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**COMMISSION STAFF WORKING PAPER**

***Annex to the***

**SECOND REPORT FROM THE COMMISSION**

**Implementation of the Convention on the protection of the European Communities'  
financial interests and its protocols**

**Article 10 of the Convention**

**{COM(2008) 77 final}**

1.	THE FIRST IMPLEMENTATION REPORT .....	4
1.1.	State of play with ratification of and accession to the Convention on the protection of the European Communities' financial interests and its protocols.....	5
1.2.	State of play with the Commission's proposal for a European Parliament and Council Directive on the criminal-law protection of the Community's financial interests.....	8
2.	DOCUMENTATION GATHERED .....	9
3.	EVALUATION METHOD.....	12
3.1.	Using the established method.....	12
3.1.1.	Assessing national implementing measures.....	12
3.1.2.	Assessing successful establishment of effective EU-wide protection of the Communities' financial interests.....	13
3.2.	Applying the method to different legal situations across Member States.....	14
3.3.	Using the dispute-settlement mechanisms to enforce the PFI instruments.....	15
3.3.1.	Ensuring ratification.....	15
3.3.2.	Ensuring transposition.....	16
4.	ANALYSIS OF NATIONAL MEASURES TAKEN .....	17
4.1.	Analysis of the general approach to legislative implementation .....	17
4.1.1.	New legislative developments in the EU-15 .....	17
4.1.2.	Legislative implementation in the Member States which joined the EU on 1 May 2004.....	18
4.1.3.	Bulgaria and Romania.....	18
4.2.	Assessment of the state of play with overall implementation.....	19
4.3.	Analysis of the implementation of specific provisions .....	19
5.	OFFENCES THAT HAVE TO BE PROVIDED FOR IN SUBSTANTIVE CRIMINAL LAW.....	20
5.1.	Fraud affecting the European Communities' financial interests.....	20
5.1.1.	Fraud in respect of expenditure (Article 1(1)(a) of the PFI Convention) .....	20
5.1.2.	Fraud in respect of revenue (Article 1(1)(b) of the PFI Convention) .....	25
5.1.3.	Intentional preparation or supply of false, incorrect or incomplete statements or documents (Article 1(3) of the PFI Convention) .....	28
5.1.4.	Penalties (Article 2 of the PFI Convention).....	30
5.1.5.	Assimilation of Community officials and members of the institutions as regards fraud (Article 4(1), (2) and (3) of the 1st Protocol).....	34

5.2.	Corruption .....	35
5.2.1.	Passive corruption (Article 2 of the 1st Protocol).....	35
5.2.2.	Active corruption (Article 3 of the 1st Protocol).....	39
5.2.3.	Assimilation of members of the institutions as regards corruption (Article 4(2) and (3) of the 1st Protocol).....	39
5.2.4.	Penalties (Article 5 of the 1st Protocol).....	40
5.3.	Money laundering (Article 2 of the 2nd Protocol).....	42
6.	PROVISIONS RELATING TO MORE GENERAL CONCEPTS OF SUBSTANTIVE CRIMINAL LAW.....	45
6.1.	Criminal liability of heads of businesses (Article 3 of the PFI Convention, Article 7(1) of the 1st Protocol and Article 12(1) of the 2nd Protocol).....	45
6.2.	Liability of legal persons (Articles 3 and 4 of the 2nd Protocol).....	47
6.2.1.	Liability of legal persons.....	48
6.2.2.	Penalties for legal persons.....	51
6.2.3.	Overall evaluation .....	52
6.3.	Confiscation (Article 5 of the 2nd Protocol) – Annex Table 11 .....	53
7.	ELEMENTS USUALLY RELATING TO CRIMINAL PROCEDURE .....	56
7.1.	Jurisdiction .....	56
7.1.1.	Jurisdiction over fraud and money laundering (Article 4 of the PFI Convention, by reference in Article 12(2) of the 2nd Protocol).....	56
7.1.2.	Jurisdiction over corruption (Article 6 of the 1st Protocol).....	59
7.2.	Extradition and prosecution (Article 5 of the PFI Convention, by reference in Article 7(1) of the 1st Protocol and Article 12(1) of the 2nd Protocol).....	62
7.3.	“ <i>Ne bis in idem</i> ” (Article 7 of the PFI Convention, by reference in Article 7(2) of the 1st Protocol and Article 12(1) of the 2nd Protocol).....	62
7.4.	Preliminary rulings by the Court of Justice of the European Communities on the Convention on the protection of the European Communities’ financial interests and its protocols .....	64
8.	EXPLANATORY NOTES TO THE TABLES .....	66
9.	CONCLUSIONS.....	66

## 1. THE FIRST IMPLEMENTATION REPORT

On 25 October 2004 the Commission adopted a report on implementation by Member States of the Convention on the protection of the European Communities' financial interests and its protocols.<sup>1</sup> That report took stock of the progress made on protecting the EC's financial interests in the national criminal law of the Member States before the enlargement of 1 May 2004, in the light of the PFI Convention of 26 July 1995,<sup>2</sup> the 1st Protocol of 27 September 1996,<sup>3</sup> the ECJ Protocol of 29 November 1996<sup>4</sup> and the 2nd Protocol of 19 June 1997<sup>5</sup> ("the PFI instruments"), even if not all the Member States had ratified the 2nd Protocol. The first report was accompanied by a Commission Staff Working Paper (CSWP)<sup>6</sup> which gave a detailed evaluation of the provisions existing in national law to meet the obligations placed on the Member States by the PFI instruments.

Now, three years after the first report and enlargement, the time has come to take a fresh look at the situation with transposition. This CSWP serves the same purpose as the first, namely to supplement the report with a more in depth analysis of the Member States' implementing legislation. Since it is intended to be a continuation of the 2004 CSWP, it will address three aspects:

- the comments made on the analysis in the first CSWP by the EU-15 Member States, plus developments in the related criminal-law provisions in those Member States since 2004;
- the relevant criminal-law provisions of the ten Member States that joined the EU on 1 May 2004, including an analysis of the existing domestic law in the four Member States that have yet to ratify the PFI instruments (the Czech Republic, Hungary, Malta and Poland);
- the relevant criminal-law provisions of Bulgaria and Romania, which joined the EU on 1 January 2007, although the PFI instruments have not yet entered into force for them.

Evaluation of the criminal law of the acceding Member States, to which the PFI instruments are not yet applicable, is justified because compliance with the PFI instruments as of the date of enlargement was part of the accession negotiations under Chapter 24 (justice and home affairs). It can therefore be reasonably assumed that all the new Member States have the minimum criminal-law provisions necessary for them not only swiftly to ratify the PFI instruments, but also to contribute to the

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<sup>1</sup> COM(2004) 709 final, 25.10.2004.

<sup>2</sup> Convention on the protection of the European Communities' financial interests, OJ C 316, 27.11.1995, p. 49.

<sup>3</sup> Protocol to the Convention on the protection of the European Communities' financial interests, OJ C 313, 23.10.1996, p. 2.

<sup>4</sup> Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests, OJ C 151, 20.5.1997, p. 2.

<sup>5</sup> Second Protocol to the Convention on the protection of the European Communities' financial interests, OJ C 221, 19.7.1997, p. 12.

<sup>6</sup> SEC(2004) 1299 final, 25.10.2004.

objective of effective and equivalent protection of the EC's financial interests. In this context, as in the previous CSWP, it seems worth adding that the PFI instruments are based on the idea that any harmonisation would considerably strengthen protection of the Community's financial interests, which remains difficult due to the fragmentary nature of the European criminal-law enforcement area.

### **1.1. State of play with ratification of and accession to the Convention on the protection of the European Communities' financial interests and its protocols**

The previous CSWP<sup>7</sup> contained a table showing the dates of notification by the EU-15 Member States. An updated table on the state of play with ratification now has to take into account not only enlargement, but also other developments:

- As regards the EU-15, Luxembourg<sup>8</sup> and Austria<sup>9</sup> have ratified the 2nd Protocol in the mean time. The only Member State which still has not ratified the 2nd Protocol is Italy, whose government approved, on 16 November 2007, a bill to start the legislative procedure for ratification of the 2nd Protocol.
- Under the first indent of Article 3(4) of the 2003 Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia,<sup>10</sup> those Member States undertook to accede to the conventions or instruments in the field of justice and home affairs drawn up in accordance with Title VI of the EU Treaty. These include the PFI instruments, which contain specific provisions on accession (Article 12 of the PFI Convention, Article 10 of the 1st Protocol, Article 6 of the ECJ Protocol and Article 17 of the 2nd Protocol). In the mean time Cyprus, Latvia, Lithuania, Slovenia and Slovakia have acceded to all the PFI instruments. Estonia has acceded to all but the ECJ Protocol. Notification of accession has still not been received from the Czech Republic, Hungary, Malta and Poland.
- The 2005 Act of Accession of Bulgaria and Romania<sup>11</sup> introduced a simplified system for the accession of these two Member States to certain conventions and protocols, including the PFI instruments.<sup>12</sup> Article 3(3) of the Act of Accession simply provides that Bulgaria and Romania accede to these conventions and protocols by virtue of the Act of Accession itself.

It is important to distinguish between ratification and entry into force:

- The situation for the EU-15 is unchanged: for all of them the PFI Convention, the 1st Protocol and the ECJ Protocol entered into force on 17 October 2002. The 2nd

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<sup>7</sup> SEC(2004) 1299 final, 25.10.2004, page 6.

<sup>8</sup> Law of 23 May 2005 (Official Journal of the Grand-Duché de Luxembourg, A-No 74 of 9 June 2005).

<sup>9</sup> Parliamentary resolution of 21 April 2006.

<sup>10</sup> Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, OJ L 236, 23.9.2003, p. 33.

<sup>11</sup> Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded, OJ L 157, 21.6.2005, p. 203.

<sup>12</sup> Annex I: List of conventions and protocols to which Bulgaria and Romania accede upon accession (referred to in Article 3(3) of the Act of Accession), OJ L 157, 21.6.2005, p. 221.

Protocol has not yet entered into force due to the non-ratification by Italy, which was a member of the EU at the time of adoption of the Council Act drawing up the 2nd Protocol.

- For the Member States which joined the EU on 1 May 2004, the PFI Convention, the 1st Protocol and the ECJ Protocol entered into force within 90 days after deposit of the instrument of accession with the Secretary-General of the Council by the acceding Member State concerned. For those which have already ratified the 2nd Protocol, it will enter into force on the same date as for the EU-15. For those which have yet to accede to the 2nd Protocol, its entry into force with respect to them will depend on whether or not Italy has ratified it in the mean time.
- Differently, for Bulgaria and Romania, the Council has adopted Decision 2008/40/JHA according to Article 3(4) of the 2005 Act of Accession.<sup>13</sup> Article 2(1) of that Decision sets the 6 December 2007 as date on which the PFI Convention, the 1st Protocol and the ECJ Protocol entered into force for Bulgaria and Romania. Entry into force of the 2nd Protocol with respect to them will depend on the entry into force with regard to Italy according to Article 2(2) of Decision 2008/40/JHA.

The updated table displays the dates of notification of ratification by the Member States, indicating in italics the dates of entry into force for each of the Member States which joined the EU on 1 May 2004:

<b>Table 1: Dates of notification on completion of constitutional requirements for adopting the PFI instruments per Member State</b>				
	<b>PFI Convention (signed 26.7.1995; entered into force 17.10.2002)</b>	<b>1st Protocol (signed 27.9.1996; entered into force 17.10.2002)</b>	<b>ECJ Protocol (signed 29.11.1996; entered into force 17.10.2002)</b>	<b>2nd Protocol (signed 19.6.1997; <u>not yet entered into force</u>)</b>
	Date of notification in accordance with Article 11(2). For Member States which joined on or after 1 May 2004, date of notification in accordance with Article 12(3). The date of entry into force is indicated in <i>italics</i> .	Date of notification in accordance with Article 9(2). For Member States which joined on or after 1 May 2004, date of notification in accordance with Article 10(3). The date of entry into force is indicated in <i>italics</i> .	Date of notification in accordance with Article 4(2). For Member States which joined on or after 1 May 2004, date of notification in accordance with Article 5(2). The date of entry into force is indicated in <i>italics</i> .	Date of notification in accordance with Article 16(2). For Member States which joined on or after 1 May 2004, date of notification in accordance with Article 17(3).
Belgium	12.3.2002	12.3.2002	12.3.2002	12.3.2002
Bulgaria	6.12.2007 according to Article 2(1) of Council Decision 2008/40/JHA (1.1.2008)			Date of entry into force according to Article 2(2) of Council Decision 2008/40/JHA.
Czech Republic	Not yet acceded	Not yet acceded	Not yet acceded	Not yet acceded

<sup>13</sup> Council Decision 2008/40/JHA concerning the accession of Bulgaria and Romania to the PFI instruments, OJ L 9, 12.1.2008, p. 23.

Denmark	2.10.2000	2.10.2000	2.10.2000	2.10.2000
Germany	24.11.1998	24.11.1998	3.7.2001	5.3.2003
Estonia	3.2.2005 (4.5.2005)	3.2.2005 (4.5.2005)	Not yet acceded	3.2.2005
Ireland	3.6.2002	3.6.2002	3.6.2002	3.6.2002
Greece	26.7.2000	26.7.2000	26.7.2000	26.7.2000
Spain	20.1.2000	20.1.2000	20.1.2000	20.1.2000
France	4.8.2000	4.8.2000	4.8.2000	4.8.2000
Italy	19.7.2002	19.7.2002	19.7.2002	Not yet ratified
Cyprus	31.3.2005 (29.6.2005)	31.3.2005 (29.6.2005)	31.3.2005 (29.6.2005)	31.3.2005
Latvia	31.8.2004 (30.11.2004)	31.8.2004 (30.11.2004)	31.8.2004 (30.11.2004)	19.10.2005
Lithuania	28.5.2004 (26.8.2004)	28.5.2004 (26.8.2004)	28.5.2004 (26.8.2004)	28.5.2004
Luxembourg	17.5.2001	17.5.2001	17.5.2001	13.7.2005
Hungary	Not yet acceded	Not yet acceded	Not yet acceded	Not yet acceded
Malta	Not yet acceded	Not yet acceded	Not yet acceded	Not yet acceded
Netherlands	16.2.2001	28.3.2002	16.2.2001	28.3.2002
Austria	21.5.1999	21.5.1999	21.5.1999	20.7.2006
Poland	Not yet acceded	Not yet acceded	Not yet acceded	Not yet acceded
Portugal	15.1.2001	15.1.2001	15.1.2001	15.1.2001
Romania	6.12.2007 according to Article 2(1) of Council Decision 2008/40/JHA (1.1.2008)			Date of entry into force according to Article 2(2) of Council Decision 2008/40/JHA.
Slovenia	17.4.2007 (16.7.2007)	17.4.2007 (16.7.2007)	17.4.2007 (16.7.2007)	17.4.2007
Slovakia	30.9.2004 (21.12.2004)	30.9.2004 (21.12.2004)	30.9.2004 (21.12.2004)	30.9.2004
Finland	18.12.1998	18.12.1998	18.12.1998	26.2.2003
Sweden	10.6.1999	10.6.1999	10.6.1999	12.3.2002
UK	11.10.1999	11.10.1999	11.10.1999	11.10.1999

## 1.2. State of play with the Commission's proposal for a European Parliament and Council Directive on the criminal-law protection of the Community's financial interests

In 2001, frustrated with the delays in ratification of the PFI instruments, the Commission proposed a Directive on the criminal-law protection of the Community's financial interests on the basis of Article 280 of the EC Treaty.<sup>14</sup> Following the opinion of the European Parliament, adopted on first reading on 29 November 2001,<sup>15</sup> and the opinion of the Court of Auditors, adopted on 8 November 2001,<sup>16</sup> the Commission presented an amended proposal for a Directive.<sup>17</sup> The proposal incorporates all the provisions of the PFI instruments relating to the definitions of offences, liability, penalties and cooperation with the Commission and is intended to offer the benefits that go with Community legislation.

After finding that so far not even the PFI instruments have resulted in effective and equivalent criminal-law protection of the EC's financial interests, the first report asked the Council to work towards adopting a common position on the amended proposal for a Directive on the criminal-law protection of the Communities' financial interests on the basis of Article 280 of the EC Treaty. The legislative procedure has been stalled ever since 2003.

Since the previous CSWP, the situation with regard to the PFI instruments has – at least formally – not improved: the 2nd Protocol has not yet entered into force and four acceding Member States still have not started the formal ratification procedure for the PFI instruments. *De facto* the current system of protection, based on conventions, creates a multi-speed situation. It results in a mixture of different legal situations in terms of the binding effect of the PFI instruments in the individual Member States' internal legal order. This situation does not produce the desired effective and dissuasive criminal-law protection. The harmonisation objective of the PFI instruments has therefore still not been formally achieved for all 27 Member States. Politically, the need for a Directive on criminal-law protection of the Communities' financial interests therefore persists.

In the mean time, a new development occurred in the form of the European Court of Justice (ECJ) judgment of 13 September 2005 in case C-176/03 *Commission v Council*<sup>18</sup> relating to Council Framework Decision 2003/80/JHA.<sup>19</sup> The judgment refers explicitly to Article 280(4) of the EC Treaty, stating that it is not possible to infer from this provision that any harmonisation of criminal law must be ruled out where it is necessary in order to ensure the effectiveness of Community law. However, the PFI instruments are not directly called into question as a result of the judgment as they had already been adopted before the introduction of Article 280(4) of the EC Treaty.

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<sup>14</sup> COM(2001) 272 final, 23.5.2001: OJ C 240 E, 28.8.2001, p. 125.

<sup>15</sup> OJ C 153 E, 27.6.2002.

<sup>16</sup> OJ C 14, 17.1.2002, p. 1.

<sup>17</sup> COM(2002) 577 final, 16.10.2002: OJ C 71 E, 25.3.2003, p. 1.

<sup>18</sup> ECR [2005], page I-7879, paragraph 52.

<sup>19</sup> Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law, OJ L 29, 5.2.2003, p. 55.



Instead, that judgment underpins the Commission's argument in favour of its proposal, as expressed in the Commission Communication on the Court's judgment.<sup>20</sup> In the wake of that judgment, the European Parliament rightly called upon the Council "to abandon its rejectionist stance on strengthened protection for the Community's financial interests through criminal law measures and to move to the first-reading stage".<sup>21</sup>

## 2. DOCUMENTATION GATHERED

Member States discussed the findings of the first report and the related CSWP at a meeting of the Council Working Group on Substantial Criminal Law on 30 May 2005. The Council Working Group decided not to draw up conclusions for the Council on the report. In the discussions Member States asked the Commission to have more trust in them insofar as application of the general principles of national criminal law are concerned, since it is up to the Member States to see how to implement the PFI instruments, as it is up to their judges, when interpreting national legislation, to take due account of European legislation. While respecting the discretion of Member States with regard to their own criminal-law systems, these general principles are, however, part of the overall objective of approximating criminal provisions in order to ensure better cooperation between different judicial authorities on protection of the Communities' financial interests.

Following up the first round of evaluation, Germany, Luxembourg, Austria, Portugal, Sweden, Finland and the UK contacted the Commission, either by sending their comments on the findings of the previous CSWP or by meeting the officials responsible to explain their point of view on the evaluation of their criminal law. Furthermore, national governments also invited the Commission to contribute to ongoing legislative work that could improve compliance with the PFI instruments at working level.

When launching the preparatory work on this CSWP, in September 2006 the Commission sent a letter to the Member States which joined the EU on 1 May 2004, asking them to supply documentation, as provided for by Article 10 of the PFI Convention. At the same time, the Commission invited the EU-15 Member States to submit comments on the first report and CSWP or new legislative material. In May 2007 the Commission also invited Bulgaria and Romania to contribute to this second round of evaluation.

The documentation which the Commission asked the Member States to supply is the main, though not the only, source of information for the analysis. The Commission also took into account, where appropriate, the information contained in the documents sent by the Member States to the Commission with a view to preparing the annual report on the measures taken to implement Article 280(5) of the EC Treaty.

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<sup>20</sup> Communication from the Commission to the European Parliament and the Council on the implications of the Court's judgment of 13 September 2005 (Case C-176/03 *Commission v Council*), COM(2005) 583 final.

<sup>21</sup> Report A6-0185/2006 of 16 May 2006 on protection of the financial interests of the Communities and the fight against fraud – 2004 annual report (2005/2184(INI)), paragraph 74.

As in the previous CSWP, the value of the analysis depends largely on the quality of the national information. Information provided up to October 2007 and, in exceptional cases, up to November 2007 has been taken into account. The analysis therefore takes stock of implementation based on the legislation forwarded to the Commission by that date. The tables in the Annexes specify, according to the information received by the Commission, the known national provisions transposing the relevant articles in the PFI instruments. The table below briefly indicates the documentation which Member States made available to the Commission.

<b>Table 2: Transmission to the Commission of the texts transposing into domestic law the obligations imposed on Member States under the PFI instruments, by Member State</b>		
(Transmission in accordance with Article 10 of the PFI Convention, also referred to, as applicable, in Article 7(2) of the 1st Protocol and Article 12(1) of the 2nd Protocol)		
	Date of latest transmission	Comments
Belgium	2.4.2004	Since the first report, Belgium has transmitted no further comments or texts.
Bulgaria	29.7.2007	In response to the Commission's letter of May 2007, Bulgaria provided a short summary of the applicable provisions and the relevant legal texts.
Czech Republic	30.11.2006	In response to the Commission's letter of September 2006, the Czech Republic provided a short summary of the applicable provisions and the relevant legal texts.
Denmark	3.12.2003	Since the first report, Denmark has transmitted no further comments or texts. However, it informed the Commission about the revision of the relevant offences in its Criminal Code in the 2005 annual report under Article 280(5) of the EC Treaty.
Germany	4.7.2007	Germany contacted the Commission on its own initiative and met Commission representatives about the previous CSWP. It also submitted a document. In response to the Commission's letter of September 2006, it submitted information about the ongoing revision of the relevant offences in its Criminal Code.
Estonia	8.12.2006	In response to the Commission's letter of September 2006, Estonia provided a short explanation of the applicable provisions and the relevant legal texts.
Ireland	15.12.2003	Since the first report, Ireland has transmitted no further comments or texts.
Greece	6.12.2006	In response to the Commission's letter of September 2006, Greece submitted a document on the previous CSWP and information about the ongoing revision of the relevant offences in its Criminal Code.
Spain	20.12.2006	In response to the Commission's letter of September 2006, Spain submitted a document on the previous CSWP and information about the ongoing revision of the relevant offences in its Criminal Code.
France	8.11.2006	In response to the Commission's letter of September 2006, France submitted a document on the previous CSWP and information about

		the ongoing revision of the relevant offences in its criminal legislation.
Italy	6.11.2006	In response to the Commission's letter of September 2006, Italy submitted comments on the previous CSWP.
Cyprus	12.6.2007	In response to the Commission's letter of September 2006, Cyprus transmitted the Law on ratification of the PFI instruments.
Latvia	28.5.2005	Latvia submitted the implementing legislation on its own initiative. In response to the Commission's letter of September 2006, Latvia provided a short explanation and additional information on some points to be clarified.
Lithuania	29.12.2006	In response to the Commission's letter of September 2006, Lithuania provided a short explanation of the applicable provisions and the relevant legal texts.
Luxembourg	30.11.2006	Luxembourg transmitted information on ratification of the 2nd Protocol on its own initiative. In response to the Commission's letter of September 2006, it submitted additional information and the relevant legal texts.
Hungary	8.2.2007	In response to the Commission's letter of September 2006, Hungary provided a short explanation of the applicable provisions and the relevant legal texts.
Malta	-	Malta has transmitted no comments or texts.
Netherlands	5.3.2007	In response to the Commission's letter of September 2006, the Netherlands submitted a document on the previous CSWP and relevant background information.
Austria	17.11.2006	Austria submitted a document on the previous CSWP on its own initiative. In response to the Commission's letter of September 2006, it transmitted information on ratification of the 2nd Protocol.
Poland	12.12.2006	In response to the Commission's letter of September 2006, Poland provided a short explanation of the applicable provisions and the relevant legal texts.
Portugal	12.7.2005	Portugal submitted comments on the previous CSWP on its own initiative.
Romania	4.10.2007	In response to the Commission's letter of May 2007, Romania provided a short summary of the applicable provisions and the relevant legal texts.
Slovenia	24.11.2006	In response to the Commission's letter of September 2006, Slovenia transmitted the applicable provisions and the relevant legal texts.
Slovakia	24.5.2007	In response to the Commission's letter of September 2006, Slovakia provided a short explanation of the applicable provisions and the relevant legal texts. Slovakia also met Commission representatives to explain its national implementing legislation better.
Finland	1.7.2005	Finland submitted comments on the previous CSWP on its own initiative.

Sweden	16.5.2006	Sweden submitted comments on the previous CSWP and information about new legislative developments of relevance to the offences covered by the PFI instruments on its own initiative.
UK	8.3.2007	As regards England and Wales, the UK contacted the Commission on its own initiative and met Commission representatives about the previous CSWP. It also submitted a document. The UK consulted the Commission on legislative initiatives on fraud and corruption. It also informed the Commission about new legislative developments of relevance to the offences covered by the PFI instruments.

### 3. EVALUATION METHOD

#### 3.1. Using the established method

This analysis supplements the second report, just as the previous CSWP did the first report. For reasons of consistency and of fairness to the acceding Member States, the same method applies as that developed and used in the previous CSWP for evaluating implementation by Member States. That method consists of two elements: first assessing national implementing measures and then evaluating the contribution made by the national measures to successful establishment of effective EU-wide protection of the Communities' financial interests. For easier reference, the main elements of the two assessment steps are briefly reiterated below.

##### 3.1.1. *Assessing national implementing measures*

The general criteria developed with respect to directives and framework decisions are also applied to the PFI instruments:

- (1) The form and methods of implementation of the result to be achieved must be chosen in a manner which ensures that the legal instrument functions effectively with account being taken of its aims;<sup>22</sup>
- (2) Each Member State is under an obligation to implement the instruments in a manner which satisfies the requirements of clarity and legal certainty and thus to transpose the provisions into mandatory national provisions.<sup>23</sup> In the specific field of criminal law, besides formal legality, conformity with the European approach to criminal law<sup>24</sup> demands that offences be accessible, precise and have foreseeable consequences, which also implies that the provisions concerned be interpreted strictly, in particular with regard to the prohibition of applying analogy in criminal law;

<sup>22</sup> See relevant case law on the implementation of Directives: Case 48/75 *Royer* [1976] ECR 497, paragraph 73.

<sup>23</sup> See relevant case law on the implementation of Directives: Case 239/85 *Commission v Belgium* [1986] ECR 3645, paragraph 7. See also Case 300/81 *Commission v Italy* [1983] ECR 449, paragraph 10.

<sup>24</sup> The European approach to criminal law is essentially based on Article 7 of the European Convention on Human Rights that overcomes the difference between common law and continental countries (see M. Delmas-Marty and J.A.E. Vervaele "The implementation of the Corpus Juris in the Member States", Volume I, 2000, p. 34).

- (3) Transposition need not necessarily require enactment in precisely the same words in an express legal provision; thus a general legal context (such as appropriate existing measures) may be sufficient. However, full application of the legal instrument must be ensured in a sufficiently clear and precise manner.<sup>25</sup>

In accordance with established case law regarding Directives, it is important to determine the nature of each provision of the PFI instruments in order to gauge the extent of the obligation for implementation.<sup>26</sup> For compliance, it is essential that the legal situation resulting from national implementing measures be sufficiently precise and clear to enable individuals to know the extent of their rights and obligations.

One of the specific features of the PFI instruments is that some of their provisions require the necessary implementing measures to be taken “in accordance with the principles defined by ... national law”, either explicitly, as in Article 3 of the PFI Convention, or implicitly, for instance for Articles 1(3), 2(1) and 4(1) of the PFI Convention.<sup>27</sup> The reference to principles defined by national law aims to respect the different dogmatic foundations of criminal law in the Member States, particularly in the context of those provisions that touch on general aspects of substantive criminal law, such as the rules on participation and attempts. Where Member States are allowed to transpose obligations imposed by the PFI instruments in accordance with the principles defined by their national law, they are not automatically dispensed from taking any implementing action. Whether the Member States complied with the relevant obligations under the PFI instruments can only be assessed in terms of whether the result to be achieved is actually ensured.

Although the Commission notes the Member States’ criticism that it should trust the working of the general principles of the national criminal law systems, this does not exclude evaluation of whether an equivalent level of criminal-law protection is attained. Member States may not argue that there is no need at all to amend their existing national law purely on the grounds of their general principles as long as the PFI instruments clearly provide for minimum harmonisation.

### 3.1.2. *Assessing successful establishment of effective EU-wide protection of the Communities’ financial interests*

Besides implementing individual provisions from the PFI instruments, national law must also comply with their general purpose of effective and equivalent protection of the financial interests of the Communities throughout the EU.

One useful tool to measure attainment of effective and equivalent protection of the financial interests of the Communities is to assess whether the shortcomings identified by the “Delmas-Marty report”<sup>28</sup> have been removed. The Delmas-Marty

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<sup>25</sup> See relevant case law on the implementation of Directives: Case 29/84 *Commission v Germany* [1985] ECR I 661, paragraph 23.

<sup>26</sup> See relevant case law on the implementation of Directives: Case C-233/00 *Commission v France* [2003] ECR I-6625, paragraph 77.

<sup>27</sup> Explanatory report on the PFI Convention: OJ C 191, 23.6.1997.

<sup>28</sup> Delmas-Marty, “Incompatibilities between legal systems and harmonisation measures: Final report of the working party on a comparative study on the protection of the financial interests of the Community”

report was drafted in the wake of the Council resolution of 13 November 1991<sup>29</sup> in order to help draft the PFI instruments. That report indicated a need to reduce differences between domestic legislation, since criminal organisations committing transnational illegalities affecting the Communities' financial interests exploit these differences to go unpunished. It asked for greater convergence in the manner in which the Member States' criminal laws apprehend forms of illegal activities directed against the European Communities.

### **3.2. Applying the method to different legal situations across Member States**

In the wake of enlargement, a mixture of different legal situations across Member States with regard to the PFI instruments has been created:

- For the EU-15, the evaluation in the previous CSWP remains valid in principle, unless the legislation has been amended or subject to case law handed down in the mean time or, as is the case for Austria and Luxembourg, the 2nd Protocol was ratified and implemented. Consequently, all that needs to be done is to add these developments to the evaluation.
- Within the Member States which acceded to the EU on 1 May 2004, the Member States which have ratified some or all of the PFI instruments are evaluated for the first time. The domestic law already existing in those Member States that have not ratified any of the PFI instruments is also analysed.
- Finally, for Bulgaria and Romania, the domestic law already existing to transpose the PFI instruments is also attached and analysed, since Council Decision 2008/40/JHA ensured the entry into force of the PFI Instruments apart from the 2nd Protocol for Bulgaria and Romania, .

At the end of the sections on the main provisions of the PFI instruments, a table gives an overview of the Member States which are considered to have completely or almost completely transposed the provision and of those assumed to have carried out no transposition or on which further information would be needed in order to ascertain whether their level of transposition is sufficient. However, the table is limited to the EU-15, with the exception of Italy for the 2nd Protocol, plus the “new” Member States which have acceded to the PFI instruments, except for Bulgaria and Romania due to the extremely short delay of entry into force of the PFI instruments for them on the basis of Council Decision 2008/40/JHA. The tables also draw a distinction between these two groups, since the EU-15 have already had an opportunity to hear the views of the Commission from the first report. At the very end, additional information on the other Member States is given to show where those to which the PFI instruments are not yet applicable stand.

In this context, it should be underlined that the evaluation is not complete on some aspects, on which further case law or legislative developments can be expected. Consequently, all the conclusions are preliminary and subject to revision. This is

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in Commission of the European Communities, “The legal protection of the financial interests of the Community: Progress and prospects since the Brussels seminar of 1989”, Brussels, 25 and 26 November 1993, p. 59.

<sup>29</sup>

OJ C 328, 17.12.1991, p. 1.

particularly true for the assimilation provisions in Article 4 of the 1st Protocol, where the Commission will closely monitor future legislative developments.

### **3.3. Using the dispute-settlement mechanisms to enforce the PFI instruments**

#### *3.3.1. Ensuring ratification*

It appears worth tackling the delay in ratification of the 2nd Protocol to the PFI Convention and accession to the PFI instruments by the Member States which joined the EU on 1 May 2004.

The Council, the European Parliament and the Commission have repeatedly invited Member States to ratify the 2nd Protocol without delay.<sup>30</sup> In 2006 the Commission addressed Italy specifically as the only EU-15 State that has still not ratified the 2nd Protocol.

This situation is undermining the desired effective and dissuasive protection of the EC's financial interests in criminal law, within the framework established by all the PFI instruments. Due to its non-ratification, Italy is indirectly impeding completion of the legal framework established by the PFI instruments, not only as regards the liability of legal persons but also with regard to the provisions on information exchange. Article 280 of the EC Treaty places an obligation on Member States to coordinate their action aimed at protecting the financial interests of the Community against fraud. It is, in the present case, against the idea of solidarity for one Member State to hold back, for a long time, entry into force of a unanimously agreed legal instrument across the EU as a whole, if this instrument is a necessary measure contributing to the fundamental aim of protecting the Communities' financial interests. This is, in particular, the case for the 2nd Protocol, which the Council considered "*necessary ... to improve the effectiveness of protection under criminal law of the European Communities' financial interests*".<sup>31</sup> An unreasonable delay in ratification or accession is impeding attainment of the aims pursued by Article 280 of the EC Treaty.

For the EU-15 and for the Member States which joined the EU on 1 May 2004 Article 280 of the EC Treaty is applicable and enforceable as of the date of accession. In any case, an obligation exists to ratify and accede to the PFI instruments within a reasonable time.

This applies to the 2nd Protocol for EU-15 Member States and to the PFI instruments for newly acceded Member States alike. The lack of entry into force of the 2nd Protocol is indirectly impeding completion of the legal framework established by the PFI instruments to provide for effective and equivalent criminal-law protection of the Community's financial interests. The delay by some Member States which joined the

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<sup>30</sup> For example: Resolution concerning a comprehensive EU policy against corruption, adopted by the Justice and Home Affairs Council on 14 April 2005 (Council Doc. 6902/05, 6901/2/05); European Parliament resolution on the protection of the financial interests of the Communities and the fight against fraud (OJ C 124 E, 15.5.2006, p. 232, paragraph 41); Report from the Commission to the European Parliament and the Council – Protection of the Communities' financial interests, COM(2006) 378 final.

<sup>31</sup> Recital to the 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.

EU on 1 May 2004 creates an unbalanced level of protection within the EU in terms of the binding effect of the PFI instruments.

### 3.3.2. *Ensuring transposition*

The PFI instruments were drawn up in accordance with the Maastricht version of the EU Treaty. At that time, the ECJ had no general jurisdiction over application of third-pillar conventions. As an exception to the rules applicable under the Maastricht Treaty at that time, Article 8(2) of the PFI Convention, Article 8(2) of the 1st Protocol and Article 13(2) of the 2nd Protocol state that, on Articles 1 and 10 of the PFI Convention, Articles 1(a) and (b), 2, 3 and 4 of the 1st Protocol and Articles 2, 7, 8, 10 and 12(2), fourth indent of the 2nd Protocol, jurisdiction is given to the ECJ to settle any persistent dispute between the Commission and one or more Member States on application of material provisions in the PFI instruments.

Article 35(7) of the EU Treaty, as amended by the Treaty of Amsterdam, provides for the possibility for the Commission to bring a legal action regarding interpretation and application of conventions established under Article 34(2)(d) of the EU Treaty before the ECJ. The question is whether the subsequent amendment of the EU Treaty by the Treaty of Amsterdam and the related extension of the ECJ's jurisdiction would allow the Commission to use the dispute-settlement provisions not only as regards implementation of the provisions specifically included in the PFI instruments, but also for all other provisions in the PFI instruments. The additional jurisdiction of the ECJ would therefore extend to implementation of the obligation to provide for, for instance, criminal liability of heads of businesses and the aspects of procedural law.

In the Commission's view, the acceptance by the Member States of a wider dispute-settlement system, including jurisdiction of the ECJ in the Treaty of Amsterdam, also extends to instruments drafted and adopted before that Treaty entered into force. Since jurisdiction is a procedural issue, it is not connected to the time when a legal act that could be subject to such a procedure was drawn up. At the time when the Treaty of Amsterdam was drafted, the PFI instruments had yet to enter into force but the Member States were well aware of the consequences of extending jurisdiction. Should the Member States, when drafting that Treaty, have wanted to avoid such an extension of jurisdiction to previous instruments, it would have been sufficient to state so explicitly in the relevant provision in the Treaty or to include a transition provision.

The Commission will consider triggering the dispute-settlement procedure for promoting ratification under the EC Treaty and under Article 8(2) of the PFI Convention, depending on whether Member States take positions diverging from the outcome of this analysis on application of the relevant provisions in the PFI instruments.

The EU-15 Member States are already aware of the Commission's views, from the previous CSWP in 2004. The dispute-settlement system available may help to remove the shortcomings identified, if these persist according to the detailed analysis below. Specific measures to ensure compliance with the PFI instruments, both formally and materially, will be proposed at the end of the CSWP.



#### 4. ANALYSIS OF NATIONAL MEASURES TAKEN

##### 4.1. Analysis of the general approach to legislative implementation<sup>32</sup>

###### 4.1.1. New legislative developments in the EU-15

The main development since 2004 has been ratification of the 2nd Protocol by Luxembourg and Austria. In Luxembourg, the ratifying law of 23 May 2005 also introduced the related amendments to the Criminal Code. In addition, the law of 1 August 2007 introduced provisions extending the possibilities for confiscation. Austria enacted a comprehensive law on the criminal liability of legal persons in 2005 and afterwards ratified the 2nd Protocol. Italy remains the only Member State which has still not ratified the 2nd Protocol. However, Italian Law No 2006/146 has put in place most of the required provisions of the 2nd Protocol, such as those on money laundering and on the liability of legal persons. In principle, Italy seems to comply with the majority of the requirements under the 2nd Protocol and could ratify it without any need for further substantial amendments to its criminal law.

Developments were also reported in criminal law in the other EU-15 Member States. In Belgium the law of 11 May 2007 amended the criminal and procedural provisions relating to corruption in order to extend their scope to officials of foreign countries and international organisations beyond the EU. Denmark amended the offence of EU fraud by Law No 366 of 24 May 2005 and rendered application thereof more comprehensible for all forms of fraudulent behaviour. Greece extended the list of predicate offences in its money laundering provision in Law No 3424/2005. France amended the liability of legal persons to render them liable for all criminal offences under French legislation by Law No 2004-204. With a view to complying with France's obligations under international law, Law No 2007-1598 made further amendments to the criminal and procedural provisions relating to corruption. With Law No 59/2007 Portugal also reformed its Criminal Code to provide for the liability of legal persons for all offences in its legislation. Sweden likewise amended its rules on the liability of legal persons in 2005. In 2006 the UK enacted a Fraud Act applicable to England, Wales and Northern Ireland. The Fraud Act is a major reform of the English criminal-law system which, amongst other things, introduced anew the general offence of fraud.

