Creating effective corporate sanctions: 
debarment under EU procurement laws and its impact on enforcing overseas 
corruption offences

A Corruption Watch paper
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Introduction

An effective and fair debarment system based on clear rules and transparent processes in the UK and across the EU is an essential and necessary part of the fight against organized and white collar crime such as corruption. Debarment is one of the most effective deterrents for companies and individuals considering engaging in such crimes and has the potential to bring about real cultural change in company behavior. This is particularly the case in countries like the UK where fines for companies are historically very low and arguably of little real deterrent value.

Article 45 of the 2004 EU Public Procurement Directive, enacted in the UK through regulation 23 of the 2006 Public Contracts Regulations, and article 39 the 2009 EU Defence Procurement Directive provide the basis for debarring, or mandatorily excluding, companies convicted of corruption, fraud, money laundering and participation in a criminal organization from public contracts.

When the Directives were negotiated, however, Member States watered down original Commission proposals in order to allow for greater Member State discretion in implementing them. The stated aim of allowing greater Member State discretion was in fact to facilitate practical implementation. The result however has been the opposite. The lack of clarity in the Directives on several key areas, particularly on proportionality, has actually hindered their practical application, and is currently having a major detrimental impact on enforcement of overseas corruption offences. This situation needs addressing urgently, whether through clarification in the courts or through new regulation or guidance by the government.

The Directives are now an integral part of EU community law on procurement. There is little scope for changes in the Directives themselves. The challenge is for EU Member States to find coordinated ways of implementing the debarment clauses of the Directives in ways which iron out the vagueness in the Directives themselves. That requires individual member states to take concrete and meaningful steps towards implementing the Directives at a national level in a meaningful manner and for EU-wide agreement to be reached on how to do this.

This paper will look at the impact that the Directives are having on enforcement of overseas corruption offences, and then go on to examine areas where the scope of the Directives is unclear and which need to be addressed in national implementation.

1 In particular, the original proposals gave a clear, broad definition of corruption, and stated that exclusion would be for any conviction in the five year period preceding the start of the contract. See Sope Williams, “The mandatory exclusions for corruption in the new EC procurement directives”,
**Impact on enforcement of overseas corruption offences**

In December 2009, the SFO and other prosecutorial bodies, with the Attorney General’s agreement published guidelines on Corporate Prosecutions. These guidelines recognise that a decision not to prosecute a company because of the effect of exclusion would undermine the Directives’ deterrent effect, but state clearly that a public interest factor against prosecution includes “where a conviction is likely to have adverse consequences for the company under European law, always bearing in mind the seriousness of the offence and any other relevant public interest factors.” They go on to say that a prosecutor “should take into account the commercial consequences of a relevant conviction under European law, particularly for self-referring companies, in ensuring that any outcome is proportionate.”

The purpose behind putting this in the guidelines is that the SFO is increasingly keen to push US style plea negotiations, encouraging companies to come forward and self-disclose wrong-doing in exchange for lenient treatment. Companies have argued that there is no incentive to self-confess if one of the prospects of coming forward would be for them to be perpetually excluded from public contracts. The SFO had already issued guidance in July 2009 to deal with these concerns that stated that companies that self-refer to them, and are committed to genuine change, will wherever possible receive “a negotiated settlement rather than a criminal prosecution” the advantage of which is that “the mandatory debarment provisions under Article 45 of the EU Public Sector Procurement Directive in 2004 will not apply.”

With these two guidelines together, there is now a serious danger in the UK that overseas corruption offences will increasingly be settled either through civil means or will be prosecuted as non-corruption offences in order to avoid the provisions of the EU Directive on mandatory exclusion. The recent settlement with BAE is likely to reflect an instance of this. There have been several reports that BAE was not prepared to plead guilty to corruption in a settlement with the SFO because of the Directive.

**The problems with the SFO’s approach**

The problems are various:

1. The UK’s Serious Fraud Office, already weakened both by lacuna in the law and by lack of a proactive and aggressive prosecution strategy, has opened itself up to lobbying and pressure by companies under investigation on the commercial consequences of a prosecution and given them a strong card to play in plea negotiations. On paper, the strength of the Directives should give the SFO a stronger hand in such negotiations, but in practice, the reverse appears to be happening.

