WORKING GROUP
ON THE PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

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WORKING GROUP
ON THE PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

FINAL REPORT
(draft)

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WORKING GROUP
ON THE PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

DRAFT
FINAL REPORT

1. INTRODUCTION

In December 2001, the Contact Committee of the Presidents of the Supreme Audit Institutions (SAIs) of the European Union, meeting in London, took note of the deliberations of the International Conference on the Prevention and Punishment of Community Fraud, organised by the Italian Court of Auditors. The International Conference had expressed the hope that the work of the SAIs could be better co-ordinated to protect the financial interests of the Communities.

The Contact Committee considered that the protection of the financial interests of the Communities is the paramount task of the Commission and of the Member States, while it is one of the essential tasks of the SAIs to ascertain whether, and how, this protection is provided.

The Contact Committee noted that, in order to study and offer proposals for co-ordinating the work of the SAIs, it was necessary as a preliminary measure to establish a clear framework of the Member States' institutional competencies in this sector. The Committee therefore established the Working Group on the Protection of the Communities' financial interests with a mandate to:

- Identify the statutory framework which exists in each Member State to protect the financial interests of the Communities, the structure of the authority set up for this purpose and its remit; and

- Analyse the powers, remit and specific activities performed by the national and/or central/regional SAIs to protect the financial interests of the Communities.

The SAIs of Austria, Belgium, Finland, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, the United Kingdom and the European Court of Auditors expressed interest in the Working Group, under the chairmanship of Italy.

The Working Group submitted an interim report to the 2002 meeting of the Contact Committee in Luxembourg and was asked to submit a final report to the 2003 Contact Committee.

2. METHOD OF WORK OF THE WORKING GROUP

The Working Group met in June 2002 to agree its approach and finalise a questionnaire designed to identify and review the statutory framework existing in each participating country relating to criminal law protection; and to identify and analyse the powers, remit and activities of the SAIs themselves. The questionnaire is attached at *Annex 3*. The Group appointed a sub-committee, with Italy, Portugal and Spain as members, to co-ordinate and

prepare draft reports for consideration by the Group.

Replies to the questionnaire, which was sent not only to the SAIs that were members of the Working Group but to all the EU SAIs, were received from Austria, Belgium, Denmark, Finland, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, the United Kingdom and the European Court of Auditors.

This final report to the Contact Committee was prepared, on the basis of the replies received, at the Group's second meeting in September 2003 and presents the Working Group's findings, conclusions and recommendations.

3. THE STATUTORY FRAMEWORK TO PROTECT THE FINANCIAL INTERESTS OF THE COMMUNITIES IN RELATION TO CRIMINAL LAW PROTECTION

The detailed findings of the Working Group in relation to criminal law protection in Member States are presented in the Group's First Report, now updated and finalised, at *Annex 1*.

This represents the first analysis carried out by SAIs in an area that is not traditionally a major area of activity for most of them; and which now provides a platform for consideration of further areas in which the work of the SAIs might be co-ordinated, or be taken forward at national level.

The Working Group notes that, in general, the various conventions and measures established at European level and designed to combat fraud and corruption in relation to the Communities' funds have been, or are being, taken forward in Member States, although the process of ratification and application of measures varies. The Working Group's First Report gives an overview of progress made in individual Member States.

The Working Group also notes that the European Commission produces an annual report which evaluates the Community's legislative and regulatory activity; measures taken by Member States in legislation and the organisation of law enforcement; and the results of activities to protect financial interests and combat fraud.
The Working Group, finally, notes that the European Anti-Fraud Office (known by its French acronym – OLAF) exercises the Commission's powers to carry out external and internal administrative investigations for the purpose of strengthening the fight against fraud, corruption and any other illegal activity adversely affecting the Community's financial interests.
A Supervisory Committee guarantees and verifies the independence of OLAF, whose investigations into the international nature of crime are pursued in co-operation with other bodies of the European Community and national authorities, without prejudice to confidentiality and data protection.

4. THE SAIs' POSITION REGARDING THE PROTECTION OF THE COMMUNITIES' FINANCIAL INTERESTS

The second part of the Working Group's mandate focused on the role of the Supreme Audit Institutions in relation to the protection of the financial interests of the European

Communities. The intention was to take into account and define their remit, the powers for performing that remit, their activities, all of it in order to safeguard or help to safeguard the Communities' financial interests against fraud, corruption and other organised acts.

The questionnaire examined several relevant aspects:

- the SAIs' powers and responsibilities in relation to fraud, corruption and money laundering.
- the legal basis of those powers and responsibilities.
- the actual areas in which those powers are used.
- the specific activities performed in relation to those responsibilities.

The detailed findings of the Group are presented at *Annex 2*.

4.1 *General approach to the SAIs' role concerning the protection of the Communities' financial interests*

There are two common statements, drawn from the SAIs' answers, which sum up the substance of this survey:

* *The SAIs do not have responsibilities (or related powers) in the field of the criminal law protection of national or the Communities' financial interests*.

In this area there are three different activities that have to be synergistically co-ordinated:

- administrative activity is under the responsibility of the *national authorities* (taking appropriate steps to prevent public funds from being fraudulently obtained or used; looking into any cases in which circumstances suggest that fraud, corruption or other irregularities have been or are likely to be committed; taking adequate remedial action and reporting cases to the prosecuting authorities where appropriate);
- criminal investigations, prosecution and combating fraud, corruption and money laundering offences are primarily tasks of the *public prosecutor*;
- ascertaining criminal liabilities and imposing criminal penalties are competencies reserved for *criminal courts*.

It should be noted that special bodies within those three areas of power (administration, prosecutor and Courts) have been created in some countries with the specific and specialised task of combating fraud, corruption and money laundering, in both national and Community ambits.

* *The SAIs do not have direct competencies or responsibilities in the fight against fraud, corruption and money laundering.*

Despite this commonly shared feature of "no responsibility", the activities of the SAIs, depending on each legal system, help to safeguard and protect public assets and resources from criminal attacks, playing an important deterrent role in this field. The development of their functions enables them to be involved, from different perspectives, in areas connected

with fraud and corruption, as mentioned below.

