

P7_TA(2014)0427

**Fight against fraud to the Union's financial interests by means of criminal law
***I**

European Parliament legislative resolution of 16 April 2014 on the 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 (COM(2012)0363 – C7-0192/2012 – 2012/0193(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0363),
 - having regard to Article 294(2) and Article 325(4) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0192/2012),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the Court of Auditors of 15 November 2012¹,
 - having regard to the opinion of the Committee of the Regions of 10 October 2012²,
 - having regard to Rules 55 and 37 of its Rules of Procedure,
 - having regard to the joint deliberations of the Committee on Budgetary Control and the Committee on Civil Liberties, Justice and Home Affairs under Rule 51 of the Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A7-0251/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 383, 12.12.2012, p. 1.

² OJ C 391, 18.12.2012, p. 134.

P7_TC1-COD(2012)0193

Position of the European Parliament adopted at first reading on 16 April 2014 with a view to the adoption of Directive 2014/.../EU 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 ~~325~~
(4) **83(2)** thereof, **[Am. 1]**

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 Auditors¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

¹ OJ C 383, 12.12.2012, p. 1.

² OJ C 391, 18.12.2012, p. 134.

³ Position of the European Parliament of 16 April 2014.

- (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 designated to support or stabilise the economy or public finances of Member States with relevance to Union policies.
- (2) In order to ensure effective, proportionate and dissuasive protection of the Union's financial interests, criminal law in the Member States should continue to complement the protection under administrative and civil law for *against* the most serious types of fraud-related conduct in this field, *and to ensure that the Union's financial interests are optimally protected, measures adopted under administrative and civil law should be complemented by legislation under criminal law in the Member States*, whilst avoiding inconsistencies, both within and among these areas of law. [Am. 2]
- (3) The protection of the Union's financial interests calls for a common definition of fraud covering fraudulent conduct with respect to expenditure and, revenues, *assets and liabilities* at the expense of the EU Union budget, *including borrowing and lending activities*. [Am. 3]

- (4) Fraud affecting Value Added Tax (VAT) diminishes tax receipts of Member States and subsequently the application of a uniform rate to Member States' VAT assessment base. As confirmed by the case-law¹ of the Court of Justice of the European Union, there is a direct link between the collection of VAT revenue in compliance with the Union law applicable and the availability to the Union budget of the corresponding resources, since any lacuna in the collection of the first potentially causes a reduction in the second. The Directive therefore covers revenue resulting from VAT receipts in the Member States.
- (5) The consideration of the substantial impact on the EU's financial interests resulting from the illegal diminution of the VAT-based own resource and application of thresholds contained in this Directive shall be read in line with the principle of proportionality, given the specific nature and methodology used for calculating that own resource, including differentiated treatment of Member States.

¹ Judgment of the Court of Justice of 15 November 2011 in Case C-539/09 *Commission v Germany* ([2011] ECR I-11235).

- (6) The Union's financial interests can be negatively affected where individual tenderers provide information to contracting or grant awarding authorities based on information ~~unduly~~ **illegally** obtained directly or indirectly from the tendering body, with the aim of circumventing or ~~skewing~~ **violating** rules applicable to a public procurement or grant procedure. Such conduct is very similar to fraud, but does not necessarily need to ~~constitute~~ **bear all the hallmarks of** a full fraud offence on the side of the tenderer, since the provided bid may ~~be completely in line with all requirements~~ **meet all the necessary criteria**. Bid-rigging behaviour between tenderers violates Union competition rules and equivalent national laws; it is subject to public enforcement action and sanctions throughout the Union and should remain outside the scope of this Directive. **[Am. 4]**
- (7) The Union money laundering legislation is fully applicable to laundering the proceeds of the criminal offences referred to in this Directive. A reference made to that legislation should insure that the sanction regime introduced by this Directive applies to all criminal offences against the Union's financial interest.

