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THE PROTECTION OF EUROPEAN UNION CITIZENS' FINANCIAL INTERESTS

Civil Liberties Series

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EUROPEAN PARLIAMENT

Directorate-General for Research

THE PROTECTION OF EUROPEAN UNION CITIZENS' FINANCIAL INTERESTS

INTERPARLIAMENTARY CONFERENCE

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Civil Liberties Series

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Introduction

Mr Antoni GUTIERREZ DIAZ, Vice-President of the European Parliament

Though the European Parliament regularly holds meetings with national parliaments, there is one thing unusual about this conference: its aim is to establish cooperation between the democratically elected bodies of the Union and the Member States in a field in which legislatures were insufficiently involved.

Protecting the financial interests of the European Union was a concern common to the Union and its Member States. Citizens were twofold tax-payers, contributing both to the budget of their own country and to the budget of the Union via the direct and indirect taxation which provided the Union's own resources. Citizens were accordingly entitled to receive every possible guarantee that their financial contributions were put to effective and legitimate use.

The institutional system of the Community consequently included a budget discharge system, assigned by the Treaties to the European Parliament.

The European Parliament had swiftly responded to being entrusted with this responsibility by setting up a specific committee, the committee on Budgetary Control, separate from the committee on Budgets.

On the other hand, budgetary control gave rise to the imposition of penalties which went beyond the purely administrative level, being governed by criminal law. The fundamental rights of the individual must be guaranteed by means of the work of the committee on Civil Liberties, which was responsible for protecting the individual. The same committee was also responsible for dealing with the financial interests of European citizens in all cases where the prescribed instrument of protection (be it the criminal law or police cooperation) went beyond the modes of action - which so far were modest - that the Treaty conferred on the European Community: a specific example of such action was the recent setting-up of Europol.

European public opinion and the institutions of the Union assigned growing importance to protecting the financial interests of citizens. There were several good reasons for this:

(1) The Union budget was changing in nature: it had taken on a political aspect, as it was used to finance both the internal and external policies of the Union. In the future, it could, moreover, become an instrument of economic policy, serving the cause of economic and financial stability within the euro zone.

(2) As the Union budget grew, so did the threats to which it was exposed, such as international crime, which took advantage of the elimination of internal border controls.

(3) According to information from UCLAF (the Commission's Unit for the Coordination of Fraud Prevention), 80% of fraud to the detriment of the Union budget derived from organised international crime. How had the Union and its Member States responded to the demand from European public opinion for protection against it? We had to face the facts: in theory, some bold plans had been drawn up, but so far their implementation had left much to be desired. Criminals had a free hand. Meanwhile the instruments of traditional

international cooperation had become obsolete and outdated, letters rogatory took several years to process, there was a lack of cooperation among judicial authorities to provide evidence, conflicts of jurisdiction occurred, and so on. As long ago as 1977, Mr Valéry Giscard d'Estaing had advocated establishing a European judicial area. Its time had come. On 16 October 1998 in Avignon, the Ministers of Justice of France, the UK, Germany, Spain and Finland had expressed their desire to create a European judicial area. They had stressed that fighting organised crime would be one of the pillars of this new area, which would be a necessary complement to Economic and Monetary Union and an important instrument to protect citizens' interests at European level. There was still a long way to go before this objective was attained. At the Avignon colloquium, the President of the European Parliament, Mr Gil-Robles, had stated the conditions which might be conducive to the establishment of a judicial area:

1. An **integrated and coherent legal framework** would have to be adopted. The harmonisation of criminal-law instruments which had been decided on in 1995 by means of the Convention on the protection of the European Communities' financial interests[1]: the Convention still remained a dead letter in spite of the appeals of the Madrid Council and the various Councils of Ministers. It had still not been ratified. Consequently, offenders continued to take advantage of the loopholes and inconsistencies in European criminal law to commit fraud;

2. **Poli tical control** would be required, to provide a democratic guarantee. At present, this was limited to the fields of budgetary and financial implementation.

3. The final element in this protection system was **judicial control**.

The situation could be summarised as follows: despite the progress which had been made, the Convention on the protection of the European Communities' financial interests had still not entered into force.

Admittedly, UCLAF played a very important role with regard to information and coordination of judicial authorities in connection with transnational crime. But it did this informally, mainly on the basis of the good will of the national authorities concerned.

In 1996 several proposals had been made for solving this problem. The idea was to harmonise the criminal-law provisions concerning protection of the financial interests of the Union, to assign the European Parliament a legislative function equal to that of the Council in respect of protecting the financial interests of the Union, and to appoint a European public prosecutor who would institute proceedings against those who committed actions detrimental to the Union's financial interests. Two years on, none of these objectives had been attained.

A strong political initiative was urgently needed. This conference should be the starting point for that, and should determine the specific means which the institutions could use, acting of one accord, in order to attain these objectives.

1 Council Act of 26 July 1995 drawing the Convention on the protection of the European Communities' financial interests (OJC 316, 27.11.1995)

Mr Nikolaus MICHALEK (*Austria*), President-in-office of the EU Council

Since the entry into force of the Maastricht Treaty, institutionalised cooperation to fight crime had existed among the Member States.

Various legal acts had been signed by means of which Member States had undertaken to approximate their legal systems and criminal law, particularly to fight the various forms of fraud, corruption among European officials or the possibility of penalising legal persons.

Conventions or protocols were on the table, but no Member State had ratified them. Yet this was an urgent matter. Having said this, application did not necessarily require prior ratification of the agreements or treaties. In Austria, for example, work on incorporating the provisions of these conventions into national criminal law had been in progress since 1 October 1998, although the conventions were still before Parliament.

These legal acts providing for measures against fraud and corruption created a legal basis in the European Union which would ensure that there would not be any major divergences among the fifteen Member States in this field. However, one must not be too hasty. Results must be evaluated before any further step was taken.

Approximating substantive legal provisions was not the only requirement: the efficiency of judicial authorities and the speed of cooperation among them was also important. How did things now stand?

The Council of Europe Convention on mutual judicial assistance went back to 20 April 1959, the Convention on Extradition to 13 December 1957. These agreements had been supplemented by additional protocols or bilateral conventions.

The Convention implementing the Schengen Agreement and the European conventions currently under consideration were based on these initial Council of Europe conventions.

The two Conventions on extradition[2] , which were currently undergoing ratification, should improve the extradition situation. The negotiations on a Convention on mutual judicial assistance in criminal matters in the Member States were relatively advanced. There remained the delicate question of telephone-tapping, which ought to be settled shortly.

