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2009 - 2014

Committee on Budgetary Control
Committee on Civil Liberties, Justice and Home Affairs

2012/0193(COD)

11.2.2014

AMENDMENTS

24 - 100

Draft report

Ingeborg Gräßle, Juan Fernando López Aguilar
(PE524.832v01-00)

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

Proposal for a directive
(COM(2012)0363 – C7-0192/2012 – 2012/0193(COD))

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PE528.001v03-00

EN

United in diversity

EN

Amendment 24
Judith Sargentini

Proposal for a directive
Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 325 (4) thereof,

Amendment

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

Or. en

Justification

After the entry into force of the Lisbon Treaty harmonisation of substantive criminal law, including offences against the Union's financial interests should be based on article 83(2) TFEU as confirmed by the opinion of the JURI committee

Amendment 25
Anthea McIntyre

Proposal for a directive
Citation 1

Text proposed by the Commission

– having regard to the Treaty on the Functioning of the European Union, and in particular *Article* 325 (4) thereof,

Amendment

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

Or. en

Amendment 26
Sarah Ludford

Proposal for a directive
Citation 1

Text proposed by the Commission

– having regard to the Treaty on the

Amendment

– having regard to the Treaty on the

Functioning of the European Union, and in particular Article 325 (4) thereof,

Functioning of the European Union, and in particular Article 83 (2) thereof,

Or. en

Amendment 27
Judith Sargentini

Draft legislative resolution
Citation 2

Draft legislative resolution

– 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)**,

Amendment

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

Or. en

Justification

After the entry into force of the Lisbon Treaty harmonisation of substantive criminal law, including offences against the Union's financial interests should be based on article 83(2) TFEU as confirmed by the opinion of the JURI committee

Amendment 28
Cornelis de Jong

Draft legislative resolution
Citation 2

Draft legislative resolution

– 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),

Amendment

– having regard to Article 294(2) and Article 83(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0192/2012),

Amendment 29
Juan Fernando López Aguilar

Draft legislative resolution
Citation 2

Draft legislative resolution

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 325 (4) thereof,

Amendment

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

Or. es

Amendment 30
Judith Sargentini

Draft legislative resolution
Citation 3

Draft legislative resolution

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

Amendment

deleted

Or. en

Justification

After the entry into force of the Lisbon Treaty harmonisation of substantive criminal law, including offences against the Union's financial interests should be based on article 83(2) TFEU as confirmed by the opinion of the JURI committee

Amendment 31
Cornelis de Jong, Rina Ronja Kari

Proposal for a directive
Recital 1

Text proposed by the Commission

(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.**

Amendment

(1) The protection of the Union's financial interests concerns only the management of budget appropriations.

Or. en

Justification

The definition is so broad that practically all government expenditures will fall under EU-legislation, even if they do not directly affect the EU budget.

Amendment 32

Auke Zijlstra

Proposal for a directive

Recital 2

Text proposed by the Commission

(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 the most serious types of fraud-related conduct in this field, **whilst avoiding inconsistencies, both within and among these areas of law.**

Amendment

(2) In order to ensure effective, proportionate and dissuasive protection of the Union's financial interests, criminal law in the Member States should **provide** protection under administrative and civil law for the most serious types of fraud-related conduct in this field.

Or. nl

Amendment 33

Auke Zijlstra

Proposal for a directive
Recital 3

Text proposed by the Commission

Amendment

(3) The protection of the Union's financial interests calls for a common definition of fraud covering fraudulent conduct with respect to both expenditure and revenues at the expense of the EU budget.

deleted

Or. nl

Amendment 34
Juan Fernando López Aguilar

Proposal for a directive
Recital 3

Text proposed by the Commission

Amendment

(3) The protection of the Union's financial interests calls for a common definition of fraud covering fraudulent conduct with respect to both expenditure **and revenues** at the expense of the EU budget.

