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

2012/0193(COD) - 16/05/2017 - Commission communication on Council's position

The Commission adopted a communication concerning the position of the Council 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.

Substantive provisions: the Commission accordingly **supports the position of the Council** at first reading regarding the substantive provisions of the Directive. The council position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. It maintains the objectives of the Commission proposal.

Compared to 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 Commission considers that the Directive will provide **clearer and more stringent rules** on a number of important issues, in particular:

- **provides updated definitions of active and passive corruption**, a new offence of misappropriation, which covers conduct by public officials going beyond the mere fraudulent behaviour and an updated definition of public officials;
- **includes the offence of serious VAT fraud** in the Directive, whereby Member States will need to criminalise at least fraud offences against the common VAT system when they are connected with the territory of two or more Member States and involve a total damage of at least EUR 10 million;
- **harmonises maximum criminal sanctions for natural persons**, including a maximum penalty of at least four years of imprisonment, when the offences referred to in the Directive involve considerable damage or advantage, or when other serious circumstances defined in national law justify such sanction;
- introduces a new, binding set of rules on **limitation periods**, including provisions on interruptions and suspensions, in respect of criminal offences affecting the Union budget.

Legal basis: while the Commission supports the Council position at first reading concerning the substantive provisions, it considers that it **should have been based on Article 325 TFEU**. The Council and the European Parliament agreed that Articles 83(1) and 83(2) TFEU should be the appropriate legal basis.

The Council adopted in first reading the draft Directive on the basis of Article 83(2) TFEU. The Commission reserves its right to **initiate legal proceedings** about the legal basis before the Court of Justice.