



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 28 May 2013**

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**Interinstitutional File:  
2012/0193 (COD)**

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**DROIPEN 58  
JAI 404  
GAF 22  
FIN 286  
CADREFIN 117  
CODEC 1154**

**NOTE**

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from: Presidency

to: COREPER

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No. Cion prop.: 12683/12 DROIPEN 107 JAI 535 GAF 15 FIN 547 CADREFIN 349  
CODEC 1924

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Subject: Protecting the Union's financial interests by means of criminal law

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The proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law<sup>1</sup> was presented to the JHA-Council on 26 October and 7 December 2012.

A number of Working Party meetings (Working Party on Substantive Criminal Law (DROIPEN)) has been held. The entire instrument has now been examined extensively by Member States experts.

While the Presidency is aware of a number of reservations that Member States have on various issues, it is the Presidency's view that it is now time for the Council to agree on a general approach with a view to initiating negotiations with the European Parliament.

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<sup>1</sup> 12683/12 DROIPEN 107 JAI 535 GAF 15 FIN 547 CADREFIN 349 CODEC 1924  
(COM(2012) 363/2).

The attached text is a best compromise, with the reservations to be borne in mind in future negotiations with the European Parliament. Coreper will be invited to address the inclusion of "assets" in Article 2 in the text below, and to agree that this text is ready for referral for agreement at the JHA Council 6 June.

COREPER took a clear position on the legal base on 24 May 2013. A clear majority indicated that 83(2) is the correct legal base for this instrument with only a few indicating that they could accept 325(4). Also, a clear majority indicated that the scope of Article (3) should be defined mainly on the basis of "subsidies and aid". The Presidency is satisfied that a sufficient majority supports this view for the purposes of reaching a general approach.

Other areas with Member State reservations, shared by the Commission, include:

- The exclusion of VAT revenues from the scope of the Directive, where a few delegations share the view of the Commission that these revenues should be covered. For a clear majority the exclusion of VAT from an instrument like this is a policy issue;
- The exclusion of the offence of procurement fraud from Article 4;
- The rules on prescription periods in Article 12;
- The exclusion of minimum sanctions from the instrument.

The Commission has underlined that it considers the attached text to be too diluted and that it in certain respects does not even preserve the *aquis*. It further insists on its view that the correct legal basis of the instrument is Article 325(4) TFEU.

The Presidency is of the view that the attached document contains a balanced compromise package covering the whole text of the instrument. It underlines that all issues will no doubt have to be raised in discussions with the European Parliament, including such topics where Member States still have reservations. The Presidency however feels that the time has come to begin negotiations with the co-legislator. The document has been drafted on the assumption that Article 83(2) is the legal basis for the Directive and the text is only valid under this assumption.

The Presidency intends to refer this general approach to JHA Council for approval on 6 June 2013. Ministers will be invited to note in the minutes of the Council that this will be the commencement of the opt-in period for Ireland and the United Kingdom in accordance with Article 3 in Protocol 21 to the Treaty.

Accordingly, Articles 1 and 2 of the Protocol 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

2012/0193 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the fight against fraud to the Union's financial interests by means of criminal law**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83 (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Court of Auditors<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The protection of the Union's financial interests concerns not only the management of budget appropriations, but extends to all measures negatively affecting or threatening to negatively affect its assets, and those of the Member States to the extent they are of relevance to Union policies.

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<sup>1</sup> Opinion 8/2012, OJ C , , p. .

- (2) The Convention for the protection of the European Communities' financial interests of 26 July 1995<sup>1</sup> including the Protocols thereto of 27 September 1996<sup>2</sup>, of 29 November 1996<sup>3</sup> and of 19 June 1997<sup>4</sup> establishes minimum rules relating to the definition of criminal offences and sanctions in the area of fraud affecting the Union's financial interests. It was drawn up by the Member States of the European Union which noted that fraud affecting Union revenue and expenditure in many cases was not confined to a single country and was often committed by organised criminal networks; on that basis, it was already recognised in that Convention that the protection of the Union's financial interests called for the criminal prosecution of fraudulent conduct injuring those interests. In parallel, Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests<sup>5</sup> was adopted. That Regulation lays down general rules relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Union law while, at the same time, referring to sectoral rules in this area, fraudulent actions as defined in the Convention on the protection of the European Communities' financial interests and the application of the Member States' criminal law and proceedings.
- (3) In order to ensure the implementation of the Union policy in the area of the protection of the Union's financial interests which has been subject to harmonisation measures such as Council Regulation (EC, Euratom) No 2988/95, it is essential to continue to approximate the criminal laws of the Member States by complementing the protection under administrative and civil law for the most serious types of fraud-related conduct in this field, whilst avoiding inconsistencies, both within and among these areas of law.
- (4) The protection of the Union's financial interests calls for a common definition of fraud falling within the scope of this Directive and covering fraudulent conduct with respect to both expenditure and revenues at the expense of the EU budget.

