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COMMISSION OF THE EUROPEAN COMMUNITIES

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2001/0115 (COD)

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Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the criminal-law protection of the Community's financial interests

(presented by the Commission pursuant to Article 250 (2) of the EC-Treaty)

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1. BACKGROUND

Proposal sent to Council and Parliament [COM(2001)272 final - 2001/0115/COD] ¹ under Article 280(4) of the EC Treaty	30 May 2001
Opinion of the Court of Auditors ²	8 November 2001
Opinion of the European Parliament - first reading ³	29 November 2001

2. PURPOSE OF THE COMMISSION'S PROPOSAL

Article 280 of the EC Treaty gives the Community the power to take measures which afford effective and equivalent protection of its financial interests 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 existing legal arrangements to be given more teeth, especially as the Member States have fallen behind schedule in ratifying the instruments which were adopted under Title VI of the EU Treaty. While the 1995 Convention and the 1996 Protocols on the protection of the financial interests of the European Communities have finally been ratified and should soon enter into force, the 1997 Protocol has still not been ratified by all the Member States. One advantage with the Commission's proposal, which takes over all the provisions of these instruments that concern the definitions of offences, liability, penalties and cooperation with the Commission, is that it will then be possible to make use of the monitoring mechanisms of the EC Treaty to ensure that Community law is correctly transposed and applied by the Member States.

3. COMMISSION'S OPINION ON THE AMENDMENTS ADOPTED BY PARLIAMENT

Of the 20 amendments adopted by Parliament at first reading (out of 31 tabled), the Commission is able to accept four 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.

3.1. Amendments accepted by the Commission

In the recitals of the proposed directive, the Commission can accept amendment 2, which sets out the objective of the new Article 280(4) of the EC Treaty, and amendment 11, which states

¹ OJ C 240 E, 28.8.2001, p. 125.

² OJ C 14, 17.1.2002, p. 1.

³ OJ C 153 E, 27.6.2002.

that the instrument will become an integral part of the Community acquis and will have to be incorporated into the legislation of the candidate countries.

Similarly there is no objection to amendment 7, on condition that it does not replace the recital proposed by the Commission, but inserts a new recital relating "to future institutional developments such as the establishment of a European Public Prosecutor to protect the Community's financial interests by means of a revision of Article 280 of the Treaty". The Commission did indeed make such a proposal at the Nice Intergovernmental Conference and the idea of establishing a European Public Prosecutor is currently being debated on the basis of the Green Paper which the Commission presented in December 2001.

In accordance with the Commission's rejection of amendment 1, it should also be noted that the Commission accepts amendments 7 and 11 only if the word "regulation" is replaced by "directive".

The Commission can also accept amendment 27, which states that the custodial sentences available at least in cases involving serious fraud, may lead to extradition. This amendment is consistent with the text of the Convention on the protection of the European Communities' financial interests and is also compatible with Article 280(4) of the EC Treaty.

3.2. Amendments accepted in part by the Commission

The Commission can accept the first sentence of the new recital inserted by amendment 3, which specifies that the Community's financial interests are among its essential interests. The second sentence, however, is not acceptable, in that protection of these financial interests is not exclusively a matter of Community law.

3.3 Amendments not accepted by the Commission

Amendments 1, 4, 28, 29 and 30 are not compatible with the second sentence of Article 280(4) of the EC Treaty, which states that measures taken on the basis of this article may "not concern the application of national criminal law or the national administration of justice".

Amendment 12 adds further details to the definition of "national official" which would not only be superfluous but would also make it narrower than in the version initially proposed. It cannot therefore be accepted.

Amendments 13, 15 and 19 on the definition of fraud are not acceptable, on the grounds that they would unduly extend the definition to cover preparatory activities, which are already adequately covered by Article 7(2) of the proposed directive.

Amendments 14, 16 and 17 relating to new offences cannot be accepted in that they do not correspond to the concept and objective of the proposed directive.

Nor can the Commission accept amendments 5, 6 and 31 relating to the status of the European Anti-Fraud Office (OLAF), for the simple reason that they have no direct link with the purpose of the proposed directive.

3.4. Conclusion

In accordance with Article 250(2) of the EC Treaty, the Commission hereby amends its proposal as set out above.