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NOTE

From:	Presidency
To:	CATS
Subject:	Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive) - Judgement in case C-105/14 (Taricco)

The proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law (the "PIF Directive") was submitted by the Commission in July 2012. The PIF Directive should replace the 1995 PIF Convention for the Member States which will be bound by the PIF Directive. After negotiations in Council under the Cypriot and Irish Presidencies, the Council (Justice and Home affairs) reached a general approach on the compromise text on 6 June 2013 [1]. After the European Parliament adopted its report on the proposal on 20 April 2014, a number of trilogues have been held under the Italian and Latvian Presidencies.

The latest trilogue was held on 2 June 2015. The Parliament and the Council were thereby very close to an agreement on almost all questions that had previously been discussed. However, the legislators also concluded that they were in disagreement on one key issue, concerning the inclusion or not of VAT fraud in the scope of the PIF Directive.

[1] Doc 10729/13 DROIPEN 75 JAI 478 GAF 30 FIN 328 CADREFIN 137 CODEC 1394.

The issue of VAT fraud

According to the proposal of the Commission[2], revenue resulting from VAT receipts in the Member States would be covered by the Directive (recital 4) although this was not explicitly stated in the text. In its general approach, the Council decided to explicitly exclude VAT fraud from the scope of the Directive, by adding the following second paragraph to Article 2: "*Revenues arising from VAT are not included in the scope of this Directive*".

The European Parliament, supported by the Commission, have continued to insist on the inclusion of VAT Fraud in the scope of the Directive, and thus of the deletion of the above-mentioned paragraph. In substance, they have noted that VAT fraud such as carrousel fraud constitutes a major problem as regards criminal attacks against the Union's financial interests that should fall under the responsibility of the future European Public Prosecutor's Office, and that the inclusion of such fraud in the Union law is already part of the acquis in the form of the 1995 PIF Convention. Member States have opposed the inclusion of VAT fraud, either by contesting that such fraud is part of the acquis or by claiming that they in any case wish to exclude such fraud from the Directive.

The judgment of the Court of 8 September 2015 in Case C-105/14 (Taricco)

In the *Taricco* judgment [3], the Court concluded that "*revenue derived from applying a uniform rate to the harmonised VAT assessment bases determined according to EU rules*" is covered by the concept of fraud in Article 1 of the 1995 PIF Convention.

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[2] Doc 12683/12 DROIPEN 107 JAI 535 GAF 15 FIN 547 CADREFIN 349 CODEC 1924.
[3] Case C-105/14, judgment of the Court (Grand Chamber) of 8 September 2015, see in particular paragraphs 40 and 41.

It further held "that conclusion cannot be called into question by the fact that VAT is not collected directly for the account of the European Union, since Article 1 of the PIF Convention specifically does not lay down such a condition, which would be contrary to that convention's objective of vigorously combatting fraud affecting the European Union's financial interests". Furthermore, the Court held that "…criminal penalties may …be essential to combat certain serious cases of VAT evasion in an effective an dissuasive manner" [4] and that the Member States must ensure that cases of serious fraud in relation to VAT and VAT evasion "…are punishable by criminal penalties which are, in particular, effective and dissuasive. Moreover, the measures adopted in that respect must be the same as those which the Member States adopt in order to combat equally serious cases of fraud affecting their own financial interests" [5]. Finally, the Court recalled that in the event that a national court concludes that national provisions on criminal penalties for serious VAT fraud do not satisfy the requirement of EU law that measures to counter VAT evasion be effective and dissuasive, "that court would have to ensure that EU law is given full effect, if need be by disapplying those provisions …" [6].

<u>Question to delegations:</u>

It appears that the judgment in the *Taricco* case contributes to clarify the legal situation concerning criminal penalties in relation to VAT fraud, as it is now seems that such fraud is already covered by the PIF Convention.

In the light of this development, delegations are asked to reflect on how the second paragraph of Article 2 of the draft PIF Directive, in the wording of the 2013 General Approach, should be handled in view of future negotiations with the European Parliament.

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[4] Paragraph 39.
[5] Paragraph 43.
[6] Paragraph 49.