Reforms of the rules on corruption offences are currently underway in Germany, Austria and the UK, mainly with the intention of making them applicable to all officials of foreign countries and international organisations. The governments of Spain and Luxembourg are working on introducing criminal liability of legal persons in their legal systems. The Spanish proposal also envisages a reform of certain provisions relating to fraud and corruption offences.

**Table 3: EU-15 Member States – new developments with regard to the PFI instruments**

Amendments of criminal law since the first report (2004)	Proposals for amendments of criminal law since the first report (2004)	No changes
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<sup>32</sup> See also Annex Tables 1 to 4.

Belgium, Denmark, Greece, France, Italy, Luxembourg, Portugal, Sweden and the UK	Spain, Luxembourg (liability of legal persons), Germany, Austria and the UK (corruption)	Ireland, the Netherlands and Finland
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#### 4.1.2. *Legislative implementation in the Member States which joined the EU on 1 May 2004*

Of the “new” Member State which have acceded to the PFI instruments, Cyprus is the only one to have implemented and ratified the PFI instruments at once by enacting a new law. Estonia and Latvia have enacted new Criminal Codes that allow them to take the requirements of the PFI instruments into account. Lithuania, Slovenia and Slovakia amended their Criminal Codes before accession insofar as they considered necessary for compliance and ratified the PFI instruments separately after enlargement.

Whereas Hungary, Malta and Poland have already amended their criminal law to bring it into compliance with the PFI instruments in order to be ready to ratify them, the Czech Republic has not yet amended its Criminal Code and needs to do so at the time of ratification. In fact, the whole of Czech criminal law is currently subject to a reform.

In all these Member States, except Cyprus, the offences transposing the PFI instruments are generally to be found in the Criminal Codes. Whereas Cyprus provides for an offence of fraud concerning the EC’s financial interests in its ratifying law, Hungary and Slovakia provide for such a specific fraud offence in their Criminal Code. In Estonia and Malta some offences relating to taxes and customs fraud may also be found in sectoral legislation. In Poland the offences transposing the PFI instruments are to be found in the general Criminal Code and in a specific Fiscal Criminal Code. In Cyprus and Malta money laundering is regulated by a separate law.

<b>Table 4: Member States which joined on 1 May 2004 by chosen method of implementation (those which have not ratified are indicated in italics)</b>		
<b>Member States which have introduced a completely new criminal offence based on the PFI instruments</b>	<b>Member States which have amended their criminal law partially in order to implement the PFI instruments</b>	<b>Member States which have taken no implementing measures</b>
Cyprus, <i>Hungary</i> and Slovakia (the latter two in their Criminal Code)	Lithuania, <i>Malta</i> , <i>Poland</i> and Slovenia	<i>Czech Republic</i> , Estonia and Latvia

#### 4.1.3. *Bulgaria and Romania*

The simplified system provided for in the 2005 Act of Accession ensures accession to these conventions and protocols by virtue of the Act of Accession itself, Council Decision 2008/40/JHA serves merely to set the date of entry into force. Despite this direct route to accession:

Bulgaria adopted a ratification law in accordance with its own constitutional requirements. This ratification law did not alter Bulgaria’s criminal law in the light

of accession. Instead, Bulgaria had already amended its Criminal Code before accession in order to ensure compliance with the PFI instruments.

Romania did the same, i.e. it amended its Law No 78/2000 on preventing, discovering and sanctioning corruption ahead of accession with a view to compliance with the PFI instruments.

#### **4.2. Assessment of the state of play with overall implementation**

The Commission appreciates that 10 of the EU-15 Member States have made further efforts to improve their implementation of the PFI instruments, even if mostly linked to their other international law obligations. They have thereby partially overcome the lack of transposition identified in the previous CSWP.

Although none of the PFI instruments expressly requires them, specific offences for fraud, and even for active and passive corruption and money laundering, offer advantages. Besides Greece and Ireland, Cyprus now also provides for a set of specific new criminal offences with a view to protecting the EC's financial interests. In the analysis for the previous CSWP,<sup>33</sup> the Commission noted that "codified" national legislation with regard to the PFI instruments made it easier to provide clear references to the applicable legal provisions and a full understanding of the conduct constituting the offence. Denmark, Hungary and Slovakia provide for a separate offence of fraud against the Communities' financial interests. In Denmark and Ireland these fraud offences are formulated in such a manner that they apply, in a subsidiary way, to existing fraud offences. Italy and Austria also partially provide for offences shaped to protect only the Communities' financial interests, for instance in the field of agricultural subsidies (Italy) or export refunds (Austria). As in its previous CSWP,<sup>34</sup> the Commission still believes that such specific offences remain desirable as a means of facilitating inquiry and prosecution.

#### **4.3. Analysis of the implementation of specific provisions**

As in the previous CSWP, transposition of each specific provision of the PFI instruments will now be analysed. However, the analysis does not take the articles of the PFI instruments in numerical order but examines first the offences that have to be provided for in substantive criminal law, then the provisions relating to more general concepts of substantive criminal law and, finally, those relating to criminal procedure.

Furthermore, the measures implementing each of the provisions of the PFI instruments are structured on the basis of:

- whether there are new developments and comments to be taken into account as regards the EU-15;
- what is the state of play with implementation in the Member States which joined on or after 1 May 2004, i.e. including Bulgaria and Romania, by establishing groups of Member States that take similar approaches; and

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<sup>33</sup> SEC(2004) 1299 final, 25.10.2004, page 15.

<sup>34</sup> SEC(2004) 1299 final, 25.10.2004, page 15.

- the overall picture for the EU as a whole based on the criteria applied in the previous CSWP.

## **5. OFFENCES THAT HAVE TO BE PROVIDED FOR IN SUBSTANTIVE CRIMINAL LAW**

### **5.1. Fraud affecting the European Communities' financial interests**

The definition of fraudulent conduct in Article 1 of the PFI Convention is the key to ensuring a common minimum level of criminal-law protection against fraud. To cover various types of fraud, Article 1(1) of the PFI Convention lays down two separate but matching definitions, one applying to expenditure, the other to revenue.

#### *5.1.1. Fraud in respect of expenditure (Article 1(1)(a) of the PFI Convention)<sup>35</sup>*

The PFI Convention defines fraud in respect of expenditure as three different forms of conduct, namely:

- (1) use or presentation of false, incorrect or incomplete statements or documents;
- (2) non-disclosure of information in violation of a specific obligation; and
- (3) misapplication of funds.

#### State of play with implementation in the EU-15 – Developments since the first report

As regards fraud in respect of expenditure, Denmark and two jurisdictions within the UK – England & Wales and Northern Ireland – have amended the applicable provisions since 2004. Denmark made the specific offence of fraud against the EC's financial interests applicable in a subsidiary way to other fraud offences in Danish criminal law. By contrast, for its jurisdictions of England & Wales and Northern Ireland, the UK completely revised the applicable law, by introducing a general fraud offence with the Fraud Act 2006. This offence covers all forms of public and private expenditure and may take three different forms, similar to those provided for in Article 1(1)(a) of the PFI Convention. Section 2 of the same Act covers fraud in the form of false presentation, Section 3 non-disclosure of information and Section 4 abuse of position.

The Netherlands, Germany, Austria, Portugal, Sweden and the UK (for the jurisdiction of Scotland) commented on the findings of the previous CSWP<sup>36</sup> on fraud in respect of expenditure. The Netherlands, Portugal and Sweden argued that compliance in their countries does not fall short in that misapplication of funds does not cover all kinds of expenditure, given that, firstly, the concept "subsidy" is widely interpreted and, secondly, subsidiary offences give rise to criminal liability in cases of misapplication of funds for expenditure other than grants.

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<sup>35</sup> See also Annex Table 5.

<sup>36</sup> SEC(2004) 1299 final, 25.10.2004, page 21.

Germany and Austria explained that it is inconceivable to commit fraud without the additional subjective element of enrichment provided for in their criminal law. However, this argument is flawed in view of the fact that Germany and Austria alike do not require this element in connection with general subsidy fraud under German criminal law or the specific fraud against export refunds under the Austrian criminal law. The impact of this argument on the Communities' financial interests, however, differs between Germany and Austria. Whereas Germany provides for a general offence of subsidy fraud applicable to most EC expenditure, Austria relies on the general fraud offence, except in the case of misapplication of funds. Consequently, Austrian law requires proof of intent to gain enrichment in the majority of fraud cases relating to expenditure of the Communities.

As regards the jurisdiction of Scotland, the UK explained that the common law offence of fraud and embezzlement also applies in case of violation of a contractual or statutory obligation to disclose.

State of play with implementation in the Member States which joined on or after 1 May 2004 – Fraud in the form of use or presentation of false, incorrect or incomplete statements or documents

Fraud affecting the Communities' expenditure committed in the form of use or presentation of false, incorrect or incomplete statements or documents is a specific offence in Cyprus, Slovakia and, although it has not yet ratified the PFI instruments, Hungary. The wording of the offence in Hungary refers to "assistance" and thus leaves open whether all forms of expenditure are covered.

Estonia, Latvia, Lithuania and Slovenia and, of the States yet to accede to the PFI Convention, the Czech Republic, Malta and Poland have enacted specific offences of fraud affecting public entities' expenditure. In the Czech Republic, the offence requires provision of factually false or severely distorted information, with the result that a simply incomplete statement is not sufficient. In Latvia, Lithuania and Poland, subsidy fraud requires additional elements – a subjective one in Latvia, that is knowingly providing false information, and an objective one in Lithuania, that is the misleading nature of the information, and also in Poland, where the statement must be made in writing.

In all these Member States, a subsidiary general offence of fraud applies to supplement subsidy fraud in cases where the expenditure was not drawn as a grant. In Estonia and Latvia this subsidiary offence requires the additional subjective element of knowingly causing misconception of existing facts. The subsidiary general offence of fraud in the Czech Republic, Lithuania and Poland requires the additional element of enrichment.

Bulgaria, in its Criminal Code, and Romania, in Law No 78/2000 on preventing, discovering and sanctioning corruption, provide for a specific offence of fraud affecting the Communities' expenditure committed in the form of use or presentation of false, incorrect or incomplete statements or documents.

State of play with implementation in the Member States which joined on or after 1 May 2004 – Fraud in the form of non-disclosure of information in violation of a specific obligation

The situation as regards fraudulent conduct affecting the Communities' expenditure committed in the form of non-disclosure of information in violation of a specific obligation is, in principle, similar to the situation with fraud in the form of use or presentation of false, incorrect or incomplete statements or documents, in particular in Member States, such as Cyprus, Hungary and Slovakia, which provide for one specific offence for all kinds of fraudulent conduct affecting the European Communities' expenditure, including omissions.

Estonia, Latvia, Lithuania, Slovenia and, of the States which have not yet ratified the PFI instruments, Malta cover subsidy fraud and general fraud through omission by the same provision as fraud in the form of use or presentation of false, incorrect or incomplete statements or documents. Poland provides for non-disclosure as a specific, alternative offence.

In the Czech Republic subsidy fraud by omission is committed only if important facts are withheld.

The specific offences contained in Bulgarian and Romanian criminal law also cover fraudulent conduct affecting the Communities' expenditure in the form of non-disclosure of information in violation of a specific obligation.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Fraud in the form of misapplication of funds

As regards expenditure, misapplication of funds consists of misuse of funds which, although legally obtained, may subsequently have been wasted or used for purposes other than those for which they were granted.<sup>37</sup>

In Cyprus, Slovakia and Hungary, as in Bulgaria and Romania, fraud in the form of misapplication of funds is listed in the specific offences enacted to protect the EC's financial interests.

In Estonia, Latvia, Lithuania, Slovenia and, of the States which have not yet ratified the PFI instruments, the Czech Republic, Malta and Poland misapplication of funds is one of the possible forms of fraudulent conduct covered by the specific laws or provisions covering fraud concerning grants and subsidies. In Latvia the offence specifically requires use for a purpose other than provided for in the grant agreement. In Lithuania the offence is tied to a minimum amount. In the Czech Republic and Estonia it is doubtful whether a criminal offence covering misapplication of Community expenditure not labelled as a subsidy or grant exists, unless, under very specific circumstances, such conduct is punished as a breach of trust.

#### Evaluation

The PFI Convention requires Member States to provide for one or more criminal offences covering the elements set out in Article 1(1)(a) of the Convention. In assessing implementation of the offences mentioned in the PFI Convention, the principle that a provision of criminal law may not be applied extensively to the

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<sup>37</sup> Explanatory report on the PFI Convention: OJ C 191, 23.6.1997.

detriment of the defendant must be observed when interpreting the different offences provided for in the Member States.

With this very cautious approach in mind, based on the additional information received, five EU-15 Member States (Denmark, Ireland, Greece, Spain and the Netherlands) and three of the Member States which joined the EU on 1 May 2004 and have already ratified the PFI instruments, namely Cyprus, Slovenia and Slovakia, appear to have fully complied with the requirements of the PFI Convention and to have criminalised every possible form of fraud affecting the Communities' expenditure.

A satisfactory level of criminalisation of fraud affecting the Communities' expenditure has been attained in four EU-15 Member States (Germany, Portugal, Finland and Sweden). In those Member States, the three forms of fraudulent conduct regarding Community expenditure cover subsidies and grants in the first place. Where subsidiary offences already apply in cases where the terms of a grant are not fulfilled (Portugal and Finland), they seem wide enough to catch possible criminal conduct and thereby to protect the Communities' financial interests. By contrast, where the offence requires additional enrichment (Germany and Sweden), the provisions cover only a very small portion of the Communities' financial interests.

Five EU-15 Member States (Belgium, France, Italy, Austria and Luxembourg) and three Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments (Estonia, Latvia and Lithuania) appear not to have fully complied with Article 1(1)(a) of the PFI Convention.

In Italy compliance falls short given that misapplication of funds does not cover every kind of expenditure.<sup>38</sup> The same seems to apply to Estonia.

Although in Belgium, Latvia, Lithuania and Luxembourg the three forms of fraudulent conduct regarding Community expenditure cover subsidies and grants in the first place, the offences still require additional elements of intent not provided for in Article 1(1)(a).<sup>39</sup>

In France and Austria<sup>40</sup> the observation made in the previous CSWP has to be confirmed: the degree of protection of the Communities' financial interests against fraud on expenditure varies widely between the three different forms of committing the offence.

In Austria an additional subjective element, namely enrichment, is added to fraudulent conduct for subsidies and grants insofar as misapplication of funds is not concerned. Unlike other Member States, Austria generally requires this element in addition before the behaviour can be criminalised under Article 1(1)(a) and therefore exposes the Communities' financial interests to a risk of defraudment different from the risk in other Member States, where such additional elements are required only if a subsidiary fraud offence applies.

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<sup>38</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 21.

<sup>39</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 21.

<sup>40</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 21.

In France fraud in the form of non-disclosure of information in violation of a specific obligation still seems to be punished only in exceptional cases and in accordance with the relevant case law, and additional elements are required to prove misapplication of funds.

Finally, no conclusive evaluation could be made on the UK: the recent reform of fraud law ensured that the jurisdictions of England & Wales and Northern Ireland now fully comply with the requirements of the PFI Convention and criminalised every possible form of fraud affecting the Communities' expenditure. As regards Scotland, however, it is still assumed that fraud in the form of non-disclosure of information in violation of a specific obligation is punishable only if there is a specific contractual or statutory obligation to disclose.<sup>41</sup>

<b>Table 5: Implementation overview – fraud in respect of expenditure</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Denmark, Germany, Ireland, Greece, Spain, the Netherlands, Portugal, Finland, Sweden and the UK (England & Wales and Northern Ireland)	Belgium, France, Italy, Luxembourg, Austria and the UK (Scotland)
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Cyprus, Slovenia and Slovakia	Estonia, Latvia and Lithuania

Of those Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments, the criminal law of Malta provides for fraud offences ensuring protection of the Communities' expenditure. The same can be said of Bulgaria and Romania.

Hungary may fall short of full compliance depending on the coverage of all forms of expenditure from the EC budget.

Poland falls short of full compliance, since fraudulent conduct regarding Community expenditure covering subsidies and grants is limited to written statements and the subsidiary offence of fraud requires intent to gain enrichment.

The criminal law of the Czech Republic appears incomplete, since for subsidy fraud the requirement of false or severely distorted information goes beyond a simple incomplete or incorrect statement. Instead of criminalising fraudulent behaviour in the form of non-disclosure of information in violation of a specific obligation, Czech law requires that important facts must be withheld. The present fraud offences in Czech law therefore do not cover all the forms of fraudulent behaviour mentioned in Article 1(1)(a) of the PFI Convention.

<sup>41</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 21.



### 5.1.2. *Fraud in respect of revenue (Article 1(1)(b) of the PFI Convention)*<sup>42</sup>

In the previous CSWP<sup>43</sup> the Commission expressed the view that the revenue resulting from application of a uniform rate to Member States' VAT assessment base is also protected by Article 1(1)(b) of the PFI Convention, although the explanatory report considers VAT to be excluded from the PFI Convention because it is not "an own resource collected directly for the account of the Communities".<sup>44</sup> Although some Member States criticised this view, the Commission maintains its position, since Article 1(1)(b) of the PFI Convention nowhere states that revenue must be collected directly on the account of the Communities.

#### State of play with implementation in the EU-15 – Developments since the first report

As stated earlier, Denmark and two jurisdictions of the UK – England & Wales and Northern Ireland – amended their criminal law provisions applicable to fraud as regards revenue too. The UK specifically clarified that it would consider that the offences in the Fraud Act 2006 also apply to fraudulent behaviour against public monies levied by foreign national and supranational authorities.

Sweden added to the findings of the previous CSWP<sup>45</sup> by clarifying that, besides the general fraud offences, specific laws provide for smuggling offences.

As regards the EU-15 Member States that introduced specific new provisions penalising fraudulent conduct against the Communities' financial interests (Denmark, Greece, Spain, Ireland and Luxembourg), the previous CSWP<sup>46</sup> noted that these apply to EC revenue, yet that none of the offences mentioned outlines specifically what is meant by "revenue" and that there is reason to assume that, whereas agricultural levies, sugar and customs duties are clearly covered, none of these provisions refers to VAT. VAT fraud, hence, appears not necessarily to be criminalised by these specific offences. Greece was the only Member State to comment on this remark, stating that its interpretation of "revenue" in the context of the Communities' financial interests would, in fact, exclude VAT.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Fraud in the form of use or presentation of false, incorrect or incomplete statements or documents

The specific offences in Cyprus, Slovakia and, of the States to which the PFI instruments are not yet applicable, in Hungary, Bulgaria and Romania aim at general protection of the financial interests of the EC. For these offences, the same question as for the EU-15 Member States arises: given the different positions on the scope of revenue to the EC budget, is there reason to assume that, whereas agricultural levies, sugar and customs duties are clearly covered, these provisions also include VAT? The Commission must consider, as a preliminary conclusion, that VAT fraud appears not necessarily to be criminalised by these specific offences. In Slovakia, however,

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<sup>42</sup> See also Annex Table 6.

<sup>43</sup> SEC(2004) 1299 final, 25.10.2004, page 22.

<sup>44</sup> Explanatory report on the PFI Convention: OJ C 191, 23.6.1997.

<sup>45</sup> SEC(2004) 1299 final, 25.10.2004, page 23.

<sup>46</sup> SEC(2004) 1299 final, 25.10.2004, page 23.

tax fraud in general is criminalised by a specific provision. In Hungary, the wording refers to “payments” and thus leaves open whether all forms of resources to the EC budget are covered.

In Latvia and, of those States which have not ratified the PFI Convention, in the Czech Republic, the general fraud offence also applies to revenue. In Czech law, the offence is committed only if factually false or severely distorted information is provided, with the result that simply incomplete statements are not sufficient. In Latvia fraud implies the additional subjective element of knowingly providing false information.

In Estonia, Lithuania and Slovenia different offences in the national Criminal Codes apply to tax and customs fraud. However, all three countries apply thresholds to these offences: in Estonia the customs offence of illicit trafficking is restricted to “large quantities” without further explanation. Likewise, Slovenia requires that tax fraud must lead to a “large” pecuniary benefit. By contrast, the Lithuanian Criminal Code lays down set monetary thresholds for application of the provisions on smuggling or customs fraud and tax evasion.

Of those States which have not ratified the PFI Convention, Malta and Poland have specific legislation providing for offences affecting public revenue. In Malta customs offences are set out in the Customs Ordinance and VAT offences in the Value Added Tax Code. Other revenue offences fall under the general fraud offence. In Poland offences relating to taxes, including VAT, and offences concerning customs are set out in a specific Fiscal Criminal Code.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Fraud in the form of failure to disclose information in violation of a specific obligation

In all these Member States, non-disclosure of information is treated similarly to, and in the same provisions as, use or presentation of false, incorrect or incomplete statements or documents, since tax and customs provisions usually provide for a specific obligation to declare events influencing the amount of duties levied or reimbursed. Furthermore, Lithuania provides for a specific offence of non-submission of declarations, accounts or other documents; however, this offence requires that the public authority has to remind the taxpayer, in writing, of the duty to submit the information.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Fraud in the form of misapplication of a legally obtained benefit

Whereas in Estonia, Cyprus, Latvia, Slovakia and, of those States which have not yet ratified the PFI instruments, Hungary and Malta, misapplication of a legally obtained benefit is one of the possible forms of fraudulent conduct criminalised with regard to EC revenue and is treated similarly to, and in the same provisions as, use or presentation of false, incorrect or incomplete statements or documents, Slovenia and, of those States which have not yet ratified the PFI instruments, Poland provide for specific offences in this regard. The Slovenian implementing measures again require that the fraudulent conduct must lead to a large pecuniary benefit.

The Lithuanian law contains no directly applicable offence of misapplication of a legally obtained benefit. However, such conduct may fall under other misapplication offences, which contain the element of wasting someone else's property and thus seem to fit in with the concept of misapplication of a legally obtained benefit.

In the Czech Republic misapplication of a legally obtained benefit is not penalised.

### Evaluation

After enlargement, compliance with the requirements of the PFI Convention regarding fraud affecting the Communities' revenue still appears more advanced than the corresponding measures on expenditure fraud. For instance, in addition to the eight EU-15 Member States (Germany, Spain, France, Italy, the Netherlands, Austria, Portugal and Finland) that were considered compliant in the previous CSWP,<sup>47</sup> based on additional information submitted by Sweden and by the UK for the jurisdictions of England & Wales and Northern Ireland, these two States may also be deemed to cover every possible form of fraudulent conduct with regard to the revenue of the Communities.

For those Member States, regardless of whether EU-15 (Denmark, Greece, Ireland and Luxembourg) or later (Cyprus and Slovakia), that have enacted specific offences to protect the Communities' financial interests, compliance may fall short in the form of differences in the offences concerning VAT fraud. In Ireland and Slovakia fraud against VAT revenue is covered by other provisions. The same is presumably also true for all the other above-mentioned Member States, since VAT resources also contribute to the national budgets and national legislators have an interest in punishing anyone who evades any form of tax. Consequently, in those Member States too there appears, *a priori*, to be no risk of leaving revenue to the EC budget exposed and lacking protection under criminal law. Nevertheless, it remains to be seen how this is applied with regard to other Member States' VAT resources.

The situation is more complex in four of the Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments (Estonia, Latvia, Lithuania and Slovenia). Estonia, however, provides for administrative punishments for low amounts of tax fraud. In Lithuania and Slovenia different revenue-related fraud offences apply to tax and customs offences. All of them set thresholds for applying the provisions. Although these thresholds are very low, Article 1(1)(b) of the PFI Convention makes no provision for any exemption from punishment, including administrative, for whatever minimum amount.

In Lithuania compliance may also fall short due to the additional requirements of the specific offence for non-submission of declarations.

In Latvia the same offences as for expenditure fraud apply. As a result, this evaluation must also conclude that the three forms of fraudulent conduct regarding EC revenue still require additional elements of intent not provided for in Article 1(1)(b).

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<sup>47</sup> SEC(2004) 1299 final, 25.10.2004, page 25.

Finally, in the EU-15, Belgium requires an additional element of intent, namely deceit, in the case of customs fraud.<sup>48</sup>

Again, no conclusive evaluation could be made on the whole of the UK, because of Scotland,<sup>49</sup> where it is not clear whether the general fraud offence may supplement the existing UK-wide offences regarding fraud and customs and under which conditions.

<b>Table 6: Implementation overview – fraud in respect of revenue</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK (England & Wales and Northern Ireland)	Belgium and the UK (Scotland)
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Estonia, Cyprus and Slovakia	Latvia, Lithuania and Slovenia

Of the Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments, the criminal law of Malta and Poland seems to include fraud offences ensuring protection of the Communities' revenue. The situation is the same for Bulgaria and Romania, which joined the EU on 1 January 2007.

For Hungary, which provides for a specific offence to protect the Communities' financial interests, compliance must be verified to check whether this offence or others cover all forms of levies and duties concerning the resources to the EC budget, including VAT fraud.

The Czech Republic provides some protection of the Communities' revenue, but it appears to be incomplete, in that the general fraud offence alone applies and requires provision of factually false or severely distorted information. As a result, the evaluation of implementation must be no different to that on the Communities' expenditure, which found that the present fraud offences in Czech law do not cover all the forms of fraudulent behaviour mentioned in Article 1(1) of the PFI Convention.

### 5.1.3. *Intentional preparation or supply of false, incorrect or incomplete statements or documents (Article 1(3) of the PFI Convention)*<sup>50</sup>

To ensure effective punishment of preparatory acts, the PFI Convention proposes two approaches. Member States may define a criminal offence of preparing or

<sup>48</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 26.

<sup>49</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 26.

<sup>50</sup> See also Annex Table 7.

supplying false, incorrect or incomplete statements or documents affecting the Communities' financial interests. According to the previous CSWP,<sup>51</sup> however, the majority of Member States have chosen a different approach, where such conduct is not in itself a criminal offence: prosecution is possible at least on the charge of participation in, instigation of or attempt to commit fraud, where the definitions of "participation", "instigation" and "attempt" in national criminal law apply.<sup>52</sup>

#### State of play with implementation in the EU-15 – Developments since the first report

In the wake of the fraud reform, the UK jurisdictions of England & Wales and Northern Ireland now penalise possession of articles for use in fraud and have specifically criminalised making or supplying articles for such use.

In their comments on the previous CSWP<sup>53</sup> France and Portugal reiterated that the offences of document forgery supplement the provisions in their national criminal-law system on participation, instigation and attempt, thus allowing them to fulfil the requirements of Article 1(3) of the PFI Convention. This argument would apply to Belgium, Denmark, Germany, Spain, Ireland, Italy, Luxembourg and Finland alike.

Along the same lines, Austria explained that its unitary approach to participation in criminal conduct also guarantees that intentional preparation or supply of false, incorrect or incomplete statements or documents are penalised.

#### State of play with implementation in the Member States which joined on or after 1 May 2004

All of the Member States which joined on 1 May 2004 and have ratified the PFI instruments (Cyprus, Estonia, Latvia, Lithuania, Slovakia and Slovenia) likewise rely on the provisions made in their national criminal-law system on participation, instigation and attempt. Slovakia stands out in that it applies a unitary approach to participation in criminal conduct. Furthermore, Slovakia also punishes negligent behaviour affecting the Communities' financial interests.

In the same way, those States which have not ratified the PFI instruments (the Czech Republic, Malta, Hungary and Poland) or those to which the PFI instruments are not yet applicable (Bulgaria and Romania) consider that the general principles of their existing national criminal law already provide sufficient protection in this regard. However, the Czech Republic provides, in addition, for offences in the form of misrepresentation of economic results and assets and Polish law for an offence when public charges are exposed to reduction, which add to the legal framework.

#### Evaluation

The implication in Article 1(3) of the PFI Convention that, if the preparation or supply of false, incorrect or incomplete statements or documents is already punished as a principal offence or as participation in, instigation of or attempt to commit fraud, as defined by Article 1(1), there is no need for the Member States to take any

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<sup>51</sup> SEC(2004) 1299 final, 25.10.2004, page 26.

<sup>52</sup> Explanatory report on the PFI Convention: OJ C 191, 23.6.1997.

<sup>53</sup> SEC(2004) 1299 final, 25.10.2004, page 27.

implementing measure makes it tricky to assess the Member States' implementation. In the absence of firm evidence of whether the general criminal-law systems make it possible to criminalise this conduct even if, ultimately, no fraud was committed or attempted, an empirical evaluation would be needed. For the time being, it can reasonably be assumed that in Member States where either preparation or supply of false, incorrect or incomplete statements or documents already constitutes an offence (of the EU-15: Greece, the Netherlands, Sweden and the UK jurisdictions of England & Wales and Northern Ireland) or a unitary approach to participation in criminal conduct is taken (of the EU-15: Denmark, Italy and Austria; of the States which joined the EU on 1 May 2004 and have ratified the PFI instruments: Slovakia), incompatibilities have been reduced to avoid gaps or loopholes in implementation.

With regard to the other Member States, since they all rely on their general national rules on participation, instigation and attempt linked to the principal offence, it appears justified to presume full implementation only where the principal offence is also correctly and fully implemented. Therefore, by virtue of complying via implementation of the principal offences, six Member States (of the EU-15: Germany, Spain, Ireland, Portugal and Finland; of the States which joined the EU on 1 May 2004 and have ratified the PFI instruments: Cyprus) appear to have implemented Article 1(3) of the PFI Convention by reference to their general rules with regard to the result to be achieved.

At this stage, for the other Member States (of the EU-15: Belgium, France, Luxembourg and the UK jurisdiction of Scotland; of the States which joined the EU on 1 May 2004 and have ratified the PFI instruments: Estonia, Latvia, Lithuania and Slovenia), any evaluation of their compliance with Article 1(3) of the PFI Convention should be subject to further review.

For those Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments (the Czech Republic, Hungary, Malta and Poland) or to which the PFI instruments are not yet applicable (Bulgaria and Romania), instead it appears worth waiting to see whether they will alter their criminal-law framework with regard to preparation or supply of false, incorrect or incomplete statements or documents once ratification is completed.

#### 5.1.4. *Penalties (Article 2 of the PFI Convention)*<sup>54</sup>

Article 2 of the PFI Convention is understood to require Member States to:

- provide at least for administrative, non-criminal penalties for conduct constituting fraud against the EC's financial interests, as defined in Article 1 of the PFI Convention, involving a total amount of less than €4 000 ("minor fraud");
- lay down effective, proportionate and dissuasive criminal penalties for fraudulent conduct involving a total amount of more than €4 000; and
- always impose proportionate and dissuasive criminal penalties at least providing for deprivation of liberty which can give rise to extradition for punishment of

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<sup>54</sup> See also Annex Table 7.

fraudulent conduct involving a minimum amount in excess of €50 000 (“serious fraud”).

#### State of play with implementation in the EU-15 – Developments since the first report

In Denmark and the UK jurisdictions of England & Wales and Northern Ireland the amendments to the legal framework applicable to fraud also affected the related penalties. In Denmark the reform of Article 289a reduced the punishment to deprivation of liberty for up to one and a half years or a fine, but increased it to deprivation of liberty for up to four years for severe fraud. Following the reform in the UK all the principal offences of fraudulent conduct are now punished in the same way, namely with up to ten years’ imprisonment.

In response to the previous CSWP,<sup>55</sup> France explained that, in cases of tax or customs fraud, a penalty of imprisonment of up to five years applies under the General Tax Code.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Penalties under national legislation

In Cyprus, Slovenia, Slovakia and, of those States which have not yet ratified the Convention, the Czech Republic and Hungary, the principal offences of “standard” fraudulent conduct are punished in the same way. The Czech Republic provides for a minimum penalty of up to two years’ imprisonment, Cyprus, Slovenia and Slovakia alike impose deprivation of liberty for up to three years and Hungary for up to five years. Cyprus allows alternative pecuniary punishment.

The penalty depends on the actual offence that was committed in the cases of Estonia, Latvia, Lithuania and, of those States which have not yet ratified the Convention, Malta and Poland. In Malta general fraudulent conduct is punished with deprivation of liberty for up to two years, yet the minimum punishment differs between expenditure and revenue fraud. In Lithuania subsidy fraud, general fraud and fiscal fraud are all punished in the same way, by deprivation of liberty for up to three years, yet smuggling and customs fraud is punished more severely, namely by deprivation of liberty for up to eight years. In Latvia, Estonia and Poland the possible penalties depend on the criminal conduct. Under Latvian law, subsidy fraud is punished with two years’ imprisonment, yet a term of three years’ imprisonment is set for the general fraud offence. The opposite is the case in Estonia, where subsidy fraud is liable to imprisonment of up to five years and general or fiscal fraud to up to three years. The most complex situation exists in Poland, where subsidy fraud is punished with imprisonment for between three months and five years and fiscal fraud offences are, likewise, liable to a maximum of five years’ imprisonment, yet no minimum threshold is set and a fine may also be imposed. The general fraud offence is punished with imprisonment for between six months and eight years.

In Bulgaria and Romania too the possible penalties depend on the criminal conduct. In Bulgaria simple wrong declaration to the detriment of the EC’s financial interests is punished with imprisonment for up to one year and a fine. In cases of

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<sup>55</sup> SEC(2004) 1299 final, 25.10.2004, page 30.

misappropriation, the punishment rises to five years' imprisonment, while in cases of documentary fraud the punishment ranges from three to ten years' imprisonment. The system is simpler in Romania, where wrong declaration to the detriment of the EC's financial interests is punished with imprisonment ranging from three to fifteen years and misappropriation with imprisonment for between six months and five years.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Thresholds for penalties under national legislation

An approach where the concept of serious and/or minor fraud exists alongside "normal" fraud in terms of the amount involved can be seen in Estonia, Cyprus and Slovakia and, of those States which have not yet acceded to the PFI instruments, in the Czech Republic and Malta.

Estonia considers only the concept of "minor" fraud with a threshold of €64, but provides for punishment only in the form of a fine.

The Czech Republic, Cyprus and Malta draw a distinction between minor and serious fraud, based on thresholds. In the Czech Republic fraud causing damage lower than €175 and in Cyprus fraud affecting financial interests lower than €1 196.20 is liable to a fine. In Malta minor fraud concerns amounts of less than €23.29, but is still punished with imprisonment for up to three months.

Concerning serious fraud, the Czech criminal law sets various thresholds, under which the minimum and maximum punishment range from five to twelve years' imprisonment if the damage caused exceeds €175 000. In Malta the punishment ranges from a minimum of thirteen months to a maximum of seven years' imprisonment if the damage caused adds up to at least €2 329.97. In Cyprus the punishment is four years' imprisonment for damage of at least €68 344.10.

Slovakia provides only for "serious" fraud, for which more severe punishment is envisaged subject to various thresholds; the most severe punishment is from seven to twelve years' imprisonment if the damage caused exceeds €100 000.

Romania provides for "serious" fraud with more severe punishment, yet no specific threshold seems to be set in its legislation.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Extradition under national legislation

Member States must provide for penalties involving deprivation of liberty which can give rise to extradition to punish fraudulent conduct involving a minimum amount which may not be set at a sum exceeding €50 000.

Verifying whether the punishment imposed gives rise to extradition requires a reference to Council Framework Decision 2002/584/JHA on the European arrest



warrant and surrender procedures between Member States.<sup>56</sup> That Framework Decision applies, *inter alia*, to fraud affecting the Communities' financial interests.

Knowing that in every Member State a maximum of at least one year's imprisonment is imposed for fraud offences, application of the European arrest warrant is guaranteed. Consequently, this evaluation reaches the same conclusion as the revised version of the Commission report on that Framework Decision.<sup>57</sup> Although that report, issued in 2006, does not refer to Bulgaria and Romania, which joined on 1 January 2007, there appears to be no need specifically to address the situation in these two countries, since both provide for sufficient levels of punishment to ensure application of the European arrest warrant.

### Evaluation

Although implementation of Article 2 of the PFI Convention regarding criminal penalties varies widely across the EU, the ranges of punishment can be considered somewhat similar in that they usually provide for a maximum punishment of imprisonment for between one and a half and five years. Where applicable, for "serious" fraud the range rises to a maximum of imprisonment for between four and twelve years.

The foregoing analysis of implementation also shows that, as regards effectiveness, the overall picture seems satisfactory, particularly since, in principle, all the Member States impose imprisonment as the standard punishment for fraudulent conduct. Given that the requirement of giving rise to extradition is fulfilled, the penalties imposed seem to be effective.

The overall picture would be even more positive if, of the EU-15, Belgium were to introduce imprisonment for some forms of customs fraud<sup>58</sup> and, of the States which joined the EU on 1 May 2004 and have acceded to the PFI instruments, Latvia, Lithuania and Slovenia were not to require a minimum amount of damage before imposing any punishment at all.<sup>59</sup>

Furthermore, in some Member States (of the EU-15: Belgium, France, Italy and the UK jurisdiction of Scotland;<sup>60</sup> of the States which joined the EU on 1 May 2004 and have ratified the PFI instruments: Estonia, Latvia, Lithuania and Slovenia; of those which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments: Malta and Poland; and of those which joined the EU on 1 January 2007: Bulgaria and Romania) some forms of fraudulent conduct are punished more heavily than others, depending on the circumstances in which the offence was committed or the actual interests affected. In Belgium and Italy,<sup>61</sup> for instance, the differences concern different forms of expenditure and revenue fraud. In this situation, implementation leaves much to be desired in terms of the dissuasive nature of the penalties.<sup>62</sup>

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<sup>56</sup> OJ L 190, 18.7.2002, p. 1.

<sup>57</sup> COM(2006) 8 final of 24.1.2006.

<sup>58</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 30.

<sup>59</sup> See Section 5.1.3.

<sup>60</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, pages 32 and 33.

<sup>61</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 33.

<sup>62</sup> Italian Corte di Cassazione, Judgment 26351, 10.7.2002.

It should be added that the probability of detecting criminal conduct, the type of prosecution (mandatory or discretionary) and court sentencing practice in each Member State have a further impact on the perception of penalties, especially on whether they are really dissuasive and effective.

5.1.5. *Assimilation of Community officials and members of the institutions as regards fraud (Article 4(1), (2) and (3) of the 1st Protocol)*<sup>63</sup>

Although assimilation of Community officials and members of the institutions as regards fraud is provided for in the 1st Protocol, it appears useful to analyse that provision in the light of the Member States' measures to criminalise fraudulent conduct. Essentially, Article 4(1) of the 1st Protocol requires Member States to extend application of their fraud offences to similar conduct on the part of Community officials or members of the institutions, thereby providing for an extension based not on the conduct but on the category of offender.<sup>64</sup>

The previous CSWP<sup>65</sup> presumed compliance by Germany, due to its legislative action, and by the other 14 EU-15 Member States, since they regard fraud as applicable to any person. However, recent practical experience with cases in some Member States has shown that the requirements of the assimilation principle go further than just ensuring that Community officials or members of the institutions may also be liable for fraud offences. In addition, the punishment applicable to national officials for all offences involving fraudulent conduct, such as embezzlement or misuse of funds, must also be extended to Community officials or members of the institutions. For instance, a Community official who has committed embezzlement should be punished under the same conditions as a national official committing the same crime, not simply as any normal person.<sup>66</sup> Assimilation therefore covers all public offences concerning the handling of the Communities' financial interests.

