

PUBLIC HEARING ON COMMISSION GREEN PAPER ON A PROPOSED EUROPEAN  
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INTERVENTION BY ~~PROFESSOR JUR SPENGER~~

1. As one of the team that drafted the original Corpus Juris document, you will not be surprised to hear that – unlike the United Kingdom Government in its present frame of mind – I favour the idea of a European Public Prosecutor, and therefore welcome the Green Paper.
2. The UK Government's position is that the answer to the problem of fraud on the Community budgets lies in the 'horizontal' rather than the 'vertical' approach: enhanced co-operation between existing national systems organised by Eurojust, instead of a centralised prosecution system directed by a European Public Prosecutor.
3. Like the UK Government, I welcome Eurojust and have high hopes of it. But unlike the UK Government, I see it as complementary to the idea of a European Public Prosecutor. I think Eurojust is needed, and will do a useful job in co-ordinating prosecutions for 'ordinary' crime committed across national borders. But do not think it will solve the problem of prosecuting for budgetary frauds, or other serious offences against the essential interests of the Community.
4. For these I believe it is essential to have a central agency with powers to determine prosecution policy, to take action itself and to give binding directions to others – powers which as it is presently constituted, Eurojust does not have. (They do not have to be rival organisations: it is possible, of course, to envisage a new proposed European Public Prosecutor grafted onto Eurojust, and working within it.)
5. I believe that offences that threaten the essential interests of the Community need to be prosecuted in a manner that is both effective, and uniform throughout the Member States. I do not see how that can be done without at least the sort of arrangements proposed in the Green Paper. Of course, there are difficulties in creating such arrangements under the Treaties as they stand. The answer, I believe, is to amend the Treaties to make it possible.
6. In England and Wales (though not in Scotland) we are used to the idea of creating specialist agencies to investigate particular forms of mainly white collar crime, and giving them the power to prosecute as well. To mention only some of them, we have the Serious Fraud Office, the Customs and Excise, the Health and Safety Executive, the Environment Agency, and now the Financial Services Agency as well. In this sense, at least, the idea of a European Public Prosecutor to handle budgetary frauds is in conformity with national traditions!
7. Whilst welcoming the Green Paper, I must add that, in certain respects, I do not think it goes quite far enough.
8. To do the job of protecting against budgetary fraud effectively, I believe we need a set of unified offences, and penalties – along the lines of those proposed in the Corpus Juris document, if not identical to them.
9. I also believe that more is needed by way of harmonising evidence than the idea of mutual recognition, tentatively floated at pages 58-60 of the Green Paper as the solution to the problem of diverse rules in different Member States about what evidence is admissible in a criminal case.

10. The 'mutual recognition' idea is the notion that, where a piece of evidence was properly gathered in country A according to the procedural rules there obtaining, it should be admissible in criminal proceedings taking place in country B, even if in country B the rules for collecting evidence are different.
11. This solves one of the problems that exist at present, but only one of them. A further major problem is the different attitude of the courts of different Member States to the requirements of directness, and orality.
12. To take just one example, the fact that a *procès-verbal* of a statement from a witness was taken in France according to the procedural rules in force there would guarantee that it was admissible in criminal proceedings in England, even under a principle of mutual recognition, because it would not get around the problem that it is a form of evidence other than oral testimony delivered live in court, and hence – under the English conception of the law of evidence – inadmissible as hearsay.
13. It was to deal with this sort of problem that Article 32 of the Corpus Juris proposal contained a list of forms of evidence that would be admissible in proceedings for budgetary fraud in any Member State.
14. I believe that such a proposal is necessary, and commend it to the Commission.