4.2 *The external audit as an instrument to prevent and detect fraud, corruption and money laundering*

The main competence of the SAIs is the audit of the funds of the national and Community (when the funds are managed by national or regional entities) public sector, with the extent of this auditing being dependent on their mandate. While conducting financial and performance audits (examining the regularity, the adequacy, the efficiency, the economy and the effectiveness), the SAIs can assess:

- the areas in which special risks of corruption, fraud or money laundering exist, for example: management of EU aid and subsidies; procurement; taxes; or creation of public-funded entities subject to Private Law, as they are outside the scope of application of Administrative Law and public control;

- the adequate development of the functions of the authorities and policies directly intended to combat fraud, corruption and money laundering: the activities to promote their prevention; the degree of implementation of the policies applied in preventing, investigating and prosecuting financial crimes; and its efficiency;

- particular cases of corruption, fraud or money laundering (always in relation to public funds) which have been committed; in these cases, the SAIs can send the relevant information to the competent instance:

- if the facts point to *criminal responsibility*, the case is sent to the appropriate authorities to consider prosecution, thus co-operating with the criminal justice system. The communication can be made under one specific mandate of the SAI or based on the generally applicable principle that all civil servants and public officials are required to report any suspected cases of a criminal nature to the prosecuting authorities;

- if the facts point to *accounting responsibilities*, the case is sent by each SAI to the competent authority, depending on its legal system. In some systems this competence is also vested in the SAI (institutions with jurisdictional powers);

- if the facts point to *administrative or disciplinary responsibility*, the case is sent to the competent department of the administration. Each administrative body can deal directly with the issue when it has the mandate to do so or it can pass the information on to any other body where this is appropriate. This is the prescribed procedure for dealing with the irregularities against Community funds that have to be notified to the European Anti-Fraud Office (OLAF). In this way, the SAIs co-operate with governmental departments to ensure sound controls and accountability systems in the public sector.

In order for SAIs to ensure a reasonable likelihood of detecting material fraud it is necessary:

- to use competent and qualified personnel;
- to assess and test internal controls;
- to verify regularity;
- to carry out adequate planning, performance and evaluation of audit work;

- to carry out substantive testing of transactions;
- to ensure a full understanding of the bodies being audited;
- to comply fully with professional standards.

The results of the audits carried out by the SAIs are communicated in reports (annual or special reports), which in both cases are distributed either to the Parliament or to any other appropriate institution (according to national legislation). Where appropriate, these reports include instances of abuses or irregularities.

The SAIs may also provide recommendations or guidance on the integrity of the use of public funds and may, where appropriate, draw attention to fraud, corruption and irregularities.

These proposals for change are aimed at achieving better controls, systems and procedures, including the regulatory environment.

Both the reports (including the main findings and irregularities detected) and the recommendations are useful instruments for the prevention of corruption, fraud and money laundering in the public sector and for providing information for their prosecution. In addition, they have a deterrent effect since they are sent to the Parliament or any other appropriate institution. In some countries the reports are also published, for the general information of the citizens. Of course, the implementation of the SAIs' recommendations by the auditees is followed up by carrying out periodical enquiries.

4.3 *The role of the SAIs with jurisdictional functions*

The SAIs with jurisdictional competencies in relation to administrative liability make an additional contribution with regard to concrete cases of corruption or fraudulent practices concerning public funds.

In these countries, the SAIs are responsible for determining the accounting liability of public officials and individuals who manage public funds not only in cases of fraud or corruption but also if the loss or damage occurs through a lack of due care (maliciously or seriously negligent behaviour) of funds for which they are responsible. The SAIs then declare accounting liability, determine the amount of damage and require its reimbursement. They do not impose penalties but only try to repair the damage caused.

The accounting jurisdiction and any other action taken by the SAI are in addition to any action that may be taken by other competent authorities in relation to the same circumstances (for example, criminal prosecution, or administrative or disciplinary action).

4.4 *The consultant function of the SAIs as a means of prevention and promotion of guidance on good governance against irregular practices*

The competencies of some SAIs include another useful instrument for preventing fraud and corruption. They have an independent consultant function to advise the Parliament and/or the Government, which is different from the one developed as a consequence of the auditing function. The above-mentioned task is usually carried out in relation to rules connected with budgetary and/or accounting issues, through advice/opinions issued during the legislative

process. In this way, on the basis of its huge experience in financial matters, the SAI can assist the legislative power in formulating norms which avoid fraud and corruption and assist in the fight against those irregular practices.

Some SAIs are represented on professional bodies which are responsible for drawing up accounting and auditing principles and even publish their own guidance on a range of good practices and areas, based on their expertise, experience and findings from their audit work. These publications are very useful in the promotion of education leading to a culture of good governance and action to combat fraud, corruption and money laundering.

5. CONCLUSIONS

The study carried out to analyse the answers of the SAIs to the questionnaire prepared by this Working Group leads to the conclusion that, although the SAIs have no direct powers in the field of criminal law protection, they have different resources at their disposal that allow them to play an important role in preventing, detecting and deterring fraud and corruption while carrying out their tasks. These objectives can be achieved by:

- using standards, guidelines and procedures for financial and performance audit to ensure a reasonable likelihood of detecting material fraud;
- conducting risk analysis to identify special risks of corruption and fraud;
- reporting to the Parliament or any other appropriate institution (according to national legislation) on the audit findings;
- promoting Parliamentary and governmental regulations and measures to improve financial management regarding corruption and fraudulent actions and preventing money laundering;
- promoting guidance, good governance and a sound culture against irregular practices;
- encouraging the performance of the administrative and judicial authorities directly involved in the fight against fraud and corruption;
- communicating information to the public prosecutor and the courts about suspected criminal/illegal actions that are discovered in the course of its work.

It can be affirmed that a strong external audit function exercised by the SAIs is an important element of the framework to combat fraud, corruption and money laundering in the public sector, by providing a deterrent effect and general supervision. In the course of the external audit work, controls that are in place in bodies spending public money can prevent and detect misconduct and the misuse of public money. The “shadow” of the audit hanging over those bodies can act as a means of deterring them from irregular practices.

6. RECOMMENDATIONS

The Working Group considers that its work in this area of importance for members of the Contact Committee should be kept under active review and recommends that:

- protection of the Communities' financial interests should be included in the list of topics under consideration by the Contact Committee’s Task Force on improving and expanding co-operation between the ECA and the SAIs;
- each EU SAI should also consider the Working Group’s findings when planning any national assurance-based review in the field of protection of Community funds;
- the Working Group’s report should be shared with a wider European audience.

ANNEX 1

WORKING GROUP
ON THE PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

THE STATUTORY FRAMEWORK

1. MANDATE

2. INTERPRETATION AND SCOPE OF MANDATE

3. CONVENTIONS AND PROTOCOLS

4. OBSERVATIONS AND REMARKS

4.1 The ratification phase

4.2 The changes in national legislation

4.3 The responsibility of legal persons

4.4 The preliminary rulings of the Court of Justice

1. MANDATE

The 2001 Contact Committee in London gave the Working Group the mandate to:

- ***Identify the statutory framework which exists in each Member State to protect the financial interests of the Community, the structure of the authority set up for this purpose and its remit;***

- ***Analyse the powers, remit and specific activities performed by the national and/or central/regional SAIs to protect the financial interests of the Community.***

Membership

Representatives from Austria, Belgium, Finland, Germany, Ireland Italy, the Netherlands, Portugal, Spain, Sweden, the United Kingdom and the European Court of Auditors are members of the Working Group. Greece and Denmark are also amongst those answering the questionnaire.

