

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure lapsed or withdrawn
2004/0172(COD)	
Fight against fraud: mutual administrative assistance for the protection of the financial interests of the Community	
Subject 8.70.04 Protecting financial interests of the EU against fraud	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>CONT</b> Budgetary Control		22/09/2004
		PPE-DE <a href="#">DUCHOŇ Petr</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>BUDG</b> Budgets	The committee decided not to give an opinion.	
	<b>ECON</b> Economic and Monetary Affairs	The committee decided not to give an opinion.	
	<b>JURI</b> Legal Affairs	The committee decided not to give an opinion.	
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
Council of the European Union			
European Commission	Commission DG <a href="#">European Anti-Fraud Office (OLAF)</a>	Commissioner ŠEMETA Algirdas	

Key events			
13/10/2004	Committee referral announced in Parliament, 1st reading		
23/05/2005	Vote in committee, 1st reading		Summary
25/05/2005	Committee report tabled for plenary, 1st reading	<a href="#">A6-0156/2005</a>	
23/06/2005	Results of vote in Parliament		
23/06/2005	Decision by Parliament, 1st reading	<a href="#">T6-0255/2005</a>	Summary
07/03/2015	Proposal withdrawn by Commission		

Technical information	
Procedure reference	2004/0172(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation

Legal basis	Treaty on the Functioning of the EU TFEU 325-p4
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	CONT/6/24017

## Documentation gateway

Legislative proposal	<a href="#">COM(2004)0509</a>	20/07/2004	EC	Summary
Committee draft report	PE355.782	28/04/2005	EP	
Amendments tabled in committee	<a href="#">PE357.808</a>	29/04/2005	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0156/2005</a>	25/05/2005	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T6-0255/2005</a> <a href="#">OJ C 133 08.06.2006, p. 0029-0105 E</a>	23/06/2005	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2005)2882</a>	13/07/2005	EC	
Court of Auditors: opinion, report	RCC0008/2005 <a href="#">OJ C 313 09.12.2005, p. 0001-0005</a>	27/10/2005	CofA	Summary
Modified legislative proposal	<a href="#">COM(2006)0473</a>	14/09/2006	EC	Summary
Document attached to the procedure	N6-0007/2007 <a href="#">OJ C 094 28.04.2007, p. 0001</a>	13/11/2006	EDPS	Summary

## Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

## Fight against fraud: mutual administrative assistance for the protection of the financial interests of the Community

**PURPOSE:** to establish the legal framework for mutual administrative cooperation and exchange of information between the competent authorities of the Member States and between those authorities and the Commission, in order to ensure equivalent and effective protection of the financial interests of the Community against fraud and any other illegal activities.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**CONTENT:** Given the multi-lateral, cross-border nature of fraud, the European Commission is presenting this proposal in a bid to improve the co-ordination of anti-fraud measures between the European Commission and the Member States. This particular proposed Regulation does not seek to increase the amount of investigative powers of the Commission nor does it seek to diminish the role national authorities play in combating fraud. As the Commission points out, however, the sixth Directive on VAT makes VAT vulnerable to fraud. Consequently, it is one of the most frequently exercised form of fraud carried out in the EU, which affects the Community budget significantly. Some Member States estimate that the detrimental affect of VAT fraud could be as high as 10% of their receipts.

The proposed Regulation forms part of a package of anti-fraud legislative acts. Specifically, it complements Regulation 1079/1999/EC and Regulation 2185/96/EC, Euratom. This legislative initiative, however, is concerned with a very specific purpose, namely "administrative co-operation" in relation to combating and preventing EU fraud and money laundering. The exchange of information at an early stage would contribute substantially towards deterring irregularities ? especially in the field of money laundering. One of the main features of the Regulation, if adopted, would be to allow the Commission to offer Member States improved and reliable intelligence, including detailed reports and, in particular, a clearer picture of new fraud trends as a result of its analytical work. It will also contribute to linking the information available with persons behind organised fraud.

### FINANCIAL IMPLICATIONS:

- Budget lines and headings: 24.0106 (fight against fraud).