2. Corruption offences which are classed as a serious criminal offence, are in danger of being downgraded to a regulatory offence, dealt with by way of fines

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2 [http://www.sfo.gov.uk/media/28313/approach%20of%20the%20sfo%20to%20dealing%20with%20overseas%20corruption.pdf](http://www.sfo.gov.uk/media/28313/approach%20of%20the%20sfo%20to%20dealing%20with%20overseas%20corruption.pdf)

3 [The Times], 18/12/2009, “Serious Fraud Office to reinterview BAE chiefs over alleged bribery”, [http://business.timesonline.co.uk/tol/business/industry_sectors/engineering/article6961088.ece](http://business.timesonline.co.uk/tol/business/industry_sectors/engineering/article6961088.ece); Private Eye, “In the City”, Issue 1256, 10th February- 4th March 2010.
and, if the SFO maintains its current policy on civil settlements with, virtually no transparency about the nature of the offences.

3. There will be increasing disparity between the way that companies which rely heavily on public contracts in the EU are treated from those that do not, leading to a two tier system for dealing with corporate corruption.

4. The UK, by adopting corporate prosecution guidelines which cite the EU procurement Directives as a public interest factor against prosecution, may have opened itself up to charges that it is seeking to evade the provisions of the article 45 of the EU Procurement Directive and article 39 of the EU Defence Procurement Directive. The UK has certainly put prosecutors in the role of sole arbiter of whether a company should face debarment or not. This is an enormous power to accrue to prosecutors without any safeguards. It is worth noting that in the US principles of prosecution section on plea negotiations, it states clearly that “where the corporation was engaged in fraud against the government ... a prosecutor may not negotiate away an agency’s right to debar or delist the corporate defendant”.

If there were greater clarity about the debarment provisions of the EU Directives will apply in practice, the SFO would be more clearly able to determine an appropriate strategy for criminal convictions. It is highly undesirable for the corporate prosecutions guidelines to be allowed to stand in their current form, with the debarment provisions standing as a public interest factor against prosecution.

\textit{Impact in the US}

It is not just in the UK where the impact of the EU debarment provisions on enforcement are being felt. US enforcement bodies are also framing their plea agreements with companies that are either based in the EU or who have subsidiaries in the EU in such a way as to avoid the Directives’ provisions. In particular, it appears that the US is allowing subsidiaries of companies that do not operate in the EU to take on criminal liability for breaches of the Foreign Corrupt Practices Act (FCPA) as imposed through Department of Justice, while allowing the parent company to accept the civil liability through penalties imposed by the Securities and Exchange Commission.

This would appear to be the case in several recent cases, such as Siemens. More recently and very openly, the US sentencing memorandum in the BAE settlement with the Department of Justice, specifically cites that under the Principles of Federal Prosecution of Business Organisations, it considered as one of the “\textit{collateral consequences, including whether there is disproportionate harm to the shareholders, pension holders, employees and other persons not proven personally culpable, as well as impact on the public arising from the prosecution}”, the EU Directive 2004/18/EC mandatory exclusion clauses and the fact that BAE’s business is primarily from government contracts including several European governments. The sentencing


5 US Sentencing Memorandum, 22/2/10, p 15,
memo notes that while mandatory exclusion is unlikely because of the charges to which BAE pleaded guilty, discretionary debarment “will presumably be considered and determined by various suspension and debarment officials”. There were reports that the US State Department was considering debarring BAE on 3 March 2010.6

**Virtuous or vicious circle?**

From the point of view of a corrupt company the impact of the EU Directive on enforcement is a very virtuous circle, whereby they are able to avoid pleading guilty to corruption charges, and evade mandatory exclusion at the same time. In terms of the global fight against corruption it is disastrous. The full details of corruption, which by its very nature is done in secret, never becomes known if non-corruption offences or lesser offences are always invoked. And one of the most powerful deterrents against corporate corruption, debarment, is never used, raising serious questions about how deep change to corporate culture with regards to bribery is likely to be.

**The new bribery law and the Directives: breaking the impasse?**

The Bribery Bill before the UK Parliament introduces a new corporate offence of failure to prevent bribery. Under clause 7, “a relevant commercial organization (“C”) is guilty of an offence if a person (“A”) associated with C bribes another person intending to a) obtain or retain business for C or b) to obtain or retain an advantage in the conduct of business for C.”