(8) 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 in this area is therefore needed. It must be ensured that the relevant offences are covered by the definition irrespective of whether conduct is in breach of official duties or not. 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 appointed, elected or employed on the basis of a contract, *or* holding a formal office, ~~as well as persons exercising the function of providing service from government and other public bodies to citizens, or for the public interest in general, without holding~~ ***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' for the purposes of this Directive therefore needs to cover also persons who do not hold a formal office, but who are none the less assigned, and who exercise, in a similar manner, a public-service function in relation to Union funds, such as contractors involved in the management of*** ~~EU~~ ***such*** funds. [Am. 5]

- (9) 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, and with the intention to damage the Union's financial interests. There is therefore a need to introduce a precise ***and unambiguous*** definition of offences covering such conduct. [Am. 6]
- (9a) ***With regard to the criminal offences committed by natural persons as defined in this Directive, it is necessary to establish intent in respect of all the elements comprised in those offences. Offences committed by natural persons which do not require intent are not covered by this Directive.*** [Am. 7]
- (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 on the Functioning of the European Union (TFEU) 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 minimum 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 and a threshold expressed in money, under which criminalisation is not necessary, should therefore be introduced.
- (13) 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.

- (14) The sanctions for natural persons in more serious cases should foresee imprisonment ranges. These serious cases should be defined by referring to a certain minimum overall damage, expressed in money, which must have been caused by the criminal behaviour to the Union's and, possibly, other budget. The introduction of minimum maximum imprisonment ranges is necessary in order to guarantee that the Union's financial interests are given an equivalent protection throughout Europe. The minimum sanction of six months ensures that a European Arrest Warrant can be issued and executed for the offences listed in Article 2 of the Framework Decision on the European Arrest Warrant, thus ensuring that judicial and law enforcement cooperation will be as efficient as possible. The sanctions will also serve as a strong deterrent for potential criminals, with effect all over Europe. More severe sanction levels should be imposed for cases when the offence was committed within a criminal organisation in the sense of Council Framework Decision 2008/841/JHA¹.

¹ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (15) 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 and lay down rules concerning prescription periods necessary in order to enable them to counter these activities.
- (16) In order to ensure the coherence of Union law and safeguard the principle that no-one is punished twice for the same cause of action, there is a need to clarify the relation between penalties under this Directive and other relevant administrative measures under Union law. The Directive should be without prejudice to the application of specific administrative measures, penalties and fines under Union law.

- (17) Without prejudice to other obligations under Union law, 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, *Eurojust*, and the Commission. **[Am. 10]**
- (18) The Convention for the protection of the European Communities' financial interests of 26 July 1995¹ and the Protocols thereto of 27 September 1996² and 29 November 1996³ should be repealed and replaced by this Directive.

¹ OJ C 316, 27.11.1995, p. 48.

² OJ C 313, 23.10.1996, p. 1.

³ OJ C 151, 20.5.1997, p. 1.

- (19) 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 national law respecting the Convention of the Council of Europe on the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and its additional Protocol (ETS no 181). The exchange of personal data between Member States should meet the requirements of Council Framework Decision 2008/977/JHA¹. 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 Council² and with the applicable rules concerning the confidentiality of judicial investigations.

¹ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

² 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 (OJ L 8, 12.1.2001, p. 1).

- (20) 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.
- (21) This Directive will apply without prejudice to the provisions on the lifting of the immunities contained in the TFEU, 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.

- (22) 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.
- (23) Since the objective of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, 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.

HAVE ADOPTED THIS DIRECTIVE:

Title I

Subject matter and definition

Article 1

Subject matter

This Directive establishes necessary measures in the field of prevention of and fight against fraud and other illegal activities affecting the Union's financial interests by defining criminal offences and sanctions *with a view to affording effective and equivalent protection in the Member States and in Union institutions, bodies, offices and agencies and boosting the credibility of Union institutions and initiatives*. [Am. 11]

Article 2

Definition of the Union's financial interest

For the purposes of this Directive, ‘the Union's financial interests’ means ***all the assets and liabilities managed by or on behalf of the Union and its institutions, bodies and agencies; and all its financial operations, including borrowing and lending activities, as well as, in particular, all revenues and expenditures covered by, acquired through, or due to:*** [Am. 12]

- (a) the Union budget;
- (b) the budgets of institutions, bodies, offices and agencies established ~~under~~ ***pursuant to*** the Treaties or budgets ***directly or indirectly*** managed and monitored by them. [Am. 13]

Title II

Criminal offences in the fields of prevention of and fight against fraud affecting the Union's financial interests

Article 3

Fraud affecting the Union's financial interests

Member States shall take the necessary measures to ensure that the following conduct, when committed intentionally, is punishable as a criminal offence:

- (a) in respect of 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 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, or
 - (iii) the misapplication of liabilities or expenditure for purposes other than those for which they were granted;

- (b) 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, or
 - (iii) misapplication of a legally obtained benefit, with the same effect.