Considering compliance from this angle, a positive, regulated extension to all the relevant forms of economic crime committed by Community officials can be found in the criminal laws of the following Member States: of the EU-15: Germany and Ireland; of the States which joined the EU on 1 May 2004 and have ratified the PFI instruments: Estonia, Latvia, Slovenia and Slovakia; and of those which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments: Malta.

All offences by national officials also seem to have been extended to Community officials in Finland and Sweden out of the EU-15 and in Lithuania of the States which joined the EU on 1 May 2004 and have ratified the PFI instruments.

Assimilation also seems to be ensured in three EU-15 Member States (Spain, the Netherlands and the UK), where a wide definition of "official" allows an

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<sup>63</sup> See also Annex Table 7.

<sup>64</sup> Explanatory report on the 1st Protocol: OJ C 11, 15.1.1998, p. 9.

<sup>65</sup> SEC(2004) 1299 final, 25.10.2004, page 33.

<sup>66</sup> See, for instance, as an example of refusing to apply a specific provision on embezzlement by officials to Community officials and of applying the general embezzlement provision instead, the Belgian Cour de cassation (2e ch., F.), Judgment P.05.0120.F/1, 16.3.2005, Rechtskundige Weekblad 2007, 17.11.2007, p. 481.

interpretation that the rules on crimes committed by national officials likewise apply to Community officials.

By contrast, it is more doubtful whether the assimilation criteria may be fulfilled with a wider interpretation for the following Member States: of the EU-15: Belgium, Denmark, Greece, France, Italy, Luxembourg, Austria and Portugal; of the States which joined the EU on 1 May 2004 and have ratified the PFI instruments: Cyprus; of those which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments: the Czech Republic, Hungary and Poland; and of those which joined the EU on 1 January 2007: Bulgaria and Romania. For these Member States, more information may be needed to confirm full assimilation, as required by Article 4(1) of the 1st Protocol.

## 5.2. Corruption

Since the previous CSWP<sup>67</sup> political momentum at national, EU and international level to continue the fight against corruption, including that affecting the Communities' financial interests, has remained high. The EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States, which requires criminalisation of the same corrupt conduct as the 1st Protocol, but without being confined to acts or omissions which damage or are likely to damage the European Communities' financial interests, entered into force on 28 September 2005 following notification of ratification by Luxembourg. Furthermore, the Commission tabled a proposal for a Council Decision on the signature and subsequently conclusion, on behalf of the European Community, of the United Nations Convention against Corruption.<sup>68</sup> It also published a report based on Article 9 of Framework Decision 2003/568/JHA on combating corruption in the private sector<sup>69</sup> covering the Member States other than Bulgaria and Romania. As regards Bulgaria and Romania specifically, the Commission adopted a Decision for each of them establishing a mechanism for cooperation and verification of progress in these two Member States to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime.<sup>70</sup>

### 5.2.1. *Passive corruption (Article 2 of the 1st Protocol)*<sup>71</sup>

The main difference between active and passive corruption is the person committing the offence. In passive corruption it is the official who is acting. The conduct to be punished under Article 2 of the 1st Protocol consists of requesting, accepting and receiving an advantage of any kind, directly or through an intermediary.

#### State of play with implementation in the EU-15 – Developments since the first report

Following criticism by the OECD, Belgium revised its corruption provisions in 2007 in order to ensure better compliance with the OECD Convention on combating

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<sup>67</sup> SEC(2004) 1299 final, 25.10.2004, page 34.

<sup>68</sup> COM(2006) 82 final, 2.3.2006.

<sup>69</sup> COM(2007) 328 final and SEC(2007) 808 final, 18.6.2007.

<sup>70</sup> C(2006) 6569 and C(2006) 6570, both published in OJ L 354, 14.12.2006, pages 56 and 58.

<sup>71</sup> See also Annex Table 8.

bribery of foreign public officials in international business transactions.<sup>72</sup> The amendments concern better interpretation of passive bribery committed via an intermediary.

Linked to the EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States, the French amendments to ensure that the offence of passive corruption covers Member State or Community officials entered into force on 28 September 2005. In 2007 France made further amendments to its provisions on corruption offences, which led to reorganisation of the rules applicable in the Criminal Code. The amendment considers European Union institutions, bodies and agencies to be a public international organisation, as provided for in the different corruption offences, so that in substance there is no change with regard to implementation of the 1st Protocol.

Sweden and the UK commented on the findings of the previous CSWP<sup>73</sup> on their implementation. Sweden confirmed the Commission's assumption that application of corruption offences to Community or other Member States' officials was ensured by the wide definition of "official" in the Criminal Code. The UK clarified that it would prosecute bribery of foreign officials and officials of international organisations, including the Communities, under common law and the offence of corrupt transactions with agents under Section 1 of the Prevention of Corruption Act 1906. In this context, the Crown Prosecution Service feels confident that it can prosecute officials of the European Communities or officials of the EU Member States on corruption charges in the UK.<sup>74</sup>

Germany, Austria and the UK hinted at the ongoing reform of their rules on corruption offences: Germany envisages integrating in its Criminal Code an extension of the corruption offences to other Member States' or Community officials. In the meantime, Austria has enacted as of 1 January 2008 a reform in which corruption offences only distinguish whether the bribe is related to the official's duties or not, but no longer differentiate between bribery for illicit and licit deeds. The UK submitted a proposal for a new Corruption Bill 2006-07, which explicitly punishes bribery of foreign public officials. The proposed definition of foreign public officials covers both officials of foreign states and officials of international organisations.

In January 2007 the Spanish government submitted an amendment to the Criminal Code explicitly extending corruption offences to cover foreign and Community officials.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

Cyprus, insofar as it has transposed the PFI instruments in a single legal text, has introduced a new specific offence modelled on Article 2 of the 1st Protocol in that

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<sup>72</sup> See Article 1 of the OECD Convention on combating bribery of foreign public officials in international business transactions.

<sup>73</sup> SEC(2004) 1299 final, 25.10.2004, page 37.

<sup>74</sup> See also the Statement by the Attorney-General, Hansard, 4 December 2001, col. 818-819.

the newly introduced offence is limited to an act or omission damaging or likely to damage the European Communities' financial interests.

Slovakia provides for an elaborate system of corruption offences, which are intended to ensure that a general offence applies in a subsidiary way in all cases where the specific conditions of the other forms of corruption offences are not fulfilled. That subsidiary offence covers foreign public officials, which means officials or servants of foreign countries and of public international organisations.

The other Member States which joined on 1 May 2004 and have ratified the PFI instruments (Estonia, Latvia, Lithuania and Slovenia) define an offence of passive bribery in their Criminal Codes and have extended its scope to officials or servants of foreign countries and of public international organisations.

The same technique is already used by the Member States which have not yet ratified the PFI instruments (the Czech Republic, Hungary, Malta and Poland) or which joined the EU on 1 January 2007 (Bulgaria and Romania).

### Evaluation

Bearing in mind that substantive criminal provisions must always provide for the highest standard of compliance, the Commission confirms its conclusion in the previous CSWP<sup>75</sup> that seven of the EU-15 Member States (Germany, Greece, France, Ireland, Italy, Luxembourg and Austria) can be considered to have criminalised at least the conduct to which Article 2 of the 1st Protocol applies and are fully compliant as regards the scope of their national provisions. Also Cyprus, of the States which joined the EU on 1 May 2004 and have ratified the PFI instruments, falls into this category.

For Germany, compliance is, however, only formal. The German criminal law complies only insofar as the 1st Protocol and the EU Convention are read as penalising conduct that includes performance of or abstention from any act within the powers of the holder of the office or function if the act concerned is carried out in breach of the official's duties.<sup>76</sup> As in the previous CSWP,<sup>77</sup> the Commission must therefore reconfirm that Germany is still failing to live up to the requirements of the assimilation principle, as regards bribery for licit deeds, since the conduct is punished only if committed by a German national official respectively. Whereas the recently adopted reform of the corruption law in Austria ensures full assimilation of Community officials or officials of other EU Member States with the country's own national officials as of 1 January 2008, the pending German reform proposal does not. Given that the main purpose of the corruption offences defined by the 1st Protocol and the above-mentioned EU Convention is to ensure that all aspects of corruption are also penalised in one Member State if committed by Community officials or officials of another Member State, the mere formal compliance by

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<sup>75</sup> SEC(2004) 1299 final, 25.10.2004, page 38.

<sup>76</sup> Explanatory report on the 1st Protocol: OJ C 11, 15.1.1998, p. 8; and Explanatory report on the EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States: OJ C 391, 15.12.1998, p. 5.

<sup>77</sup> SEC(2004) 1299 final, 25.10.2004, page 39.

Germany appears seriously to put at risk attainment of an equivalent level of criminal-law protection against corruption affecting the European Union.

The previous CSWP<sup>78</sup> stated that, concerning the five EU-15 Member States (Belgium, Denmark, the Netherlands, Portugal and Finland) that do not explicitly refer to Community officials but to “EU officials” (Portugal) or to officials of other international organisations (Belgium, Denmark, the Netherlands and Finland), despite lacking evidence to this effect, it seems very reasonable to assume that the concept used in the national laws is likely to be interpreted by the courts so as to match the definitions in Article 1 of the 1st Protocol. With this in mind, the Commission would deem Estonia, Latvia, Lithuania and Slovenia, out of the Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments, as also compliant, since their criminal laws explicitly refer to officials of other countries or international organisations.

At first glance, also amongst the States which joined the EU on 1 May 2004 and have ratified the PFI instruments, the Slovakian system of corruption offences seems sufficient for transposition of the 1st Protocol, although it appears useful to keep an eye on actual application of this system, since there may be doubts whether these different provisions are compatible with the requirement of legal certainty or assimilation, insofar as the corrupt conduct is criminalised by superseding provisions, depending on different circumstances for the person acting and the facts of the cases.

Two (Sweden and UK) of the three EU-15 Member States (Spain, Sweden and the UK) where the Commission deemed it largely up to the courts to consider whether Community officials are within the scope of the relevant bribery offences<sup>79</sup> made statements confirming their confidence that they could prosecute officials of the European Communities or officials of the EU Member States on their own corruption charges. For the moment, the risk that the courts will deny that the offence of passive corruption can be committed by Community officials therefore appears rather low, although developments in case law in this regard will continue to be monitored. In Spain the risk is further reduced by the pending proposal for an amendment to the Spanish Criminal Code explicitly extending corruption offences to foreign and Community officials.

All the Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments (the Czech Republic, Hungary, Malta and Poland) or which joined the EU on 1 January 2007 (Bulgaria and Romania) apply rules on corruption offences that do not refer to Community officials or officials of other Member States but to foreign officials or officials of international organisations. Again, as for other Member States, it must be assumed reasonable that the concept used in the national laws is likely to be interpreted by the courts so as to match the definitions in Article 1 of the 1st Protocol.

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<sup>78</sup> SEC(2004) 1299 final, 25.10.2004, page 38.

<sup>79</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 39.

### 5.2.2. *Active corruption (Article 3 of the 1st Protocol)*<sup>80</sup>

Active corruption is the corollary of the offence defined in Article 2 of the 1st Protocol, seen from the corruptor's side.<sup>81</sup> As regards the specific way of interpreting the offence, the foregoing considerations on passive corruption also apply to active corruption.

Nearly all the Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments (Estonia, Latvia, Lithuania, Slovenia and Slovakia) separate active from passive corruption, yet use a common reference as regards the term "official". Only Cyprus penalises active and passive bribery as the same offence.

In five of the Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments (the Czech Republic, Hungary and Malta) or which joined the EU on 1 January 2007 (Bulgaria and Romania), the situation is the same. It is interesting to note that, whereas the Hungarian wording of the offence does not seem to cover active corruption via an intermediary, the interpretation by the judiciary does.<sup>82</sup> Unlike the others, Poland redefines the term "official" twice, but in the same way, for active and passive corruption alike.

Due to the parallelism of each Member State's measures in this regard, the evaluation of the Member States' implementing measures and how they relate to possible attainment of an equivalent level of criminal-law protection is identical to the foregoing evaluation on passive corruption.

### 5.2.3. *Assimilation of members of the institutions as regards corruption (Article 4(2) and (3) of the 1st Protocol)*<sup>83</sup>

The purpose of Article 4 of the 1st Protocol is that members of national (parliamentary and government) bodies and members of the European institutions should be treated in the same way as regards the offences covered by the PFI instruments. On the one hand, criminal conduct by these persons must be criminalised, but on the other the specific situation of persons exercising a constitutional or political function should not be disregarded. Member States are required to ensure that, for punishable fraud and corruption offences, members of the Commission are assimilated to government ministers, members of the European Parliament to members of national parliaments, members of the ECJ to members of the highest national courts and members of the European Court of Auditors to their national counterparts.

#### State of play with implementation in the EU-15 – Developments since the first report

In response to the statement in the previous CSWP<sup>84</sup> that neither statutory instruments nor common law in the UK seem to provide for the assimilation required by Article 4 of the 1st Protocol, the UK declared that no-one, whatever their

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<sup>80</sup> See also Annex Table 8.

<sup>81</sup> Explanatory report on the 1st Protocol: OJ C 11, 15.1.1998, p. 8.

<sup>82</sup> Hungarian Supreme Court, Judgment Legf. Bir. Bfv. IV. 1544/1997; published under No BH1998.320.

<sup>83</sup> See also Annex Table 8.

<sup>84</sup> SEC(2004) 1299 final, 25.10.2004, page 41.

function, except for the Head of State, is immune from prosecution and that assimilation is therefore fully guaranteed.

For Germany, the envisaged reform also intends to integrate the liability of members of the institutions into the Criminal Code. At present their liability is provided for in a specific separate law.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

The Czech Republic, Estonia, Cyprus and Lithuania fail to provide explicitly for criminal liability of members of the Commission, European Parliament, ECJ and Court of Auditors. Instead, they seem to assume that national courts' practice will consider the term "official" as covering all appointed or elected members, including members of the European institutions.

The Criminal Codes of Bulgaria, Latvia, Hungary, Malta, Poland, Romania, Slovenia and Slovakia take a similar approach, but provide for at least extension to members of international parliamentary assemblies (Poland and Romania) or to judges of international organisations (Slovenia) or to both (Bulgaria, Latvia, Hungary, Malta and Slovakia), so that members of the European Parliament or the ECJ are already covered by the wording of the applicable offences. The Slovakian Criminal Code also makes explicit reference to MEPs, provided they are Slovak nationals.

As regards the derogations possible under Article 4(3) and (4) of the 1st Protocol, none of the Member States which joined the EU on 1 May 2004 appears to provide for specific rules regarding criminal prosecution of members of their national governments, parliaments or high courts also to apply to similar functions exercised by members of the Commission, the European Parliament and the ECJ.

#### Evaluation

As in the previous CSWP,<sup>85</sup> all EU-15 Member States seem to ensure compliance with Article 4 of the 1st Protocol. For some of them, however, (Belgium, Denmark, Spain, the Netherlands, Portugal and the UK) full application will continue to be monitored, based on their possible court practice to be established. Again, the Spanish government proposal submitted in January 2007 explicitly lists members of the institutions as liable under the corruption offences.

Except for Cyprus, the approach of monitoring future case law on application of the corruption offences in the light of the assimilation requirements must also be taken for the Member States which joined the EU on 1 May 2004 or on 1 January 2007, regardless of whether the PFI instruments already apply to them or not.

#### 5.2.4. *Penalties (Article 5 of the 1st Protocol)*<sup>86</sup>

Article 5 of the 1st Protocol requires the Member States to ensure that active and passive corruption, as defined in Articles 2 and 3, are always punishable by criminal

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<sup>85</sup> SEC(2004) 1299 final, 25.10.2004, page 41.

<sup>86</sup> See also Annex Table 8.



penalties. It requires the Member States to provide for penalties involving deprivation of liberty, which can give rise to extradition in the most serious cases.

#### State of play with implementation in the EU-15 – Developments since the first report

None of the EU-15 has indicated any new development as concerns penalties for corruption offences since the first report.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

All the Member States which joined the EU on or after 1 May 2004 provide for criminal penalties for corruption. Punishment for the standard offence provided for by Articles 2 and 3 of the 1st Protocol varies between Member States, depending on whether the penalties for active and passive corruption are the same or not.

Estonia and Cyprus, of the States which have ratified the PFI instruments, and Bulgaria, the Czech Republic, Malta and Poland punish both active and passive corruption in the same way. The highest maximum punishment is provided for in Poland, where imprisonment for corruption ranges from one to ten years, followed by Cyprus, where imprisonment of up to seven years is possible, and Bulgaria, where the punishment can be up to six years' imprisonment plus a fine. Consistently, the Czech Republic, Estonia and Malta provide for a maximum punishment of five years' deprivation of liberty, yet the minimum punishment is nine months in Malta, one year in the Czech Republic and in Estonia. In Cyprus imprisonment may also be combined with a financial penalty.

In Latvia, Lithuania Slovakia and Slovenia and in Hungary and Romania, of the States to which the PFI instruments are not yet applicable, passive and active corruption are penalised differently, with active corruption punished less severely in all of them. Romania punishes passive corruption with imprisonment for between three and twelve years. In Latvia, Hungary and Slovenia imprisonment for passive corruption can be for up to a maximum of eight years, yet in Latvia there is no minimum punishment, in Slovenia it is one year and in Hungary two years. Lithuanian and Slovak law punish passive corruption with imprisonment for up to five years; Slovakia provides for a minimum imprisonment of two years. In Latvia the punishment for active corruption is up to six years' imprisonment, in Hungary and in Slovenia from one to five years and in Romania from six months to five years. Lithuanian law punishes active corruption with up to four years, Slovak law up to three years. Depending on the different forms of corrupt behaviour provided for in the Slovak system, the punishment may rise to imprisonment ranging from five to twelve years for more serious forms of passive corruption.

#### Evaluation

The previous CSWP<sup>87</sup> considered that all EU-15 Member States clearly impose criminal penalties for the corruption offences punished in their legal system. This compliance with Article 5 of the 1st Protocol is also true for all the Member States which joined the EU on 1 May 2004. There is no need to verify whether the

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<sup>87</sup> SEC(2004) 1299 final, 25.10.2004, page 43.

punishment for corruption is long enough to allow extradition. Firstly, because all Member States always impose a penalty including deprivation of liberty and, secondly, because corruption is one of the offences listed in Article 2(2) of Framework Decision 2002/584/JHA on the European arrest warrant.

The more favourable starting conditions – namely that corruption was perceived by the existing legal traditions as conduct that needed to be punished – have led to an overall picture that seems satisfactory in terms of effectiveness and dissuasiveness, particularly since, in principle, all the Member States impose imprisonment as the standard punishment for active and passive corruption.

An overview of implementation with regard to the whole spectrum of corruption for the EU-15 and for the Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments gives a result based essentially on the results of the evaluation on passive corruption, which is valid for all other aspects addressed in this regard too:

<b>Table 7: Implementation overview – corruption</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Belgium, Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK	Germany
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Estonia, Cyprus, Latvia, Lithuania and Slovenia	Slovakia

### **5.3. Money laundering (Article 2 of the 2nd Protocol)<sup>88</sup>**

Article 2 of the 2nd Protocol requires Member States to ensure that the criminal offence of money laundering in their national legislation also includes the offences of fraud, at least in serious cases, and of active and passive corruption as predicate offences. The same obligation is found in Article 3(5) of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>89</sup> which repealed Directive 91/308/EEC, as amended by Directive 2001/97/EC. The Member States have to bring into force the laws, regulations and administrative provisions necessary to comply with the new Directive by 15 December 2007 at the latest. In the criminal law area, the Directive is supplemented by Joint Action 98/699/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime<sup>90</sup> and by Council Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and

<sup>88</sup> See also Annex Table 9 and note that, as the 2nd Protocol providing for this offence has not yet entered into force, this section is included only for the sake of completeness.

<sup>89</sup> OJ L 309, 25.11.2005, p. 15.

<sup>90</sup> OJ L 333, 9.12.1998, p. 1.

the proceeds of crime,<sup>91</sup> on which the Commission published a second report in 2006.<sup>92</sup>

#### State of play with implementation in the EU-15 – Developments since the first report

Greece and Luxembourg have amended their money-laundering provisions since the previous CSWP.<sup>93</sup> In 2005 Greece amended the money-laundering offence and extended it explicitly to the offences listed in the specific law on the protection of the Communities' financial interests and to the corruption offences. Amongst others, with a view to preparing for ratification of the 2nd Protocol, Luxembourg did the same in 2004 with regard to the specific offence of fraud affecting the Communities' financial interests and the corruption offences, both to be found in its Criminal Code. In this context, it should be added that Austria considered it unnecessary to amend its money-laundering offence in view of its ratification of the 2nd Protocol.

Germany and Sweden commented on the findings of the previous CSWP.<sup>94</sup> Sweden explained that tax and customs fraud are predicate offences within the definition of money laundering. Germany stressed the difference between “serious fraud”, as defined in Article 2 of the PFI Convention, based on the specific threshold of €50 000 and of “fraud, at least in serious cases” as referred to in Article 1(e) of the 2nd Protocol. In Germany's view, the latter is subject to the national assessment of seriousness and not tied to any threshold. That is why Germany should be deemed to have provided for full implementation, even if the predicate offences of its money-laundering offence do not include tax fraud, unless conducted on a repetitive basis or by a gang, since this is one of the “serious cases” which Germany would consider to justify a predicate offence to money laundering. Following this line of argument, all other Member States would also benefit from the fact that predicate offences may be limited to circumstances or thresholds (for instance, Spain and Austria). At the moment, however, Germany would nonetheless not comply with the requirements of the 2nd Protocol. The case law of the German Bundesgerichtshof<sup>95</sup> considers that the circumstances used in the related predicate offence in Section 370a of the German Fiscal Code for serious tax fraud are not specific enough to satisfy constitutional criminal law guarantees, which leads the court to refuse to apply the offence at all. Consequently, *de facto* the whole aspect of revenue fraud is presently not applicable as a predicate offence to money laundering in Germany. Cutting out a whole aspect of fraud to the Community's revenue, as is presently the case in Germany, seems to go beyond the liberty given to Member States with the wording “fraud, at least in serious cases.” In fact, Germany plans to revise the related offence for “serious tax fraud” in the near future, which should then lead to compliance, at least according to the German interpretation of the requirements of the 2nd Protocol.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

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<sup>91</sup> OJ L 182, 5.7.2001, p. 1.

<sup>92</sup> COM(2006) 72 final, 21.2.2006.

<sup>93</sup> SEC(2004) 1299 final, 25.10.2004, page 47.

<sup>94</sup> SEC(2004) 1299 final, 25.10.2004, page 46.

<sup>95</sup> German Bundesgerichtshof, Judgment 5 StR 85/04, 22.7.2004.

The offence of money laundering, as provided for by the national provisions of Estonia, Latvia, Lithuania, Slovenia and Slovakia and also of Bulgaria, the Czech Republic, Hungary, Malta, Poland and Romania, out of the States where the PFI instruments are not yet applicable, considers as predicate offences all possible crimes under the relevant national legislation. In these countries fraud and corruption offences are therefore likewise covered. In Poland the reference to all possible offences as predicate offences seems to include tax fraud, criminalised outside the Criminal Code in the Polish Fiscal Criminal Code.

In Cyprus the offence of money laundering is linked to a set list of predicate offences, which the specific legislation on offences concerning the EC's financial interests extended to cover exactly these offences.

### Evaluation

To evaluate compliance with Article 2 of the 2nd Protocol and the impact, it must be borne in mind that, of the EU-15, Italy still has not ratified the 2nd Protocol, but will still have to comply with Directive 2005/60/EC. It is also clear that, due to various efforts by the EC, attainment of an adequate level of protection of the Communities' financial interests is well advanced in the field of money laundering.

Based on the additional information, 14 of the EU-15 Member States (Belgium, Denmark, Spain, Greece, France, Ireland, Italy, Luxembourg, the Netherlands, Finland, Austria, Portugal, Sweden and the UK) seem to comply with their obligations under Article 2 of the 2nd Protocol. The same can be said of all of the Member States which joined the EU on or after 1 May 2004, regardless of whether the PFI instruments are applicable to them (Estonia, Cyprus, Latvia, Lithuania, Slovenia and Slovakia) or not (Bulgaria, the Czech Republic, Hungary, Malta, Poland and Romania).

Despite its interpretation, Germany still seems to fall short of compliance as no form of revenue fraud, even if committed under circumstances defined nationally as serious, may be a predicate offence due to the case law in which courts refused to apply the predicate offence concerned. Germany is working on a legislative solution, and the situation will need to be looked at again after the ongoing reform.

<b>Table 8: Implementation overview – money laundering</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Belgium, Denmark, Greece, Spain, France, Ireland, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK	Germany
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Estonia, Cyprus, Latvia, Lithuania, Slovenia and Slovakia	-

Since Italy has not yet ratified the 2nd Protocol, it is not listed in the table for the EU-15.

## **6. PROVISIONS RELATING TO MORE GENERAL CONCEPTS OF SUBSTANTIVE CRIMINAL LAW**

### **6.1. Criminal liability of heads of businesses (Article 3 of the PFI Convention, Article 7(1) of the 1st Protocol and Article 12(1) of the 2nd Protocol)<sup>96</sup>**

The concept of criminal liability of heads of businesses, introduced by Article 3 of the PFI Convention and then extended to the offences of corruption and money laundering under the 1st and 2nd Protocols, is one of the innovative aspects of the PFI instruments. Article 3 of the PFI Convention establishes the principle that heads of businesses exercising legal or effective power within a business should not automatically be exempted from all criminal liability where an offence criminalised under the PFI instruments has been committed by a person under their authority acting on behalf of their business. The same provision requires each Member State to take the measures it deems necessary to allow heads of businesses or other persons with power to take decisions or exercise control within a business to be held criminally liable where the principles defined by its national law so permit. According to the explanatory report, Member States have retained considerable freedom to establish the basis for criminal liability of decision-makers and heads of businesses, notably based on their personal action as authors of, associates in, instigators of or participants in the main offence up to introducing specific offences.<sup>97</sup>

#### State of play with implementation in the EU-15 – Developments since the first report

The reform of the fraud law in the UK jurisdictions of England & Wales and Northern Ireland introduced a specific section providing that, for the fraud offences contained in the Fraud Act 2006, heads of businesses or other persons with power to take decisions or exercise control within a business are to be held criminally liable.

In response to the criticism in the previous CSWP<sup>98</sup> on implementation of that principle, Greece, France, Ireland, Italy and Austria submitted comments. As regards the finding in the previous CSWP<sup>99</sup> that Greece has imposed specific criminal liability on heads of businesses, Greece explained that the offence also criminalises failure to prevent criminal behaviour within an enterprise. In response to the proposal in the previous CSWP<sup>100</sup> to look at case law in order to be able to assess the criminal liability of heads of businesses in some EU-15 Member States, France reiterated that the French courts acknowledge the principle of criminal liability of heads of businesses for any act or omission in breach of legislative or statutory rules. Italy and Austria explicitly emphasised that their system of joint responsibility also applies to the criminal liability of heads of businesses. In the same way, Sweden hinted that

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<sup>96</sup> See also Annex Table 9.

<sup>97</sup> Explanatory report on the PFI Convention: OJ C 191, 23.6.1997, p. 1.

<sup>98</sup> SEC(2004) 1299 final, 25.10.2004, page 50.

<sup>99</sup> SEC(2004) 1299 final, 25.10.2004, page 50.

<sup>100</sup> SEC(2004) 1299 final, 25.10.2004, page 51.

complicity may also be construed through negligence and therefore be extended to heads of businesses. No Member State reported specific new case law on the criminal liability of heads of businesses.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

In Cyprus the law implementing the PFI instruments contains a specific section providing that heads of businesses may be held criminally liable for the offences specified in that law in cases where they knew, or should have known, about the offence to be committed and failed to take all necessary action to forestall it.

Slovakia and, out of the States where the PFI instruments are not yet applicable, Bulgaria, Hungary and Romania also have a specific provision on the criminal liability of heads of businesses for making possible the particular fraud offences affecting the Communities' financial interests. However, this criminal liability of heads of businesses does not cover corruption or money laundering offences, for which heads of businesses may be criminally prosecuted only in accordance with the national rules on authors of, associates in, instigators of or participants in offences.

The Criminal Codes of Estonia, Latvia, Lithuania and Poland, which has not yet ratified the PFI instruments, recognise criminal liability of heads of businesses as a general concept of liability in their legal systems. Estonia, Latvia and Lithuania envisage a system whereby a negligent head of business may become liable for failure to perform organisational tasks to avoid offences. In Polish law penalties may be imposed on any natural person who is in control of unlawful behaviour.

The Czech Republic, Malta, Slovenia and, as regards offences other than fraud to the detriment of the Communities' financial interests, Hungary and Slovakia consider it sufficient that heads of businesses may be criminally prosecuted in accordance with their national rules on authors of, associates in, instigators of or participants in offences. The actual criminal liability of heads of businesses may vary, depending on the specific case.

#### Evaluation

The previous CSWP<sup>101</sup> found it difficult to assess correct implementation of Article 3 of the PFI Convention due to the discretion left to Member States with regard to this concept, touching essentially on a general aspect of criminal-law systems.

In its previous CSWP,<sup>102</sup> out of the EU-15 the Commission considered that the Netherlands, Greece, Spain, Portugal, Finland and the UK tended, in principle, to impose specific criminal liability on heads of businesses. Out of the Member States which joined on 1 May 2004 and have ratified the PFI instruments, Cyprus, Estonia, Latvia and Lithuania must be added to this group. Slovakia falls into this group only insofar as fraud affecting the Communities' financial interests themselves is concerned. Based on additional information, preliminary but no definitive conclusions can be drawn for those EU-15 Member States (Belgium, Denmark,

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<sup>101</sup> SEC(2004) 1299 final, 25.10.2004, page 48.

<sup>102</sup> SEC(2004) 1299 final, 25.10.2004, page 50.

Germany, France, Ireland, Italy, Luxembourg, Austria and Sweden) and also for Slovenia, as the only Member State which joined on 1 May 2004 and has ratified the PFI instruments, where the general rules on participation are considered sufficient.

The input from some of these Member States to demonstrate compliance still lacks really convincing examples from case law on the liability of heads of businesses. The Delmas-Marty report,<sup>103</sup> which was the original inspiration behind Article 3 of the PFI Convention, demonstrated a need for harmonisation, since incompatibilities stem from the fact that the decision-maker is liable in very different circumstances, depending on the national legal system. With this in mind, the fact that in some Member States the rules on the criminal liability of heads of businesses have remained untouched also leads to the conclusion that, *prima facie*, incompatibilities persist and have not been reduced to avoid gaps or loopholes in implementation.

<b>Table 9: Implementation overview – criminal liability of heads of business</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Greece, the Netherlands, Spain, Portugal, Finland and the UK	Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, Austria and Sweden
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Estonia, Cyprus, Latvia, Lithuania and Slovakia	Slovenia

For those Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments, Poland tends to impose specific criminal liability on heads of businesses. Hungary does so specifically but only with regard to fraud affecting the Communities’ financial interests. Otherwise, Hungary, like the Czech Republic and Malta, considers the general rules on participation sufficient. The situation with Bulgaria and Romania is the same as in Hungary.

## **6.2. Liability of legal persons (Articles 3 and 4 of the 2nd Protocol)<sup>104</sup>**

Article 3 of the 2nd Protocol has shaped the EU formula regarding the liability of legal persons for criminal activities. However, ten years after negotiation of that Protocol, legal persons’ liability remains a difficult issue for Member States, despite the fact that many other EU third-pillar instruments and conventions of other international organisations to combat corruption impose introduction of such liability.<sup>105</sup> Under the 2nd Protocol, Member States are required to ensure that legal

<sup>103</sup> Delmas-Marty, “Incompatibilities between legal systems and harmonisation measures: Final report of the working party on a comparative study on the protection of the financial interests of the Community” in Commission of the European Communities, “The legal protection of the financial interests of the Community: Progress and prospects since the Brussels seminar of 1989”, Brussels, 25 and 26 November 1993, analysis on p. 69 and recommendation on p. 91 (R. 9).

<sup>104</sup> See also Annex Table 10 and note that, as the 2nd Protocol providing for this concept has not yet entered into force, this section is included only for the sake of completeness.

<sup>105</sup> See the previous CSWP: SEC(2004) 1299 final, 25.10.2004, page 52.

persons can be held liable for fraud, active corruption and money laundering committed for their benefit by any person holding certain leading positions or decision-making powers within the legal entity.

The provision extends liability to cases where lack of supervision or control by a person in a position to exercise them rendered the offence possible. Article 3(3) of the 2nd Protocol stresses that the liability of a legal person should not exclude the liability of the natural person involved in commission of the offences for which the legal person is liable.

Article 4 of the 2nd Protocol addresses the issue of penalties against legal persons held liable for the offences referred to in Article 3, the minimum obligation being to impose criminal or administrative fines. It recognises the different forms of liability dealt with in Article 3, drawing a distinction between liability for an offence committed by a person in a leading position and liability for an offence committed by a subordinate employee.

Whatever the mechanism to establish criminal liability of legal persons, effective, proportionate and dissuasive penalties or measures must be provided for and, even if sanctions need not be provided for in the criminal legislation of the Member States, they should have a certain punitive character in the sense of going beyond mere reparation of damages or restitution of wrongful enrichment.<sup>106</sup> In the Commission's view, the liability of legal persons must result in sanctions having a punitive character. Those sanctions may then be supplemented by other measures, for instance as part of civil law.

#### 6.2.1. *Liability of legal persons*

Amongst the Member States under scrutiny, the previous CSWP<sup>107</sup> identified, roughly speaking, four systems of liability of legal persons for fraud, active corruption and money laundering committed for their benefit:

- criminal liability for all criminal offences;
- criminal liability for specific offences;
- liability of legal persons for offences provided for in the criminal legislation but punished with “corporate fines”; and
- administrative law linking liability of legal persons to either all or specific criminal offences committed by natural persons. This system aims essentially to uphold the principle that only natural persons can commit criminal deeds.

#### State of play with implementation in the EU-15 – Developments since the first report

With a view to ratification of the 2nd Protocol, in 2005 Austria enacted a comprehensive law on the criminal liability of legal persons. Under that law, legal persons can be held liable for all criminal offences, including fiscal offences,

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<sup>106</sup> Explanatory report on the 2nd Protocol, OJ C 91, 31.3.1998, p. 12.

<sup>107</sup> SEC(2004) 1299 final, 25.10.2004, page 54.



committed for their benefit. The law also extends liability to the lack of supervision or control which rendered the offence possible.

Luxembourg, by contrast, has not yet introduced any general criminal liability for legal persons, since discussions are still in progress on the best way to introduce a system of liability of legal persons for criminal offences. In the mean time, Luxembourg will apply Article 203 of an amended Act of 10 August 1915 allowing judges to order the dissolution and liquidation of every legal person registered in Luxembourg which has committed a criminal offence. However, this system appears unsatisfactory in that it seems to lack the necessary effectiveness, proportionality and dissuasiveness. The fact that the government forwarded a draft law on the criminal liability of legal persons to the Luxembourg parliament in April 2007 is therefore welcomed.

According to the previous CSWP,<sup>108</sup> the French and Portuguese systems provide that legal persons can be held criminally liable for specifically defined offences committed on their account by their representatives or managing bodies. Both France (in 2004) and Portugal (in 2007) have now extended the liability of legal persons – France to all criminal offences in its legislation, Portugal also to corruption and money laundering offences.

Although Italy has not yet ratified the 2nd Protocol, it already provides for the administrative liability of legal persons for specifically listed criminal offences. In 2006 money laundering was added to the list of offences possibly giving rise to the liability of legal persons.

In 2005 Sweden amended its Criminal Code in order to render legal persons liable if the persons in charge, including those performing supervisory tasks, fail to do what could reasonably be required of them to prevent the crime. However, Swedish criminal law continues to apply liability to legal persons only, if the crime entailed gross disregard for the special obligations associated with the business activities or is otherwise of a serious kind, thus limiting liability beyond that provided for in Article 3 of the 2nd Protocol.

Spain and the UK commented on the findings of the previous CSWP.<sup>109</sup> Spain stated that, since October 2004, it can impose penalties on legal persons for money laundering and corruption. Spain's wide definition of the money-laundering offence would, in principle, include merely receiving proceeds from all possible crimes, including serious fraud. However, the principal aim of the Spanish law is to attach liability to the persons acting on behalf of the legal person. Consequently, again the present system appears unsatisfactory in that it seems to lack the necessary effectiveness, proportionality and dissuasiveness. It should be added, however, that in January 2007 the Spanish government submitted an amendment to the Criminal Code providing for liability of legal persons for all criminal offences.

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<sup>108</sup> SEC(2004) 1299 final, 25.10.2004, pages 57 and 58.

<sup>109</sup> SEC(2004) 1299 final, 25.10.2004, page 54.

The UK emphasised its position that civil law measures are sufficient to fulfil the requirements under the 2nd Protocol concerning lack of supervision and that it does not intend to adopt a specific act to provide for the liability of legal persons.

State of play with implementation in the Member States which joined on or after 1 May 2004 – Criminal liability for all criminal offences

Latvia and, of the States to which the PFI instruments are not yet applicable, Hungary and Romania consider that legal persons can be held criminally liable for all criminal offences committed for their benefit.

In Latvia criminal liability is regulated directly in the Criminal Code, which allows coercive measures to be applied to a legal person for criminal offences. While it provides that the coercive measures may also be applied with regard to the nature and consequences of the acts of the legal person, it is not clear whether a court may hold a legal person liable where its lack of supervision or control made the criminal offences possible. Furthermore, application of these coercive measures appears to depend on prior conviction of the natural person.

Hungary has introduced a specific law on the criminal liability of legal persons, if the crime resulted in a pecuniary advantage for a legal person. Liability of a legal person may also be established if the crime was facilitated by members of the supervisory board. In the Hungarian system too, the liability of the legal person depends on conviction of the natural person, unless the perpetrator is not punishable due to mental illness or death. Both Latvian and Hungarian law therefore lack any self-standing liability of the legal person.

Romania's Criminal Code provides for the criminal liability of legal persons for all offences committed in their field of activity or in their interest. In Romanian law the liability of the legal person is not linked to prior conviction of the natural person. However, it is not clear whether a Romanian court may hold a legal person liable where its lack of supervision or control made the offences possible.

