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

2012/0193(COD) - 25/03/2014 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Budgetary Control together with the Committee on Civil Liberties, Justice and Home Affairs adopted the report by Ingeborg GRÄSSLE (EPP, DE) and Juan Fernando LÓPEZ AGUILAR (S&D, ES) on the proposal for a directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law

The Committee on Legal Affairs, exercising its prerogatives as an associated committee in accordance with Rule 50 of the Rules of Procedure, was also consulted for an opinion on the report.

The committee recommended that Parliament’s position in first reading following the ordinary legislative procedure should amend the Commission position as follows:

Legal basis: Members proposed to retain **Article 83(2)** of the Treaty on the Functioning of the European Union as the legal basis of the proposal rather than Article 325 (4).

Objective: the regulation should also afford effective and equivalent protection in the Member States and in Union institutions, bodies, offices and agencies and boosting the credibility of Union institutions and initiatives.

Members introduced a **broader definition of the notion of the ‘Union's financial interests’** which now covered and all its financial operations, including borrowing and lending activities.

Criminal offences: the report explicitly mentioned corruption relating to activities in **procurement**. It made a distinction between **active and passive corruption**. The notion of ‘**misappropriation**’ was introduced, which, when committed intentionally, must be punishable as a criminal offence. Misappropriation should consist of an act by a public official to commit or disburse funds, or appropriate or use assets, contrary to the purpose for which they were intended, and which damaged the Union's financial interests.

In this context, Members inserted an amendment regarding ‘Union official’ which was based on the current definition of official included in the First Protocol to the Convention on the Protection of Financial Interests in force, which was well known and accepted by Member States.

Penalties for physical persons: the committee stated that in cases of offences involving damages of less than **EUR 5 000** (EUR 10 000 in the proposal) and not involving aggravating circumstances, Member States may provide instead for the imposition of sanctions other than criminal penalties.

Imprisonment: Members deleted provisions regarding a minimum penalty of at least 6 months imprisonment stating that minimum penalties did not respect the diversity of legal systems and the need for judicial discretion. Introducing them would also not be consistent with the position Parliament had taken as regards the draft Directive on the protection of the euro and other currencies against counterfeiting in criminal law.

It was suggested that the provisions **should not affect the discretion of courts and judges in Member States in determining the most appropriate and proportionate sentence** in any individual case.

Members went on to state that where it was established that a criminal offence had been committed **within a criminal organisation, that fact should be treated as an aggravating circumstance** for sentencing purposes rather than a different criminal offence.

Ne bis in idem rule : the report introduced a new article stipulating that Member States should apply in their national criminal law the *'ne bis in idem*' rule, under which a person whose trial had been completed in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that, if a penalty was imposed, it had been enforced, was in the process of being enforced or may no longer be enforced under the laws of the sentencing State

Recovery: Member States should take the necessary measures to ensure the **prompt recovery** of sums unduly paid in the context of the commission of the criminal offences and their **transfer** to the Union budget. Member States should also keep regular records of the sums recovered and shall inform the relevant Union institutions or bodies about those sums, or, where they have not been recovered, of the reasons for such non-recovery.

Cooperation between Member States and OLAF: for the purpose of the Directive, the committee stated that cooperation should not be limited to cooperation between Member States and Commission **but encompass also the cooperation between the Member States themselves.** Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, Member States, **Eurojust** and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in the directive whilst complying with the Charter of Fundamental Rights of the European Union and with the applicable Union legislation on the protection of personal data,

Reports, statistics and evaluation: the Commission shall, **within 24 months** after the deadline for implementation of the Directive, and thereafter on a yearly basis, submit a report assessing the extent to which the Member States have taken the necessary measures to comply with the Directive.

For their part, Member States should regularly collect and maintain **comprehensive statistics** from the relevant authorities in order to review the effectiveness of the systems established by them to protect the Union's financial interests. The Commission shall, **within 5 years** after the deadline for implementation of the Directive], submit a full evaluation of the latter.