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<sup>1</sup> OJ C 316, 27.11.1995, p. 48.

<sup>2</sup> OJ C 313, 23.10.1996, p. 1.

<sup>3</sup> OJ C 151, 20.5.1997, p. 1.

<sup>4</sup> OJ C 221, 19.7.1997, p. 11.

<sup>5</sup> OJ L 312, 23.12.1995, p. 1.

- (5) The Union money laundering legislation is fully applicable to the laundering of proceeds of criminal offences in serious cases referred to in this Directive. A reference made to that legislation should ensure that the sanction regime introduced by this Directive applies to serious cases of criminal offences against the Union's financial interest.
- (6) Corruption constitutes a particularly serious threat against the Union's financial interests, which can in many cases also be linked to fraudulent conduct. A particular criminalisation as regards all undue advantages in this area is therefore included.
- (7) The Union's financial interests can be negatively affected by certain types of conduct of a public official which aim at misappropriating funds or assets contrary to the purpose foreseen, where the Union's financial interests are thereby damaged. There is therefore a need to introduce a precise definition of offences covering such conduct.
- (8) As regards the offences of passive corruption and misappropriation, there is a need to include a definition of public officials covering all relevant officials, whether holding a formal office in the Union in the Member States or in third countries. Private persons are increasingly involved in the management of Union funds. In order to adequately protect Union funds from corruption and misappropriation, the definition of 'public official' therefore needs to cover also persons that do not hold a formal office, but nonetheless are assigned and exercising, in a similar manner, a public service function in relation to Union funds, such as contractors involved in the management of such funds.
- (9) With regard to the criminal offences foreseen in this Directive, intention must apply to all the elements constituting the offences referred to in this Directive. The intentional nature of an act or omission may be inferred from objective, factual circumstances. Offences by natural persons which do not require intention are not covered by this Directive.
- (10) Some offences against the Union's financial interests are in practice often closely related to the offences covered by Article 83 (1) of the Treaty and Union legislation based on that Article. Coherence with such legislation should therefore be ensured in the wording of the provisions.

- (11) In as much as the Union's financial interests can also be damaged or threatened by conduct attributable to legal persons, they should be liable for the criminal offences, as defined in this Directive, committed on their behalf.
- (12) In order to protect the Union's financial interests equivalently through measures which should act as a deterrent throughout the Union, Member States should further foresee certain types and levels of sanctions when the criminal offences defined in this Directive are committed. The levels of sanctions should not go beyond what is proportionate for the offences.
- (13) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent rules for criminal offences affecting the Union's financial interests.
- (14) This Directive does not affect the proper and effective application of disciplinary measures. Sanctions that can not be equated to criminal penalties can be taken into account in accordance with national law when sentencing a person for one of the offences defined under this Directive in individual cases; for other sanctions, the principle of *ne bis in idem* should be fully respected. This Directive does not criminalise behaviour which is not also subject to disciplinary sanctions or other measures concerning a breach of official duties, in cases where such disciplinary sanctions or other measures can be applied to the persons concerned.
- (15) The sanctions for natural persons in more serious cases should foresee imprisonment. In determining whether an offence is serious, Member States should, according to national law, have regard to all relevant circumstances, such as the value of any damage done or advantages gained, or the damage to the integrity of or confidence in systems for managing the Union's financial interests.

The introduction of minimum levels of maximum imprisonment penalties for serious offences is necessary in order to guarantee that the Union's financial interests are given an equivalent protection throughout Europe. The sanctions will serve as a strong deterrent for potential criminals, with effect all over Europe.