When it come to cooperation between States, legal bases were not the only important thing: there were also the practical instruments for the implementation of day-to-day cooperation to be considered. In order to establish these, various joint actions had been decided:

- The joint action of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the EU[3]. This was expected to improve extradition and mutual judicial assistance procedures, by means of

2 - Council Act of 10 March 1995, adopted on the basis of Article K.3 of the TEU, drawing up the Convention on simplified extradition procedure between the Member States of the EU (OJ C 78, 30.3.1995)
- Council Act of 27 September 1996, adopted on the basis of Article K.3 of the TEU, drawing up the Convention relating to extradition between the Member States of the EU (OJ C 313, 23.10.1996)
3 OJ L 105, 27.4.1996

exchanges of experts, more effective and swifter cooperation, and better understanding of judicial systems, which often varied widely.

- The joint action of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international commitments in the fight against organised crime. A consideration of the situation of each country had begun.

- On 29 June 1998[4] the creation of the European judicial network, which was expected to make it possible to establish liaison centres for contacts among the Member States, thereby facilitating cooperation[5]. These liaison centres were important for exchanges of judicial information from other Member States.

- On 29 June 1998, other joint actions were adopted concerning methods of mutual judicial assistance in the field of the criminal law: these provided that each Member State must within one year state how its judicial authorities intended to deal with requests for mutual judicial assistance and what methods would be used to ensure rapid and effective cooperation[6] .

In this field, major efforts had been made. However, the potential of the various forms of cooperation had not been completely exhausted: much remained to be done. There was no denying the fact that there were some inadequacies, which must be remedied very soon. Progress must be made before trying to go any further and set up a European Public Prosecutor's Office. Although, as a Minister of Justice, I have so far stressed bringing criminals to justice. Prevention was also all-important. The Austrian Presidency had proposed a detailed resolution on this subject[7]. The rules on aid to farmers or for research should be so formulated by Member States and the Commission that they did not lend themselves to fraud and that checks could readily be performed.

A credible strategy for fighting fraud must be based on two aspects: prevention and detection.

We should not be satisfied with prevention alone: no criminal-law system confines itself to that. Very often, Union funds are distributed to NGOs in a decentralised manner, and many fields which used to be the domain of the State have passed to the private sector. With cofinancing, it is difficult to say what proportion of national subsidies has been hit by fraud in comparison with the proportion of European subsidies. Means of monitoring this are lacking. It will be necessary to see how other measures can be taken to combat corruption in the private sector. In order to make progress one must be realistic and pragmatic. Prudence is called for: we should not raise the public's hopes too high. There is a prevailing belief that Europol will produce miracle cures. That is a mistake which could damage the Union's credibility.

Mrs Anita GRADIN, Member of the European Commission

Since I joined the European Commission on the 1st of January 1995, we have come a long way in improving our efficiency in fighting fraud against the Community finances.

4 OJ L 344, 15.12.1997
5 OJ L 191, 7.7.1998
6 OJ L 191, 7.7.1998
7 Council Resolution of 21 December 1998 on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it (OJC 408, 29.12.1998)

Our work is beginning to bear fruit. UCLAF –the Commission's anti-fraud service– has been increasingly successful in uncovering fraud and irregularities. In 1997, more than 5000 cases, totalling 1.4 billion ECU, were dealt with by Member States and the Commission together. Today, UCLAF has about 950 cases under investigation. Of these 950 cases, about 25 cases concern suspicion of fraud or corruption inside the Institutions. A number of these inquiries have hit the headlines recently. This may make painful reading for some, but so be it. I am absolutely convinced that we need to get to the bottom of all these affairs, so that we can withstand public scrutiny when it comes to fraud.

Every political and administrative system runs a risk of being corrupted or defrauded. This is unavoidable. But what is necessary isto do our utmost to prevent fraud from happening, to pursue investigations energetically, and finally to bring fraudsters to court and take appropriate disciplinary measures.

Ten years ago, fraud against the EU budget was combated by a multitude of different agencies and Ministries acting separately. Many services of the Commission, many ministries in Member States, such as Finance and Agriculture, not to mention all the local authorities and agencies, were fighting fraud each in their own corner without real coordination, and without a proper legal framework.

These days are over. UCLAF is coordinating things in Brussels, and Member States have put better procedures in place. The regulation on combating fraud and the "on-the-spot" control regulation are in force. The Conventions and Protocols dealing with penal matters have been signed. It is just a shame that they have not yet been ratified by all national Parliaments.

So we have made important progress. How can we take things even further? We need three different types of partnership and synergy in order to take the fight against fraud further.

1. We need **good collaboration between the national Parliaments and the European Parliament**. National parliamentarians have an acute sense of responsibility vis-à-vis the taxpayer. They will want to ensure that when money is sent to Brussels, it is well spent. The European Parliament for its part has a clear understanding of the necessity of equivalent protection of the taxpayer's money in **all** European Member States. It is only by combining these two political forces that we may bring about a solid legal framework for the protection of the European budget and other Community interests – such as the environment or the euro. We need political support in national Parliaments as well as in the European Parliament. And that support has to be part of a common strategy. That is what this Conference is also about. But it is only by means of ratification by national Parliaments that we may be sure that fraudsters brought in front of a Court face similar charges in all Member States.

2. We need a **synergy between the legal instruments in the first pillar** dealing with the Community interest **and the third pillar** dealing with police and criminal matters.

3. We need **a strong partnership between investigators in Brussels and in Member States**. Our anti-fraud service UCLAF has established privileged relations with investigative authorities in most Member States. Investigators are building confidence in one another. They

are cooperating on specific cases. They are exchanging information. They are offering help to each other. And it shows in the results.

Cigarette smuggling is a case in point. Last year, about 420 million ECU was lost to the European Union budget, but national budgets are affected as well, in the form of tax losses. UCLAF, in close collaboration with national police, managed to uncover a number of serious cases, involving smuggling into Belgium, Italy and Spain. We are at present entering into discussions with Switzerland on how to act together against some of these criminals who operate from their territory. I have received a very positive response from the Swiss Federal Counsellor, Mr Köhler, on this subject.

In transit fraud UCLAF has also, in collaboration with Member States, been very active in investigations which have made it possible to bring fraudsters to court. As we all know, the loss of own resources to the EU budget and of national tax revenue is considerable in transit fraud.

All these inquiries can only succeed in a strong partnership between Member States and the Commission.

Finally, a word on the Amsterdam Treaty. When I took office four years ago, I learned with surprise that decisions to **spend** money were taken by qualified majority, while decisions to **control** money and fight fraud needed unanimity. Under the Maastricht Treaty, it was –so to speak– more difficult to agree on fighting fraud than to spend money. I, therefore, proposed to Member States a more operational fraud-fighting article in the new Treaty. And this was accepted in the form of the new Article 280[8] operating with a qualified majority and co-decision with the European Parliament.

1. Combating organised crime

1.1. ***Point of view of the European Parliament***

8 Art. 280 (ex Article 209a)

1. The Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States.
2. Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.
3. Without prejudice to other provisions of this Treaty, the Member States shall coordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.
4. The Council, acting in accordance with the procedure referred to in Article 251, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community with a view to affording effective and equivalent protection in the Member States. These measures shall not concern the application of national criminal law or the national administration of justice.
5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Article.

