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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	14671/14 DROIPEN 118 JAI 886 ECOFIN 880 UEM 332 GAF 45 CODEC 2248
No. Cion doc.:	6152/13 DROIPEN 11 JAI 81 ECOFIN 92 UEM 18 GAF 18 CODEC 2131
Subject:	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 **[First reading]** - Preparation for technical meetings

1 On 11 July 2012, the Commission submitted 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 to the European Parliament and the Council.

2. The examination of the proposal by the Working Party on Substantive Criminal Law (DROIPEN) started after Summer 2012 [under the Cyprus Presidency]. On 6 June 2013 after a number of Working Party meeting days and JHA-Counsellors' meeting, the Council (Justice and Home Affairs) adopted a general approach on the proposal[1] [under the Irish Presidency].

[1] 10729/13 DROIPEN 75 JAI 478 GAF 30 FIN 328 CADREFIN 137 CODEC 1394.

3. The lead committees of the European Parliament are the LIBE (Civil Liberties, Justice and Home Affairs) Committee and the CONT (Budgetary control) Committee. The rapporteurs appointed are Mr Lopéz Aguilar (ES, S&D) and Ms Grässle (DE, EPP). The European Parliament voted its report containing amendments on 16 April 2014.[2]

4. Ireland has opted in, the United Kingdom and Denmark do not take part in the adoption of this Directive.

5. Delegations find in Annex I a 4-column table, containing in the text of the Commission proposal in the first column, the text of the Council general approach in the second and the EP amendments in the third.

6. A first technical meeting with the European Parliament, represented by the rapporteurs, is scheduled for 1 October 2014.

7. In view of this meeting, and on the basis of the preliminary discussion that took place in CATS on 16 September 2014, the Presidency has included a number suggestions in the fourth column of the column in annex. The suggestions only concern the operative part of the text (starting on page 19 below).

8. Delegations are asked to examine these suggestions at the meeting of DROIPEN on 30 September 2014.

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[2] 9024/14 CODEC 1124 DROIPEN 56 JAI 237 GAF 25 FIN 315 CADREFIN 70 PE 296.

PIF Directive

COM - COUNCIL - EP TEXT

September 2014

Article	COM text	Council text	EP text	Presidency comments/suggestions
CITATIONS				
Citation 1	Having regard to the Treaty on the Functioning of the European Union, and in particular Article ***325 (4)*** thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article ~~***325 (4)***~~ ***83(2)*** thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article ~~***325 (4)***~~ ***83(2)*** thereof,	
RECITALS				
Recital 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.	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 Member States with~~ of relevance to Union policies.	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.	

Recital 1a	-	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 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 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.	-	

Recital 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.	In order to ensure the implementation of the Union policy in the area of the ~~effective, proportionate and dissuasive~~ 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 ~~in~~ the Member States by complementing ~~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.	In order to ensure effective, proportionate and dissuasive protection against the most serious types of fraud-related conduct, and to ensure that ~~of~~ 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, ~~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.	
Recital 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.	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.	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, assets and liabilities at the expense of the Union ~~EU~~ budget, including borrowing and lending activities.	
Recital 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 jurisprudence[3], there is a direct link between the collection of VAT revenue in compliance with the Union law	~~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 jurisprudence[4], there is a direct link between the collection of VAT revenue in compliance with the Union law applicable and the availability to the~~	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 jurisprudence[5], there is a direct link between the collection of VAT revenue in compliance with the Union law	

[3] Case C-539/09 – OJ C 25/08 of 28 January 2012.
[4] Case C-539/09 – OJ C 25/08 of 28 January 2012.
[5] Case C-539/09 – OJ C 25/08 of 28 January 2012.

