



## INFORMATION SHEET OF THE PROJECT:

# Preventing fraud, corruption and bribery committed through legal entities for the purpose of financial and economic gain

### SUMMARY OF THE PROJECT

The main objective of this project is to contribute to the prevention of and fight against economic and financial crime committed through legal entities in the public and private sector. Legal persons can be deliberately established, or otherwise misused, for the purpose of financial and economic gain. Such malpractices, e.g. VAT fraud, are also often cross-border in nature and take advantage of opportunities offered by the European internal market. This leads to negative effects for the EU internal market and the financial system of the EU MS. Differences in civil, administrative and criminal laws and regulations of the MS make it more difficult to tackle such cross-border malpractice. The application of preventive methods can enhance the effectiveness of tackling these phenomena. Improving exchange of information on legal entities by interconnecting business registers in the MS is a perfect example of such a preventive strategy. The main objective is to promote preventive actions and strategies and following project activities will be undertaken: (1) conducting a comparative study on the implementation and application of international and EU legislation related to the prevention of and fight against crimes such as fraud, corruption and bribery committed by either legal entities and /or by their directors, including the exchange of information on disqualifications of persons entitled to legally bind those legal entities; (2) establishing an inventory of best practices with respect to the prevention of such malpractices by those entities; (3) the convening of a conference in Warsaw, Poland of expert representatives from the MS, from international stakeholders such as the OECD, FATF and the NGO Transparency International and from the EU anti-corruption network, on the results of the research and the survey; (4) publishing of the comparative study with the results of the research and the conference; (5) the publishing of a manual of best practices and horizontal tools in the prevention of bribery, corruption and other economic and financial crimes committed through legal entities in order to promote them at EU level. The project provides the following results: (i) increased knowledge among the authorities of the EU MS and international regulations related to organised crime, fraud and corruption; (ii) improved understanding of the opportunities for the circumvention of those regulations misusing legal entities; (iii) insight into the possibilities for improvement of the afore mentioned rules and regulations and enhanced awareness of available best practices. These (i), (ii) and (iii) results are achieved by respectively the following measures: (a) The Warsaw Conference; (b) The dissemination of the reader; (c) The expert meeting in The Hague for the preparation of the manual of best practices; (d) the EU wide dissemination of the manual; (e) the intensive involvement of the anti-corruption network.

### MAIN OBJECTIVES OF THE PROJECT

The project proposal aims at the implementation of the prevention of crime in particular financial and economic crime as committed by legal entities. It will contribute to the prevention of fraud, corruption and bribery committed through these entities. It will promote exchange of legal knowledge and information on best practices concerning preventive actions. Concrete measures such as a comparative study, an international conference, the distribution of a reader and recommendations for preventive actions in this field and an expert meeting aimed at the development of a horizontal monitoring tool documented in a manual will help ensuring the implementation of the project objective. Furthermore, cooperation with the EU anti-corruption network will contribute to sustaining this objective and enhance mutual understanding and cooperation between Member States' authorities.

## **SPECIFIC ISSUES ADDRESSED BY THE PROJECT**

Fraud and corruption committed through misusing legal entities is posing an increasing threat to the EU and its Member States. In this respect, two understandings of corporate crime can be identified. A first notion of corporate crime concerns the misconduct of legal entities that were established with lawful intentions, such as the Parmalat case. A second notion of corporate crime concerns those legal entities which are established as a result of a previous criminal act, or with the scope of committing new criminal offences. As it emerges from the Europol OCTA (2007), the misuse of legal entities for committing financial crimes is closely linked to Organised Crime groups (OC groups). According to that study, OC groups make use of Legitimate Business Structures for facilitating criminal activities, money laundering and reinvesting laundered money. The current economic and financial crisis calls for the development of preventive measures within the internal market, to address the misuse of the financial and economic system by legal entities whether linked to OC groups or not. Preventive measures with regards to legal entities could be effective, in particular aimed at fraud and corruption. Therefore, this project intends to develop and promote legal knowledge and different preventive measures in the fight against fraud and corruption committed through legal entities. The Dutch experience, with its Preventive Screening System could be a good example of a successfully applied best practice. The main objective of that system is to gain insight into the vulnerability of business sectors in respect to potential infiltrations by organised crime groups, in order to take preventive measures. A manual will be drawn up as a horizontal tool for the application of some of the most promising best practices of the Member States. Recommendations will be forwarded describing possible sectors which could be monitored at the EU level.

## **OBJECTIVES RELATED TO THESE SPECIFIC ISSUES**

The project will provide legal knowledge on the implementation and application of EU and international legal instruments addressing organised crime, fraud and corruption committed through legal entities. Secondly, the exchange of know-how strengthening state and corporate capacities in this field will be promoted. Special attention will be given to legal provisions and administrative bodies. Information will be gathered concerning disqualification provisions and registers in the Member states of directors of legal entities. Such information could also be useful as a preventive tool. Finally, an inventory will be drawn up of best practices with a view to describing tools and techniques developed within the Member States to prevent fraud and corruption committed through legal entities. A manual will be drawn up as a horizontal tool for EU wide application of successfully applicable best practices, e.g. the Dutch System of Preventive Screening.

## **PARTICIPANTS**

Targets groups for the international conference are: (1) two experts each per Members States' and candidate States' governments and/or their law enforcement authorities each; (2) one representative from Europol, Eurojust and OLAF, each; (3) two representatives from the Anti-Corruption Network; one representative from OECD, FATF, Transparency International and European Business Register, each; (4) ten members of the academic community.

Target groups for the expert meeting are: (1) one expert from each Members States' and candidate States' government or their law enforcement authorities; (2) one representative from Europol, Eurojust and OLAF, each; (3) two from the Anti-Corruption Network; (4) one representative from OECD, FATF, Transparency International and the European Business Register, each.

## **BACKGROUND INFORMATION**

Academic research demonstrates the strong negative impact of corruption and bribery on the public moral and in particular the general economy. See, for example, the study of prof. Jan van Dijk (Trends Organ Crime (2007) 10:39–56) on the effect of organised crime (“Mafia”), corruption and the lack of rule of law on national wealth. As far back as 2003, the Commission communicated its comprehensive EU policy against corruption, stressing among others the

importance of taking preventive measures. Later that year the Council adopted a Framework Decision on combating corruption. Its transposition by the Member States was criticised seriously by the Commission in its 2007 evaluation, concluding that it was "... still at an early stage". Most Member States did not comply with the substantive provisions of this Framework Decision. In addition, the issue of liability of legal persons appears to be a difficult one (only five Member States fully transposed the provision – article 5 - in question). The EU Anti-Corruption Network was a practical step taken only rather recently.

In the light of this state of affairs and in particular, the current financial crisis, preventing corruption has become more urgent than ever. The proposed project will demonstrate its innovative character by focusing on the role of legal entities as a tool for corruptive abuse. It will provide new insights by bringing together the legal and practical progress made by Member States in this field. It will reinforce awareness among member States' officials, inducing them to harmonise legislation and offer horizontal tools to tackle, in a preventive way, fraud, corruption and bribery in and between the public and private sector.

Other than the general study, the project will focus on specific topics such as waste management, emission trading schemes and public procurement.