



EUROPEAN COMMISSION

MEMO

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Questions and Answers:

Proposal to protect financial interests of the EU

Why do we need to protect the financial interests of the EU?

The EU already has legal instruments in place to protect the EU's financial interests when crimes such as fraud, corruption or money laundering are committed. However, the current rules can be strengthened even more to better protect tax payers' money. Member States still have very diverging rules on the definition of these crimes against the EU budget and hence the level of sanctions that are applied. Such differences have a negative impact on how efficiently the EU can protect its financial interests. For example, the conviction rate in cases involving offences against the EU budget varies considerably across the EU from one Member State to another, ranging from 14% to 80% (with an EU average of 41%). Stronger measures against fraud, such as defining common offences in all EU Member States, can help to deter criminal activities against the EU budget and to protect EU public money equally in all EU Member States. Putting in place a stronger system for deterring, investigating and prosecuting offences against the EU budget will better protect taxpayers' money and make it easier to recover funds.

How do definitions of crime and levels of sanction vary in EU Member States?

With respect to **fraud**, Member States have different definitions of this crime leading to sanctions that can vary from no minimum sentence (e.g. the UK or Ireland), a maximum of 6 months imprisonment (e.g. Austria) up to a maximum of 12 years imprisonment (e.g. Romania).

With respect to the crime of **money laundering**, the maximum term of imprisonment ranges between 2 years (e.g. Finland) and 20 years (e.g. Austria).

Definitions of the crime of the **obstruction of public tender procedures** also vary from one Member State to another, leading to sanctions as different as a mere administrative fine (e.g. Bulgaria) to 5 years of imprisonment (e.g. Germany, Luxembourg, Slovakia and Spain).

For a full overview of sanctions applied in Member States against the crime of fraud, see the table in Annex 1.

Why is the Commission proposing this Directive?

This Directive is being proposed to clarify, harmonise and strengthen Member States' criminal law as regards offences related to the EU budget.

There are considerable differences in the level of protection of the EU budget across Member States. Since 2000, 281 out of a total of 647 cases transferred by the European Anti-Fraud Office (OLAF) to national judicial authorities were dismissed. Conviction rates for these cases range from 14% to 80% across Member States, with an EU average of 41%. The differences are largely due to a patchy legal framework.

The 1995 Convention on the protection of the European Communities' financial interests, the main legal act in the area of criminal law and protection of the EU budget, did not provide sufficient harmonisation and enforcement in the Member States.

There are several reasons to explain the different levels of protection in the EU:

- offences such as obstructions of public procurement or grant procedures and misappropriations are not covered by EU law and are therefore not properly harmonised;
- penalties for these crimes differ depending on the Member State in which they are prosecuted;
- short statutes of limitation make legal procedures more complex and reduce the likelihood of a conviction;
- criminal law is not always implemented properly.

For example, public sector service providers, officials of international organisations or elected officials are not always covered by corruption provisions. Another example is that some Member States do not provide for a minimum imprisonment period, or set a maximum sanction of a few months for these crimes.

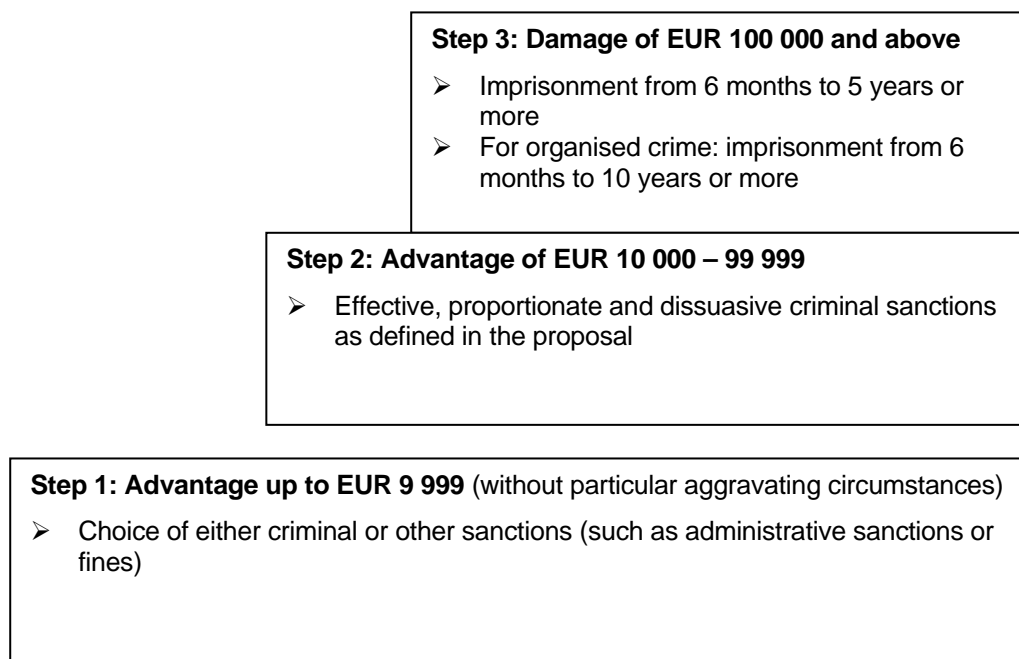
What offences and minimum sanctions does this proposal cover?

