



Luxembourg - Global bribery offenses guide

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1) What is the legal framework governing bribery in Luxembourg?

The Luxembourg Criminal Code is the key piece of Luxembourg legislation governing bribery. Its scope of application was broadened by the Law of February 13, 2011, strengthening the means of combating bribery (short title), which implemented the OECD and European Council recommendations against bribery and some provisions regarding whistleblowing. Luxembourg is also party to two United Nations Conventions against Bribery and Transnational Organized Crime.

2) What constitutes a bribe?

The Luxembourg Criminal Code distinguishes between two types of bribery: active bribery and passive bribery. The instigating party is considered to have committed active bribery whereas the receiving party is deemed to have committed passive bribery.

A bribe is an offer, promise, donation, gift or advantage given or received, directly or indirectly, in order to carry out or abstain from carrying out for the person offering or receiving the bribe or for a third party, an act relating or facilitated by an office, duty or mandate.

The offense of bribery applies whether the advantage has been effectively obtained or not.

The offense includes public bribery involving persons holding public authority, officials, agents entrusted with an elective public mandate or a public service mission, including foreign nationals, and private corruption involving companies and corporate entities (cf. section 5).

3) What are the principal offenses under this legal framework?

- Active bribery: offering, promising or giving a bribe to a person holding public authority, carrying out a public service mission or holding a public electoral mandate (Art. 247 of the Criminal Code).
- Passive bribery: requesting, agreeing to receive or accepting a bribe (Art. 246 of the Criminal Code).
- Attempted bribery involving goods (Art. 506-1,4 of the Criminal Code).
- Influence peddling, which entails abusing a true or assumed influence to solicit, receive propose or give a bribe to obtain (without limitation) an authorization, distinctions, work or to influence a decision from a public entity or an administration (Art. 248 of the Criminal Code).
- A person who holds public authority receiving or soliciting a bribe as a reward from a person who benefits from an improper act and giving or offering a bribe to such person as a reward of benefiting from an improper act (Art. 249 of the Criminal Code).
- Bribery of judges, arbitrators, experts and any individual appointed by courts or parties in judicial matters (Art. 250 of the Criminal Code).

the Criminal Code).

- It is an offense for a person who is a director, manager, or agent of a legal person or natural person, to solicit or agree to receive (to propose or give to such person) an offer, promise or advantage of any kind, for themselves or a third party, or to accept the offer or promise thereof, to do or refrain from doing any act of their function or facilitated by such function, without the knowledge of the board of directors, the principal or the employer (Art. 310 and 310-1 of the Criminal Code).

4) What is the jurisdictional reach of the legal framework?

The Criminal Code makes no difference between Luxembourg citizens and any person of any nationality or citizenship. Therefore, foreign nationals, EU officials and institution employees fall within the scope of bribery offenses (Art. 252 of the Criminal Code).

Luxembourg will have jurisdiction if an element of the offense or an act that constitutes one of the elements of the offense was committed on Luxembourg territory.

Also, any Luxembourg citizen, any person who has their habitual residence in the Grand Duchy of Luxembourg, as well as any foreigner found in the Grand Duchy of Luxembourg, who has committed abroad the offenses of the abovementioned Articles 247, 246, 248, 249, 250, 310 and 310-1 of the Criminal Code (cf. section 3) may be prosecuted in Luxembourg, even if that act is not punishable under the relevant foreign law (Art. 5-1 of the Criminal Procedure Code).

Finally, Luxembourg courts have jurisdiction to hear cases involving offenses committed in the EU without the dual criminality requirement in accordance with the Article 2(2) of the European Council Framework Decision of June 13, 2002.

5) Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

Luxembourg public agents are specifically targeted under Article 10 of the Law of April 16, 1979, concerning the general status of public officers and employees.

The following individuals can also be prosecuted for bribery offenses under the Criminal Code: any Luxembourg or foreign public officials, agents entrusted with an elective public mandate or a public service mission including foreign nationals, EU officials and institution employees, members of the European Commission, international organizations agents, public or private sectors individuals, and magistrates.

Legal persons can be criminally liable for the offenses committed on their account by their corporate entities and natural persons.

6) Can a parent company be liable for its subsidiary's involvement in bribery?