A key question is whether a clause 7 offence will trigger article 45 of the EU Directive. This is currently under consideration by the government which is seeking legal advice on the issue. The private sector is lobbying hard that clause 7 should not trigger article 45.

However, such a decision would make a nonsense of the Directives and more broadly of the government’s anti-bribery strategy for several reasons:

1. Clause 7 is the only realistic way of getting corporate prosecutions for bribery. According to the Serious Fraud Office’s response to the Law Commission’s consultation on reform of bribery laws, “in present cases of corruption, it is extremely difficult to prove corporate responsibility.”7 As the Law Commission put it, the main reason for including such an offence was that failures to prevent bribery by corporations operating nationally and world-wide “are a key factor in the perpetuation of the practice of bribery.”8 The Law Commission also believed that “incentives to adopt good practice must be underpinned by legal duties that, if breached, may lead to legal action to punish and deter bad practice”.9

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6 http://www.defensenews.com/story.php?i=4523735&c=AME&s=TOP
8 Ibid, para 6.3
9 Ibid, para 6.51
2. If clause 7 does not trigger article 45, then it will in practice mean that companies convicted in the UK (as opposed to individuals who will be covered) will in effect be immune from the Directives’ reach. The major deterrent value that the Directives provide will simply not apply to companies convicted in the UK. That would itself seriously undermine the Directives and destroy the political space to create any sort of collective will to implement the Directives’ seriously across the EU.

3. Clause 7 has an ‘adequate procedures’ defence. This means in practice that as the Law Commission puts it, “companies who make good faith efforts to avoid the commission of the offence will duly escape its net.” This defence naturally introduces a form of proportionality: only companies that have clearly failed to introduce adequate procedures, where there is major wrong-doing and systemic failure are likely to be prosecuted. These are precisely the kind of companies who should be liable for mandatory exclusion. The defence means that the kind of scenarios proposed by the private sector as the unacceptable results of the mandatory exclusion provisions would simply not happen: ie where a rogue employee commits an offence or where there has been a one-off and minor misdemeanour.

However, there is an important caveat: ensuring that clause 7 triggers article 45 must be done in the context of addressing the broader proportionality question as to how long companies will be excluded for (see below.)

Mandatory exclusion or debarment: the issues

Background to the Directives


The intention behind these Directives is to:
- to protect the integrity of the procurement process and thereby public budgets by excluding unreliable suppliers from public contracts;
- to prevent corruption and the other activities listed by deterring companies and individuals from engaging in the specified offences; and
- to enhance competition.

According to the European Commission’s 2006 Communication on Disqualifications arising from criminal convictions in the European Union, disqualifications such as the

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10 Ibid, para 6.60
mandatory exclusions of article 45 are “primarily preventive. When a person who has been convicted of an offence is deprived of the ability to exercise certain rights ... it is primarily to prevent him or her from re-offending”.

This preventative and deterrent effect of the mandatory exclusion provisions in the Directives is recognized in the UK’s Corporate Prosecution guidelines which state that: “Prosecutors should bear in mind that a decision not to prosecute because the Directive is engaged will tend to undermine its deterrent effect.”

Debarment: a consequence of criminal action not double jeopardy

Given the backlash against the EU Directives in the UK, it is worth going over some of the reasons for the importance of debarment. There have been arguments that excluding a company that has been convicted of corruption represents a form of double jeopardy. The double jeopardy argument in relation to blacklisting was deployed recently in a recent bid-rigging case in the UK, when the Office of Fair Trading fined 103 companies £132 million for a practice called ‘cover-pricing’. The Office of Fair Trading and the Office of Government Commerce issued a specific note to public authorities recommending that the companies “should not be automatically excluded from future tenders on the grounds that they are parties to the Decision” [by the OFT that they had infringed competition law]. In the press, the Department of Business, Skills and Innovation (BIS) stated that “we don’t want the companies being fined to be in a double jeopardy situation where they’re being fined but then being blacklisted on top of that”.