Mrs Charlotte CEDERSCHIÖLD (PPE, Sweden), committee on Civil Liberties and Internal Affairs, EP

Mrs Cederschiöld said that nowadays the Union was faced by sophisticated crime, committed by experts, which was increasingly international, made use of the most modern methods of communication, and was exploiting the establishment of new economic systems in the former communist countries. Organised crime concentrated on fields where the criminal ran few risks, such as tobacco and alcohol smuggling, prostitution, corruption and drugs trafficking. Every month several million euro derived from crime in Eastern Europe was invested in the West.

Various sectors lent themselves to money laundering. This process afforded scope for all forms of corruption and was a threat to democracy and human rights.

One of the pieces in this puzzle was fraud against the Community budget. It directly threatened the rule of law. As always, the victim was the tax-payer, who was not in a position to defend himself. The fight against organised crime must be based on preventive measures, using well organised infrastructure. As national measures were not sufficient, action was needed at EU level.

Cooperation among Member States had been sluggish and chaotic; it had not been possible to catch up with the criminals. Legal systems were too different. Further progress must be made, and a common judicial area created. Consideration should be given to extending this approach to the applicant countries. Collaboration with national authorities and UCLAF should be developed.

Mrs Cederschiöld was also concerned about the lack of parliamentary control over such bodies as Europol and UCLAF.

Any suggestion as to how control could be stepped up should also afford guarantees of protection for the individual. Why not empower the European Ombudsman to consider complaints by members of the public in cases where their privacy was violated by the misuse or abuse of personal data? A European data system was needed in order for the rights of the individual to be respected at the same time as crime was fought.

Mrs Cederschiöld stressed that preventive measures were genuinely necessary. Every effort to fight crime must be encouraged. Only civil society could combat crime, and it should be afforded more opportunities to do so.

Mr Herbert BÖSCH (PSE, Austria), rapporteur on OLAF, EP

Our conference here in Brussels is taking place at a time when the European Commission and the European Parliament are at daggers drawn.

This crisis of confidence has a great deal to do with the subject of our discussions. Within the the European Parliament there is considerable dissatisfaction about, and deep distrust of, the way in which the Commission deals with cases of fraud within its own ranks.
Until recently, whenever this subject was raised with me, I used to say that, while it was true that fraud did sometimes occur at the Commission, it was confined to a few regrettable and

exceptional cases, such as one might find anywhere. Even today I still believe that the vast majority of officials here in Brussels carry out their duties conscientiously and diligently.

But I no longer believe that fraud is always confined to a few inevitable individual cases.

By now we know of too many worrying instances in which whole areas of policy have been discredited on account of the dubious actions of officials, usually in association with external consultancies - which, to make matters worse, are already highly paid.

Why do these problems occur?

The first problem lies in the particular structure of Union expenditure. At 5%, administrative expenditure accounts for a remarkably small proportion of the total. The proportion available to fund the intended recipients is correspondingly high.

We have no desire to change this. But we need to be aware that where subsidies are paid, grasping hands are liable to reach out.

The second reason why problems arise is because money is spent in a decentralised manner, which means that large numbers of people are inevitably involved. 80% of funding is channelled via the authorities of the Member States. Nongovernmental organisations are often involved, too, and funds pass through many intermediate points before they reach those for whom they are intended.

We do not wish to alter the principle of decentralisation. But we must increase the staffing of Commission units responsible for paying aid and subsidies. We know from our experience of development aid that national administrations have between two and three times as many staff at their disposal as the Commission does to manage expenditure and carry out checks. The Commission has some catching up to do in this respect. But I should warn you that we at Parliament will not simply approve more funding for staff: first, we shall expect to see some convincing plans for reforming the relevant units.

This is especially true in the field of external relations, where everything that could go wrong evidently is doing so. I shall confine myself to mentioning the disaster with the programmes to promote nuclear safety in Central and Eastern Europe, so damningly described in the recent report by the Court of Auditors.

It was also the Court of Auditors which not long since told the Commission quite frankly that it lacked a clear and unambiguous policy of zero tolerance of fraud and corruption. Such a zero tolerance policy begins with a determined approach to disciplinary issues. It is unacceptable that the Commission should respond to a loss of some 10 million euro, as occurred in the MED programmes, by saying that the management errors concerned were not serious enough to warrant even opening disciplinary proceedings.

Nor can we accept that if Commission officials falsify reports and documentary evidence, this should be excused as mere administrative sleight of hand designed to pull the wool over the eyes of the Commission's internal auditors, as happened in the case of ECHO.

Yet all these things have happenend, and the person who played down the seriousness of the matter by dismissing it as 'sleight of hand' was none other than the President of the Commission, Jacques Santer, himself.

These two examples may suffice to explain the anger felt by Members of the committee on Budgetary Control. Despite it, we have tried to remain constructive and to make progress on the matter. That includes seeking to do so in cooperation with the present Commission. On 7 October in Strasbourg, Parliament adopted by a large majority my report on the setting-up of OLAF.

OLAF is the acronym of the European Fraud Investigation Office. It is a new name, to mark a fresh start. But please take note: in setting it up, we do not intend to establish a new institution outside the existing ones, as has frequently been asserted. We do not intend to do so because, until such time as there is a European judicial authority to protect the financial interests of the Union, it would be a mistake to locate investigative duties entirely outside the Commission. That really would place the investigators in a vacuum, without the authority and support of examining magistrates or public prosecutors. But at the same time they would lack access to vital internal information and would not enjoy the monitoring powers which UCLAF already has now because it forms part of the Commission.

What we need, therefore, is an office within the Commission but with the maximum operational independence, which should be safeguarded by special rules and procedures. And OLAF should have more experienced investigators than UCLAF does now. Without wishing to deny the merits of its present staff, for my taste they too often serve purely as book-keepers of fraud at present - quite simply because they lack the necessary resources.

One last point: the public are clearly not prepared to give us the benefit of the doubt here. I hardly need describe the consequences for the prestige of the European Union and indeed for the forthcoming European elections if the impression were to be gained that we were not doing everything in our power to ensure that European tax-payers' money was protected effectively.'

1.2 Point of view of national parliaments

Mr Anton LEIKAM *(Austria)*, chairman, Internal Affairs Committee, *Nationalrat*

All over the world, organised crime is becoming an increasingly serious threat to society. When the billions generated in profit from it enter the international financial system, they endanger the economy and provide the means to corrupt politics and administration. These forms of crime constitute a serious danger to democratic societies.

In comparison, efficient means of preventing and detecting such criminal activities are only being developed very slowly, and generally remain a step behind.

Fraud and bribery are occurring on a huge scale, damaging the interests both of the public and of public institutions.