	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.	~~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.~~	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.	
Recital 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.	~~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.~~	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.	
Recital 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	~~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~~	The Union's financial interests can be negatively affected where individual tenderers provide information to contracting or grant awarding authorities based on information illegally ~~unduly~~ obtained directly or indirectly from the tendering body, with the aim of circumventing or violating ~~skewing~~rules applicable to a public procurement or grant procedure. Such conduct is very similar to fraud, but does not necessarily need to bear all the hallmarks of ~~constitute~~a full fraud offence on the side of the tenderer, since the provided bid may meet all the necessary criteria.~~be completely in line with all requirements.~~ Bid-rigging behaviour between tenderers violates Union competition rules and	

	national laws; it is subject to public enforcement action and sanctions throughout the Union and should remain outside the scope of this Directive.	~~throughout the Union and should remain outside the scope of this Directive.~~	equivalent national laws; it is subject to public enforcement action and sanctions throughout the Union and should remain outside the scope of this Directive.	
Recital 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.	The Union money laundering legislation is fully applicable to the laundering of ~~the~~ proceeds of ~~the~~ 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 ~~all~~ serious cases of criminal offences against the Union's financial interest.	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.	
Recital 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, 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 a formal office, such as contractors involved in the management of EU funds.	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. ~~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, 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 a formal office, such as contractors involved in the management of EU funds.~~	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 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, ~~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 a formal office,~~ such as contractors involved in the management of ~~EU~~ such funds.	
Recital 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 definition of offences covering such conduct.	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~~where the Union's financial interests are thereby damaged. There is therefore a need to introduce a precise definition of offences covering such conduct.	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.	
Recital 9a	-	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.		
Recital 9b (9a for the EP)	-	With regard to 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.	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.	
Recital 9c	-	This Directive does not oblige Member States to foresee penalties of imprisonment for perpetrators of criminal offences that are not of a serious nature, in cases where intent is presumed under the national law.	-	
Recital 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.	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.	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.	Identical
Recital 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.	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.	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.	Identical
Recital 12	In order to protect the Union's financial interests equivalently through measures which should act as a deterrent throughout the Union, Member States	In order to protect the Union's financial interests equivalently through measures which should act as a deterrent throughout	In order to protect the Union's financial interests equivalently through measures which should act as a deterrent throughout	

	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.	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~~.	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.	
Recital 12a	-	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.	-	
Recital 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.	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.	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.	Identical
Recital 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,	The sanctions for natural persons in more serious cases should foresee imprisonment ~~ranges~~. In determining whether an offence is serious, Member States should, according to national law, have regard to	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,	

	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/JHA[6].	all relevant circumstances such as the value of the damage done or advantage gained, or the damage to the integrity of or confidence in systems for managing the Union's financial interests. ~~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 levels of maximum imprisonment penalties for serious offences~~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/JHA.~~	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/JHA[7].	

[6] OJ L 300, 11.11.2008, p. 42.
[7] OJ L 300, 11.11.2008, p. 42.

Recital 14a		Member States should ensure that when the offence was committed within a criminal organisation in the sense of Council Framework Decision 2008/841/JHA, 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 obligatio 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.		
Recital 14aa			While it is appropriate to introduce certain minimum levels of penalties in respect of the offences defined in this Directive, nothing herein should be taken as interfering with the prerogatives of the courts and judges of the Member States to use their discretion in individual cases. ???	
Recital 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	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~~	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	

	necessary in order to enable them to counter these activities.	~~periods necessary~~ 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.	periods necessary in order to enable them to counter these activities.	
Recital 15a	-	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 shall be without prejudice to those Member States which do not set limitation periods for investigation, prosecution and enforcement.	-	
Recital 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.	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.	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.	
Recital 17	Without prejudice to other obligations under Union law, there is a need for	Without prejudice to the rules on cross-border cooperation and mutual legal	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.	assistance in criminal maters and to other rules 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 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 investigations or prosecution procedures of individual criminal cases conducted by the national authorities.	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.	
Recital 17a	-	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.		
Recital 18	The Convention for the protection of the European Communities' financial interests of 26 July 1995[8] and the Protocols thereto of 27 September 1996[9] and 29 November 1996[10] should	The Convention for the protection of the European Communities' financial interests of 26 July 1995[11] and the Protocols thereto of 27 September 1996[12] and 29	The Convention for the protection of the European Communities' financial interests of 26 July 1995[14] and the Protocols thereto of 27 September 1996[15] and 29	

8 OJ C 316, 27.11.1995, p. 48.
9 OJ C 313, 23.10.1996, p. 1.
10 OJ C 151, 20.5.1997, p. 1.

	be repealed and replaced by this Directive.	November 1996[13] should be ~~repealed and~~ replaced by this Directive in relation to Member States participating in the adoption of this Directive.	November 1996[16] should be repealed and replaced by this Directive.	
Recital 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/JHA[17]. 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	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 aquis. ~~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/JHA. 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	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/JHA[19]. 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	

