

European Public Prosecutor Public Hearing

UK.

Brussels, 16 / 17<sup>th</sup> September 2002

Session 1: The Actors in the institutional and legal framework

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- The UK has read with great interest the Green Paper.
- We fully support the starting point which led to this work, namely that effective prosecution of fraud against the EC budget is essential. We welcome the widening of the debate on how this can best be achieved.
- We are concerned however that the Green Paper has failed to justify its conclusion that the creation of a European Public Prosecutor is the solution. For that reason, we are not addressing the individual questions posed in the GP, since it seems to us that they proceed on the basis of accepting the need for an EPP. This we do not do, and I propose initially to give a short outline of the main objections we have to the proposal. I shall then elaborate on some of those arguments. Others in the delegation will expand on others later.
- In the first place, we remain convinced that strong preventative measures remain our best protection, and would welcome a greater emphasis on this area.
- Secondly, the Green Paper does not contain sufficient data to enable us to be clear as to the volumes of fraud, which would be dealt with by the introduction of such a system. Levels of "own country" fraud and fraud involving third countries would have to be taken into account, and we have seen no figures, which allow for these factors.

- We are also troubled by the distinction between fraud against European Union budgets and “other” fraud. Quantification of the annual losses from each suggests that it would be inappropriate to focus on E U fraud for particular, and hugely expensive, treatment.
- Thirdly, we are encouraged by the positive steps that national governments are taking to deal with the problem as it occurs domestically, and note some significant successful prosecutions recently. I refer here particularly to the presentation to be given later by my colleague from our Agriculture Department.
- Further, we do not accept that what is called fragmentation of the European law enforcement area is a root problem.
- And from the practical point, we have grave concerns about the introduction of a two tier system, where potentially a defendant in an EPP case would stand trial with different rules of procedure and evidence, alongside his purely domestic co-defendant, with the consequent inequality that that would produce.
- We are also firmly of the view that this debate, although welcome, is premature.
- By no means least, we have substantial concerns on points of principle in relation to accountability and transparency of the proposed role, and in relation to subsidiarity.

I would now like to expand briefly, and not in any order of importance, on a few of the general points I have made above.

- I have said that we believe that this debate is premature. The Green Paper quotes (at page 8) from the report of the Select Committee Report of our own House of Lords. However, the more appropriate quotation from that report, which the Green Paper does not reproduce, is that the introduction of such a regime should only be considered if all other efforts to deal with the problem failed. We agree with that conclusion and are firmly of the view that we are not yet in that position.
- In relation to timing, the paper fails to take account of a number of important and groundbreaking measures introduced recently in the field of Justice and Home Affairs. Effective implementation of these measures, both in the field of traditional MLA and in relation to the more innovative mutual recognition will enable us to be better able to fight cross border crime generally, including fraud perpetrated against the EU.
- Eurojust too, which is only just starting out on its work, has great potential to make a significant contribution to the fight against cross border fraud, and in this, will be able to profit from a close working relationship with OLAF and Member States. It is important that OLAF too makes full use of the opportunities provided to work closely with Eurojust. And in this connection, too, the better relationships between prosecutors generally, fostered by the pioneering work of the European Judicial Network must not be forgotten. And these relationships will only improve with maturity, and the ultimate beneficiary will be the administration of justice in Europe generally. We need to allow time for Eurojust to be fully established and given a chance to produce results.
- The Green Paper asserts that administrative facilities in the Community have been refined over the years but that prevention and detection are still not sufficient. As I have said, prevention is the ideal solution, but

prevention is also a responsibility of Member States. In relation to the adequacy of domestic measures to combat fraud, the UK Government has recently moved to clamp down on agricultural fraud following reports that the abuse of the Common Agricultural Policy contributed to a substantial amount of fraud against the Community budget. Figures published in the latest Fight against Fraud report show that reported irregularities in agriculture in the UK fell from 393 cases in 2000 to 252 cases in 2001. The Commission is not alone in attempting to deal with this issue.

- A prevention strategy, linked to on going reform of the main policy area, would have much more impact than any harmonising or institutional solution. Reducing the means to commit fraud, increasing detection rates and publishing successes in these areas are all important strategies.
- One of the most troubling aspects of the Green Paper is the lack of empirical data to support the assertion that the creation of an EPP is the most efficient solution to the problem. We need to get a better idea of the scale of the problem – how much fraud there is and where it lies, and how much the proposed solution would cost.
- It is likely that the direct cost of a central unit with investigative and prosecution functions could be easily double the current costs of OLAF, which for the current year are approximately 40m euros. But since more than 70% of the nearly 700 million of fraud in 2001 was committed within single Member States, these frauds can obviously be prosecuted effectively under current domestic systems. And since in addition many of the remaining frauds seem to involve third countries where the EPP

could add no special benefit, the cost benefit picture of the EPP appears arguable at best.

- Without hard figures, it is difficult therefore to justify the likely costs, which appear at this stage however, to be disproportionate. This is a fundamental argument which needs much closer attention.
- And, following on from that point, it has to be asked why it is suggested that European Union fraud should be the target of such specialised treatment, rather than say, human trafficking or drug trafficking, both of which represent major threats to our way of life today.
- What does seem to be important, however, is that an effective OLAF can investigate such cases and bring them to the attention of national authorities, and we encourage OLAF in that regard.
- We have, as I have said, substantial problems in relation to accountability and transparency, and subsidiarity. The proposals would have a major impact on Member States' laws and procedures without clear justification to show what new arrangements are necessary and how they would bring added value. The idea of creating a European Prosecutor on a first Pillar base such as Article 280 would conflict with the principle that the application of criminal law should, as with the maintenance of law and order and national security, remain reserved to Member States. We are also deeply troubled by the lack of accountability of the European Prosecutor to any national law officers or to Parliament. This would be in stark contrast to the position of other UK prosecutors, and would create substantial problems for us.

- In relation to the trial process itself, we cannot see the justification for the introduction of what would in effect be a two tier system, both of procedure and evidence. Our information suggests that in many cases of European Union fraud, the European Union offence is only one charge, and there are other domestic only charges, perhaps in relation to other types of dishonesty. There may also be co-defendants not involved in the European Union aspects. The potential for injustice, inequality and final successful challenge to such procedures appears to us to be very real.
- We remain committed to the fight against fraud against European Union financial interests. We remain willing also to consider with an open mind any proposals which seem to us to offer an effective solution to the problem. However, we remain unconvinced that the proposals in the Green paper would achieve this result.