Convention for the protection of the Communities' financial interests

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The purpose of this report is to check progress made towards the objective of effective and equivalent protection of the EC's financial interests in the EU as a whole. It examines the state of play regarding the transposition of the PFI instruments in the EU, in light of the conclusions of the first report, and it examines the legislative situation in the other Member States – whether they have ratified all the PFI instruments or not.

To recall, the first report (presented in October 2004) announced that the Commission intended to submit a follow-up report on implementation in the whole of the EU. Although ratification is not yet completed, neither in the EU-15 nor in the Member States which joined in 2004 and 2007, the Commission considers that, ten years after the signature of the 2nd Protocol and three years after enlargement, the time has come take a fresh look at the national implementing measures and to consider the impact of the PFI instruments as a whole.

As a general assessment, the report finds that the harmonisation objective of the PFI instruments has still not been fully achieved in all 27 Member States – neither formally nor materially. The Commission regrets that, due to the lack of ratification by Italy, the 2nd Protocol has still not entered into force there and that ratification by Member States which joined the EU on 1 May 2004 has still not been finalised. *De facto*, the current system of protection, based on conventions, creates a multi-speed situation and 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. Formally, therefore, this situation does not produce the desired effective and dissuasive penal protection.

Concerning material compliance, the Commission's analysis finds that five of the Member State , which have ratified the PFI instruments now appear to have taken all the measures needed to comply in a satisfactory way with the PFI instruments. Loopholes which allow offences to go unpunished persist though. The need for a Directive on criminal-law protection of the Community's financial interest remains. As such the report remarks that the Commission will examine further possible approaches to meet this objectives opened up by the reform of the EU/EC Treaty.

Given that formal compliance is yet to be achieved, the Commission urges those Member States which, more than ten years after the adoption of the last of the PFI instruments and more that three years after accession, have still not done so, to ratify all the PFI instruments without delay. All Member States are invited to step up their efforts to reinforce their national criminal legislation to protect the Community's financial interests.

As a follow-up to this report, the Member States are urged to ratify the 2nd Protocol without delay. 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 report also lists seven Member States that still show serious shortcoming in the implementation of the other PFI instruments. They are: Belgium; Germany; France; Ireland; Italy; Luxembourg; and Austria. The Commission will address these seven Member States to gather their views on their shortcoming. Should diverging positions be revealed, the Commission may initiate procedures under Article 8 of the PFI Convention. As far as the Member States, who joined in May 2005 and January

2007 are concerned, they are invited to meet their commitments under the Accession Treaties. The Czech Republic, Hungary, Malta and Poland, together with Estonia, should proceed as fast as possible with the accession of the PFI instruments, to which they have not yet acceded.