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

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The public consultation following the Green Paper gave rise to more than 200 written and oral contributions from interested parties. This follow-up Report summarises the opinions and contributions that have been received by the Commission during 2002. It is made up of a general evaluation, followed by an evaluation of the responses received by subject area. The first part deals with views on the need to create a European Prosecutor, reaffirming and detailing the Public Prosecutor's added value. The second half focuses on institutional and legal questions that will need to be addressed in greater depth. Overall the results are positive. The necessity of establishing a legal basis in the Treaty is emphasised. Without Treaty amendment, the Commission states that it has no power to make specific proposals for secondary legislation going beyond the preferences that it expressed in the Green Paper. The outcome of the public hearings does, however, enable the Commission to identify a series of topics requiring closer study: - the relationship between the European Prosecutor and existing European authorities. Firstly, the role of the court of Justice in settling conflicts of jurisdiction needs specific analysis. Objective criteria must govern the choice of Member State of trial. It is particularly important also to study the various ways in which the European Prosecutor and Eurojust could be combined. The future of OLAF must be considered too; - defence rights and the administration of evidence in the context of establishing a European Prosecutor. In procedural terms, two essential topics emerge from the hearing. The first concerns the equivalent protection of defence rights. The Commission will incorporate the results of the Green Paper on the procedural guarantees for persons challenged in criminal proceedings to find out whether it will be advisable to go beyond the standards already shared by the Member States when establishing the European Prosecutor. Secondly, the value in a Member State of evidence gathered by a European Prosecutor in another Member State supposes an approximation of national legislation, confined to the minimum needed to implement the mutual admissibility principle. The extent of harmonisation of the law of evidence felt to be desirable should be studied in more detail in this context, in conjunction with the work programme in judicial cooperation; - the Prosecutor's connection with national criminal systems. The Commission plans to show how the Prosecutor, with guarantees of independence, could integrate into the criminal law systems of Member States without affecting their organisation. Examples are, neutrality in relation to the prerogatives of examining magistrates or to the plurality of law enforcement agencies. It will clarify how hybrid cases could be handled, such as by joint action or withdrawal by the Prosecutor or national authority. In conclusion, the Commission states that only the establishment of the European Prosecutor in the Treaty, accompanied by a legal basis for the development of secondarily legislation to ensure his connection with national legal systems, is likely to answer the current difficulties.