

This document contains the EU's initial proposal for a legal text on anti-corruption provisions of a possible modernised EU-Chile Association Agreement. It has been tabled for discussion with Chile. The actual text in the final agreement will be a result of negotiations between the EU and Chile. The EU reserves the right to make subsequent modifications to this proposal.

EU-Chile Free Trade Agreement

EU TEXTUAL PROPOSAL

PROVISIONS ON ANTI-CORRUPTION

Section XX.I

Article XX1.Definitions

[To be drafted at a later stage, taking into account as well the definitions already laid out in other parts of the Agreement]

Article XX.2 –Objectives

[Note: This Article is subject to review in order to ensure coherence with the general objectives set out in the recitals/Political Part of the Association Agreement and avoid duplications and overlaps. It is worth noting that in the Political Part of the Association Agreement the Parties would affirm their commitments under the United Nations Convention against Corruption and their support of the UNCAC's implementation review mechanism.]

1. The Parties affirm their commitment to eliminate corruption in international trade and investment and recall that corruption in trade and investment undermines good governance and economic development and distorts international competitive conditions.
2. The Parties recognise that corruption can affect trade as it may compromise market access opportunities and erode commitments aimed at creating a level playing field. Corruption affecting trade and investment can act as a non-tariff barrier for investors and enterprises seeking to participate in trade and investment.
3. The Parties recognize that corruption is a transnational issue and linked to other forms of transnational and economic crime including money-laundering and benefits from a multi-disciplinary approach and close cooperation at an international level.
4. The Parties recognize the need to build integrity and enhance transparency within both the public and private sectors and that each sector has complementary responsibilities in this regard.
5. The Parties recognize the importance of regional and multilateral initiatives including the United Nations, the World Trade Organisation, the OECD, the Financial Action Task Force (FATF), the Council of Europe and the Organisation of American States to prevent and combat corruption in matters affecting international trade and investment and commit to work jointly to encourage and support appropriate initiatives.
6. The Parties reiterate their shared commitment under Goal 16 of the 2030 Agenda for Sustainable Development to "substantially reduce corruption and bribery in all their forms".
7. The Parties recognise the important work undertaken by the G20 Working Group on Anticorruption and reaffirm their support to the relevant High Level Principles agreed in the G20.
8. The objective of these provisions is to set a bilateral framework of commitments to combat and prevent corruption affecting trade and investment in the relationship between the Parties.

Article XX.3. Relation to Other Agreements

Nothing in this [] shall affect the rights and obligations of the Parties under UNCAC; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with its Annex, done at Paris on 21st November 1997; the Inter-American Convention Against Corruption, done at Caracas on 29th March 1996; and the relevant legal instruments adopted by the Council of Europe.

Section XX.II Scope of Application

These provisions of this [xxxxx] shall apply to corruption with respect to matters covered by [Trade & Investment Title of this Agreement].

Section XX.III Measures to combat corruption

Article XX.4. Active and passive corruption of public officials

The Parties recognise the importance of combating active and passive corruption of public officials affecting trade and investment. To this end they reaffirm in particular their commitments under Article 15 and Article 16 of the United Nations Convention against Corruption (UNCAC) to adopt or maintain such legislative and other measures as may be necessary to establish active and passive corruption of public officials and active corruption of foreign public officials as criminal offences, when committed intentionally; and to consider adopting such legislative and other measures as may be necessary to establish passive corruption of foreign public officials as criminal offences, when committed intentionally.

Article XX.5. Active and passive corruption in the private sector

The Parties recognise the importance of combatting active and passive corruption in the private sector affecting trade and investment. To this end they recall the need to comply with their commitments under UNCAC and reaffirm in particular their commitments under Article 21 of UNCAC to consider adopting such legislative and other measures as may be necessary to establish as criminal offences active and passive corruption in the private sector, when committed intentionally in the course of economic, financial or commercial activities.

Article XX.6. Corruption and money laundering

The Parties, recognising the interlinkage between corruption and money laundering, reaffirm their commitments under Article 23 of UNCAC.

Article XX.7. Liability of legal persons

The Parties recognise that establishing the liability of legal persons and ensuring that there are effective, proportionate and dissuasive criminal or non-criminal sanctions is critical to the global fight against corruption in international trade and investment. To this end, the Parties reaffirm their commitments under Article 26 of UNCAC and recall their support to the G20 High Level Principles on Liability of Legal Persons.

Section XX.IV. Measures to prevent corruption in the private sector

Article XX. 8. Responsible Business Conduct

1. The Parties recognise the importance of preventive measures and responsible business conduct including financial and non-financial reporting obligations and corporate social responsibility practices in averting corruption and the role of trade in pursuing this objective.
2. The Parties recognise the necessity for taking into account the needs and constraints of SMEs in terms of reporting obligations.
3. The Parties recall their support to the OECD Guidelines for Multinational Enterprises in relation to anti-corruption.

Article XX.9. Financial reporting

1. In line with their commitments under UNCAC, the Parties recognise the importance of enhancing accounting and auditing standards in the private sector as a way of preventing corruption and agree in particular that, among others, the following measures could achieve this objective:

(a) Ensuring that private enterprises, taking into account their structure and size, and notably the specific needs of small and medium sized enterprises, implement measures to assist in preventing and detecting acts of corruption, which may include compliance with a corporate governance code, internal audit function or sufficient internal controls.

