

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2012/0193(COD) Procedure completed
Fight against fraud to the Union's financial interests by means of criminal law	
Repealing JHA act 1995/1127 <a href="#">1994/0911(CNS)</a>	
Repealing JHA act 1997/0520 <a href="#">1995/0360(CNS)</a>	
Repealing JHA act 1997/0719 <a href="#">1996/0902(CNS)</a>	
Subject	
7.40.04 Judicial cooperation in criminal matters	
8.70.04 Protecting financial interests of the EU against fraud	

Key players			
European Parliament	Joint Committee Responsible	Rapporteur	Appointed
	<b>CONT</b> Budgetary Control Civil Liberties, Justice and Home Affairs		09/12/2013
		PPE <a href="#">GRÄSSLE Ingeborg</a>	09/12/2013
		S&D <a href="#">LÓPEZ AGUILAR Juan Fernando</a>	
		Shadow rapporteur	
		PPE <a href="#">MACOVEI Monica</a>	
		PPE <a href="#">MATERA Barbara</a>	
		S&D <a href="#">AYALA SENDER Inés</a>	
		ALDE <a href="#">GERBRANDY Gerben-Jan</a>	
		Verts/ALE <a href="#">JOLY Eva</a>	
	Verts/ALE <a href="#">STAES Bart</a>		
	<b>LIBE</b> Budgetary Control Civil Liberties, Justice and Home Affairs		
	Former committee for opinion		
	<b>JURI</b> Legal Affairs (Associated committee)		18/09/2012
		PPE <a href="#">ZWIEFKA Tadeusz</a>	
	<b>ECON</b> Economic and Monetary Affairs	The committee decided not to give an opinion.	
	Former committee for opinion on the legal basis		
	<b>JURI</b> Legal Affairs		06/11/2012
		Verts/ALE <a href="#">LICHTENBERGER Eva</a>	
Council of the European Union	Council configuration	Meeting	Date

	<a href="#">General Affairs</a>	<a href="#">3531</a>	25/04/2017
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3508</a>	09/12/2016
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3490</a>	14/10/2016
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3473</a>	10/06/2016
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3433</a>	03/12/2015
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3244</a>	06/06/2013
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3195</a>	25/10/2012
	European Commission	Commission DG	Commissioner
	<a href="#">Justice and Consumers</a>		
	<a href="#">European Anti-Fraud Office (OLAF)</a>		
European Court of Auditors			

Key events			
11/07/2012	Legislative proposal published	<a href="#">COM(2012)0363</a>	Summary
11/09/2012	Committee referral announced in Parliament, 1st reading		
25/10/2012	Debate in Council	<a href="#">3195</a>	
06/06/2013	Debate in Council	<a href="#">3244</a>	Summary
10/06/2013	Referral to joint committee announced in Parliament		
13/06/2013	Referral to associated committees announced in Parliament		
20/03/2014	Vote in committee, 1st reading		
25/03/2014	Committee report tabled for plenary, 1st reading	<a href="#">A7-0251/2014</a>	Summary
16/04/2014	Decision by Parliament, 1st reading	<a href="#">T7-0427/2014</a>	Summary
22/09/2014	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
03/12/2015	Debate in Council	<a href="#">3433</a>	
10/06/2016	Debate in Council	<a href="#">3473</a>	
14/10/2016	Debate in Council	<a href="#">3490</a>	
27/04/2017	Council position published	<a href="#">06182/1/2017</a>	Summary
18/05/2017	Committee referral announced in Parliament, 2nd reading		
15/06/2017	Vote in committee, 2nd reading		
22/06/2017	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A8-0230/2017</a>	Summary
04/07/2017	Debate in Parliament		
05/07/2017	Results of vote in Parliament		
05/07/2017	Decision by Parliament, 2nd reading	<a href="#">T8-0299/2017</a>	Summary
05/07/2017	Final act signed		

05/07/2017	End of procedure in Parliament		
28/07/2017	Final act published in Official Journal		