Article 4

Fraud related criminal offences affecting the Union's financial interests

1. Member States shall take the necessary measures to ensure that any provision of information, or failure to provide such information, to contracting or grant awarding entities or authorities in a public procurement or grant procedure involving the Union's financial interests, by candidates or tenderers, or by persons responsible for or involved in the preparation of replies to calls for tenders or grant applications of such participants, when committed intentionally and with the aim of circumventing or skewing the application of the eligibility, exclusion, selection or award criteria, *or of distorting or destroying natural competition among bidders*, is punishable as a criminal offence. **[Am. 14]**
2. Member States shall take the necessary measures to ensure that money laundering as defined in Article 1(2) of Directive 2005/60/EC of the European Parliament and of the Council¹ involving property *or income* derived from the offences covered by this Directive is punishable as a criminal offence. **[Am. 15]**

¹ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

3. Member States shall take the necessary measures to ensure that ~~the following conduct,~~ ***passive corruption and active corruption***, when committed intentionally, ***are*** punishable as criminal ~~offence~~: ***offences***.

~~(a)~~ ***For the purposes of this Directive, passive corruption shall consist of*** the action of a public official, who, directly or through an intermediary, requests or ~~receives~~ ***accepts in advance*** advantages of any kind whatsoever ***or a promise of such an advantage***, for himself or for a third party, ~~or accepts a promise of such an advantage, to act~~ ***for acting, delaying action*** or ~~refrain~~ ***refraining*** from acting in accordance with his duty or in the exercise of his functions, ***whether or not in breach of his official obligations***, in a way which damages or is likely to damage the Union's financial interests (~~passive corruption~~);

~~(b)~~ *For the purposes of this Directive, active corruption shall consist of* the action of whosoever promises, *offers* 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, *to delay action* or *to* refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests ~~(active corruption)~~, *or for having performed those conducts in the past.* [Am. 16]

4. Member States shall take the necessary measures to ensure that ~~the intentional~~ *misappropriation, when committed intentionally, is punishable as a criminal offence.*

For the purposes of this Directive, misappropriation shall consist of an act by a public official to commit or disburse funds, or appropriate or use assets, contrary to the purpose for which they were intended, and ~~with the intent to damage~~ *which damages* the Union's financial interests, ~~is punishable as a criminal offence (misappropriation).~~ [Am. 17]

5. For the purpose of this Article, 'public official' means:

- (a) ~~any person exercising a public service function for the Union or in Member States or third countries by holding a legislative, administrative or judicial office; *Union or national official, including any national official of another Member State and any national official of a third country.*~~

The term 'Union official' means:

- (i) *any person who is an official or other contracted employee within the meaning of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union ('Staff Regulations'),*
- (ii) *any person seconded to a Union institution, body, office or agency by the Member States or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants.*

Members of bodies, offices or agencies set up in accordance with the Treaties and the staff of such bodies, offices or agencies shall be treated as Union officials, inasmuch as the Staff Regulations do not apply to them.

The term 'national official' shall be understood by reference to the definition of 'official' or 'public official' in the national law of the Member State or third country in which the person in question performs the function.

Nevertheless, in the case of proceedings involving an official of a Member State, 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 ~~for the Union or in Member States or third countries, not holding such an office, participating in~~ *involving* the management of, or decisions concerning, the Union's financial interests *in Member States or third countries.* [Am. 18]

Title III

General provisions relating to the criminal offences in the fields of prevention of and fight against fraud affecting the Union's financial interests

Article 5

Incitement, aiding and abetting, 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 ~~Title II~~ *Articles 3 and 4* is punishable as a criminal offence. **[Am. 19]**
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 ~~or~~ *and* in Article 4, ~~paragraph 4,~~ *(4)* is punishable as a criminal offence. **[Am. 20]**

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 ~~Title II~~ **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: **[Am. 21]**
 - (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 ~~Title II~~ **Articles 3, 4 and 5** for the benefit of that legal person by a person under its authority.
[Am. 22]