There is no explicit Luxembourg law provision with regards to the criminal liability of a parent company for its subsidiary's involvement in bribery. As a general principle, Luxembourg law recognizes a principle of separate corporate personality, according to which a company is a legal person on its own, separate from those of its shareholders/subsidiaries. As such, a company's shareholders/subsidiaries are protected by a "corporate veil" which prevents them from being held liable for the company's actions.

The only exception to this principle is when the company in question qualifies as fictitious. Case law considers a company "fictitious" when:

- the incorporation of the company is simulated, ie at the time of the company's constitution, all of its shareholders lacked *affectio societatis* (shareholder's sincere will to collaborate in order to achieve a common objective). This situation would happen if, for example, the shareholders acted only as nominees or figureheads for a third party; or
- the shareholders of the company act as if there was no separate entity with corporate personality by:
 - making decisions on the subsidiary's behalf as if the subsidiary was not an independent legal entity, but rather a mere business unit of a shareholder; and
 - intermingling the company's assets with their own and therefore demonstrating that the subsidiary does not

have any real patrimonial autonomy.

7) Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

Luxembourg law does not specifically provide limitations on such payments. However, guidance issued by Luxembourg authorities considers that the use of a broad terminology such as “any advantage whatsoever” (Art. 246 et. Seq. of the Criminal Code) is to make any advantages, such as facilitation payments, an offense under Luxembourg law if those advantages are given or received with the intention to bribe.

8) Does the legal framework restrict political and charitable contributions?

There are no express provisions with regards to such contributions. However, as mentioned above, any advantages could be considered a bribe provided they are given or received with the intention to bribe.

9) Does the legal framework place restrictions on corporate hospitality?

There are no express provisions with regard to corporate hospitality; however, the Law of April 16, 1979, concerning the general status of public officers and employees states that public employees are expected to act in accordance with the dignity of their position.

The Law of April 16, 1979, further states that public employees cannot directly or indirectly solicit, accept or be promised by any individual, any material advantages, if the acceptance of those advantages leads the employee to act unlawfully (Art. 10(3)). Corporate hospitality could be considered a bribe should it be given or received with the intention to bribe.

10) Are there any defenses for bribery offenses?

There are no exceptions to the liability principles described above.

A public agent or public employee charged with the offense of bribery can prove that they acted according to their supervisor’s instructions. They then have to prove that the supervisor operated under their prerogative and that they had the duty to comply with those instructions. The supervisor could therefore be charged with the offense (Art. 260 of the Criminal Code).

11) What are the key regulatory or enforcement bodies with regard to bribery?

Depending on the stage of the proceedings and the nature of the possible offense, various authorities may take jurisdiction, such as the Public Prosecutor.

The *Commission de surveillance du secteur financier* (CSSF), the Luxembourg financial sector regulator, is the main actor in the context of anti-bribery and anti-money laundering. The CSSF is able to investigate and even issue administrative measures and fines in the case of non-compliance with the law.

The Corruption Prevention Committee is a consulting body that assists the Luxembourg government in fighting corruption. It determines the national policy in fighting bribery.

12) What are the legal consequences of being found guilty of bribery offenses?

Individuals face five years to ten years’ imprisonment and/or fines between EUR500 and EUR187,500 (Art. 251 of the Criminal Code). They may be fined up to EUR1.25 million in certain cases of bribery offenses involving goods (Art. 506-1 of the Criminal Code).

Individuals may face, under certain circumstances, destitution of certain political rights or exclusion from exercising public functions.

Individuals may face destitution of certain civil rights under certain circumstances.

Companies may be fined up to EUR750,000, and in certain situations, they may be fined up to EUR3.75 million (Art. 36 and 37 of the Criminal Code).

Individuals and companies can also face confiscation (Art. 31 and 40 of the Criminal Code).

Companies may be disqualified from public tenders or even dissolved under certain conditions (Art. 38 of the Criminal Code).

Companies convicted of bribery offenses may also face debarment from public procurement contracts under the EU Public Procurement Directive.

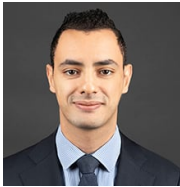
13) Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

Criminal cases in Luxembourg can be settled before trial by means of a *jugement sur accord* (a settlement mechanism similar to plea agreement). However, in Luxembourg, this practice is not as common as in Common Law countries.

[Access the full guide](#)

[Return to Overview page](#)

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