



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 April 2014

9024/14

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

**CODEC 1124
DROIPEN 56
JAI 237
GAF 25
FIN 315
CADREFIN 70
PE 296**

INFORMATION NOTE

from: General Secretariat of the Council
to: Permanent Representatives Committee/Council

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 - Outcome of the European Parliament's first reading (Strasbourg, 14 to 17 April 2014)

I. INTRODUCTION

The Rapporteurs, Ms Ingeborg GRÄSSLE (EPP, DE) and Mr Juan Fernando LÓPEZ AGUILAR (S&D, ES), presented a report on the proposal for a directive on behalf of the Committee on Budgetary Control and the Committee on Civil Liberties, Justice and Home Affairs. The report contained 41 amendments (amendments 1 - 41) to the proposal.

In addition, four amendments (amendments 42 - 45) were tabled by political groups (EPP, S&D and ECR).

II. VOTE

When it voted on 16 April 2014, the plenary adopted 39 amendments to the proposal for a directive.

All but three of the Committee's amendments (amendments 8, 9 and 29) were adopted. In addition, amendment 43 by the S&D group was adopted.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

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

European Parliament legislative resolution of 16 April 2014 on the proposal for a directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law (COM(2012)0363 – C7-0192/2012 – 2012/0193(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

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

¹ OJ C 383, 12.12.2012, p. 1.

² OJ C 391, 18.12.2012, p. 134.

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Citation 1

Text proposed by the Commission

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

Amendment

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

Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) In order to ensure effective, proportionate and dissuasive protection *of the Union's financial interests, criminal law in the Member States should continue to complement the protection under administrative and civil law* for the most serious types of fraud-related conduct *in this field*, whilst avoiding inconsistencies, both within and among these areas of law.

Amendment

(2) In order to ensure effective, proportionate and dissuasive protection *against* the most serious types of fraud-related conduct, *and to ensure that the Union's financial interests are optimally protected, measures adopted under administrative and civil law should be complemented by legislation under criminal law in the Member States*, whilst avoiding inconsistencies, both within and among these areas of law.

Amendment 3

Proposal for a directive

Recital 3

Text proposed by the Commission

(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.

Amendment

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

Amendment 4

Proposal for a directive

Recital 6

Text proposed by the Commission

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

Amendment

(6) The Union's financial interests can be negatively affected where individual tenderers provide information to contracting or grant awarding authorities based on information **illegally** obtained directly or indirectly from the tendering body, with the aim of circumventing or **violating** 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** a full fraud offence on the side of the tenderer, since the provided bid may **meet all the necessary criteria**. Bid-rigging behaviour between tenderers violates Union competition rules and equivalent national laws; it is subject to public enforcement action and sanctions throughout the Union and should remain outside the scope of this Directive.

Amendment 5

Proposal for a directive

Recital 8

Text proposed by the Commission

(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**

Amendment

(8) Corruption constitutes a particularly serious threat against the Union's financial interests, which can in many cases also be linked to fraudulent conduct. A particular criminalisation in this area is therefore needed. It must be ensured that the relevant offences are covered by the definition irrespective of whether conduct is in breach of official duties or not. As regards the offences of passive corruption and misappropriation, there is a need to include a definition of public officials covering all relevant officials, whether appointed, elected or employed on the basis of a contract, **or holding a formal office in the Union, in the Member States or in third**

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.

countries. Private persons are increasingly involved in the management of Union funds. In order to adequately protect Union funds from corruption and misappropriation, the definition of 'public official' for the purposes of this Directive therefore needs to cover also persons who do not hold a formal office, but who are none the less assigned, and who exercise, in a similar manner, a public-service function in relation to Union funds, such as contractors involved in the management of such funds.

Amendment 6

Proposal for a directive Recital 9

Text proposed by the Commission

(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.

Amendment

(9) The Union's financial interests can be negatively affected by certain types of conduct of a public official which aim at misappropriating funds or assets contrary to the purpose foreseen, and with the intention to damage the Union's financial interests. There is therefore a need to introduce a precise **and unambiguous** definition of offences covering such conduct.

Amendment 7

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

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

Amendment 10

Proposal for a directive Recital 17

Text proposed by the Commission

(17) Without prejudice to other obligations under Union law, there is a need for appropriate provision to be made for cooperation between Member States and the Commission to ensure effective action against the criminal offences defined in this Directive affecting the Union's financial interests, including exchange of information between the Member States and the Commission.

Amendment

(17) Without prejudice to other obligations under Union law, there is a need for appropriate provision to be made for cooperation between Member States and the Commission to ensure effective action against the criminal offences defined in this Directive affecting the Union's financial interests, including exchange of information between the Member States, ***Eurojust***, and the Commission.

Amendment 11

Proposal for a directive Article 1

Text proposed by the Commission

This Directive establishes necessary measures in the field of prevention of and fight against fraud and other illegal activities affecting the Union's financial interests by defining criminal offences and sanctions.

Amendment

This Directive establishes necessary measures in the field of prevention of and fight against fraud and other illegal activities affecting the Union's financial interests by defining criminal offences and sanctions ***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.***

Amendment 12

Proposal for a directive Article 2 – introductory part

Text proposed by the Commission

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

Amendment

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:

Amendment 13

Proposal for a directive Article 2 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 14

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall take the necessary measures to ensure that any provision of information, or failure to provide such information, to contracting or grant awarding entities or authorities in a public procurement or grant procedure involving the Union's financial interests, by candidates or tenderers, or by persons responsible for or involved in the preparation of replies to calls for tenders or grant applications of such participants, when committed intentionally and with the aim of circumventing or skewing the application of the eligibility, exclusion, selection or award criteria, **or of distorting or destroying natural competition among bidders**, is punishable as a criminal offence.

