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REPORT

on the 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 Community against fraud and any other illegal activities
(COM(2004)0509 – C6-0125/2004 – 2004/0172(COD))

Committee on Budgetary Control

Rapporteur: Petr Duchoň

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 Community against fraud and any other illegal activities
(COM(2004)0509 – C6-0125/2004 – 2004/0172(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0509)¹,
 - having regard to Article 251(2) and Article 280(4) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament,
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A6-0156/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Citation 3 a (new)

***Having regard to the opinion of the
European Data Protection Supervisor¹,***

¹ OJ C 301, 7.12.2004, p. 4.

Amendment 2
Article 2, paragraph 1, subparagraph 1 a (new)

¹ Not yet published in OJ.

This shall also include cases in which all or some of the illegal activities take place in states outside the Community.

Justification

It should be made clear that information may also be exchanged in cases where all or some of the illegal activities take place outside the Community. This applies in particular to cases involving the external aid granted by the Community.

Amendment 3

Article 3, paragraph 1, point (a)

(a) any infringement of a provision of Community law resulting from an act or omission by an economic operator, including breaches of contracts arising under provisions of Community law, which has, or would have, the effect of prejudicing the general budget of the Community or budgets managed by it, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Community, or by an unjustified item of expenditure;

(a) any infringement of a provision of Community law resulting from an act or omission by an economic operator, including breaches of contracts arising under provisions of Community law ***and in implementation of both direct and indirect Community financing***, which has, or would have, the effect of prejudicing the general budget of the Community or budgets managed by it, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Community, or by an unjustified item of expenditure;

Justification

The addition intends to clarify that the regulation covers direct and indirect Community financing.

Amendment 4

Article 3, paragraph 2, point (a)

(a) which have or might have ramifications in other Member States, or where there are tangible links with operations carried out in other Member States; and

(a) which have or might have ramifications in other Member States, or where there are tangible links with operations carried out in other Member States ***or in cases of Community expenditure (direct and indirect) where no specific rules on mutual assistance apply***; and

Justification

Direct and indirect Community financing should be covered.

Amendment 5

Article 3, paragraph 2, point (b)

(b) which are estimated to cause overall fiscal damage in the Member States concerned in excess of EUR 500 000 in the area of VAT, or to cause damage to the Community's financial interests of EUR 100 000 or more in the other cases covered by this Regulation; in case of money laundering the threshold applies to the predicate offence;

(b) ***which were detected by operations - regardless of whether they were discovered in single or multiple operations - and*** which are estimated to cause overall fiscal damage in the Member States concerned in excess of EUR 500 000 in the area of VAT, or to cause damage to the Community's financial interests of EUR 100 000 or more in the other cases covered by this Regulation; in case of money laundering the threshold applies to the predicate offence;

Justification

In the interest of preventing damage to the Community's financial interest it should be possible to fight irregularities when there are clear indications for attempts to hide/disguise fraudulent actions.

Amendment 6

Article 4, paragraph 1, point (a), point (iii)

(iii) the competent authorities listed in Regulation (EC) No 1798/2003, the respective central liaison offices and liaison departments designated pursuant to that Regulation, other tax investigation authorities competent to investigate VAT fraud or the competent authorities referred to in Council Directive 92/12/EEC insofar as information gathered may afford evidence of VAT fraud; or

(iii) the competent authorities listed in Regulation (EC) No 1798/2003, the respective central liaison offices and liaison departments designated pursuant to that Regulation, other tax investigation authorities competent to investigate VAT fraud or the competent authorities referred to in Council Directive 92/12/EEC insofar as information gathered may afford evidence of VAT fraud; ***this shall not preclude direct contacts, exchange of information or cooperation between the different Member States' officials and the authorities mentioned in this Article;*** or

Justification

Regulation (EC) 1798/2003 (administrative cooperation in the area of VAT) provides for information exchange between Member States' authorities. The amendment makes also more informal contacts possible and includes the Commission and OLAF.

Amendment 7

Article 4, paragraph 2 a (new)

2a. The Commission shall keep a list of all the authorities taking part in cooperation under this Regulation. The list shall be constantly updated and made accessible on the Internet.

Justification

It should be made absolutely clear which authorities are taking part in cooperation under this regulation.

Amendment 8

Article 11, paragraph 1, subparagraph 1

1. For the purpose of providing operational and technical assistance and where necessary to help competent authorities of the Member States to detect and investigate irregularities within the meaning of point (1)(b) of the first paragraph of Article 3 of this Regulation, ***the Commission shall be granted access to the Member States' records stored in national databases as referred to in Article 22 of Regulation (EC) No 1798/2003.***

1. For the purpose of providing operational and technical assistance and where necessary to help competent authorities of the Member States to detect and investigate irregularities within the meaning of point (1)(b) of the first paragraph of Article 3 of this Regulation, ***Member States shall without delay communicate to the Commission the following information from their records stored in national databases as referred to in Regulation (EC) No 1798/2003:***

- 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.