## Technical information

Procedure reference	2012/0193(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Repealing JHA act 1995/1127 <a href="#">1994/0911(CNS)</a> Repealing JHA act 1997/0520 <a href="#">1995/0360(CNS)</a> Repealing JHA act 1997/0719 <a href="#">1996/0902(CNS)</a>
Legal basis	Rules of Procedure EP 58; Treaty on the Functioning of the EU TFEU 325-p4
Mandatory consultation of other institutions	<a href="#">European Court of Auditors</a>
Stage reached in procedure	Procedure completed
Committee dossier	CJ09/8/08825

## Documentation gateway

Legislative proposal		<a href="#">COM(2012)0363</a>	11/07/2012	EC	Summary
Document attached to the procedure		<a href="#">SWD(2012)0195</a>	11/07/2012	EC	
Document attached to the procedure		<a href="#">SWD(2012)0196</a>	11/07/2012	EC	
Court of Auditors: opinion, report		N7-0004/2013 <a href="#">OJ C 383 12.12.2012, p. 0001</a>	15/11/2012	CofA	Summary
Specific opinion		<a href="#">PE500.747</a>	14/12/2012	EP	
Committee opinion		<a href="#">PE514.816</a>	05/11/2013	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0251/2014</a>	25/03/2014	EP	Summary
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0427/2014</a>	16/04/2014	EP	Summary
Council statement on its position		<a href="#">07929/2/2017</a>	12/04/2017	CSL	
Council position		<a href="#">06182/1/2017</a>	27/04/2017	CSL	Summary
Commission communication on Council's position		<a href="#">COM(2017)0246</a>	16/05/2017	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A8-0230/2017</a>	22/06/2017	EP	Summary
Text adopted by Parliament, 2nd reading		<a href="#">T8-0299/2017</a>	05/07/2017	EP	Summary
Draft final act		<a href="#">00032/2017/LEX</a>	05/07/2017	CSL	
Commission response to text adopted in plenary		<a href="#">SP(2017)538</a>	06/09/2017	EC	
Follow-up document		<a href="#">COM(2021)0536</a>	06/09/2021	EC	
Follow-up document		<a href="#">COM(2022)0466</a>	16/09/2022	EC	

<b>Additional information</b>	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>
<b>Final act</b>	
<a href="#">Directive 2017/1371</a> <a href="#">OJ L 198 28.07.2017, p. 0029</a> Summary	

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

**PURPOSE:** to lay down measures to prevent and fight fraud and other illegal activities in relation to the Unions financial interests by providing for sanctions and for common definitions of offences.

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

**BACKGROUND:** according to the [2010 Commission report on the protection of the Union's financial interests](#), suspected fraud amounts to approximately 600 million euro annually on the revenue and expenditure side despite the legal framework in place. It can be assumed that the actual amount is even higher as not all cases are detected and reported.

The damage to the EU budget calls for action to ensure equivalent and effective protection of the Union's financial interests, including criminal law as far as this proves necessary. Despite the development of an EU acquis in this area which includes fraud, corruption and money laundering, Member States have adopted diverging rules and consequently often diverging levels of protection within their national legal systems.

According to the Commission, the actual common definition of offences in all Member States would reduce the risks of divergent practice, as they would ensure a uniform interpretation and a homogeneous way to meet all the necessary prosecution requirements. They would also strengthen the deterrent effect and enforcement potential of relevant provisions

The proposal follows on from the Commissions May 2011 communication [On the protection of the Unions financial interests by criminal law and by administrative investigations](#) and the September 2011 communication [Towards a European criminal policy: Ensuring the effective implementation of EU policies through criminal law](#).

**IMPACT ASSESSMENT:** the Commission conducted an impact assessment of policy alternatives, taking into account the outcome of an external study which was completed in February 2012. The impact assessment concludes that a solution which in particular would extend the types of some fraud-related offences, introduce minimum sanctions and harmonise statutory limitation is to be preferred.