2. INTERPRETATION AND SCOPE OF THE MANDATE

2.1 At its first meeting in Rome on 28 June 2002 the Working Group decided that, as a first stage, they would confine their work to a review of the Criminal Law protection existing in each participating country. The approach would be to apply the questionnaire presented to the Liaison Officers in May 2002 in so far as it related to "criminal law" issues. This would provide the data required for the first requirement of the Mandate and avoid duplication of or overlap with the remit of Structural Funds Working Group.

The "criminal law protection" approach which the Group has chosen to follow hinges on the investigation of fraud, corruption and deliberate/wilful criminal acts in general, ending with the imposition of effective, proportionate and dissuasive criminal penalties.

"Criminal law protection" is governed by the following statutory provisions:

1. The provision created by Article 280 of the Treaty of Rome (in paragraphs 2, 3, and 4).
2. Article 31 of the Treaty on European Union, which lays down common action in the area of criminal judicial co-operation.
3. The following documents designed to protect the financial interests of the Community within the narrow field of criminal law protection.

3.1 The Convention of 26 July 1995.
3.2 The (first) Protocol of 26 September 1996.
3.3 The Protocol of interpretation of 29 November 1996.
3.4 The Convention of 26 May 1997.
3.5 The (second) Protocol of 19 June 1997.

It was acknowledged that very little had been done or was known about the extent of adoption of the various Conventions or the mechanisms established under them – perhaps because this was not traditionally a major area of activity for most SAIs. The Working Group felt that an assurance-based review would be useful and might also yield some interesting comparative data on progress and approach between the national administrations.

Where possible, the Group would also aim to use the information-gathering phase of the present review to identify possible future, more focused, areas of examination for consideration by the Contact Committee.

The Group also agreed that there were two aspects to be answered under each question, namely:

- Do measures exist (is there a structure/mechanism)? and
- What are they?

2.2 A second part to the questionnaire was developed to meet the second requirement of the Mandate relating to the powers, remit and activities of SAIs in the protection of the Communities' interests.
In keeping with the overall approach agreed for the Group's work, this part of the questionnaire:

- refers to the field of criminal law only (although it was agreed that this would be interpreted to cover jurisdictional matters where appropriate); and
- follows the approach of establishing whether the SAI has a responsibility or power, then providing a summary and finally giving brief details of the activities this leads the SAI to carry out.

2.3 The questionnaire
A questionnaire is attached at Annex 3.

3. CONVENTIONS AND PROTOCOLS

The five legal instruments mentioned above - adopted under Title 6 of the Maastricht Treaty on "Police and judicial co-operation in criminal matters" (the so-called "third pillar") - constitute a co-ordinated set of norms designed to prevent and to combat the crimes of fraud, corruption and money laundering by officials of the Member States and of the European Community, not only specifically to protect the financial interests of the Community but also for the broader and more general protection of the financial interests of the Member States.
These types of instruments (falling within the scope of "traditional" international law) can be explained essentially by the fact that at present there is no such thing as European Community criminal law. Everyone knows, moreover, that the success obtained with the construction of the Community can have the effect of substantially encouraging an increase in certain forms of crime whose structural features and dimensions range beyond national borders, and can therefore be defined as transnational. According to Title VI of the Treaty the response can therefore be made within the sphere of the "third pillar", namely, in the drafting of international conventions (as typical instruments to foster co-operation between states).

In particular, these instruments are designed to:

a) combat fraud which damages the Community budget (the Fraud Convention of 25 July 1995).
This Convention was the first Community international law instrument specifically designed to protect the Community budget from fraud. The aim is to render the criminal law provisions of the Member States mutually compatible in order to combat and deter fraud more effectively and to improve co-operation in criminal matters.

Its objective is therefore to enable Member States to prevent fraudulent acts, usually with criminal penalties, which are damaging to the Community's financial interests, with regard to both expenditure and revenue. In the latter case, this is restricted merely to revenue from taxes levied on trade with third countries (agricultural duties), sugar levies and customs duties;

b) combat corruption which damages the Community budget (the "first" Protocol of 27 September 1995).
This Protocol broadens the criminal offences that damage the financial interests of the Community committed by Community officials (and members of Community Institutions) or officials (and members of national Institutions) of the Member States to include active and passive corruption.
It is very closely linked to the Corruption Convention (see paragraph c) below), of which it forms the basis;

c) combat corruption (the Corruption Convention of 26 May 1977).
This Convention strengthens the instruments for combating corruption that were established in the "first" Protocol, which only protected the financial interests of the Community, extending it to make it possible to prosecute all acts of corruption involving national or Community officials (and members of national and Community Institutions).
It did not make any substantial innovations in relation to the provisions of the "first" Protocol, but it does extend their scope, disregarding any linkage between acts of corruption and damage to the Community's financial interests. In practice, this Convention ultimately takes over the substance of the "first" Protocol;

d) combat money laundering (the "second" Protocol of 19 June 1997).
This Protocol explicitly sets out to protect the financial interests of the Community, and deals in particular with money laundering, the liability of legal persons for fraud, corruption and money laundering, and the confiscation and sequestration of the goods and the proceeds of such crimes;

e) preliminary interpretations by the European Court of Justice (the Protocol of 26 November 1996).
This Protocol extends the powers of the European Court of Justice, and lays down that it is essential for it to issue preliminary rulings as a condition for the uniform application by the national courts of both the Fraud Convention and the "first" and the "second" Protocols.

All these international law instruments require them to be ratified and adopted by the Member States according to their domestic constitutional procedures.
Their adoption must be notified to the Secretary General of the European Union Council, and the Conventions and Protocols become effective 90 days after the last Member State has submitted this notification.

The specific issues governed by all these conventions and protocols have made it necessary to seek the co-operation of the ministries concerned (mainly the Ministries of Justice and Home Affairs) to compile the questionnaires.

4. OBSERVATIONS AND REMARKS

A number of observations may be made on the basis of an analysis of the questionnaires,

and they may be considered as a general overview of the statutory framework which exists in each Member State.

4.1 The ratification phase

From the point of view of the timing, the ratification procedures have taken what may be considered a normal period of time for international conventions, also taking account of the fact that ratification has often involved more than one convention or protocol at the same time.

Some people may have expected the procedures to be completed more rapidly, both because the subject matters were in many cases already the subject matter of conventions that had been issued by other international organisations, or because the fifteen Member States involved had a paramount and common interest in standardising their legal provisions and their conduct, and in improving co-operation in this field.

The conventions/protocols which in theory are designed to protect the financial interests of the European Community specifically protect the finances of the Member States as well, which, as we know, provide the resources for the Community budget. Additionally, these instruments protect states in terms of other aspects relating to their membership of the Community. One only has to think of customs duties and the management of Community aid in relation to fraud and active and passive corruption legislation; the possibility of prosecuting Community officials who have decision-making powers relating to the implementation of Community policies; the "*ne bis in idem*" and extradition provisions, which tend to confer a single character on Community criminal judgments.