(3) The protection of the Union's financial interests calls for a common definition of fraud covering fraudulent conduct with respect to both expenditure, **revenues, assets and liabilities** at the expense of the EU budget, **including borrowing and lending activities.**

Or. en

Amendment 35
Arkadiusz Tomasz Bratkowski, Jacek Protasiewicz, Tadeusz Zwiefka

Proposal for a directive
Recital 4

Text proposed by the Commission

Amendment

(4) Fraud affecting Value Added Tax (VAT) diminishes tax receipts of Member States and subsequently the application of

deleted

a uniform rate to Member States' VAT assessment base. As confirmed by the Court of Justice jurisprudence²⁶, 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.

²⁶ Case C-539/09 – OJ C 25/08 of 28 January 2012.

Or. en

Justification

The deletion of the recital 4 is a consequence of the changes made in the article 2.

Amendment 36
Cornelis de Jong, Rina Ronja Kari

Proposal for a directive
Recital 4

Text proposed by the Commission

Amendment

(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 Court of Justice jurisprudence²⁶, 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

deleted

VAT receipts in the Member States.

²⁶ *Case C-539/09 – OJ C 25/08 of 28 January 2012.*

Or. en

Justification

The administration of VAT is a matter for Member States within the framework of the EU VAT system and should fall outside the scope of this directive.

Amendment 37

Arkadiusz Tomasz Bratkowski, Jacek Protasiewicz, Tadeusz Zwiefka

Proposal for a directive

Recital 5

Text proposed by the Commission

Amendment

(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. ***deleted***

Or. en

Justification

The deletion of the recital 5 is a consequence of the changes made in the article 2.

Amendment 38

Cornelis de Jong, Rina Ronja Kari

Proposal for a directive

Recital 5

Text proposed by the Commission

Amendment

(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.

deleted

Or. en

Amendment 39
Monica Luisa Macovei

Proposal for a directive
Recital 6

Text proposed by the Commission

Amendment

(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 obtained directly or indirectly from the tendering body, with the aim of circumventing or skewing rules applicable to a public procurement or grant procedure. Such conduct is very similar to fraud, but does not necessarily need to constitute a full fraud offence on the side of the tenderer, since the provided bid may be completely in line with all requirements. ***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.***

(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 obtained directly or indirectly from the tendering body, with the aim of circumventing or skewing rules applicable to a public procurement or grant procedure. Such conduct is very similar to fraud, but does not necessarily need to constitute a full fraud offence on the side of the tenderer, since the provided bid may be completely in line with all requirements. ***The Union's financial interests can also be negatively affected where individual tenderers provide intentionally false information to contracting or grant awarding authorities. Bid-rigging behaviour between tenderers violates Union competition rules and equivalent national laws.;***

Amendment 40
Juan Fernando López Aguilar

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) With regard to the criminal offences laid down in this Directive, it is necessary to establish intent in respect of all the elements of which those offences consist. Offences by natural persons which do not require intention are not covered by this Directive.

Amendment 41
Cornelis de Jong, Rina Ronja Kari

Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(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.

deleted

Amendment 42
Gerben-Jan Gerbrandy, Jan Mulder

Proposal for a directive
Recital 12

Text proposed by the Commission

(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.

Amendment

(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. ***In exceptional cases, domestic courts should nonetheless be able to impose a sentence lighter than the minimum penalty, provided that this is justified by the general principles of European or domestic law.***

Or. nl

Amendment 43
Monica Luisa Macovei

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) In order to ensure the coherence of Union law with respect to the protection of the Union's financial interests, it is appropriate to introduce certain minimum levels of penalties in respect of the offences defined in this Directive. This Directive lays down minimum rules. It

does not prevent the Member States from exercising their discretion by providing more extensive powers in their national law.

Or. en

Amendment 44
Juan Fernando López Aguilar

Proposal for a directive
Recital 17

Text proposed by the Commission

(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 and the Commission.

Amendment

(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.

Or. en

Amendment 45
Cornelis de Jong, Rina Ronja Kari

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

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***.

Amendment

This Directive establishes necessary measures in the field of prevention of and fight against fraud and other illegal activities ***directly*** affecting the Union's financial interests, ***with a view to affording effective and equivalent protection in the Member States and in Union institutions, bodies, offices and agencies***.

