

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

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from Secretariat  
to The Convention

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Subject : Contribution by Mr Hannes Farnleitner, Mr Figel, Mr Peter Hain, Mrs Lena Hjelm-Wallén, Mr Roche, Ms Teija Tiilikainen, members of the Convention and Mr Henrik Hololei, and Mr Poul Schlüter, alternate members of the Convention:  
"Improving the Union's response to fraud – alternatives to european public prosecutor"

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The Secretary-General of the Convention has received the contribution annexed hereto from Mr Hannes Farnleitner, Mr Figel, Mr Peter Hain, Mrs Lena Hjelm-Wallén, Mr Roche and Ms Teija Tiilikainen, members of the Convention and Mr Henrik Hololei, Mr Poul Schlüter, alternate members of the Convention

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**RECONTRIBUTION TO THE CONVENTION FROM MR FARNLEITNER,  
MR FIGEL, MR HAIN, MRS HJELM-WALLEN, MR HOLOLEI, MR ROCHE,  
MR SCHLÜTER AND MS TIILIKAINEN  
IMPROVING THE UNION'S RESPONSE TO  
FRAUD – ALTERNATIVES TO THE EUROPEAN  
PUBLIC PROSECUTOR**

During the discussion in the plenary session on Justice and Home Affairs on 3-4 April, a number of Convention members expressed serious concerns about the proposal to create a European Public Prosecutor in Article 20 of Part II relating to the area of freedom, security and justice<sup>1</sup>. The purpose of this contribution to the Convention is to explain our concerns and suggest how we might meet the points made by those who favour a European Public Prosecutor.

As you know, we fully support the need for stronger action against fraud and other serious crimes. However, we do not think that the creation of an office of a European Public Prosecutor is the right solution.

***Our concerns about the European Public Prosecutor proposal***

The European Public Prosecutor would not tackle the root causes of the problem of fraud against the Union's financial interests. It would not reduce the opportunities for fraud. Nor would it improve the ability to detect fraud.

The European Public Prosecutor proposal is also unnecessary to address problems in co-operation between Member States for prosecutions against those involved in fraud against the Union's financial interests or other serious crimes. Little evidence has been produced in the Convention to support the need to move away from the approach adopted at the Tampere European Council. Mutual recognition of criminal decisions, respect for the diversity of legal systems and effective co-operation between national prosecutors in Eurojust should continue to be the foundation of judicial co-operation in criminal matters.

The European Public Prosecutor proposal would result in a loss of national accountability for prosecution decisions that impact on the rights of individuals under criminal law. Criminal prosecution should be essentially a national responsibility. Our national prosecutors must be accountable to national courts and ultimately to our national parliaments. The European Public Prosecutor would be accountable to neither.

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<sup>1</sup> CONV 614/03

We believe there are more effective ways to fight fraud against the Union's financial interests and other serious cross-border crimes which avoid the negative consequences of a European Public Prosecutor. We hope that the Convention will find consensus based on the following approach:

### ***Strengthening Eurojust***

We should agree to strengthen Eurojust while retaining the concept that prosecution of individuals is a national rather than EU competence. This could be done by adding to its resources, competence or powers (increased powers should be subject to agreement by unanimity).

We should improve co-operation between existing EU bodies such as the European anti-fraud office (OLAF) and Eurojust, and improve the transparency of Eurojust's and Member States' action against fraud. Eurojust can ask Member State authorities to investigate or prosecute an offence, and can seek explanations of any failure to act on their request. Where necessary, Eurojust should "name and shame" Member States who fail to take any action against fraudsters.

### ***Improve judicial co-operation through mutual recognition***

We strongly support the Praesidium's proposals to incorporate mutual recognition as a key principle in the new Treaty for judicial co-operation in criminal matters. Implementation of the mutual recognition principle will result in a major improvement in co-operation between Member States in the fight against fraud and other serious crime.

We agree to improve co-operation between judicial and customs authorities, including enhanced use of fiscal liaison officers. We should also improve co-operation between Member States and the Commission, by implementing the 2<sup>nd</sup> Protocol to the 1995 Convention on Protection of Financial Interests.

We should make maximum use of mutual evaluation mechanisms to ensure that Member States have effective arrangements for investigating and prosecuting fraud.

### ***Prevention and detection of fraud***

We should continue the process of "fraud-proofing" Union programmes, in particular in designing the regulations for agriculture, structural fund and external aid policies and by requiring programmes to specify tangible outputs or outcomes. We should prevent multiple counting of outputs, for example in Structural Fund projects or external aid funding, and should write into all new regulations a requirement to share information between the Commission and national bodies.

## ***Sanctions***

We support the development of a new EU instrument (supplementary to the EU Convention on Protection of EC Financial Interests) providing strong criminal penalties for those convicted of serious fraud, including fines, confiscation of the proceeds, and imprisonment.

We should examine the present weaknesses of the system of "corrections" whereby grants from European Union funds to those EU countries that fail to take effective measures against fraud are reduced or cut off completely. Where appropriate, it should be extended. Under current Structural Fund rules, 10% is withheld until there is a satisfactory audit outcome; such rules could be extended to other programmes, and consideration should be given to increasing the 10% for programmes particularly targeted by fraudsters.

We should impose non-criminal penalties on individuals who benefit from "irregularities" (e.g. farmers who deliberately or persistently over-claim, training providers who double count outputs, persons caught evading customs duties).

## ***Union Institutions***

To complement these measures, we should strengthen the European Court of Auditors and continue the Commission's process of internal reform, for example improvements in accounting procedures.

## ***Conclusion***

We do not agree that there is a need to include a provision for the European Public Prosecutor in the new Treaty. Instead, we should ensure that the new Treaty allows us to pursue the alternative way forward described above. This means looking again at the articles on judicial co-operation in criminal matters including the article on Eurojust. Others aspects (fraud-proofing, sanctions and co-operation) are possible under the existing Treaty, but Treaty provisions such as Article 280 could be improved to set a clearer agenda for EU action against fraud.