State of play with implementation in the Member States which joined on or after 1 May 2004 – Criminal liability for specific offences

Estonia and Lithuania provide for a system whereby the general provisions on the liability of a legal person for acts committed on its behalf apply if the specific offence defined states so. These general rules include lack of supervision and control as a basis for liability. In both Criminal Codes the criminal liability of legal persons extends to offences relating to the PFI instruments.

In Cyprus the specific law on the protection of the Communities' financial interests renders legal persons liable and open to prosecution for any of the offences listed therein, including where lack of supervision or control made any such offences possible.

Slovenia and, of the States which have not yet ratified the PFI instruments, Poland have introduced specific legislation on the criminal liability of legal persons. The legislation of both these countries includes liability for lack of supervision. The list

of possible offences for which legal persons may be held liable includes, amongst others, the relevant crimes of fraud, corruption and money laundering.

In 2002 Malta, one of the Member States which has not yet ratified the PFI instruments, introduced criminal liability of legal persons for offences regarding abuse of public authority in Article 121D of its Criminal Code. These are essentially corruption offences. Later in the same year the liability of legal persons was extended, by reference, to the offences covered by the subtitle dealing with fraud and in the specific law dealing with money laundering. However, the reference does not cover the specific laws applicable to customs and tax offences. Liability also applies when lack of supervision facilitated the offence.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Administrative liability of legal persons

Bulgaria provides for administrative liability of legal persons for specifically listed offences, including all to the detriment of the EC's financial instruments. This liability is also triggered when lack of supervision or control made the offences possible.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Neither criminal nor administrative law linking liability to legal persons

Slovakia and, of the States which have not yet ratified the PFI instruments, the Czech Republic make no provision for holding a legal person liable for criminal offences. In Slovakia discussions are in progress on the best way to introduce a system of liability of legal persons for criminal offences. One positive development is that the Slovakian government forwarded a draft law introducing liability of legal persons to parliament in 2007, notwithstanding that the Slovakian parliament has already once opposed a previous version of such a law.

### 6.2.2. *Penalties for legal persons*

#### State of play with implementation in the EU-15 – Developments since the first report

The only EU-15 Member State to have introduced a new system for the liability of legal persons since 2004 is Austria, whose legislation provides for a fine calculated in relation to the punishment laid down for natural persons in the Criminal Code.

German law provides for the possibility of imposing administrative fines on legal persons for all criminal offences, as explained in the previous CSWP.<sup>110</sup> It should be added that the maximum administrative fine is one million euros, which is rather low considering the gains possible from economic crime. The fine may therefore lack deterrent effect, although it may be combined with confiscation of the proceeds of the offences committed. Recent practice in Germany shows that in cases of fraud, active or passive corruption or money laundering or other economic crime, confiscation of the proceeds may easily exceed the maximum administrative fine several times over. It is therefore doubtful whether effective, proportionate and

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<sup>110</sup> SEC(2004) 1299 final, 25.10.2004, page 56.

dissuasive criminal penalties are applied to punish legal persons under this administrative system.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

All the Member States which joined on or after 1 May 2004 and provide for some form of criminal liability of legal persons (Estonia, Cyprus, Latvia, Lithuania, Slovenia and, of those which have not yet ratified the PFI instruments, Hungary, Malta, Poland and Romania) provide, in the first place, for fines. In addition, some also provide for winding-up (Estonia, Cyprus, Latvia, Lithuania, Hungary, Romania and Slovenia), disqualification from business activities (Cyprus, Lithuania, Hungary and Romania) and exclusion from public benefits (Cyprus, Poland and Romania). Bulgaria provides for fines only.

For all EU Member States more information may be needed to ensure that, in practice, effective, proportionate and dissuasive criminal penalties are also applied to legal persons under Article 4 of the 2nd Protocol.

#### 6.2.3. *Overall evaluation*

Due to the legislative efforts of France, Austria, Portugal and Sweden since 2004, eight EU-15 Member States that have ratified the 2nd Protocol (Germany, Greece, France, the Netherlands, Austria, Portugal, Finland and Sweden) plus four Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments (Estonia, Cyprus, Lithuania and Slovenia) seem to comply with the obligations under Articles 3 and 4 of the 2nd Protocol alike.

For one EU-15 Member State (Spain) and one of those which joined the EU on 1 May 2004 and has acceded to the PFI instruments (Latvia), the fact that their legal systems still aim principally at attaching liability to the persons acting on behalf of the legal person leaves room for improvement in order to achieve the necessary effectiveness, proportionality and dissuasiveness. In the previous CSWP<sup>111</sup> the Commission criticised the fact that Spain does not provide for fines but only for other penalties, a system that appears not to meet the requirements of Article 4(1) of the 2nd Protocol.

As observed in the previous CSWP,<sup>112</sup> compliance with the 2nd Protocol could be doubtful in the four remaining EU-15 Member States (Belgium, Denmark, Ireland and the UK) in cases where lack of supervision or control renders the offence possible or where the offence is committed by a subordinate person.

Although having ratified the 2nd Protocol, both Luxembourg, as an EU-15 Member State, and Slovakia, one which joined the EU on 1 May 2004 and has ratified the PFI instruments, lack a system of liability of legal persons for criminal deeds and are thus not in compliance with Articles 3 and 4 of the 2nd Protocol.

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<sup>111</sup> SEC(2004) 1299 final, 25.10.2004, page 56.

<sup>112</sup> SEC(2004) 1299 final, 25.10.2004, page 58.

These results are preliminary, since compliance with Article 4 of the 2nd Protocol still requires verifying whether, in practice, penalties imposed on legal persons are effective, proportionate and dissuasive.

<b>Table 10: Implementation overview – liability of legal persons</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Germany, Greece, France, the Netherlands, Austria, Portugal, Finland and Sweden	Belgium, Denmark, Spain, Ireland, Luxembourg and the UK
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Estonia, Cyprus, Lithuania and Slovenia	Latvia and Slovakia

Since Italy has not yet ratified the 2nd Protocol, it is not included in the table for the EU-15. However, following the reform, the Italian legislation now covers all the necessary offences giving rise to liability of legal persons and, in that respect, would be compliant. Also Bulgaria and Poland, as Member States which joined the EU on or after 1 May 2004 and not yet applying the PFI instruments, provide for liability of legal persons in accordance with the 2nd Protocol. For the other Member States in this category which, in principle, provide for liability of legal persons (Malta, Hungary and Bulgaria), it is unsure whether the Maltese legislation covers all the necessary offences, whether the Hungarian system lacks self-standing liability of legal persons separate from liability of natural persons and what is the Bulgarian approach when lack of supervision or control makes criminal offences possible. Finally, the Czech Republic still does not provide for the concept as such.

### **6.3. Confiscation (Article 5 of the 2nd Protocol) – Annex Table 11<sup>113</sup>**

Article 5 of the 2nd Protocol requires Member States to take measures to enable the seizure, confiscation or removal of the instruments used to commit fraud, active or passive corruption or money laundering and the proceeds of these offences or property of a value equivalent to such proceeds.

In this context, the previous CSWP<sup>114</sup> made reference to other EU legislation concerning confiscation orders, notably the above-mentioned Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime and Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence.<sup>115</sup> Since 2004 two other instruments have been added to this list, namely Council Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property<sup>116</sup> and Council Framework Decision

<sup>113</sup> Note that, as the 2nd Protocol calling for this provision has not yet entered into force, this section is included only for the sake of completeness.

<sup>114</sup> SEC(2004) 1299 final, 25.10.2004, page 59.

<sup>115</sup> OJ L 196, 2.8.2003, p. 45.

<sup>116</sup> OJ L 68, 15.3.2005, p. 49.

2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.<sup>117</sup> The aim of Framework Decision 2005/212/JHA is to ensure that all Member States have effective rules governing confiscation of proceeds from crime. The objective of Framework Decision 2006/783/JHA is to facilitate cooperation between Member States as regards mutual recognition and execution of orders to confiscate property so as to impose an obligation on each Member State to recognise and execute on its territory confiscation orders issued by a court competent in criminal matters of another Member State. Framework Decisions 2003/577/JHA and 2005/212/JHA refer, amongst others, to fraud affecting the Communities' financial interests and corruption as offences where, if punishable by the issuing Member State with a maximum period of three years, no verification of double criminality is needed to execute in one Member State a freezing order issued by a judicial authority of another Member State in the framework of criminal proceedings.

#### State of play with implementation in the EU-15 – Developments since the first report

The only EU-15 Member State to have amended the arrangements for confiscation is Luxembourg, whose law of 1 August 2007 amended Articles 31 and 32 of the Luxembourg Criminal Code to allow confiscation of the proceeds of money laundering, the instruments and proceeds of fraud and, in general, property of value equivalent to any proceeds from crime.

Five EU-15 Member States commented on the findings in the previous CSWP.<sup>118</sup> Greece clarified that money laundering can in fact give rise to confiscation under its legislation. The Spanish legislators, by implementing Framework Decision 2003/577/JHA, now also allow confiscation of property of a value equivalent to criminal proceeds. France, by contrast, stated that it is sufficient to provide for confiscation of property of whatever kind belonging to the convicted person for money laundering only, since Article 5 of the 2nd Protocol does not require confiscation of property for the other offences concerned, such as fraud and corruption. As regards the doubts about whether tax fraud is included in the reference to the possible offences giving rise to confiscation, Sweden stated that in its taxation system special charges equivalent to confiscation may be imposed on fiscal fraudsters. The UK also indicated that it applies the Proceeds of Crime Act 2002 in such a way that instruments of the offence can be seized.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

All the Member States which joined the EU on 1 May 2004, except Latvia, provide in their criminal law for measures to enable the seizure, confiscation or removal of the instruments used to commit fraud, active or passive corruption or money laundering, of the proceeds of these offences and of property of a value equivalent to such proceeds, regardless of whether they have ratified the PFI instruments (Estonia, Cyprus, Lithuania, Slovenia and Slovakia) or not (the Czech Republic, Hungary, Malta and Poland). Also value confiscation seems to be available to varying degrees, but at least as an alternative measure, in the domestic procedures of these Member

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<sup>117</sup> OJ L 328, 24.11.2006, p. 59.

<sup>118</sup> SEC(2004) 1299 final, 25.10.2004, page 61.

States. The same is, in principle, true for Bulgaria and Romania, although in Romania confiscation of property of a value equivalent to criminal proceeds is doubtful in the case of money laundering.

Latvia is the exception and seems to have no such procedure for confiscation of the instruments used.<sup>119</sup>

### Evaluation

Based on the additional information and recent amendments to the legislation, all the EU-15 Member States which have ratified the 2nd Protocol (Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK) appear to comply with the requirements of Article 5 of the 2nd Protocol.

So do all the Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments (Estonia, Cyprus, Lithuania, Slovenia and Slovakia), except for Latvia, which has no provisions on confiscation of instruments used.

<b>Table 11: Implementation overview – confiscation</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK	-
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Estonia, Cyprus, Lithuania, Slovenia and Slovakia	Latvia

Since Italy has not yet ratified the 2nd Protocol, it is not included in the table for the EU-15. However, in Italy for some crimes, including money laundering, it does not seem possible to confiscate property of a value equivalent to the proceeds. This gap was not addressed by Law No 2006/146, which otherwise put in place the material criminal law provisions of the 2nd Protocol.

The Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments (the Czech Republic, Hungary, Malta and Poland) all appear to provide for confiscation under terms that comply with Article 5 of the 2nd Protocol instead. Bulgaria also appears to comply with Article 5 of the 2nd Protocol. In Romania, it remains to be verified whether value confiscation is possible for money laundering.

<sup>119</sup> The second Commission report based on Article 6 of Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime confirms this result (COM(2006) 72 final, 21.2.2006, page 6).

## 7. ELEMENTS USUALLY RELATING TO CRIMINAL PROCEDURE

### 7.1. Jurisdiction

Since harmonising the Member States' substantive criminal law was not considered enough, the PFI instruments had to lay down jurisdiction rules to enable Member States' courts to prosecute and judge offences against the Communities' financial interests, in particular where such offences have been only partly committed within the territory of a specific Member State. That is why Article 4 of the PFI Convention and Article 6 of the 1st Protocol require the Member States to establish more extensive jurisdiction rules. These two different jurisdiction provisions will be looked at separately.

As regards extension of the personality principle, the PFI instruments allow each Member State to declare that it will not apply or will apply only in specific cases or conditions the jurisdiction rules relating to the personality principle in the PFI instruments. Whereas the EU-15 Member States (France and the UK with regard to Article 4 of the PFI Convention and Denmark, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Sweden, Finland and the UK with regard to Article 6 of the 1st Protocol) have made extensive use of such declarations, only Lithuania and Slovakia, of the Member States which joined the EU on 1 May 2004 and have acceded to the PFI instruments, have exercised their right to declare that they will not apply certain rules in accordance with Article 6 of the 1st Protocol.

The Commission still believes that, although allowed, declarations refusing some of the jurisdiction rules are detrimental to effective enforcement of substantive criminal law.

#### 7.1.1. *Jurisdiction over fraud and money laundering (Article 4 of the PFI Convention, by reference in Article 12(2) of the 2nd Protocol)*<sup>120</sup>

Article 4 of the PFI Convention lays down rules on jurisdiction to prosecute and judge offences of fraud and, by reference in the 2nd Protocol, money laundering affecting the Communities' financial interests. The provision requires Member States to establish jurisdiction:

- where the offence, participation in the offence or the attempted offence has been committed in whole or in part within their territory, including situations in which the benefit of the offence has been obtained on the territory concerned (territoriality principle);
- where a person within their territory has knowingly committed the offence of participating in or instigating an offence committed on the territory of another Member State or third country (extended territoriality principle); and
- where the offender is a national of the relevant Member State, irrespective of where the offence was committed (active personality principle).

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<sup>120</sup> See also Annex Table 11.



In order to establish jurisdiction, Member States may require that the condition of double criminality is fulfilled.

#### State of play with implementation in the EU-15 – Developments since the first report

None of the EU-15 Member States has amended the applicable provisions in its Criminal Code or, if applicable, Criminal Procedural Code. However, France, Austria and the UK commented on the findings in the previous CSWP,<sup>121</sup> which considered that the legislation of all three of them does not seem to have provided for full territorial jurisdiction for tax fraud or participation or attempts committed only in part within their territory but detrimental to another Member State's tax authority. France indicated that its case law would allow a wide interpretation of the applicable provisions, yet failed to provide references to this effect. Similarly, Austria argued that, insofar as administrative authorities are competent to pursue fiscal crimes, this competence also applies should the offender have acted in Austria or in cases where a jurisdiction clause is provided for under an international treaty, with the result that Austrian jurisdiction is ensured beyond the local jurisdiction of the administrative authorities concerned. For all three of its jurisdictions, the UK offered a fuller analysis offering case law under which tax fraud, participation in or attempts at fraud and money laundering committed only partially in the UK may be prosecuted, given that jurisdiction covers any "relevant event" on UK territory.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

The principle of establishing jurisdiction based on territoriality posed no difficulty to the Member States which joined the EU on or after 1 May 2004. All of them, regardless of whether the PFI instruments apply (Estonia, Cyprus, Latvia, Lithuania, Slovenia and Slovakia) or not (Bulgaria, the Czech Republic, Hungary, Malta, Poland and Romania) provide for such jurisdiction.

The same is true for jurisdiction over a person who, within one Member State's territory, has knowingly committed the offence of participating in or instigating an offence committed on the territory of another Member State or of a non-EU country, although it must be added that the systems regarding aiding, abetting or being an accomplice to offences vary widely between Member States, which makes it difficult to gain an overview of jurisdiction over such acts.

Likewise, all these Member States provide for jurisdiction where the offender is a national of the Member State concerned, irrespective where the offence was committed. As allowed by the third indent of Article 4(1), Estonia, Slovenia and, of the States which have yet to apply the PFI instruments, Malta (but limited to fraud) and Romania require double criminality in such cases. It seems noteworthy that Poland, although it has not yet ratified the PFI instruments, provides such jurisdiction for fiscal offences only if the offence was directed against the Communities' financial interests.

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<sup>121</sup> SEC(2004) 1299 final, 25.10.2004, page 65.

From a legislative point of view, most of these Member States apply the general provisions of their Criminal Codes as regards jurisdiction. Only Cyprus and Malta have explicitly enacted jurisdiction clauses in response to Article 4 of the PFI Convention.

### Evaluation

Compliance with the jurisdiction rules in the PFI instruments is difficult to evaluate since they essentially refer to general concepts of criminal law. Transposition by specific legislation may be superfluous if the general legal framework provides for adequate implementation.

All the Member States, including those which joined the EU on 1 May 2004 and have ratified the PFI instruments, provide for some form of jurisdiction under all three indents of Article 4(1) of the PFI Convention, apart from the UK, which explicitly invoked Article 4(2) of the PFI Convention to declare that it will not apply the third indent of Article 4(1).

As regards France and Austria, more information on case law concerning full territorial jurisdiction for tax fraud would be welcome. The previous CSWP<sup>122</sup> criticised that Belgium appears not to ensure jurisdiction for some categories of participation in fraud or money laundering committed abroad and that Italy requires additional procedural barriers that are neither allowed by Article 4 of the PFI Convention nor covered by a declaration submitted by that country.

The concept of double criminality is now fully or partially applied in 11 of the EU-15 Member States (Belgium, Denmark, Germany, France, Luxembourg, the Netherlands, Austria, Finland and Sweden) or of those which have ratified the PFI instruments (Estonia and Slovenia).

<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Denmark, Germany, Greece, Spain, Ireland, Luxembourg, the Netherlands, Portugal, Finland, Sweden and the UK	Belgium, France, Austria and Italy
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Estonia, Cyprus, Lithuania, Latvia, Slovenia and Slovakia	-

All the Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments (the Czech Republic, Hungary, Malta and Poland) or which joined the EU on 1 January 2007 (Bulgaria and Romania) appear to provide for

<sup>122</sup> SEC(2004) 1299 final, 25.10.2004, page 65.

jurisdiction in compliance with Article 4 of the PFI Convention instead. Of this group, only Malta requires double criminality as regards fraud.

#### 7.1.2. *Jurisdiction over corruption (Article 6 of the 1st Protocol)*<sup>123</sup>

Article 6 of the 1st Protocol establishes different criteria for conferring jurisdiction to prosecute and try cases involving active and passive corruption:

- where the offence is committed in whole or in part on a Member State's territory (territoriality and extended territoriality principle);
- where the offender is a national or one of the Member State's officials (active personality principle);
- where active corruption is committed abroad by persons who are not nationals of the relevant Member State against a national of that Member State, who is a national or Community official or member of a Community institution (passive personality principle); and
- where the offender is a Community official working for a Community institution with its headquarters in the Member State concerned (headquarters principle).

#### State of play with implementation in the EU-15 – Developments since the first report

The only EU-15 Member State to have made any significant changes to its rules on jurisdiction over corruption offences since 2004 is Belgium, as part of the general reform of corruption offences with the Law of 11 May 2007. As regards Belgian jurisdiction in cases where the offender is Belgian or the offence is committed against a Belgian, the law abolished the requirement for prosecution to take place only following an official complaint against the offence by the authorities of the country in which it was committed.

The UK commented on the previous CSWP,<sup>124</sup> consistently stating that prosecution of corruption offences would use the provisions of the Prevention of Corruption Act 1906. That Act, read together with the Criminal Justice Act 1948, allows jurisdiction to be established where the offence is committed in whole or in part on UK territory or the offender is a UK national.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

All the Member States which joined the EU on 1 May 2004 or on 1 May 2007 provide for jurisdiction if the corruption took place in whole or in part within their territory, regardless whether the Member State in question has ratified the PFI instruments or not.

As regards jurisdiction, the same applies if the offender is one of the Member State's nationals or one of its officials, i.e. under the "active personality principle". Estonia

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<sup>123</sup> See also Annex Table 12.

<sup>124</sup> SEC(2004) 1299 final, 25.10.2004, page 70.

and Slovenia, however, seem to make jurisdiction conditional on the offence being punishable under the legislation of the country in which the offence was committed or, in the case of Slovenia, if double criminality is not given, prosecution is subject to the permission of the Ministry of Justice. For all other Member States which joined on or after 1 May 2004, no such requirements exist, regardless of the state of ratification of the PFI instruments.

Of those States which have ratified the PFI instruments, Lithuania<sup>125</sup> and Slovakia<sup>126</sup> declared that they do not provide for jurisdiction with regard to the passive personality principle, meaning for offences committed against a national of their Member State, who is a national or Community official or member of a Community institution.

Latvia, by contrast, provides for such jurisdiction, as do Estonia and Slovenia. The situation for the latter two is the same as for the active personality principle. In Cyprus it is not clear whether such jurisdiction is granted or not on the basis of the national provisions making an international agreement, such as the 1st Protocol, directly applicable on jurisdiction.

Bulgaria, the Czech Republic, Hungary, Malta, Poland and Romania, despite not yet having to apply the PFI instruments, also provide for the passive personality principle. However, the Czech Republic, Hungary and Romania require that the offence must be punishable under the legislation of the country in which the offence was committed. For this reason, they may wish to amend their relevant law, or to submit an appropriate declaration to this end, when ratifying the PFI instruments.

Jurisdiction over an offender who is a Community official working for a Community institution with its headquarters in the Member State concerned appears to be the most complex. The jurisdiction rule appears applicable in Estonia, Cyprus and Slovakia, on the basis of the national provisions making an international agreement, such as the 1st Protocol, directly applicable on jurisdiction. Latvian and Slovenian law appear to imply that this jurisdiction rule is applicable only if the offender is a resident. However, neither of these two has submitted a declaration to this effect. According to the Lithuanian declaration, this jurisdiction rule is not applied. Out of those Member States which have not yet ratified the PFI instruments, Hungary has already indicated that it intends to declare, at the time of ratification, that it will not apply this jurisdiction rule. In Malta and Poland the present legislation requires that the offender must be a resident. Consequently, they may submit a declaration to this effect when ratifying the PFI instruments. Bulgarian, Czech and Romanian law contain a provision making international agreements directly applicable on jurisdiction.

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<sup>125</sup> The Lithuanian declaration reads: “Pursuant to paragraph 2 of Article 6 of the Protocol adopted on 27 September 1996 the Seimas of the Republic of Lithuania declares that the Republic of Lithuania does not apply the jurisdiction rules provided for in subparagraphs c and d of paragraph 1 of Article 6 of this Protocol.”

<sup>126</sup> The Slovakian declaration reads: “The Slovak Republic declares that it shall not apply the rule according to Article 6(1), point (c) of the Protocol.”

## Evaluation

Assessment of compliance with Article 6 of the 1st Protocol gave quite a positive picture for the EU-15, since Member States have either provided for adequate jurisdiction or made a declaration under Article 6(2) of the 1st Protocol. The same is, in principle, also true for Cyprus, Lithuania and Slovakia, out of the Member States that joined the EU on 1 May 2004 and have ratified the PFI instruments, since Lithuania and Slovakia have made appropriate declarations and it can reasonably be assumed that the provisions of the 1st Protocol are applicable to the references in the national criminal jurisprudence rules in Cyprus and Slovakia. As regards the Member States which have ratified the PFI instruments and still require double criminality without having submitted a declaration to this effect, such as Estonia and Sweden, this appears less problematic as long as this requirement is fulfilled in practice with regard to the other EU Member States. Together with the amendments in Belgium and the clarifications from the UK, this brings compliance up to 18 Member States (EU-15: Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK; plus, out of the Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments: Estonia, Cyprus, Lithuania and Slovakia).

The previous CSWP<sup>127</sup> found that Ireland provides for application of the passive personality principle only for active corruption committed against Irish nationals. However, Article 6(1)(c) of the 1st Protocol also includes passive corruption, so it is unclear why Ireland did not extend its jurisdiction to all other offences as well.

In the context of Article 6(1)(d) – the headquarters principle – the Latvian and Slovenian condition that the offender must be a resident is not covered by the wording of the jurisdiction rule.

<b>Table 13: Implementation overview – jurisdiction over corruption</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK	Ireland
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Estonia, Cyprus, Lithuania and Slovakia	Latvia and Slovenia

All the Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments (the Czech Republic, Hungary, Malta and Poland) or which joined the EU on 1 January 2007 (Bulgaria and Romania) intend to make

<sup>127</sup> SEC(2004) 1299 final, 25.10.2004, page 70.

declarations under Article 6(1)(c) and/or (d) to avoid not complying with the relevant requirements.

**7.2. Extradition and prosecution (Article 5 of the PFI Convention, by reference in Article 7(1) of the 1st Protocol and Article 12(1) of the 2nd Protocol)**

When the PFI instruments were drafted, the extradition rules established in Article 5 of the PFI Convention were designed to supplement the provisions on the extradition of own nationals and tax offences applying between Member States, especially under the European Convention on Extradition of 13 December 1957. In the mean time, the provisions of the European Convention on Extradition have, *de facto*, been replaced by Framework Decision 2002/584/JHA on the European arrest warrant. Under a European arrest warrant there is no possibility of refusing extradition solely on the grounds that it has been requested in connection with a tax or customs duty offence. Therefore, compliance with Framework Decision 2002/584/JHA means compliance with Article 5 of the PFI Convention.

Consequently, the same conclusion must be drawn as in the revised version of the Commission report on that Framework Decision.<sup>128</sup> That report provisionally concluded that the European arrest warrant is now operational in most of the cases provided for. Its impact has been positive, since the available indicators for judicial control, effectiveness and speed are favourable, while fundamental rights are being observed. Further effort is still required for certain Member States (in particular the Czech Republic, Denmark, Estonia, Ireland, Italy, Luxembourg, Malta, the Netherlands, Slovenia and the UK) to comply fully with the Framework Decision and for the EU to fill certain gaps in the system. The Commission report on the European arrest warrant does not refer to Bulgaria and Romania. However, there appears to be no need specifically to address the situation in these two countries in this CSWP.

**7.3. “*Ne bis in idem*” (Article 7 of the PFI Convention, by reference in Article 7(2) of the 1st Protocol and Article 12(1) of the 2nd Protocol)<sup>129</sup>**

The “*ne bis in idem*” rule in Article 7 of the PFI Convention is considered to be in line with Articles 54 to 58 of the Convention implementing the Schengen Agreement.<sup>130</sup> Article 7(1) of the PFI Convention is worded nearly the same as Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985, while Articles 7(2) and (3) of the PFI Convention are similar to Articles 55(1) and (3) of the Convention implementing the Schengen Agreement.

Since 2004 the “*ne bis in idem*” principle, along with the provisions of the Convention implementing the Schengen Agreement and, by reference, those of the PFI Convention, have been subject to political discussions in the wake of the Commission’s Green Paper on Conflicts of Jurisdiction and the Principle of “*ne bis in idem*” in Criminal Proceedings.<sup>131</sup> It should be added that the Commission Staff

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<sup>128</sup> COM(2006) 8 final of 24.1.2006, page 7.

<sup>129</sup> See also Annex Table 13.

<sup>130</sup> OJ L 239, 22.9.2000, p. 19.

<sup>131</sup> COM(2005) 696 final, 23.12.2005.

Working Paper<sup>132</sup> accompanying the Green Paper highlights that the PFI instruments, notably Article 6(2) of the PFI Convention, are part of the EU criminal law, which places an obligation on the Member States or their authorities to cooperate with each other with the purpose of coming to a decision on the appropriate jurisdiction under which a specific case should be dealt with as regards specific types of crime to the detriment of the Communities' financial interests.

Also, the related ECJ case law on Article 54 of the Convention implementing the Schengen Agreement has further developed. Two cases are of particular interest, since the suspected crimes under the applicable national laws would fall under the definition of fraud in Article 1 of the PFI Convention and it therefore appears that they could possibly also have been subject to Article 7 of the PFI Convention. In the Gasparini case<sup>133</sup> the suspects were charged with having put smuggled olive oil onto the market of one of the Member States and in the Kretzinger case<sup>134</sup> with receiving, on a commercial basis, contraband cigarettes on which duty had not been paid. Article 7(2) of the PFI Convention allows declarations by the Member States and sets out specific cases where the "*ne bis in idem*" rule can be derogated. Out of the Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments, Slovenia<sup>135</sup> and Slovakia<sup>136</sup> joined Greece, Denmark, Germany, Italy, Austria, Finland and Sweden in submitting declarations under this provision.

#### State of play with implementation in the EU-15 – Developments since the first report

The developing case law of the ECJ concerning the "*ne bis in idem*" rule, as enshrined in the Schengen implementing Convention, supports those EU-15 Member States arguing that application of the principle results from the possible direct application of Article 7 of the PFI Convention or, *de facto*, from Article 54 of the Schengen implementing Convention. Since Ireland and the UK have agreed to apply, amongst others, the "*ne bis in idem*" provisions of the Schengen *acquis*, it appears that they have been successfully implemented for all EU-15 Member States.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

Although, apart from Cyprus, the relevant Schengen *acquis* applies to the Member States which joined the EU on 1 May 2004 as from 21 December 2007,<sup>137</sup> it is worth

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<sup>132</sup> SEC(2005) 1767, 23.12.2005.

<sup>133</sup> Case C-467/04 *Gasparini* [2006] ECR I-9199.

<sup>134</sup> Case C-288/05 *Kretzinger nyp*.

<sup>135</sup> The Slovenian declaration reads: "*In relation to Article 7(1) of the Convention drawn up, on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, the Republic of Slovenia declares that it shall not be bound by Article 7(1) in respect of those cases referred to in Article 7(2)(b) of the Convention.*"

<sup>136</sup> The Slovak declaration reads: "*The Slovak Republic declares that it shall not be bound by Article 7(2) of the Convention if the acts which were the subject to the judgment issued abroad are crimes against security or another equally fundamental interest of the Slovak Republic.*"

<sup>137</sup> Council Decision 2007/801/EC on the full application of the provisions of the Schengen *acquis* in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, OJ L 323, 8.12.2007, p. 34.

briefly referring to the applicable “*ne bis in idem*” rules as regards Article 7 of the PFI Convention.

The criminal law of Estonia, Latvia, Lithuania and Slovenia, all of which have ratified the PFI instruments, provides for a specific international “*ne bis in idem*” rule. In Slovakia compliance is ensured on the basis of a provision in the Criminal Procedural Code to apply the “*ne bis in idem*” rule where provided for in international agreements. As regards Cyprus, information is missing on application of the “*ne bis in idem*” rule with regard to other EU Member States.

Of the States which have not ratified the PFI instruments, the Procedural Codes of the Czech Republic, Poland and Romania seem to provide for the “*ne bis in idem*” rule where provided for in international agreements. In Hungary, by contrast, application of the “*ne bis in idem*” rule requires prior recognition of the foreign judgment in Hungary. Application of this rule with regard to other EU Member States is unclear in Bulgaria and in Malta.

#### Evaluation

Cyprus is the only case where it appears unclear how and whether the “*ne bis in idem*” rule in Article 7 of the PFI Convention is applied.

<b>Table 14: Implementation overview – “<i>ne bis in idem</i>”</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition</b>
EU-15	Belgium, Denmark, Germany, Greece, Spain, France, Italy, Ireland, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK	-
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Estonia, Latvia, Lithuania, Slovakia and Slovenia	Cyprus

As regards the Member States which joined the EU on 1 May 2004 and have not yet ratified the PFI instruments or which joined the EU on 1 January 2007, the Czech Republic, Poland and Romania seem to have provisions that will allow them to apply the “*ne bis in idem*” rule in Article 7 of the PFI Convention, whereas Bulgaria, Malta and Hungary still need to explain or improve their application.

#### **7.4. Preliminary rulings by the Court of Justice of the European Communities on the Convention on the protection of the European Communities’ financial interests and its protocols<sup>138</sup>**

The Protocol on the interpretation by way of preliminary rulings by the ECJ adds a system for interpreting the PFI instruments. Essentially, Article 2 of the Protocol

<sup>138</sup>

See also Annex Table 13.



allows two forms of implementation, namely either to allow only courts whose decisions are no longer subject to judicial remedies to request a preliminary ruling or to allow any court to do so.

#### State of play with implementation in the EU-15 – Developments since the first report

In response to the previous CSWP,<sup>139</sup> which stated that as regards the UK it is not clear on which legal basis courts are allowed to ask for preliminary rulings of the ECJ in the field of the PFI instruments, the UK answered that, in its view, it is sufficient to ratify the Protocol, without it containing any obligation to provide for implementing legislation. However, this argument runs against the obligation to enable the system to function effectively.

No other developments were reported from the other EU-15 Member States. In particular, Italy has still not enacted an implementing decree. It therefore remains unclear whether Italian courts may request a preliminary ruling in this field. Furthermore, no procedure under the Protocol seems to be pending before the ECJ.

#### State of play with implementation in the Member States which joined on or after 1 May 2004 – Analysis

Of those Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments, Lithuania and Slovenia accepted that any of their courts may request the ECJ to give a preliminary ruling on a question raised in a case pending before them and concerning interpretation of the PFI instruments. In Latvia and Slovakia, only courts or tribunals against whose decisions there is no judicial remedy under national law may request such a preliminary ruling.

By contrast, the situation is unclear for Cyprus, which has not submitted any declaration accepting the jurisdiction of the ECJ to issue preliminary rulings indicating under which procedure Cyprus accepts its jurisdiction. Furthermore, Cyprus appears to have taken no legislative action to implement the Protocol.

It should be added that, besides the Czech Republic, Hungary, Malta and Poland, also Estonia, despite having adhered to the other PFI instruments, has not yet ratified the ECJ Protocol on the interpretation by way of preliminary rulings by the ECJ.

Bulgaria's national ratification declared that only courts or tribunals against whose decisions there is no judicial remedy under national law may request such a preliminary ruling. Romania still will have to make such a declaration.

#### Evaluation

Three Member States (Italy, Cyprus and the UK) have ratified the Protocol, but not taken implementing measures to ensure operation of the system on preliminary rulings by the ECJ, as provided for in the Protocol.

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<sup>139</sup> SEC(2004) 1299 final, 25.10.2004, page 75.

<b>Table 15: Implementation overview – preliminary rulings by the Court of Justice of the European Communities</b>		
<b>Member States</b>	<b>Transposition complete or considered nearly complete</b>	<b>Transposition incomplete or further information required to evaluate transposition as complete</b>
EU-15	Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Luxembourg, the Netherlands, Austria, Portugal, Finland and Sweden	Italy and the UK
Member States which joined the EU on 1 May 2004 and have ratified the PFI instruments	Latvia, Lithuania, Slovakia and Slovenia	Cyprus

## **8. EXPLANATORY NOTES TO THE TABLES**

The annexed tables are drafted in the same way as the tables in the previous CSWP,<sup>140</sup> but updated for the EU-15 and adding the Member States which joined the EU on or after 1 May 2004. This time they are preceded by an overview of transposition by the 27 Member States for easier reference, covering all the main provisions of the PFI instruments. That table is drawn up in a similar way to the table in the report on Framework Decision 2003/568/JHA on combating corruption in the private sector.<sup>141</sup>

The first four tables give a brief overview of the legislative activities of all the Member States regarding the PFI instruments. Following the same order as the analysis, the next nine tables present a compilation of the applicable national provisions of the Member States. The tables are based essentially on the information received by the Commission. The national provisions transposing each of the articles in the PFI instruments are indicated wherever considered relevant. The tables are intended to serve as a basis for easier reference to the national provisions referred to above but contain no information on the specifics of the national provisions concerned. No table is provided on the provisions on extradition and prosecution, since these issues are now addressed in the context of the European arrest warrant.

The tables cover all 27 Member States. They have been updated for the EU-15 and information has been added for the Member States which have not yet ratified some or all of the PFI instruments to allow a possibly complete overview.

## **9. CONCLUSIONS**

A distinction must be drawn between the EU-15 Member States, which were already covered by the first report, and the relevant criminal law provisions of the twelve

<sup>140</sup> SEC(2004) 1299 final, 25.10.2004, pages 77 to 115.

<sup>141</sup> COM(2007) 328 final and SEC(2007) 808.

“new” Member States, ten of which joined the EU on 1 May 2004 and two on 1 January 2007, since the PFI instruments have entered into force in only some of them.

Member States considered not to have supplied sufficient information are invited to do so with a view to a third report, which the Commission intends to submit once all Member States have notified their ratification of and/or accession to all the PFI instruments.

The Council, the European Parliament and the Commission have repeatedly invited Member States to ratify the 2nd Protocol without delay.<sup>142</sup> In 2006 the Commission addressed Italy as the only EU-15 State that has still not ratified the 2nd Protocol. The legislation necessary for ratification still does not seem even to have been tabled. Due to its non-ratification, Italy is indirectly impeding completion of the legal framework established by the PFI instruments, not only as regards the liability of legal persons but also with regard to the provisions on information exchange. The solidarity and coordination obligations under Article 10 and, especially, Article 280 of the EC Treaty should provide a means of tackling a situation where one Member State is holding back entry into force of a unanimously agreed legal instrument across the EU as a whole, if this instrument is a necessary measure contributing to the aims also required under the EC Treaty. This is, in particular, the case for the 2nd Protocol, which the Council considered “*necessary ... to improve the effectiveness of protection under criminal law of the European Communities’ financial interests*”.<sup>143</sup>

The first report asked Member States to step up their efforts to reinforce their national criminal legislation and to treat the objective of full application of the PFI instruments as a priority. The Commission believes that the criminal legislation of the following EU-15 Member States still shows serious shortcomings in implementation of the other PFI instruments:

- (1) Belgium, since the Belgian Criminal Law does not fully comply with the definition of fraud because it requires the additional subjective element of being explicitly aware (“*sciemment*”) that the offender is not entitled to the grant;
- (2) Germany, because it fails to meet the requirements of the assimilation principle for corruption offences, since bribery for licit deeds is punished only if committed by a German national official but not by European Community staff or by an official of another Member State;
- (3) France, for not punishing fraud in the form of non-disclosure;

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<sup>142</sup> For example: Resolution concerning a comprehensive EU policy against corruption, adopted by the Justice and Home Affairs Council on 14 April 2005 (Council Doc. 6902/05, 6901/2/05); European Parliament resolution on the protection of the financial interests of the Communities and the fight against fraud (OJ C 124 E, 15.5.2006, p. 232, paragraph 41); Report from the Commission to the European Parliament and the Council – Protection of the Communities’ financial interests, COM(2006) 378 final.

<sup>143</sup> Recital to the 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) Ireland, whose jurisdiction rules on passive personality do not cover passive corruption;
- (5) Italy, where the penalties provided for by the implementing provisions are inadequate, because they are neither dissuasive nor proportionate;
- (6) Luxembourg, because for fraud it requires the additional subjective element of intentionally (“*sciemment*”) making a false declaration;
- (7) Austria, whose criminal law requires, for fraud, proof of the additional subjective element of enrichment (“*Bereicherungsvorsatz*”).

The Commission will address these seven Member States to gather their views on these alleged shortcomings. Should these contacts reveal diverging positions on application of the relevant provisions in the PFI instruments, initiation of procedures under Article 8 of the PFI Convention may be appropriate.

