

**PUBLIC HEARING ON THE GREEN PAPER ON THE PROTECTION UNDER
CRIMINAL LAW OF THE COMMUNITIES' FINANCIAL INTERESTS AND THE
ESTABLISHMENT OF A PUBLIC PROSECUTOR**

IRELAND

Ireland does not believe that a case for the establishment of an European Public Prosecutor has been made out.

Ireland has always been prepared to work in co-operation with other Member States in accordance with the Treaties to fight transnational crime including fraud against the Communities' finances.

It is useful to note that this is not the first time that a proposal to establish a European Public Prosecutor has been put forward by the Commission. Like earlier proposals the present proposal has profound implications for the investigation and prosecution of offences in Ireland and also, it is clear, in other Member States.

To establish a European Public Prosecutor as proposed in the Commission's Green Paper would require significant changes in Ireland's constitutional, investigation and prosecution systems. There is therefore a heavy onus on the Commission to show that such a fundamental change in the legal systems of the Member States is required and that there is no possible alternative to the establishment of a European Public Prosecutor.

I do not believe that the Green Paper has made the case for such a change nor does it show that a European Public Prosecutor is the only solution to the problem of fraud against the Communities' finances. Indeed there is no evidence in this Green Paper that a European Prosecutor system would be any more successful than the measures which the Council of the EU has been introducing in recent years to tackle the problem of fraud against the Community.

What is proposed is to graft on to the criminal law system which, in Ireland's case, has evolved over many years a completely new system with for example, different rules for the investigation of offences and their prosecution. How realistic is it to attempt to force two different systems of criminal law and procedure to operate together - one for domestic crime and one for fraud against the Communities.

To accommodate the proposals in the Green Paper changes would have to be made to Ireland's Constitution and criminal justice system including for example the areas of the direction and control of investigations, admissibility of evidence, the independence of the prosecution authorities and mandatory prosecutions.

And we should reflect on the question of proportionality and subsidiarity. What the Green Paper proposes is a special arrangement for the offence of fraud against the Communities' finances. But logically why stop there. Despite the horrific events of 11 September 2001 no one suggested that Member States should abandon their criminal justice systems and replace them with a totally new pan European system

to tackle the terrorists and murderers. Instead all Member States agreed to work closely together within the provisions of the Treaties and without changing fundamental principles of their legal systems to try to tackle the problem.

Yet what citizens of the Member States are being asked to do now is to abandon significant constitutional and legal arrangements and replace them with special arrangements for a particular category of offences. Other speakers from Ireland will be addressing in greater detail the extent and implications of the proposal to establish a European Public Prosecutor for the Irish Constitution and criminal justice system.

The proposal is pursued without reference to the developments which have been taking place in recent years to tackle transnational crime including fraud against the Communities' finances. My colleague has already referred to the Convention on the Protection of the Communities' Financial Interests. I would add to this the role of EUROPOL and particularly EUROJUST, the latter established only this year.

Should these measures not be given at least some time to operate and their effectiveness assessed before they are condemned in favour of a radical measure whose effectiveness has not been proved? The measures which have been agreed, some of which I have just listed, are the product of the efforts of the Member States and represent the extent to which they have been prepared to go to date. They were achieved after complex negotiations and as in all agreements they represent a compromise.

We cannot work on the basis of conflicting premises. On the one hand we are working together respecting each others legal systems and moving towards greater mutual recognition as envisaged by Tampere. On the other we are being asked to accept that co-operation measures are not sufficient to address fraud against the Communities' finances and that a new supra national body must be established. We either believe in finding solutions through measures to strengthen police and judicial co-operation or we do not. Central to the thinking in the Green Paper is a view that this one issue cannot be addressed through co-operation measures between Member States. Ireland does not subscribe to that view.

We cannot ignore the conclusions of the Justice and Home Affairs Council last February. "The Council noted there were a number of difficulties connected with the setting up of a European Public Prosecutor and considered that the time was not right for such a radical step. It was generally underlined that the newly created institutions of EUROJUST and OLAF needed time to affirm themselves in the fight against offences committed against the financial interests of the Communities."

Ireland does not believe that the European Union should be invested with the sovereign power of prosecuting, trying or punishing its citizens. Ireland believes that Member States alone should exercise that power. To that end, Ireland strongly believes in the principle of judicial co-operation and in the extension of mutual recognition of judicial processes. Ireland also strongly supports EUROPOL, EUROJUST, and measures designed to promote and sustain co-operation between police forces in Member States.

In that context, Ireland favours an approach based on the principle of subsidiarity and developing of a programme of measures under the Third Pillar designed to address areas where existing laws and practice expose the EU to exploitation of diversity by criminal elements and based on the policy of making criminal justice systems inter-operable to the requisite extent.

The case for establishing a European Public Prosecutor has not been justified. These proposals are therefore neither necessary nor desirable.

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