Amendment 46
Nuno Melo

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

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.

Amendment

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, ***in order to afford effective and equivalent protection in the Member States and boost the credibility of Union institutions and initiatives.***

Or. pt

Amendment 47
Arkadiusz Tomasz Bratkowski, Jacek Protasiewicz, Tadeusz Zwiefka

Proposal for a directive
Article 2 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

I. For the purposes of this Directive, ‘the Union's financial interests’ means all revenues and expenditures covered by, acquired through, or due to:

Or. en

Amendment 48
Bart Staes

Proposal for a directive
Article 2 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

(b) the budgets of institutions, bodies, offices and agencies established under the Treaties or budgets managed and monitored by them ***directly or indirectly;***

Or. en

Amendment 49
Anthea McIntyre

Proposal for a directive
Article 2 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) Revenues arising from VAT are not included in the scope of this Directive

Or. en

Amendment 50
Arkadiusz Tomasz Bratkowski, Jacek Protasiewicz, Tadeusz Zwiefka

Proposal for a directive
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive does not apply to the revenues arising from VAT.

Or. en

Justification

Including VAT in the scope of this directive we risk to fall outside the legal base since indirect taxation is regulated in Article 113 TFEU. Given the fact that the potential of VAT fraud affecting the Unions budget is very limited, the question of proportionality may arise. The future EPPO might not be ready to deal with the number of cases while national authorities would be precluded from investigating them. Exclusion of the VAT allows avoiding the above

problems.

Amendment 51
Renate Weber

Proposal for a directive
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The Union's financial interests relate as well to all assets and liabilities managed by or on behalf of the Union and its institutions, and to all its financial operations, including borrowing and lending activities;

Or. en

Amendment 52
Renate Weber

Proposal for a directive
Article 3 – paragraph 1 – point a – introductory part

Text proposed by the Commission

Amendment

(a) in respect of expenditure, any act or omission ***relating to:***

(a) in respect of expenditure, any act or omission ***in violation of a specific obligation, constituting:***

Or. en

Amendment 53
Renate Weber

Proposal for a directive
Article 3 – paragraph 1 – point b – introductory part

Text proposed by the Commission

Amendment

(b) in respect of revenue, any act or

(b) in respect of revenue, any act or

omission *relating to*:

omission *in violation of a specific obligation, constituting*:

Or. en

Amendment 54
Bart Staes

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

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 Council³³ involving property derived from the offences covered by this Directive is punishable as a criminal offence.

³³ OJ L 309, 25.11.2005, p. 15.

Amendment

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 Council³³ involving property *or any other income* derived from the offences covered by this Directive is punishable as a criminal offence.

³³ OJ L 309, 25.11.2005, p. 15.

Or. en

Amendment 55
Monica Luisa Macovei

Proposal for a directive
Article 4 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

3. Member States shall take the necessary measures to ensure that *passive corruption and active corruption in the public sector*, when committed intentionally, are punishable as criminal *offences*:

Or. en

Amendment 56
Monica Luisa Macovei

Proposal for a directive
Article 4 – paragraph 3 – point a

Text proposed by the Commission

(a) 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 a way which damages or is likely to damage the Union's financial interests (*passive corruption*);

Amendment

(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, ***accepts***, 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 a way which damages or is likely to damage the Union's financial interests;

Or. en

Amendment 57
Renate Weber

Proposal for a directive
Article 4 – paragraph 3 – point a

Text proposed by the Commission

(a) 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 a way which damages or is likely to damage the Union's financial interests (passive corruption)***;

Amendment

(a) the ***deliberate*** action of a public official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for ***themselves*** or for a third party, or accepts a promise of such an advantage, ***as inducement to:***

Or. en

Amendment 58
Renate Weber

Proposal for a directive
Article 4 – paragraph 3 – point a a (new)

Text proposed by the Commission

Amendment

(aa) carry out or to have in the past carried out an official duty or an act in the course of their official duties, whether or not in breach of their official obligations, in a way that damages or is likely to damage the Community's financial interests,