The short account of the subject matter, dealt with in the international law instruments discussed here, clearly shows that, due to the partial overlapping of the issues they regulate or the indirect and direct linkages between the various disciplines, they are intimately linked.

For these reasons, some of the Member States have ratified all or part of the individual instruments as a whole. This has been done on the grounds of "normative cost-effectiveness", and in order to better co-ordinate the measures needed to adjust the legislation of the Member States to the commitments deriving from the instruments to be ratified.

The results of the questionnaire show that Belgium simultaneously ratified all five documents (Conventions and Protocols) as a whole in February 2002, Spain in January 2000 and Portugal in December 2000.
In December 1998 Finland, and in September 2000 Italy, ratified the Fraud Convention and the "first" PFI Protocol, the Corruption Convention and the Protocol on preliminary rulings for interpretation in a single Act of Parliament. Greece also ratified four instruments with a single Act of Parliament (Law 2803 of 2000) including the Fraud Convention and the PFI Protocols and the interpretation Protocol, while Law No 2802/2000 ratified the Convention on corruption. The Fraud Convention, the "first" PFI Protocol and the preliminary interpretation Protocol were unanimously ratified by Austria in May 1999. The same instruments were ratified in the Netherlands by a law enacted in December 2000, while the Corruption Convention and the "second" PFI Protocol were ratified jointly by a law enacted in June 2001. In Germany: the Fraud Convention and the “first” PFI Protocol were enacted on September 1998; the Corruption Convention and the “second” PFI Protocol on October 2002; the Protocol on preliminary rulings in July 2002. In May 2002 Ireland ratified four

instruments (the fraud convention, the first and the second PFI protocol, the interpretation protocol) and in March 2003 the fifth one (the corruption convention).

4.2 The changes in national legislation

We may safely say that once they were signed and subsequently confirmed by ratification, the conventions/protocols examined here have been grafted on to what was already a very solid normative "trunk" shared in common by all the countries concerned, regarding the subject matters governed by the conventions/protocols.

This is confirmed, as already indicated, by the ratification instruments, which have not generally introduced any fundamental innovations to the current legislation of the Member States, but in most cases have simply involved supplementing the existing provisions, mainly to extend to the individuals concerned (civil servants and members of the European institutions) the liability to prosecution for fraud, corruption and money laundering which was already codified in their national legislation.

Confirming this, it transpires that:

- in Belgium it has not been necessary to change domestic law because the principles, concepts and rules of the instruments examined are already part of Belgian law, even though they are spread across different pieces of legislation which nevertheless, taken as a whole, govern a broader field than that governed by the conventions/protocols.
- in Italy, Ireland, Portugal and Spain domestic legislation was already very largely in line with the instruments ratified, so that the provisions adjusting the national legislation required very few measures to remove the marginal incompatibilities.
- in Austria and Germany, the ratification of the first four instruments only required partial changes to existing legislation.

During the Nineties, virtually all the States had signed and subsequently ratified international conventions dealing with the prevention and the prosecution of the same types of crimes dealt with in these conventions and protocols. This means that the countries had already standardised their legal concepts of fraud, corruption and money laundering, "*ne bis in idem*", and had accepted common procedures such as extradition, sequestration and confiscation.

The set of instruments for combating fraud, corruption and money laundering drafted by the European Union are not the sole initiative in this area. Other international organisations and institutions are also concerned with combating corruption, each in terms of their own objectives and purposes, and have produced numerous conventions.

We are thinking here, for example, of the following:

a) the European Convention on Extradition, of the Council of Europe (and its second protocol of 17 May 1978)
b) the European Convention on Judicial Assistance, of the Council of Europe
c) the European Convention on Transfer of Proceedings, of the Council of Europe
d) the European Convention on Transfer of Convicted Persons, of the Council of Europe
e) the Convention on Extradition between the Member States of the European Union (27 September 1996)
f) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (29 May 2000)
g) the European Community Council Directive of 10 June 1991 (No 91/308) on the prevention of the use of the financial system for the purpose of money laundering, as recently amended by Directive 2001/97/EC of the European Parliament and the Council of 4 December 2001.
h) the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of

Crime, of the Council of Europe.

i) the recommendations of the G7 Financial Action Task Force against money laundering (Paris, July 1989)
j) the recommendations of the International Financial Action Group (IFAG) of 1996.
k) the Joint Action 98/699/JHA adopted by the Council (on 3/12/98) on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.
l) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Paris, 17 December 1997).

Another remark stems from the analysis of the questionnaires.
The changes made to national legislation, in order to adjust to the conventions/protocols, referred, as was to be expected, to criminal law above all, and to a lesser degree to criminal procedure.
But because of the wide scope of the subject matter, which is often broken up in different countries across various different pieces of legislation, the changes have also affected customs, fiscal, financial and administrative legislation as well. This means that the impact has been wide-ranging, particularly for the cases of fraud which can be found spread through, and governed by, various different laws.
This is the case in Belgium and in Italy, for example. And also in the United Kingdom, where there is no specific crime of fraud, but instead a large number of individual fraud-type crimes: the expression "fraud" is therefore used to define various acts such as deception, bribery, forgery, extortion, corruption, theft, conspiracy, embezzlement, misappropriation, false representation, concealment of material facts and collusion.

4.3 The responsibility of legal persons

The examination of the "second" PFI Protocol, with particular reference to the possibility of prosecuting legal persons for fraud, and active and passive corruption and money laundering, demands a more thorough account. In this case, there seem to be two contrasting legal traditions that have perhaps had an effect on the speed of ratification of the Protocol: criminal and/or administrative liability and penalties.
The Protocol has been ratified by Belgium, Greece, the Netherlands, Germany, Spain, Portugal, Ireland and the United Kingdom (although it is not yet in force).

In particular, Belgium emphasises the fact that the Belgian Act (of 4 May 1999) on the liability of legal persons is more advanced than the Protocol. For the Protocol leaves it to individual States to decide between criminal liability and administrative liability, and Belgium, which has always supported the idea of criminal liability, therefore has legislation that is the most consistent with its own legal traditions.

In Germany, “the liability of legal persons has all along been determined by section 30 of the Administrative Offences Act. Under the relevant provisions, it has long since been possible to hold legal persons liable for committing offences, including fraud, corruption and money laundering. Any such offence is treated as an administrative offence but not as a criminal offence. A non-criminal fine of up to 500 000 euro can be imposed as a punishment, and this amount may be exceeded in order to take away the unlawful profit obtained by the commission of the offence.
Given the existence of this statutory provision in Germany, the Second Protocol of 19 July 1997 on the Convention for the protection of the Communities’ financial interests needed to be transformed into German law only in so far as the circle of natural persons for whose criminal or administrative offences the legal person is held responsible would have to be

extended to executive staff having supervisory powers. The new Act of Parliament would extend the circle of natural persons for whose criminal or administrative offences a legal person will be held answerable to those persons who belong to the group of persons acting responsible for the management of the enterprise or a local unit thereof. Thus the Act goes beyond the requirements of the Second Protocol. Furthermore, the maximum non-criminal fine that can be imposed will be increased to one million euro, and this limit may be exceeded in order to take away the unlawful profits obtained by committing such an offence."

