

# Procedure file

Basic information		
COS - Procedure on a strategy paper (historic)	2002/2065(COS)	Procedure completed
Combating Community fraud: criminal-law protection of the financial interests, the European Prosecutor. Green Paper		
Subject 8.10 Revision of the Treaties, intergovernmental conferences 8.70.04 Protecting financial interests of the EU against fraud		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>CONT</b> Budgetary Control		23/01/2002
		PPE-DE <a href="#">THEATO Diemut R.</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs		20/02/2002
		PSE <a href="#">PACIOTTI Elena Ornella</a>	
	<b>JURI</b> Legal Affairs and Internal Market		19/02/2002
		PSE <a href="#">PATRIE Béatrice</a>	
	<b>AFCO</b> Constitutional Affairs		26/03/2002
		PPE-DE <a href="#">DIMITRAKOPOULOS Giorgos</a>	
Council of the European Union	<b>PETI</b> Petitions		24/01/2002
		PPE-DE <a href="#">VON BOETTICHER Christian Ulrik</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2414</a>	05/03/2002
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2411</a>	28/02/2002
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>		

Key events			
11/12/2001	Non-legislative basic document published	COM(2001)0715	Summary
28/02/2002	Debate in Council	<a href="#">2411</a>	
05/03/2002	Debate in Council	<a href="#">2414</a>	
11/04/2002	Committee referral announced in Parliament		

18/02/2003	Vote in committee		Summary
18/02/2003	Committee report tabled for plenary	<a href="#">A5-0048/2003</a>	
27/03/2003	Debate in Parliament		
27/03/2003	Decision by Parliament	<a href="#">T5-0130/2003</a>	Summary
27/03/2003	End of procedure in Parliament		
11/03/2004	Final act published in Official Journal		

#### Technical information

Procedure reference	2002/2065(COS)
Procedure type	COS - Procedure on a strategy paper (historic)
Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 142
Stage reached in procedure	Procedure completed
Committee dossier	CONT/5/16112

#### Documentation gateway

Non-legislative basic document		COM(2001)0715	11/12/2001	EC	Summary
Committee report tabled for plenary, single reading		<a href="#">A5-0048/2003</a>	18/02/2003	EP	
Follow-up document		<a href="#">COM(2003)0128</a>	19/03/2003	EC	Summary
Text adopted by Parliament, single reading		<a href="#">T5-0130/2003</a> OJ C 062 11.03.2004, p. 0022-0191 E	27/03/2003	EP	Summary

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

**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 mooted 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 admissibility 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.?

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The committee adopted the report by Diemut THEATO (EPP-ED, D) welcoming the Commission's Green Paper. Pointing out that approximately EUR 1 billion was lost each year as a result of fraud and that the European taxpayer was the ultimate victim of this, the committee supported the idea of establishing a European Public Prosecutor and said that protection of the EU's financial interests should be a priority objective for the development of common provisions in the field of criminal law. In its view "there can be no question of returning Community powers to national level". The report called on the Convention and the future Intergovernmental Conference in 2004 to incorporate Article 280a on the establishment of a European Public Prosecutor's office (as proposed by the Commission during the May 2000 IGC) into the future treaty. It argued that the protection of the Community's financial interests in an enlarged Union must be secured, while at the same time stressing that this must not become an obstacle to successful enlargement in 2004. It also noted that the establishment of a European Prosecutor on a first pillar basis would be a further step away from the demarcation of EU powers into three areas with separate rules and instruments under the three-pillar architecture. The committee stressed the need for democratic control, via the European Parliament, over the exercise of power by the Prosecutor who, it said, should be appointed by Parliament, with the assent of the Council, following the nomination by the Commission of at least two candidates. It also made a number of suggestions for improving the system proposed in the Green Paper, so as to ensure that fundamental rights are fully upheld and protected in the course of the new authority's work. MEPs added that the offences which constitute damage to the EU's financial interests should be specified "in precise detail" and that a uniform set of penalties was needed. Other points raised in the report included: the need to guarantee the European Prosecutor's independence; the need for the Prosecutor to be subject to judicial control making it possible to lodge subsequent appeals and better monitor his/her work; and the need to lay down detailed criteria for determining the choice of Member State where the trial would be held, in order to avoid the risks of 'forum shopping'. The committee also called for consideration to be given to a body of common EU rules on evidence, in view of the different systems in force in the various Member States. Lastly, MEPs wanted the Commission to clarify its proposals regarding relations between the Prosecutor and existing structures such as Eurojust and OLAF. On the latter point, they suggested that OLAF's remit could be enlarged to include powers of criminal investigation and that OLAF be made an entirely independent body.?

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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 secondary legislation to ensure his connection with national legal systems, is likely to answer the current difficulties.?

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The European Parliament adopted a resolution drafted by Diemut THEATO (EPP-ED, Germany) on the Commission's Green Paper. (Please refer to the document dated 18/02/03.) Parliament stated that it supported the principle behind the establishment of an European Public Prosecutor and greater cooperation between national judicial authorities, but insisted that there are a number of substantive issues that have to be regulated in part under secondary legislation. These include legal systems and practices, language and administrative practice, the

consequences for national criminal law, the risk of double jeopardy and the overlapping of competences between national and European Prosecutors, the admissibility of evidence, and mutual recognition.?