Organised crime in the fields of international financial fraud, international insurance fraud and motor vehicle theft presents enormous challenges to the executive branch of government. At the

same time, it is often impossible for the executive to ascertain in individual cases whether money laundering or fraud have been committed.

The phenomenon of international organised crime, particularly in the financial field, is also a major topic of debate in Austria. The media tend to use the eye-catching term 'Mafia' to refer to its perpetrators. Constant harping on the fact that Austria is a net contributor has made this a very sensitive subject.

Security is very high on people's list of concerns in Austria, second only to anxiety about their jobs. I am glad to say that the police and judiciary enjoy high levels of confidence: 79% and 62% respectively.

As far as combating fraud is concerned, the Austrian public expect to see preventive measures, investigations and prosecutions, especially in the fields of investment fraud and pyramid investment schemes, which often damage large numbers of small investors.

I regard the June 1997 action plan for fighting organised crime and the numerous other initiatives to combat corruption, fraud and money laundering, such as the money laundering Directive, as valuable instruments for controlling crime. The options which already exist in this field must therefore be put to use as quickly as possible.

One element in this is the harmonisation of certain aspects of the Member States' criminal law and the coordination of criminal-law provisions. I know from Austria's experience that public acceptance can be achieved only if the necessity of such measures is made clear and the necessary public information campaigns are carried out.

However, it will also be necessary to make gradual improvements in institutional cooperation throughout Europe. What I have in mind here is uniform definitions and harmonisation of criminal-law provisions, and training of judges, public prosecutors and the police.

Mutual assistance between criminal investigation departments should be intensified. In comparison with mutual judicial assistance, it is a quicker and more flexible instrument and is therefore better suited to combating international crime.

Before actual criminal proceedings, a quick and unimpeded exchange of information ought to be possible, so that police measures can be taken as soon as the appropriate circumstances are identified.

An additional measure is the setting-up of national central agencies, analogous to the existing network of money laundering notification centres, which can then coordinate national criminal investigations.

Finally, in order to combat foreign criminal gangs effectively, there is a need to assign the right national priority to training and further training, technical support and exchanges of information.

If Europe is to continue to develop into an area of freedom, security and law, modern industrialised societies must improve their crime-fighting strategies and eliminate the basis for

organised crime. Fighting corruption is increasingly becoming one of the principal challenges facing societies.

No State is immune to corruption any longer, and a clear common approach is needed to combat it.

Mr Henrik LAX *(Finland),* chairman, Legal Affairs Committee, *Eduskunta*

In Finland and in the Finnish Parliament, it rather goes without saying that international cooperation to fight crime and provide legal assistance needs to be intensified, and that this should in particular be done within the European Union. It was so obvious, indeed, that Article 280 of the Amsterdam Treaty aroused few passions when the Finnish Parliament ratified it just over six months ago. Nor were many passions aroused when we in Parliament approved the corruption convention with its two additional protocols. It may be worth noting that the OECD has found Finland to be one of the least corrupt countries, and perhaps this is reflected in our attitude to international cooperation in this field, too.

Another background factor may help to explain why we adopt a very pragmatic attitude to international judicial cooperation and fighting crime. We have many decades of good experience of cooperation among the Nordic countries and we view this cooperation within the European Union as a natural continuation of the experience we have gained jointly with our Nordic brothers and sisters.

In Finland, therefore, debate tends to centre more on finding solutions to practical problems; relatively rarely do we feel the need to debate issues of principle in Parliament. I should also like to point out that the Finnish Parliament has very good contact and, in a way, also very strict procedures for monitoring what our government does in the Council of Ministers here in Brussels. We are very well informed, and our special committee, the Committee on Legislation, is also consulted very frequently when Directives are being drafted.

Traditionally, policy on crime has been debated relatively calmly in Finland. For a long time in fact it was very - how should I put it? - expert-centred. It is very rarely that this field has caused ructions and public debate in our country. It would perhaps be true to say that it is more in the public eye at present, but we have yet to witness any great excitement about it. Nearly three years ago our government launched an anti-crime programme, and a follow-up programme has now been adopted, which will run from next year, explicitly providing for intensified cooperation among various authorities. In this context we do not make any particular distinction between national authorities and authorities within the European Union or in other countries outside it.

A few words about the future. It is clear from what I have said that Finland is prepared to go further when it comes to harmonising the criminal law. We do not see this as particularly problematic in the field of combating economic crime. The real problems we have encountered perhaps mainly arise from the fact that our constitution contains strict requirements regarding stringency, precision in defining offences. Accordingly I do see certain problems, for example, as regards defining membership of a criminal organisation as an offence. We believe that the *Corpus Juris* can provide a satisfactory basis for continued long-term work to combat such crime, and we believe that, before creating new institutionalised arrangements for European cooperation such as

a European Public Prosecutor's Office, it is important to analyse where the real problems lie: where the shortcomings are in cooperation among the various authorities. Is it merely a question of problems in some parts of the Union or in certain judicial functions, or is it something else? Once we know the answer, I believe it will be considerably easier to find effective ways of dealing with the problem.'

Mrs Maria Eduarda AZEVEDO *(Portugal)*, European Affairs Committee, *Assembleia*

In Portugal, members of the public, Parliament, the executive and the judicial authorities are highly aware of the problem of fraud and know very well that in order to fight this scourge, real cooperation is needed. This is a precondition: everyone must unite in the common cause. This cooperation, which has been made possible by the third pillar, should be stepped up, and the third pillar should be given time to display its potential, in the aftermath of Maastricht and Amsterdam.

Mr Pierre FAUCHOM [9] *(France)*, Committee on Legislation, *Sénat*

Mr Fauchom said that everyone deplored the rise of international crime and acknowledged that current remedies were ineffective. People called for better harmonisation, cooperation and contacts, choosing their words carefully while fully aware that they were referring to a wide range of realities. Conventions were mentioned, but these were extremely incomplete; moreover, as they had not been ratified, their value was more symbolic than real. Our system of defence against crime was developing slowly and chaotically, while crime was moving more quickly: this discrepancy was worrying.

Mr Fauchom was not sure that the proposal by Austria's Minister of Justice was an adequate response to the problem, his suggestion being that one must continue to make progress step by step before resorting to any other solution. The French Senate took the view that there was an immediate need to seek seriously different approaches and find a new solution. As always in European affairs, as cooperation was producing inadequate results, there was a need to go beyond cooperation and work towards unification. This was currently being done with regard to the currency, and sooner or later the same approach would have to be extended to dealing with international crime: otherwise criminals would continue to leave us behind. That is why the French Senate endorsed the conclusions of Mrs Delmas-Marty concerning a new European code and a uniform procedure (only at the top, of course), so that there would common definitions in the same languages - otherwise, translation problems alone would result in complete paralysis. All this was complicated and called for a new method. Why not set up interparliamentary working parties, with the Commission serving as a linchpin? These could bring together specialists from the various legal affairs committees of the European Parliament, working in

9 Mr Fauchom is the author of an information report drafted on behalf of the French Senate delegation for the EU entitled 'Reform of the 3rd pillar of the EU: towards a European judicial area' (report no 352-1996/1997).

conjunction with representatives of the various national parliaments and with Commission experts and representatives, in order not to fragment their efforts.