11 OJ C 316, 27.11.1995, p. 48.
12 OJ C 313, 23.10.1996, p. 1.
14 OJ C 316, 27.11.1995, p. 48.
15 OJ C 313, 23.10.1996, p. 1.
13 OJ C 151, 20.5.1997, p. 1.
16 OJ C 151, 20.5.1997, p. 1.
17 OJ L 350, 30.12.2008, p. 60.
19 OJ L 350, 30.12.2008, p. 60.

	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[18] and with the applicable rules concerning the confidentiality of judicial investigations.	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 and with the applicable rules concerning the confidentiality of judicial investigations.	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[20] and with the applicable rules concerning the confidentiality of judicial investigations.	
Recital 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.	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.	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.	Identical

[18] OJ L 8, 12.1.2001, p. 1.
[20] OJ L 8, 12.1.2001, p. 1.

Recital 21	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.	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.	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.	Identical
Recital 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.	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.	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.	Identical
Recital 23	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.	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.	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.	Identical
Recital 23a	-	[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.]		
Recital 23b	-	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.	-	

ARTICLES				
Art. 1	1. 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.	1. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the field of the ~~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~~.	1. 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.	Presidency suggestion: - The Council to maintain its position; the last part of the EP text could go into a recital.
Art 2	For the purposes of this Directive, 'the Union's financial interests' means all revenues and expenditures 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	For the purposes of this Directive, 'the Union's financial interests' means all revenues, ~~and~~ 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	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:	Presidency suggestions: - Following the discussions in CATS of 16 September, in which many delegations expressed a certain marge of flexibility on the issue, the group is invited to consider possible compromises with EP on this point. - On VAT, the group is invited to consider

	monitored by them.	monitored by them. Revenues arising from VAT are not included in the scope of this Directive.	a) the Union budget; b) the budgets of institutions, bodies, offices and agencies established pursuant to ~~under~~ the Treaties or budgets directly or indirectly managed and monitored by them.	what possible compromises with EP there could be, including (see also CATS doc 12880/14): a) whether VAT-related offences could be included in the scope of the Directive, but at the same time be fully or partly excluded from the competence of the EPPO, or b) whether a differentiation between different types of VAT-related offences could be considered.
Art 3	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	For the purposes of this Directive, *fraud affecting the Union's financial interest* shall consist of: ~~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 subsidy and aid expenditure, any act or omission relating to: (i) the use or presentation of false,	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	Presidency suggestions: - The group is invited to consider whether there is room for compromise as regards the fraud definition, in particular as regards Article 3(a) in the general approach, and to consider what room there is to abstain from the distinction made between subsidy, aid and "other expenditure".

	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.	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, ~~or~~ (iii) the misapplication of such funds ~~liabilities or expenditure~~ 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,	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.	

		(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, ~~or~~ (iii) misapplication of a legally obtained benefit, with the same effect. 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.		
Art 4	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, is punishable as a criminal offence.	1. For the purposes of this Directive: ~~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 ofby 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 andwith the aim of circumventingskewing the application ofeligibility, exclusion, selection or the award criterias punishabel as a criminal offence~~; (i) ~~Member States shall take the~~	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 the natural competition among bidders, is punishable as a criminal offence.	Presidency suggestion: - The group is invited to agree to the inclusion of a specific provision on procurement fraud in the Directive and to consider what the exact scope of such a provision could be.

	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 Council[21] involving property derived from the offences covered by this Directive is punishable as a criminal offence.	~~necessary measures to ensure that~~*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[22] involving property derived from the offences referred to~~covered by~~ in in Article 4, paragraph 1 (ii) and (iii), and~~this Directive~~, at least when they constitute~~in~~ serious offences, the offences referred to in Article 3 and 4, paragraph 1(iv)~~cases~~ ~~and in cases of passive or active corruption~~; ~~is punishable as a criminal offence.~~	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 Council[23] involving property or income derived from the offences covered by this Directive is punishable as a criminal offence.	Presidency suggestion: - The group is invited to agree in principle with the definition of money laundering in this Directive proposed by the EP and to reflect on whether the wording suggested by the Commission or the EP could be accepted.
	3. Member States shall take the necessary measures to ensure that the following	(ii) ~~Member States shall take the necessary measures to ensure that the following conduct, when committed intentionally, is~~	3. Member States shall take the necessary measures to ensure that passive corruption and active corruption~~the following conduct,~~ when committed	