**LEGAL BASIS:** Article 325(4) of the Treaty on the Functioning of the European Union (TFEU).

**CONTENT:** this proposal replaces the [proposal for a Directive on the criminal-law protection of the Community's financial interests](#). It seeks to set out harmonised criminal law provisions in the field of the protection of the Union's financial interests, while allowing Member States a certain degree of flexibility as regards how to impose more stringent provisions.

In particular, the proposal:

- introduces a definition of the Unions financial interests (fraud in relation to VAT is considered as affecting the EU's financial interests and is therefore covered by this proposed Directive);
- provides a definition of fraudulent behaviour to be criminalised in the Member States;
- provides that dishonest conduct of tenderers in public procurement is to be criminalised in the Member States;
- provides for a definition of corruption to be criminalised in the Member States;
- provides for a definition of misappropriation, which covers conduct by public officials that does not constitute fraud in a stricter sense, and which consists in the misappropriation of funds or assets contrary to the purpose foreseen, with the intention to damage the Union's financial interests;
- makes reference to anti-money laundering legislation (Directive 2005/60/EC) with respect to money-laundering of the proceeds of the offences, so that such money laundering will be criminalised in the Member States;
- requires Member States to criminalise also forms of preparation of and participation in the offences of incitement, aiding and abetting, attempt;
- requires Member States to ensure liability of legal persons, while excluding that such liability is alternative to that of natural persons;
- requires Member States to apply effective, proportionate and dissuasive sanctions, in line with jurisprudence of the Court of Justice, and to set out a certain minimum set of criminal sanctions for natural persons;
- requires certain minimum imprisonment terms for particularly serious offences, based on thresholds set out for each offence;
- requires the existence of means of freezing and confiscation of proceeds and instrumentalities from these offences;
- requires the Member States to take the necessary measures to establish their competence bases in regard to criminal offences so as to allow the judicial authorities to initiate investigations, pursue prosecutions and bring to judgment cases relating to the Union's financial interests.

**BUDGETARY IMPACT:** this proposal has no immediate budgetary implications for the Union. Its aim is, however, to prevent losses caused by illegal activities affecting the Union's financial interests by increasing deterrence and making enforcement by criminal law authorities of the Member States more effective, as well as to facilitate recovery in cases where losses caused by illegal activities affecting the Union's financial interests have already occurred.

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

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COURT OF AUDITORS OPINION No 8/2012 on the proposal for 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 Court welcomes the Commission's proposal to define the concept of the 'Union's financial interests'. It makes the following recommendations:

(1) The definition in the proposal refers exclusively to revenue and expenditure covered by, acquired through or due to the Union budget or the budgets of institutions, bodies, offices and agencies established under the Treaties or budgets managed and monitored by them. However, the term 'budget' is not appropriate either in the case of the European Central Bank, the European Investment Bank and the European Investment Fund, or in the cases of the European Bank for Reconstruction and Development and the European Stability Mechanism. Their operations are of evident financial interest to the European Union but are mostly financed by their own capital or through income earned by means of their activities, for instance, borrowing and lending.

The Court considers that the definition should therefore be clarified in order to reflect the fact that the Union's financial interests relate to all assets and liabilities managed by or on behalf of the Union and its institutions, and to all its financial operations, including borrowing and lending activities.

(2) Value added tax (VAT) fraud is covered by the proposed Directive. As this type of fraud often has a cross-border dimension, it cannot be tackled at national level alone. An effective fight against VAT fraud thus requires efficient cooperation between Member States.

(3) The proposal deals with a number of fraud-related criminal offences affecting the Union's financial interests. With regard to the definition of corruption, the Court recommends clarification that the corruption of officials, who are paid by the EU institutions, is automatically contrary to the Union's financial interests.

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

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The Council agreed on a general approach on the proposed Directive on the fight against fraud to the Union's financial interests by means of criminal law. This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the Directive.

