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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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(COMMISSION DE VENISE)

KEEPING POLITICAL AND CRIMINAL RESPONSIBILITY SEPARATE
PROVISIONS OF NATIONAL CRIMINAL LAWS
IN THE FIELD OF ABUSE OF OFFICE

SEPARER LA RESPONSABILITE POLITIQUE
DE LA RESPONSABILITE PENALE
DISPOSITIONS DES LOIS PENALES NATIONALES
EN MATIERE D'ABUS DE POUVOIR

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Country	Provision on abuse of office by members of government	Need for benefit/damage
Albania / Albanie	Article 248 - Abuse of duty Deliberate accomplishment or non-accomplishment of actions or of failures to act, in violation to the law and constituting the failure of a person, who carries out public functions, to do his duties regularly, in cases when it has led to bringing him or to other persons unjust material or non-material benefits or who have brought damages to the legitimate interests of the state, citizens, and other legal entities, when it does not constitute another criminal offence	Yes. unjust material or non material benefits or damages to the legitimate interests of the state, citizens, and other legal entities.
Andorra / Andorre	Article 344 : Privation illégale de liberté de personnes Article 372 : Prévarication Article 373 : Nomination de personne non idoine à une charge publique Article 378 : Concession Article 379 : Exactions pécuniaires indues Articles 380 et 381 : Corruption Article 388 : Appropriation de biens publics Article 389 : Administration déloyale de biens publics Article 390 : Utilisation temporaire de biens publics Article 391 : Prise illégale d'intérêt Article 392 : Négociations en marchés publics, prohibitions Article 393 : Abus d'information privilégiée	Oui, préjudice Non Non Oui, bénéfice Oui, préjudice Oui, bénéfice Oui, bénéfice Oui, bénéfice Oui, bénéfice Oui, bénéfice Oui, dommage Oui, bénéfice
Armenia / Arménie	Article 308 – Abuse of official authority Abuse of official authority by a state official for mercenary interests, personal, other interests or group interest Article 309 – Exceeding official authorities Actions wilfully committed by an official which obviously exceed his authorities	Article 308 – Yes, essential damage to the legal interests of citizens, organisations, public or state rights (in case of property loss, the amount (value) exceeding 300 minimal salaries) Article 309 – Yes, essential damage to the rights of citizens, organisations, state or legal interests (in case of property loss, the amount (value) exceeding 500 minimal salaries)
Austria / Autriche	Article 302: knowingly abusing one's authority with the intention to damage another's rights	Yes, intention to damage
Belgium / Belgique	Articles 254 ss : infractions commises par une personne revêtue d'une autorité publique dont elle a fait un usage abusif ou dont elle a refusé de faire usage alors qu'elle en était légalement requise - en particulier : Article 254 : réquisition de l'usage de la force publique contre	Non

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	l'exécution d'une loi ou d'un arrêté royal Article 258 : déni de justice Ces dispositions ne s'appliquent pas aux ministres	
Canada	No specific provision (see ss. 119-130)	See B - most offences are linked to corrupt practices
Croatia / Croatie	Article 337: the individual oversteps his/her authority or fails to perform his/her duties for the purpose of any material or immaterial benefit for him/herself or another legal or natural person (Article 291 of the new penal code) Article 292 of the new code: unlawful favouritism (cf. Article 338 of the old code, abuse in performing governmental duties) Article 295 of the new code: trading in influence (cf. Article 343 of the old code, illegal intercession)	Yes, alternative conditions: benefit or "to cause any damages whatsoever" - material benefit is an aggravating
Cyprus / Chypre	There are specific provisions in respect of abuse of official powers or violation of duty enunciated in the Civil Service Law 1/90 (see Section VII-Disciplinary code , sections 73- 86 of the Civil Service Law 1/90), which provide for administrative sanctions.	No, but the abuse of official powers is always detrimental to the state up to a certain extent
Czech Republic / République tchèque	Article 329: intention to cause some kind of damage or other significant injury to another person or to set up for oneself or another person an unjustifiable benefit	Yes, alternative conditions: benefit or "damage or other significant injury to another person"
Denmark / Danemark	Ministers of Government Accountability Act: abuse of a position to violate the rights or any person or of any public authority	Yes, violation of rights; benefit (unlawful privilege) is an aggravating
Estonia / Estonie	No, a previous provision was repealed because it was considered too general and vague	./.
Finland / Finlande	Chapter 40, Section 7: violation of official duty or misuse of office in respect of a person who is under his/her command or immediate supervision	Yes, alternative conditions: benefit or detriment or loss to another
France	Prise illégale d'intérêt (article 432-12) = immixtion d'un intérêt privé dans un processus administratif Le favoritisme (Article 432-14) concerne les marchés publics et délégations de service public	Non, pas d'exigence de profit des coupables ni de préjudice pour la collectivité
Georgia / Géorgie	Article 332: Abuse of Official Authority Abuse of official authority by: state-political official, an officer or a person equal thereto in contempt of public service requirements. Article 333: (Exceeding Official Powers) Exceeding official power by: state-political official, an officer or a person	Article 332: Yes, any profit or privilege for oneself or others that has come as a substantial prejudice. Article 333: Yes, a substantial damage to the right of a natural or legal person, legal public or

