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

2012/0193(COD) - 11/07/2012 - Legislative proposal

PURPOSE: to lay down measures to prevent and fight fraud and other illegal activities in relation to the Union’s financial interests by providing for sanctions and for common definitions of offences.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: according to the 2010 Commission report on the protection of the Union's financial interests, suspected fraud amounts to approximately 600 million euro annually on the revenue and expenditure side despite the legal framework in place. It can be assumed that the actual amount is even higher as not all cases are detected and reported.

The damage to the EU budget calls for action to ensure equivalent and effective protection of the Union's financial interests, including **criminal law** as far as this proves necessary. Despite the development of an EU *acquis* in this area which includes fraud, corruption and money laundering, Member States have adopted d**iverging rules and consequently often diverging levels of protection within their national legal systems**.

According to the Commission, the actual **common definition of offences** in all Member States would reduce the risks of divergent practice, as they would ensure a uniform interpretation and a homogeneous way to meet all the necessary prosecution requirements. They would also strengthen the **deterrent effect and enforcement potential** of relevant provisions

The proposal follows on from the Commission’s May 2011 communication “On the protection of the Union’s financial interests by criminal law and by administrative investigations” and the September 2011 communication “Towards a European criminal policy: Ensuring the effective implementation of EU policies through criminal law”.

IMPACT ASSESSMENT: the Commission conducted an impact assessment of policy alternatives, taking into account the outcome of an external study which was completed in February 2012. The impact assessment concludes that a solution which in particular would extend the types of some fraud-related offences, introduce minimum sanctions and harmonise statutory limitation is to be preferred.

LEGAL BASIS: Article 325(4) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal replaces the proposal for a Directive on the criminal-law protection of the Community's financial interests. It seeks to **set out harmonised criminal law provisions** in the field of the protection of the Union's financial interests, while allowing Member States a certain degree of flexibility as regards how to impose more stringent provisions.

In particular, the proposal:

- introduces a **definition** of the Union’s financial interests (fraud in relation to VAT is considered as affecting the EU's financial interests and is therefore covered by this proposed Directive);
- provides a definition of **fraudulent behaviour** to be criminalised in the Member States;
- provides that dishonest conduct of tenderers in **public procurement** is to be criminalised in the Member States;

- provides for a definition of **corruption** to be criminalised in the Member States;
- provides for a definition of **misappropriation**, which covers conduct by public officials that does not constitute fraud in a stricter sense, and which consists in the misappropriation of funds or assets contrary to the purpose foreseen, with the intention to damage the Union's financial interests;
- makes reference to **anti-money laundering** legislation (Directive 2005/60/EC) with respect to money-laundering of the proceeds of the offences, so that such money laundering will be criminalised in the Member States;
- requires Member States to criminalise also forms of **preparation** of and participation in the offences of incitement, aiding and abetting, attempt;
- requires Member States to ensure liability of legal persons, while excluding that such **liability** is alternative to that of natural persons;
- requires Member States to apply **effective, proportionate and dissuasive sanctions**, in line with jurisprudence of the Court of Justice, and to set out a certain minimum set of criminal sanctions for natural persons;
- requires certain **minimum imprisonment terms** for particularly serious offences, based on thresholds set out for each offence;
- requires the existence of means of **freezing and confiscation** of proceeds and instrumentalities from these offences;
- requires the Member States to take the necessary measures to establish their **competence bases** in regard to criminal offences so as to allow the judicial authorities to initiate investigations, pursue prosecutions and bring to judgment cases relating to the Union's financial interests.

BUDGETARY IMPACT: this proposal has no immediate budgetary implications for the Union. Its aim is, however, to prevent losses caused by illegal activities affecting the Union's financial interests by increasing deterrence and making enforcement by criminal law authorities of the Member States more effective, as well as to facilitate recovery in cases where losses caused by illegal activities affecting the Union's financial interests have already occurred.