The argument of ‘double jeopardy’ has cropped up again in discussion of the Bribery Bill. As Jack Straw said in the debate: “Double jeopardy is a much overworked phrase. It could be argued that it is double jeopardy for someone who has committed a fraud both to end up in the criminal court and to lose his job, but I do not call that double jeopardy. It is simply the consequence of a criminal action.”

Lack of clarity in the EU Procurement Directives and UK implementing regulations

During the drafting process several clarifying points were included in the proposals for the mandatory exclusion article which were subsequently removed. These included:

1) a broad definition of corruption. This definition was:


\[\text{Financial Times, “Bid-riggers to escape blacklist”, 15/9/09}\]

\[\text{Hansard, 3/3/10, Column 949. The double jeopardy argument in this debate was more specifically made in relation to the fact that companies could be liable under the Proceeds of Crime Act 2002 once convicted under the Bribery Bill.}\]

\[\text{For a definitive analysis of the lack of clarity see Sope Williams, “The Mandatory Contractor Exclusions for Serious Criminal Offences in UK Public Procurement”, European Public Law 15, no 3 (2009): 429-444}\]
“corruption, that is to say, of having promised, offered or given, whether directly or via third parties, a benefit of whatever kind to a civil servant or public agent of a Member State, or third country or an international organization or to any person for the benefit of that person or a third party, with the intention that such person will carry out or refrain from carrying out any act in breach of his professional obligations”

2) A time limit of the history of a conviction to five years preceding the start of the contract date.

3) An exception clause for companies convicted for instance of crimes committed by a rogue employee and that have “removed the cause of the conviction, for instance by penalizing an employee having committed one of the [relevant acts] without that operator’s knowledge”.

The mandatory exclusion clause as it was finally agreed is as follows:

“Any candidate or tenderer who has been the subject of a conviction by final judgement of which the contracting authority is aware for one or more reasons listed below shall be excluded from participation in a public contract: ...

b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 [drawing up ... the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union] and Article 2(1) of Framework Decision 2003/568/JHA [on combating corruption in the private sector] ....

Member States shall specify, in accordance with their national law and having regard to Community law, the implementing conditions for this paragraph.”

The UK implementation of the Directives is in the Public Contracts Regulations 2006, with clause 23 reflecting article 45.

Both the Directives and the UK Regulations have left several key issues unclear. These are as follows:

a) Coverage of foreign convictions

The Directives do not specify directly whether companies convicted of corruption of public officials in countries outside the EU are covered. The Office of Government Commerce has stated in its guidance on this issue that the conviction applies whether the supplier is from an EU Member State, a country that is a signatory to the GPA or a third country. That is to say, according to the OGC’s interpretation an economic operator outside of the EU, but who is convicted within the EU would be covered by the exclusion provisions. The Public Contracts Regulations themselves however allow for an even narrower reading: that the term economic operator only applies to contractors who are established in a relevant state. The Public Contracts Regulations definition of a relevant state is limited solely to EU Member States, or to five non-EU countries with which the EU has agreements (Bulgaria, Iceland, Liechtenstein, Norway and Romania.

However, it would make a mockery of the procurement directives and undermine their purpose if the provisions do not apply to foreign convictions for several reasons:

1) The integrity of the procurement process would be jeopardised by non-EU companies whose convictions and track record could not be taken into account.

2) European companies would be put at a serious disadvantage in the competitive process, in contrary to the principle of equal treatment and non-discrimination.

3) The non-applicability of foreign convictions could also encourage further loopholes in the directives as it may encourage companies convicted in the EU to operate through subsidiaries outside of the EU.

It cannot be in the financial interests of the European communities or of EU Member States that the protective and deterrent effect of the procurement directives apply only to companies convicted within the EU. Furthermore, exclusion from European contracts for engaging in the offences could provide a serious incentive to companies in emerging economies and other non-EU countries to clean up their record if they wish to bid for European contracts. It is a major complaint of European companies that they are put at a disadvantage in contracting abroad by less scrupulous competitors particularly from emerging economies. The Directives allow Member States to use the procurement process to signal that EU countries will only contract with reputable companies that have not engaged in corruption, or the other offences listed. It would send a powerful message if this were made clear.