Or. en

Amendment 59
Renate Weber

Proposal for a directive
Article 4 – paragraph 3 – point a b (new)

Text proposed by the Commission

Amendment

(ab) refrain from carrying out or in the past to have refrained from carrying out, or to delay or to have delayed an official duty or an act in the course of their official duties, whether or not in breach of their official obligations, in a way that damages or is likely to damage the Community's financial interests. (passive corruption);

Or. en

Amendment 60
Monica Luisa Macovei

Proposal for a directive
Article 4 – paragraph 3 – point b

Text proposed by the Commission

(b) 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 a way which damages or is likely to damage the Union's financial interests (***active corruption***).

Amendment

(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 or 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.

Or. en

Amendment 61

Renate Weber

Proposal for a directive

Article 4 – paragraph 3 – point b

Text proposed by the Commission

(b) 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 a way which damages or is likely to damage the Union's financial interests*** (active corruption).

Amendment

(b) the ***deliberate*** action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to a public official for ***themselves*** or for a third party ***as inducement for them to carry out, delay*** or refrain from ***carrying out the acts mentioned in subparagraph (a)*** (active corruption).

Or. en

Amendment 62

Monica Luisa Macovei

Proposal for a directive

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall take the necessary measures to ensure that passive corruption and active corruption in the private sector, as referred in Article 2 of Framework Decision 2003/568/JHA, are punishable as criminal offences.

Or. en

Justification

Private companies, non-governmental organisations and individuals are also beneficiaries of EU funds. Therefore corruption or other offences committed by those in private sector harming the Union's financial interests shall be covered by this Directive.

Amendment 63

Renate Weber

Proposal for a directive

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In the case of acts which involve a public official, the condition that the act or omission damages or is likely to damage the Community's financial interests shall be deemed to have been fulfilled.

Or. en

Amendment 64

Monica Luisa Macovei

Proposal for a directive

Article 4 – paragraph 5 – point a

Text proposed by the Commission

Amendment

(a) any person exercising a public service

(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;

function for the Union or in Member States or third countries by holding a legislative, administrative or judicial office, *whether appointed or elected*;

Or. en

Amendment 65
Bart Staes

Proposal for a directive
Article 4 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. A former "public official" still under the obligation not to be active in certain sectors without explicit permission;

Or. en

Amendment 66
Monica Luisa Macovei

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. As regards natural persons, Member States shall ensure that the criminal offences referred to in **Title II** shall be punishable by effective, proportionate and dissuasive criminal penalties, **including fines** and imprisonment as specified in Article 8.

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, **temporary or permanent exclusion from European Union tender procedures** and imprisonment as specified in Article 8.

Or. en

Amendment 67
Bart Staes

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

2. In cases of minor offences involving damages of less than EUR **10,000** and advantages of less than EUR **10,000** and not involving particularly serious circumstances, Member States may provide instead for other than criminal penalties.

Amendment

2. In cases of minor offences involving damages of less than EUR **5,000** and advantages of less than EUR **5,000** and not involving particularly serious circumstances, Member States may provide instead for other than criminal penalties.

Or. en

Amendment 68
Judith Sargentini

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) a minimum penalty of at least 6 months imprisonment ;

Amendment

deleted

Or. en

Justification

Minimum penalties do not respect the diversity of legal systems and the need for judicial discretion. Introducing them here would also not be consistent with the position Parliament has taken as regards the draft Directive on the protection of the euro and other currencies against counterfeiting in criminal law

Amendment 69
Cornelis de Jong

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) a minimum penalty of at least 6 months imprisonment ; ***deleted***

Or. en

Amendment 70
Anthea McIntyre

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) a minimum penalty of at least 6 months imprisonment ; ***deleted***

Or. en

Amendment 71
Sarah Ludford

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) a minimum penalty of at least 6 months imprisonment ; ***deleted***

Or. en

Amendment 72
Gerben-Jan Gerbrandy, Jan Mulder

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) a minimum penalty of at least 6 months imprisonment;