Justification

Imposes a pro-active attitude on Member States. Commission is treated as equal partner of Member States. Information elements taken over from Regulation (EC) 1798/2003.

Amendment 9 Article 19, paragraph 2 a (new)

2a. In this context, the European Anti-Fraud Office (OLAF) shall have a coordinating role.

Justification

Member States should be made aware of and use the service platform function of OLAF.

Amendment 10 Article 20 a (new)

Article 20a

Amendment of existing legal provisions

The Commission shall submit the proposals required to amend Regulation (EC) No 1798/2003 and Decision 2000/642/JHA.

Justification

Pursuant to Article 19 of the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation, the legal acts referred to above should be amended if provisions they contain stand in the way of the full implementation of the proposed new regulation. For example, pursuant to Article 5(4) of Decision 2000/642/JHA the financial intelligence units of the Member States are at present required to undertake all necessary measures to ensure that information exchanged between them 'is not accessible by any other authorities, agencies or departments'. As things stand, therefore, the Commission would also be denied access to such information.

Amendment 11 Title II a (new) and Article 20 b (new)

TITLE IIA RECOVERY

Article 20b Strengthening the possibility of

recovering unlawfully obtained gains

Obligation to provide information

1. For the purpose of facilitating the recovery of claims resulting from irregularities, as defined in Article 3, institutions and persons, as referred to in Article 2a of Directive 91/308/EEC, shall provide the competent authorities of the Member States, upon request and in accordance with paragraph 2, with all relevant financial information enabling those authorities to apply the measures provided for in Article 20c.

2. Requests shall be accompanied by a statement outlining relevant facts known to the authority making the request, as referred to in paragraph 1, or to the Commission, and the grounds for serious suspicion. The credit institutions and/or financial institutions concerned shall ensure that this information remains confidential.

Justification

Committee on Budgetary Control has learnt over the years that recovering unlawfully obtained proceeds is difficult and time consuming. As a consequence, measures must be taken to strengthen information exchange at an early stage, and Member States should create the possibility to seize and freeze assets on the basis of a serious suspicion of fraud.

Amendment 12
Article 20 c (new)

Article 20c
Means of recovery

1. 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 of property, as referred to in Article 1, point (C), first indent, of Directive 91/308/EEC, the value of which corresponds to such proceeds.

2. The measures referred to in paragraph 1 may be imposed on a natural or legal person who has committed or is suspected of having committed the irregularity, or who has contributed to or is suspected of having contributed to the commission of the irregularity. These measures may also be applied to a natural or legal person who benefits from the proceeds of the irregularity.

Justification

Committee on Budgetary Control has learnt over the years that recovering unlawfully obtained proceeds is difficult and time consuming. As a consequence, measures must be taken to strengthen information exchange at an early stage, and Member States should create the possibility to seize and freeze assets on the basis of a serious suspicion of fraud.

EXPLANATORY STATEMENT

1. Article 280 of the EU Treaty stipulates clearly that the Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community. It also obliges the Member States to take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own interests.
2. However, the Commission annual reports on the protection of the Community's financial interests and also the annual activity reports published by the European Anti-Fraud Office (OLAF) gives ample proof that the effectiveness of fighting fraud must be further improved.
3. As a consequence, ever since the its communication on the protection of the Communities' financial interests of June 2000, the Commissions strives to fine tune systems of communication and administrative assistance between, on the one hand, the Commission and Member States, and among Member States themselves on the other¹. The current proposal is part of the Commission's Action Plan for the period 2004-2005.
4. The European Parliament has always supported the Commission in its fraud fighting effort². Close cooperation between Member States and Commission is of prime importance as the Commission is overall accountable to the discharge authority for the way the EU budget was spent, whereas Member States are actually responsible for the implementation of approximately 80% the budget.

Legal Base of the Proposal

5. The legal base of the proposal is Article 280 (4) of the Treaty establishing the European Union. Thereby the proposal falls under the co-decision procedure.

Purpose of the Commission proposal

6. The proposal provides a legislative framework for mutual administrative assistance in all areas relevant to the protection of the Community's financial interests, i.e. own-resources and expenditure, which are not yet covered by more specific legislation (i.e. Council Regulation (EC) No 515/97³ for the areas of customs and agriculture, Council Regulation (EC) No 1798/2003⁴ concerning administrative cooperation in the field of value added tax).
7. The current VAT system, based on the sixth Directive⁵ is vulnerable to fraud⁶. The

¹ COM(2000)0358, COM(2001)0254, COM(2004)0544.

² The most recent examples are P5_TA (2004) 0223, INI 2004/2198.

³ OJ L 82, 22.3.1997, p. 1.

⁴ OJ L 264, 15.10.2003, p. 1.