In the Public Contracts Regulations, it states that “a contracting authority shall not treat a person who is not a national of a relevant State and established in a relevant State more favourably than one who is” (4(2)). This would suggest that companies convicted in other countries must be covered otherwise they would be receiving favourable treatment above companies convicted in the EU. But in the absence of a court ruling, clear guidance or an amendment to the Regulations clarifying that companies convicted in other countries are covered, there is a possibility that the Regulations can be read narrowly by contracting authorities to apply only to companies within the EU, or (if they follow the OGC’s guidance) convicted within the EU.

Of course, if the Regulations are amended to cover foreign convictions, the question will arise as to whether all foreign convictions apply, or convictions solely in countries signed up to the Government Procurement Agreement at the WTO. Clearly there must be a clause protecting economic operators from convictions resulting from unfair trials but limiting it only to GPA countries would be too arbitrary. Convictions from any ‘competent jurisdiction’ would be a more appropriate way to address the issue. A process can be built in which allows representations to be made to the relevant Secretary of State that a conviction is unsound or has followed a process that is repugnant to the public policy of the UK to address the concern about unfair trials.

b) Coverage of convictions by related companies.

According to EU figures from 2004, nearly 30% of bids for domestic contracts in the EU come from subsidiaries of foreign companies and such subsidiary bids have a slightly higher success rate than bids from domestic companies. The question of whether the exclusion provisions of the EU Directives and the UK Regulations apply only to the company convicted or more broadly to subsidiary or parent companies is therefore a very important one. Clearly it would be a major loophole in the Directives if

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companies convicted of corruption were able to frustrate the purpose of the Directives merely by bidding through a subsidiary or a subsidiary convicted of corruption were to bid through a parent company.

The Directives are silent on whether the exclusion applies solely to the economic operator or individual putting in a tender or to related persons and companies such as subsidiaries or parent companies. In the Regulations, it states that an economic operator shall be excluded if it or its directors “or any other person who has powers of representation, decision or control of the economic operator has been convicted.” Clearly one interpretation of this is that where a parent company who controls the economic operator is convicted, an exclusion should apply. The Office of Government Commerce guidance on this issue states that the term ‘economic operator’ “refers only to the contractor, supplier or services provider applying to tender for the specific contract in question - not parent companies, subsidiaries or sub-contractors, but may in certain circumstances apply to a controlling parent company.”

Clearly if companies are able to circumvent the exclusion provisions by bidding through related companies, it would seriously undermine them. In recognition of this, other bodies and governments that apply debarment (including the US and the World Bank) as a tool to protect the integrity of procurement require controlled subsidiaries and holding or controlling parent companies to be excluded as well. It is vital that the Regulations and Guidance make clear that the exclusion should apply to both subsidiary and parent companies, and that there be room for related companies to be excluded where the whole company operates as a single economic unit with high levels of control. The Regulations would need to be amended to state that “any other person who has powers of representation, decision or control of the economic operator or over whom the economic operator has powers of representation, decision or control, has been convicted” and need to specify that ‘person’ can mean legal person as well.

c) Obligations on contracting authorities to enquire and investigate

In the final version of the Directive, the phrase “of which the contracting authority is aware” was inserted. This has been transposed through the Regulations as “if the contractual authority has actual knowledge” of a conviction. There is no obligation on public authorities to enquire into whether a company has a conviction or not. Within the Directives, public authorities “shall, where appropriate, ask candidates or tenderers to supply” documents which prove that the operator does not have convictions of any of the offences listed. Interpreting this in the UK context, the Office of Government Commerce has stated that public authorities should “as a minimum, seek a declaration from all economic operators [in prequalification questionnaires for instance] confirming that they have not been convicted.” There is however no legal obligation on

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19 ibid, para 3.2
authorities to do so and it is not clear whether in fact all public authorities are doing so.

In the UK there is the additional problem as to where authorities would go to find information about convictions. Convictions by companies would not be registered at the Criminal Records Bureau as individual convictions are. There is an urgent need for the setting up of a national database of convicted companies but also an EU wide central register of convicted companies, which procurement officials can consult. This could significantly reduce the burden on public authorities.