The Member States which joined the EU on 1 May 2004 or on 1 January 2007 are invited to meet their commitments under the Accession Treaties. Consequently, the Czech Republic, Hungary, Malta and Poland, together with Estonia in the case of the ECJ Protocol, should proceed as fast as possible with accession to the PFI instruments to which they have not yet acceded.

The remaining Member States are invited to step up their efforts to reinforce their national criminal legislation to protect the Communities’ financial interests, in particular addressing the shortcomings identified in this report. Furthermore, those Member States considered not to have supplied sufficient information are invited to do so.

### Overview of transposition

I = no/insufficient information; N = not transposed; P = partly transposed; T = fully transposed

Nyr = not yet ratified (for the EU-15). Nya = not yet acceded (for the Member States which joined the EU on or after 1 May 2004)

Member State (EU-15 in bold)	Article 1 of the Convention (expenditure fraud)	Article 1 of the Convention (resource fraud)	Articles 2 and 3 of the 1st Protocol (corruption)	Article 2 of the 2nd Protocol (money laundering)  NOT YET IN FORCE	Article 3 of the Convention (criminal liability of heads of businesses)	Articles 3 and 4 of the 2nd Protocol (liability of legal persons)  NOT YET IN FORCE	Article 5 of the 2nd Protocol (confiscation)  NOT YET IN FORCE	Article 4 of the Convention (jurisdiction for fraud)	Article 6 of the 1st Protocol (jurisdiction for corruption)
<b>BE</b>	<b>N (requires specific knowledge of the offence)</b>	<b>N (no effective, proportionate and dissuasive penalties)</b>	<b>T</b>	<b>T</b>	<b>I (lack of case law)</b>	<b>N (liability for lack of supervision)</b>	<b>T</b>	<b>N (jurisdiction for some categories of participation in fraud or money laundering committed abroad)</b>	<b>T</b>
BG	T	T	T	Nya (T)	T	Nya (T)	Nya (T)	T	T
CZ	Nya (N, requires)	Nya (N, requires)	Nya (T)	Nya (T)	Nya (I, lack)	Nya (N, no provision for)	Nya (T)	Nya (T)	Nya (I, depends on)

	severely distorted information)	severely distorted information)			of case law)	liability of legal persons)			declaration)
DK	T	T	T	T	I (lack of case law)	N (liability for lack of supervision)	T	T	T
DE	P (subsidiary offence requires enrichment)	T	N (no full assimilation with national officials)	N (resource fraud is <i>de facto</i> no predicate offence)	I (lack of case law)	T	T	T	T
IE	T	T	T	T	I (lack of case law)	N (liability for lack of supervision)	T	T	N (passive personality principle for active corruption only)
EE	N (subsidiary offence requires deception; misapplication of funds does not cover all expenditure)	T	T	T	T	T	T	T	P (depends on application of double criminality)
EL	T	T	T	T	T	T	T	T	T

ES	T	T	T	T	T	N (subsidiary liability of legal persons)	T	T	T
FR	N (no rules on non-disclosure)	T	T	T	I (lack of case law)	T	T	I (lack of case law)	T
IT	N (no effective, proportionate and dissuasive penalties; requires enrichment)	T	T	Nyr (T)	I (lack of case law)	Nyr (T)	Nyr (N, value confiscation for money laundering)	N (additional procedural barriers)	T
CY	T	T	T	T	T	T	T	T	T
LV	N (requires specific knowledge of the offence)	N (requires specific knowledge of the offence)	T	T	T	N (subsidiary liability of legal persons)	N (no confiscation of instruments)	T	N (offender has to be a resident)
LT	N (requires specific knowledge of the offence)	N (no punishment for small amounts)	T	T	T	T	T	T	T

LU	<b>N (requires specific knowledge of the offence)</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>I (lack of case law)</b>	<b>N (no liability of legal persons)</b>	<b>T</b>	<b>T</b>	<b>T</b>
HU	Nya (I, definition of “assistance”)	Nya (I, definition of “payments”)	Nya (T)	Nya (T)	Nya (P, limited to fraud)	Nya (N, subsidiary liability of legal persons)	Nya (T)	Nya (T)	Nya (I, depends on declaration)
MT	Nya (T)	Nya (T)	Nya (T)	Nya (T)	Nya (I, lack of case law)	Nya (P, no liability for fiscal offences)	Nya (T)	Nya (T)	Nya (I, depends on declaration)
NL	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>
AT	<b>N (requires enrichment)</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>I (lack of case law)</b>	<b>T</b>	<b>T</b>	<b>I (lack of case law)</b>	<b>T</b>
PL	Nya (P, requires enrichment)	Nya (T)	Nya (T)	Nya (T)	Nya (I, lack of case law)	Nya (T)	Nya (T)	Nya (T)	Nya (I, depends on declaration)
PT	<b>P (definition of grants)</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>	<b>T</b>
RO	T	T	T	Nya (T)	I, lack of case law	Nya (I, lack of information on liability)	Nya (N, lack of value confiscation for money)	T	T



						for lack of supervision)	laundrying)		
SI	T	N (no punishment for small amounts)	T	T	I (lack of case law)	T	T	T	N (offender has to be a resident)
SK	T	T	I (lack of case law)	T	P (limited to fraud)	N (no liability of legal persons)	T	T	T
FI	P (definition of grants)	T	T	T	T	T	T	T	T
SE	P (subsidiary offence requires enrichment)	T	T	T	I (lack of case law)	T	T	T	P (depends on application of double criminality)
UK	T (England & Wales and Northern Ireland)  I (Scotland)	T (England & Wales and Northern Ireland)  I (Scotland)	T	T	T	N (criminal liability for lack of supervision)	T	T	T

**Annex Table 1**

<b>Instrument</b>	<b>PFI Convention</b>		
<b>Member State</b>	<b>Notification</b>	<b>Legislative text</b>	<b>Method of implementation</b>
Belgium	12.3.2002	Law of 17 February 2002 ratifying the PFI Convention, the first Protocol, the second Protocol, the ECJ Protocol and the Convention on the fight against corruption involving officials of the European Communities (Belgisch Staatsblad/Moniteur Belge of 15.5.2002, Ed. 2, page 20555)	No amendments to existing provisions were made by Belgium at the time of ratification
Bulgaria	6.12.2007 according to Article 2(1) of Council Decision 2008/40/JHA	Ratification law of 24.1.2007, Bulgarian State Gazette, Issue No 12 of 6.2.2007, page 4	No amendments to existing provisions of the Criminal Code of 1968 were made by Bulgaria at the time of ratification. The main amendments to the provisions of interest were published in Bulgarian State Gazette, Issue No 92 of 27.9.2002 (new Art. 212(3) of the Bulgarian Criminal Code) and Bulgarian State Gazette, Issue No 24 of 22.3.2005 (new Art. 254(2) and Art. 254b of the Bulgarian Criminal Code)
Czech Republic	Not yet ratified	Not yet ratified	No amendments to existing provisions of the Czech Criminal Code of 1961 (Collection of Laws No 140/1961)
Denmark	2.10.2000	Law No 228 of 4 April 2000 amending the Criminal Code	Amendment of the Criminal Code (insertion of §289a and amendment of §289) In the mean time, §289a was amended by Law No 366 of 24 May 2005
Germany	24.11.1998	Federal Law on transposition of the PFI Convention (EG-Finanzschutzgesetz – BGBl 1998 II, p. 2322)	Amendment of the Criminal Code (insertion of §264(1), point (2) and amendment of §264(7)) and of the criminal provisions of the German Fiscal Code (amendment of §370(7))
Estonia	3.2.2005	Law ratifying the PFI Convention, the first Protocol and the second Protocol (RT II, 6.1.2005, 1, 1)	No amendments to existing provisions of the new Criminal Code of 2001 were made by Estonia at the time of ratification
Greece	26.7.2000	Law No 2803/2000 ratifying the PFI Convention, the first Protocol, the second Protocol and the ECJ Protocol (OJ of the Hellenic Republic of 3.3.2000, Part A, No 48, p. 639)	The law provides for codification of the provisions on criminal offences relating to the PFI Convention without amending the Criminal Code
Spain	20.1.2000	Organic Law 6/1995 introduced the main concepts of the PFI Convention into the Spanish Criminal Code of 1973. Shortly afterwards, a new Criminal Code was enacted by Organic Law 10/1995 incorporating the amended rules. The Criminal Code 1995 was amended by Organic Law 15/2003 as regards fraud and corruption (BOE, 26.11.2003, No 283-2003)	Amendment of the new Spanish Criminal Code (Art. 305, 306 and 309 recently amended by Organic Law 15/2003 without any specific link to the PFI Convention)
France	4.8.2000	Law No 99-419 of 27 May 1999 ratifying the PFI Convention (OJ of the French Republic, 28.5.1999, 7857)	No amendments to existing provisions were made by France at the time of ratification
Ireland	3.6.2002	Criminal Justice (Theft and Fraud Offences) Act, 2001 (enacted as Act No 50 of 2001), Section 41 giving the force of law to PFI instruments (with conditions)	Enactment of Criminal Justice (Theft and Fraud Offences) Act, 2001. Part 6 of the Act provides for codification of the provisions on criminal offences relating to the PFI Convention

Italy	19.7.2002	Law No 2000/300 ratifying and transposing the PFI Convention, the first Protocol to the PFI Convention, the Protocol on the interpretation by the European Court of Justice, the Convention on the fight against corruption involving officials of the European Communities and the OSCE Convention on the fight against corruption involving foreign public officials in international economic operations as well as delegating the government to enact provisions on the administrative liability of legal persons (Legge 29 settembre 2000, No 300, GURI No 250 of 25.10.2000)	Amendment of the Italian Criminal Code (insertion of Art. 316ter and amendment of Art. 9) and of the amalgamated law in respect of customs matters (amendment of Art. 295, 295bis and 297) and the law on fraud affecting the European Agricultural Guidance and Guarantee Fund (amendment of Art. 23)
Cyprus	31.3.2005	Law No 37(III)/2003 containing the Convention on the protection of the European Communities' financial interests and protocols (Ratification) Act (Government Gazette I(III) No 3758 of 3.10.2003)	The law provides for codification of the provisions on criminal offences relating to the PFI Convention without amending the Criminal Code
Latvia	31.8.2004	Ratification by approval by the parliament of 3.4.2003 (Latvijas Vestnesis 60 (2825) of 17.4.2003)	No amendments to existing provisions of the new Criminal Code of 1999 were made by Latvia at the time of ratification
Lithuania	28.5.2004	Ratification by Law No IX-2021 of 12.2.2004 (Valstybės žinios/Law Gazette of 29.4.2004, No 67-2354)	No amendments to existing provisions of the new Criminal Code of 2000 were made by Lithuania at the time of ratification. The main amendments to the provisions of interest were made by Law No IX-2314 of 5.7.2004 and Law No X-272 of 23.6.2005 as regards customs fraud
Luxembourg	17.5.2001	Law of 30 March 2001 ratifying the Convention and the first Protocol and the Protocol on the jurisdiction of the ECJ (OJ of the Grand-Duché du Luxembourg, A-No 47, 26.4.2001)	Amendment to the Criminal Code (amendment of Art. 496-2 and Art. 496-3 and insertion of Art. 496-4)
Hungary	Not yet ratified	Not yet ratified	No amendments to existing provisions of the Criminal Code, Act IV of 1978, will need to be made by Hungary at the time of ratification. The main amendments to the provisions of interest in the Criminal Code were made by Act CXXI of 2001 (paragraph 69 introduced Art. 314)
Malta	Not yet ratified	Not yet ratified	The main provisions of the Criminal Code (Chapter 9 of the Laws of Malta) were amended by Act III of 2002 (paragraphs 55, 56 and 62 to 65 amending Art. 293, 294 and 308 to 310B)
Netherlands	16.2.2001	Kingdom Act of 13 December 2000 ratifying the PFI Convention, the first Protocol to the PFI Convention, the Protocol on the interpretation by the European Court of Justice, the Convention on the fight against corruption involving officials of the European Communities and the OSCE Convention on the fight against corruption involving foreign public officials in international economic operations (Stb 2000 615) and Act of 13 December 2000 adapting some provisions of the Criminal Code in connection with the ratification and implementation of the Conventions on the fight against corruption (Stb 2000 616)	Amendment of the Criminal Code (introduction of Art. 323a)

Austria	21.5.1999	Federal Law of 1998 amending the Criminal Code (Strafrechtsänderungsgesetz 1998 – BGBl I 1998/153) and the Federal Law amending levies and charges (Abgabenänderungsgesetz 1998 – BGBl I 1999/28)	Amendment of the Criminal Code (insertion of §153b) and of the Code of Criminal Procedure (amendment of §34)
Poland	Not yet ratified	Not yet ratified	No amendments to existing provisions of the new Criminal Code of 1997 or the Fiscal Criminal Code of 1999 will need to be made by Poland at the time of ratification. The main amendments to the provisions of interest in the Criminal Code were published in Dziennik Ustaw (Dz.U.) 04.69.626 and in the Fiscal Criminal Code (Dz.U.03.162.1569)
Portugal	15.1.2001	Parliamentary Resolution No 80/2000 (Diário da república, Série I-A No 288 of 15.12.2000, p. 7305) and Presidential Decree No 82/2000 (Diário da república, Série I-A No 288 of 15.12.2000, p. 7253) ratifying the PFI Convention, the first Protocol, the second Protocol and the ECJ Protocol	No amendments to existing provisions were made by Portugal at the time of ratification
Romania	6.12.2007 according to Article 2(1) of Council Decision 2008/40/JHA	-	The main amendments to the provisions of interest were made by Law 161/2003 (Monitorul Oficial No 279, 21 April 2003) amending Law No 78/2000 on preventing, discovering and sanctioning corruption, published in the Monitorul Oficial No 219, 18 May 2000
Slovenia	17.4.2007	Ratification by “MKZFIES” Law No 26 of 9.2.2007 (Uradni list RS/Official Gazette RS 4/2007)	No amendments to existing provisions of the new Criminal Code of 1994 were made by Slovenia at the time of ratification. However, the concept of misappropriation was introduced in Art. 235 (Fraud in obtaining loans or related benefits) by Law No 1662 “KZ-B” of 7.4.2004 (Uradni list RS/Official Gazette RS 40/2004)
Slovakia	30.9.2004	Ratified by the President on 25.8.2004 (Notification by the Minister for Foreign Affairs, Collection of Laws No 703/2004)	The main concepts of the PFI Convention were introduced into the Slovak Criminal Code of 1961 (Collection of Laws No 140/1961). Shortly afterwards, a new Criminal Code was enacted incorporating these offences, applicable as of 1.1.2006 (Collection of Laws No 300/2005)
Finland	18.12.1998	Decree of the President 834/2002 and Law No 814/1998 (Finland’s Statute Book of 18.11.1998, p. 2227) amending the Criminal Law	Amendment of the Criminal Code (amendment of Chapter 1, §13 and of Chapter 29, §5 and §9)
Sweden	10.6.1999	Law No 1999:197 amending the Criminal Code	Amendment of the Criminal Code (insertion of Chapter 9, §3a and amendment of Chapter 2, §5a)
United Kingdom – England and Wales	11.10.1999	Ratified by the Foreign Secretary signing the necessary instruments of adoption in September 1999 in order to complete the ratification process for mainland United Kingdom, i.e. the three jurisdictions of England and Wales, Scotland and Northern Ireland	No amendments to existing provisions were made by the UK at the time of ratification. Ratification was completed after the government had acted to bring into force Part I of the Criminal Justice Act 1993 by the Criminal Justice Act 1993 (Commencement No 10) Order 1999, Statutory Instrument 1999 N. 1189 (C 32). In the mean time, for England & Wales and Northern Ireland the UK has enacted the Fraud Act 2006
United Kingdom – Scotland			
United Kingdom – Northern Ireland			

## Annex Table 2

Instrument	First Protocol		
Member State	Notification	Legislative text	Method of implementation
Belgium	12.3.2002	Law of 17 February 2002 ratifying the PFI Convention, the first Protocol, the second Protocol, the ECJ Protocol and the Convention on the fight against corruption involving officials of the European Communities (Belgisch Staatsblad/Moniteur Belge of 15.5.2002, Ed. 2, page 20555)	No amendments to existing provisions were made by Belgium at the time of ratification. Belgium amended Art. 250 concerning the application of corruption offences to foreign and international officials, repealed Art. 251 of the Belgian Criminal Code and revised the jurisdiction provision in Art. 10quarter of the Criminal Procedural Code by the Law of 11 May 2007 (Belgisch Staatsblad/Moniteur Belge of 8.6.2007, N. 171, page 31224)
Bulgaria	6.12.2007 according to Article 2(1) of Council Decision 2008/40/JHA	Ratification law of 24.1.2007, Bulgarian State Gazette, Issue No 12 of 6.2.2007, page 4	No amendments to existing provisions of the Criminal Code of 1968 were made by Bulgaria at the time of ratification. The main amendments to the provisions of interest were published in Bulgarian State Gazette, Issue No 92 of 27.9.2002 (adding a definition in Art. 93(15), point c) and amending Art. 301 and 304 of the Bulgarian Criminal Code)
Czech Republic	Not yet ratified	Not yet ratified	No amendments to existing provisions of the Czech Criminal Code of 1961 (Collection of Laws No 140/1961). However, the provisions on corruption were extended to foreign and national officials with the introduction of §162a by Collection of Laws No 96/1999
Denmark	2.10.2000	Law No 228 of 4 April 2000 amending the Criminal Code	Amendment of the Criminal Code (§122 and §144)
Germany	24.11.1998	Federal Law on transposition of the Protocol to the PFI Convention (EU-Bestechungsgesetz (EU-BestG) – BGBI 1998 II, p. 2340)	Additional provisions to implement the First Protocol are included in the Federal law itself (Art. 2, §1 and §2) and also amendments of the Criminal Code (inserting a paragraph in §5 to extend jurisdiction on crimes under §108a). The German government proposes to abolish the EU-BestG and to integrate the definitions into the Criminal Code (discussion of 19.4.2005; proposal of 30.5.2007)
Estonia	3.2.2005	Law ratifying the PFI Convention, the first Protocol and the second Protocol (RT II, 6.1.2005, 1, 1)	No amendments to existing provisions of the new Criminal Code of 2001 were made by Estonia at the time of ratification
Greece	26.7.2000	Law No 2803/2000 ratifying the PFI Convention, the first Protocol, the second Protocol and the ECJ Protocol (OJ of the Hellenic Republic of 3.3.2000, Part A, No 48, p. 639)	The law provides for codification of the provisions on criminal offences relating to the PFI Convention without amending the Criminal Code
Spain	20.1.2000	Organic Law 6/1995 introduced the main concepts of the first Protocol into the Spanish Criminal Code of 1973. Shortly afterwards, a new Criminal Code was enacted by Organic Law 10/1995 incorporating the amended rules. The Criminal Code 1995 was amended by Organic Law 15/2003 as regards fraud and corruption (BOE, 26.11.2003, No 283-2003)	Organic Law 15/2003 did not amend the new Spanish Criminal Code as regards the 1st Protocol

France	4.8.2000	Law No 99-420 of 27 May 1999 ratifying the PFI Convention (OJ of the French Republic, 28.5.1999, 7857)	No amendments to existing provisions were made by France at the time of ratification. Subsequent amendments were introduced by Law No 2000-595 of 30 June 2000 amending the Criminal Code (introduction of Art. 435-1 and Art. 435-2, but entered into force on 28.5.2005 in accordance with its Art. 3) and the Code of Criminal Procedure concerning the fight against corruption (OJ of the French Republic, 1.1.2000, 9944). France amended Art. 435-1 to 435-2, introduced Articles 435-3 to 435-15 and revised the jurisdiction provision in Art. 689-8 of the Criminal Procedural Code by Law No 2007-1598 of 13 November 2007 (OJ of the French Republic, 14.11.2007, 18684)
Ireland	3.6.2002	Criminal Justice (Theft and Fraud Offences) Act, 2001 (enacted as No 50 of 2001), Section 41 giving the force of law to PFI instruments (with conditions)	Enactment of Criminal Justice (Theft and Fraud Offences) Act, 2001. Part 6 of the Act provides for codification of the provisions on criminal offences relating to the Protocol
Italy	19.7.2002	Law No 2000/300 ratifying and transposing the PFI Convention, the first Protocol to the PFI Convention, the Protocol on the interpretation by the European Court of Justice, the Convention on the fight against corruption involving officials of the European Communities and the OSCE Convention on the fight against corruption involving foreign public officials in international economic operations as well as delegating the government to enact provisions on the administrative liability of legal persons (Legge 29 settembre 2000, No 300, GURI No 250 of 25.10.2000)	Amendment of the Criminal Code (insertion of Art. 322bis and amendment of Art. 10)
Cyprus	31.3.2005	Law No 37(III)/2003 containing the Convention on the protection of the European Communities' financial interests and protocols (Ratification) Act (Government Gazette I(III) No 3758 of 3.10.2003)	The law provides for codification of the provisions on criminal offences relating to the PFI Convention without amending the Criminal Code
Latvia	31.8.2004	Ratification by approval by the parliament of 29.4.2004 (Latvijas Vestnesis 69 (3017) of 1.5.2004)	No amendments to existing provisions of the new Criminal Code of 1999 were made by Latvia at the time of ratification
Lithuania	28.5.2004	Ratification by Law No IX-2021 of 12.2.2004 (Valstybės žinios/Law Gazette of 29.4.2004, No 67-2354)	No amendments to existing provisions of the new Criminal Code of 2000 were made by Lithuania at the time of ratification. The main amendments to the provisions of interest were made by Law No IX-2314 of 5.7.2004
Luxembourg	17.5.2001	Law of 30 March 2001 ratifying the Convention and the first Protocol and the Protocol on the jurisdiction of the ECJ (OJ of the Grand-Duché du Luxembourg, A-No 47, 26.4.2001)	Amendment to the Code of Criminal Procedure (insertion of Art. 503-1) and of the Law on judicial organisation (insertion of paragraph 5 in Art. 40)
Hungary	Not yet ratified	Not yet ratified	No amendments to existing provisions of the Criminal Code, Act IV of 1978, will need to be made by Hungary at the time of ratification. The main amendments to the provisions of interest in the Criminal Code were made by Act CXXI of 2001 (paragraph 19 introduced Art. 137(3), subsequently amended by Act CXXX of 2003, and paragraphs 47 to 50 introduced Articles 258/B to 258/D)
Malta	Not yet ratified	Not yet ratified	The main provisions of the Criminal Code (Chapter 9 of the Laws of Malta) were amended by Act III of 2002 (paragraphs 70, 74 and 75 amending Art. 115, 120 and 121) and further reviewed by Act III of 2004

Netherlands	28.3.2002	Kingdom Act of 13 December 2000 ratifying the PFI Convention, the first Protocol to the PFI Convention, the Protocol on the interpretation by the European Court of Justice, the Convention on the fight against corruption involving officials of the European Communities and the OSCE Convention on the fight against corruption involving foreign public officials in international economic operations (StB 2000 615) and Act of 13 December 2000 adapting some provisions of the Criminal Code in connection with the ratification and implementation of the Conventions on the fight against corruption (StB 2000 616)	Amendment of the Criminal Code (Amendment of Art. 4, Art. 6, Art. 84, Art. 363 and Art. 177 and introduction of Art. 364a and Art. 178a)
Austria	21.5.1999	Federal Law of 1998 amending the Criminal Code (Strafrechtsänderungsgesetz 1998 – BGBl I 1998/153) and the Federal Law amending levies and charges (Abgabenänderungsgesetz 1998 – BGBl I 1999/28)	Amendment of the Criminal Code (insertion of point (4b) in §74(1) and amendment of §304 and §307). The corruption provisions were extended to all officials of foreign countries or international organisations by Federal Law of 2008 amending the Criminal Code (Strafrechtsänderungsgesetz 2008 – BGBl I 2007/109)
Poland	Not yet ratified	Not yet ratified	No amendments to existing provisions of the new Criminal Code of 1997 will need to be made by Poland at the time of ratification. The main amendments to the corruption provisions in the Criminal Code were published in Dz.U.00.93.1027 and Dz.U.03.111.1061
Portugal	15.1.2001	Parliamentary Resolution No 80/2000 (Diário da república, Série I-A No 288 of 15.12.2000, p. 7305) and Presidential Decree No 82/2000 (Diário da república, Série I-A No 288 of 15.12.2000, p. 7253) ratifying the PFI Convention, the first Protocol, the second Protocol and the ECJ Protocol	No amendments to existing provisions were made by Portugal at the time of ratification. However, Law No 108/2001 following up the Council of Europe Criminal Law Convention on Corruption amended Art. 372, Art. 386 and Art. 3, Art. 16 and Art. 18 of Law No 34/87
Romania	6.12.2007 according to Article 2(1) of Council Decision 2008/40/JHA	-	The main amendments to the provisions of interest were made by Law 161/2003 (Monitorul Oficial No 279, 21 April 2003) amending Law No 78/2000 on preventing, discovering and sanctioning corruption, published in the Monitorul Oficial No 219, 18 May 2000
Slovenia	17.4.2007	Ratification by “MKZFIES” Law No 26 of 9.2.2007 (Uradni list RS/Official Gazette RS 4/2007)	No amendments to existing provisions of the new Criminal Code of 1994 were made by Slovenia at the time of ratification. However, the corruption offences laid down in Art. 267, 268, 269 and 269a were revised by Law No 1662 “KZ-B” of 7.4.2004 (Uradni list RS/Official Gazette RS 40/2004)
Slovakia	30.9.2004	Ratified by the President on 25.8.2004 (Notification by the Minister for Foreign Affairs, Collection of Laws No 704/2004)	The main concepts of the PFI Convention were introduced into the Slovak Criminal Code of 1961 (Collection of Laws No 140/1961). Shortly afterwards, a new Criminal Code was enacted incorporating these offences, applicable as of 1.1.2006 (Collection of Laws No 300/2005) The corruption offences were slightly amended in 2005 (Collection of Laws No 650/2005)
Finland	18.12.1998	Decree of the President 836/2002 and Law No 815/1998 (Finland’s Statute Book of 18.11.1998, p. 2229) amending the Criminal Law (the provisions concerned were essentially amended by Law No 604/2002 extending criminal liability for these crimes to public international organisations as such)	Amendment of the Criminal Code (amendment of Chapter 16, §13 and §20 and Chapter 40, §9. However, amendments superseded by Law No 604/2002)

Sweden	10.6.1999	Law No 1999:197 amending the Criminal Code	Amendment of the Criminal Code (insertion of Chapter 9, §3a and amendment of Chapter 17, §7 and §17 and of Chapter 20, §2 and §5)
United Kingdom – England and Wales	11.10.1999	Ratified by the Foreign Secretary signing the necessary instruments of adoption in September 1999 in order to complete the ratification process for mainland United Kingdom, i.e. the three jurisdictions of England and Wales, Scotland and Northern Ireland	No amendments to existing provisions were made by the United Kingdom at the time of ratification. Ratification was completed after the government had acted to bring into force Part I of the Criminal Justice Act 1993 by the Criminal Justice Act 1993 (Commencement No 10) Order 1999, Statutory Instrument 1999 No 1189 (C 32). However, the Anti-terrorism, Crime and Security Act 2001 extended the common law crime of bribery and of corruption to foreign agents in all jurisdictions of the United Kingdom. The Home Office is taking measures to reform the corruption offences via a new corruption bill (Bill 126 2006-2007 of 14.6.2007 – House of Commons)
United Kingdom – Scotland			
United Kingdom – Northern Ireland			



**Annex Table 3**

<b>Instrument</b>	<b>ECJ Protocol</b>		
<b>Member State</b>	<b>Notification</b>	<b>Legislative text</b>	<b>Method of implementation</b>
Belgium	12.3.2002	Law of 17 February 2002 ratifying the PFI Convention, the first Protocol, the second Protocol, the ECJ Protocol and the Convention on the fight against corruption involving officials of the European Communities (Belgisch Staatsblad/Moniteur Belge of 15.5.2002, Ed. 2, page 20555)	No amendments to existing provisions were made by Belgium at the time of ratification
Bulgaria	6.12.2007 according to Article 2(1) of Council Decision 2008/40/JHA	Ratification law of 24.1.2007, Bulgarian State Gazette, Issue No 12 of 6.2.2007, page 4	Bulgaria appears to consider that it will not be necessary to provide for any additional implementing measure
Czech Republic	Not yet ratified	Not yet ratified	The Czech Republic considers that it will not be necessary to provide for any implementing measure since there are already provisions on application of the ECJ's competence under Art. 35 of the EU Treaty
Denmark	2.10.2000	Law No 228 of 4 April 2000 amending the Criminal Code	§2 of Law No 228 of 4.4.2000
Germany	3.7.2001	Law on the preliminary rulings of the European Court of Justice in the field of police and judicial cooperation in criminal matters under Art. 35 of the EU Treaty (EuGH-Gesetz – BGBI 1998 I, 2035)	Specific law on the related procedure before German courts
Estonia	Not yet ratified	Not yet ratified	
Greece	26.7.2000	Law No 2803/2000 ratifying the PFI Convention, the first Protocol, the second Protocol and the ECJ Protocol (OJ of the Hellenic Republic of 3.3.2000, Part A, No 48, p. 639)	Art. 12 of Law No 2803/2000
Spain	20.1.2000	The ECJ Protocol was published in the Spanish Official Journal together with the declarations as regards its application and entry into force (BOE, 29.7.2003, No 180-2003)	Spain appears to consider that it is not necessary to provide for any additional implementing measure
France	4.8.2000	Law No 99-421 of 27 May 1999 ratifying the Protocol on the jurisdiction of the ECJ (OJ of the French Republic, 28.5.1999, 7857)	No amendments or no implementing provisions were adopted by France at the time of ratification
Ireland	3.6.2002	Criminal Justice (Theft and Fraud Offences) Act, 2001 (enacted as Act No 50 of 2001), Section 41 giving the force of law to PFI instruments (with conditions)	Enactment of Criminal Justice (Theft and Fraud Offences) Act, 2001. Section 41 refers to application of the ECJ-Protocol

Italy	19.7.2002	Law No 2000/300 ratifying and transposing the PFI Convention, the first Protocol to the PFI Convention, the Protocol on the interpretation by the European Court of Justice, the Convention on the fight against corruption involving officials of the European Communities and the OSCE Convention on the fight against corruption involving foreign public officials in international economic operations as well as delegating the government to enact provision on the administrative liability of legal persons (Legge 29 settembre 2000, No 300, GURI No 250 of 25.10.2000)	Need for the government to enact an implementing decree on the basis of Art. 12 of Law No 2000/300 ratifying and transposing the PFI Convention etc., but no such decree seems to have been enacted yet
Cyprus	31.3.2005	Law No 37(III)/2003 containing the Convention on the protection of the European Communities' financial interests and protocols (Ratification) Act (Government Gazette I(III) No 3758 of 3.10.2003)	No amendments to existing provisions were made by Cyprus at the time of ratification
Latvia	31.8.2004	Ratification by approval by the parliament of 29.4.2004 (Latvijas Vestnesis 69 (3017) of 1.5.2004)	Latvia appears to consider that it is not necessary to provide for any additional implementing measure
Lithuania	28.5.2004	Ratification by Law No IX-2021 of 12.2.2004 (Valstybės žinios/Law Gazette of 29.4.2004, No 67-2354)	Lithuania appears to consider that it is not necessary to provide for any additional implementing measure
Luxembourg	17.5.2001	Law of 30 March 2001 ratifying the Convention and the first Protocol and the Protocol on the jurisdiction of the ECJ (OJ of the Grand-Duché du Luxembourg, A-No 47, 26.4.2001)	Art. 8 of Law of 30 March 2001
Hungary	Not yet ratified	Not yet ratified	-
Malta	Not yet ratified	Not yet ratified	-
Netherlands	16.2.2001	Kingdom Act of 13 December 2000 ratifying the PFI Convention, the first Protocol to the PFI Convention, the Protocol on the interpretation by the European Court of Justice, the Convention on the fight against corruption involving officials of the European Communities and the OSCE Convention on the fight against corruption involving foreign public officials in international economic operations (Stb 2000 615)	The Netherlands appears to consider that it is not necessary to provide for any additional implementing measure
Austria	21.5.1999	Federal Law on preliminary rulings by the Court of Justice of the European Communities in the field of police and judicial cooperation in criminal matters (BGBl I 1999/89) in relation to the updated list as announced by the Federal Chancellor (BGBl III 2003/5)	Specific law on the related procedure before Austrian courts
Poland	Not yet ratified	Not yet ratified	Poland considers that it will not be necessary to provide for any implementing measure
Portugal	15.1.2001	Parliamentary Resolution No 80/2000 (Diário da república, Série I-A No 288 of 15.12.2000, p. 7305) and Presidential Decree No 82/2000 (Diário da república, Série I-A No 288 of 15.12.2000, p. 7253) ratifying the PFI Convention, the first Protocol, the second Protocol and the ECJ Protocol	Portugal considers that it is not necessary to provide for any implementing measure

Romania	6.12.2007 according to Article 2(1) of Council Decision 2008/40/JHA	-	Romania has not transmitted any declaration of acceptance of the ECJ's jurisdiction
Slovenia	17.4.2007	Ratification by "MKZFIES" Law No 26 of 9.2.2007 (Uradni list RS/Official Gazette RS 4/2007)	Under Art. 3, point 2 of the "MKZFIES" Law Slovenia accepts the jurisdiction of the Court of Justice pursuant to the conditions specified in Article 2(2)(b) of the Protocol
Slovakia	30.9.2004	Ratified by the President on 25.8.2004 (Notification by the Minister for Foreign Affairs, Collection of Laws No 705/2004)	Slovakia considers that it is not necessary to provide for any implementing measure
Finland	18.12.1998	Decree of the President 838/2002 and Law No 837/2002 giving the content of the Protocol legislative status of an act of parliament in Finland (Finland's Statute Book of 9.10.2002, p. 3968)	Finland considers that it is not necessary to provide for any implementing measure
Sweden	10.6.1999	Law No 1999:197 amending the Criminal Code also ratifies the ECJ Protocol	Law 1998:1352 provides for implementation of all conventions based on Title VI of the EU Treaty
United Kingdom – England and Wales	11.10.1999	Ratified by the Foreign Secretary signing the necessary instruments of adoption in September 1999 in order to complete the ratification process for mainland United Kingdom, i.e. the three jurisdictions of England and Wales, Scotland and Northern Ireland	No amendments to existing provisions were made by the United Kingdom at the time of ratification
United Kingdom – Scotland			
United Kingdom – Northern Ireland			

### Annex Table 4

Instrument	Second Protocol (not yet entered into force)		
Member State	Notification	Legislative text	Method of implementation
Belgium	12.3.2002	Law of 17 February 2002 ratifying the PFI Convention, the first Protocol, the second Protocol, the ECJ Protocol and the Convention on the fight against corruption involving officials of the European Communities (Belgisch Staatsblad/Moniteur Belge of 15.05.2002, Ed. 2, page 20555)	No amendments to existing provisions were made by Belgium at the time of ratification
Bulgaria	Date of entry into force according to Article 2(2) of Council Decision 2008/40/JHA.	Ratification law of 24.1.2007, Bulgarian State Gazette, Issue No 12 of 6.2.2007, page 4	No amendments to existing provisions of the Criminal Code of 1968. An amendment to the Administrative Violations and Sanctions Act introducing the liability of legal entities was published in Bulgarian State Gazette, Issue No 79 of 4.10.2005
Czech Republic	Not yet ratified	Not yet ratified	No amendments to existing provisions of the Czech Criminal Code of 1961 (Collection of Laws No 140/1961). However, the provisions on money laundering were amended by the introduction of §252a by Collection of Laws No 134/2002
Denmark	2.10.2000	Law No 228 of 4 April 2000 amending the Criminal Code	Amendment of the Criminal Code (amendment of §284 and insertion of §306)
Germany	5.3.2003	Federal Law on the transposition of the second Protocol to the PFI Convention, the Joint Action of 22 December 1998 on corruption in the private sector and the Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (BGBl 2002 I, p. 3387)	Amendment of the Law on administrative sanctions (amendment of §30 and §130), of the Criminal Code (by adding a point (5) to §75) and of the Federal Law on transposition of the Protocol to the PFI Convention (extending its scope to money laundering)
Estonia	3.2.2005	Law ratifying the PFI Convention, the first Protocol and the second Protocol (RT II, 6.1.2005, I, 1)	No amendments to existing provisions of the new Criminal Code of 2001 were made by Estonia at the time of ratification
Greece	26.7.2000	Law No 2803/2000 ratifying the PFI Convention, the first Protocol, the second Protocol and the ECJ Protocol (OJ of the Hellenic Republic of 3.3.2000, Part A, No 48, p. 639) As regards the second Protocol, the law will come into force in Greece on ratification by every Member State (Art. 13 of Law No 2803/2000)	Amendment of Law No 2331/1995 on prevention and combating the legalisation of income from criminal activities
Spain	20.1.2000	A new Criminal Code was enacted by Organic Law 10/1995. The Criminal Code 1995 was amended by Organic Law 15/2003 as regards fraud and corruption (BOE, 26.11.2003, No 283-2003)	Amendment of the new Spanish Criminal Code (Art. 31, 127, 129 and 301 recently amended by Organic Law 15/2003 without any specific link to the 2nd Protocol)

