will limit its application to corruption-related enrichment and will not risk infringing on defendants' constitutional rights.

Conclusion

The European Commission proposed the 2023 Directive to update the EU's existing framework and to "ensure that all forms of corruption are [criminalized] in all Member States."¹²⁶ This was a lofty goal, and one that the Directive largely fails to achieve. The Directive offers standardized definitions for public and private sector bribery, misappropriation, trading in influence, abuse of functions, obstruction of justice, and enrichment from corruption offenses.¹²⁷ These definitions are meant to harmonize the legal definitions for corruption offenses across all twenty-seven EU member states, or at least to set a minimum standard below which they may not fall.¹²⁸ Additionally, the Directive provides minimum criminal penalties for the enumerated corruption offenses, seeking to standardize enforcement and punishment for corruption across the EU.¹²⁹

Although the Directive's idea of a uniform body of anti-corruption law is theoretically an effective method to combat member states' inconsistent and haphazard anti-corruption legislation, it fails in practice. Though the Directive's definition for public sector bribery has its strengths, namely that it doesn't require an isolated act or omission and includes indirect bribes, its flaws will render it ineffective. The EU does not encompass gratuities given for past official acts or omissions, it requires that the official benefit from the

123. The Directive's definition is also likely to be less effective.

124. *SIEMENS Scandal: Court of Appeals Acquits 20 Greek and German Executives*, KEEP TALKING GREECE (Sept. 26, 2022), <https://www.keeptalkinggreece.com/2022/09/26/siemens-scandal-greece-acquittal-court/> [<https://perma.cc/RXV2-MYHQ>].

125. *Id.*

126. See Commission, *supra* note 21, at 1–2.

127. See *id.* at 33–35.

128. See *id.* at 30.

129. See *id.* at 2.

transaction, and it requires that bribery (and all other offenses) be committed intentionally.

In almost all member states, both incentives for future acts and rewards for past acts constitute bribery; however, under the Directive, member states may relax their standards and only prosecute bribes given for future acts. The Directive also requires that the official benefit from the transaction, meaning that mere consideration or a quid pro quo will not suffice. Lastly, and most importantly, only one member state shares the Directive's intent requirement. In all other member states, a public official who accepts a bribe or the private entity who offers it may be held criminally responsible for bribery if the objective elements of the offense are met, regardless of the mental state of the actors. However, the EU requires that bribery (and all other offenses) be committed intentionally, opening the doors to a slew of failure of proof defenses from defendants who claim they were unaware of either the law or the consequences of their actions. Moreover, the EU creates further ambiguity by failing to define "intentionally," meaning that even the intent requirement may be applied inconsistently across member states, defeating the Directive's goal of harmonizing offenses.

The EU's other proposed offenses show more promise than its definition for bribery, particularly the addition of enrichment from corruption offenses. Currently, only around half of surveyed member states have compatible provisions for enrichment from corruption. This broad offense punishes the possession of property obtained through corruption offenses and will therefore help member states prosecute those who benefit from corruption schemes without necessarily carrying out the offenses themselves.

The Directive's definition for bribery is ineffective and will not strengthen corruption controls because it offers minimum provisions that are far weaker than most member states' existing domestic anti-corruption legislation. Best case scenario, the Directive's bribery definition will have little to no effect, and most member states will not have to modify their own definitions much to comply with the EU. Worst case scenario, the Directive's weak definition opens the door for member states to remain compliant by weakening their anti-bribery legislation (e.g., adding an intent requirement or decriminalizing gratuities). It will take time to determine just how ineffective, or even detrimental, the Directive's bribery definition will be, as member states have two years to implement the Directive and another year to present their domestic anti-corruption plans and legislation to the EU.¹³⁰ However, analysis of the anti-bribery legislation in each member state reveals that the Directive will do little to help in the arduous fight against corruption.

130. Max Grier, *EU Agrees Bare-Bones Anti-Corruption Law*, POLITICO (Dec. 2, 2025), <https://www.politico.eu/article/eu-anti-corruption-law-negotiations-italy-giorgia-meloni/> [<https://perma.cc/84PC-4F8L>].

Appendix A: Bribery Definitions

Member State/EU Legislation	Legal Definition of Bribery	Does the legislation define both passive and active bribery/ corruption?	Is a specific, isolated act or omission required?	Are indirect bribes included?	Are acts or omissions outside the scope of the official's duties included?	Are benefits given for lawful acts within the scope of the official's duties included?	Is intent required?	Are incentives for future acts/ omissions included?	Are rewards for past acts/ omissions included?	Does the official have to benefit from the exchange?
EU Convention (1997)	<p>Passive corruption: The deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute passive corruption.</p> <p>Active corruption: The deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute active corruption.</p>	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes
EU Directive (2023)	<p>Active Bribery: The promise, offer or giving, directly or through an intermediary, of an advantage of any kind to a public official for that official or for a third party in order for the public official to act or refrain from acting in accordance with his duty or in the exercise of that official's functions.</p> <p>Passive Bribery: The request or receipt by a public official, directly or through an intermediary, of an advantage of any kind or the promise of such an advantage for that official or for a third party, in order for the public official to act or refrain from acting in accordance with his duty or in the exercise of that official's function.</p> <p><i>Bribery must be committed intentionally.</i></p>	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes

Member State/EU Legislation	Legal Definition of Bribery	Does the legislation define both passive and active bribery/corruption?	Is a specific, isolated act or omission required?	Are indirect bribes included?	Are acts or omissions outside the scope of the official's duties included?	Are benefits given for lawful acts within the scope of the official's duties included?	Is intent required?	Are incentives for future acts/omissions included?	Are rewards for past acts/omissions included?	Does the official have to benefit from the exchange?
Austria	<p>Bribery: The offering, promising, or granting of an advantage to a public official for a specific, or at least determinable, official act that is either contrary or in accordance with the official's duties.</p> <p>Perpetrator must genuinely believe that it is at least possible, and be willing to accept, that they are offering, promising, or granting an advantage to a public official for the improper performance or omission of an official act.</p> <p>Corruptibility: When a public official demands, accepts, or agrees to receive an advantage that is connected to the performance or omission of an official act that is either contrary or in accordance with the official's duties.</p>	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Denmark	<p>Active Bribery: Any person who unlawfully provides, promises, or offers a gift or other advantage to a person serving in a Danish, foreign, or international public office to induce them to act or refrain from acting in their official duties</p> <p>Passive Bribery: Any person who, in the exercise of Danish, foreign, or international public service or office, unlawfully receives, demands, or accepts a gift or other advantage</p> <p>Gift or Advantage: Tangible or intangible benefits offered to the official</p>	Yes	No	No	No	Yes	No	Yes	No	Yes

Member State/EU Legislation	Legal Definition of Bribery	Does the legislation define both passive and active bribery/corruption?	Is a specific, isolated act or omission required?	Are indirect bribes included?	Are acts or omissions outside the scope of the official's duties included?	Are benefits given for lawful acts within the scope of the official's duties included?	Is intent required?	Are incentives for future acts/omissions included?	Are rewards for past acts/omissions included?	Does the official have to benefit from the exchange?
France	<p>Bribery: Proffering, without any right, at any moment, directly or indirectly, offers, promises, gifts, presents or any advantages, to induce a public official to perform or not to perform (or to reward a public official for having performed or for not having performed) any act within his or her occupation, position or office, or facilitated by his or her occupation, position or office.</p> <p>Bribery implies the improper use of authority associated with one's public or private function</p> <p>Passive Bribery: Receiving or requesting a bribe</p> <p>Active Bribery: Offering a bribe</p>	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Germany	<p>Granting of Bribes: Offer, promise, or grant of a benefit to a public official in consideration for having performed or performing a (specific) official act in the future and thereby violating his or her official duties</p> <p>Accepting Bribes: Demand or acceptance of benefits in exchange for an official act in violation of the public official's duties</p> <p>Official Acts include illegal acts, acts contrary to internal guidelines, and the undue exercise of discretion.</p>	Yes	No	No	Yes	No	No	Yes	Yes	Yes

Member State/EU Legislation	Legal Definition of Bribery	Does the legislation define both passive and active bribery/corruption?	Is a specific, isolated act or omission required?	Are indirect bribes included?	Are acts or omissions outside the scope of the official's duties included?	Are benefits given for lawful acts within the scope of the official's duties included?	Is intent required?	Are incentives for future acts/omissions included?	Are rewards for past acts/omissions included?	Does the official have to benefit from the exchange?
Greece	<p>Passive Bribery: Public servant who requests or receives any kind of undue advantage or promise of such an advantage in exchange for an action or omission, in the future or in the past, within or against the exercise of his duties</p> <p>Active Bribery: The act of giving or promising unlawful benefits or gain to a public official for committing or omitting an act in the course of his duties or against his duties</p>	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Ireland	<p>Corruptly includes acting with an improper purpose personally or by influencing another person, whether a) by means of making a false or misleading statement; b) by means of withholding, concealing, altering, or destroying a document or other information, or; c) by other means</p> <p>Active Corruption: A person who corruptly offers, or corruptly gives or agrees to give, a gift, consideration or advantage to a person as an inducement to, or reward for, or otherwise on account of, any person doing an act in relation to his or her office, employment, position or business</p> <p>Passive Corruption: A person who corruptly requests, corruptly accepts or obtains, or corruptly agrees to accept, a gift, consideration, or advantage as an inducement to, or reward for, or otherwise on account of, any person doing an act in relation to his or her office, employment, position, or business</p>	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No

Member State/EU Legislation	Legal Definition of Bribery	Does the legislation define both passive bribery and active bribery/corruption?	Is a specific, isolated act or omission required?	Are indirect bribes included?	Are acts or omissions outside the scope of the official's duties included?	Are benefits given for lawful acts within the scope of the official's duties included?	Is intent required?	Are incentives for future acts/omissions included?	Are rewards for past acts/omissions included?	Does the official have to benefit from the exchange?
Poland	<p>Active Bribery: Providing a public official with a financial or personal benefit or its promise in exchange for an action or omission associated with their role</p> <p>Passive Bribery: Public official who accepts or demands a financial or personal benefit in exchange for performing or refraining from certain actions related to their official role</p> <p>There must be a link between the bribe and the performance of the public official's duties (e.g., payment for a favorable decision), even if an official is rewarded for past conduct that was not, at the time, motivated by a bribe</p>	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes
Romania	<p>Passive Bribery: The action of a public servant who, directly or indirectly, for themselves or on behalf of others, solicits or receives money or other undue benefits or accepts a promise of money or benefits, in exchange for performing, not performing, accelerating or delaying the performance of an action which falls under the purview of their professional duties or with respect to the performance of an action contrary to their professional duties</p> <p>Active Bribery: The giving or offering of money or other benefits in exchange for a public official performing, not performing, accelerating or delaying the performance of an action which falls under the purview of their professional duties or with respect to the performance of an action contrary to their professional duties</p>	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes

Appendix B: Other Offenses

	EU 2023 Directive	Austria	Denmark	France	Germany	Greece	Ireland	Poland	Romania
Bribery (public sector)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Misappropriation	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Trading in influence	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Abuse of functions	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Obstruction of justice	Yes	Yes	Yes	Yes	Yes	Yes	No	Unclear	Yes
Enrichment from corruption	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No