[21] OJ L 309, 25.11.2005, p. 15.
[22] OJ L 309, 25.11.2005, p. 15.
[23] OJ L 309, 25.11.2005, p. 15.

	conduct, when committed intentionally, is punishable as a criminal offence: (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); (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	~~punishable as a criminal offence~~ *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~~(passive corruption)~~; (iii) ~~Member States shall take the necessary measures to ensure that the following conduct, when committed intentionally, is punishable as a criminal offence~~*active corruption* shall consist of the action of whosoever promises or gives, directly or through an intermediary, an	intentionally, ~~is~~ are punishable as ~~a~~ criminal 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 accepts in advance ~~receives~~ advantages of any kind whatsoever or a promise of such an advantage, for himself or for a third party, for acting, delaying action or refraining ~~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, 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	Presidency suggestion: - In the light of the discussions in CATS on 16 September, in which many delegations expressed a degree of flexibility on this point, the group is invited to reflect on whether there is room to reconsider the definition of passive and active corruption in this Directive.

	corruption).	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;~~(active corruption).~~	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, or for having performed those conducts in the past. ~~(active corruption)~~.	
	4. Member States shall take the necessary measures to ensure that the intentional 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 the Union's financial interests, is punishable as a criminal offence (misappropriation).	(iv) ~~Member States shall take the necessary measures to ensure that~~ *misappropriation* shall consist of the ~~4. Member States shall take the necessary measures to ensure that the intentional~~ 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 ~~in a way which damages or is likely to~~ and which damages the Union's financial interests~~, is punishable as a criminal~~	4. Member States shall take the necessary measures to ensure that misappropriation, when committed intentionally, is punishable as a criminal offence. For the purposes of this Directive, misappropriation shall consist of an ~~the intentional~~ 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~~ which damages the Union's financial	

		~~offence (misappropriation)~~. 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.	interests~~, is punishable as a criminal offence (misappropriation)~~.	
	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; (b) any other person exercising a public service function for the Union or in Member States or third countries, not holding such an office, participating in the management of or decisions concerning the Union's financial interests.	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	5. 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. ~~person exercising a public service function for the Union or in Member States or third countries by holding a legislative, administrative or judicial office;~~ The term 'Union official' means: (i) any person who is an official or other contracted employee within the meaning	Presidency suggestion: - The group is invited to agree in principle with the definition of misappropriation in this Directive proposed by the EP and to reflect on whether the wording suggested by the Commission or EP could be accepted.

		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 initiated by another Member State the latter shall not be bound to apply the	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 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	Presidency suggestion: - The Council to maintain its definition of public official.

		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.	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 involving ~~for the Union or in Member States or third countries, not holding such an office, participating in~~ the management of, or decisions concerning the Union's financial interests in Member States or third countries.	

Art 5	1. Member States shall take the necessary measures to ensure that inciting, aiding or abetting the criminal offences referred to in Title II is punishable as a criminal offence. 2. Member States shall take the necessary measures to ensure that an attempt to commit the criminal offence referred to in Article 3 or in Article 4, paragraph 4, is punishable as a criminal offence.	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 ~~Title II~~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~~or~~ in Article 4, paragraph 1(iv)~~4~~, is punishable as a criminal offence.	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. 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~~or~~ in Article 4 (4), ~~paragraph 4,~~ is punishable as a criminal offence.	Virtually identical.
Art 6	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 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 power of representation of the legal	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 ~~Title II~~ 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:	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 ~~Title II~~ 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:	Virtually identical.

	person; - an authority to take decisions on behalf of the legal person; or - 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 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 Title II or criminally liable under Article 5.	- a power of representation of the legal person; - an authority to take decisions on behalf of the legal person; or - 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 ~~Title II~~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~~Title II~~ or criminally	- a power of representation of the legal person; - an authority to take decisions on behalf of the legal person; or - 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 ~~Title II~~ 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~~Title II~~ or criminally	

	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.	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.	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.	