On the basis of these conclusions, the normal decision-making process would resume, with the Council of Ministers assuming responsibility. The idea was not to short-circuit the normal decision-making process but only to prepare for it in a different way, starting with parliamentarians - that is, people who possessed a legitimacy not shared by officials, experts or those professionally concerned with the criminal law - and who were thus in a position to take an interest in European affairs. This would be a new approach politically and would make it possible to involve national parliaments in quite a different way, given that they normally suffered the fate of seeing European provisions only at the final stage, in the course of ratification procedures on which they could in reality exert little influence, since everything had already been decided elsewhere.

As parliaments would be involved simply and modestly at a prior stage, Mr Fauchom considered that this would represent progress for European democracy.

Mr Anders HÖGMARK *(Sweden)*, Judicial Affairs Committee, *Riksdag*

Mr Högmark considered that Member States and the Union should do everything they could to combat international crime by improving cooperation amongst themselves. The *Corpus Juris* was positive, as it proposed creating a link between the national and European levels.

The relevant conventions should be ratified as soon as possible, and a political will to make progress should thus be expressed. No legislation could replace political will.

In Sweden, much had been said in the media about inadequate audits. Swedish auditors considered that international rules on auditing should be adapted to take account of modern technical realities. Audits should also be carried out at the right time.

Action was needed at local, regional and national level to combat fraud. The credibility of the Union in the eyes of its citizens was at stake.

Mr Manuel ACACIO *(Spain)*, Committee on Economic and Financial Affairs, *Senado*

I imagine we all agree that there are two different aspects to the financial fraud. There is fraud entailing misuse of Community funds by the various organisations or countries and there is international organised crime.

As regards the first of these, we consider that the Union's budgetary control should entail the application of increasingly effective anti-fraud measures. We do not believe that this type of fraud will be a major issue in the future. As people become more used to thinking of themselves as citizens of Europe, the problem will become less acute.

As regards the second aspect, which is more of a threat to us, common policies are needed. The crimes which we are all facing need to be tackled in a combined effort, using common police

resources and common information media... Policies also need to be harmonized: policies on taxation, crime-fighting, prisons, judicial matters, etc.

This common endeavour should ensure that there are no hiding places within Europe. Harmonisation of national policies should eliminate any legal loopholes which hamper the battle against fraud.

If organised criminals have ever-greater resources at their disposal, we should join forces: this is the way to target more resources against them.

A common policy on combating fraud must be backed up by pressure exerted by the European Union as a whole on third countries to encourage them to crack down on crime at source. Moreover, the criminals often take refuge in those countries. At the root of some financial offences there are other offences perhaps even more appalling, a prime example being laundering of the proceeds of drugs trafficking. Combating this type of fraud will help to combat the crimes from which funds are derived which are then used to commit fraud.

To sum up, I believe we all agree that common problems require common solutions. Our task after this conference should be to speed up the development of national and European policies with the aim of arriving at common solutions as soon as possible.'

Mr Jan PETERSEN *(Denmark)*, Legal Affairs Committee, *Folketing*

It is important to combat organised crime jointly, both within the Member States and beyond the frontiers of the Union, in order to avoid fear among the public. At present, cross-border crime is a topic of debate in Denmark. It would be worthwhile to step up cooperation in this field, but that this should be done pragmatically: in other words, practical measures are called for rather than academic constructs. Various countries ought to ratify the relevant conventions. It is necessary to be very practical as regards relations between the authorities of the Union and the Member States to organise investigations: a single national body ought to be responsible, to promote quick and easy contacts. Each country should therefore organise its work in such a way that only one partner is authorised to collaborate with the authorities of the Union. For that matter, each national parliament has a duty to organise the judicial sysem in accordance with the wishes of the public: that means it is important not to fly in the face of national traditions.

It would certainly not be right to confine oneself to the territory of the Union, as this problem does not only concern Europe (I am particularly thinking of drug trafficking on the continent of Latin America). Strategies must therefore be worked out which go well beyond the geographical limits of the Union; above all, I must reiterate, it would be a mistake to develop theoretical projects which merely lead to delay.

Mr Leonidas TZANIS *(Greece)*, Vice-chairman, Committee on Public Administration, Internal Affairs and Justice, *Vouli ton Ellinon*

How could fraud be detected and a rapid procedure for punishing offenders instituted? This was one of the fundamental problems currently facing the Greek judicial system. Mr Tzanis thought

that Member States could easily arrive at common definitions of offences of fraud, as their basic legislation was very similar (for example, Greece's public law was based on Germany's). The view of what constituted an offence was much the same in most European States. In order to identify when offences had been committed, it was necessary to establish a rapid procedure.

A recent opinion poll in Greece had shown that the public were very concerned about crime. The problem was all the more serious for countries which had common borders with third countries. No progress had been made since the last joint meeting of the European Parliament and national parliaments.

In order to achieve more, cooperation was needed between parliamentary committees and not just national parliaments. There should also be close cooperation between UCLAF and national authorities, particularly in the field of technology.

Finally, everybody who accepted the idea of the European Union ought to accept the idea of a uniform criminal procedure.

Mr Rosario Giorgio COSTA *(Italy)*, Finance Committee, *Senato*

Mr Costa considered that education was fundamental. Starting at school, we should 'construct' an ideal of the European citizen and promote respect for the State budget as if its money were our own. This was a measure which could be initiated very quickly.

Another possibility in the field of education would be to establish a specific university discipline concerned with Community finances and their regulation. Banks could be involved in this, and could for example manage Community aid.

Mr Michele SAPONARA *(Italy)*, Committee on Judicial Affairs, *Camera*

Mr Saponara said that Italy was particularly open to the idea of adopting an overall strategy for fighting crime; the work of Judge Falcone had clearly demonstrated this. Numerous university porfessors, judges and Members of the European Parliament had likewise performed studies which could be taken as a basis for debate.

Mrs Theato observed that Italy had established special bodies which had no equivalent in other countries, such as the 'Guardia di Finanza'. Moreover, eminent Italian scientists and jurists had signed the 'Geneva appeal'.

Mr Michael AHERN *(Ireland)*, chairman of the Joint Committee on Finance/Public Services, *Dail Eireann*

Mr Ahern, said that Ireland was seeking to develop cooperation with the Member States to combat fraud (especially in relation to drugs) and international crime, as well as with the USA, the countries of Central and Eastern Europe, Russia, Asia and Latin America.

