Intergovernmental Conference IGC: revision of the Treaties, the financial interests and the European Prosecutor

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In the framework of its new anti-fraud strategy, the Commission had confirmed its wish to strengthen the protection of the Community's financial interests. Fraud and other irregularities will increase as the number of Member States and the number of operators and administrations involved in the management of Community funds rise. Against this background, the powers which this Communication proposes should be vested in a European Public Prosecutor and would be limited strictly to the protection of the Community's financial interests as already defined and circumscribed in Article 280(1) of the EC Treaty. Only the essential characteristics of the office would be laid down in the Treaty (appointment, removal, duties and independence), leaving the rules and mechanisms governing its operation to be regulated by secondary legislation. The Commission proposal to the Intergovernmental Conference is based on detailed preparatory work. It recommends the creation of a unified Community law-enforcement area as regards the preparatory stages of court proceedings precisely by the harmonious insertion of in the national systems of a European Public Prosecutor, excluding any communitarisation of the administration of criminal justice. The organisation would be highly decentralised. The European Public Prosecutor would be supported by Deputy European Prosecutors in the Member States so as to secure the link between the Community mechanism and national legal systems. The Commission proposes that the European Public Prosecutor be appointed by the Council, acting by a qualified majority on a proposal from the Commission with the assent of the European Parliament. Regarding the term of office, the Commission proposes a non-renewable term of six-years and stresses his independence as a judicial officer. With regard to the conditions for the exercise of the European Public Prosecutor's functions, a specific mechanism confined to activities detrimental to the Community's financial interests is necessary to ensure smooth operation in terms of both substantive criminal law and criminal procedure. These rules should be adopted by the Council by the co-decision procedure. In conclusion, the Commission proposes that the Conference supplement the current provisions concerning the protection of the Community's financial interests with a legal basis allowing: - the appointment of an independent European Public Prosecutor exercising the prosecution function in the courts of the Member States in the field of the protection of the Community's financial interests and within the framework of specific rules adopted for this purpose; and - the subsequent adoption through secondary legislation of: - the regulations applicable to his office; - rules of substantive law concerning the protection of financial interests by the European Public Prosecutor (offences and penalties); - rules governing criminal procedure and the admissibility of evidence; - rules concerning judicial review of actions taken by the Public Prosecutor in performance of his duties.