- (16) Member States should ensure that when the offence was committed within a criminal organisation in the sense of Council Framework Decision 2008/841/JHA<sup>1</sup>, this should be considered an aggravating circumstance in accordance with the applicable rules established by their legal systems. They should ensure that this aggravating circumstance is available for judges to consider when sentencing offenders, although there is no obligation for judges to apply those aggravating circumstances. The aggravating circumstance should not be expressly provided for in Member States' law when in national law the offences in the sense of Council Framework Decision 2008/841 are criminalised as a separate offence and may lead to more severe sanction levels.
- (17) Given in particular the mobility of perpetrators and of proceeds stemming from illegal activities at the expense of the Union's financial interests, as well as the complex cross-border investigations which this entails, all Member States should establish their jurisdiction in order to enable them to counter these activities. Member States should thereby ensure that their jurisdiction includes situations where an offence is committed by means of information and communication technology accessed from their territory.
- (18) Member States should lay down rules concerning prescription periods necessary in order to enable them to counter illegal activities at the expense of the Union's financial interests. In cases of serious offences, the prescription period should be at least five years from the time when the offence was committed. This is without prejudice to those Member States which do not set limitation periods for investigation, prosecution and enforcement.
- (19) Administrative measures and sanctions play an important role in the protection of the Union's financial interests. The imposition of criminal sanctions on the basis of offences foreseen by this Directive and of administrative sanctions does not lead to the breach of the principle of *ne bis in idem*, as interpreted by the Court of Justice. The obligations under this Directive do not exempt Member States from the obligation to apply and implement administrative Union sanctions and measures within the meaning of Article 4 and 5 of Council Regulation No 2988/95.

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<sup>1</sup> OJ L 300, 11.11.2008, p. 42.

- (20) Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters and to other rules under Union law, in particular under Regulation of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF), there is a need for appropriate provision to be made for cooperation between Member States and the Commission to ensure effective action against the criminal offences defined in this Directive affecting the Union's financial interests, including exchange of information between the Member States and the Commission as well as technical and operational assistance lent by the Commission to the competent national authorities as they may need to facilitate coordination of their investigations. The assistance by the Commission should not entail the participation of the Commission in the investigation or prosecution procedures of individual criminal cases conducted by the national authorities.
- (21) The Commission should report to the European Parliament and the Council on the measures taken by Member States to comply with the Directive. The report may be accompanied, if necessary, by proposals taking into consideration possible evolutions, in particular regarding the financing of the Union budget.
- (22) The Convention for the protection of the European Communities' financial interests of 26 July 1995<sup>1</sup> and the Protocols thereto of 27 September 1996<sup>2</sup> and 29 November 1996<sup>3</sup> and of 19 June 1997<sup>4</sup> should be replaced by this Directive in relation to Member States participating in the adoption of this Directive.

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<sup>1</sup> OJ C 316, 27.11.1995, p. 48.

<sup>2</sup> OJ C 313, 23.10.1996, p. 1.

<sup>3</sup> OJ C 151, 20.5.1997, p. 1.

<sup>4</sup> OJ C 221, 19.7.1997, p. 11.

- (23) Proper implementation of this Directive by the Member States includes the processing of personal data among the competent national authorities, its exchange between Member States, on the one hand, and between competent Union bodies on the other hand. The processing of personal data at the national level between national competent authorities should be regulated by the EU acquis. The exchange of personal data between Member States should meet the requirements of Council Framework Decision 2008/977/JHA<sup>1</sup>. To the extent personal data are processed by Union institutions, bodies, agencies and offices, they should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>2</sup> and with the applicable rules concerning the confidentiality of judicial investigations.
- (24) The intended dissuasive effect of the application of criminal law penalties requires particular caution with regard to fundamental rights. This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to liberty and security, the protection of personal data, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the principles of the legality and proportionality of criminal offences and penalties, as well as the prohibition of being tried or punished twice in criminal proceedings for the same criminal offence. This Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.
- (25) This Directive will apply without prejudice to the provisions on the lifting of the immunities contained in the Treaty, the Protocol on the Privileges and Immunities of the European Union, the Statute of the Court of Justice and the texts implementing them, or similar provisions incorporated in national law.

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<sup>1</sup> OJ L 350, 30.12.2008, p. 60.

<sup>2</sup> OJ L 8, 12.1.2001, p. 1.

- (26) This Directive is without prejudice to the general rules and principles of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case.
- (27) Since the objective of this Directive cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (28) [In accordance with Article 3 of the Protocol (No 21) on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.]<sup>1</sup>
- (29) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

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<sup>1</sup> The draft text of this recital will be modified accordingly if the United Kingdom or Ireland will choose not to opt in to the Directive.

HAVE ADOPTED THIS DIRECTIVE:

## **Title I: Subject matter and definition**

### *Article 1*

#### *Subject matter*

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the field of the fight against fraud and other illegal activities affecting the Union's financial interests.

### *Article 2*

#### *Definition of the Union's financial interests*

For the purposes of this Directive, 'the Union's financial interests' means all revenues, expenditures and [assets] covered by, acquired through, or due to:

- (a) the Union budget;
- (b) the budgets of institutions, bodies, offices and agencies established under the Treaties or budgets managed and monitored by them.