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 ~~Title II~~ *Articles 3 and 4* or criminally liable under Article 5. **[Am. 23]**
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 ~~Title II shall be~~ **Articles 3, 4 and 5 are** punishable by effective, proportionate and dissuasive criminal penalties, including fines and imprisonment as specified in Article 8. **[Am. 24]**
2. In cases of ~~minor~~ offences involving damages of less than EUR ~~10,000~~ **5 000** and advantages of less than EUR ~~10,000~~ **5 000** and not involving ~~particularly serious~~ **aggravating** circumstances, Member States may provide instead for **the imposition of sanctions** other than criminal penalties. **[Am. 25]**
3. Paragraph 1 **of this Article** shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials, **as defined in Article 4(5)**. **[Am. 26]**
4. Member States shall ensure that sanctions of another nature, that cannot be equated to criminal penalties, and which are already imposed on the same person for the same conduct, can be taken into account when sentencing that person for a criminal offence referred to in Title II.

Article 8

Imprisonment thresholds

1. Member States shall take the necessary measures to ensure that criminal offences as referred to in Articles 3 and 4, paragraphs 1 and 4, involving an advantage or damage of at least EUR ~~100,000~~ **50 000** shall be punishable by:**[Am. 43]**

~~(a) a minimum penalty of at least 6 months imprisonment;~~ **[Am. 27]**

(b) a maximum penalty of at least 5 years of imprisonment.

Member States shall take the necessary measures to ensure that criminal offences as referred to in Article 4, paragraphs 2 and 3, involving an advantage or damage of at least EUR 30,000 shall be punishable by:

~~(a) a minimum penalty of at least 6 months imprisonment;~~ **[Am. 28]**

(b) a maximum penalty of at least 5 years of imprisonment.

2. Member States shall take the necessary measures to ensure that the criminal offences referred to in ~~Title II shall be~~ **Articles 3, 4 and 5 are** punishable by a maximum penalty of at least 10 years of imprisonment where the offence was committed within a criminal organisation ~~in the sense~~ ***within the meaning*** of Framework Decision 2008/841/JHA.
[Am. 30]

Article 8a

Aggravating circumstances

Member States shall take the necessary measures to ensure that, where it is established that a criminal offence as referred to in Articles 3, 4 or 5 has been committed within a criminal organisation within the meaning of Framework Decision 2008/841/JHA, that fact is treated as an aggravating circumstance for sentencing purposes. [Am. 31]

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;
- (aa) *temporary or permanent exclusion from Union tender procedures; [Am. 32]***
- (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 9a

Ne bis in idem rule

Member States shall apply in their national criminal law the 'ne bis in idem' rule, under which a person whose trial has been completed in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that, if a penalty was imposed, it has been enforced, is in the process of being enforced or may no longer be enforced under the laws of the sentencing State. [Am. 33]

Article 10

Freezing and confiscation

Member States shall ensure freezing and confiscation of proceeds and instrumentalities from the offences referred to in Title II in accordance with Directive 2014/42/EU of the European Parliament and of the Council¹.

¹ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

Article 11
Jurisdiction

1. Member States shall take the necessary measures to establish their jurisdiction over the criminal offences referred to in ~~Title II~~ **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 *own* nationals *or is resident in their territory; or*
 - (c) ***the offender is subject to the Staff Regulations, or was subject to the Staff Regulations at the time of the offence.*** [Am. 34]
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.
3. Member States shall ensure that their jurisdiction includes situations where an offence is committed by means of information and communication technology accessed from their territory.

Article 12

Prescription for offences affecting the Union's financial interests

1. Member States shall ensure a prescription period within which the investigation, prosecution, trial and judicial decision on offences referred to in Title II, and in Article 5, remain possible, of at least five years from the time when the offence was committed.
2. Member States shall ensure that the prescription period shall be interrupted and commence anew upon any act of a competent national authority, including in particular the effective beginning of investigation or prosecution, until at least ten years from the time when the offence was committed.
3. Member States shall take the necessary measures to enable the enforcement of a penalty imposed following a final conviction for a criminal offence referred to in Title II, and in Article 5, for a sufficient period of time that shall not be less than 10 years from the time of the final conviction.

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 ~~Title II~~ **Articles 3, 4 and 5**.