In the United Kingdom a general provision creating criminal liability specifies that the term "person" in any law must also be construed to mean "a group of persons, which are incorporated or not". This means that, in principle, companies or corporations can be prosecuted for fraud, corruption and money laundering.

In Greece a law enacted in 2001 provides for the prosecution of legal persons, even though no criminal sanctions are provided.
In Spain and Ireland criminal and administrative penalties are in place.
Provisions exist (criminal penalties, but not administrative penalties), in Portugal, for the criminal liability of legal persons when such crimes are committed by their governing bodies or representatives in their name and on their behalf. But the law does not include provisions for the liability of legal persons in relation to money laundering, only natural persons may bear criminal liability.

Lastly, in the Netherlands, the liability of legal persons was already sanctioned (also under criminal law) by the Criminal Code.

4.4 The preliminary rulings of the Court of Justice
One further final reflection relates to the Protocol on preliminary rulings of interpretation by the Court of Justice.

The findings of the questionnaires do not seem to confirm that dual approach between the Member States which the Protocol had foreseen.

When the Protocol established the principle of the competence of the Court of Justice to issue preliminary interpretations of the Convention and of the "first" PFI Protocol (Article 1), it left it to the Member States to specify which national jurisdictions could apply to the Court (Article 2). The choice was between the National Courts, whose decisions were final and unappealable under national law, and/or all the Courts of the Member State.

From the questionnaires, all seem to opt for the second alternative (Belgium, Italy, Austria, Finland, the Netherlands, Greece, Germany, Spain, Ireland). As regards Portugal, the choice was for the first alternative. In the United Kingdom the choice has not yet been made.

Annex 2

THE SAIs' POSITION REGARDING THE PROTECTION OF THE COMMUNITIES' FINANCIAL INTERESTS

1. FOREWORD

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1. FOREWORD

The first part examined the implementation, by the Member States, of the conventions and protocols for the protection of the financial interests of the European Communities. This second part will focus on the Supreme Audit Institutions (SAIs), defining their remit, their powers for the performance of that remit, the activities that they perform as part of their remit and to safeguard (or help to safeguard) the national financial interests overall and the Community's financial interests, where these are related, against fraud, corruption and other criminal acts.

This analysis, based on the replies to the questionnaire submitted by 13 (out of 15) SAIs[1] and the European Court of Auditors, therefore falls within the terms of reference given to the Working Group by the Committee of Presidents, and is limited to the field of criminal law and jurisdiction, overlapping from time to time with the broader area of administrative/accounting and disciplinary liability legislation and jurisdiction wherever appropriate or necessary (for example, in the case of the SAIs which also exercise judicial powers).

Using this approach, the questionnaire drawn up by the Working Group has examined the following aspects:

1. The powers and responsibilities of the SAIs in relation to fraud, corruption and money laundering;

2. The legal basis of these powers and responsibilities (constitutional, or by statute law, administrative law, regulations, professional codes of conduct);

3. Their responsibilities in relation to detection, prosecution, prevention, regulation, reporting, setting down guidelines and policies (education, guidance, governance and good practice);

4. Specific activities performed in relation to these responsibilities.

2. THEIR COMMONLY-SHARED STATUS

When assessing the results of a complex investigation, it is sometimes possible to begin by simply summing up the results and then examining the differences, which at all events do not affect or modify the summing-up itself.
And this is our position here.

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[1] SAIs of Austria, Belgium, Denmark, Finland, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, the United Kingdom.

Two commonly agreed statements have been made by the SAIs which sum up the substance of this survey:

a) there is no responsibility (or related powers) in the field of the criminal law protection of national and Community financial interests,
b) the control/auditing activities - and in some cases, particular types of judicial activities - are performed with the main aim of preventing or deterring the commission of criminal acts by public servants.

Based on this commonly shared feature of "no responsibility", the activities of all the SAIs, depending upon the domestic legal system, help to safeguard and protect public assets and resources from criminal "attack".

We shall therefore see the form these short concurring statements take in practice from the analytical replies to the questionnaire.

2.1. No responsibility or related powers

As part of the wide-ranging, comprehensive formula for combating criminal acts likely to have negative repercussions on public finances, there are three different activities that are synergistically co-ordinated:

- administrative activity, for which national authorities are responsible;
- investigations, co-ordinated by a public prosecutor;
- ascertaining criminal liability and issuing criminal penalties, which are reserved for criminal courts.

This is the picture which, according to the replies, is common to all the States; it shows that the SAIs do not play any active part in relation to these criminal law issues, which form part of the substance of the conventions and protocols.

This is consistent with the position taken up at international level by the external auditing organisations and associations. For example, the Auditing Practices Board states that "external auditors do not have a duty to detect corruption and other fraud as a part of their financial audit work, except to the extent that these materially affect the financial statements audited".

This is a position that emerges quite clearly from some of the answers given to the questionnaire:

"The main forms of external government audit is not on fighting fraud, corruption and money-laundering" (GE); "criminal matters do not fall under the Belgian Court of Audit's remit" (BE); "the Netherlands Court of Audit has no specific responsibility/powers" (NE); "the European Court of Auditors' responsibilities as regards combating fraud and corruption could not cover their detection, which does not come within its jurisdiction " (ECA); "the Tribunal de Cuentas does not have a direct performance in the fight against fraud, corruption and money-laundering" (SP); "the UK National Audit Office does not have specific legislative responsibility or powers in relation to counter-fraud, corruption and money-laundering...nor in the investigation or prosecution of criminal cases" (UK); "the Rechnungshof is not provided with jurisdictional functions and has no power to pass sentences for criminal offences" (AU)".

The German SAI, in its replies, clearly sets out the powers and responsibilities of the main parties involved: the public administration, the public prosecuting authority and the courts:

- "the public administration's task is to take appropriate steps to prevent public funds from being fraudulently obtained ... and to look into any cases in which circumstances suggest that fraud, corruption or other irregularities have been or are likely to be committed, to take adequate remedial action and to report cases to the prosecuting authorities where appropriate";
- "prosecution and combating fraud, corruption and money-laundering offences is

primarily a task of the public prosecution service";
- the courts are reserved "judicial powers and the sanction to be imposed in criminal matters".

The Italian Court of Auditors notes that the Italian public administration (the Ministry of the Economy and Finance) has a specific financial police corps - the "Guardia di Finanza" - one of whose main tasks is combating fraud, corruption and money laundering. In particular, it has a special "investigative unit" working specifically in the field of protecting the financial interests of the European Communities.