Amendment 15

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that money laundering

Amendment

2. Member States shall take the necessary measures to ensure that money laundering

as defined in Article *I (2)* of Directive 2005/60/EC of the European Parliament and of the Council³³ involving property derived from the offences covered by this Directive is punishable as a criminal offence.

³³ OJ L 309, 25.11.2005, p. 15.

as defined in Article *I(2)* of Directive 2005/60/EC of the European Parliament and of the Council³³ involving property *or income* derived from the offences covered by this Directive is punishable as a criminal offence.

³³ OJ L 309, 25.11.2005, p. 15.

Amendment 16

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

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

(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 corruption***).

Amendment

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

(b) ***For the purposes of this Directive, active corruption shall consist of*** the action of whosoever promises, ***offers*** or gives, directly or through an intermediary, an advantage of any kind whatsoever to a public official for himself or for a third party for him to act, ***to delay action or to refrain*** from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the Union's financial interests, ***or for having performed those conducts in the past***.

Amendment 17

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

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)***.

Amendment

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 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 which damages the Union's financial interests.

Amendment 18

Proposal for a directive Article 4 – paragraph 5

Text proposed by the Commission

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***;

Amendment

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***.

The term 'Union official' means:

(i) any person who is an official or other contracted employee within the meaning of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union ('Staff Regulations'),

(ii) any person seconded to a Union institution, body, office or agency by the Member States or by any public or private body, who carries out functions equivalent to those performed by Union

officials or other servants.

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

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

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

(b) any other person 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.*

(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.*

Amendment 19

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall take the necessary measures to ensure that inciting, aiding or abetting the *commission of any of the* criminal offences referred to in *Articles 3 and 4* is punishable as a criminal offence.

Amendment 20

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that an attempt to

Amendment

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.

commit *any of* the criminal *offences* referred to in Article 3 *and* in Article 4(4) is punishable as a criminal offence.

Amendment 21

Proposal for a directive

Article 6 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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

Amendment 22

Proposal for a directive

Article 6 – paragraph 2

Text proposed by the Commission

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.

Amendment

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

Amendment 23

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

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

Amendment

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*

criminally liable under Article 5.

and 4 or criminally liable under Article 5.

Amendment 24

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. As regards natural persons, Member States shall ensure that the criminal offences referred to in ***Articles 3, 4 and 5 are*** punishable by effective, proportionate and dissuasive criminal penalties, including fines and imprisonment as specified in Article 8.

Amendment 25

Proposal for a directive Article 7 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 26

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

3. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials.

Amendment

3. Paragraph 1 ***of this Article*** shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officials, ***as defined in Article 4(5)***.

Amendment 43

Proposal for a directive Article 8 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

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

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 **50 000** shall be punishable by:

Amendment 27

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

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

deleted

Amendment 28

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

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

deleted

Amendment 30

Proposal for a directive

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

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.

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

Amendment 31

Proposal for a directive Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Aggravating circumstances

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

Amendment 32

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

Text proposed by the Commission

Amendment

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

Amendment 33

Proposal for a directive Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Ne bis in idem rule

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

Amendment 34

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

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

- (a) the offence is committed in whole or in part within their territory; ***or***
- (b) the offender is one of their nationals.

Amendment

1. Member States shall take the necessary measures to establish their jurisdiction over the criminal offences referred to in ***Articles 3, 4 and 5*** where:

- (a) the offence is committed in whole or in part within their territory;
- (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.***

Amendment 35

Proposal for a directive Article 13

Text proposed by the Commission

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***.

Amendment

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***.

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.

Amendment 36

Proposal for a directive Article 15 – title

Text proposed by the Commission

Amendment

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

Cooperation

Amendment 37

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

Amendment

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.

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

Amendment 38

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

Amendment

2. The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against the criminal offences referred to in **Title II**. The Commission and the competent national authorities shall ***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

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**. The Commission, ***Eurojust*** and the competent national authorities shall 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 applicable Union legislation on the protection of personal***

to which that information may be passed.

data, and shall take into account the requirements of investigation secrecy. To that end, a Member State, when supplying information to the Commission ***and to Eurojust***, may set specific conditions covering the use of information, whether by the Commission, ***by Eurojust***, or by another Member State to which that information may be passed.

Amendment 39

Proposal for a directive Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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.

Amendment 40

Proposal for a directive Article 15 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Union officials shall disclose to OLAF any criminal offences of which they become aware during their mission.

Amendment 41

Proposal for a directive Article 17a (new)

Text proposed by the Commission

Amendment

Article 17a

Reporting, statistics and evaluation

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

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

2. Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of the systems established by them to protect the Union's financial interests. The statistics collected shall be sent to the Commission on a yearly basis and shall include:

(a) the number of criminal proceedings initiated, subdivided into the number of proceedings dismissed, the number resulting in an acquittal, the number resulting in a conviction and the number of ongoing proceedings,

(b) the amounts recovered, and the amounts not recovered, following criminal proceedings,

(c) the number of requests for assistance received from other Member States, subdivided into the number of requests acceded to and the number rejected.

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