



THE SENATE  
OF THE PARLIAMENT OF THE CZECH REPUBLIC  
9<sup>TH</sup> TERM

64<sup>TH</sup>

**RESOLUTION OF THE SENATE**

Delivered on the 4<sup>th</sup> session held on 30<sup>th</sup> January 2013

**on the Proposal for a regulation of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law /Senate Press no. N 183/08/**

**The Senate**

**I.**

**1. Supports**

the harmonisation of elements (physical facts) of criminal offences which violate the Union's financial interests because it may facilitate mutual recognition of judgements in criminal cases and contribute to uniform interpretation;

**2. Points out, however,**

that the legislation of the European Union in the area of criminal law must observe the principle of proportionality and must not impair the system of criminal law in the Member States unless it is necessary for the accomplishment of the objectives of this legislation;

**II.**

**1. Does not consider**

necessary the detailed harmonisation of punishment terms for criminal offences as defined by the Directive, as it would suffice to stipulate that sanctions imposed by the Member States have to be effective, proportionate and deterrent;

**2. States**

that the rules proposed by the Directive concerning the prescription for criminal responsibility and sentence do not comply with the concept of these institutes in the Czech legal order and will lead to the creation of different regimes for criminal offences of the same level of social harmfulness; thus it represents a disproportionate encroachment on domestic law, which is not necessary for the accomplishment of the Directive's objectives;

### **3. Emphasises**

that the regulation of a minimum term of imprisonment for criminal offences defined by the Directive should not affect domestic legislation that allows, in certain circumstances, to impose a penalty of a shorter duration than the minimum term (for instance in case of sentencing the so-called co-operating defendant);

### **4. Insists**

that the relation between punishment for the same offence by a Member State's criminal court and by an administration authority should be clarified in accordance with the directly applicable rules of the European Union, in order that the Directive complies with the prohibition of double punishment for the same offence, which forms a part of constitutional traditions of the Member States, and with its interpretation by the European Court of Human Rights;

### **5. Invites**

the European Commission to take into consideration the above-mentioned comments, especially during the preparation of future legislative proposals harmonising the elements (physical facts) of criminal offences, for instance in relation to the proposal concerning money laundering, which is mentioned in the Commission Work Programme 2013;

## **III.**

### **1. Requests**

the Government to inform the Senate about the way this position was taken into account and to provide the Senate with information on the further proceeding of negotiations;

### **2. Authorises**

the President of the Senate to forward this Resolution to the European Commission.

Milan Štěch  
sign manual  
President of the Senate

Miroslav Škaloud  
sign manual  
Senate Verifier