Convention for the protection of the Communities' financial interests

1994/0911(CNS) - 25/10/2004 - Follow-up document

A number of Protocols have been developed since 1995 to protect the Community's financial interests. They are the First Protocol of 1996, the ECJ Protocol, also agreed in 1996 and the Second Protocol agreed in 1997. Collectively they are referred to as the PFI Instruments. The purpose of the Commission report on the PFI Instruments is to assess Member State implementation of the PFI provisions and to offer suggestions for improvement. Assessing the implementation process of the PFI provisions in the new Member States will be dealt with separately.

The main thrust of this Commission Report is to focus on PFI implementation and ratification in the 15 Member States, to examine in detail the provisions in the PFI instruments relating to criminal or procedural law and not to take account of provisions that require no implementation such as those on co-operation and data protection. Prior to beginning the assessment of provisions the Report makes note of the fact that, although the PFI instruments fall under the third pillar, there is considerable overlap with the EU Treaties and in particular Article 280 thereof.

In its general assessment the Report notes that, at first sight, national provisions adopted in the Member States show that the level of effective criminal-law protection of the EC's financial interests has increased. Concerning the definition of offences, national systems have grown closer to one another and penalties are usually set at sufficiently high levels so as not impede mutual assistance. Further, the principle of assimilation, has found some recognition among Member States. Yet, in spite of some progress, the Commission concludes that none of the Member States appear to have taken all the measures needed to comply fully with the PFI instruments. They are particularly concerned that gaps and loopholes in the law allow offences to go unpunished. Moreover, the evaluation procedure uncovered considerable difference between the Member States as regards criminal penalties. This gap makes the Commission question whether the penalties imposed always meet the Court of Justice criteria of being effective, proportionate and dissuasive. The Commission also expresses considerable concern that the level of protection being awarded to the Community's financial interests are not advanced enough to exclude any risk of leaving unpunished, or of not deterring, those criminals intent on defrauding the EU.

On the basis of this analysis the Commission makes a number of recommendations. They are requesting the Member States to:

- Step up their efforts to reinforce national criminal legislation, in particular with regard to the complete criminalisation of fraudulent conduct and criminal liability in a corporate context.

- Reconsider their reservations stated when ratifying the PFI instruments and

- Implement and ratify the second Protocol without delay.

Significantly, the Commission further recommends that the Council work towards adopting a Common Position on the amended proposal for a Directive on the criminal-law protection of the Community's financial interests. This, the Commission believes, would bring provisions regarding the protection of the Community's financial interests under the umbrella of the first pillar and offer the EU greater financial security. Other measures being mooted by the Commission include a possible approach offered by Treaty amendments including amendments to 280 of the EC Treaty under the Draft Constitutional Treaty. This could, for example, include the option of establishing a "European Financial Public Prosecutor's Office".