New methods of cooperation should be ceaselessly explored, and this was indeed being done by the various government agencies, police forces through Europol, courts and customs and authorities. The suggestion by France that interparliamentary working parties should be set up was an extremely interesting one, and deserved to be looked into.

By way of information, the speaker added that the Irish Government was going to publish an important white paper on organised crime which would take account of the possibilities of international cooperation. The Committee on Finance/Public Services had reviewed the country's financial services, identified certain illegal practices and advised that a single financial services authority should be set up. The government had accepted the proposal, and work was in progress to implement it.

On 20 November 1997, an action plan for fighting crime had been adopted. A single national body had been made responsible for coordinating all measures to combat organised crime. It was important not to create any new bureaucracy but to institute a flexible agency as quickly as possible. A crime analysis bureau had been set up to exchange data. The big priority was a united front against international crime.

Mr Nicolas ESTGEN *(Luxembourg)*, Finance Committee, *Chambre*

It would be a mistake to underestimate the extent of public concern about international crime, whose activities were barely hampered by the barriers established at the Union's external borders. The citizens of Europe had a right to be protected against crime of all kinds and to enjoy the protection of international and Community legal instruments, including the European Convention on Human Rights.

Public opinion in Luxembourg acknowledged the efforts which had been made by the Community institutions to fight crime. Generally speaking, the initiatives adopted to this end were uncontentious to the extent that there was no danger of their disrupting judicial systems or conflicting with the philosophical and sociological foundations of the established systems.
In support of this assertion, attention should be drawn to the Luxembourg Government's memorandum on the 1996 IGC. This document formally recognised the need to act as resolutely and effectively as possible against the scourges of rising international crime, terrorism and clandestine immigration.

According to the Luxembourg Government's memorandum, the reasons why intergovernmental cooperation had not produced the tangible results which its initiators had anticipated were as follows:

- the complexity of the matter and the sensitivity of the fields concerned, which went to the heart of the Member States' sovereignty;

- decision-making by unanimous vote, which was a precondition for the adoption of legal instruments under Title 6;

- the optional conferment of powers on the Court of Justice of the EC, which had proved to be a major obstacle to the adoption of conventions;

- the five-level working structures, which acted as a considerable brake on decision-making.

The Luxembourg Government would be happy to increase the opportunities for meetings between Members of the European Parliament and of national parliaments in order to exchange views and arrive at a consensus.

The great French poet Paul Valéry had said that people could achieve precisely as much as they were determined to ('les esprits valent ce qu'ils veulent'). That was true of us too - provided that we were really determined.

Mr Humphrey MALINS (*United Kingdom*), Home Affairs Committee, *House of Commons*

I understand of course that we are discussing issues today that are of great importance, but also to the EU, its institutions and its peoples. But do not let us make the mistake of believing that some of these issues are of any real interest to 99.9% of the people of Europe, who, if the people of Great Britain are anything to judge by, are blissfully ignorant of some of the issues that we are discussing. It is vital that we explain these issues to our people and that we carry them with us in our arguments. So when I find myself asked, has the phenomenon of transnational organized crime recently been the subject of public debate in my country, the answer is "no". It has not. If I am asked, do matters such as the fight against corruption and fraud rank amongst the main concerns of the public in my country, the answer is "no". They do not.

Nobody on the doorstep ever talks to me about these issues. The concerns are with jobs, health, education, transport and other like issues. If I am asked if I have followed the debate launched in the institutions of the Union on the future of European policy in the area of criminal law, with a view to fighting crime, the answer is "no".

I have not and I suggest that in our own parliament, in our country, there is something of a lack of interest, which is unfortunate.

If I am asked how public opinion in my country has reacted to the proposal to standardize certain areas of Member States' criminal law or to coordinate criminal law provisions, the answer is, public opinion has not reacted because it knows nothing of these matters. Though I suggest that were it to do so it might proceed with great caution and might not be happy at some of the matters suggested, which is why I stress again how important it is that we get the message about these issues across to our people on the doorstep.

We talk of fraud and corruption affecting the EU budget. Forgive me if I am being over-simplistic when I say a word or two about this. One aspect of this must concern fraudulent claims against the EU budget and another is internal fraud or corruption. There are two matters which need reflection. The first is, and I apologize for saying it, the often negligent and occasionally corrupt manner in which the EU has disposed of its funds in the past. And secondly the corruption and bribery which remain endemic and indeed second nature amongst officials at local and national level in many parts of the EU. We need to introduce more efficient procedures and put them in place before disposals of EU funds happen. We have to learn hard lessons about efficiency and the stamping out of corruption both away from home and also quite close to home. Obviously

UCLAF has a vital role to play in the coordination of fraud prevention but from what I understand the Court of Auditors has been critical of that body, saying that it has had hitherto too few staff, of whom only about a quarter have been either suitable or available for carrying out investigations. If that is the case, that must be put right and if extra staff are needed, if higher qualified staff are needed, if higher salaries have to be paid to attract the most able candidates, that must be done. We have a similar parallel in our own country where we introduced the crown prosecution service some years ago which was hopelessly underfunded, hopelessly undermanned and hopelessly underpaid.

I believe that the question of drug smuggling and hard drugs finding their way round Europe is one of the greatest problems that we face. I sit as a part-time criminal judge in our courts in England and I say that the biggest contributor to serious crime in my country is hard drugs. And the greatest evil facing young people in my country today is hard drugs. Anything that we can do at European level to cooperate to stamp out this evil scourge is greatly to be applauded.

But my emphasis is mainly on cooperation between governments rather than on legislation. So if we are to talk about harmonizing criminal law provisions in Member States' legal systems, then I query that. It is certainly an emotive issue and would be an emotive issue amongst our people. The same applies to the concept of the European judicial area, a good idea in many ways but gain an issue which is controversial.

Rather I support wholeheartedly increased cooperation between a number of bodies. Firstly between police forces across Europe. In my country I regret to say that the minimum educational qualifications to become a member of our police force are far too low. We need to attract high calibre, well educated entrants to our police force who are capable of coping with the sophistication of the modern international criminality. That is not to say it is not an excellent police force but we do need a very high calibre of candidates in it. As far as Europol is concerned I would rather see it more as a liaison force, a databank for criminal intelligence rather than a European-wide police force. In any event, tremendous cooperation between different police forces across the European countries should be developed and cooperation also between the parliaments. How rare it is that we, from our parliaments, get a chance to have a discussion like this with you! How much I wish we could have it more often and cooperation also between our respective judiciaries!

1.3. Debate

Mr Per Brix KNUDSEN, Director of the UCLAF, Commission

It is essential that monitoring systems should be based on sound and simple foundations and should operate in accordance with criteria which can readily be understood and applied.

One of the major problems lies in the fact that before discussing how to improve monitoring of judicial procedures and their effectiveness in cross-border cooperation, it is necessary to ensure that the parties concerned are properly informed about the fraud, corruption and international crime in general that they are required to combat.