The offences in this proposal all affect the financial interests of the European Union. They include fraud, obstruction of public procurement or grant procedures, corruption, money laundering, and misappropriation.

The proposed minimum sanction for these crimes would be 6 months imprisonment, provided that the financial damage to the EU budget was above a specific threshold laid down in the proposal. The maximum sanction would be at least 5 or 10 years imprisonment, depending on whether or not the offence was committed by an organised group.

This means the sanctions would be proportionate to the damage caused. The proposal includes a three-step approach with thresholds of damage (or advantage obtained by the offender) defined in financial terms to determine the seriousness of the crime. Member States would therefore be obliged to provide for the following sanctions for cases of fraud and misappropriation:

Proposed sanction system for fraud and misappropriation



Member States could nevertheless impose more stringent provisions than those laid down in the proposal.

What does the proposal say about the statutes of limitation?

The period within which the investigation, prosecution, trial and judicial decision for the offence must take place, would have to be at least five years from the time when the offence was committed, according to the proposal. It should be extended to at least ten years if it was interrupted by investigations or prosecutions.

Currently, prescription periods vary widely, ranging from 1 to 12 years (see table in Annex 2).

How much of the EU budget is affected by fraud?

In 2010, Member States reported €617 million worth of suspected fraud cases involving EU public money, which is less than one percent of all EU expenditure and revenue concerned.

Can this proposal have an impact on the recovery of misused EU funds?

The proposed Directive would facilitate the work for police officers and prosecutors working on cases involving multiple jurisdictions. For example, a prosecutor who wanted to freeze criminals' assets through seizure or confiscation would benefit from the existence of harmonised law in all EU jurisdictions. This would result in more effective recovery of EU money.

What is the legal basis for this proposal?

Article 325 of the Treaty on the Functioning of the European Union (TFEU) provides that Member States shall counter fraud and any other illegal activities affecting the financial interests of the EU, by taking measures that act as a deterrent and effectively protect the EU budget. The TFEU also provides a legal basis for the harmonisation and strengthening of Member States' criminal law.

The proposed Directive would replace the 1995 Convention. If adopted, this proposal would have to be implemented by all EU Member States, or they could face legal action at the European Court of Justice.

What other measures are foreseen by criminal law to protect the EU budget?

There are many legal acts in criminal law to protect EU financial interests, one of the most important being the 1995 Convention, which will be replaced by this proposal.

The [Framework Decision on the European Arrest Warrant](#) contributes to a better protection of EU financial interests by making easier the surrendering of suspects from one Member State to another. Other important legal measures are the [Directive on the prevention of money laundering and terrorist financing](#) and several [Framework Decisions concerning the confiscation of crime-related proceeds](#).

What are the next steps towards improved protection of the EU budget?

The proposal will now be transmitted to the European Parliament and Council for discussion and adoption. This proposal feeds into the greater plan of protecting the EU's financial interests. The Commission foresees to put forward a separate proposal for a Directive on the harmonisation of procedural criminal law in the Member States in 2013. It will aim, firstly, at aligning rules for the collection and use of evidence in criminal procedures and, secondly, at better communication and cooperation between national authorities and OLAF.

See also [IP/12/767](#)