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	<p>equal thereto. Article 337: Illicit Participation in Entrepreneurial Activity Establishment of an enterprise, organisation or institution for entrepreneurial purposes or participation therein, irrespective of a legal prohibition, by an officer or a person equal thereto, directly or indirectly</p>	<p>state interest. Article 337: Yes, if it is related to awarding illegal privileges or preferences or granting any other form of patronage to him/her,-</p>
Germany / Allemagne	Article 331: Illegal taking of interests	Yes, material or immaterial benefit (for him/herself or a third person)
Greece / Grèce	<p>Article 239 = abuse of office: not applicable to ministers Article 259: breach of duty by civil servants</p>	Article 259: yes (benefit for him/herself or a third person)
Ireland / Irlande	No, there are provisions on corruption and conflicts of interest	./.
Italy / Italie	<p>Article 323: the person either (1) acts in breach of the law or regulations, (2) fails to abstain in the presence of his/her own personal interest</p>	Yes, alternative conditions: material (not immaterial) benefit or "to cause others to suffer an unfair damage"
Lithuania / Lituanie	Article 228: abusing of an official position or exceeding vested powers	<p>Yes, the condition is major damage to the State, the European Union, an international public organisation, a legal or a natural person Personal benefit is an aggravating</p>
Mexico / Mexique	Article 251, Abuse of authority, details 16 possible conducts that may fulfil the criteria. These include unjustified use of violence, unjustified denial of a public service, unjustified imprisonment of persons, unjustified payment of services that were not provided to government, etc.	No
Moldova	<p>Article 327. Abuse of power or abuse of service (1) The intentional use by a public person of the service situation, in the material interest or in other personal interest, if this causes considerable damage to the public interest or the rights and lawful interests of individuals or legal persons, Article 328. Excess of power or overcome of service prerogatives (1) The commission by a public person of actions that obviously overcome the limits of rights and prerogatives conferred by law, if this caused considerable damage to the public interest or the rights and lawful interests of individuals or legal persons, Article 329. Negligence in the office</p>	<p>Yes, in the material interest or in other personal interest and considerable damage to the public interest or the rights and lawful interests of individuals or legal persons Yes, if this caused considerable damage to the public interest or the rights and lawful interests of individuals or legal persons. Yes, if this caused damages in large proportion to the public interest or the rights and lawful interests of individuals or legal persons. Yes, if actions were committed</p>

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	<p>(1) Failure or inadequate performance by a public person of service obligations as a result of negligent or inappropriate attitudes towards them, if this cause damages in large proportion to the public interest or the rights and lawful interests of individuals or legal persons, Article 332. False in public documents (1) Registration by a public person, in official documents of obviously false information and forgery of such documents, if these actions were committed in material interest or other personal interests,</p>	<p>in material interest or other personal interests</p> <p>Yes, alternative conditions: benefit or damage to another or serious violation of the rights of another</p>
<p>Montenegro / Monténégro</p>	<p>Article 416 (abuse of official status): a person in an official capacity unlawfully uses his/her official position or authorisations, oversteps the limits of his/her official authorisation or omits to perform his/her official duty</p>	<p>Yes, alternative conditions: benefit or damage to another or serious violation of the rights of another</p>
<p>Netherlands / Pays-Bas</p>	<p>No specific provision (see Article 355 ff for specific offences by public officials). For every offence, violation by a public servant of a specific duty of office or use, for the purpose of committing the criminal offence, of the power, opportunities or means afforded to him, is an aggravating</p>	<p>./.</p>
<p>Norway / Norvège</p>	<p>Article 123: misuse of one's position so as to violate any person's right by performing or omitting to perform an official act Article 124: unlawful use of the office to induce any person to do, tolerate or omit to do anything</p>	<p>Article 123: yes, violation of any person's right</p>
<p>Poland / Pologne</p>	<p>Article 231: excess of authority or failure to fulfil one's duties</p>	<p>Yes, the condition is to act to the detriment of public or private interest</p>
<p>Portugal</p>	<p>Article 382: abuse of power or violation of duty which corresponds to an act capable of producing legal effects as a manifestation of the will of the State = harm done to the smooth running and impartiality of the administration</p>	<p>Yes, alternative conditions: the intention of obtaining an illicit advantage or of harming someone (no need of actual damage or gain)</p>
<p>Romania / Roumanie</p>	<p>Article 246: malfeasance and nonfeasance against a person's interest Article 247: malfeasance or nonfeasance by restriction of certain rights Article 248: malfeasance and nonfeasance against public interests</p>	<p>Yes, the condition is harm to the legal interests of a person (246) or restriction of his rights/discrimination (247) or significant disturbance in the proper operation of a body or institution of the State (248)</p>
<p>Russia / Russie</p>	<p>Article 285: Abuse of official powers</p>	<p>Article 285: Yes, material or immaterial benefit; the condition consists in an enjoyment of official powers in contravention of interests of the office where such enjoyment, being committed for material or immaterial benefit, has led to a</p>