A clear majority of delegations have indicated that the legal basis of the proposal should be Article 83(2) instead of Article 325(4) as proposed by the Commission. The text of the agreed general approach is thus based on the presumption that Article 83(2) is the legal basis. The following are the main amendments to the Commission's proposal:

- The Council has amended the text in regard to the subject matter of the proposed Directive so that it establishes minimum rules concerning the definition of criminal offences and sanctions in the field of the fight against fraud and other illegal activities affecting the Union's financial interests.
- Revenues arising from VAT are no longer included in the scope of this proposed Directive.
- As to what constitutes fraud affecting the Union's financial interest, the general approach differentiates between fraud in respect of (i) subsidy and aid expenditure and (ii) other expenditure.
- It also introduces definitions of money laundering, passive corruption, active corruption and misappropriation.
- The text also amends the article relating to penalties for natural persons. Criminal offences falling within the scope of the Directive would be punishable by a maximum penalty of at least four years of imprisonment when they constitute serious offences. In cases of offences involving damages of less than EUR 10 000 and advantages of less than EUR 10 000. Member States may provide instead for other than criminal penalties, unless the case constitutes a serious offence.
- It introduces a new article on aggravating circumstances whereby Member States would have to take the necessary measures to ensure that it shall be regarded as an aggravating circumstance when a criminal offence referred to in the Directive is committed within a criminal organisation in the sense of [Framework Decision 2008/841](#) on the fight against organised crime.
- The article regarding prescription for offences has been redrafted: Member States would have to take the necessary measures to enable the investigation, prosecution, trial and judicial decision of criminal offences referred to in the Directive for a sufficient period of time after the commission of those offences, such that those offences may be tackled effectively. In cases of serious offences, they would have to ensure that the prescription period amounts to at least five years from the time when the offence was committed. They could also establish a prescription period that is shorter than five years in cases of serious offences provided that they shall ensure that the period may be interrupted or suspended upon specified acts.
- Member States would take the necessary measures to enable the enforcement of: (a) a penalty of more than one year of imprisonment, or alternatively, (b) a penalty of imprisonment in a case of a serious offence, imposed following a final conviction for a criminal offence referred to in the Directive, for at least five years from the date of the final conviction. This period may include extensions of the prescription period arising from interruption or suspension.
- an article has been added stating that the Convention for the Protection of the European Communities Financial Interests is replaced by this Directive.

Lastly, Ministers are invited to note in the minutes of the Council that this will be the commencement of the opt-in period for Ireland and the United Kingdom in accordance with Article 3 in Protocol 21 to the Treaty. In accordance with Articles 1 and 2 of the Protocol 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it.

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

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The Committee on Budgetary Control together with the Committee on Civil Liberties, Justice and Home Affairs adopted the report by Ingeborg GRÄSSLE (EPP, DE) and Juan Fernando LÓPEZ AGUILAR (S&D, ES) on the proposal for 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 Committee on Legal Affairs, exercising its prerogatives as an associated committee in accordance with [Rule 50 of the Rules of Procedure](#), was also consulted for an opinion on the report.

The committee recommended that Parliaments position in first reading following the ordinary legislative procedure should amend the Commission position as follows:

Legal basis: Members proposed to retain Article 83(2) of the Treaty on the Functioning of the European Union as the legal basis of the proposal rather than Article 325 (4).

Objective: the regulation should also afford effective and equivalent protection in the Member States and in Union institutions, bodies, offices and agencies and boosting the credibility of Union institutions and initiatives.

Members introduced a broader definition of the notion of the Union's financial interests which now covered and all its financial operations, including borrowing and lending activities.

Criminal offences: the report explicitly mentioned corruption relating to activities in procurement. It made a distinction between active and passive corruption. The notion of misappropriation was introduced, which, when committed intentionally, must be punishable as a criminal offence. Misappropriation should consist of an act by a public official to commit or disburse funds, or appropriate or use assets, contrary to the purpose for which they were intended, and which damaged the Union's financial interests.

In this context, Members inserted an amendment regarding Union official which was based on the current definition of official included in the First Protocol to the Convention on the Protection of Financial Interests in force, which was well known and accepted by Member States.