Revenues arising from VAT are not included in the scope of this Directive.

## **Title II: Criminal offences in the field of fraud affecting the Union's financial interests**

### *Article 3*

#### *Fraud affecting the Union's financial interests*

1. For the purposes of this Directive, *fraud affecting the Union's financial interests* shall consist of:
    - (a) in respect of subsidy and aid expenditure, any act or omission relating to:
      - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf,
      - (ii) non-disclosure of information in violation of a specific obligation, with the same effect,
      - (iii) the misapplication of such funds for purposes other than those for which they were originally granted;
    - (b) in respect of other expenditure, any act or omission relating to:
      - (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf, or
      - (ii) non-disclosure of information in violation of a specific obligation, with the same effect,
- at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests;

- (c) in respect of revenue, any act or omission relating to:
- (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf,
  - (ii) non-disclosure of information in violation of a specific obligation, with the same effect,
  - (iii) misapplication of a legally obtained benefit, with the same effect.
2. Subject to Article 7(4), Member States shall take the necessary measures to ensure that the acts or omissions as referred to in paragraph 1 constitute a criminal offence, when committed intentionally.

#### *Article 4*

##### *Fraud related criminal offences affecting the Union's financial interests*

1. For the purposes of this Directive:
- (i) *money laundering* shall consist of the acts defined in Article 1 (2) of Directive 2005/60/EC of the European Parliament and of the Council<sup>1</sup> involving property derived from the offences referred to in Article 4, paragraph 1 (ii) and (iii), and, at least when they constitute serious offences, the offences referred to in Article 3 and 4, paragraph 1(iv);
  - (ii) *passive corruption* shall consist of the action of a public official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, in a way which damages or is likely to damage the Union's financial interests;

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<sup>1</sup> OJ L 309, 25.11.2005, p. 15.

(iii) *active corruption* shall consist of the action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to a public official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, in a way which damages or is likely to damage the Union's financial interests;

(iv) *misappropriation* shall consist of the act by a public official who is entrusted with the management of funds or assets to commit or disburse funds, or appropriate or use assets, contrary to the purpose for which they were intended and which damages the Union's financial interests.

2. Subject to Article 7(4), Member States shall take the necessary measures to ensure that the acts or omissions as referred to in paragraph 1 constitute a criminal offence, when committed intentionally.

3. For the purpose of this Article:

'public official' means:

(a) any 'Union' or 'national' official, including any national official of another Member State and any national official of a third country;

(i) the term 'Union' official shall mean:

- any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Union or the Conditions of employment of other servants of the European Union,

- any person seconded to the European Union by the Member States or by any public or private body, who carries out functions equivalent to those performed by European officials or other servants.

Members of institutions, bodies, offices and agencies, set up in accordance with the Treaties and the staff of such bodies shall be treated as Union officials, inasmuch as the Staff Regulations of the European Union or the Conditions of employment of other servants of the European Union do not apply to them;

(ii) the term 'national official' shall be understood by reference to the definition of 'official' or 'public official' in the national law of the State in which the person in question performs the function

Nevertheless, in the case of proceedings involving a Member State's official, or a national official of a third country, initiated by another Member State the latter shall not be bound to apply the definition of 'national official' except in so far as the definition is compatible with its national law.

(b) any other person assigned and exercising a public service function involving the management of or decisions concerning the Union's financial interests in Member States or third countries.

### **Title III: General provisions relating to the criminal offences in the fields of fight against fraud affecting the Union's financial interests**

#### *Article 5*

#### *Incitement, aiding and abetting, and attempt*

1. Member States shall take the necessary measures to ensure that inciting, aiding or abetting the commission of any of the criminal offences referred to in Articles 3 and 4 is punishable as a criminal offence.
2. Member States shall take the necessary measures to ensure that an attempt to commit any of the criminal offences referred to in Article 3 and in Article 4, paragraph 1(iv), is punishable as a criminal offence.

*Article 6*  
*Liability of legal persons*

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, of any of the criminal offences referred to in Articles 3, 4 and 5-for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of the criminal offences referred to in Articles 3 and 4 or criminally liable under Article 5.

4. For the purpose of this Directive, ‘legal person’ shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

*Article 7*  
*Penalties for natural persons*

1. As regards natural persons, Member States shall ensure that the criminal offences referred to in Articles 3, 4 and 5 shall be punishable by effective, proportionate and dissuasive criminal penalties.

2. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 shall be punishable by a maximum penalty which provides for imprisonment.
3. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3 and 4 shall be punishable by a maximum penalty of at least four years of imprisonment when they constitute serious offences.
4. In cases of offences involving damages of less than EUR 10,000 and advantages of less than EUR 10,000. Member States may provide instead for other than criminal penalties, unless the case constitutes a serious offence.
5. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials.

#### *Article 8*

##### *Aggravating circumstance*

Member States shall take the necessary measures to ensure that it shall be regarded as an aggravating circumstance when a criminal offence referred to in Articles 3, 4 or 5 is committed within a criminal organisation in the sense of Framework Decision 2008/841 of 24 October 2008 on the fight against organised crime.

#### *Article 9*

##### *Minimum sanction types for legal persons*

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;

- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

*Article 10*  
*Freezing and confiscation*

Member States shall take the necessary measures to enable freezing and confiscation of proceeds and instrumentalities from the offences referred to in Articles 3, 4 and 5. Those Member States participating in Directive .../.../... [of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union]<sup>1</sup> shall do so in accordance with that Directive.

*Article 11*  
*Jurisdiction*

1. Member States shall take the necessary measures to establish their jurisdiction over the criminal offences referred to in Articles 3, 4 and 5 where:
  - (a) the offence is committed in whole or in part within their territory; or
  - (b) the offender is one of their nationals.
2. For the case referred to in point (b) of paragraph 1, Member States shall take the necessary measures to ensure that their jurisdiction is not subordinated to the condition that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

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<sup>1</sup> To be adopted following proposal COM(2012) 85.

## *Article 12*

### *Prescription for offences affecting the Union's financial interests*

1. Member States shall take the necessary measures to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in Articles 3, 4 and 5 for a sufficient period of time after the commission of those offences, such that those offences may be tackled effectively.
2. Member States shall in cases of serious offences ensure that the prescription period amounts to at least five years from the time when the offence was committed.
3. Member States may establish a prescription period that is shorter than five years in cases of serious offences provided that they shall ensure that the period may be interrupted or suspended upon specified acts.
4. Member States shall take the necessary measures to enable the enforcement of:
  - (a) a penalty of more than one year of imprisonment, or alternatively,
  - (b) a penalty of imprisonment in a case of a serious offence,imposed following a final conviction for a criminal offence referred to in Articles 3, 4 and 5, for at least five years from the date of the final conviction. This period may include extension of the prescription period arising from interruption or suspension.

## *Article 13*

### *Recovery*

This Directive shall be without prejudice to the recovery of sums unduly paid in the context of the commission of the criminal offences referred to in Articles 3, 4 and 5.

#### *Article 14*

##### *Interaction with other applicable legal acts of the Union*

This Directive shall be without prejudice to the application of administrative measures and sanctions as laid down in Union law, in particular those within the meaning of Articles 4 and 5 of Council Regulation No 2988/95<sup>1</sup>, or in national law adopted in compliance with a specific obligation under Union law.

#### **Title IV: Final provisions**

#### *Article 15*

##### *Cooperation between the Member States and the European Commission (European Anti-Fraud Office)*

1. The Member States and the Commission shall cooperate with each other in the fight against the criminal offences referred to in Articles 3, 4 and 5. To that end the Commission shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations.
2. The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against the criminal offences referred to in Articles 3, 4 and 5. The Commission and the competent national authorities shall take account in each specific case of the requirements of investigation secrecy and data protection. To that end, a Member State, when supplying information to the Commission, may set specific conditions covering the use of information, whether by the Commission or by another Member State to which that information may be passed.

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<sup>1</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interest, OJ L 312, 23.12.1995, p. 1.

## *Article 16*

### *Replacement of the Convention for the protection of the European Communities' financial interests*

The Convention on the protection of the European Communities' financial interests of 26 July 1995, including the Protocols thereto of 27 September 1996, of 29 November 1996 and of 19 June 1997 (the "Convention"), is hereby replaced in relation to Member States participating in the adoption of this Directive, with effect from [day of application under Art. 17 (1) second sub-paragraph]. In relation to Member States participating in the adoption of this Directive, references to the Convention shall be construed as references to this Directive.

## *Article 17*

### *Transposition*

1. Member States shall adopt and publish, by [two years from the adoption] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from ... .

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 18*

*Report*

The Commission shall by [24 months after the deadline for implementation of the Directive] submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, subject to appropriate information being made available by Member States.

*Article 19*

*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 20*

*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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