(b) Ensuring that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

2. The Parties shall take such measures as may be necessary, in accordance with its domestic laws and regulations, on the disclosure of financial statements and maintenance of accounting and auditing standards.

3. Each Party should consider adopting or maintaining measures requiring external auditors to report any suspected acts to the competent authorities regarding the offenses specified in [Article(s)]. If such reporting is required, the Parties shall ensure that the external auditors making such reports reasonably and in good faith are protected from legal action regarding breaches of any contractual or legal restriction on disclosure of information.

Article XX.10. Transparency in the private sector

1. The Parties recognise that transparency can contribute to deter corruption in the field of trade and investment and to this end, recall their commitments under Article 12.2 UNCAC, in particular the following measures that could achieve the objective of ensuring greater transparency in the private sector involved in commercial activities relating to trade and investment under this Agreement:

(a) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(b). Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(c). Promoting measures to prevent conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

2. In order to prevent trade and investment related corruption, the Parties shall adopt measures requiring large public interest companies with more than 500 employees to disclose in their annual reports or otherwise disclose in public statements the measures they have taken to prevent and detect corruption and bribery.

Article XX.11. Measures to prevent money-laundering

Recognising the importance of preventing money laundering and its potential impact on trade and investment the Parties confirm their commitment to adopt or maintain a comprehensive domestic regulatory and supervisory regime for financial institutions and designated non-financial business and professions (DNFBPs) in accordance with existing commitments under the UNCAC and the Recommendations of the FATF. The Parties shall promote the implementation of the FATF Recommendations on Transparency and Beneficial Ownership of Legal Persons and Arrangements, and the G20 High Level Principles on Beneficial Ownership Transparency.

In accordance with these above mentioned commitments, Recommendations and Principles the Parties shall maintain or adopt measures that:

a) Ensure that their domestic legislation includes a definition of "beneficial owner" that captures the natural person (s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It shall also include those persons who exercise ultimate effective control over a legal person or arrangement.

- b) Ensure that corporate or other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.
- c) Ensure that trustees of express trusts maintain adequate, accurate and current beneficial ownership information, including of settlors, the protector (if any), trustees and beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. These measures should also apply to other legal arrangements with a structure or function similar to express trusts.
- d) Require financial institutions and DNFBPs to identify the customer and verify that customer's identity, as well as to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, such that the financial institution or DNFBP is satisfied that it knows who the beneficial owner is. DNFBPs are understood to be those defined by the FAFT Recommendations.
- e) Put in place mechanisms to ensure that the relevant authorities as defined by domestic legislation have access to beneficial owner information in a timely manner.
- f) Ensure that their competent authorities participate in information exchanges on beneficial ownership with international counterparts in a timely and effective manner.
- g) Require financial institutions and DNFBPs to perform enhanced due diligence notably in relation to politically exposed persons, which are understood to be individuals who hold or have held prominent public functions within the territory of either Party or internationally as well as their family members and close associates.
- h) Ensure that an effective supervision of the above-mentioned obligations is in place, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance.

Section XX.V. Measures to prevent corruption in the public sector

Article XX.12. Conduct of Public officials

1. The Parties reaffirm their support to the G20 High Level Principles on asset disclosure by public officials, as well as the APEC Conduct Principles for Public Officials for Chile and the Council of Europe Recommendation on codes of conduct for public officials for the EU.
2. The Parties reaffirm their commitments as set out in Article 8 of UNCAC including the application of codes or standards of conduct for public officials, facilitating the reporting by

public officials of acts of corruption to appropriate authorities, requiring public officials to make declarations to appropriate authorities regarding potential conflicts of interests and taking measures providing for disciplinary or other measures against public officials who violate such codes or standards.

Article XX.13. Transparency in the public administration

1. The Parties stress the importance of transparency in the public administration to prevent trade and investment related corruption and agree to promote transparency in line with specific and horizontal provisions foreseen in the [Trade pillar of the AA], including in particular trade facilitation, public procurement, domestic regulation and general transparency provisions.

2. The Parties reaffirm their commitments under Article 13(2) of UNCAC to take appropriate measures to ensure that its anti-corruption bodies are known to the public and to provide access to those bodies for reporting any relevant incidents.

Article XX.14. Participation of civil society

The Parties recognise the importance of the participation of civil society in the prevention of and the fight against corruption in the field of international trade and investment, as well as the need to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. To this end they reaffirm their commitments under Article 13(1) of UNCAC in particular on taking appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations, and community based organisations.

Article XX.15. Protection of reporting persons

The Parties reaffirm their commitment under Article 33 of UNCAC concerning protection against any unjustified treatment for reporting persons.

[Section XX.V. Dispute Resolution Mechanism

NOTE: This section is subject to review in order to ensure coherence with the mechanisms in the Association Agreement.

In order to ensure an appropriate implementation of the provisions, in the EU's view it is important to ensure channels for the Parties to arrive at mutually satisfactory solutions in case of disagreements on any matters covered by these provisions.]

Section XX.VI. Final Provisions

[Article XX.16. Institutional arrangements

[Note: Draft text to be provided once the relationship with the Association Agreement has been decided].

Article XX.17. Cooperation

[Note: Draft text to be provided once the relationship with the Association Agreement has been decided].