At the same time, it is important that public procurement authorities are encouraged and resourced to investigate cases where a conviction has occurred or where there are suspicions that it has in order to avoid companies seeking to evade the exclusion provisions by using either related companies or setting up new entities to bid for a contract. Either the government must resource a specific debarment officer in each contracting authority as happens in the US, or the Office of Government Commerce must be beefed up to provide this kind of support to contracting authorities, to achieve this end.

d) Proportionality and time limits to exclusion

There is no mention in the Directives or in the UK’s implementing regulations as to whether there are time limits on exclusion or whether mitigating factors such as the seriousness of the offence or remedial measures by a contractor can be taken into account. This has led to complaints from the private sector that the Directives are “excessively punitive”22 and allow for “potential material injustices”23 in that they could be read to imply a perpetual exclusion from public contracts even for minor offences.

The OGC has offered no guidance to public authorities about how long a company or individual should be excluded for. One approach is that it should only be excluded for as long as a conviction is unspent.24 In the UK the rehabilitation period for a fine is five years, after which it would become spent. But there is no certainty that this is how the exclusion provisions will be interpreted across the board.

While perpetual exclusion should be an option for companies whose business model has been largely dependent upon bribery (or any of the other offences listed), or who have engaged in large-scale and egregious bribery and are unable to reform, it is clearly not suitable for a company which has committed a much lesser offence, such as negligence with regard to a rogue employee or a small one-off bribe. Even five years exclusion in some contexts might be an overly harsh penalty.

Proportionality could and should be addressed through the creation of specific time limits which take into account relevant factors including whether remedial measures

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22 Memorandum by GC100 (the association of general counsel and company secretaries in the FTSE 100) to the Joint Committee on the Draft Bribery Bill, [http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/memo/430/ucm1002.htm](http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/memo/430/ucm1002.htm);
23 Memorandum by the Anti-Corruption Forum to the Joint Committee on the Draft Bribery Bill, [http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/115/115we05.htm](http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/115/115we05.htm)
have been taken by a company. Companies should be excluded for such a period as is appropriate to deter bribery and in light of the seriousness of the offence and such steps as have been taken by the company to ensure no repetition of the offence.

It would clearly be possible, given the broad discretion accorded to Member States in specifying the implementing conditions for the Directives, for the UK government, with expert advice and in articulation with the criminal justice system, to introduce rules on time limits into the Public Contracts Regulations and offer guidance on how the limits should be applied. The UK Anti-Corruption Forum has recommended that a tariff be developed listing approximate lengths of debarment taking into account a whole host of factors including the seriousness of the offence, the status of those involved, cooperation with and self-reporting to the authorities among other things.\(^\text{25}\)

This would be much preferable to adopting a ‘discretionary’ approach where procurement officers can decide whether to exclude companies or not.\(^\text{26}\) Clear guidelines and set criteria make for a transparent and effective system, whereas greater discretion in this area could lead to even more lack of clarity and confusion. If the system becomes discretionary, prosecutors will not be able to know whether companies they seek charges and financial penalties against will subsequently also be excluded and for how long. Equally procurement officers cannot be expected to be corporate governance or criminal law experts who can determine the adequacy of remedial measures or the seriousness of an offence.

It is also preferable to adopting a ‘self-cleaning’ approach, which is being advocated by some.\(^\text{27}\) According to the ‘self-cleaning’ approach, a company that has adopted self-cleaning after being convicted of an offence should avoid exclusion altogether. The danger with a self-cleaning approach is that it potentially undermines the purpose of the directive. Since most criminal trials of corporations for the listed offences, and certainly for corruption, would involve the requirement of some form of remedial measures to be taken, in effect no corporations would be excluded from public contracts regardless of the seriousness of their offence. The directives would lose their preventative value. Furthermore, if a company knows it can evade exclusion from public contracts solely by agreeing to ‘self-clean’, meanwhile, it removes any real incentive for it to comply with the law.

Adopting a time-limit approach on set criteria does still raise key questions. How will the time limits be assessed? Who should determine whether a companies’ remedial action is sufficient to limit exclusion? Will reliance be placed on independent monitors agreed between the SFO and the concerned company sufficient or should a regulatory body be involved?

What is clear is that debarment is a necessary part of the anti-corruption regime of the EU and the UK, and that EU countries need to co-ordinate their efforts to create clear system for implementing the EU Directives which addresses the gaps identified here

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and make it possible for overseas corruption to be treated as the serious criminal offence which it is, with an appropriate prosecution strategy.