The reliability of monitoring systems, which are there to ensure that systems function, itself poses problems. The existing monitoring systems are not effective enough to detect fraud.

There is another important point: the principle that Member States are accountable to the Union for funds which have been lost, diverted, because of the ineffectiveness of procedures in the Member States. There are problems with a system which has existed for years in agriculture. It is now being applied to the Structural Funds, but not yet to traditional own resources, i.e. the resources which Member States collect for the Union.

It is not in fact the best solution. It comes down to saying that the Union must be recompensed for any lack of control in the Member States concerned. However, it is a good fallback strategy if one wishes to protect the finances of the Union.

It is also necessary to bear in mind that, when it comes to financial crime, not very much is ever recovered anyway. It is important not to punish Member States for being more efficient at detecting fraud. The Member State should not be held responsible when we know that there are funds which will be impossible to recover, whatever happens. It is important not to penalise the countries which in fact are acting most effectively.

Appropriate cross-border cooperation needs to be organised between police forces. In the short term, the cross-border cooperation system must be developed, particularly in the judicial field, without encroaching on national policing and investigative powers or on existing national judicial procedures. Even without interference, there is scope for considerable progress.

For example, in a country like Spain, where tax fraud is rife, some interesting results have been achieved. In the tobacco market, fraud has been reduced from 17% to 5% thanks to close coordination of police and judicial action, both inside and outside Spain. Blitzes have been conducted against organised crime, its modus operandi has been detected and defined and it has been dismantled. Switzerland has also been involved. Cross-border cooperation, both administrative and political, is essential.'

Mr Rinaldo BONTEMPI (PSE, Italy), rapporteur for the Committee on Civil Liberties and Internal Affairs, EP

The current situation can no longer be tolerated: 80% of the citizens of Europe are worried about internal security.

It is necessary first of all to take a look at the Amsterdam Treaty and the new lines of action it affords. The Treaty is disappointing in some respects, but as far as the area of freedom, justice and security is concerned, it contains some innovations and offers us new possibilities and indeed new instruments. In defining the area of freedom, justice and security, one of the limits is derived from the requirements of democracy: how can action be taken in the field of the criminal law while respecting fundamental rights? This is a first extremely important limit.

There are also specific novelties which are worthy of mention, one being a kind of unification of fundamental criminal law: Articles 1 to 8 of the *Corpus Juris* define eight specific offences (fraud against the Community budget, market-rigging in connection with the award of contracts,

corruption, abuse of office, misappropriation of funds, disclosure of secrets pertaining to one's office, money laundering and receiving, conspiracy), and Article 9 defines the penalties for them. This is a novelty which ought to be exploited.

It will be possible for conventions to be replaced with framework decisions. The jurisdiction of the Court of Justice of the EC is recognised.

It is not acceptable that conventions such as that on the protection of the European Communities' financial interests have not been ratified. Among those which have been, Europol is the only one which is of any genuine use. What has been achieved with regard to the police should also be done in the judicial field.

Other practical proposals would make it possible to achieve progress, such as direct communication between judges, shorter time limits for letters rogatory and anything which could promote practical cooperation between judges. The *Corpus Juris* opens up a major new avenue, displaying real vision. If one wishes financial interests to be protected, an innovative instrument is required.

Adopting a number of uniform standards accords with the programme against organised crime adopted by the Council and with the Amsterdam Treaty. Thus the *Corpus Juris* could enable the European Union to play its proper part vis-à-vis its citizens.

The legitimacy of the European Union is at stake.'

Mr Roy James PERRY (PPE, UK), Committee on Budgetary Control, EP

In the United Kingdom sadly the particular problem with tobacco is one that is getting worse. This weekend we have had figures reported, I think I have these figures right, that estimated revenue from tobacco taxes has had to be scaled down from 8.9 billion to 8.3 billion pounds. That is a loss of some 600 millions - getting on for ten percent less than that which was anticipated. And to paraphrase the words of President Reagan: 600 million here and 600 million there, soon you are talking about very, very large sums of money. Indeed the British customs and excise came up with a project called "mistletoe" where they are going to apparently stop the whole army of transit vans that take tobacco illegally from the continent of Europe to the British Isles.

I have been involved in these problems by the temporary committee of inquiry into transit fraud. The lesson I learned from that was that it was very easy to spread the blame, there was a great tendency at the European level to say 80 percent of this problem is at the national level and it is the national level that are not doing enough. Equally of course it was possible for people at national level to say it is Brussels. I think that some way or the other we have to get over that.

If the customs services across Europe could act as if they were one and were to appreciate that money lost in one country was going to be picked up by somebody in another country and that we would all be suffering as a result of that, that really would be a big help.

I have been involved in another area: the former British Prime Minister John Major established a joint working group of members of Parliament and members of the European Parliament to work together.

Again the lesson I learned from that is that actually there is a lot of ignorance on the part of members of the national parliaments about what is done and what the powers are in Europe and vice versa.

I really do believe that we have to find some way by which the politicians, at a national and a European level, can work together to address a problem that after all is a common problem. We may be quite sure that the organised criminals and gangsters have no problems working together.

Mrs Anne BAASTRUP (*Denmark*), vice-chairman of the European and Legal Affairs Committee, *Folketing*

Does the Union have sufficient means in this field? Has the legal framework been completed? Is the fight against fraud a priority for the EuropeanUnion?

Mr Roy James PERRY (PPE, UK), Committee on Budgetary Control, EP

I am always tempted to say that things are different on the continent, but I will not. When the British representative said, it is in the remarks, that 99.9 percent of the UK population have no interest in what this conference is trying to achieve, he was probably right, but there is a reason for that. In the UK media you will never find a good European story. If it is a European story it is a bad story.

I will give you what I think is a good example. This conference will probably get no coverage in the UK. And yet it is about how to solve problems. How the Member States and the Community have to work together. But next week, when it is the Court of Auditors' annual report, the papers will be full of Euro fraud.

The one thing about this conference is that we have all agreed on the same goals.

Mrs Charlotte CEDERSCHIÖLD (PPE, Sweden), committee on Civil Liberties and Internal Affairs, EP

We cannot continue to focus on the differences. We must concentrate on what we can take forward: otherwise we shall end in deadlock. The most important thing to my mind is that we should first reach agreement here on what we wish to achieve and then discuss the common preconditions for achieving it, so that we can arrive at a common approach to how we intend to move ahead. One practical example is a European public prosecutions authority, in response to which an awful lot of people will stand up as one man and say "No, we cannot have that". But if instead one speaks of a legal authority to which one can put questions, from which one can obtain information, where prosecutors can learn about the law of evidence in other countries, get help in

handling evidence in such a way that its value will not be lost - the vast majority of people respond positively to this idea.

