

**Presentation by John Fish /
CCBE President**

**European Commission Public Hearing on the Green paper on the establishment of a
European Public Prosecutor for the criminal-law protection of the Community's
financial interests.**

16/17 September 2002

On behalf of the Council of the Bars and Law Societies of the European Union (CCBE), which through the national Bars and Law Societies of the Member States of the European Union represents some 500,000 European lawyers, I would like to express the following views on the Green Paper from the European Commission on the establishment of a European Public Prosecutor for the criminal-law protection of the Community's financial interests.

My colleague, Peter Baauw will deal with the issues raised in this presentation in some further detail but the following are a broad outline of the reasons why the CCBE does not support the creation of a European Public Prosecutor, some of which were touched upon by other speakers during yesterday's session.

In the first instance it seems to the CCBE that there is an absence of parliamentary and democratic control. Furthermore, the CCBE notes with concern the absence of provisions in the Green Paper relating to the accountability of the European Public Prosecutor.

Secondly, we anticipate that there may well be significant constitutional issues in some Member States and that the creation of a European Public Prosecutor would not be permissible under certain constitutions. The CCBE could envisage great constitutional difficulties and conflicts if such a European Prosecutor were to exist.

Thirdly the CCBE believes that the activities of a European Public Prosecutor will in the long run not be restricted just to Community fraud. It will be inevitable and nearly impossible for the European Public Prosecutor to confine his or her investigations to the protection of the Community's financial interests. The CCBE fears that, over time, the responsibilities of the office will increase beyond Community matters and extend into domestic matters and thus national jurisdictional issues.

Fourthly, the CCBE envisages the possibility that if there is fraud of European Union funds at a Community level, the perpetrators may also have committed offences at a national level. Therefore, a situation may arise where two offences are being investigated side by side. This could also present the prosecution with ample opportunities for forum shopping between the Member States. This could also result in shopping for a jurisdiction where one can obtain an easier conviction than in another State, and it is not

believed that this is in the interests of justice because it would highlight the different standards in different Member States and so undermine the notion of justice overall.

Fifthly, the CCBE would also like to stress the numerous difficulties inherent in supra-national authorities interfering with national authorities in the field of preliminary investigations, gathering of evidence, trial and sentencing.

Sixthly, the CCBE is concerned with the dangers involved in the free movement of evidence. It is possible that the gathering of evidence would interfere with national rules and procedures, and consequently not be in accordance with the rules of a particular country. This might result in evidence being deemed as inadmissible.

Having regard to the above-mentioned observations the CCBE would also like to bring the following points to your attention:

(a) Procedural safeguards:

The CCBE believes that, if the office of European Public Prosecutor is created, there would need to be effective procedural safeguards in place. In this respect, the CCBE would make reference to the Commission's work in this area on procedural safeguards for suspects and the accused in criminal proceedings.

(b) Proper system of legal aid:

Furthermore, and inherent in any system of procedural safeguards, is the need for a proper system of legal aid. The CCBE would like to stress the importance of having in each Member State a proper and adequate system of criminal legal aid. The CCBE encourages the Commission to make every effort to ensure that such a system is in place in each Member State.

(c) Rights of defendants

The CCBE is somewhat disappointed that the Green Paper does not deal adequately with the rights of defendants which in our view should have been more actively dealt with in the proposal.

The CCBE has noted with some interest the inclusion of money laundering as a proposed offence. While the views of the CCBE are well known in the context of the application of anti-money laundering legislation to professionals, it is with some surprise that we note the inclusion in the proposal, which in turn lends some weight to the concerns expressed previously regarding the extension of the powers of the EPP into domestic fields of criminal legislation.

That CCBE has also noted that in the field of enforcement that the Green Paper refers to a number of "coercive measures" which may constitute a common core of principles and which includes the European Arrest Warrant. The CCBE would wish to remind delegates

that it has already gone on record in stating its concerns regarding this proposal, and in particular the absence of reference to fair trial and the exclusion of the double criminality rule.