⁵ Sixth Council Directive 77/388/EEC, 17.5.1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, OJ L 145, 13.6.1977, p. 1.

detrimental effects of VAT fraud to the Member States' and to the Community's budget have been estimated by some Member States as being up to 10% and more of their net VAT receipts.

8. EC financial interests are particularly vulnerable to transnational fraud. Therefore the level and the quality of cooperation between, on the one hand, various Member States authorities and, on the other hand, between Member States' authorities and the Commission, are essential to fight fraud effectively.
9. The proposal does not transfer additional competencies from national to the European level. It does also not affects existing European legislation. It rather reinforces existing mechanisms for cooperation and information exchange.
10. In addition, the proposed regulation would put the Commission and OLAF in a position to offer Member States improved and reliable intelligence, and in particular a clearer picture of new fraud trends and vulnerable sectors as a result of the Commission's and OLAF's analytical work.

The Rapporteur's Position

11. The rapporteur generally supports the proposed regulation.
12. The rapporteur suggests clarifying the reach of the proposal by saying that both direct and indirect Community expenditures should be covered.
13. In addition, the rapporteur is of the opinion that the Community level threshold set must not prevent the Commission from taking preemptive measures when there are clear indications for attempts to hide/disguise fraudulent actions.
14. Furthermore, in the area of VAT fraud, the rapporteur is convinced that OLAF can play a pivotal role in strengthening the information exchange by being a service platform.
15. Finally, and in light of persisting difficulties to recover unlawfully spent money from third parties, the rapporteur suggests that provisions be included, which facilitate the seizing and freezing of assets.

Including VAT fraud: Why?

16. Intra-Community VAT fraud affects the functioning of the VAT own resource system, to which Member States's VAT receipts contribute as well as the Member States' VAT income as such. Intra-Community VAT fraud threatens also the level playing field for the different economic operators.
17. Data from Member States administrations, research institutes as well as from the national

Directive as last amended by Directive 2004/15/EC (OJ L 52, 21.2.2004, p. 61).

⁶ Report from the Commission to the Council and the European Parliament on the use of administrative cooperation arrangements in the fight against VAT fraud, COM(2004)0260.

and the European Court of Auditors indicate that the total amount of VAT fraud can be estimated at some €70 billion EUR for year 2003. Approximately a third of this amount can be attributed to transnational fraudulent activities.

18. Intra-Community VAT fraud is frequently committed by fraudsters stretching their activities to several countries (i.e. so-called carousel fraud), often using several Member States at a time, rendering the fraud-fighting task of individual Member States very difficult.
19. The existing framework of bi- and multilateral administrative cooperation is insufficient to fight large scale fraud cases. Member States administrations need to receive operational and intelligence support at a European level. In this respect OLAF, as a service platform, is ideally placed.

Including money-laundering: Why?

20. The Second Protocol to the Convention on Protection of the European Communities' Financial Interests¹ stipulates in articles 6 and 7: "A Member State may not refuse to provide mutual assistance in respect of fraud, active and passive corruption and money laundering for the sole reason that it concerns or is considered as a tax or customs duty offence. The Member States and the Commission shall cooperate with each other in the fight against fraud, active and passive corruption and money laundering. To that end, the Commission shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations." As a consequence the Commission was right to include this aspect in its proposal

Legislative Financial Statement

21. The legislative financial statement estimates the financial impact of human resources and other administrative expenditure at 1.851 million EUR for the years [n] and [n+1], and 1.751 million EUR as of the year [n+3].

¹ OJ C 221, 17.7.1997, Annex.

PROCEDURE

Title	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 Community against fraud and any other illegal activities			
References	(COM(2004)0509 – C6-0125/2004 – 2004/0172(COD))			
Legal basis	Articles 251(2) and 280(4) EC			
Basis in Rules of Procedure	Rule 51			
Date submitted to Parliament	28.9.2004			
Committee responsible Date announced in plenary	CONT 13.10..2004			
Committee(s) asked for opinion(s) Date announced in plenary	LIBE 13.10.2004	JURI 13.10.2004	ECON 13.10.2004	BUDG 13.10.2004
Not delivering opinion(s) Date of decision	LIBE 24.11.2004	JURI 24.11.2004	ECON 25.10.2004	BUDG 31.01.2005
Rapporteur(s) Date appointed	Petr Duchoň 22.9.2004			
Discussed in committee	19.4.2005			
Date adopted	23.5.2005			
Result of final vote	for: 11 against: 2 abstentions: 0			
Members present for the final vote	Herbert Bösch, Petr Duchoň, Szabolcs Fazakas, Ingeborg Gräßle, Ona Juknevičienė, Nils Lundgren, Jan Mulder, István Pálfi, José Javier Pomés Ruiz, Margarita Starkevičiūtė, Alexander Stubb, Jeffrey Titford			
Substitutes present for the final vote	Ashley Mote			
Date tabled – A6	25.5.2005		A6-0156/2005	