

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2001/0115(COD) Procedure lapsed or withdrawn
Fight against fraud: criminal-law protection of the Community's financial interests	
Subject 8.70.04 Protecting financial interests of the EU against fraud	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	CONT Budgetary Control		10/07/2001
		PPE-DE THEATO Diemut R.	
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		11/07/2001
		GUE/NGL DI LELLO FINUOLI Giuseppe	
European Commission	JURI Legal Affairs and Internal Market		11/09/2001
		PSE MARINHO Luís	
	Commission DG European Anti-Fraud Office (OLAF)	Commissioner ŠEMETA Algirdas	

Key events			
23/05/2001	Legislative proposal published	COM(2001)0272	Summary
14/06/2001	Committee referral announced in Parliament, 1st reading		
06/11/2001	Vote in committee, 1st reading		Summary
06/11/2001	Committee report tabled for plenary, 1st reading	A5-0390/2001	
28/11/2001	Debate in Parliament		
29/11/2001	Decision by Parliament, 1st reading	T5-0629/2001	Summary
16/10/2002	Modified legislative proposal published	COM(2002)0577	Summary
16/04/2013	Proposal withdrawn by Commission		Summary

Technical information	
Procedure reference	2001/0115(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 325-p4
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	CONT/5/14818

Documentation gateway					
Legislative proposal		COM(2001)0272 OJ C 240 28.08.2001, p. 0125 E	23/05/2001	EC	Summary
Court of Auditors: opinion, report		RCC0009/2001 OJ C 349 10.10.2001, p. 0001-0020	19/07/2001	CofA	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0390/2001	06/11/2001	EP	
Text adopted by Parliament, 1st reading/single reading		T5-0629/2001 OJ C 153 27.06.2002, p. 0032-0253 E	29/11/2001	EP	Summary
Modified legislative proposal		COM(2002)0577 OJ C 071 25.03.2003, p. 0001-0002 E	16/10/2002	EC	Summary

Additional information	
European Commission	EUR-Lex

Fight against fraud: criminal-law protection of the Community's financial interests

PURPOSE: to present a Commission proposal for a directive of the European Parliament and of the Council on the criminal-law protection of the Community's financial interests. **CONTENT:** under Article 280 of the EC Treaty as amended by the Treaty of Amsterdam, the Community is responsible for taking measures for the protection of Community financial interests which afford effective and equivalent protection in all the Member States. The sheer extent of the damage done to Community financial interests by fraud and international economic and financial crime calls for the current legal arrangements to be given more teeth as a matter of urgency, especially as the Member States have fallen behind schedule in ratifying the convention and protocols of the financial interests (PFI) of the European Communities. The Commission is accordingly proposing this Directive, based on Article 280 of the EC Treaty, which is also motivated by the need to adopt concrete measures to implement its overall strategic approach to combat fraud. The articles in this proposal on the criminal-law protection of the financial interests of the European Communities are without exception based on provisions from the Third Pillar PRI instruments. The main provisions of the proposed directive are the following: - all the provisions from the current protocols on the protection of the European Community's financial interests that do not fall under the restriction referred to in Article 280 of the EC Treaty; - provisions on cooperation with the Commission, since these do not fall under the exception in Article 280(4) of the EC Treaty either; - setting up of an advisory committee involving Member States in regular consultation; - provisions on fraud, active and passive corruption, equal treatment, money laundering, liability and penalties, and finally, cooperation of national authorities.?

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The Court of Auditors was asked for its opinion on the proposed directive. The Court welcomed the initiative and considered that a directive is an appropriate instrument for instituting effective protection of the Community's financial interests. It made the following specific observations: -the current definition of corruption, both active and passive, is too restrictive: on the one hand it does not cover the act on the part of an official of receiving advantages as inducement to carry out a duty that is not in breach of his official duties; on the other, it makes the existence of the offence depend on damage to the Community's financial interests. This condition is not acceptable where Community officials are concerned. -making it a condition of money-laundering that the person committing the act knows the derivation of the property is likely to make it virtually

impossible to bring a prosecution for such an offence. -bodies corporate can be held liable for acts of passive corruption as well. The Court refers, for example, to the case of a body corporate carrying out public tasks. -there is no reason for limiting custodial sentences to cases of serious fraud.

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The committee adopted the report by its chair, Diemut THEATO (EPP-ED, D) broadly supporting the proposal under the codecision procedure (1st reading), subject to a few amendments. It argued that the protection of the Community's financial interests must be dealt with at Community level, i.e. it should fall within the first pillar as confirmed by the European Council in Nice. In addition, MEPs wanted the proposed directive turned into a regulation, thereby making it binding and directly applicable in the Member States. In view of the complex, cross-border nature of some fraud cases, the committee called for reinforced cooperation between Member States and the EU Anti-Fraud Office, OLAF, allowing action taken against a cross-border fraud case to be centralised in one Member State. It also wanted to prevent people presumed guilty of fraud against the financial interests of the EU from enjoying total immunity because of a blanket refusal by some Member States to extradite their nationals. The committee called for the rapid appointment of an independent European Public Prosecutor on the basis of Article 280 of the EC Treaty. It recognised that, until the treaty is amended, the European Public Prosecutor can only investigate members of the EU's institutions and bodies and their officials and other staff. However, it also wanted to ensure that investigations were lawful and legitimate in accordance with the European Convention on Human Rights. ?

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The European Parliament adopted the resolution by Mr Diemut THEATO (EPP-ED, D). (Please refer to the previous text). It should however be added that an amendment calling for the rapid appointment of an independent European Public Prosecutor on the basis of Article 280 of the EC Treaty was rejected by the Plenary. A subsequent motion to send the report back to the Committee on Budgetary Control was also rejected.?

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Of the 20 amendments adopted by the European Parliament, the Commission can accept 4 in full and one in part. Because of the approach it has taken as regards the form and the legal basis of its proposal, the Commission is unable to accept any of the other Parliamentary amendments, which might have more political and legal relevance in some other context. Those accepted include: - the instrument will become an integral part of the Community acquis and will have to be incorporated into the legislation of the candidate countries; - a new recital referring to future developments such as the establishment of a European Public Prosecutor; - custodial sentences available at least in cases involving serious fraud may lead to extradition. Amendments not accepted include: - further details on the definition of "national official"; - additions to the definition of fraud, since they would unduly extend the definition to cover preparatory activities, which are already adequately covered; - clauses on new offences are rejected since they do not correspond to the objective of the directive; - references to OLAF are rejected, for the simple reason that they have no direct link with the purpose of the directive.?

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As announced in Official Journal C 109 of 16 April 2013, the Commission decided to withdraw this proposal, which had become obsolete.