## Basic information

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|---|---|
| **1994/0911(CNS)**<br><br>CNS - Consultation procedure<br>Regulation | Procedure completed |
| Convention for the protection of the Communities' financial interests<br><br>Repealed by 2012/0193(COD)<br>See also 2015/0210(NLE)<br><br>**Subject**<br><br>8.70.04 Protecting financial interests of the EU against fraud | |

## Key players

### European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| LIBE Civil Liberties and Internal Affairs | BONTEMPI Rinaldo (PSE) | 16/09/1994 |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| JURI Legal Affairs, Citizens' Rights | ODDY Christine Margaret (PSE) | 07/09/1994 |
| CONT Budgetary Control | THEATO Diemut R. (PPE) | 27/07/1994 |

### Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| Economic and Financial Affairs ECOFIN | 1835 | 1995-03-20 |
| Economic and Financial Affairs ECOFIN | 1812 | 1994-12-05 |
| Justice and Home Affairs (JHA) | 1859 | 1995-06-20 |
| Justice and Home Affairs (JHA) | 1808 | 1994-12-01 |
| Social Affairs | 1813 | 1994-12-06 |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 15/06/1994 | Legislative proposal published | COM(1994)0214 | Summary |
| 24/10/1994 | Committee referral announced in Parliament | | |
| 05/12/1994 | Debate in Council | | |

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|---|---|---|---|
| 06/12/1994 | Debate in Council | | |
| 02/03/1995 | Vote in committee | | |
| 02/03/1995 | Committee report tabled for plenary, 1st reading/single reading | A4-0039/1995 | |
| 15/03/1995 | Debate in Parliament | | Summary |
| 20/03/1995 | Debate in Council | | |
| 20/06/1995 | Debate in Council | | |
| 26/07/1995 | Act adopted by Council after consultation of Parliament | | |
| 26/07/1995 | End of procedure in Parliament | | |
| 27/11/1995 | Final act published in Official Journal | | |

## Technical information

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|---|---|
| **Procedure reference** | 1994/0911(CNS) |
| **Procedure type** | CNS - Consultation procedure |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Regulation |
| **Amendments and repeals** | Repealed by 2012/0193(COD)<br>See also 2015/0210(NLE) |
| **Legal basis** | Treaty on European Union (after Amsterdam) M K.3-p2c |
| **Stage reached in procedure** | Procedure completed |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee report tabled for plenary, 1st reading/single reading | | A4-0039/1995<br>OJ C 089 10.04.1995, p. 0005 | 02/03/1995 | |
| Text adopted by Parliament, 1st reading/single reading | | T4-0092/1995<br>OJ C 089 10.04.1995, p. 0055-0082 | 15/03/1995 | Summary |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(1994)0214 | 15/06/1994 | Summary |
| Follow-up document | COM(2004)0709 | 25/10/2004 | Summary |
| Follow-up document | COM(2008)0077 | 14/02/2008 | Summary |
| Follow-up document | SEC(2008)0188 | 14/02/2008 | |

| Additional information | | |
|---|---|---|
| **Source** | **Document** | **Date** |
| European Commission | EUR-Lex | |

| Final act |
|---|
| Justice and Home Affairs act 1995/1127(03)<br>OJ C 316 27.11.1995, p. 0048-0048 |

# Convention for the protection of the Communities' financial interests

1994/0911(CNS) - 15/06/1994 - Legislative proposal

This draft convention between the Member States sought to increase protection of the Community's financial interests: fraud or attempted fraud against the Community's financial interest would constitute a criminal offence in each Member State, with national laws incriminating the same acts. The minimum penalty would be either a custodial sentence or a financial penalty, or both. Fraud would be considered as aggravated when one of the following elements was present: repetition of the offence, acting with a degree of premeditation, criminal conspiracy, when the person concerned was an official or public servant, bribery of an official, when the amount of loss exceeded ECU 50 000. The convention laid down rules for the enforcement and application of national laws in cases of fraud committed against several Member States, or from a non-member country. It also defined rules for extradition, prosecution and prescription and enjoined Member States to provide mutual aid for all legal proceedings of this type. The European Court of Justice would, at the request of Member States or the Commission, resolve any disagreement relating to the application of the convention and would give a preliminary ruling on how its provisions were to be interpreted. The convention was accompanied by a proposal for a regulation concerning the administrative penalties to be applied to fraud affecting the Community's financial interests.

# Convention for the protection of the Communities' financial interests

1994/0911(CNS) - 14/02/2008 - Follow-up document

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.

# Convention for the protection of the Communities' financial interests

1994/0911(CNS) - 15/03/1995 - Text adopted by Parliament, 1st reading/single reading

Parliament, in approving Mr Bontempi's report by a large majority, rejected the draft intergovernmental Convention for the protection of the EU's interests and called for the proposal to be withdrawn.

# 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".