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

2012/0193(COD) - 05/07/2017 - Final act

PURPOSE: to adopt new rules to better protect the EU financial interests.

LEGISLATIVE ACT: European Parliament and Council Directive 2017/1371 on the fight against fraud affecting the Union's financial interests by means of criminal law.

CONTENT: this Directive establishes **minimum rules concerning the definition of criminal offences and penalties** on combatting fraud and other illegal activities detrimental to the Union’s financial interests. It shall improve the prosecution and punishment of offences harmful to EU finances and facilitate the recovery of misappropriated European funds.

Definitions: the Directive contains common definitions of a number of infringements which are detrimental to the EU budget. These include, among others, cases of fraud and other fraud-related offences such as **active and passive bribery**, **embezzlement and money laundering**.

The Directive also applies to **serious cases of cross-border VAT fraud**. For offences against the common VAT system, the threshold as of which the damage or advantage should be presumed to be considerable is, in conformity with this Directive, **EUR 10 000 000**.

Sanctions: the Directive establishes a set of provisions on minimum sanctions against **natural persons**. These sanctions must be effective, proportionate and dissuasive.

In cases where the harm caused or the advantage obtained is considerable, the offence shall be punishable by a **maximum penalty of at least four years imprisonment**. For certain offences, 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**.

Legal persons found liable for criminal offences shall be liable to penalties including criminal or non-criminal fines and which may include other sanctions such as temporary or permanent exclusion from tendering procedures or the temporary or permanent disqualification from the practice of commercial activities.

Member States shall take the necessary measures to enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences.

Limitation periods: the Directive lays down minimum rules as regards the limitation periods within which the case must be investigated and prosecuted. These delays should allow the law enforcement authorities to intervene for a sufficient period of time after the commission of those criminal offences.

For serious criminal offences, a maximum penalty of at least four years of imprisonment, the Directive provides for a **limitation period of at least five years**.

Member States may provide for a limitation period of less than five years but not less than three years, provided that this period may be interrupted or suspended in the event of specified acts.

Cooperation: the Directive requires **Member States, Eurojust, the European Public Prosecutor's Office and the Commission (OLAF)** to cooperate within the limits of their respective competences in the field of combating the criminal offences referred to in the Directive. It also obliges the **Court of Auditors** and auditors responsible for auditing the budgets of the Union institutions to disclose to OLAF and to other competent authorities any fact of which they become aware when carrying out their duties, which could be qualified as a criminal offence.

Assessment: by 6 July 2021, the Commission shall submit a report assessing the extent to which Member States have taken the necessary measures to comply with this Directive.

ENTRY INTO FORCE: 17.8.2017.

TRANSPOSITION: no later than 6.7.2019.

The Convention on the protection of the European Communities' financial interests of 26 July 1995, including its Protocols is hereby replaced by this Directive for the Member States bound by it, with effect from 6 July 2019.