Member States shall take the necessary measures to ensure the prompt recovery of such sums and their transfer to the Union budget, without prejudice to the relevant Union sector-specific rules on financial corrections and recovery of amounts unduly spent. Member States shall also keep regular records of the sums recovered and shall inform the relevant Union institutions or bodies about those sums, or, where they have not been recovered, of the reasons for such non-recovery. [Am. 35]

Article 14

Interaction with other applicable legal acts of the Union

The application of administrative measures, penalties and fines as laid down in Union law, in particular those within the meaning of Articles 4 and 5 of Council Regulation No 2988/95¹, or in national law adopted in compliance with a specific obligation under Union law, shall be without prejudice to this Directive. Member States shall ensure that any criminal proceedings initiated on the basis of national provisions implementing this Directive shall not affect the proper and effective application of administrative measures, penalties and fines that cannot be equated to criminal proceedings, laid down in Union law or national implementing provisions.

¹ 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).

Title IV

Final provisions

Article 15

Cooperation between the Member States and the European Commission (European Anti-Fraud Office) [Am. 36]

1. ***Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters***, the Member States, ***Eurojust*** and the Commission shall, ***within their respective competences***, cooperate with each other in the fight against the criminal offences referred to in ~~Title II~~ ***Articles 3, 4 and 5***. To that end, the Commission ***and, where appropriate Eurojust***, shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations. [Am. 37]

2. The competent authorities in the Member States may, *within their respective competences*, exchange information with the Commission *and with Eurojust* so as to make it easier to establish the facts and to ensure effective action against the criminal offences referred to in ~~Title II~~ *Articles 3, 4 and 5*. The Commission, *Eurojust* and the competent national authorities shall ~~take account~~ in each specific case *comply with Article 6* of the ~~requirements of investigation secrecy and data protection~~ *Treaty on the European Union, with the Charter of Fundamental Rights of the European Union and with the applicable Union legislation on the protection of personal data, and shall take into account the requirements of investigation secrecy*. To that end, a Member State, when supplying information to the Commission *and to Eurojust*, may set specific conditions covering the use of information, whether by the Commission, *by Eurojust*, or by another Member State to which that information may be passed. [Am. 38]

- 2a. *The Court of Auditors, national audit institutions (for example when auditing transactions under shared management arrangements) and auditors responsible for auditing the budgets of the institutions, bodies and agencies established pursuant to the Treaties, or the budgets managed and audited by the institutions, shall disclose to OLAF any criminal offences of which they become aware during their mission. [Am. 39]***
- 2b. *Union officials shall disclose to OLAF any criminal offences of which they become aware during their mission. [Am. 40]***

Article 16

Repeal of the criminal law conventions 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, shall be repealed with effect from [day of application under Art. 17 (1) second sub-paragraph].

Article 17

Transposition

1. Member States shall adopt and publish, by ... 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 17a

Reporting, statistics and evaluation

- 1. The Commission shall, by [24 months after the deadline for implementation of this Directive], and thereafter on a yearly basis, submit to the European Parliament and to the Council a report assessing the extent to which the Member States have taken the necessary measures to comply with this Directive and evaluating the effectiveness of this Directive in attaining its objectives.*

Those reports shall refer to the information made available by Member States pursuant to paragraph 2.

2. *Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of the systems established by them to protect the Union's financial interests. The statistics collected shall be sent to the Commission on a yearly basis and shall include:*
- (a) the number of criminal proceedings initiated, subdivided into the number of proceedings dismissed, the number resulting in an acquittal, the number resulting in a conviction and the number of ongoing proceedings;*
 - (b) the amounts recovered, and the amounts not recovered, following criminal proceedings;*
 - (c) the number of requests for assistance received from other Member States, subdivided into the number of requests acceded to and the number rejected.*

3. *The Commission shall, by [60 months after the deadline for implementation of this Directive], submit to the European Parliament and to the Council a full evaluation of this Directive, based on the experience gained and, in particular, on the reports and statistics provided pursuant to paragraphs 1 and 2. If appropriate, the Commission shall at the same time submit a proposal for amendment of this Directive, taking duly into account the outcome of the evaluation. [Am. 41]*

Article 18

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 19

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament

The President

For the Council

The President