Annex 1

Full overview of sanctions applied in Member States against the crime of fraud

M S	Sanctions
A T	Imprisonment up to 6 months (§ 146 StGB), 3 years (§ 147 (1) and (2) StGB), 10 years (§§ 147 (3), 148 StGB); Imprisonment up to 3 resp. 5 years and fine up to the double amount of the evaded amount (§ 7 AEG).
B E	Imprisonment from 1 month to 5 years (Article 450 Income Tax Code), Imprisonment from 2 months to 3 years (Article 451 Income Tax Code) and fines (Articles 259, 260 and 261 of the General Law on customs and excise tax).
B G	Imprisonment of 1 to 8 years (Article 209, 210 CC), Imprisonment of 3 to 10 years (Article 211 CC), Imprisonment of 2 to 8 years for (Article 212 CC), Imprisonment of 3 to 10 years (Article 212(3) CC)
C Y	Imprisonment of 5 years (Article 300 CC), Imprisonment of up to 3 years or a fine that does not exceed €5,125.80 or both
C Z	Imprisonment of up to 2 years (§ 209 - 212 CC)
D K	Imprisonment not exceeding 1 year and 6 months (Article 279 Penal Code) (Article 289A Penal Code), 8 years in aggravated cases
EE	Fine or imprisonment of up to 3 years (§209 Penal Code), 5 years (§210 Penal Code)
FI	Fine or imprisonment from 14 days to 2 years (Ch.36, Section 1 CC), (Ch.29, Section 1 CC) (Ch.29, Section 5 CC), 4 months to 4 years in aggravated form
FR	Imprisonment of maximum 5 years and fine of €375,000 (Article 313-1 to 313-3 CC), maximum 7 years and fine of €750,000 in aggravated form
D E	Imprisonment of not more than 5 years or a fine (§263 GCC)
EL	Between 10 days and 5 years , 3 months to 5 years (Article 386(1) CC), 2 years to 5 years in aggravated form
H U	Imprisonment of up to 2 years (§318 CC), 5 years (§314 CC).
IR	Imprisonment not exceeding 5 years (Section 42 of the 2001 Act)
IT	Imprisonment of 6 months to 3 years and a fine of from € 51 to € 1,032.00 (Article 640.1 C.P), imprisonment from 1 to 6 years (Article 640 bis C.P)
LV	Imprisonment for a term not exceeding 3 years , or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage (€17,074.20)

M S Sanctions	
(Section 177 Criminal Law)	
LT	Community service or a fine, or restriction of liberty, or arrest, or imprisonment for a term of up to 3 years (Article 182 CC) or up to 8 years (serious crime)
L U	Imprisonment from 1 month to 1 year or fine from €500 to €30,000 (Article 490 CC), Imprisonment from 1 month to 1 year or fine from €500 to €10,000 (Article 498 CC)
M T	Imprisonment from 4 months to 1 year (Article 298(1) CC), Imprisonment for a term not exceeding 18 months and payment of a fine of €2,329.37 to €34,940.60 (Article 298C CC), Imprisonment from 7 months to 2 years for (Article 308 CC), Imprisonment from 1 to 6 months or a fine (Article 309 CC)
N L	Imprisonment not exceeding, 1 year (Article 328 PC), 2 years (Article 334 PC), 3 years (Article 360 PC), 4 years (Articles 227, 326 PC) or 6 years (Articles 225, 336, 359 PC) or fines of up to €76,000
PL	Imprisonment for a term of between 3 months and 5 years (Article 297 Penal Code)
PT	Imprisonment up to 3 years or a fine (Article 217 CC)
R O	Imprisonment between 6 months and 12 years (Article 215 CP) (basic case)
SI	Imprisonment for not less than 3 months and not more than 3 years (Article 229 KZ-1), Imprisonment for not more than 3 years (Article 211 KZ-1), Imprisonment for not more than 5 years (Article 228 KZ-1), Fine or imprisonment for not more than 3 years (Article 231 KZ-1)
S K	Imprisonment of up to 2 years (Section 221 CC), Imprisonment of 1 to 5 years (Section 222-225)
E S	Imprisonment of 6 months to 3 years (Article 252 CC)
S E	Imprisonment for at most 2 years (Ch.9, Section 1 Penal Code)
U K	Summary conviction: imprisonment not exceeding 12 months , to a fine or to both (Section 1 Fraud Act 2006); Conviction on indictment: imprisonment not exceeding 10 years , to a fine or to both

Annex 2

Prescription periods in Member States

Member State	Minor offences	Most serious offences	Can the limitation period be suspended or interrupted?
AT	1 year	No limitation	Yes
BE	5 years	20 years	Yes
BG	5 years	20 years	Yes
CY	No limitation	No limitation	n/a
CZ	1 year	10 years	Yes
DE	3 years	10 years	Yes
DK	2 years	10 years	Yes
EE	5 years	10 years	Yes
FI	2 years	20 years	Yes
FR	1 year	10 years	Yes
GR	1 year	20 years	Yes
HU	3 years	Equal to the maximum sentence	Yes
IT	4 years	Equal to the maximum sentence	
IR	6 months		No limitation period for the trial of offences on indictment
LV	2 years	10 years	Yes
LT	3 years	15 years	Yes
LU	5 years	10 years	Yes
MT	3 months	20 years	Yes
NL	3 years	20 years	Yes
PL	3 years	30 years	No
PT	2 years	15 years	Yes
RO	5 years	15 years	Yes
SI	1 year	50 years	Yes
SK	3 years	30 years	Yes
ES	5 years	20 years	Yes
SE	2 years	25 years	Yes
UK	6 months		No limitation period for the trial of offences on indictment

Please note that this table gives an approximate picture of the situation in Member States by December 2011