- Overall multi-annual estimate of expenditure: Overall financial impact of human resources and other administrative expenditure: 1.751 million per year, 1.851 for the first two years which include an amount of EUR 100 000 for the development of information systems for internal use of the Commission.

- Overall financial impact of human resources and other administrative expenditure: A total of 15 staff, of which five are permanent and ten

temporary at a total cost of EUR 1 361 340.

- Other administrative expenditure deriving from the action: Total cost of EUR 1 851 340.

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The committee adopted the report by Petr DUCHO? (EPP-ED, CZ) broadly approving the proposal under the 1st reading of the codecision procedure, subject to a few amendments:

- it should be clarified that the regulation will cover both direct and indirect EU funding;
- the Commission should keep a list of all the authorities taking part in cooperation under the regulation. The list should be constantly updated and made accessible on the Internet;
- Member States should be made aware of and use the service platform function of the EU anti-fraud office (OLAF), which will have a coordinating role;
- measures must be taken to strengthen information exchange at an early stage in order to facilitate the recovery of claims resulting from irregularities. The information must remain confidential;
- Member States should be able to seize and freeze assets when there is a serious suspicion of fraud. This would apply to "the proceeds of any irregularity involving sums of more than EUR 50 000 or property.....the value of which corresponds to such proceeds".

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The European Parliament adopted a resolution drafted by Petr DUCHO? (EPP-ED, CZ) and made some amendments to the Commission?s proposal. (Please see the document dated 23/05/2005.) Parliament added that Member States shall without delay communicate to the Commission the following information from their records:

- VAT identification numbers issued by Member States receiving the information;
- the total value of intra-Community supplies of goods to persons holding a VAT identification number by all operators identified for the purposes of VAT in the Member State providing the information.

This replaces the clause giving the Commission access to Member States? records stored in national databases.

Parliament inserted a new Title II on recovery and a new Article 20 b and 20c. The latter states that in order to ensure effective recovery, Member States shall seize and freeze, where necessary after obtaining authorisation from a judicial authority, the proceeds of unlawfully obtained advantages affecting the Community's financial interests. This provision shall apply to the proceeds of any irregularity involving sums of more than EUR 50 000 or property the value of which corresponds to such proceeds.

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**PURPOSE:** A Court of Auditors Opinion on a proposal for the mutual administrative assistance against fraud and any other illegal activities.

**CONTENT:** The Court of Auditors has prepared this Opinion following a request from the Council in respect of the Commission?s proposed Regulation ?on mutual administrative assistance for the protection of the financial interest of the Community against fraud and any other illegal activities.?

To recall, the purpose of the proposed Regulation is to enhance the Commission?s role as a co-ordinator of Member States? activities in fighting fraud and other illegal activities affecting the financial interests of the Community. This would, in particular be the case with regard to trans-national VAT fraud and money laundering related to EC fraud. When examining the Commission?s proposal, the Court took account both of its own auditing work as well as provisions on better law making. Based on these observations it has come to the following conclusions and makes the following recommendations:

- The Court agrees with the Commission?s analysis that there is a need for more effective co-operation amongst Member States and the need for more effective co-operation between the Member States and the European Commission in order to protect the Community?s financial interest against fraud and other illegal activities.
- The Court agrees that the existing legal framework for combating fraud is both complicated and difficult to implement.
- At the same time, however, the Opinion states that the proposed new Regulation adds further complexity to an already intricate system, notably in terms of definitions and reporting criteria.
- In addition, the proposal to add yet another legal instrument conflicts with the objective of an inter-institutional agreement to update and condense Community legislation and to simplify it significantly.

- Accordingly, the Court proposes that the Commission should make an effort to simplify and consolidate Community anti-fraud legislation with a view to avoiding duplications and overlapping or contradictory provisions.
- Within this context, the Court recalls its recommendation to focus on OLAF's activities on its investigative function. Widening the scope of OLAF in co-ordinating Member States' anti-fraud operations might conflict with this objective.
- The notion of the 'financial interest of the Community', which is central to all anti-fraud legislation, should be clearly defined. A single definition of 'irregularities' should be used throughout anti-fraud legislation.
- As far as co-operation in the field of value added tax is concerned, the Court reiterates its recommendation that the Commission should concentrate on its responsibility for identifying malfunctions in the national systems and putting forward adequate remedies to the Member States concerned.

