Fight against fraud to the Union's financial interests by means of criminal law

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The Council agreed on a general approach on the proposed Directive on the fight against fraud to the Union's financial interests by means of criminal law. This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the Directive.

A clear majority of delegations have indicated that the **legal basis of the proposal should be Article 83(2)** instead of Article 325(4) as proposed by the Commission. The text of the agreed general approach is thus based on the presumption that Article 83(2) is the legal basis. The following are the main amendments to the Commission's proposal:

- The Council has amended the text in regard to the subject matter of the proposed Directive so that it " establishes **minimum rules concerning the definition of criminal offences and sanctions** in the field of the fight against fraud and other illegal activities affecting the Union's financial interests".

- Revenues arising from VAT are **no longer included** in the scope of this proposed Directive.

- As to what constitutes fraud affecting the Union's financial interest, the general approach differentiates between fraud in respect of (i) **subsidy and aid expenditure** and (ii) **other expenditure**.

- It also introduces definitions of **money laundering**, **passive corruption**, **active corruption** and **misappropriation**.

- The text also amends the article relating to penalties for natural persons. Criminal offences falling within the scope of the Directive would be punishable by a maximum penalty of at least four years of imprisonment when they constitute serious offences. In cases of offences involving damages of less than EUR 10 000 and advantages of less than EUR 10 000. Member States may provide instead for other than criminal penalties, unless the case constitutes a serious offence.

- It introduces a new article on **aggravating circumstances** whereby Member States would have to take the necessary measures to ensure that it shall be regarded as an aggravating circumstance when a criminal offence referred to in the Directive is committed within a criminal organisation in the sense of Framework Decision 2008/841 on the fight against organised crime.

- The article regarding **prescription for offences** has been redrafted: Member States would have to take the necessary measures to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in the Directive for **a sufficient period of time** after the commission of those offences, such that those offences may be tackled effectively. In cases of serious offences, they would have to ensure that the prescription period amounts to **at least five years from the time when the offence was committed**. They could also establish a prescription period that is shorter than five years in cases of serious offences provided that they shall ensure that the period may be interrupted or suspended upon specified acts.

- Member States would take the necessary measures to enable the enforcement of: (a) **a penalty of more than one year of imprisonment**, **or** alternatively, (b) a penalty of imprisonment in a case of a serious

offence, imposed following a final conviction for a criminal offence referred to in the Directive, **for at least five years from the date of the final conviction**. This period may include extensions of the prescription period arising from interruption or suspension.

- an article has been added stating that the Convention for the Protection of the European Communities Financial Interests is replaced by this Directive.

Lastly, Ministers are invited to note in the minutes of the Council that this will be the commencement of the opt-in period for Ireland and the United Kingdom in accordance with Article 3 in Protocol 21 to the Treaty. In accordance with Articles 1 and 2 of the Protocol 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it.