France	4.8.2000	Law No 99-422 of 27 May 1999 ratifying the second Protocol (OJ of the French Republic, 28.5.1999, 7858)	No amendments to existing provisions were made by France at the time of ratification. Art. 121-2 of the French Criminal Code concerning the liability of legal persons was amended by Art. 54 of Law No 2004-204 of 9 March 2004 (OJ of the French Republic, 10.5.2004, 4567) and extended to all crimes in French legislation
Ireland	3.6.2002	Criminal Justice (Theft and Fraud Offences) Act, 2001 (enacted as Act No 50 of 2001), Section 41 giving the force of law to PFI instruments (with conditions)	Enactment of Criminal Justice (Theft and Fraud Offences) Act, 2001. Part 6 of the Act provides for codification of the provisions on criminal offences relating to the second Protocol
Italy	Not yet ratified	Not yet ratified: Law No 2006/146 ratifying the UN Convention on transnational organised crimes extended the concept of administrative criminal liability for legal persons to money laundering (Art. 10 (5))	Envisaged method of implementation is to enact a new law as proposed in the legislative proposal
Cyprus	31.3.2005	Law No 37(III)/2003 containing the Convention on the protection of the European Communities' financial interests and protocols (Ratification) Act (Government Gazette I(III) No 3758 of 3.10.2003)	Reference to the Acts (1996-2003) governing the concealment, investigation and confiscation of the proceeds of certain criminal acts in Art. 2 of Law No 37(III)/2003
Latvia	19.10.2005	Ratification by approval by the parliament of 29.4.2004 (Latvijas Vestnesis 69 (3017) of 1.5.2004)	No amendments to existing provisions were made by Latvia at the time of ratification
Lithuania	28.5.2004	Ratification by Law No IX-2021 of 12.2.2004 (Valstybės žinios/Law Gazette of 29.4.2004, No 67-2354)	No amendments to existing provisions of the new Criminal Code of 2000 were made by Lithuania at the time of ratification. The main amendments to the money laundering provisions were made by Law No IX-1992 of 29.1.2004 and to those on confiscation by Law No IX-2314 of 5.7.2004
Luxembourg	13.7.2005	Act of 23 May 2005 ratifying the Convention on the fight against corruption involving officials of the European Communities, the second Protocol, the Strasbourg Convention and its Protocol and amending the Criminal Code (OJ of the Grand-Duché du Luxembourg, A-No 74, 9.6.2005)	Amendments to the Luxembourg Criminal Code (amending Art. 252 and adding Articles 310 and 310-1). The offence of money laundering (Art. 506-1) was amended earlier by the Law of 12 November 2004 (OJ of the Grand-Duché du Luxembourg, A-No 183, 19.11.2004). The confiscation rules were amended by the Law of 1 August 2007 (OJ of the Grand-Duché du Luxembourg, A-No 136, 13.8.2007)
Hungary	Not yet ratified	Not yet ratified	No amendments to existing provisions of the Criminal Code, Act IV of 1978, will need to be made by Hungary at the time of ratification. The main amendments to the provisions of interest in the Criminal Code were made by Act CXXI of 2001 (paragraph 60 amended Art. 303 on money laundering) and a specific law on the liability of legal entities was introduced by Act CIV of 2001
Malta	Not yet ratified	Not yet ratified	The main provisions of the Criminal Code (Chapter 9 of the Laws of Malta) were amended by Act III of 2002 introducing and extending forfeiture provisions and the liability of legal persons (paragraph 9 on Art. 23A and 23B and paragraph 29 on Art. 121D)
Netherlands	28.3.2002	Kingdom Act of 22 June 2001 ratifying the second Protocol to the PFI Convention and the Convention on the fight against corruption (Stb 2001 315)	No amendments to existing provisions were made by the Netherlands at the time of ratification

Austria	20.7.2006	Parliamentary Resolution of 21.4.2006 ratifying the second Protocol (not published in the BGBl)	Prior to ratification, enactment of a specific law on the liability of legal persons for crimes (Verbandsverantwortlichkeitsgesetz (VbVG) – BGBl I 2005/151) and also relevant amendments to the Fiscal Criminal Code (BGBl I 2005/161)
Poland	Not yet ratified	Not yet ratified	A specific law on the liability of legal entities was published in 2002 (Dz.U. 02.197.1661)
Portugal	15.1.2001	Parliamentary Resolution No 80/2000 (Diário da república, Série I-A No 288 of 15.12.2000, p. 7305) and Presidential Decree No 82/2000 (Diário da república, Série I-A No 288 of 15.12.2000, p. 7253) ratifying the PFI Convention, the first Protocol, the second Protocol and the ECJ Protocol	No amendments to existing provisions were made by Portugal at the time of ratification. However, Law No 10/2002 amended Art. 2 of Decree-Law No 325/95 extending it to fiscal fraud. Liability of legal persons for certain crimes was introduced into the Portuguese Criminal Code by Law No 59/2007 (Diário da república, Série I-A No 170 of 4.9.2007, p. 6181)
Romania	Date of entry into force according to Article 2(2) of Council Decision 2008/40/JHA.	Not yet applicable	The liability of legal persons was introduced by amendments made to the Criminal Code by Law 278/2006 (Monitorul Oficial No 601, 12 July 2006). Money laundering provisions were introduced by Law 656/2002 (Monitorul Oficial No 904, 12 December 2002)
Slovenia	17.4.2007	Ratification by “MKZFIES” Law No 26 of 9.2.2007 (Uradni list RS/Official Gazette RS 4/2007)	No amendments to existing provisions of the new Criminal Code of 1994 were made by Slovenia at the time of ratification. However, the law which introduced the criminal liability of legal entities – Law No 2791 of 16.7.1999 “ZOPOKD” (Uradni list RS/Official Gazette RS 59/1999) – was revised by Law No 2294 “ZOPOKD-A” of 30.4.2004 (Uradni list RS/Official Gazette RS 50/2004) as regards extension to all corruption offences
Slovakia	30.9.2004	Ratified by the President on 25.8.2004. However, the notification by the Minister for Foreign Affairs will not be published in the Collection of Laws until the second Protocol enters into force	The main concepts of the PFI Convention were introduced into the Slovak Criminal Code of 1961 (Collection of Laws No 140/1961). Shortly afterwards, a new Criminal Code was enacted incorporating these offences, applicable as of 1.1.2006 (Collection of Laws No 300/2005). The corruption offences were slightly amended in 2005 (Collection of Laws No 650/2005)
Finland	26.2.2003	Law No 1191/2002 (Finland’s Statute Book of 27.12.2002, p. 4795) giving the content of the Protocol the legislative status of an act of parliament in Finland (the provisions of the Finnish Criminal Code were not altered, but were essentially amended later by Law No 61/2003)	No amendments to existing provisions were made by Finland at the time of ratification
Sweden	12.3.2002	Law No 2001:780 amending the Criminal Code	Amendment of the Criminal Code (amendment of Chapter 2, §5a and Chapter 9, §11)
United Kingdom – England and Wales	11.10.1999	Ratified by the Foreign Secretary signing the necessary instruments of adoption in September 1999 in order to complete the ratification process for mainland United Kingdom, i.e. the three jurisdictions of	No amendments to existing provisions were made by the United Kingdom at the time of ratification. Ratification was completed after the government had acted to bring into force Part I of the Criminal Justice Act 1993 by the

United Kingdom – Scotland		England and Wales, Scotland and Northern Ireland	Criminal Justice Act 1993 (Commencement No 10) Order 1999, Statutory Instrument 1999 No 1189 (C 32). However, the Proceeds of Crime Act 2002 extends the anti-money-laundering rules to all criminal conduct which constitutes an offence in the United Kingdom
United Kingdom – Northern Ireland			

**Annex Table 5**

<b>Instrument</b>	<b>PFI Convention</b>		
<b>Member State</b>	<b>Art 1(1)(a), first indent - Expenditure fraud</b>	<b>Art. 1(1)(a), second indent - Expenditure fraud</b>	<b>Art. 1(1)(a), third indent - Expenditure fraud</b>
Belgium	Art. 2, §2 of Royal Decision of 31 May 1933	Art. 2, §2 of Royal Decision of 31 May 1933	Art. 2, §3 of Royal Decision of 31 May 1933
Bulgaria	Art. 254(2) of the Bulgarian Criminal Code for the specific purpose of appropriating EU funds. Subsidiary Art. 212 (3) of the Bulgarian Criminal Code for use of false contents or inauthentic or forged documents for the specific purpose of appropriating EU funds, but limited to use of documents. Subsidiary general fraud (Art. 209)	Art. 254(2) of the Bulgarian Criminal Code for the specific purpose of appropriating EU funds. Subsidiary Art. 212(3) of the Bulgarian Criminal Code for use of false contents or inauthentic or forged documents for the specific purpose of appropriating EU funds, but limited to use of documents	Art. 254b of the Bulgarian Criminal Code specifically for “EU funds”
Czech Republic	§250b(1) of the Czech Criminal Code for subsidy fraud. §250 of the Czech Criminal Code as general fraud offence. This subsidiary general offence of fraud requires minimum damage above €175. (For damage lower than approximately €175 §50 of Collection of Laws No 200/1990 applies)	§250b(1) of the Czech Criminal Code for subsidy fraud. §250 of the Czech Criminal Code as subsidiary general fraud offence for minimum damage above €175. (For damage lower than approximately €175 §50 of Collection of Laws No 200/1990 applies)	§250b(2) of the Czech Criminal Code for subsidy fraud
Denmark	§289a(1) of the Danish Criminal Code	§289a(1) of the Danish Criminal Code	§289a(2) of the Danish Criminal Code
Germany	§264(1), points (1) and (4) or §263(1) of the German Criminal Code	§264(1), point (3) or §263(1) of the German Criminal Code	§264(1), point (2) of the German Criminal Code
Estonia	§210(2) of the Estonian Criminal Code for subsidy fraud, where “subsidy” is defined as all “public funds” (§210(1)). §209(1) of the Estonian Criminal Code as general fraud offence. In addition, §280 of the Estonian Criminal Code criminalises submission of false information to administrative authorities	§210(2) of the Estonian Criminal Code for subsidy fraud, where “subsidy” is defined as all “public funds” (§210(1)). §209(1) of the Estonian Criminal Code as general fraud offence	§210(3) of the Estonian Criminal Code for subsidy fraud
Greece	Art. 4(1) of Law No 2803/2000 or Art. 386 of the Greek Criminal Code	Art. 4(1) of Law No 2803/2000 or Art. 386 of the Greek Criminal Code	Art. 4(1) of Law No 2803/2000
Spain	Art. 309 of the Spanish Criminal Code for fraud above €50 000; Art. 627 of the Spanish Criminal Code for offences for amounts between €4 000 and €50 000	Art. 309 of the Spanish Criminal Code for fraud above €50 000; Art. 627 of the Spanish Criminal Code for offences for amounts between €4 000 and €50 000	Art. 306 of the Spanish Criminal Code for fraud above €50 000; Art. 628 of the Spanish Criminal Code for offences for amounts between €4 000 and €50 000
France	Art. 313-1 or Art. 441-1 or Art. 441-6, third indent of the French Criminal Code	-	Art. 314-1 of the French Criminal Code
Ireland	Section 42 of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 42 of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 42 of the Criminal Justice (Theft and Fraud Offences) Act, 2001



Italy	Art. 316ter or Art. 640bis of the Italian Criminal Code or, for fraud concerning the EAGGF, Art. 2(1) of Law No 1986/898	Art. 316ter of the Italian Criminal Code or Art. 640bis of the Italian Criminal Code	Art. 316bis of the Italian Criminal Code
Cyprus	Art. 5(1) of Law No 37(III)/2003	Art. 5(1) of Law No 37(III)/2003	Art. 5(1) of Law No 37(III)/2003
Latvia	Section 210 of the Latvian Criminal Code for subsidy fraud; Section 177 of the Latvian Criminal Code as general fraud offence	Section 210 of the Latvian Criminal Code for subsidy fraud; Section 177 of the Latvian Criminal Code as general fraud offence	Section 210(2) of the Latvian Criminal Code; Section 177 of the Latvian Criminal Code as general fraud offence
Lithuania	Art. 207 of the Lithuanian Criminal Code for subsidy fraud; Art. 182 of the Lithuanian Criminal Code as general fraud offence. In addition, Art. 186 of the Lithuanian Criminal Code punishes anyone who dishonestly avoids compulsory payments and Art. 205 submission of false information to national or international administrative authorities	Article 207 of the Lithuanian Criminal Code for subsidy fraud. Article 221 of the Lithuanian Criminal Code on non-submission of declarations, accounts or other documents	Article 206 of the Lithuanian Criminal Code. As a subsidiary offence, such behaviour may fall under Article 182 of the Lithuanian Criminal Code as general fraud offence, which also covers the elimination of property-related obligations, Art. 183 concerning the misappropriation of another person's property and Art. 184 concerning the wasting of another person's property
Luxembourg	Art. 496-1 of the Luxembourg Criminal Code	Art. 496-1 and also Art. 496-3 of the Luxembourg Criminal Code	Art. 496-2 of the Luxembourg Criminal Code
Hungary	Article 314(1), point (a) of the Hungarian Criminal Code	Article 314(1), point (a) of the Hungarian Criminal Code	Article 314(2), point (a) of the Hungarian Criminal Code
Malta	Art. 293 (misappropriation) in the form of Art. 294 of the Maltese Criminal Code; as a subsidiary offence Art. 308 (obtaining money or property by false pretences) and Art. 309 (other cases of fraudulent gain) may apply	Art. 293 (misappropriation) in the form of Art. 294 of the Maltese Criminal Code; as a subsidiary offence Art. 308 (obtaining money or property by false pretences) and Art. 309 (other cases of fraudulent gain) may apply	Art. 293 (misappropriation) in the form of Art. 294 of the Maltese Criminal Code
Netherlands	Art. 326 or Art. 225(2) or Art. 227a of the Dutch Criminal Code	Art. 326 or Art. 227b of the Dutch Criminal Code.	Art. 323a of the Dutch Criminal Code
Austria	§146 and §147 of the Austrian Criminal Code; specifically for export subsidies: §7 of the Austrian Law on export subsidies referring to §35 of the Austrian Fiscal Criminal Code (for import or export duties or customs)	§146 and §147 read together with §2 of the Austrian Criminal Code; specifically for export subsidies: §7 of the Austrian Law on export subsidies referring to §35 of the Austrian Fiscal Criminal Code (for import or export duties or customs)	§153b of the Austrian Criminal Code; specifically for export subsidies: §7 of the Austrian Law on export subsidies referring to §35 of the Austrian Fiscal Criminal Code (for import or export duties or customs)
Poland	Article 297(1) of the Polish Criminal Code for subsidies	Article 297(2) of the Polish Criminal Code for subsidies. In addition, the subsidiary general offence of fraud in Poland (Article 286 of the Polish Criminal Code) applies.	Article 82 of the Polish Fiscal Criminal Code. As a subsidiary offence, such behaviour may fall under Article 284 of the Polish Criminal Code concerning misappropriation of another person's property
Portugal	Art. 36(1) of Decree-Law No 28/84	Art. 36(1) of Decree-Law No 28/84	Art. 37(1) of Decree-Law No 28/84
Romania	Art. 18.1(1) of Law No 78/2000	Art. 18.1(2) of Law No 78/2000	Art. 18.2(1) of Law No 78/2000
Slovenia	Art. 235(1) of the Slovenian Criminal Code for subsidy fraud. Art. 217 of the Slovenian Criminal Code as general fraud offence	Art. 235(1) of the Slovenian Criminal Code for subsidy fraud. Art. 217 of the Slovenian Criminal Code as general fraud offence. Both cover suppression or concealment of information	Art. 235(2) of the Slovenian Criminal Code. As a subsidiary offence, such behaviour may fall under Art. 234a of the Slovenian Criminal Code as business fraud if an economic activity is concerned, Art. 245 concerning misapplication, Art. 246 concerning misapplication of entrusted property or Art. 264 concerning misapplication of entrusted property in office

Slovakia	§261 of the Slovak Criminal Code	§261 of the Slovak Criminal Code	§261 of the Slovak Criminal Code
Finland	Chapter 29, §5(1) of the Finnish Criminal Code applicable to expenditure on behalf of the European Communities due to reference in Chapter 29, §9(2) of the Finnish Criminal Code	Chapter 29, §5(2) of the Finnish Criminal Code applicable to expenditure on behalf of the European Communities due to reference in Chapter 29, §9(2) of the Finnish Criminal Code	Chapter 29, §7 of the Finnish Criminal Code applicable to expenditure on behalf of the European Communities due to reference in Chapter 29, §9(2) of the Finnish Criminal Code
Sweden	Chapter 9, §1(1) of the Swedish Criminal Code	Chapter 9, §1(1) of the Swedish Criminal Code	Chapter 9, §3a of the Swedish Criminal Code
United Kingdom – England and Wales	Section 2 of the Fraud Act 2006 (fraud by false representation). If committed by at least two persons, conspiracy to defraud is a <u>common law offence</u>	Section 3 of the Fraud Act 2006 (fraud by failing to disclose information)	Section 4 of the Fraud Act 2006 (fraud by abuse of position)
United Kingdom – Scotland	Fraud is a <u>common law offence</u> . <u>Scotland provides for the common law offence of fraud, which also covers conduct affecting the European Communities' expenditure</u>		Misapplication could be assumed as embezzlement under <u>common law</u>
United Kingdom – Northern Ireland	Section 2 of the Fraud Act 2006 (fraud by false representation). If committed by at least two persons, conspiracy to defraud is a <u>common law offence</u>	Section 3 of the Fraud Act 2006 (fraud by failing to disclose information)	Section 4 of the Fraud Act 2006 (fraud by abuse of position)

**Annex Table 6**

<b>Instrument</b>	<b>PFI Convention</b>		
<b>Member State</b>	<b>Art. 1(1)(b), first indent – Revenue fraud</b>	<b>Art. 1(1)(b), second indent – Revenue fraud</b>	<b>Art. 1(1)(b), third indent – Revenue fraud</b>
Belgium	Art. 259, point 2 and Art. 261 of the General Law on customs and excise tax or Art. 10 of the Law of 11 September 1962 concerning the importation, exportation and transit of goods and related technologies. On VAT fraud, Art. 73 to Art. 73bis of the VAT Code	Art. 259, point 2 and Art. 261 of the General Law on customs and excise tax or Art. 10 of the Law of 11 September 1962 concerning the importation, exportation and transit of goods and related technologies. On VAT fraud, Art. 73 to Art. 73bis of the VAT Code	Art. 259, point 2 and Art. 261 of the General Law on customs and excise tax or Art. 10 of the Law of 11 September 1962 concerning the importation, exportation and transit of goods and related technologies. On VAT fraud, Art. 73 to Art. 73bis of the VAT Code
Bulgaria	Art. 254(2) of the Bulgarian Criminal Code for the specific purpose of appropriating EU funds. As a subsidiary offence, Art. 212(3) of the Bulgarian Criminal Code for use of false contents or inauthentic or forged documents for the specific purpose of appropriating EU funds, limited to the use of documents. For smuggling, Art. 242 of the Bulgarian Criminal Code and for taxes, including VAT, Art. 255, 256 and 257 of the Bulgarian Criminal Code also apply.	Art. 254(2) of the Bulgarian Criminal Code for the specific purpose of appropriating EU funds. As a subsidiary offence, Art. 212(3) of the Bulgarian Criminal Code for use of false contents or inauthentic or forged documents for the specific purpose of appropriating EU funds, limited to the use of documents	Art. 254b of the Bulgarian Criminal Code specifically for “EU funds”
Czech Republic	§250 of the Czech Criminal Code as general fraud offence for minimum damage above €175. (For damage lower than approximately €175 §50 of Collection of Laws No 200/1990 applies)	§250 of the Czech Criminal Code as general fraud offence for minimum damage above €175. (For damage lower than approximately €175 §50 of Collection of Laws No 200/1990 applies)	-
Denmark	§289a(1) of the Danish Criminal Code	§289a(1) of the Danish Criminal Code	§289a(2) of the Danish Criminal Code
Germany	§370(1), point (1) of the German Fiscal Code	§370(1), point (2) of the German Fiscal Code	§370(1), point (1) of the German Fiscal Code due to the reference to §153 of the German Fiscal Code
Estonia	§385 of the Estonian Criminal Code for fraudulent miscalculation of tax; §391 for illicit trafficking as a customs offence. In addition, §280 of the Estonian Criminal Code criminalises submission of false information to administrative authorities. §152 of the Taxation Act and §73 of the Customs Act also provide for complementary misdemeanours	§385 of the Estonian Criminal Code for fraudulent miscalculation of tax; §391 for illicit trafficking as a customs offence. In addition, §280 of the Estonian Criminal Code criminalises submission of false information to administrative authorities. §152 of the Taxation Act and §73 of the Customs Act also provide for complementary misdemeanours	§385 of the Estonian Criminal Code for fraudulent miscalculation of tax; §391 for illicit trafficking as a customs offence. §152 of the Taxation Act and §73 of the Customs Act also provide for complementary misdemeanours
Greece	Art. 4(1) of Law No 2803/2000 or Art. 102(1) of the Customs Code	Art. 4(1) of Law No 2803/2000 or Art. 102(1) of the Customs Code	Art. 4(1) of Law No 2803/2000
Spain	Art. 305(1) and (3) of the Spanish Criminal Code for fraud above €50 000, referred to as offences; Art. 628 of the Spanish Criminal Code for amounts between €4 000 and €50 000 or Art. 2 of Organic Law 12/1995 for smuggling	Art. 305(1) and (3) of the Spanish Criminal Code for fraud above €50 000, referred to as offences; Art. 628 of the Spanish Criminal Code for amounts between €4 000 and €50 000 or Art. 2 of Organic Law 12/1995 for smuggling	Art. 305(1) and (3) of the Spanish Criminal Code for fraud above €50 000, referred to as offences; Art. 628 of the Spanish Criminal Code for amounts between €4 000 and €50 000 or Art. 2 of Organic Law 12/1995 for smuggling

France	Punishable criminally under Art. 414 to 417 and administratively under Art. 410 to 412 of the Customs Code or under Art. 1741 and administratively under Art. 1728 to 1729 of the General Tax Code	Punishable criminally under Art. 414 to 417 and administratively under Art. 410 to 412 of the Customs Code or under Art. 1741 and administratively under Art. 1728 to 1729 of the General Tax Code	Punishable criminally under Art. 414 to 417 and administratively under Art. 410 to 412 of the Customs Code or under Art. 1741 and administratively under Art. 1728 to 1729 of the General Tax Code
Ireland	Section 42 of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 42 of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 42 of the Criminal Justice (Theft and Fraud Offences) Act, 2001
Italy	Art. 640bis of the Italian Criminal Code or, for customs duties, Art. 282 to 292 of the amalgamated Law in respect of customs matters for smuggling or, for taxes, Art. 2 of implementing Decree 2000/74 on the new provisions on offences concerning taxes on income and value added	Art. 640bis of the Italian Criminal Code or, for customs duties, Art. 282 to 292 of the amalgamated Law in respect of customs matters for smuggling or, for taxes, Art. 2 of implementing Decree 2000/74 on the new provisions on offences concerning taxes on income and value added	Art. 640bis of the Italian Criminal Code or, for customs duties, Art. 282 to 292 of the amalgamated Law in respect of customs matters for smuggling or, for taxes, Art. 2 of implementing Decree 2000/74 on the new provisions on offences concerning taxes on income and value added
Cyprus	Art. 5(2) of Law No 37(III)/2003	Art. 5(2) of Law No 37(III)/2003	Art. 5(2) of Law No 37(III)/2003
Latvia	Section 177 of the Latvian Criminal Code as general fraud offence, which also applies to tax fraud	Section 177 of the Latvian Criminal Code as general fraud offence, which also applies to tax fraud	Section 177 of the Latvian Criminal Code as general fraud offence, which also applies to tax fraud
Lithuania	Art. 199 and 199-1 of the Lithuanian Criminal Code for smuggling and customs fraud (for amounts exceeding €9 413). Art. 220(1) of the Lithuanian Criminal Code for false information on taxes, Art. 220(2) for tax evasion (only for amounts exceeding €377). As a subsidiary offence, Art. 182 of the Lithuanian Criminal Code as general fraud offence, Art. 186 concerning persons who dishonestly avoid compulsory payments and Art. 205 for submission of false information to national or international administrative authorities, if done on behalf of a legal person, also apply	Article 207 of the Lithuanian Criminal Code for subsidy fraud. Article 221 of the Lithuanian Criminal Code on non-submission of declarations, accounts or other documents	Such behaviour may be considered to fall under the subsidiary offences provided for in Article 182 of the Lithuanian Criminal Code as general fraud offence; Art. 183 concerning the misappropriation of another person's property and Art. 184 concerning the wasting of another person's property
Luxembourg	Art. 496-4 of the Luxembourg Criminal Code	Art. 496-4 of the Luxembourg Criminal Code	Art. 496-4 of the Luxembourg Criminal Code
Hungary	Article 314(1), point (b) of the Hungarian Criminal Code	Article 314(1), point (b) of the Hungarian Criminal Code	Article 314(2), point (b) of the Hungarian Criminal Code
Malta	For customs Art. 62 of the Customs Ordinance (Chapter 37 of the Laws of Malta) and for VAT Art. 77 of the Value Added Tax Act (Chapter 406 of the Laws of Malta). As a subsidiary offence, the offences provided for in Art. 308 (obtaining money or property by false pretences) and 309 (other cases of fraudulent gain) may apply	For customs, Art. 62 of the Customs Ordinance (Chapter 37 of the Laws of Malta) and for VAT Art. 77 of the Value Added Tax Act (Chapter 406 of the Laws of Malta). As a subsidiary offence, the offences provided for in Art. 308 (obtaining money or property by false pretences) and 309 (other cases of fraudulent gain) may apply	For customs, Art. 62 of the Customs Ordinance (Chapter 37 of the Laws of Malta) and for VAT Art. 77 of the Value Added Tax Act (Chapter 406 of the Laws of Malta). As a subsidiary offence, the offences provided for in Art. 308 (obtaining money or property by false pretences) and 309 (other cases of fraudulent gain) may apply
Netherlands	Art. 326 or Art. 225(2) or Art. 227a of the Dutch Criminal Code or Art. 47 of the Customs Law or Art. 18 of the Import and Exports Act or Art. 68 of the State Taxes Law	Art. 326 or Art. 225(2) or Art. 227a of the Dutch Criminal Code or Art. 47 of the Customs Law or Art. 18 of the Import and Exports Act or Art. 68 of the State Taxes Law	Art. 47 of the Customs Law or Art. 225(2), 227a and 227b of the Dutch Criminal Code

Austria	§33 of the Austrian Fiscal Criminal Code (for taxes) and §35 of the Austrian Fiscal Criminal Code (for import or export duties or customs)	§33 of the Austrian Fiscal Criminal Code (for taxes) and §35 of the Austrian Fiscal Criminal Code (for import or export duties or customs)	§33 of the Austrian Fiscal Criminal Code (for taxes) and §35 of the Austrian Fiscal Criminal Code (for import or export duties or customs)
Poland	Art. 53 to 56 and 76 of the Polish Fiscal Criminal Code (for taxes, including resources of the EC in accordance with Art. 53(26a)) and Art. 86 to 88 and 92 of the Polish Fiscal Criminal Code (for customs)	Art. 53 to 56 and 76 of the Polish Fiscal Criminal Code (for taxes, including resources of the EC in accordance with Art. 53(26a)) and Art. 86 to 88 and 92 of the Polish Fiscal Criminal Code (for customs)	Article 82 of the Polish Fiscal Criminal Code
Portugal	Art. 23 of the Fiscal Offence Code or Art. 23 of the Customs Offence Code	Art. 23 of the Fiscal Offence Code or Art. 23 of the Customs Offence Code	Art. 23 of the Fiscal Offence Code and Art. 23 of the Customs Offence Code
Romania	Art. 18.3(1) of Law No 78/2000	Art. 18.3(2) of Law No78/2000	Art. 18.2(3) of Law No 78/2000
Slovenia	Art. 255 of the Slovenian Criminal Code for smuggling; Art. 254(1) of the Slovenian Criminal Code including all taxes or financial obligations	Art. 255 of the Slovenian Criminal Code for smuggling; Art. 254(2) of the Slovenian Criminal Code including all taxes or financial obligations	Art. 254(2) of the Slovenian Criminal Code including all taxes or financial obligations
Slovakia	§261 of the Slovak Criminal Code. Tax evasion, including VAT, is punished under §276 of the Slovak Criminal Code	§261 of the Slovak Criminal Code	§261 of the Slovak Criminal Code
Finland	Chapter 29, §1 of the Finnish Criminal Code applicable to a levy collected on behalf of the European Communities due to reference in Chapter 29, §9(1) and (2) of the Finnish Criminal Code	Chapter 29, §1 of the Finnish Criminal Code applicable to a levy collected on behalf of the European Communities due to reference in Chapter 29, §9(1) and (2) of the Finnish Criminal Code	Chapter 29, §1 of the Finnish Criminal Code applicable to a levy collected on behalf of the European Communities due to reference in Chapter 29, §9(1) and (2) of the Finnish Criminal Code
Sweden	Chapter 9, §1(1) of the Swedish Criminal Code or §2 of the Fiscal Criminal Code or the Law on criminal charges for smuggling	Chapter 9, §1(1) of the Swedish Criminal Code or §2 of the Fiscal Criminal Code or the Law on criminal charges for smuggling	Chapter 9, §3a of the Swedish Criminal Code
United Kingdom – England and Wales	Cheating revenue is a <u>common law offence</u> . Sections 167 and 168 or 170 of the Customs and Management Excise Act 1979 or Section 72 of the VAT Act 1994	Cheating revenue is a <u>common law offence</u> . Sections 167 and 168 or 170 of the Customs and Management Excise Act 1979 or Section 72 of the VAT Act 1994	-
United Kingdom – Scotland	Sections 167 and 168 or 170 of the Customs and Management Excise Act 1979 or Section 72 of the VAT Act 1994	Sections 167 and 168 or 170 of the Customs and Management Excise Act 1979 or Section 72 of the VAT Act 1994	-
United Kingdom – Northern Ireland	Cheating revenue is a <u>common law offence</u> . Sections 167 and 168 or 170 of the Customs and Management Excise Act 1979 or Section 72 of the VAT Act 1994	Cheating revenue is a <u>common law offence</u> . Sections 167 and 168 or 170 of the Customs and Management Excise Act 1979 or Section 72 of the VAT Act 1994	-

**Annex Table 7**

<b>Instrument</b>	<b>PFI Convention</b>				<b>First Protocol</b>
<b>Member State</b>	<b>Art. 1(3) – Preparative action</b>	<b>Art. 2(1) – Penalties for fraud</b>	<b>Art. 2(1) – Penalties for serious fraud</b>	<b>Art. 2(2) – Penalties for minor fraud</b>	<b>Art. 4(1) – Assimilation of Community officials</b>
Belgium	Art. 51 of the Belgian Criminal Code penalises attempt and Art. 67 of the Belgian Criminal Code participation. Art. 259, point 1 and Art. 260 of the General Law on customs and excise tax provide for a specific offence of preparing documents intended for customs fraud	Art. 2, §2 of Royal Decision 1933: deprivation of liberty from 6 months to 3 years and fine; Art. 2, §3 of Royal Decision 1933: deprivation of liberty from 6 months to 5 years; Art. 2, §4 of Royal Decision 1933: deprivation of liberty from 1 to 5 years and fine; Art. 259, Art. 260 and Art. 261 of the General Law on customs and excise tax: fine; Art. 73 of the VAT Code: fine and deprivation of liberty up to 2 years. Art. 73bis of the VAT Code: fine and deprivation of liberty up to 5 years	-	-	-
Bulgaria	Art. 212(3) of the Bulgarian Criminal Code for use of false contents or inauthentic or forged documents for the specific purpose of appropriating EU funds, limited to the use of documents. Bulgarian criminal law provides for rules on participation, instigation and attempt under Art. 17 to 19 (attempt) and Art. 20 to 22 (accomplice and participant) of the Bulgarian Criminal Code	Art. 254(2) (wrong declaration to the detriment of EC funds): imprisonment of up to 1 year and fine; Art. 212(3) (false documents to the detriment of EC funds): imprisonment of 3 to 10 years; Art. 254b (misappropriation to the detriment of EC funds): imprisonment of up to 5 years	-	-	Misappropriation of EU funds is punished more harshly, but only if committed by Bulgarian officials (Art. 201 and 202(2), point 3 of the Bulgarian Criminal Code)
Czech Republic	§8 (attempt) and §§9 and 10 (accomplice and participant) of the Czech Criminal Code	Deprivation of liberty for up to 2 years under both §250 and §250b of the Czech Criminal Code	For damage exceeding €875: deprivation of liberty from 6 months to 3 years; for damage exceeding €17 500: deprivation of liberty from 2 to 8 years; for damage exceeding €175 000: deprivation of liberty from 5 to 12 years	For damage lower than approximately €175 §50 of Collection of Laws No 200/1990 provides for a fine of up to €525	-

Denmark	§21 and §23 of the Danish Criminal Code provide for punishing attempt and participation in all crimes under the Danish Criminal Code. §171 of the Danish Criminal Code criminalises document forgery	Deprivation of liberty up to 1 year and 6 months plus fine for all crimes under §289a of the Danish Criminal Code. In severe cases, up to 8 years for §289 and §289a of the Danish Criminal Code	-	-	-
Germany	§264(1), point (4) of the German Criminal Code and §25 to §27 of the German Criminal Code for participation. §267 of the German Criminal Code criminalises document forgery	Deprivation of liberty up to 5 years or financial penalty	-	For revenue fraud for sums below €125, alternative measure other than criminal sanctions	Assimilation for fraud committed by Community officials ensured by reference made in Art. 2, §1(2) of the Federal Law on transposition of the Protocol to the PFI Convention
Estonia	§22 of the Estonian Criminal Code for participation. §25 of the Estonian Criminal Code for attempt	§210(1) (subsidy fraud) of the Estonian Criminal Code: pecuniary punishment or deprivation of liberty up to 5 years; §209(1) (normal fraud), §386(1) (fraudulent miscalculation of tax) and §391(1) (illicit trafficking) of the Estonian Criminal Code: pecuniary punishment or deprivation of liberty up to 3 years. §280 (submission of false information): pecuniary punishment or deprivation of liberty up to 1 year	-	As regards fraud and subsidy fraud, §218 of the Estonian Criminal Code applies and provides for only misdemeanour punishment (fines) for a value below €64	Assimilation for all aggravating circumstances for illicit trafficking (§391(2), point (1)) and additional liability for misuse of official position (§289) via the definition in §288(2) of the Estonian Criminal Code also applying to “officials of international organisations”
Greece	Art. 6 of Law No 2803/2000 unless punished by another provision or as attempt at a crime punished under another provision (deprivation of liberty up to 1 year)	Deprivation of liberty up to 10 years (Art. 4(2) of Law No 2803/2000), unless below €5 878	Deprivation of liberty up to 20 years (Art. 4(2) of Law No 2803/2000) above €73 475	Deprivation of liberty up to 1 year or fine (Art. 5 of Law No 2803/2000) below €5 878	-
Spain	Art. 15(1), in connection with Art. 305, 306 and 309, plus Art. 15(2) in connection with Art. 627 and 628 of the Spanish Criminal Code. Articles 27 and 28 of the Spanish Criminal Code for participation	Penalty from 1 to 2 months, that is to say a pecuniary penalty of between €2 and €400 per day for the period from 1 to 2 months (Art. 627 and 628 of the Spanish Criminal Code), unless below €4 000	Deprivation of liberty from 1 to 4 years and financial penalty (Art. 305, 306 and 309 of the Spanish Criminal Code) if the total amount involved exceeds €50 000	“Non-criminal” sanctions for fraud for sums below €4 000	Assimilation for fraud committed by Community officials ensured through the wide definition of official in Art. 24(2) of the Spanish Criminal Code

France	Article 121-4 of the French Criminal Code for attempt and Article 121-6 of the French Criminal Code for participation	Expenditure fraud: Art. 313-2 of the French Criminal Code: punished by 5 years deprivation of liberty and fine; Art. 441-2 of the French Criminal Code: 3 years deprivation of liberty and fine; Art.314-2 and Art. 314-3 of the French Criminal Code: 3 years deprivation of liberty and fine, Revenue fraud: first-degree customs misdemeanour under Art. 414 of the Customs Code: 3 years deprivation of liberty and fine. Art. 1741 of the General Code on taxes provides for up to 5 years' deprivation of liberty	-	No reference to minor fraud, but administrative penalties against VAT offences and customs fraud	-
Ireland	Participation, attempt and instigation punished as the principal offence under Section 42, point (b) of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 42 of the Criminal Justice (Theft and Fraud Offences) Act, 2001: maximum of an unlimited fine and/or maximum imprisonment of 5 years	-	-	Section 45 of the Criminal Justice (Theft and Fraud Offences) Act, 2001
Italy	Art. 110 of the Italian Criminal Code on participation and Art. 56 on attempt	Art. 640bis of the Italian Criminal Code: deprivation of liberty from 1 to 6 years; Art. 316ter of the Italian Criminal Code: deprivation of liberty from 6 months to 3 years; Art. 316bis of the Italian Criminal Code: deprivation of liberty from 6 months to 4 years; Art. 2(1) of Law No 1986/898: deprivation of liberty from 6 months to 3 years	Art. 282 to 292 of the amalgamated Law in respect of customs matters provides for financial penalties, Art. 295 of the same Law provides for deprivation of liberty up to 3 years in addition to the financial penalty, if exceeding €49 993.03	Art. 2(1) of Law No 1986/898 and for the customs crimes punishable under Art. 282 to 292 of the amalgamated Law in respect of customs matters (Art. 295bis of that Law), below €3 999.96, financial administrative sanction	-
Cyprus	Art. 6 and 7 of Law No 37(III)/2003 referring for participation and for attempt to Sections 20 and 366 of the Criminal Code respectively	Deprivation of liberty up to 3 years and/or pecuniary penalty (Art. 5(1) and (2) of Law No 37(III)/2003), unless below €1 200	Deprivation of liberty up to 4 years and/or pecuniary penalty (Art. 5(3) of Law No 37(III)/2003) if exceeding €68 344.10	Pecuniary penalty (Art. 5(4) of Law No 37(III)/2003) below €1 196.20	-



Latvia	Section 20 of the Latvian Criminal Code on participation; Section 15 on attempt	Section 210 of the Latvian Criminal Code: deprivation of liberty up to 2 years; Section 177 of the Latvian Criminal Code: deprivation of liberty up to 3 years	-	-	Extension of public fraud offences in the Latvian Criminal Code, such as Section 317 (exceeding official authority), Section 326 (unlawful participation in property transactions) and Section 327 (forging official documents) to “officials of international organisations” as defined in Section 316(3)
Lithuania	Art. 24 and 26 of the Lithuanian Criminal Code on participation; Art. 22 on attempt	For offences under Art. 221 (non-submission of declarations): community work or fine. For offences under Art. 206 (misapplication): deprivation of liberty up to 1 year (if exceeding €5 648). For offences under Art. 184 (waste of resources), 186 (infliction of financial loss) and 205 (fraudulent statements): fine or deprivation of liberty up to 2 years. For offences under Art. 182 (fraud), 183 (infliction of financial loss), 207 (subsidy fraud) and 220 (tax evasion): fine or deprivation of liberty up to 3 years. For offences under Art. 199 and 199-1 (smuggling and customs fraud, if exceeding €9 413, otherwise no punishment): deprivation of liberty up to 8 years	-	-	-
Luxembourg	Art. 66 of the Luxembourg Criminal Code on complicity. Preparation of false or incorrect documents and statements may also fall under Art. 194 of the Luxembourg Criminal Code (forgery)	For offences under Art. 496, 496-1, 496-2 and 496-4 of the Luxembourg Criminal Code: deprivation of liberty from one month to 5 years, plus a fine. For offences under Art. 496-3, deprivation of liberty from 8 days to 2 years and fine	-	-	-
Hungary	Art. 16 to 18 (attempt) and 19 to 21 (perpetration) of the Hungarian Criminal Code.	Art. 314 of the Hungarian Criminal Code: deprivation of liberty up to 5 years	-	-	-

