

Brussels, September 16th 2002

Ladies and Gentlemen,

Combating fraud against the financial interests of the European Union is a top priority for the European Union. Today we discuss the Green Paper on the criminal-law protection of the Community's financial interests and the establishment of a European Public Prosecutor. The European Parliament is the Commission's strongest ally in this matter.

The Parliament is aware that in many cases, fraud involving Community revenue and expenditure is not restricted to a single country, but is often the work of organised criminal networks. The involvement of organised crime and the transitional nature of the fraud make it difficult to prosecute, especially in a framework of different legal orders, applying different rules of substance and procedure. The inadequacies in the conventional tools of mutual judicial assistance often lead to delays, dilatory actions and even impunity. According to the Parliament, the fraud -which in 1999 was estimated to account for a total of 413 million € has to be combated by establishing a European Public Prosecutor.

The Parliament repeatedly called for the creation of this new institution, not only in several reports made by the Committee on Budgetary Control, but also in resolutions made on the initiative of my own Constitutional Affairs Committee<sup>1</sup>.

The Green Paper on the establishment of a European Prosecutor, discussed by us today, is an attempt to clarify the Commission's ideas and to widen the debate. The Commission's proposal must be analysed in a profound and detailed way. In the European Parliament, my committee has been asked to write a constitutional advice on the subject. Being the *rapporteur* in this dossier, I have already had a first exchange of views with some of my colleagues on the subject. The following constitutional remarks were made.

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<sup>1</sup> As there were for example the Resolution on criminal procedures in the European Union (Corpus Juris) (Wiebenga), the Dimitrakopoulos/Leinen Report on the convening of the Intergovernmental Conference, the European Parliament Resolution on the Treaty of Nice and the future of the European Union (Mendez de Vigo/Seguro) and the European Parliament Resolution on the constitutional process and the future of the Union (Leinen/Mendez de Vigo.)

First of all, the EC Treaty does not currently provide a legal basis for a European law-enforcement area involving a common judicial authority such as a Prosecutor. The Community Treaty would accordingly have to be amended. The Commission has proposed inserting a new article 280a in the EC Treaty. The Commission's proposal is that the requisite amendment of the Treaty be confined to what is necessary to lay down the conditions for the European Public Prosecutor's appointment and resignation and to determine his tasks and the main features of his function. The Committee on Constitutional Affairs supports the Commission in amending the EC Treaty, but is fully aware of the difficulties that will arise due to opposition expressed by some Member States. Our Committee therefore encourages the Convention on the future of the EU, being the responsible body to reform the Treaties, to examine this question.

Secondly, the role of the European Parliament should be guaranteed. In general, the proposals put forward by the European Commission take the European Parliament into account. For example: the Commission proposes that the European Prosecutor should be appointed by the Council acting by qualified majority, on a proposal from the Commission, and with the assent of Parliament. The Committee on Constitutional Affairs is convinced that there is a need for democratic control via the European Parliament over the exercise of power by the European Public Prosecutor, who has a direct influence over the rights and freedoms of European citizens. The Committee on Constitutional Affairs therefore has suggested that, in order to be effective, the European Prosecutor should submit reports annually in which he plans to make use of his powers and spend the budget he requires for the purpose. At the end of the year, the European Prosecutor should also submit a report in which the plan was implemented, to the European Parliament.

Thirdly, the Constitutional Affairs Committee agrees with the Commission's general approach to regulate at European level only what is absolutely necessary and leave everything else to be governed by national law and the national systems. The establishment of a European prosecutor should fully respect the principles of subsidiarity and proportionality.

Fourthly, I believe it is necessary to stress the importance of protecting the Community's financial interests by a variety of means. According to the Constitutional Affairs Committee, an effective enforcement strategy must consist of a balanced mix of preventive measures, action under criminal law and administrative sanctions. The establishment of a European Prosecutor

on a first pillar basis creates a legal framework for combating financial fraud and thus restores the balance at a European level between the administrative and the judicial approach.

Fifthly, the Committee on Constitutional Affairs is convinced that the success of the work of the European Public Prosecutor will depend on the extent to which the new institution can be fitted in the existing system for justice and home affairs co-operation. The relations with Eurojust, Europol and the European Judicial Network will have to be structured to secure complementary co-operation and avert the risk of conflict of jurisdiction. As regard to Olaf, the Committee on Constitutional Affairs suggests that, in relation with the European Prosecutor, Olaf will act chiefly as a supplier of information. In other words, it will be an instrument for the generation of initial suspicion needed to found an investigation.

Finally, to anticipate all sorts of practical issues that will occur during the process of establishing a European Public Prosecutor, the Committee on Constitutional Affairs will suggest establishing on a short-term basis a council of national public prosecutors.

Ladies and Gentlemen,

The idea of a European Public Prosecutor for offences against Community financial interests fits neatly with the prospect of a "Europe of Law". I agree with commissioner Schreyer when she states that the new breakthroughs finally achieved in the area of judicial co-operation between the Member States in criminal matters create a favourable environment for the establishment of the office of European Public Prosecutor.

The creation of a European Prosecutor on a first pillar basis will be a further step away from the demarcation of EU powers into three areas with their separate rules and instruments in the three pillar architecture set up by the Maastricht Treaty. For the Committee on Constitutional Affairs, it is clear that criminal law can no longer be envisaged as an area for Community regulation only in the third pillar of the EU Treaty.

I am convinced that the Green Paper will prompt a broad and unprejudiced debate among all those concerned on the establishment of the European Public Prosecutor and on how his office should operate. The European Parliament, being the driving force behind the idea, will take an

active part in the debate. As a representative of the European citizens, I am very interested in the results of this public hearing and I thank you all for this share of views.

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Vice-President of the European Parliament  
Member of the EP Committee on Constitutional Affairs