Penalties for physical persons: the committee stated that in cases of offences involving damages of less than EUR 5 000 (EUR 10 000 in the proposal) and not involving aggravating circumstances, Member States may provide instead for the imposition of sanctions other than criminal penalties.

Imprisonment: Members deleted provisions regarding a minimum penalty of at least 6 months imprisonment stating that minimum penalties did not respect the diversity of legal systems and the need for judicial discretion. Introducing them would also not be consistent with the position Parliament had taken as regards the draft Directive on the protection of the euro and other currencies against counterfeiting in criminal law.

It was suggested that the provisions should not affect the discretion of courts and judges in Member States in determining the most appropriate and proportionate sentence in any individual case.

Members went on to state that where it was established that a criminal offence had been committed within a criminal organisation, that fact should be treated as an aggravating circumstance for sentencing purposes rather than a different criminal offence.

Ne bis in idem rule : the report introduced a new article stipulating that Member States should apply in their national criminal law the 'ne bis in idem' rule, under which a person whose trial had been completed in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that, if a penalty was imposed, it had been enforced, was in the process of being enforced or may no longer be enforced under the laws of the sentencing State

Recovery: Member States should take the necessary measures to ensure the prompt recovery of sums unduly paid in the context of the commission of the criminal offences and their transfer to the Union budget. Member States should also keep regular records of the sums recovered and shall inform the relevant Union institutions or bodies about those sums, or, where they have not been recovered, of the reasons for such non-recovery.

Cooperation between Member States and OLAF: for the purpose of the Directive, the committee stated that cooperation should not be limited to cooperation between Member States and Commission but encompass also the cooperation between the Member States themselves. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, Member States, Eurojust and the Commission shall, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in the directive whilst complying with the Charter of Fundamental Rights of the European Union and with the applicable Union legislation on the protection of personal data,

Reports, statistics and evaluation: the Commission shall, within 24 months after the deadline for implementation of the Directive, and thereafter on a yearly basis, submit a report assessing the extent to which the Member States have taken the necessary measures to comply with the Directive.

For their part, Member States should regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of the systems established by them to protect the Union's financial interests. The Commission shall, within 5 years after the deadline for implementation of the Directive], submit a full evaluation of the latter.

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

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The European Parliament adopted by 577 votes to 36, with 28 abstentions, a legislative resolution on the proposal for 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.

Parliament position adopted at first reading following the ordinary legislative procedure amended the Commission proposal as follows.

Legal basis: Parliament proposed to retain Article 83(2) of the Treaty on the Functioning of the European Union as the legal basis of the proposal rather than Article 325 (4).

Objective: in order to ensure effective protection against the most serious types of fraud-related conduct, and to ensure that the Unions

financial interests are optimally protected, Parliament considered that the measures adopted under administrative and civil law should be complemented by legislation under criminal law in the Member States. It also stated that this Regulation should also afford effective and equivalent protection in the Member States and in Union institutions, bodies, offices and agencies and boosting the credibility of Union institutions and initiatives.

Members introduced a broader definition of the notion of the Union's financial interests which now covered and all its financial operations, including borrowing and lending activities.

**Criminal offences:** Parliament explicitly mentioned corruption relating to activities in procurement. It made a distinction between active and passive corruption. The notion of misappropriation was introduced, which, when committed intentionally, must be punishable as a criminal offence. Misappropriation should consist of an act by a public official to commit or disburse funds, or appropriate or use assets, contrary to the purpose for which they were intended, and which damaged the Union's financial interests.

In this context, an amendment was inserted regarding Union official which was based on the current definition of official included in the First Protocol to the Convention on the Protection of Financial Interests in force, which was well known and accepted by Member States.

**Penalties for physical persons:** Parliament stated that in cases of offences involving damages of less than EUR 5 000 (EUR 10 000 in the proposal) and not involving aggravating circumstances, Member States may provide instead for the imposition of sanctions other than criminal penalties.

**Imprisonment:** criminal offences involving an advantage or damage of at least EUR 50 000 should be punishable (EUR 100 000 in the Commissions proposal).