Malta	Art. 41 (attempt) and 42 to 47 (accomplices) of the Maltese Criminal Code. The Code also provides for liability for conspiracy (Art. 48A)	Expenditure fraud: Art. 293 in the form provided for by Art. 294 (misappropriation) and Art. 308 (obtaining money or property by false pretences) of the Maltese Criminal Code: imprisonment from 7 months to 2 years. For resource fraud: Art. 62 of the Customs Ordinance: imprisonment up to 2 years; Art. 77 of the Value Added Tax Act: up to 6 months	Serious fraud for amounts exceeding €2 329.37: imprisonment from 13 months to 7 years (Art. 310(1), point (a) of the Maltese Criminal Code)	Minor fraud for amounts below €2 329.37: imprisonment up to 3 months (Art. 310(1), point (c) of the Maltese Criminal Code)	Art. 112 of the Maltese Criminal Code (embezzlement) as extended to foreign public officials and officials of international organisations by Art. 121(4) of the Maltese Criminal Code
Netherlands	Art. 225(1) of the Dutch Criminal Code	Art. 225(1) and (2) of the Dutch Criminal Code: deprivation of liberty up to 6 years or fine. Art. 227a and Art. 227b of the Dutch Criminal Code: deprivation of liberty up to 4 years or fine. Art. 323a and Art. 326 of the Dutch Criminal Code: deprivation of liberty up to 3 years or fine. Art. 68 of the State Taxes Act: deprivation of liberty up to 6 months or fine. Art. 18 of the Import and Exports Act: deprivation of liberty up to 6 years or fine. Art. 48 of the Customs Law: deprivation of liberty up to 6 years or fine or the equivalent of the sum of duties due, if higher than €45 000. Art. 47 of the Customs Law: deprivation of liberty up to 1 year or fine or the equivalent of the sum of duties due, if higher than €11 250	-	-	-
Austria	§15 in conjunction with §146 and §153b of the Austrian Criminal Code for expenditure and §13 in conjunction with §33 and §35 of the Austrian Fiscal Criminal Code for revenue	§146 and §147(2) of the Austrian Criminal Code: deprivation of liberty up to 3 years for amounts exceeding €2 000. §153b(3) of the Austrian Criminal Code: deprivation of liberty up to 2 years for amounts exceeding €2 000. For fraud concerning revenue, provision is made for a financial penalty imposed by the fiscal administration unless considered serious fraud (beyond €37 500 for customs and €75 000 for tax fraud)	Serious fraud for expenditure at €40 000 under §146 and §147(3) of the Austrian Criminal Code: deprivation of liberty from 1 to 10 years. §153b(4) of the Austrian Criminal Code: deprivation of liberty from 6 months to 5 years. Serious fraud for customs at €37 500 and for taxes at €75 000: §33(5), §35(4) and §53(2), point (a) of the Austrian	For fraud concerning expenditure under §146 of the Austrian Criminal Code and §153b(1) of the Austrian Criminal Code: deprivation of liberty up to 6 months or financial penalty below €2 000	-

			Fiscal Criminal Code: deprivation of liberty up to 2 years; if exceeding €500 000, up to 5 years		
Poland	Art. 13 in conjunction with Art. 297 and 286 of the Polish Criminal Code for attempt. Art. 53(28) of the Polish Fiscal Criminal Code; Art. 82 and 88 of the Polish Fiscal Criminal Code (attempt); Art. 21(1) of the Polish Fiscal Criminal Code only if the penalty exceeds one year, which is the case for all offences under Art. 54, 55, 56, 76, 86, 87 and 92 of the Polish Fiscal Criminal Code; Art. 18 of the Polish Criminal Code and, by reference to it, Art. 20 of the Polish Fiscal Criminal Code (participation and instigation)	For fraud concerning expenditure: Art. 297 of the Polish Criminal Code: deprivation of liberty between 3 months and 5 years; Art. 286 of the Polish Criminal Code: deprivation of liberty between 6 months and 8 years; Art. 82 of the Polish Fiscal Criminal Code: fine. For fraud concerning revenue: Art. 88 of the Polish Fiscal Criminal Code fine; Art. 54, 56, 76, 86, 87 and 92: fine and deprivation of liberty up to 5 years (Art. 27 of the Polish Fiscal Criminal Code); Art. 55: deprivation of liberty of up to 3 years	-	-	-
Portugal	Art. 2 on liability for action taken on behalf of others and Art. 4 for attempt in connection with offences punished under Art. 36 and 37 of Decree-Law No 28/84 for expenditure and Art. 6 on liability for action taken on behalf of others in connection with Art. 23(2) of the Portuguese Fiscal Offence Code for revenue	For fraud concerning expenditure: deprivation of liberty from 1 to 5 years and fine when punishable under Art. 36 of Decree-Law No 28/84 and deprivation of liberty up to 2 years and a fine when punishable under Art. 37 of Decree-Law No 28/84. For fraud concerning revenue: deprivation of liberty up to 3 years and fine for crimes under Art. 23 of the Portuguese Fiscal Offence Code	-	-	-
Romania	Art. 18.4 of Law No 78/2000 specifically punishes attempted offences under Art. 18.1 to 18.3. Articles 23 to 31 (on participation and instigation) of the Romanian Criminal Code also apply	Imprisonment from 3 to 15 years and denial of certain rights for offences under Art. 18.1(1), Art. 18.1(2), Art. 18.3(1) and Art. 18.3(2) of Law No 78/2000. Imprisonment from 6 months to 5 years for offences under Art. 18.2(1) and Art. 18.2(3) of Law No 78/2000	Imprisonment from 10 to 20 years and denial of certain rights for offences with very serious outcomes (Art. 18.1(3) and Art. 18.3(3) of Law No 78/2000). Imprisonment from 5 to 15 years and	-	-

			denial of certain rights for the same offences with very serious outcomes (Art. 18.2(2) of Law No 78/2000)		
Slovenia	Art. 25 to 28 of the Slovenian Criminal Code on participation; Art. 22 on attempt	Expenditure and revenue fraud: Art. 235 (subsidy fraud), Art. 217 (general fraud), Art. 254 (evasion of fiscal obligations), Art. 255 (smuggling), Art. 246 (misapplication of entrusted property) and Art. 264 (misapplication of entrusted property in office): deprivation of liberty up to 3 years; Art. 234a (business fraud) and Art. 245 (misapplication): up to 5 years	-	-	For Art. 264 via the definitions of officials including those working for international organisations in Art. 126(2), point 6 of the Slovenian Criminal Code
Slovakia	§263 of the Slovak Criminal Code covers negligent action. Also §20 (complicity) and §14 (attempts) in conjunction with §261 of the Slovak Criminal Code	§261(1) of the Slovak Criminal Code: deprivation of liberty from 6 months to 3 years	Aggravated fraud for amounts of at least €2 000 defined as serious damage (§125: punishment 1 to 5 years), €20 000 defined as considerable damage (§125: punishment 3 to 8 years) and €100 000 defined as large-scale damage (§125: punishment 7 to 12 years)	-	§128(1) of the Slovak Criminal Code
Finland	Chapter 5, §1 in conjunction with Chapter 29§ 1 and 5 of the Finnish Criminal Code	Deprivation of liberty up to 2 years or financial penalty	-	-	-
Sweden	Chapter 15, §11 of the Swedish Criminal Code	Deprivation of liberty up to 2 years for all crimes falling under Chapter 9, §1 and §3a and Chapter 15, §11 of the Swedish Criminal Code and §2 of the Fiscal Criminal Code. §11 of Chapter 9 provides specifically for punishment for attempting fraud in accordance with Chapter 9, §1 and §3a	-	-	-

<p>United Kingdom – England and Wales</p>	<p>Sections 6 and 7 of the Fraud Act 2006. Participation and instigation punished as a principal offence under Section 8 of the Accessories and Abettors Act 1861. Incitement (crime) is a <u>common law offence</u> in itself. Attempt punishable under Section 1 of the Criminal Attempts Act 1981. Using a false instrument is contrary to the Forgery and Counterfeiting Act 1981</p>	<p>For fraud concerning expenditure: for offences under the Fraud Act 2006: maximum imprisonment of 10 years. For fraud concerning revenue: for cheating the revenue, no limit on penalties since covered by common law. For offences under Section 170 of the Customs and Management Excise Act 1979 and Section 72 of the VAT Act 1994: maximum imprisonment of 7 years and/or unlimited fine; for offences under Sections 167 and 168 of the Customs and Management Excise Act 1979: maximum imprisonment of 2 years and/or unlimited fine</p>	<p>-</p>	<p>-</p>	<p>-</p>
<p>United Kingdom – Scotland</p>	<p>In Scotland, participation is punishable under Section 293 of the Criminal Procedure (Scotland) Act 1995; incitement and instigation are <u>common law offences</u>. Attempt is regarded as a crime under Section 294 of the Criminal Procedure (Scotland) Act 1995</p>	<p>For fraud concerning expenditure: for fraud and embezzlement, no limit on penalties since covered by common law. For fraud concerning revenue: for offences under Section 170 of the Customs and Management Excise Act 1979 and Section 72 of the VAT Act 1994, maximum imprisonment of 7 years and/or unlimited fine; for offences under Sections 167 and 168 of the Customs and Management Excise Act 1979, maximum imprisonment of 2 years and/or unlimited fine</p>	<p>-</p>	<p>-</p>	<p>-</p>
<p>United Kingdom – Northern Ireland</p>	<p>Sections 6 and 7 of the Fraud Act 2006. Participation and instigation punished as a principal offence under Section 8 of the Accessories and Abettors Act 1861 applicable also to Northern Ireland. Incitement (crime) is a <u>common law offence</u> in itself. Attempt punishable under Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983. Using a false instrument is contrary to the Forgery and Counterfeiting Act 1981, applicable also to Northern Ireland</p>	<p>For fraud concerning expenditure: for offences under the Fraud Act 2006, maximum imprisonment of 10 years. For fraud concerning revenue: for cheating the revenue, no limit on penalties since covered by common law. For offences under Section 170 of the Customs and Management Excise Act 1979 and Section 72 of the VAT Act 1994, maximum imprisonment of 7 years and/or unlimited fine; for offences under Sections 167 and 168 of the Customs and Management Excise Act 1979, maximum</p>	<p>-</p>	<p>-</p>	<p>-</p>

		imprisonment of 2 years and/or unlimited fine			
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**Annex Table 8**

<b>Instrument</b>	<b>First Protocol</b>			
<b>Member State</b>	<b>Art. 2 – Passive corruption</b>	<b>Art. 3 – Active corruption</b>	<b>Art. 4(2) and (3) – Assimilation of members of the European institutions</b>	<b>Art. 5 – Penalties for corruption</b>
Belgium	Art. 246, §1 and Art. 247, §2 of the Belgian Criminal Code apply to foreign public officials and officials of a public international organisation by reference in Art. 250 of the Belgian Criminal Code	Art. 246, §2 and Art. 247, §2 of the Belgian Criminal Code apply to foreign public officials and officials of a public international organisation by reference in Art. 250 of the Belgian Criminal Code		Active and passive corruption alike (Art. 247, §2 of the Belgian Criminal Code): deprivation of liberty from 6 months to 2 years and fine
Bulgaria	Art. 301(5) of the Bulgarian Criminal Code extends application to public officials in a foreign state or in an international organisation, based on the definitions in Art. 93, point 15 of the Bulgarian Criminal Code	Art. 304(3) of the Bulgarian Criminal Code extends application to public officials in a foreign state or in an international organisation, based on the definitions in Art. 93, point 15 of the Bulgarian Criminal Code	Article 93, point 15 of the Bulgarian Criminal Code	Active and passive corruption alike (Art. 301(1) and Art. 304(1) of the Bulgarian Criminal Code): deprivation of liberty up to 6 years and fine
Czech Republic	§160(3), point (b) of the Czech Criminal Code extends to public officials in a foreign state or in an international organisation in accordance with §162a(2) of the Czech Criminal Code	§161(2), point (b) of the Czech Criminal Code extends to public officials in a foreign state or in an international organisation in accordance with §162a(2) of the Czech Criminal Code	§162a(2), point (b)	Active and passive corruption of public officials alike (§160(3), point (b) and §161(2), point (b) of the Czech Criminal Code): deprivation of liberty from 1 to 5 years
Denmark	§144 of the Danish Criminal Code includes foreign public officials and officials of a public international organisation	§122 of the Danish Criminal Code includes foreign public officials and officials of a public international organisation	Reference to bodies representing international organisations in §122 and §144 of the Danish Criminal Code. For members of the European Commission the special procedure for ministers' liability applies	Active corruption: deprivation of liberty up to 3 years; passive corruption: deprivation of liberty up to 6 years

Germany	§332 of the German Criminal Code applies to other Member States' and Community officials for the purposes of the Protocol due to a reference made in Art. 2, §1(2) of the Federal Law on transposition of the Protocol to the PFI Convention	§334 of the German Criminal Code on active corruption applies to other Member States' and Community officials due to a reference made in Art. 2, §1(2) of the Federal Law on transposition of the Protocol to the PFI Convention	Criminal liability of members of the European Commission, Court of Justice and Court of Auditors is provided for by a reference made in Art. 2, §1(1) and (2) of the Federal Law on transposition of the Protocol to the PFI Convention. No liability for national members of parliament and, hence, nor for members of the European Parliament. Active corruption by members of the European Parliament and of the German national parliaments is a criminal offence under §108e of the German Criminal Code	Deprivation of liberty from 6 months (passive corruption) and 3 months (active corruption) up to 5 years or financial penalty
Estonia	§294 of the Estonian Criminal Code includes "foreign officials" and "officials of international organisations", based on the definition in §288(2)	§298 of the Estonian Criminal Code, based on the definition in §288(2)	Extensive definition of Community officials given in §288(1) and (2) of the Estonian Criminal Code	Deprivation of liberty between 1 and 5 years
Greece	Art. 3 of Law No 2803/2000 or Art. 235 of the Greek Criminal Code	Art. 3 of Law No 2803/2000 or Art. 236 of the Greek Criminal Code	Criminal liability of members of the European Commission, the European Parliament, Court of Justice and Court of Auditors is provided for by a reference made in Art. 10(2) of Law No 2803/2000 to Articles 3 (active and passive corruption), 4, 5 and 6 (fraud)	Deprivation of liberty of at least 1 year
Spain	Art. 420 of the Spanish Criminal Code applies to Community officials for the purposes of the Protocol due to the wide definition of official in Art. 24(2) of the Spanish Criminal Code	Art. 423 of the Spanish Criminal Code applies to Community officials for the purposes of the Protocol due to the wide definition of official in Art. 24(2) of the Spanish Criminal Code plus the reference in Art. 445 of the Spanish Criminal Code	Criminal liability of members of the European Commission, Court of Justice and Court of Auditors is provided for by the wide definition in Art. 24(2) of the Spanish Criminal Code. Assimilation of members of the European Parliament to members of the chambers of the Spanish parliaments is explicitly mentioned in Art. 24(1) of the Spanish Criminal Code	Art. 420 and 423 of the Spanish Criminal Code: deprivation of liberty from 1 to 4 years; if the official does not succeed in acting: from 1 to 2 years



France	Art. 435-1 of the French Criminal Code is directly applicable to other Member States' officials and to officials of the European Communities under Art. 435-5 of the French Criminal Code	Art. 435-3 of the French Criminal Code is directly applicable to other Member States' officials and to officials of the European Communities under Art. 435-5 of the French Criminal Code	Assimilation of the members of the European Commission, the European Parliament and the European Court of Auditors based on the definitions of national functions comparable to those in international public organisations to which the European Union is equivalent under Art. 435-3 of the French Criminal Code. Corruption of members of the European Court of Justice is also assimilated, via Art. 435-3, to the offences in Art. 435-7 and 435-9 of the French Criminal Code	For offences of active and passive corruption under Art. 435-1 and 435-3 of the French Criminal Code: deprivation of liberty of 10 years and fine
Ireland	Section 44 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 applies to Member States' and Community officials for the purposes of the Protocol due to a reference thereto made in Section 40 of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 43 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 applies to Member States' and Community officials for the purposes of the Protocol due to a reference thereto made in Section 40 of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 40(1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001: assimilation to national officials, including ministers of the government, the Attorney-General, the Controller and Auditor-General, members of the national parliament, judges of a court in the state, director of public prosecutions and directors of public bodies	Section 43 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 (active corruption): fine or imprisonment for a term not exceeding 5 years or both. Section 44 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 (passive corruption): same penalty
Italy	Art. 319 of the Italian Criminal Code applies to Member States' and Community officials for the purposes of the Protocol due to a reference thereto made in Art. 322bis(1) of the Italian Criminal Code	Art. 321 of the Italian Criminal Code applies to Member States' and Community officials for the purposes of the Protocol due to a reference thereto made in Art. 322bis(1) of the Italian Criminal Code	Criminal liability of members of the European Commission, the European Parliament, Court of Justice and Court of Auditors is provided for by a reference made in Art. 322bis(1), point 1 of the Italian Criminal Code. As regards the members of the Court of Justice, Art. 319ter of the Italian Criminal Code provides for specific incrimination as regards judicial proceedings, which is likewise to be considered applicable to active and passive corruption regarding members of the Court of Justice	Deprivation of liberty from 2 to 5 years for active and passive corruption alike. For attempted corruption the punishment is reduced by a third by Art. 322 of the Italian Criminal Code. In the case of corruption aiming at conclusion of contracts, the punishment may be increased by a third (Art. 319bis of the Italian Criminal Code). For crimes under Art. 319ter of the Italian Criminal Code, deprivation of liberty from 3 to 8 years
Cyprus	Art. 9 of Law No 37(III)/2003	Art. 9 of Law No 37(III)/2003	Art. 9 is a general offence that may cover anyone, including members of the European institutions (see implicitly also Art. 4, point (e) of Law No 37(III)/2003)	Deprivation of liberty up to 7 years and pecuniary penalty

Latvia	Section 320 of the Latvian Criminal Code includes “foreign public officials” and “officials of international organisations”, based on the definition in Section 316(3)	Section 323 of the Latvian Criminal Code, based on the definition in Section 316(3)	Section 316(3) of the Latvian Criminal Code	Active corruption: deprivation of liberty up to 6 years. Passive corruption: deprivation of liberty up to 8 years
Lithuania	Art. 225(2) of the Lithuanian Criminal Code includes officials of “foreign states” and of “international public organisations”, based on the definition in Art. 230(2)	Art. 227(2) of the Lithuanian Criminal Code includes officials of “foreign states” and of “international public organisations”, based on the definition in Art. 230(2)	Art. 230(1) of the Lithuanian Criminal Code	Active corruption: deprivation of liberty up to 4 years. Passive corruption: deprivation of liberty up to 5 years
Luxembourg	Art. 246 of the Luxembourg Criminal Code applies to other Member States’ and Community officials for the purposes of the Protocol due to a reference in Article 252(1) of the Luxembourg Criminal Code	Art. 247 of the Luxembourg Criminal Code applies to other Member States’ and Community officials for the purposes of the Protocol due to a reference in Article 252(1) of the Luxembourg Criminal Code	Art. 252 of the Luxembourg Criminal Code refers to members of the Commission, the European Parliament, the Court of Justice and the Court of Auditors. Art. 40 of the Law on judicial organisation assimilates members of the European Commission to members of the government under accusation by virtue of Art. 82 of the Constitution for the offences referred to in Art. 496-1 to 496-4 and Art. 246 to 252 of the Luxembourg Criminal Code committed in the exercise of their functions. Art. 503-1 of the Luxembourg Criminal Code assimilates members of the European Court of Justice to members of the courts other than the Supreme Court (Cour de cassation) for the offences referred to in Art. 496-1 to 496-4 and Art. 246 to 252 of the Luxembourg Criminal Code committed in the exercise of their functions (application of Art. 485 of the Criminal Code)	Active and passive corruption alike: deprivation of liberty from 5 years up to 10 years and fine. As regards corruption of judges, either active or passive: Art. 250 of the Luxembourg Criminal Code provides for deprivation of liberty from 10 to 15 years and a fine
Hungary	Art. 250 of the Hungarian Criminal Code for national public officials and Art. 258/D for “foreign public officials”, which includes persons in the service of a foreign country or an international organisation in accordance with Art. 137(3) of the Hungarian Criminal Code	Art. 253 of the Hungarian Criminal Code for national public officials and Art. 258/B for “foreign public officials”, which includes persons in the service of a foreign country or an international organisation in accordance with Art. 137(3) of the Hungarian Criminal Code.	Art. 137(1), points (b), (c) and (d) of the Hungarian Criminal Code	For passive corruption (Art. 250(3) and Art. 258/D(2)): deprivation of liberty (for breach of duty) from 2 to 8 years; for active corruption (Art. 253(2) and Art. 258/B(2)): deprivation of liberty (for breach of duty) from 1 to 5 years

Malta	Art. 115 (bribery), as extended to foreign public officials and officials of international organisations by Art. 121(4) of the Maltese Criminal Code	Art. 120 (punishment for persons bribing public officials or servants), as extended to foreign public officials and officials of international organisations by Art. 121(4) of the Maltese Criminal Code	Art. 115 of the Maltese Criminal Code; Art.121(4), points (b), (c) and (d)	Active and passive corruption: Art. 115 and, by reference, Art. 120. For inducing: imprisonment from 9 months to 5 years. For acting against duty: from 1 to 8 years. For active corruption without success: imprisonment from 6 months to 3 years.
Netherlands	Art. 363 of the Dutch Criminal Code applies to other Member States' and Community officials for the purposes of the Protocol due to a reference in Article 364a(1) which defines "foreign public official" as a person holding a public function on behalf of a foreign state or a public international organisation	Art. 177 of the Dutch Criminal Code applies to other Member States' and Community officials for the purposes of the Protocol due to a reference in Article 178a(1) which defines "foreign public official" as a person holding a public function on behalf of a foreign state or a public international organisation	Criminal liability of members of the European Commission, the European Parliament, Court of Justice and Court of Auditors is provided for by a reference made in Art. 84 of the Dutch Criminal Code extending the definition of "officials" to members appointed to a function or elected thereto. As regards members of the Court of Justice, Art. 178a(3) and 364a(3) of the Dutch Criminal Code provide for a specific offence of judicial corruption, which is likewise to be considered applicable to active and passive corruption regarding members of judicial bodies of international organisations. Members of the Commission and of the European Parliament are subject to a specific criminal procedure before the Hoge Raad provided for members of the Dutch government and Parliament by Art. 94 of the Law on Judicial Organisation. For members of the European Commission the special procedure for ministers' liability applies	Active and passive corruption alike: deprivation of liberty up to 4 years or fine. As regards corruption of judges: for passive corruption, deprivation of liberty up to 9 years or, in criminal proceedings, 12 years; for active corruption, deprivation of liberty up to 6 years or, in criminal proceedings, 9 years for all crimes or, alternatively, a fine
Austria	§304(1) of the Austrian Criminal Code which, under §74(1), point (4a) explicitly applies to foreign or international officials	§307(1), point (1) of the Austrian Criminal Code which, under §74(1), point (4a), explicitly applies to foreign or international officials	Criminal liability of members of the European Commission, Court of Justice and Court of Auditors is provided for by the extensive definition of Community officials in §74(1), point (4b) of the Austrian Criminal Code	For passive and active corruption alike: deprivation of liberty up to 3 years. However, if punishable under §153 of the Austrian Criminal Code, deprivation of liberty up to 6 months or financial penalty for damage below €2 000, deprivation of liberty up to 3 years for damage between €2 000 and €40 000 and deprivation of liberty from 1 to 10 years for damage beyond €40 000.

Poland	Art. 228(6) of the Polish Criminal Code extends liability and punishment to any person who exercises a public function in a foreign state or an international organisation	Art. 229(5) of the Polish Criminal Code extends liability and punishment to any person who exercises a public function in a foreign state or an international organisation	Art. 115(13), point (2a), Art. 228(6) and Art. 229(5) of the Polish Criminal Code	For active and passive corruption (standard): deprivation of liberty from 6 months to 8 years; if for breach of law from 1 to 10 years
Portugal	Art. 373(1) of the Portuguese Criminal Code applies to Member States' and Community officials for the purposes of the Protocol due to a reference in Art. 386(3), points (a) and (b)	Art. 374 referring to the definitions in Art. 373 of the Portuguese Criminal Code applies to Member States' and Community officials for the purposes of the Protocol due to a reference in Art. 386(3), points (a) and (b)	Criminal liability of members of the European Commission and the European Parliament fall under the definition of political functions in Art. 3 of Law No 34/87. Art. 16 and Art.18 of Law No 34/87 establish specific offences of passive and active corruption. Members of the Court of Justice and Court of Auditors seem to fall under the definition of "magistrates" in Art. 386(3), point (a) of the Portuguese Criminal Code	Deprivation of liberty from 1 to 8 years (passive corruption under Art. 372 of the Portuguese Criminal Code) or from 2 to 8 years (passive corruption under Art. 16 of Law No 34/87) and 6 months to 5 years (active corruption under Art. 374 of the Portuguese Criminal Code and Art. 18 of Law No 34/87 alike)
Romania	Art. 254 of the Romanian Criminal Code applies to Member States' and Community officials due to a reference in Art. 8.1, points (a), (c) and (e) of Law 78/2000	Art. 255 of the Romanian Criminal Code applies to Member States' and Community officials due to a reference in Art. 8.1, points (a), (c) and (e) of Law No 78/2000	Article 8.1, point (a) of Law No 78/2000	Passive corruption (Art. 254 of the Romanian Criminal Code): deprivation of liberty from 3 to 12 years. Active corruption (Art. 255 of the Romanian Criminal Code): deprivation of liberty from 6 months to 5 years
Slovenia	Art. 267(1) of the Slovenian Criminal Code applies to foreign officials under Art. 126(2), point 5 and to international officials or officials of international courts under Art. 126(2), points 6 and 7	Art. 268(1) of the Slovenian Criminal Code applies to foreign officials under Art. 126(2), point 5 and to international officials or officials of international courts under Art. 126(2), points 6 and 7	Art. 126, points 6 and 7 of the Slovenian Criminal Code	Passive corruption: Art. 267(1) deprivation of liberty from 1 to 8 years and a fine. Active corruption: Art. 268(1) from 1 to 5 years and a fine
Slovakia	§328 of the Slovak Criminal Code which, under §128(1), explicitly applies to Slovak MEPs. If not covered by the general offence, §330 of the Slovak Criminal Code which, under §128(2), explicitly applies to other Member States' and Community officials as "foreign public officials"	§332 of the Slovak Criminal Code which, under §128(1), explicitly applies to MEPs. §334 of the Slovak Criminal Code which, under §128(2), explicitly applies to other Member States' and Community officials as "foreign public officials"	MPs and judges of international organisations are explicitly mentioned in §331 and §335 of the Slovak Criminal Code	Passive corruption: §328 deprivation of liberty from 2 to 5 years; §330 and §331 from 5 to 12 years. Active corruption: §332 up to 3 years, §334 and §335 from 2 to 5 years

Finland	Chapter 40, §1(1) and (2) of the Finnish Criminal Code applies to Member States' and Community officials for the purposes of the Protocol due to a reference in Chapter 40, §12(3) and a definition of "foreign public official" as a person who attends to a public function on behalf of a foreign state or a public international organisation in accordance with Chapter 40, §11(4)	Chapter 16, §13 of the Finnish Criminal Code applies to Member States' and Community officials for the purposes of the Protocol due to a reference in Chapter 16, §20 to the definition of "foreign public official" as a person who attends to a public function on behalf of a foreign state or a public international organisation in accordance with Chapter 40, §11(4)	Criminal liability of members of the European Commission, Court of Justice and Court of Auditors is provided for by the extensive definition of Community officials in Chapter 40, §11(4) of the Finnish Criminal Code. No liability for national members of parliament and, hence, nor for members of the European Parliament. Active corruption by members of the European Parliament and of the national parliaments is a criminal offence under Chapter 16, §14a of the Finnish Criminal Code due to a reference in Chapter 16, §20 to the definition of member of a foreign parliament in accordance with Chapter 40, §11(6)	Deprivation of liberty up to 2 years or financial penalty for active and passive corruption alike. In aggravated cases, Chapter 40, §2 and Chapter 16, §14 increase the penalty to deprivation of liberty from 4 months to 4 years
Sweden	Chapter 20, §2(1) of the Swedish Criminal Code applies to other Member States' and Community officials for the purposes of the Protocol due to a reference in Chapter 20, §2(2), point 4 giving a wide definition of persons "exercising public powers"	Chapter 17, §7 of the Swedish Criminal Code applies to other Member States' and Community officials for the purposes of the Protocol due to a reference in Chapter 20, §2(2), point 4 giving a wide definition of persons "exercising public powers"	Criminal liability of members of the European Commission, European Parliament, Court of Justice and Court of Auditors concerning fraud is provided for by general application of Chapter 9, §1. As regards active and passive corruption, Chapter 20, §2(2), point 6 of the Swedish Criminal Code lists members of the European Commission, European Parliament, Court of Justice and Court of Auditors as possible offenders and victims. Chapter 17, §17 regulates the role of public prosecutor in this regard	Deprivation of liberty up to 2 years or financial penalty for active and passive corruption alike. For passive corruption, in aggravated cases Chapter 20, §2 increases the penalty to deprivation of liberty for up to 6 years
United Kingdom – England and Wales	Bribery is a <u>common law offence</u> . Section 1(1) of the Prevention of Corruption Act 1906	-	-	For bribery, no limit on penalties since it is covered by common law. Under Section 1(1) of the Prevention of Corruption Act 1906, the offender is guilty of a misdemeanour and liable: (a) on summary conviction to imprisonment for a term not exceeding 6 months or to a fine up to the statutory maximum or to both; (b) on conviction on indictment to imprisonment for a term not exceeding 7 years or

United Kingdom – Scotland	In Scotland, bribery as a <u>common law offence</u> is limited to judicial officers. Section 1(1) of the Prevention of Corruption Act 1906		to a fine or to both
United Kingdom – Northern Ireland	Bribery is a <u>common law offence</u> . Section 1(1) of the Prevention of Corruption Act 1906		

**Annex Table 9**

<b>Instrument</b>	<b>Second Protocol (not yet entered into force)</b>	<b>PFI Convention</b>
<b>Member State</b>	<b>Art. 2 – Money laundering related to the proceeds of fraud, at least in serious cases, and of active and passive corruption</b>	<b>Art. 3 – Criminal liability of heads of businesses</b>
Belgium	Art. 505 of the Belgian Criminal Code covers all proceeds of any crime under Art. 42 of the Belgian Criminal Code	
Bulgaria	Art. 253(4) of the Bulgarian Criminal Code	Art. 219(2) of the Bulgarian Criminal Code provides for criminal liability of any person not sufficiently supervising persons who misadminister public funds and thereby cause substantial damage
Czech Republic	§252a of the Czech Criminal Code	-
Denmark	§290 of the Danish Criminal Code, as amended by Law No 465 of 7 June 2001 (which abolished §284 of the Danish Criminal Code which originally referred explicitly to §289(2) and §289a (fraud) as predicate offences)	
Germany	§261 of the German Criminal Code	
Estonia	§394 of the Estonian Criminal Code	§290 of the Estonian Criminal Code provides generally for liability of any person neglecting their duties of employment, if major damage is caused to another person's interests protected by law. This implies a certain liability of heads of businesses
Greece	Law No 2331/1995 on prevention and combating the legalisation of income from criminal activities penalises money laundering. By Law No 3424/2005 Greece amended Law No 2331/1995 and extended its scope explicitly to Articles 2, 3, 4 and 6 of Law No 2803/2000 and corruption offences under Law No 2658/1998 and 2802/2000 (general corruption offences of EC officials)	Art. 7 of Law No 2803/2000 provides specifically for criminal liability of heads of businesses
Spain	Art. 301 of the Spanish Criminal Code	Art. 31 of the Spanish Criminal Code
France	Art. 324-1 of the French Criminal Code. Specific provision on money laundering of the proceeds derived from tax offences (Art. 415 of the Customs Code)	-
Ireland	Section 31(1) of the Criminal Justice Act, 1994, as amended by Section 21 of the Criminal Justice (Theft and Fraud Offences) Act, 2001	-
Italy	Not yet ratified: Art. 648bis of the Italian Criminal Code	-
Cyprus	Art. 5 of the Prevention and Suppression of Money Laundering Activities Law No 61(I)/96 which includes the offences provided for in Law No 37(III)/2003 as predicate offences under Art. 12 of the same law	Art. 8 of Law No 37(III)/2003 because the head of business either knew or should have known and failed to take all the action necessary to forestall the offence

Latvia	Section 195 of the Latvian Criminal Code	Section 197 of the Latvian Criminal Code provides generally for liability of any person neglecting their duties of employment, if substantial harm is caused to another person's interests protected by law. This implies a certain liability of heads of businesses
Lithuania	Art. 216 of the Lithuanian Criminal Code and Art. 189 of the Lithuanian Criminal Code	Art. 229 of the Lithuanian Criminal Code provides for liability of persons working in an enterprise and entitled to act on its behalf or holding administrative powers (Art. 230(3)), if they neglectfully cause major harm. This implies a certain liability of heads of businesses
Luxembourg	Article 506-1(1) of the Luxembourg Criminal Code, as amended by Article 10 of the Act of 12 November 2004, criminalises money laundering related to fraud detrimental to the Communities' financial interests, prohibited by Articles 496-1 to 496-4 of the Luxembourg Criminal Code. Article 506-1(1) of the Luxembourg Criminal Code also covers money laundering related to corruption	-
Hungary	Art. 303(1) of the Hungarian Criminal Code	Art. 314(3) of the Hungarian Criminal Code provides specifically for criminal liability of persons in a management or supervisory position who make offences under Art. 314 of the Hungarian Criminal Code possible
Malta	Art. 3 of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta)	-
Netherlands	Art. 420bis of the Dutch Criminal Code	Art. 51(2), point (2) of the Dutch Criminal Code provides for punishment of natural persons "who have ordered the commission of the criminal offence and [...] those in control of such unlawful behaviour"
Austria	§165(1) of the Austrian Criminal Code	As regards misapplication of expenditure, due to the structure of the offence, a specific provision on criminal liability of heads of businesses is provided for in §153b(2) of the Austrian Criminal Code
Poland	Art. 299 of the Polish Criminal Code	Art. 18(1) of the Polish Criminal Code and Art. 9 of the Polish Fiscal Criminal Code provide for criminal liability of persons supervising or instructing the perpetration of offences
Portugal	Art. 1 of Decree-Law No 325/95 and Art. 368-A of the Portuguese Criminal Code	Art. 2 on liability for action taken on behalf of others in connection with offences punished under Art. 36 and 37 of Decree-Law No 28/84 for expenditure and Art. 6 on liability for action taken on behalf of others in connection with Art. 23(2) of the Portuguese Fiscal Offence Code. Art. 12 of the Portuguese Criminal Code provides for such criminal liability in general for all criminal offences
Romania	Art. 34 of Law No 656/2002.	Art. 18.5 of Law No 78/2000 makes heads of businesses criminally liable for breach of duty owing to negligence, when this results in the perpetration by subordinates of any of the criminal offences provided for in Art. 18.1 to 18.3 of Law No 78/2000
Slovenia	Art. 252 of the Slovenian Criminal Code	-
Slovakia	§233 of the Slovak Criminal Code	§262 of the Slovak Criminal Code provides specifically for criminal liability of persons in a management or supervisory position who make possible commission of offences under §261 of the Slovak Criminal Code
Finland	Chapter 32, §6 of the Finnish Criminal Code	Chapter 5, §8 of the Finnish Criminal Code provides specifically for criminal liability of heads of businesses
Sweden	Chapter 9, §6a and Chapter 6, §6a of the Swedish Criminal Code	-



United Kingdom – England and Wales	Section 340 of the Proceeds of Crime Act 2002, applicable to all three jurisdictions	Section 12 of the Fraud Act 2006. The United Kingdom indicated that, under Schedule 1 of the Interpretation Act 1978, the principle of criminal liability of heads of businesses is acknowledged in cases where there is the possibility of attributing the offence to the person concerned and also in case of lack of control or supervision
United Kingdom – Scotland		The United Kingdom indicated that, under Schedule 1 of the Interpretation Act 1978, applicable also to Scotland, the principle of criminal liability of heads of businesses is acknowledged in cases where there is the possibility of attributing the offence to the person concerned and also in case of lack of control or supervision
United Kingdom – Northern Ireland		Section 12 of the Fraud Act 2006. The United Kingdom indicated that, under Section 37 of the Interpretation (Northern Ireland) Act 1954, the principle of criminal liability of heads of businesses is acknowledged in cases where there is the possibility of attributing the offence to the person concerned and also in case of lack of control or supervision

**Annex Table 10**

<b>Instrument</b>	<b>Second Protocol (not yet entered into force)</b>		
<b>Member State</b>	<b>Art. 3(1) – Liability of legal persons for fraud, active corruption or money laundering</b>	<b>Art. 3(2) – Liability of legal persons for lack of supervision and control</b>	<b>Art. 4(1) – Sanctions for liability under Art. 3</b>
Belgium	Art. 5 of the Belgian Criminal Code		Art. 7bis of the Belgian Criminal Code provides for a criminal financial penalty and for taking other measures, namely winding up the company, closing the enterprise or some of its establishments, temporarily suspending activities and publishing the verdict
Bulgaria	Art. 83a of the Administrative Violations and Sanctions Act provides for administrative liability of legal persons for specifically listed offences, including Art. 212, 253, 254, 254b and 301 to 307	Art. 83a of the Administrative Violations and Sanctions Act also covers “persons chosen in a control or supervisory body”	Administrative/“non criminal” fines
Czech Republic	-	-	-
Denmark	§25 to §27 of the Danish Criminal Code provide for criminal liability of legal persons, who are held responsible for an act of any of their members (originally §306 provided for legal persons’ criminal liability specifically for the offences in §122, §144 and §289a; however, §306 was amended by Law No 378 of 6.6.2002 to extend it to all crimes under the Criminal Code, hence also including money laundering)		Legal persons are sanctioned with fines
Germany	§30 of the Law on administrative sanctions provides for liability of legal persons for all criminal offences	§30 in conjunction with §130 of the Law on administrative sanctions provides for liability of legal persons for lack of supervision and control for all criminal offences	Administrative/“non criminal” fines of up to 1 million euro: §30 of the Law on administrative sanctions in combination with other measures, such as civil law action for damages or commercial law sanctions, such as winding up the company in serious cases
Estonia	§209(3) (general fraud), §210(3) (subsidy fraud), §280(2) (submission of false information), §386(2) (fraudulent miscalculation of tax), §391(3) (illicit trafficking), §298(4) (active corruption), §294 (accepting a bribe) and §294(3) (money laundering) of the Estonian Criminal Code plus §152(2) of the Taxation Act and §73(2) of the Customs Act all provide for punishment of legal persons	Lack of supervision seems to be included insofar as acts of the supervisory bodies may trigger liability (by reference in §14 of the Estonian Criminal Code)	Legal persons are liable to pecuniary punishment for corruption offences (§294 and §298) and also to compulsory dissolution