Lastly, it is worth noting that even though the British NAO does not have specific responsibilities, as mentioned earlier, nevertheless "the Comptroller and Auditor General is a prescribed person under the Public Interest Disclosure Act for receipt of "whistle-blowing" disclosures in the central public sector relating to fraud, corruption, money-laundering, etc...".

2.2. The external audit as a means of prevention and deterrence

An effective external audit certainly has an undoubted deterrent effect and helps to prevent criminal acts from being committed by public officials.
It is in this field of prevention that the SAIs claim an active part in protecting national and Community financial interests against fraud, corruption and, in some cases, money-laundering.

"Audits carried out by the SAI aim at revealing any irregularity, intentional or not. Therefore, combating fraud, corruption or money-laundering does not constitute a separate objective." (GR)
"The strong external audit function ... is an important element in the framework to counter fraud, corruption and money-laundering in the public sector, by providing a deterrent effect and oversight ... The fact that an audit is carried out acts as a deterrent." (UK).
"The SAI's task includes examining the adequacy and effectiveness of federal internal control systems and to check the extent to which applicable legislative regulations and administrative rules, such those on contract awarding, effectively prevent corruption and other irregularities." (GE).
"The statutory role of the Court is not fraud prevention but its action has an undeniable effect on this".(BE)
"Both the Annual Report and the Motions and Notes of the *Tribunal de Cuentas* are useful instruments for the prevention and prosecution of corruption, fraud and money-laundering in the public sector."(SP)

"*The European Court of Auditors*, even though it does not have any direct power in the fight against fraud and corruption, plays an important role in their prevention. Money laundering, by contrast, is an area that lies entirely outside its sphere of activity ... The Court's responsibilities in the field of fraud and corruption arise, as regards prevention, from the EC Treaty ... In terms of prevention of fraud and corruption, the Court has a very important function, which it exercises as part of either its audit activity or its advisory activity."(ECA)
"On the basis of the powers of the Court in the areas of financial and performance auditing, the Court may engage in (audit) activities to promote the prevention against fraud and corruption."(NE)
"The audit carried out by the Court of Auditors is certainly a deterrent against acts of fraud, and corruption by public officials. This deterrence is particularly important in areas where

the Court carried out an *ex ante* audit, as it does with public tenders in excess of Euro 5 million or supplies worth more than Euro 500,000" (IT).

2.2.1. Methods of performing audits

The replies to the questionnaire also reveal a number of specific ways of performing audits to help protect public financial interests against criminal acts a priori.

Assessment of internal control/audit

Having emphasised that "a system of strong internal control within departments and agencies helps protect the financial interest of public entities and especially prevent, or at least, hamper corruption", the German SAI draws attention in particular to ascertaining "the existence of internal control and the compliance with existing legal provisions in the course of its regular audit work."

The Danish SAI deems it important "to ensure that internal controls are established and carried out". This also forms part of the normal duties performed by the British NAO: "in the course of our financial audit work we consider the controls in place within bodies spending public money to prevent misconduct and the misuse of public money."

Assurance of regularity

In even more general terms, it is the assurance of regularity itself - by which is meant that the money disbursed has been applied to the purpose for which the grants made by Parliament were intended to provide and that the expenditure complies with the rules of the authority which governs it - - which implicitly acts as a deterrent, considering that "by definition, a fraudulent or corrupt transaction cannot be regular" (UK NAO).

Planning controls and audits

Another way of protecting public financial interests through auditing is in the planning and performance of audit work, on the understanding that it is the responsibility of management to prevent and detect fraud, and an audit cannot be expected to detect all errors or instances of fraudulent or dishonest conduct.

"We plan, perform and evaluate our audit work so as to have a reasonable expectation of detecting material misstatements in the financial statements arising from fraud or error... To ensure that we have a reasonable expectation of detecting fraud, we use competent personnel, assessment and testing of controls, substantive testing of transactions and a full understanding of the entity being audited". (UK NAO)

With regard to planning audits, it is also essential to identify in advance the areas that are "at risk", so that preventive action can be taken where it is most required.

"The Court bears in mind the major risks of fraud and corruption that exist in certain areas when planning its audits and, if need be, when embarking on special audits aimed at pinpointing and rectifying the shortcomings found in the management systems." (ECA)

Also, the Tribunal de Cuentas "detects the areas in which special risks of corruption, fraud and money-laundering exist" (SP).

Reporting

Another way of combating fraud and corruption forms part and parcel of the normal

functions of all the SAIs: reporting (to Parliament, to the authorities being audited, and to other authorities as required by national legislation) on the findings of the controls and audit work performed, and particularly by identifying instances where fraud and corruption is suspected.

As the European Court of Auditors points out, "it goes without saying that there is a specific obligation to highlight any irregularities detected during the audits, ... that any case of fraud and/or corruption that is found has to be brought to the attention of the competent authorities", including OLAF (the European Anti-Fraud Office) with which the Court "regularly exchanges information."

The Austrian *Rechnungshof* "reports directly and at any time (annual report, special report) on criminal/illegal actions of public officials of the audited bodies to the competent disciplinary body (e.g.: Federal Ministry, local government) and the federal/regional parliament."

The *Tribunal de Cuentas* "in the annual reports and the special reports... sends to the Parliament... the results of the audit... in the areas and cases of corruption, fraud and laundering of public funds." In these reports, "also the results obtained in order to correct infractions, abuses or irregular actions detected by the Tribunal... will be pointed out..." (SP).

“The Comptroller and Auditor General reports to Parliament’s Committee of Public Accounts on matter of significance, including, where appropriate and material, the unlawful use of public finances”. “This can include in-depth reports on systemic or case-based fraud and fraud-related issues, to identify lessons to be learned and good practice guidance to the audited entities and the central public sector”. (UK)
The Netherlands Court "has a professional responsibility to detect and report cases of fraud that have a material impact on the financial statements of the ministries".
The German SAI, "apart from its annual report addressed to the two Houses of the Federal Parliament and to the Federal Government, may at any time report on issues of special importance or provide advice on the basis of its audit experience. Special reports issued under these powers serve to draw attention to audit findings and conclusions in order to support decision-making by Parliament and Government both in budgetary and other matters." (GE)

Other procedures to prevent unlawful activities

Lastly, there are the following procedures mentioned by a number of SAIs that help to prevent unlawful activities from being committed by public officials.