(a) a minimum penalty of at least 6 months imprisonment. ***In exceptional cases, domestic courts should nonetheless be able to impose a sentence lighter than the minimum penalty, provided that this is justified by the general principles of European or domestic law;***

Or. nl

Amendment 73
Judith Sargentini

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) a minimum penalty of at least 6 months imprisonment;

deleted

Or. en

Justification

Minimum penalties do not respect the diversity of legal systems and the need for judicial discretion. Introducing them here would also not be consistent with the position Parliament has taken as regards the draft Directive on the protection of the euro and other currencies against counterfeiting in criminal law

Amendment 74
Cornelis de Jong

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) a minimum penalty of at least 6 months imprisonment;

deleted

Amendment 75
Anthea McIntyre

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) a minimum penalty of at least 6 months imprisonment; ***deleted***

Amendment 76
Sarah Ludford

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) a minimum penalty of at least 6 months imprisonment; ***deleted***

Amendment 77
Gerben-Jan Gerbrandy, Jan Mulder

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) a minimum penalty of at least 6 months imprisonment;

(a) a minimum penalty of at least 6 months imprisonment. *In exceptional cases, domestic courts should nonetheless be able to impose a sentence lighter than the minimum penalty, provided that this is justified by the general principles of*

European or domestic law;

Or. nl

Amendment 78
Anthea McIntyre

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) This provision shall not affect the discretion of courts and judges in Member States in determining the most appropriate and proportionate sentence in any individual case;

Or. en

Amendment 79
Sarah Ludford

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

This provision shall not affect the discretion of courts and judges in Member States in determining the most appropriate and proportionate sentence in any individual case;

Or. en

Amendment 80
Monica Luisa Macovei

Proposal for a directive
Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Aggravating circumstances

Member States shall take the necessary measures to ensure that, where it is established that the suspected or accused natural or legal person of a criminal offence referred to in Articles 3, 4 or 5 has already been convicted for other criminal offences of a similar nature, that fact shall be treated as an aggravating circumstance for sentencing purposes.

Or. en

Amendment 81
Cornelis de Jong

Proposal for a directive
Article 9 – title

Text proposed by the Commission

Amendment

Minimum sanction types for legal persons

Sanction types for legal persons

Or. en

Amendment 82
Monica Luisa Macovei

Proposal for a directive
Article 9 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) temporary or permanent exclusion from European Union tender procedures;

Or. en

Amendment 83
Anthea McIntyre

Proposal for a directive
Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall take the necessary measures to establish their jurisdiction over the criminal offences referred to in Title II where:

Amendment

1. Member States shall take the necessary measures to establish their jurisdiction over the criminal offences referred to in Title II where, ***provided that territoriality is the primary determining factor:***

Or. en

Amendment 84
Sarah Ludford

Proposal for a directive
Article 11 – paragraph 1 – point b

Text proposed by the Commission

(b) the offender is one of their nationals.

Amendment

deleted

Or. en

Amendment 85
Monica Luisa Macovei

Proposal for a directive
Article 11 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the offender is subject to the Staff Regulations of the European Union or the Conditions of employment of other servants of the European Union, or was subject to those Regulations at the time of the offence.

Or. en

Amendment 86
Cornelis de Jong

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

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.**

Amendment

1. Member States shall ensure a **sufficiently lengthy** prescription period within which the investigation, prosecution, trial and judicial decision on offences referred to in **Article 3, 4 and 5** remain possible.

Or. en

Amendment 87
Cornelis de Jong, Rina Ronja Kari

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

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.

Amendment

deleted

Or. en

Justification

These matters can usefully be left to the discretion of Member States in accordance with the proportionality principle.

Amendment 88
Cornelis de Jong, Rina Ronja Karigerbrgra

Proposal for a directive
Article 12 – paragraph 3

Text proposed by the Commission

Amendment

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. **deleted**

Or. en

Justification

These matters can usefully be left to the discretion of Member States in accordance with the proportionality principle.