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	<p>Article 285.1 Unreasonable expenditure of the budget</p> <p>Article 285.2 Unreasonable expenditure of the State off-budget funds</p> <p>Article 285.3 Entry of knowingly wrong information in the State united registers</p> <p>Article 286: Exceeding official powers</p> <p>Article 292: Forgery by the official</p>	<p>substantial violation of the rights and lawful interests of individuals or organisations, or the legally-protected interests of the society or the State</p> <p>Article 285.1: Yes, the condition consists in a substantial breach of the rules on expenditure of the budget by the official (damage)</p> <p>Article 285.2: Yes, the condition consists in a substantial breach of the rules on expenditure of the off-budget funds by the official (damage)</p> <p>Article 285.3: No, the conditions are in an entry of knowingly wrong information in any of the State united registers, or deliberate abolishment or forgery of some documents for the State united registers</p> <p>Article 286: Yes, the condition consists in substantial violation of the rights and lawful interests of individuals or organisations, or the legally-protected interests of society and the State through clearly exceeding official powers</p> <p>Article 292: Yes; the condition consists in a forgery of official document by the official where such forgery was committed for material or immaterial benefit</p>
San Marino / Saint-Marin	Article 376: abuse of authority by any public official (subsidiary to special crimes such as corruption punished under art. 371 ff).	Yes, alternative condition: aim to obtain a benefit for the public official or another person, or else aim to cause a disadvantage to another person.
Serbia / Serbie	<p>Article 359: by abuse of office or authority, excess of the limits of official authority or dereliction of duty</p> <p>Article 361: dereliction of duty</p>	<p>Article 359: Yes, alternative conditions: benefit or damages to a third party or serious violation of the rights of another</p> <p>Article 361: Yes, the condition is serious violation of another's rights or material damage</p>
Slovakia / Slovaquie	<p>Article 326: exercise of powers in an unlawful manner/excess of legal authority/failure to fulfil a duty resulting from one's legal authority or from a court decision</p> <p>Article 327: neglect of duty by a public official (by negligence)</p>	<p>Article 326: Yes, alternative conditions: intention of causing damage to another or obtaining undue benefit for oneself or another</p> <p>Article 327: negligence is sufficient</p>
Spain / Espagne	<p>Article 404: handing down arbitrary resolutions</p> <p>Article 405: appointing someone who</p>	No

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	does not comply with the legal requisites for a public post Article 433: putting funds or assets placed under one's charge due to one's duties to other uses Article 441: exercise of incompatible activities	
Sweden / Suède	Chapter 20, section 1: disregard of the duties of office (intentionally or through carelessness)	No, serious harm to an individual or the public sector substantial improper benefit may be aggravating
Switzerland / Suisse	Article 312 : abus d'autorité (= violation de devoirs légaux)	Oui, conditions alternatives : dessein de se procurer ou de procurer à un tiers un avantage illicite, ou dessein de nuire à autrui
« the former Yugoslav Republic of Macedonia » / “l'ex-République yougoslave de Macédoine”	Article 353: use of official position or authorisation, excess of limits of official authorisation	Yes, alternative conditions: benefit or to cause damage to other persons
Ukraine	Article 364: abuse of authority or office = wilful use of authority or official position contrary to the official interests Article 365: excess of authority or official powers = wilful commission of acts, by an official, which patently exceed the rights and powers vested in him/her	Article 364: Yes, mercenary motives or other personal benefit or benefit of any third person + it caused any substantial damage to legally protected rights, freedoms and interests of individual citizens, or state and public interests, or interests of legal entities Article 365: Yes, the condition is substantial damage to the legally protected rights and interests of individual citizens, or state and public interests, or interests of legal entities
United Kingdom / Royaume-Uni	Misconduct in public office = a public officer acting as such wilfully neglects to perform his duty and/or wilfully misconducts himself to such a degree as to amount to an abuse of the public's trust in the office holder	No