Art 7	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. 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. 3. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials.	1. As regards natural persons, Member States shall ensure that the criminal offences referred to in Articles 3, 4 and 5 ~~Title II~~ shall be punishable by effective, proportionate and dissuasive criminal penalties~~, including fines and imprisonment as specified in Article 8~~. 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. ~~2~~4. 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, unless the case constitues a serious offence. ~~3~~5. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials.	1. As regards natural persons, Member States shall ensure that the criminal offences referred to in Articles 3, 4 and 5 ~~Title II shall be~~ are punishable by effective, proportionate and dissuasive criminal penalties, including fines and imprisonment as specified in Article 8. 2. In cases of ~~minor~~ offences involving damages of less than EUR ~~10~~5,000 and advantages of less than EUR ~~10~~5,000 and not involving ~~particularly serious~~ aggravating circumstances, Member States may provide instead for the imposition of sanctions other than criminal penalties. 3. Paragraph 1 of this Article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials, as	Presidency suggestions: - Council to maintain its general position on sanctions in Articles 7 and 8. Nonetheless: - The group is invited to consider the threshold for certain offences [for which sanctions not including imprisonment may be foreseen] suggested by Parliament. - The group is invited to consider whether a definition of serious offences (see recital 16) could be introduced, in the light of the positions expressed by the Commission and the EP in their respective versions of Article 8(1).

	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.	~~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.~~	defined in Article 4(5). 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.	
Art 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 shall be punishable by (a) a minimum penalty of at least 6 months imprisonment ; (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	~~*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 shall be punishable by~~ ~~(a) a minimum penalty of at least 6 months imprisonment ;~~ ~~(b) a maximum penalty of at least 5 years of imprisonment.~~ ~~Member States shall take the necessary measures to ensure that criminal offences~~	*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~~50,000 shall be punishable by ~~(a) a minimum penalty of at least 6~~three ~~months imprisonment;~~ (a~~b~~) a maximum penalty of at least 5 years of imprisonment. Member States shall take the necessary measures to ensure that criminal offences	[The relevant Council text in this regards can be found embedded in Article 7.] Presidency suggestion: - The Council to maintain the structure proposed.

	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; (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 punishable by a maximum penalty of at least 10 years of imprisonment where the offence was committed within a criminal organisation in the sense of Framework Decision 2008/841.	~~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;~~ ~~(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 punishable by a maximum penalty of at least 10 years of imprisonment where the offence was committed within a criminal organisation in the sense of Framework Decision 2008/841.~~ *Aggravating circumstance* Member States shall take the necessary	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;~~ (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 Articles 3, 4 and 5~~Title II shall be~~ 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.	

		measures to ensure that it shall be regarded as an aggravating circumstance when a criminal offences 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.		
Art 8a	-	-	*Aggravating circumstances* Member States shall take the necessary measures to ensure that, where it is established that a criminal offence referred to in Articles 3, 4 or 5 has been committed within the meaning of Framework Decision 2008/841, the fact shall be treated as an aggravating circumstance for sentencing purposes.	The EP text is de facto embedded in Articles 7/8 in the Commission and Council texts.

Art 9	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.	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.	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; (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.	Almost identical. Presidency suggestion: - The group is invited to consider the provision (aa) suggested by Parliament.
Art 9a	-	-	*Ne bid in idem rule*	Presidency suggestion:

			Member States shall apply in their national criminal law the 'ne bis in idem' rule, under which a person whose trial has not 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.	- The group is invited to consider whether the provision suggested by Parliament could be taken into account in recitals.
Art 10	Member States shall ensure freezing and confiscation of proceeds and instrumentalities from the offences referred to in Title II in accordance with Directive …/…/... [of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union][24].	Member States shall take the necessary measures to ensure freezing and confiscation of proceeds and instrumentalities from the offences referred to in Articles 3, 4 and 5~~Title II~~. Those Member States participating in ~~accordance~~ Directive …/…/... [of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union] shall do so in accordance with that Directive.	Member States shall ensure freezing and confiscation of proceeds and instrumentalities from the offences referred to in Title II in accordance with Directive …/…/... [of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union][25].	Differences of technical nature between the versions.
Art 11	1. Member States shall take the necessary	1. Member States shall take the necessary	1. Member States shall take the necessary	Presidency suggestion:

[24] To be adopted following proposal COM(2012) 85.
[25] To be adopted following proposal COM(2012) 85.

	measures to establish their jurisdiction over the criminal offences referred to in Title II 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. 3. Member States shall ensure that their	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 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. ~~3. Member States shall ensure that their~~	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. 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	- The group is invited to consider whether there is room to take into account any of the modifications suggested by EP.

	jurisdiction includes situations where an offence is committed by means of information and communication technology accessed from their territory.	~~jurisdiction includes situations where an offence is committed by means of information and communication technology accessed from their territory~~.	jurisdiction includes situations where an offence is committed by means of information and communication technology accessed from their territory.	
Art 12	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.	1. Member States 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. ~~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 in cases of serious offences ensure that the prescription period amounts to at least five years from the time when the offence was committed. ~~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.~~	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.	Presidency suggestion: - The group is invited to consider whether there is room to find a compromise on this this provision, including if a partial of full redraft of the Article in view of clarifying the scope of the provision could be envisaged. - The group is invited to consider whether a definition of serious offences could be introduced, in the light of the positions expressed by the Commission and the EP in their respective versions of Article 8(1).

		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~~3~~. 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 ~~Title II, and in~~ Articles 3, 4 and 5, for at least five years from the date ~~a sufficient period of time that shall not be less than 10 years from the time~~ of the final conviction. This period may include extensions of the prescription period arising from interruption or suspension.		
Art 13	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.	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~~Title II~~.	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~~Title II~~.	Presidency suggestion: - The group is invited to consider whether the addition suggested by the Parliament could, at least partly, be taken into account in the form of a recital.

			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.	
Art 14	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 2988/95[26], 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	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, or in national law adopted in compliance with a specific obligation under Union law~~, shall be~~	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 2988/95, or in national law adopted in compliance with a specific obligation under Union law, shall be without prejudice to this Directive.	Presidency suggestions: - The Council to maintain its position; nonetheless, the group is invited to consider whether there is room to take some of the suggestions made by the EP into account in a recital.

[26] 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.

	effective application of administrative measures, penalties and fines that cannot be equated to criminal proceedings, laid down in Union law or national implementing provisions.	~~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~~.	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.	

Art 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 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. 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	Cooperation between the Member States and the European Commission (European Anti-Fraud Office) 1. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, t~~T~~he Member States 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~~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. 2. The competent authorities in the Member States may, within their competences, 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 3. ~~Title II~~In applying this Article, the Commission and the competent national authorities shall take into account in each specific case ~~of~~the requirements of confidentiality ~~investigation secrecy~~and the rules on data protection. ~~To that end, a Member~~	Cooperation 1. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, ~~T~~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~~Title II~~. 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. 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 Articles 3, 4 and 5.~~Title II.~~ The Commission, Eurojust and the competent national authorities shall ~~take account~~ in each specific case comply with Article 6 of the Treaty on the European Union, with the Charter of Fundamental Rights of the European Union and with the	Presidency suggestions: - The Council to maintain its position; nonetheless, the group is invited to consider whether there is room to take some of the suggestions made by the EP into account in a recital (in particular as regard the roles of Eurojust and the Court of Auditors).

	passed.	~~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.~~	applicable Union legislation on the protection of personal data, and shall take into account the requirements of investigation secrecy. ~~of the requirements of investigation secrecy and data protection.~~ 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. 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. 2b. Union officials shall disclose to OLAF any criminal offences of which they	

			become aware during their mission.	
Art. 16	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].	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~~shall be repealed~~ 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.	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].	Differences of mainly technical nature between the versions.
Art. 17	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	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 … .	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	Virtually identical.

	… . 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.	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.	… . 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.	
Art 17a/18	-	Report 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 States have taken the necessary measures in	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	Presidency suggestion: - The group is invited to reflect on whether there is room to add any additional reporting obligation (or related obligation) in the Directive, or if an additional recital could be considered.

		order to comply with this Directive, subject to appropriate information being made available by Member States.	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.	
Art. 18	This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.	This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.	This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.	Identical
Art. 19	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	Identical