Amendment 89
Monica Luisa Macovei

Proposal for a directive
Article 15 – title

Text proposed by the Commission

Amendment

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

Or. en

Justification

Justification: For the purpose of this Directive, cooperation should not be limited to cooperation between Member States and Commission but encompass as well the cooperation between the Member States themselves

Amendment 90
Monica Luisa Macovei

Proposal for a directive
Article 15 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall cooperate with each other in the fight against the criminal offences referred to in **Title II**. 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.

Amendment

1. ***Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters***, the Member States and the Commission (***European Anti-Fraud Office***) shall, ***within their respective competences***, 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.

Or. en

Amendment 91
Juan Fernando López Aguilar

Proposal for a directive
Article 15 – paragraph 1

Text proposed by the Commission

1. The Member States and the Commission shall cooperate with each other in the fight against the criminal offences referred to in **Title II**. 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.

Amendment

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 **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.

Or. en

Amendment 92
Judith Sargentini

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

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 Title II. 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.

Amendment

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 Title II. The Commission and the competent national authorities shall in each specific case **comply with Article 6 of the Treaty on the European Union and the Charter of Fundamental Rights of the European and the applicable EU legislation on the protection of personal data, and take into account the requirements of investigation secrecy**. 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.

Or. en

Amendment 93
Monica Luisa Macovei

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

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 **Title II**. 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.

Amendment

2. The competent authorities in the Member States **shall, within their respective competences**, exchange information with the Commission **(European Anti-Fraud Office) 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 **Articles 3, 4 and 5**. The Commission, **Eurojust** 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 **and Eurojust**, may set specific conditions covering the use of information, whether by the Commission, **Eurojust** or by another Member State to which that information may be passed.

Or. en

Amendment 94
Nils Torvalds

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

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 Title II. 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,

Amendment

2. The competent authorities in the Member States may, **in line with their competences and legislation**, exchange information with the Commission, **Europol and 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. The Commission, **Europol, Eurojust** and the competent national authorities shall take account in each specific case of the requirements of investigation secrecy and data protection.

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.

To that end, a Member State, when supplying information to the Commission, ***Europol or Eurojust***, may set specific conditions covering the use of information, whether by the Commission, ***Europol, Eurojust*** or by another Member State to which that information may be passed.

Or. en

Amendment 95
Monica Luisa Macovei

Proposal for a directive
Article 17 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Member States shall ***bring into force*** the laws, regulations and administrative provisions necessary to comply with this Directive, ***by [two years from the date of adoption]***. They shall forthwith communicate to the Commission the text of those provisions.

Or. en

Amendment 96
Bart Staes

Proposal for a directive
Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Commission will, on an annual basis, report to the European Parliament on the implementation and effectiveness of this legislation including the number of cases per Member-State being opened and closed and the penalties imposed:

Or. en

Amendment 97
Esther de Lange

Proposal for a directive
Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall submit annually a detailed report to the Commission, Council and Parliament on criminal offences defined in this Directive affecting the Union's financial interests.

Or. en

Amendment 98
Bart Staes

Proposal for a directive
Article 17 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The Commission will 5 years after the date when this legislation comes into force review the directive and propose an amending text based on a full evaluation and experience gained;

Or. en

Amendment 99
Monica Luisa Macovei

Proposal for a directive
Article 17 a (new)

Text proposed by the Commission

Amendment

Article 17a

Statistics

Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of their systems established to protect the European Union's financial interests. The statistics collected shall be sent to the Commission each year and shall include:

- a) the number of criminal proceedings initiated,*
- b) the number of criminal proceedings dismissed, acquitted and successfully prosecuted,*
- c) the amounts recovered following criminal proceedings,*
- d) the amounts not recovered following criminal proceedings,*
- e) the number of requests for assistance requests received from another Member State,*
- f) the number of requests for assistance received from another Member State rejected.*

Or. en

Justification

Assessing the efficiency and effectiveness of the Directive requires gathering relevant statistical information in particular regarding the success and results of criminal proceedings and the cooperation between Member States. An article on statistics should therefore be added to the Directive proposal.

Amendment 100
Monica Luisa Macovei

Proposal for a directive
Article 17 b (new)

Text proposed by the Commission

Amendment

Article 17b

Reporting

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

Or. en