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Subject : **Contribution submitted by Mr Antonio Tajani, member of the Convention:  
"Area of freedom, security and justice"**

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The Secretary-General of the Convention has received the contribution annexed hereto from  
Mr Antonio Tajani, member of the Convention.

**Comments by Mr Antonio Tajani on the final report (18 REV. 1) of Working Group X**

1. An area of freedom, security and justice cannot be established until we have determined both the common values as expressed in the fundamental rights of individuals and the procedural instruments which are able to guarantee the protection of those rights.

In this context, we should remember that the national legal systems have a well-established constitutional tradition as regards fundamental rights. We therefore need to find an appropriate place for the national legal systems within the legal system of the European Union whilst maintaining, as a general rule, the intergovernmental cooperation aspect of the Area of Freedom Security and Justice.

I understand the numerous reservations expressed in the final report on the current functioning of JHA. In the near future, we need to strengthen cooperation, particularly in matters concerning the police, and we need to move more swiftly towards the harmonisation of criminal law and of the rules governing the court system. But these requirements should not take precedence over the equally important need to set up a new criminal law system root and branch.

In order to do that we must exploit the safeguards provided in national legal systems. European law should include a *habeas corpus* – a genuine ‘statute of citizens’ rights’ – which should also act as a benchmark for the harmonisation of the various national systems. We should also provide for third-party judges and procedures which enable fundamental rights to be exercised (and thus protected).

Only when we have built these foundations will we be able to establish a true European criminal law system, which will allow us to meet the understandable expectations (expressed in Tampere) with regard to a Europe-wide fight against crime.

Unless this is the case, we risk having highly effective tools (e.g. arrest warrant and procedure for seizing and confiscating goods) but without being sure of the restrictions on their use. For centuries the rules of democracy have stipulated that first we must define the rights and then the circumstances in which they can be suppressed or waived.

2. With regard to the desire for qualified majority voting, we should not forget that while it is true that unanimity can slow down the adoption and entry into force of important decisions,

it is also true that where fundamental rights are at stake, majority decisions can be acceptable only if the Charter of the Union contains those safeguards which no majority should be able to breach to the detriment of citizens.

From another point of view, in many cases up to now, during the process of framing the acts deliberated upon in the Council of JHA Ministers (framework decisions and joint resolutions), attention has primarily been focused on single issues. The Convention should take responsibility for ensuring that proceedings are conducted in a more comprehensive and systematic way.

The future Europe of justice should be based on the subsidiarity principle, which is the cornerstone of the European institutions, precisely because the protection of citizens' freedom and security and, more broadly, the administration of justice, are areas in which Member States can and must contribute their experience and competence. Nevertheless, in a federation of national states, the fundamental rights of citizens which should be recognised in the Fundamental Charter of the Union must first be recognised in the constitutions of each individual state.

3. The system envisaged in several passages of the final report of Working Group X would supplement national legal systems in which criminal prosecutions are governed in completely different ways (in some systems criminal prosecution is compulsory, in others optional or subject to guidelines from the government and/or parliament). There is therefore the risk that differences will increase and harmonisation become more remote.

Moreover, the proposed system does not consider the difference between the national organisation of public prosecution services, which is sometimes vertical and of a hierarchical nature and sometimes, for example in Italy, of a merely functional nature.

The proposal to establish a European Public Prosecutor's Office to prosecute offences against the Union's financial interests conflicts with the various national legal systems and appears unacceptable.

Indeed, the EU's legal system does not provide for jurisdiction over criminal law and criminal procedure, nor for a judiciary encompassing every level of jurisdiction and able to guarantee a full right of defence. The establishment of a European Public Prosecutor's Office would therefore be illogical and unwarranted. Furthermore, the creation of such a body is somewhat premature given that the objectives of judicial cooperation and the harmonisation of rules on criminal matters in the Member States have not yet been achieved.

It would also be inappropriate to confer jurisdiction in criminal law matters on the Court of

Justice and Court of First Instance, as these courts were established with different aims and not to rule on matters of criminal law.

Whilst it may not be necessary to establish a European Public Prosecutor's Office, it is, on the contrary, imperative that we strengthen judicial cooperation, which can be effectively implemented by Eurojust. The further development of Eurojust and Europol are therefore steps in the right direction, provided that their role is one of coordination and that they encourage cooperation between national bodies.

As a general rule, we must aim for coordination and cooperation in preventing and curbing cross-border crime. We must also aim for increased harmonisation of the national legal systems in the Member States in order to make the decisions taken at European level more effective.

Whilst on the topic of harmonisation, may I add that it would be a good idea to establish a shared principle with regard to the relationship between government institutions and the judiciary, between judges and public prosecutors and between public prosecutors and criminal investigation departments.

Another aspect of paramount importance is the involvement of national parliaments and the European Parliament. In order for this to come about, new and more clear-cut arrangements for participation in decision-making will have to be devised.