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In May 2005 the Parliament adopted 12 amendments to the Commission's proposal. The Commission considers that a large number of the amendments are acceptable in full, in principle or in part, given that they improve upon the proposal whilst at the same time maintaining the original aims and political viability of the initial proposal. Moreover, the Commission has taken account of the negotiations which took place in the Council's Anti-fraud working groups as well as the Opinion of the European Court of Auditors.

Below is a summary of the Commission's position:

- The Commission accepts that a reference should be made to the European Data Protection Officer.
- The Commission agrees that both the Community's and the Member States' task of protecting the Community's financial interests should not be limited to Community territories.
- The Commission has modified the initial proposal in such a way so as to provide for mutual administrative assistance in the field of direct expenditure and in cases without a transnational nature. This is currently an important missing element in the legislative framework and has, therefore, been accepted by the Commission.
- The Commission has modified the wording limiting the scope to transnational VAT fraud and limiting it to competent officials in order to maintain coherence with the provisions of Regulation 1798/2003/EC.
- The Commission has agreed to adding a comprehensive register of the competent authorities with the help from the Member States.
- The Commission has not accepted Parliamentary proposals on Member State information duties relating to the supply of goods under the VAT information exchange system.
- The Commission has agreed that it is best placed to act as co-ordinator with third countries.
- The Commission has not accepted an amendment concerning the introduction of a new article on amending existing legal obligations given that the proposed Regulation will not affect Regulation 1798/2003 and does not cover criminal law.
- The Commission has accepted an amendment introducing a new provision on recovery (albeit with modified wording) since it complements the scope of the proposal.
- Subject to some modification the Commission has accepted an amendment whereby the Member States must apply specific measures, including appropriate administrative measures, against fraud and money laundering such as recovery, at least as of an amount exceeding EUR 50 000.

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Opinion of the European Data Protection Supervisor on the Amended Proposal for a Regulation of the European Parliament and of the Council on mutual administrative assistance for the protection of the financial interests of the European Community against fraud and any other illegal activities.

The EDPS considers that on the whole the Amended Proposal maintains the level of protection of personal data contained in the EU data protection framework, namely Directive 95/46/EC and Regulation (EC) No 45/2001. Nevertheless, the EDPS notes that whether such standards of data protection will indeed be maintained will depend on the specific content of implementing legislation for which the Amended Proposal creates a legal basis. Since implementing legislation will be crucial for the protection of personal data in this context, the EDPS particularly welcomes the inclusion in the amended proposal of the obligation to consult him on the drafting of such implementing legislation.

- Effect on the Protection of Personal Data: Clarification of Article 17.1: the EDPS notes that at least in one case, the amended proposal contains a provision which may have a negative effect as far as the protection of personal data is concerned. This is Article 17 of the Amended Proposal which was formerly Article 18 of the Proposal as adopted by the Commission. Point 4 of the EDPS Opinion of 2004 noted that Article 18 (1) second paragraph should not affect the rights of data subjects to have access to their personal data. The EDPS assumes that this is the intention of the legislator, however, in the current language, this is not entirely clear. For this reason, the EDPS suggests adding the following sentence at the end of Article 17.1., second paragraph: 'This shall not affect the rights of data subjects to have access to personal data relating to them, in accordance with Directive 95/46 and Regulation 45/2001?;
- Proposal for Alternative Language in accordance with the existing rules on consultation: the EDPS welcomes the fact that the amended proposal takes into account some of the remarks made by the EDPS in his opinion of 2004. For example, in view of the mandatory character

of Article 28 (2) of Regulation (EC) No 45/2001, the EDPS welcomes the explicit reference in the amended proposal to this consultation exercise. However, the EDPS considers that this reference should be made in the Preamble of the Proposal. The following shall be inserted: "After consulting the European Data Protection Supervisor", in line with standard practice.

Otherwise, the EDPS is satisfied with the content of the amended proposal and does not see the need for additional changes to it.