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

2012/0193(COD) - 27/04/2017 - Council position

The Council adopted its **position at first reading** with a view to the adoption of 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 objective of the draft Directive is to **establish minimum rules concerning the definition of criminal offences, sanctions and limitation periods** in the field of the fight against fraud and other illegal activities affecting the Union’s financial interests, with a view to contributing effectively to a stronger protection against crime affecting those financial interests, in line with the acquis of the Union in this field.

The Directive will improve the level of protection currently existing on the basis of the 1995 Convention on the protection of the European Communities' financial interests, which the Directive will replace for the Member States bound by it.

The main elements of the Council position are as follows:

Scope: the proposed Directive covers offences against the **common VAT systems**. It introduces a specific definition of fraud with revenue arising from VAT.

However, the scope of the Directive is limited, as the Directive will be applicable **only when the offences are serious**. The offences shall be considered serious when they are connected with the territory of two or more Member States and involve a total damage of at least **EUR 10 million**.

Definition of the criminal offences: the Council position includes a number of definitions of offences which are considered to be detrimental to the EU budget. These offences include cases of fraud and other related offences, such as **active and passive corruption and money laundering**.

Sanctions: the Council position lays down a set of rules on minimum penalties for **natural persons**. Member States shall ensure that the criminal offences are punishable by effective, proportionate and dissuasive criminal sanctions. Offences involving considerable damages or advantages will be punishable more severely, i e by a maximum penalty of **at least four years of imprisonment**.

The damage or advantage resulting from the criminal offences shall be presumed to be considerable where the damage or advantage involves more than EUR 100 000.

A **legal person** held liable shall be subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as temporary or permanent exclusion from public tender procedures or temporary or permanent disqualification from the practice of commercial activities.

Prescription: the Council position introduces detailed binding rules on prescription in Union criminal law. Member States are obliged to provide for a prescription period that enable law enforcement for a **sufficient period of time** to tackle the offences effectively, and provides for a minimum prescription period of **at least five years in cases of serious offences.**

A rule on prescription of the enforcement of penalties has also been introduced.

Cooperation between the Member States, the European Commission and agencies and the Court of auditors: the Council position obliges Member States, some agencies such as Eurojust and the Commission to cooperate within their respective competences, in the fight against the criminal offences laid down in the Directive. It obliges the Court of Auditors and other audit bodies to **disclose** relevant facts which could be qualified as a criminal offence.