Greece	Art. 8 of Law No 2803/2000 provides for liability of legal persons for all criminal offences	Art. 8 of Law No 2803/2000 provides for liability of legal persons for all criminal offences	Art. 8 of Law No 2803/2000 provides for administrative fines or permanent or temporary exclusion from entitlement to public benefits or aid or for temporary or permanent disqualification from commercial activities. The fines are imposed by an administrative authority and temporary measures may be imposed for from 1 month up to 2 years
Spain	Possible civil liability under circumstances set out in Art. 301 of the Spanish Criminal Code allowing application of Art. 129 of the Spanish Criminal Code	-	Art. 301 of the Spanish Criminal Code provides for civil liability of legal persons. Art. 129 provides for possible additional measures
France	Art. 121-2, first indent of the Criminal Code provides that legal persons, except public entities, are liable to criminal prosecution for offences committed on their behalf by their representatives or organs in the cases specified by law. Art. 121-2, second indent provides for liability of territorial communities limited to activities subject to sub-contracting. Criminal liability for all criminal offences	-	Art. 313-9, 324-9 and 435-15 of the French Criminal Code refer to Art. 121-2 of the French Criminal Code imposing a fine of up to 5 times the maximum amount applied to natural persons (Art. 131-38). Penalties are listed in Art. 131-39 (winding up; ban on carrying out professional or social activities during which the offence was committed; placing under judicial supervision; definitive or provisional closing of the firm's establishments; exclusion from entitlement to public procurement; ban on applying for public investment; ban on writing cheques or using credit cards; confiscation of the instrument or the proceeds of the offence; dissemination of the judgment)
Ireland	The Interpretation Act 1937 reflects the opinion that there is no distinction between natural and legal persons	-	-
Italy	Not yet ratified: Art. 5 of implementing Decree No 2001/231, together with Art. 11(1), point (a) of Law No 2000/300 ratifying and transposing the PFI Convention, etc. provides for liability of legal persons for fraud and active and passive corruption and Art. 10(5) of Law 2006/146 also for money laundering	Not yet ratified: Art. 7 of implementing Decree No 2001/231, together with Art. 11(1), point (a) of Law No 2000/300 ratifying and transposing the PFI Convention, etc. provides for liability of legal persons for lack of supervision and control regarding fraud and active and passive corruption and, on the basis of Art. 10(5) of Law 2006/146, also for money laundering	Not yet ratified: administrative/"non-criminal" fines in accordance with Art. 10 to 12 of implementing Decree No 2001/231 in combination with other measures, such as winding up the company, exclusion from entitlement to public benefits, temporary or permanent disqualification from commercial practice, prohibition to contract with the public authorities and prohibition to advertise its goods or services in serious cases
Cyprus	Art. 10(1) of Law No 37(III)/2003	Art. 10(2) of Law No 37(III)/2003	Art. 11 of Law No 37(III)/2003 provides for a pecuniary penalty and, possibly, in addition exclusion from public benefits, temporary or permanent disqualification from business activities and judicial winding-up
Latvia	Criminal liability of legal persons is covered by Section 70-1 of the Latvian Criminal Code on coercive measures applied to legal persons for all crimes	Section 70-8 of the Latvian Criminal Code appears to include imposition of measures in case of lack of control	Section 70-2 of the Latvian Criminal Code provides for: liquidation, limitation of rights, confiscation and pecuniary sanctions. The measures are further set out in Sections 70-3 to

			70-7 of the Latvian Criminal Code
Lithuania	Art. 182(5) (fraud), 183(4) (infliction of financial loss), 186(3) (infliction of financial loss), 189(4) (use of criminal assets), 199(3) and 199-1(2) (smuggling and customs fraud), 205(2) (fraudulent statements), 206(3) (misapplication), 207(2) (subsidy fraud), 216(2) (legalisation of criminal assets), 220(3) (tax evasion), 221(3) (non-submission of declarations) and 227(5) (bribery), together with Art. 20 of the Lithuanian Criminal Code, provide for liability of legal persons	Art. 20(2), point 3 of the Lithuanian Criminal Code includes liability of legal persons for acts of persons exercising control within the legal person	Art. 43 of the Lithuanian Criminal Code provides for fines, restriction of activities and liquidation
Luxembourg	Article 203 of the amended Act of 10 August 1915		Article 203 of the 1915 Act on business associations provides that the commercial court can wind up any company involved in criminal activity
Hungary	Criminal liability of legal persons is laid down in Act CIV of 2001, which provides for liability for all crimes under the Criminal Code if the crime was facilitated or resulted in a pecuniary advantage	Art. 2 point (a) of Act CIV of 2001 covers facilitation by a member of the supervisory board	Dissolution, restriction of operation or fine (Art. 3(1) and, in more detail, Art. 4 to 6 of Act CIV of 2001)
Malta	Art. 121D of the Maltese Criminal Code applies to all corruption offences, by reference to the fraud offences via Art. 310A of the Maltese Criminal Code and to money laundering via Art.3(4) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta)	Art. 121D of the Maltese Criminal Code also covers persons "having the authority to exercise control"	Fine of between €1 150 and €1 150 000
Netherlands	Art. 51(2), point (1) of the Dutch Criminal Code provides in general for punishment of legal persons	Art. 51(2), point (2) of the Dutch Criminal Code, which provides in general for punishment of legal persons, also extends to control due to the possibility to punish heads of businesses	Usually the fine applied to legal persons may be increased by the judge (Art.23(7) of the Dutch Criminal Code)
Austria	Criminal liability of legal persons is provided for in a specific Law (VbVG) and covers all kinds of criminal offences, including fiscal offences (§1 of the VbVG)	§3 of the specific Law on criminal liability of legal persons (VbVG) refers to failures of collaborators and punishes the legal person for any failure in supervision	The judge imposes a fine calculated in relation to the punishment for natural persons, based on the legal persons' turnover or economic capacity (§4 of the VbVG)
Poland	Criminal liability of legal persons is provided for in a specific Law of 2002 (Dz.U. 02.197.1661), which establishes a list for legal persons' criminal liability specifically including, amongst others, the fraud, corruption and money laundering offences in the Criminal Code and Fiscal Criminal Code of interest (Art. 16(1), points 1)(a), (3) and (6) for the Criminal Code and (2) points (1) and (2) for the Fiscal Criminal Code).	Art. 3 of the Law of 2002 covers the acts of individuals with the knowledge or consent of persons asked to supervise the legal entity	The judge imposes a fine limited to 10% of the legal person's revenue (Art. 6 of the Law of 2002). In addition, the legal person may be excluded from grants and procurement procedures (Art. 9)

Portugal	Criminal liability of legal persons is provided for in Art. 3 of Decree-Law No 28/84 (therefore covering the offences of subsidy fraud under Art. 36 and 37 of Decree-Law No 28/84) and in Art. 7 of the Portuguese Fiscal Offence Code (therefore covering the fiscal fraud under Art. 23 of the Portuguese Fiscal Offence Code). Law No 59/2007 introduced criminal liability of legal persons, amongst others for corruption offences (Art. 372 to 374) and money laundering (Art. 368-A) in the Portuguese Criminal Code (Art. 11)	Criminal liability of legal persons for lack of supervision also now exists under Art. 11	For offences of subsidy fraud under Art. 36 and 37 of Decree-Law No 28/84, legal persons may be sentenced to a fine and the judge may order dissolution of the enterprise (Art. 36(3) and Art. 37(4)). For fiscal fraud, the same is provided for under Art. 12 of the Portuguese Fiscal Offence Code. The same is provided for in Art. 11 of the Criminal Code
Romania	Art. 19.1 of the Romanian Criminal Code	Art. 21 of the Romanian Criminal Code	Art. 53 and Art. 71.1, 71.2, 71.3, 71.5 and 71.6 of the Romanian Criminal Code provide that the principal punishment applicable to legal persons is a fine (up to a maximum of RON 900 000), with the complementary punishments of dissolution, suspension of the activity or one of the activities of the liable legal person, closure of some of its establishments and prohibition to participate in public procurement procedures
Slovenia	Criminal liability of legal persons is provided for in a specific law – Law No 2791 of 16.7.1999 “ZOPOKD” (Uradni list RS/Official Gazette RS 59/1999), as amended by Law No 2294 of 30.4.2004. Art. 25, points 5, 7 and 8 thereof provide a list of legal persons’ criminal liability specifically including, amongst others, the fraud, active corruption and money-laundering offences in the Criminal Code	Art. 4, point 4 of the Law on criminal liability of legal persons (ZOPOKD) includes offences committed under the obligatory supervision of the management or supervisory bodies	Art. 12 of the Law on criminal liability of legal persons (ZOPOKD) provides for fines (Art. 13), expropriation of property (Art. 14) and liquidation (Art. 15)
Slovakia	-	-	-
Finland	Chapter 9, §2 of the Finnish Criminal Code provides for corporate criminal liability for “persons belonging to a statutory organ or other management body or exercising actual power of decision” and provides for corporate fines. Reference is made thereto for fraud (Chapter 29, §10), active corruption (Chapter 16, §18) and money laundering (Chapter 32, §14)	Chapter 9, §2 of the Finnish Criminal Code provides for corporate criminal liability “if the care and diligence necessary for the prevention of the offence has not been observed” and provides for corporate fines. Reference is made thereto for fraud (Chapter 29, §10), active corruption (Chapter 16, §18) and money laundering (Chapter 32, §14)	Chapter 9, §5 of the Finnish Criminal Code provides for compulsory corporate fines ranging from €850 to €850 000
Sweden	Criminal liability of legal persons is covered by Chapter 36, §7 of the Swedish Criminal Code on corporate fines	Sweden considers that criminal liability of legal persons is covered by Chapter 36, §7 of the Swedish Criminal Code on corporate fines, which also provides for punishment for action which has not been taken but could reasonably have been expected	At the request of the public prosecutor only, fines of between SKr 10 000 and SKr 3 000 000 may be imposed on legal persons under Chapter 36, §8 of the Swedish Criminal Code
United Kingdom – England and Wales	Criminal liability of corporations is recognised by case law in all three jurisdictions of the United Kingdom in application of the principle of identification	Liability for insufficient supervision or control is addressed, in all three jurisdictions, under civil law of negligence with a view to repairing damages. The United Kingdom considers this sufficient to fulfil the requirements of the 2nd Protocol	Legal persons are liable to the same penalties as natural persons by virtue of the Interpretation Act 1978, also applicable to Scotland and to Northern Ireland, under Section 37 of the Interpretation (Northern Ireland) Act 1954: in practice, courts
United Kingdom – Scotland			

United Kingdom – Northern Ireland			impose penalties on organisations
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**Annex Table 11**

<b>Instrument</b>	<b>Second Protocol (not yet entered into force)</b>	<b>PFI Convention</b>		
<b>Member State</b>	<b>Art. 5 – Confiscation</b>	<b>Art. 4(1), first indent of the PFI Convention – Jurisdiction over fraud committed on the Member State’s territory</b>	<b>Art. 4(1), second indent of the PFI Convention – Jurisdiction over persons committing fraud on the Member State’s territory</b>	<b>Art. 4(1), third indent of the PFI Convention – Jurisdiction over nationals of a Member State – possible declaration under Art. 4(2)</b>
Belgium	Art. 42 of the Belgian Criminal Code and, for the value of proceeds, Art 43bis of the Belgian Criminal Code	Art. 3 of the Belgian Criminal Code	Art. 3 of the Belgian Criminal Code insofar as assisting and inducing fall under “committing” an offence as defined in Art. 66 of the Belgian Criminal Code, but not insofar as only “participation”, as defined in Art. 67 of the Belgian Criminal Code, is concerned	Art. 7, §1 of the Belgian Code of Criminal Procedure on condition of “double criminality”
Bulgaria	Art. 53 of the Bulgarian Criminal Code for “forfeiture”	Art. 3(1) of the Bulgarian Criminal Code	Art. 3(1) of the Bulgarian Criminal Code	Art. 4(1) of the Bulgarian Criminal Code
Czech Republic	§51, §56 and §56a of the Czech Criminal Code, which allow forfeiture only for fraud under §250 of the Czech Criminal Code	§17(1) of the Czech Criminal Code	§17(1) and (2) of the Czech Criminal Code	§18 of the Czech Criminal Code
Denmark	§75 of the Danish Criminal Code and, for the value of proceeds, §77 of the Danish Criminal Code	§6, point (1) of the Danish Criminal Code	§6, point (1) and §9 of the Danish Criminal Code	Generally provided for in §7(1) of the Danish Criminal Code on condition of “double criminality”
Germany	§73 of the German Criminal Code	§3 of the German Criminal Code	§3 and §9(2) of the German Criminal Code	For money laundering on condition of “double criminality” (§7 of the German Criminal Code)
Estonia	§83(1) of the Estonian Criminal Code allows seizure and confiscation or removal of the instruments and proceeds and §84 confiscation of their value. For money laundering (§394) the objects used for preparation of the offence may also be confiscated	§6 of the Estonian Criminal Code	§6 and §11(2) of the Estonian Criminal Code	§7(1), point 3 of the Estonian Criminal Code on condition of “double criminality”

Greece	Art. 76(1) of the Greek Criminal Code. Art. 2 of Law 2331/95 allows confiscation for money laundering	Art. 11 of Law No 2803/2000 referring directly to jurisdiction as set out in Art. 4 of the PFI Convention	Art. 11 of Law No 2803/2000 referring directly to jurisdiction as set out in Art. 4 of the PFI Convention	Art. 11 of Law No 2803/2000
Spain	Article 302 and Art. 127 of the Spanish Criminal Code. Article 589 of the Spanish Code of Criminal Procedure	Art. 23(1) and 23(4), point (g) of the Spanish Law on Judiciary (Law 6/1985)	Art. 23(1) and 23(4), point (g) of the Spanish Law on Judiciary (Law 6/1985)	Art. 23(2) of the Spanish Law on Judiciary (Law 6/1985) only on specific request by the damaged party or by the Ministry of Financial Affairs and on condition of “double criminality”
France	Art. 414 of the Customs Code provides for confiscation of the object of fraud and means of transport and concealment; Art. 412 of the Customs Code: confiscation of the defrauded goods only. Art. 131-21, second indent of the French Criminal Code applies to fraud (Art. 313-7 of the French Criminal Code), active and passive corruption (Art. 435-5 of the French Criminal Code) and money laundering (Art. 324-7 of the French Criminal Code) and provides for confiscation of the instrument and the proceeds. For money laundering Art. 324-7 of the French Criminal Code provides for confiscation of possessions (of whatever nature) belonging to the convicted person	Art. 113-2 of the French Criminal Code	Art.113-5 of the French Criminal Code	Art. 113-6 of the French Criminal Code
Ireland	Section 9 (1) of the Criminal Justice Act, 1994: confiscation order by a court is possible against the person sentenced for an indictable offence, but aims at recovering a sum of money equal to the value of the pecuniary advantage derived from the offence	Common law	Section 45(1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 45(1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001
Italy	Not yet ratified: for crimes under Art. 316bis, Art. 316ter, Art. 319, Art. 321 (applicable also under the conditions of Art. 322bis) and Art. 640bis of the Italian Criminal Code (i.e. fraud for expenditure and corruption), Art. 322ter and the reference in Art. 640 quarter provide for obligatory confiscation, also of the value. As regards crimes under Art. 648bis of the Italian Criminal Code (i.e. fraud for revenue and money laundering) or fraud by presenting false data related to revenue of the EAGGF under Art. 2(1) of Law No 1986/898 and customs crimes punishable under Art. 282 to 292 of the amalgamated Law in respect of customs matters, Art. 240 of the Italian Criminal Code	Art. 6 of the Italian Criminal Code	Art. 6 of the Italian Criminal Code	Art. 9 of the Italian Criminal Code on specific request by the Italian Ministry of Justice
Cyprus	Art. 6 to 13 of the Prevention and Suppression of Money Laundering Activities Law No 61(I)/96 which includes confiscation for all the offences under Law No 37(III)/2003 as predicate offences under Article 12 of the same Law	Art. 4, points (a) and (b) of Law No 37(III)/2003	Art. 4, point (d) of Law No 37(III)/2003	Art. 4, point (c) of Law No 37(III)/2003



Latvia	Section 358 of the Latvian Criminal Procedural Code for confiscation of criminally acquired property and also of the value	Section 2 of the Latvian Criminal Code	Section 2 of the Latvian Criminal Code	Section 4(1) of the Latvian Criminal Code
Lithuania	Art. 72 of the Lithuanian Criminal Code	Art. 4(1) and (3) of the Lithuanian Criminal Code	Art. 4(2) and (3) of the Lithuanian Criminal Code	Art. 5 of the Lithuanian Criminal Code
Luxembourg	Articles 31 and 32-1 of the Luxembourg Criminal Code	Art. 7-2 of the Luxembourg Code of Criminal Procedure	Art. 7-2 of the Luxembourg Code of Criminal Procedure read together with Art. 66 and 67 of the Luxembourg Criminal Code	Art. 5(2) of the Luxembourg Code of Criminal Procedure on condition of “double criminality”
Hungary	Art. 77 of the Hungarian Criminal Code	Art. 3(1) of the Hungarian Criminal Code	Art. 3(1) of the Hungarian Criminal Code	Art. 3(1) of the Hungarian Criminal Code
Malta	Art. 23B of the Maltese Criminal Code and Art. 60 of the Customs Ordinance (Chapter 37 of the Laws of Malta)	For fraud offences Art. 310B, points (a) and (b) of the Maltese Criminal Code; for money laundering Art. 121C, point (a) of the Maltese Criminal Code; under reference of Art. 3(6) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta)	For fraud offences Art. 310B, point (c) of the Maltese Criminal Code; for money laundering Art. 121C, point (a) of the Maltese Criminal Code; under reference of Art. 3(6) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta)	For fraud offences Art. 310B, point (d) of the Maltese Criminal Code, on condition of “double criminality”; for money laundering Art. 121C, point (b) of the Maltese Criminal Code; under reference of Art. 3(6) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta)
Netherlands	Articles 33 to 33a of the Dutch Criminal Code and Art. 36 for confiscation of the value of proceeds	Art. 2 of the Dutch Criminal Code	Art. 2 of the Dutch Criminal Code read together with Art. 47 of the Dutch Criminal Code	Art. 5(1), second intent of the Dutch Criminal Code on condition of “double criminality”
Austria	§20, §20b(2), §26 and §65 of the Austrian Criminal Code; §17 to §19 of the Austrian Fiscal Criminal Code	For expenditure: §62, as explained by §67(2) of the Austrian Criminal Code. For revenue: §5(1) and (2) of the Austrian Fiscal Criminal Code	For expenditure: §62, as explained by §67(2) including reference to §12 of the Austrian Criminal Code. For revenue: §5(1) and (2) including reference to §11 of the Austrian Fiscal Criminal Code	§65(1), point (1) of the Austrian Criminal Code on condition of “double criminality” (§65(4) of the Austrian Criminal Code)
Poland	Art. 44 and 45 of the Polish Criminal Code; Art. 29 to 33 of the Polish Fiscal Criminal Code	Art. 5 of the Polish Criminal Code; Art. 3(2) of the Polish Fiscal Code	Art. 5 of the Polish Criminal Code; Art. 3(2) of the Polish Fiscal Code	Art. 109 of the Polish Criminal Law and Art. 3(5) of the Polish Fiscal Code, the latter specifically if the offence is directed against the financial interests of the EC
Portugal	Art. 109 to 111 of the Portuguese Criminal Code allow general confiscation, also of the value of proceeds	Art. 4 of the Portuguese Criminal Code	Art. 4 and 7 of the Portuguese Criminal Code	Art. 5(1), point (c) of the Portuguese Criminal Code
Romania	Art. 118 of the Romanian Criminal Code. Confiscation of the cash equivalent is specifically provided for in Art. 254 and 255 of the Romanian Criminal Code for corruption and in Art. 19 of Law No 78/200 for fraud offences	Art. 3 of the Romanian Criminal Code	Art. 4 of the Romanian Criminal Code	Art. 5 in conjunction with Art. 6 of the Romanian Criminal Code on condition of “double criminality”
Slovenia	Art. 95, 96 and 98 of the Slovenian Criminal Code	Art. 120(1) of the Slovenian Criminal Code	Art. 120(1) of the Slovenian Criminal Code	Art. 122 of the Slovenian Criminal Code on condition of “double criminality” due to Art. 124(3)
Slovakia	§60 of the Slovak Criminal Code	§3 of the Slovak	§3(2) of the Slovak	§4 of the Slovak

		Criminal Code	Criminal Code	Criminal Code
Finland	Chapter 10, §3 of the Finnish Criminal Code appears to provide for confiscation for fraud, corruption and money laundering. Chapter 10, §8 also allows confiscation of the value	Chapter 1, §1, as explained by §10 of the Finnish Criminal Code	Chapter 1, §1, as explained by §10 of the Finnish Criminal Code	Generally provided for in Chapter 1, §6 of the Finnish Criminal Code on condition of “double criminality” due to Chapter 1, §11(1)
Sweden	Chapter 36, §1 of the Swedish Criminal Code appears to provide for confiscation for any offence. Chapter 36, §4 also allows confiscation of the value. Chapters 4 and 5 of the Tax Offence Code are equivalent to confiscation	Chapter 2, §1 of the Swedish Criminal Code	Chapter 2, §1, as explained by §4 of the Swedish Criminal Code	Chapter 2, §2(1), point (1) of the Swedish Criminal Code on condition of “double criminality” due to Chapter 2, §1(1)
United Kingdom – England and Wales	Part 2 Proceeds of Crime Act 2002	For offences under Sections 15, 16 and 17 of the Thefts Act 1968 and Sections 1 to 5 of the Forgery and Counterfeiting Act 1981 jurisdiction is established for any event that occurred in England and Wales (Section 2 of the Criminal Justice Act 1993) or if the benefit is obtained in England and Wales (Section 4 of the Criminal Justice Act 1993)	For offences under Sections 15, 16 and 17 of the Thefts Act 1968 and Sections 1 to 5 of the Forgery and Counterfeiting Act 1981 jurisdiction is established for any event that occurred in England and Wales (Section 2 of the Criminal Justice Act 1993) or if the benefit is obtained in England and Wales (Section 4 of the Criminal Justice Act 1993)	The United Kingdom declared that it does not apply this rule
United Kingdom – Scotland		<u>Common law</u>	Section 71 of the Criminal Justice Act 1993 extends jurisdiction to persons within the United Kingdom who assist with or induce a serious offence outside the UK against the law of another Member State in relation to Community provisions on duties and taxes, agricultural levies or movement of goods. However, United Kingdom courts require proof that the offence is serious under the law of a foreign Member State – such proof failed in the Southwark fraud case (Customs and Excise v Ghiselli, 15.5.1996)	

<p>United Kingdom – Northern Ireland</p>		<p>For offences under Sections 15, 16 and 17 of the Thefts (Northern Ireland) Act 1969 and Sections 1 to 5 of the Forgery and Counterfeiting Act 1981 jurisdiction is established for any event that occurred in Northern Ireland or if the benefit is obtained in Northern Ireland (Article 42 of the Criminal Justice (Northern Ireland) Order 1996)</p>	<p>For offences under Sections 15, 16 and 17 of the Thefts Act 1968 and Sections 1 to 5 of the Forgery and Counterfeiting Act 1981 jurisdiction is established for any event that occurred in England and Wales (Section 2 of the Criminal Justice Act 1993) or if the benefit is obtained in England and Wales (Section 4 of the Criminal Justice Act 1993)</p>	
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**Annex Table 12**

<b>Instrument</b>	<b>First Protocol</b>			
<b>Member State</b>	<b>Art. 6(1)(a) – Jurisdiction</b>	<b>Art. 6(1)(b) – Jurisdiction – Declaration under Art. 6(2)</b>	<b>Art. 6(1)(c) – Jurisdiction – Declaration under Art. 6(2)</b>	<b>Art. 6(1)(d) – Jurisdiction – Declaration under Art. 6(2)</b>
Belgium	Art. 3 of the Belgian Criminal Code and Art. 10quarter of the Preliminary Title of the Belgian Code of Criminal Procedure	Art. 10quarter of the Preliminary Title of the Belgian Code of Criminal Procedure	Art. 10quarter of the Preliminary Title of the Belgian Code of Criminal Procedure	Art. 10quarter of the Preliminary Title of the Belgian Code of Criminal Procedure
Bulgaria	Art. 3(1) of the Bulgarian Criminal Code	Art. 4(1) of the Bulgarian Criminal Code	Art. 5 of the Bulgarian Criminal Code	Art. 6(2) of the Bulgarian Criminal Code applies international agreements to which Bulgaria adhered
Czech Republic	§17(1) and (2) of the Czech Criminal Code	§18 of the Czech Criminal Code	§20(1) of the Czech Criminal Code. However, §20a of the Czech Criminal Code makes international agreements prevail, once ratified	§20a of the Czech Criminal Code makes international agreements prevail, once ratified
Denmark	§6, point (1) of the Danish Criminal Code	§7(1) of the Danish Criminal Code on condition of “double criminality”	§8, point (3) of the Danish Criminal Code	§8, point (5) of the Danish Criminal Code
Germany	§3 of the German Criminal Code	§3 and §9(2) of the German Criminal Code	Jurisdiction for corruption against nationals committed outside German territory ensured by reference made in Art. 2, §2 of the Federal Law on transposition of the Protocol to the PFI Convention	Jurisdiction on corruption due to headquarters of the institution concerned ensured by reference made in Art. 2, §2 of the Federal Law on transposition of the Protocol to the PFI Convention
Estonia	§6 of the Estonian Criminal Code	§7(1), point 3 of the Estonian Criminal Code on condition of “double criminality”. Estonia has not submitted a declaration to this effect. §8 of the Estonian Criminal Code makes international agreements prevail	§7(1), point 1 of the Estonian Criminal Code on condition of “double criminality”. Estonia has not submitted a declaration to this effect. §8 of the Estonian Criminal Code makes international agreements prevail	§8 of the Estonian Criminal Code makes international agreements applicable and prevail for punishability accepted by Estonia for acts committed outside its territory
Greece	Art. 11 of Law No 2803/2000 refers directly to jurisdiction as set out in Art. 6 of the first Protocol	Art. 11 of Law No 2803/2000 refers directly to jurisdiction as set out in Art. 6 of the first Protocol	Art. 11 of Law No 2803/2000 refers directly to jurisdiction as set out in Art. 6 of the first Protocol	Art. 11 of Law No 2803/2000 refers directly to jurisdiction as set out in Art. 6 of the first Protocol

Spain	Art. 23(1) and 23(4), point (g) of the Spanish Law on the Judiciary (Law 6/1985)	Art. 23(1) and 23(4), point (g) of the Spanish Law on the Judiciary (Law 6/1985). Rules on participation and instigation in Articles 27, 28 and 29 of the Spanish Criminal Code	Art. 23(3), point (h) of Organic Law 6/1985 on the Judiciary	Art. 23(1) of Organic Law 6/1985 on the Judiciary together with the wide definition of public official in Art. 24(2) of the Spanish Criminal Code
France	Art. 113-2 of the French Criminal Code	Art. 689-8, second indent of the French Code of Criminal Procedure provides for prosecution of any national individual and national official on French territory guilty of the offences described in Art. 435-1 and 435-2 of the French Criminal Code. France submitted a declaration setting out the conditions for prosecution	Art. 689-8, third indent of the French Code of Criminal Procedure provides for prosecution of any person on French territory guilty of the offence described in Art. 435-2 of the Criminal Code. France submitted a declaration setting out the conditions for prosecution	Art. 689-8, first indent of the French Code of Criminal Procedure provides for prosecution of any Community official working in an EU body with its headquarters on French territory who is on French territory for commission of the offence described in Art. 435-1 of the French Criminal Code. France submitted a declaration setting out the conditions for prosecution
Ireland	Common law	Section 45(2), point (a) of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 45(2), point (b) of the Criminal Justice (Theft and Fraud Offences) Act, 2001	Section 45(2), point (a) of the Criminal Justice (Theft and Fraud Offences) Act, 2001
Italy	Art. 6 of the Italian Criminal Code	Art. 6 of the Italian Criminal Code. Italy submitted a declaration setting out the conditions for prosecution	Art. 10 of the Italian Criminal Code. Italy submitted a declaration setting out the conditions for prosecution	Art. 6 of the Italian Criminal Code
Cyprus	Art. 4, point (a) of Law No 37(III)/2003	Art. 4, point (c) of Law No 37(III)/2003	-	-
Latvia	Section 2 of the Latvian Criminal Code, including joint participation under Section 20	Section 4(1) of the Latvian Criminal Code	Section 4(3) of the Latvian Criminal Code but only for serious crimes, which include the corruption offences (Section 320 and 323) under Section 7(4) of the Latvian Criminal Code	-
Lithuania	Art. 4(1) to (3) of the Lithuanian Criminal Code	Art. 5 of the Lithuanian Criminal Code	Lithuania declared that it does not apply this jurisdiction rule	Lithuania declared that it does not apply this jurisdiction rule
Luxembourg	Art. 7-2 of the Luxembourg Code of Criminal Procedure	Luxembourg declared that it would apply the jurisdiction rules referred to in Article 6(1), point (b) of the Protocol only if the offender is a Luxembourg national. As regards its nationals, Luxembourg will apply Art. 5 of the Code of Criminal Procedure	Luxembourg declared that it would apply the jurisdiction rules referred to in Article 6(1), point (c) of the Protocol only if the offender is a Luxembourg national	Luxembourg declared that it would apply the jurisdiction rules referred to in Article 6(1), point (d) of the Protocol only if the offender is a Luxembourg national
Hungary	Art. 3(1) of the Hungarian Criminal Code	Art. 3(1) of the Hungarian Criminal Code	Art. 4(1), point (a) of the Hungarian Criminal Code, but only applicable for cases of "double criminality", in which case Hungary may envisage making a declaration under Art. 6(2) at the time of ratification (letter of 8.2.2007)	Hungary may envisage making a declaration under Art. 6(2) at the time of ratification (letter of 8.2.2007)

Malta	Art. 121C, point (a) of the Maltese Criminal Code	Art. 121C, point (b) of the Maltese Criminal Code	Art. 121C, point (d) of the Maltese Criminal Code	Art. 121C seems to apply only to the other cases, i.e. to residents in Malta, despite criminal liability in the case of international organisations with their headquarters in Malta under Art. 121(4), point (g)
Netherlands	Art. 2 of the Dutch Criminal Code	The Netherlands submitted a declaration setting out the conditions for prosecution	The Netherlands submitted a declaration setting out the conditions for prosecution	The Netherlands submitted a declaration setting out the conditions for prosecution
Austria	§62, as explained by §67(2) of the Austrian Criminal Code	§65(1), point (1) of the Austrian Criminal Code on condition of “double criminality”. Austria submitted a declaration setting out the conditions for prosecution	Austria considers this article of the Protocol an international obligation for prosecution based on §64(1), point (6) of the Austrian Criminal Code	Austria considers this article of the Protocol an international obligation for prosecution based on §64(1), point (6) of the Austrian Criminal Code
Poland	Art. 5 of the Polish Criminal Code	Art. 109 of the Polish Criminal Law	Art. 110 of the Polish Criminal Law	Art. 110 of the Polish Criminal Law, but not applicable in cases where a foreigner committed the act outside Poland, in which case Poland envisages making a declaration under Art. 6(2) at the time of ratification
Portugal	Art. 4 of the Portuguese Criminal Code	Portugal submitted a declaration setting out the conditions for prosecution	Portugal declared that it does not apply this jurisdiction rule	Portugal declared that it does not apply this jurisdiction rule
Romania	Art. 3 of the Romanian Criminal Code	Art. 4 of the Romanian Criminal Code	Art. 5 in conjunction with Art. 6 of the Romanian Criminal Code on condition of “double criminality”	Art. 3 of the Romanian Criminal Code (territoriality principle) in cases where the offence is committed on Romania’s territory since the Community organisation has its seat in Romania. Otherwise Art. 7 of the Romanian Criminal Code as regards international conventions
Slovenia	Art. 120(1) of the Slovenian Criminal Code	Art. 122 of the Slovenian Criminal Code on condition of “double criminality” due to Art. 124(3) or, failing that, subject to permission by the Ministry of Justice for prosecution under Art. 124(4). Slovenia has not submitted a declaration to this effect	Art. 123(1) of the Slovenian Criminal Code on condition of “double criminality” due to Art. 124(3). Slovenia has not submitted a declaration to this effect	-
Slovakia	§3 of the Slovak Criminal Code	§4 of the Slovak Criminal Code	Slovakia declared that it does not apply this jurisdiction rule	§7 of the Slovak Criminal Code, which makes international agreements prevail over §5 and §6 of the Slovak Criminal Code
Finland	Chapter 1, §1, as explained by §10 of the Finnish Criminal Code	Finland submitted a declaration setting out the conditions for prosecution	Finland declared that it does not apply this jurisdiction rule	Finland declared that it does not apply this jurisdiction rule

Sweden	Chapter 2, §1 of the Swedish Criminal Code	Chapter 2, §2(1), point (1) of the Swedish Criminal Code on condition of “double criminality”	Sweden submitted a declaration setting out the conditions for prosecution	Sweden declared that it does not exercise its jurisdiction in cases where the offender is a Community official working for an institution or body which has its headquarters in Sweden
United Kingdom – England and Wales	The Prevention of Corruption Act 1906 together with the Anti-terrorism, Crime and Security Act	The United Kingdom declared that it does not apply the jurisdiction rules laid down in Article 6(1)(b). However, Section 109 of the Anti-Terrorism, Crime and Security Act 2001 provides that nationals of the United Kingdom may be punished if they do anything outside the United Kingdom that constitutes, if committed in the United Kingdom, the offence of bribery under common law or under Section 1 of the Public Bodies Corrupt Practices Act 1889	The United Kingdom declared that it does not apply the jurisdiction rules laid down in Article 6(1)(c)	The United Kingdom declared that it does not apply the jurisdiction rules laid down in Article 6(1)(d)
United Kingdom – Scotland				
United Kingdom – Northern Ireland				

**Annex Table 13**

Instrument	PFI Convention	ECJ Protocol	
Member State	Art. 7(1) – “ <i>ne bis in idem</i> ”	Art. 2(1) – Declaration of acceptance of the jurisdiction of the Court under Art. 2(2)(a)	Art. 2(1) – Declaration of acceptance of the jurisdiction of the Court under Art. 2(2)(b)
Belgium	Art. 13 of the Preliminary Title of the Belgian Code of Criminal Procedure if the offence was committed outside Belgium		Belgium declared that it accepts the Court’s jurisdiction, as provided for by Art. 2(2)(b)
Bulgaria	-	Not yet applicable, but Bulgaria has already declared that it accepts the Court’s jurisdiction, as provided for by Art. 2(2)(a)	-
Czech Republic	§11(4) of the Czech Criminal Procedural Code	Not yet ratified	Not yet ratified
Denmark	§10a of the Danish Criminal Code for all conventions concluded by Denmark		§2(1) of Law No 228 of 4.4.2000 accepts the Court’s jurisdiction, as provided for by Art. 2(2)(b)
Germany	Art. 7(1) is directly applicable and hence ensures the “ <i>ne bis in idem</i> ” rule between Member States		Greece accepts the Court’s jurisdiction with reservations
Estonia	§2 of the Estonian Criminal Code ensures the “ <i>ne bis in idem</i> ” rule for all foreign punishments imposed	Not yet ratified	Not yet ratified
Greece	Art. 57 of the Greek Code of Criminal Procedure		Art. 12(2) of Law No 2803/2000 accepts the Court’s jurisdiction, as provided for by Art. 2(2)(b)
Spain	-	Spain accepts the Court’s jurisdiction with reservations	
France	Art. 692 of the Criminal Procedural Code		France stated at the time of notification that it accepts the Court’s jurisdiction
Ireland	<u>Common law</u>	Ireland accepts the Court’s jurisdiction; under Section 41(1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001, the Protocol on interpretation (other than Art. 2(2)(b)) has the force of law in the State. Under Section 41(2) of the Criminal Justice (Theft and Fraud Offences) Act, 2001, judicial notice of any ruling, decision or opinion of the ECJ relating to the meaning or effect of any provision of the PFI instruments	



Italy	Art. 731 of the Italian Code of Criminal Procedure		Italy, however, has already declared that it accepts the Court's jurisdiction, as provided for by Art. 2(2)(b).
Cyprus	-	-	-
Latvia	Section 25(6) of the Latvian Criminal Code ensures the " <i>ne bis in idem</i> " rule on the basis of international conventions concluded by Latvia	Latvia declared that it accepts the Court's jurisdiction, as provided for by Art. 2(2)(a)	-
Lithuania	Art. 8 of the Lithuanian Criminal Code ensures the " <i>ne bis in idem</i> " rule for all foreign punishments imposed	-	Lithuania declared that it accepts the Court's jurisdiction, as provided for by Art. 2(2)(b)
Luxembourg	Art. 5(4) of the Luxembourg Code of Criminal Procedure		Art. 8 of the Law of 30 March 2001 accepts the Court's jurisdiction, as provided for by Art. 2(2)(b)
Hungary	The " <i>ne bis in idem</i> " rule seems to require prior recognition of the foreign judgment in accordance with the procedure in Art. 579 of the Hungarian Criminal Procedural Code	Not yet ratified	Not yet ratified
Malta	-	Not yet ratified	Not yet ratified
Netherlands	Art. 68 of the Dutch Criminal Code		The Netherlands accepts the Court's jurisdiction with reservations
Austria	§34 of the Austrian Code of Criminal Procedure		Austria accepts the Court's jurisdiction with reservations
Poland	Art. 114(3), point (3) of the Polish Criminal Code: applicable as of the time of ratification. The principle also applies, via Art. 20(2) of the Polish Fiscal Criminal Code, to the offences under the Fiscal Criminal Code	Not yet ratified	Not yet ratified
Portugal	Art. 229 of the Portuguese Code of Criminal Procedure ensures the " <i>ne bis in idem</i> " rule on the basis of international conventions concluded by Portugal	Portugal accepts the Court's jurisdiction (Art. 2 of the Presidential Decree)	
Romania	Art. 10, indent 1, point (j) of the Romanian Criminal Procedural Code		
Slovenia	Art. 124(1) and (2) and Art. 125 of the Slovenian Criminal Code		Slovenia declared that it accepts the Court's jurisdiction, as provided for by Art. 2(2)(b)
Slovakia	§2(8) of the Slovak Code of Criminal Procedure together with §9 ensures the " <i>ne bis in idem</i> " rule on the basis of international conventions concluded by Slovakia	Slovakia accepts the Court's jurisdiction (final sentence of Notification by the Minister for Foreign Affairs, Collection of Laws No 705/2004). Procedure is set out in the Slovak Code of Criminal Procedure	
Finland	Chapter 1, §13 of the Finnish Criminal Code		Finland accepts the Court's jurisdiction

Sweden	Chapter 2, §5a of the Swedish Criminal Code		Sweden accepts the Court's jurisdiction
United Kingdom – England and Wales	<u>Common law</u>	-	-
United Kingdom – Scotland			
United Kingdom – Northern Ireland			