a) "Audits of the integrity policies of central government and the implementation of these policies." (NE)
b) "Audits of the performance of Institutions with the role of detecting, investigating and prosecuting financial crimes." (NE)
c) "Co-operation with the competent authorities and the criminal justice system where appropriate." (UK)
d) "Working with government departments to ensure sound systems of control and accountability in the central public sector." (UK)

e) The German SAI “co-operates with government ministries, e.g. to advise them on the effectiveness of control systems. In such cases, it will nevertheless take care to make sure not to blur the borderline between the responsibilities of the executive branch and the external audit functions.” (GE)
f) "Being represented on a range of professional bodies which are responsible for drawing up accounting and auditing standards and guidance." (UK)
g) "Working with the central public sector and audited entities in a range of fora (audit committees, steering committees, panels, working groups, conferences, seminars) in the promotion of education and guidance on good governance, counter fraud, anti-corruption and money-laundering." (UK). For example, the German Federal Court is a member of a "working group on public works established by the FCA and its Länder counterparts. Fighting fraud and corruption is a part of the remit of this working group."
h) "Issuing guidance on issues related to fraud and corruption based on SAIs' expertise." (UK) In this connection, the German Federal Court of Audit, for example, has published "Guidance for combating fraud in connection with public road works" which includes "a list of indicators suggesting the occurrence of corruption in connection with public works contracts."
i) "Promoting Parliamentary/Governmental measures to improve economic-financial management regarding corruption and fraudulent actions or preventing public money-laundering." (SP)
j) "Making recommendations on civil or disciplinary measures." (AU)
k) "Where appropriate, the German SAI also suggests that further steps be taken or that the matter in question should be investigated further." (GE)
l) "Giving advice on regulations." (DE). For example, the functions of the European Court of Auditors include "advisory work, in relation to the process of taking decisions on Community provisions of a financial nature, which relate, *inter alia*, to action to combat fraud and corruption."

2.2.2. The SAIs having judicial functions

A particular contribution to preventing fraud and corruption is theoretically connected with the judicial activities relating to the administrative/accounting responsibilities of certain SAIs (Spain, Portugal, Belgium, Italy and Greece, among those which replied to the questionnaire).
The deterrent effect of these judicial activities is inherent in the possibility which they have to order damages to be paid to cover the loss of public funds as a result of fraud or corruption committed by civil servants and, in Spain, by "collectors of aids or public subsidies".
It should be emphasised that the same act can fall within the jurisdiction of the SAIs as well as the criminal or civil courts, or be dealt with administratively.

3. THE OBLIGATION OF THE SAIs TO REPORT UNLAWFUL ACTS OF A CRIMINAL NATURE

When, in the course of its audit work, a SAI is apprised of any facts or acts that might possibly constitute criminal offences of fraud, corruption or money-laundering, it is required to report this to the prosecuting authorities.
This is mandatory, according to numerous replies to the questionnaires, based on the generally applicable principle that all civil servants and public officials are required to report to the prosecuting authorities any suspected cases of a criminal nature.

For example, in Belgium the "Code of criminal procedure provides that any public authority that is aware of a crime or an offence should report it to the judicial authorities and provide them with the relevant information and documentation."

In Austria, "the Rechnungshof - like any other public body - is obliged to notify to the public prosecutor facts of suspected criminal/illegal actions being discovered on the occasion of its audit activities."

In Spain, "if the facts create criminal liability, the case is sent to the Criminal Courts through the General Office of the Public Prosecutor of the State. A Special Unit of the Office of the Public Prosecutor aimed at the fight against corruption and fraud has been set up."

In Greece, "whenever a criminal offence is detected during routine audit work, the case is communicated to the competent Public Prosecutor's Office."

In Portugal, "where, during the exercise of its powers, situations of fraud, corruption or money-laundering are detected, they are communicated to the competent authorities."

Also in the United Kingdom, "civil servants are obliged to take appropriate action when they encounter cases of fraud or corruption" and "government departments are required to report all instances of fraud to the Treasury"; "the National Audit Office has appropriate provisions for internal reporting of, and action on, fraud."

In Germany, "the SAI will, as a rule, provide information about evidence suggesting the commission of a punishable offence either to the authority concerned, to the latter’s supervisory authority or directly to the public prosecution service. Audit reports or other audit related documents will be made available to the prosecution authority only where there is no cause for concern that individual’s personal rights may be infringed.”

Lastly, the European Court of Auditors "immediately informs the competent authorities if it discovers cases of fraud and corruption in the course of one of its audits."

Annex 3

QUESTIONNAIRES

PART I

1

CONVENTION OF 26 JULY 1995 "ON THE PROTECTION OF THE EUROPEAN COMMUNITIES' FINANCIAL INTERESTS"

This Convention followed the Council Act of 26 July 1995 which acknowledged that combating fraud was an issue of common interest in terms of co-operation in the fields of justice and home affairs in criminal matters.

This Convention standardises and co-ordinates the legal instruments designed to ensure the protection of the Community's financial interests, *inter alia* by applying effective, proportionate and dissuasive criminal penalties.

Questions

1. Adoption
1.1 Date
1.2 Instrument (Statute, Regulation, Head of State/Head of Government decree)
1.3 Notification to the Secretary-General: date

2. The notion of fraud (Article 1)
2.1 Is domestic legislation consistent with the notion? YES NO
2.2. What measures ensure this?

3. Criminal law sanctions (effective, proportionate, dissuasive) (Article 2)
3.1 Are there penalties in place? YES NO
3.1.1 If so, summarise the main ones:
(imprisonment, extradition, fines, sequestration, confiscation)

4. Heads of businesses (Article 3)
4.1 Are heads of businesses criminally liable? YES NO
4.2 What measures are in place?

5. Jurisdiction (Article 4)
5.1 Are there measures to establish national jurisdiction over offences committed on home territory? YES NO
5.2 What are these measures?

6. Extradition (Article 5)
6.1 Are there measures to establish national jurisdiction over nationals for offences committed abroad? YES NO
6.2 What are these measures?

7. Co-operation (Article 6)
7.1 Are there measures to foster co-operation in relation to criminal offences involving at least two Member States? YES NO
7.2 What are these measures?

8. "Ne bis in idem" (Article 7)
8.1 Are there any measures to prevent the prosecution of a person for the same offence in two or more states? YES NO
8.2 What are these measures?

9. Transmission (Article 10)
9.1 Has a system for communicating information been put in place? YES NO
9.2 What are the arrangements?

2

"FIRST" PROTOCOL OF 27 SEPTEMBER 1996 "ACTIVE AND PASSIVE CORRUPTION"

This Protocol addresses active and passive corruption that damages the interests of the Community performed by Community officials or national officials of Member States other than those in which the corruption takes place.

Questions

1. Adoption
1.1 Date
1.2 Instrument (Statute, Regulation, Head of State/Head of Government decree)
1.3 Notification to the EU Council Secretary-General: date

2. The notion of "passive corruption" (Article 2)
2.1 Is domestic legislation consistent with the notion? YES NO
2.2 What measures ensure this?

3. The notion of "active corruption" (Article 3)
3.1 Is domestic legislation consistent with the notion? YES NO
3.2 What measures ensure this?

