Combating Community fraud: criminal-law protection of the financial interests, the European Prosecutor. Green Paper

2002/2065(COS) - 11/12/2001 - Non-legislative basic document

PURPOSE: to launch an EU-wide debate on the future role and powers of a European Public Prosecutor relating to the Community's financial interests. CONTENT: fraud within the EU is a pervasive and on-going problem. It involves all sectors of the criminal classes from small time fraudsters to organised crime. The current fragmentation of European provisions to combat fraudulent activities undoubtedly lays the EU and its financial interests open to exploitation and abuse. Hence the mooting of the idea for a European law-enforcement area governed by a European Public Prosecutor. The need to protect the Community's financial interests arose following the allocation of own resources to the Community in 1976. Much work over the past ten years has gone into the idea of revising the EU Treaties to allow for the appointment of a European Prosecutor whose remit would be to investigate financial fraud committed against the Community. The European Parliament has been a particularly vocal supporter and proponent of the concept. In recent years a growing number of Member States have acknowledged the need to investigate what role a European Prosecutor could play in the fight against fraud. This Green Paper is thus a culmination of on-going working groups and is being presented within the context of the 2001-2003 action plan on protecting the Community's financial interests. The conclusions of the consultation process will then be presented to the Convention on the future of the European Union. The scale of fraud affecting the Community's financial interests detected by the Member States and the European Anti-Fraud Office (OLAF) in 1999 was estimated at EUR 413 million. Overall, these cases amount to some EUR 122 million of the Community's own resources and EUR 291 million on expenditure. EUR 170 million was in the area of agricultural expenditure, EUR 73 million in the area of external action by the Communities and EUR 48 million in the field of structural actions. In order to combat the scale of this crime, the Green Paper argues that prevention and detection is not enough. The need for effective enforcement activities remains a high priority. At the inter-governmental conference in Nice 2000, the Commission sought to revise the Treaties in such a way as to set up a European Public Prosecutor, to include only the essential characteristics of the European Prosecutor (appointment, removal, duties and independence). The rules and mechanics governing the Prosecution Service's operation would be regulated by secondary legislation. The Commission bid failed due to time constraints and Member States' request for further information. This Green Paper seeks to outline a possible scenario for such secondary legislation, including definitions of offences and penalties, determining how Community legislation will mesh with national criminal systems, procedures for laying cases before the European Public Prosecutor, his/her powers of investigation and lastly the judicial review of acts done by his/her office. Depending on the conclusions of the consultation process the Commission may propose adding new provisions to the Treaty to provide a legal basis for: 1) The appointment of an independent European Public Prosecutor centralising the management of investigations and prosecutions in cases concerning the protection of the Community's financial interests; and 2) The adoption of a set of specific rules determining among other things: - A highly decentralised organisation based on Deputy European Public Prosecutors with the assistance of national investigation services in the Member States; - The rules of substantive criminal law to be applied by him/her with a trend towards unification of offences etc. - The criminal procedure be applied by the European Public Prosecutor in full respect of mutual recognition of investigative measures provided for in national law. - Exception from the mandatory prosecution principle and the distribution of cases; - Rules governing the admissiblility of evidence; - Relations between the European Public Prosecutor and international players in the field; - Procedures for reviewing acts done under the authority of the European Public Prosecutor. Lastly, courts agendas, trials and the execution of penalties would remain entirely governed by national law - subject to the principle that the prosecution is in the hands of the European Public Prosecutor.