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OPINION OF THE LEGAL SERVICE*

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 (12683/12 DROIPEN 107 JAI 535 GAF 15 FIN 547 CADREFIN 349 CODEC 1924)
- Legal basis

I. INTRODUCTION

1. At the meeting of CATS on 9 October 2012, the Council Legal Service (CLS) made an intervention on the legal basis of the above proposal for a Directive. This opinion reiterates and expands on that intervention.

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II. FACTUAL AND LEGAL FRAMEWORK

2. On 17 July 2012, the Commission submitted a 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 law¹ (the proposed Directive).

3. According to its Article 1, the proposed Directive "[defines] *criminal offences and criminal sanctions*" which are necessary in order to fight fraud and other illegal activities affecting the EU's financial interests. It defines the constituent elements of different criminal offences (Article 4) and contains detailed provisions on the type and level of criminal penalties to be applied to natural persons (Article 7), including different levels of imprisonment (Article 8), and on the minimum sanction types applicable to legal persons (Article 9), as well as provisions on jurisdiction (Article 11). Article 12 contains specific provisions on prescription periods. Article 14 indicates that this comes as a complement to existing Community measures, and more particularly to Regulation 2988/95 on the protection of the EC financial interests² (Regulation 2988/95), which provides for administrative measures and penalties. The proposed Directive is intended to repeal the 1995 Convention on the protection of the EC financial interests³ (the 1995 PIF Convention) (Article 16).

4. The proposed Directive is based on Article 325(4) of the Treaty on the Functioning of the European Union (TFEU) which reads: "*The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies.*"⁴

¹ COM (2012) 363 final, doc. 12683/12.

² Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

³ Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 48).

⁴ Article 325(1) TFEU reads: "*The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.*"

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