4. Assimilation (Article 4)
4.1 Are there measures relating to equate
fraud by Community officials and national officials? YES NO
4.2 Do these measures apply to fraud by Ministers, Members of Parliament,
Supreme Court Members or Members of the Court of Auditors? YES NO
4.3 Do these measures apply to fraud by members of
the European Commission, European Parliament, European Court of Justice
and European Court of Auditors? YES NO
4.4 What are these measures?

5. Sanctions (effective, proportionate, dissuasive) (Article 5)
5.1 Are there penalties in place? YES NO
5.2 If so, summarise the main ones
(imprisonment, extradition, fines, sequestration, confiscation)

6. Jurisdiction (Article 6)
6.1 Are there measures which establish national powers to deal with the offences
provided by Articles 2,3 and 4 of the Protocol? YES NO
6.2 What are these measures?

3

PROTOCOL OF 29 NOVEMBER 1996
"ON THE INTERPRETATION, BY WAY OF PRELIMINARY RULING, BY THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITY"

This Protocol forms part of the set of measures to protect the financial interests of the Community as an instrument to help establish a uniform interpretation of the provisions of the Convention of 26 July 1995, the Protocol of 27 September 1996 and the Protocol of 29 June 1997.

Questions

1. Adoption
1.1 Date
1.2 Instrument (Statute, Regulation, Head of State/Head of Government decree)
1.3 Notification to the EU Council Secretary-General: date

2. Declaration of acceptance of the jurisdiction of the Court of Justice (Article 2)
2.1 Was the Declaration made at the time of signing the Protocol? YES NO
2.2 Did the Declaration provide for requests for preliminary rulings by the European Court of Justice to be made:
2.2.1 Solely by courts whose judgments cannot be appealed against under domestic law? YES NO
2.2.2 By any court? YES NO

4

CONVENTION OF 26 MAY 1997 "ON THE FIGHT AGAINST CORRUPTION INVOLVING OFFICIALS OF THE EUROPEAN COMMUNITIES OR OFFICIALS OF MEMBER STATES OF THE EUROPEAN UNION"

This Convention expands on the Protocol of 27 September 1996 to include all acts of corruption (and not merely conduct linked to fraud against the Communities' financial interests) involving Community officials or Member States' officials.

Questions

1. Adoption
1.1 Date
1.2 Instrument (Statute, Regulation, Head of State/Head of Government decree)
1.3 Notification to the EU Council Secretary-General: date

2. The notion of "passive corruption" (Article 2)
2.1 Is domestic legislation consistent with the notion? YES NO
2.2 What measures ensure this?

3. The notion of "active corruption" (Article 3)
3.1 Is domestic legislation consistent with the notion? YES NO
3.2 What measures ensure this?

4. Assimilation (Article 4)
4.1 Are there measures to ensure the notion of (active and passive) corruption committed by Ministers, Members of Parliament, Members of Supreme Courts and the Court of Auditors also applies to members of the European Commission, European Parliament, European Court of Justice and European Court of Auditors?
YES NO

4.2 What are these measures?
5. Criminal law sanctions (effective, proportionate, dissuasive) (Article 2)
5.1 Are there penalties in place? YES NO
5.1.1 If so, summarise the main ones (imprisonment, extradition, fines, sequestration, confiscation).

6 Heads of businesses (Article 6)
6.1 Are there measures making Heads of Businesses criminally liable for active corruption by those under their authority and on behalf of the business?
YES NO
6.2 What are these measures?

7. Jurisdiction (Article 7)
7.1 Are there measures establishing national powers over corruption offences created by the Convention? YES NO
7.2 What are these measures?

8. Co-operation (Article 9)

8.1 Are there measures to foster co-operation in relation to criminal offences involving at least two Member States? YES NO

8.1.1 If so, what measures?

- Judicial assistance YES NO
- Extradition YES NO
- Transfer of proceedings YES NO
- Enforcement of foreign judgments YES NO
- Other (please specify)

9. "Ne bis in idem" (Article 10)

9.1 Are there measures to prevent prosecution for the same offence in two or more Member States? YES NO

9.2 What are these measures?

10. Jurisdiction of the Court of Justice (Article 12)

10.1 Has the State declared acceptance of the jurisdiction of the European Court of Justice to issue preliminary rulings if requested by:

10.1.1 courts whose judgments cannot be appealed against under domestic law? YES NO

10.1.2 all courts? YES NO

5

SECOND PROTOCOL OF 19 JUNE 1997 "THE LIABILITY OF LEGAL PERSONS FOR FRAUD, ACTIVE CORRUPTION AND MONEY-LAUNDERING"

This Protocol protects the interests of the Community by establishing the liability of legal persons in the event of fraud, active corruption and money-laundering for their own interests.

Questions

1. Adoption
1.1 Date
1.2 Instrument (Statute, Regulation, Head of State/Head of Government decree)
1.3 Notification to the EU Council Secretary-General: date

2. The notion of "money laundering" (Article 1)
2.1 Is domestic legislation consistent in accordance with the notion? YES NO
2.2 What measures ensure this?

3. Money-laundering (Article 2)
3.1 Is money-laundering a criminal offence? YES NO
3.2 How is this reflected in domestic legislation?

4. Liability of legal persons (Article 3)
4.1 Are there measures to ensure that legal persons can be held liable for fraud, active corruption and money-laundering? YES NO
4.2 What are they?

5. Sanctions (Article 4)
5.1 Are there penalties in place? YES NO
5.1.1 If so, do they include the following:
- fines? YES NO
- criminal penalties? YES NO
- administrative penalties? YES NO
- denial of the enjoyment of some public aid or entitlement? YES NO
- temporary or permanent ban on trading? YES NO
- judicial surveillance? YES NO
- judicial winding-up orders? YES NO
- other (please specify)?

6. Sequestration and confiscation (Article 5)
6.1 How are the following used by the State:
6.1.1 Sequestrated assets?
6.1.2 Confiscated assets?

7. Co-operation with the Commission (Article 7)
7.1 Have bilateral protocols been concluded for co-operation between the Commission and the Member State to combat fraud, corruption and money-laundering? YES NO

PART II

THE SAIs' POSITION REGARDING CRIMINAL LAW ISSUES

An analysis of the powers, remit and specific activities performed by the national and/or central/regional SAIs to protect the financial interests of the Community in relation to fraud and other illegal activities.

Questions

1. Does the SAI have responsibilities/powers in the areas of:
- counter-fraud?
- corruption?
- money-laundering?

2. Are these responsibilities:
- statutory/legislative?
- regulatory/administrative?
- professional/other?

3. What are the specific responsibilities in relation to:
- detection?
- prosecution?
- prevention?
- regulation?
- reporting?
- any other areas? (e.g. education and guidance, governance, good practice)

4. How are these responsibilities discharged? (What activities does the SAI engage in?)