Members deleted provisions regarding a minimum penalty of at least 6 months imprisonment. They went on to state that where it was established that a criminal offence had been committed within a criminal organisation, that fact should be treated as an aggravating circumstance for sentencing purposes rather than a different criminal offence.

**Minimum sanction types for legal persons:** Member States should take the necessary measures to ensure that a legal person held liable may be subject to sanctions, including temporary or permanent exclusion from Union tender procedures.

**Ne bis in idem rule:** Parliament introduced a new article stipulating that Member States should apply in their national criminal law the 'ne bis in idem' rule, under which a person whose trial had been completed in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that, if a penalty was imposed, it had been enforced, was in the process of being enforced or may no longer be enforced under the laws of the sentencing State.

**Jurisdiction:** Member States should take the necessary measures to establish their jurisdiction over the criminal offences where: (a) the offence is committed in whole or in part within their territory; (b) the offender is one of their own nationals or is resident in their territory; (c) or the offender is subject to the Staff Regulations, or was subject to the Staff Regulations at the time of the offence.

**Recovery:** Member States should take the necessary measures to ensure the prompt recovery of sums unduly paid in the context of the commission of the criminal offences and their transfer to the Union budget. Member States should also keep regular records of the sums recovered and shall inform the relevant Union institutions or bodies about those sums, or, where they have not been recovered, of the reasons for such non-recovery.

**Cooperation between Member States and OLAF:** for the purpose of the Directive, Parliament stated that cooperation should not be limited to cooperation between Member States and Commission but encompass also the cooperation between the Member States themselves. Without prejudice to the rules on cross-border cooperation and mutual legal assistance in criminal matters, Member States, Eurojust and the Commission should, within their respective competences, cooperate with each other in the fight against the criminal offences referred to in the directive whilst complying with the Charter of Fundamental Rights of the European Union and with the applicable Union legislation on the protection of personal data,

**Reports, statistics and evaluation:** the Commission should, within 24 months after the deadline for implementation of the Directive, and thereafter on a yearly basis, submit a report assessing the extent to which the Member States have taken the necessary measures to comply with the Directive.

For their part, Member States should regularly collect and maintain comprehensive statistics from the relevant authorities in order to review the effectiveness of the systems established by them to protect the Union's financial interests. The Commission should, within 5 years after the deadline for implementation of the Directive, submit a full evaluation of the latter.

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

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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 Unions 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.

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

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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.

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

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The Committee on Budgetary Control and the Committee on Civil Liberties, Justice and Home Affairs adopted the recommendation for second reading contained in the report by Ingeborg GRÄSSLE (EPP, DE) and Juan Fernando LÓPEZ AGUILAR (S&D, ES) on the Council 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 committee recommended the European Parliament to approve the Council position at first reading without amendment.

In the short justification accompanying the recommendation, it is recalled that the conclusion of the negotiations on the directive is the first step towards the harmonisation of criminal law in Europe when crimes are committed against the EU budget.

The main priorities are:

- VAT fraud is included in the scope of the Directive for cases involving a loss of at least EUR 10 million in two or more Member States;
- public procurement fraud was also included in the revision clause;
- the maximum penalty for natural persons will be at least 4 years of imprisonment across Europe when involving damages or advantages of at least EUR 100 000. Parliament has made clear that the maximum penalties as well as the threshold for all offenses are binding to all Member States;

- prescription periods and deadlines for the enforcement of judgments will be 5 years. The length of the deadline for enforcement is also included in the revision clause.

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

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**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 Unions 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.

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

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The European Parliament adopted a legislative resolution on the Council 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.

Following the recommendation for second reading of the Committee on Budgetary Control and the Committee on Civil Liberties, Justice and Home Affairs, Parliament approved the Council's position at first reading without any amendments.

The aim of the proposed Directive is to establish minimum rules on the definition of criminal offences, penalties and limitation periods for the fight against fraud and other illegal activities detrimental to the Union's financial interests, in order to contribute effectively to better protection against crime affecting those financial interests.