Mr Herbert BÖSCH (PSE, Austria), rapporteur on OLAF, EP

When we refer to European financial resources, we are also talking about national funds. The committee of inquiry into the Community transit system showed that funds diverted from the Union budget actually represented only a quarter of the total amount of money which had been diverted, the other three quarters coming from national budgets.

This is a good time to think about the necessary strategies to protect the budget. A discussion has begun concerning the future structure of the Union's own resources. So far, we have heard a lot about who should contribute how much to the budget. National parliaments and the European Parliament ought to give more consideration to how to ensure that the money reaches the intended recipients.

2. Legal proceedings

2.1. *Introduction*

Mrs Diemut THEATO (PPE, DE), chairman, Committee on Budgetary Control, EP

Three preconditions should make it possible to establish a European judicial area:

- judicial control
- harmonised basic criminal law
- political control.

These three conditions are particularly well suited to the shared objective of protecting the financial interests of the Union and protecting its citizens.

Judicial control

It has been noted that where collaboration to fight crime is concerned, difficulties arise immediately because there is no coordinating institution. Which institution could take on this task? Europol was not set up with this aim in mind, and does not appear to have the requisite legal basis for it. For economic reasons it would be desirable to opt for an existing institution operating in the field of information. What about UCLAF? What are the arguments in its favour?

It can carry out administrative checks on the spot, and it can gather evidence for submission to the criminal-law authorities. This organisation already has access to the Commission's databases. It will shortly acquire a status which will assign it a fundamental position. UCLAF already has relations with the judicial authorities in the various countries. It would accordingly be relatively

easy to entrust coordination and information tasks to it in all cases of cross-border offences and cross-border investigations.

Operationally, the problem of judicial control arises: this does not fall within UCLAF's information and coordination remit. Real judicial control could be exercised by a European Public Prosecutor's Office, which could enter into dialogue with European police authorities. The European Public Prosecutor's Office, which could only be set up by means of an amendment to the Treaties, could be based on the model of the *Corpus Juris*, national authorities being responsible for criminal proceedings. This system should be flexible, in order to adapt to the constitutional problems which have been raised by various parliaments.

What European police authority could enter into genuine dialogue with this European Public Prosecutor's Office? For the time being I do not wish to answer this question, but I nonetheless consider that UCLAF constitutes a kind of embryonic police force. If its status is changed, it should be empowered to take on certain CID tasks and could probably work with the European Public Prosecutor's Office and with national police authorities.

A harmonised basis for criminal law

The creation of European bodies to combat fraud and corruption at the institutions would not make sense without harmonised definitions. For years, the European Parliament has been fighting for the harmonisation of national criminal provisions. Whereas the Europol Convention was ratified unanimously by the parliaments of the Union, the Convention on the protection of the European Communities' financial interests has yet to be ratified by a single Member State.

Behind the technical difficulties involved there probably lurks a certain distrust among members of parliament with regard to the idea of harmonising such a field as the criminal law, which is a reserved field in all parliamentary democracies.

If there is a genuine desire for international cooperation in the field of the criminal law, it will be necessary to pay the price for it and to have appropriate instruments.

Legislation and procedures would have to be applied which are not yet covered by national legislation. Article 280 of the Amsterdam Treaty contains provisions on combating fraud and provides for codecision by the European Parliament and the Council, with limits set by the subsidiarity principle.

Political control

The last precondition for creating a European judicial area is political control. This task is already partly entrusted to the European Parliament, which grants the Commission discharge for the budget after checking the exactitude and correctness of the latter's expenditure. But there should also be checks on the application of the criminal law at European level. This function can only be exercised by a democratically elected body, a body capable of ascertaining that the system has worked and which - if it has not worked - can take measures to correct it.

This objective is not unattainable. We need only decide to attain it.

Mr John VERVAELE, expert of the Center for Enforcement of European Law, Utrecht [10]

In the early 1990s, Ministers of Justice and Home Affairs had asked the Commission to carry out a comparative study of ways in which Community law was applied in Member States. This had yielded interesting conclusions, which had served as a basis for the development of instruments to defend the financial interests of the European Union within the framework of the first and third pillars in the form of regulations and conventions.

A second study had been undertaken at the request of the European Parliament, in collaboration with the Directorate-Generale for Financial Control and UCLAF, resulting in the *Corpus Juris*.

The third stage was the transposition of the *Corpus Juris* into national law. What was happening by way of follow-up to this project? The study group was considering the extent to which national systems (constitutions and criminal law) were compatible with the *Corpus Juris*.

The debate did not concern the question of the legal basis (would it come under the first or third pillar?); the main issue was the applicability of the *Corpus Juris*, the effectiveness of its operation, the level of protection of financial interests it would afford.

When the *Corpus Juris* was being drafted, judicial traditions in the various Member States had first been examined. The *Corpus Juris* proposed a solution midway between common law and civil law. In recent years, enormous efforts had been made to harmonise these two types of law. A balance had been sought between the main, basic principles of these two systems of law.

The *Corpus Juris* was based on the Union's *acquis*, particularly in the form of third-pillar conventions, the proposed harmonisation of criminal law (on fraud, corruption, money laundering, etc). This study was intended to:

(a) supplement information on the compatibility or otherwise of national systems with the *Corpus Juris*,

(b) modify various points in the text of the *Corpus Juris* in the light of the information gathered,

(c) draft implementation provisions for the transposition of the *Corpus Juris*.

Ultimately, the *Corpus Juris* would have to be analysed from the point of view of the Treaty in order to assess its compatibility. The intention was to see whether national investigations/prosecutions could be supplemented with a Community dimension.

In the past it had been found that purely national solutions were inadequate. The application of traditional international law, likewise under the third pillar, was not enough either.

The Union could only benefit from the introduction of greater cohesion and compatibility between the fifteen Member States' criminal investigation and prosecution systems and criminal law. It was necessary to work towards a genuinely European system of criminal investigation. This was essential for the development of the European Union. A specifically European criminal investigation system could be tested. That was the aim of the study.

Other issues relating to horizontal and vertical cooperation were analysed. 'Horizontal cooperation' meant cooperation between the authorities of the various Member States (e.g.

10 Mr Vervaele represented the Commission's study group which was examining the compatibility of the *Corpus Juris* with national judicial systems in order to establish to what extent Member States' national law provided a basis for combating international crime effectively.

customs services, prosecuting authorities). 'Vertical cooperation' referred to cooperation between the competent authorities of the Member States and of the EU.

2.2 Point of view of national parliaments

Mrs Johanna SCHICKER *(Austria)*, chairman, Finance Committee, *Bundesrat*

The phenomenon of cross-border crime is a long-standing topic of public debate in Austria.

In 1997, new methods of investigating and fighting organised crime were introduced in Austria, particularly identified in the public mind with the key-words 'bugging' and 'mass computerised screening to identify potential suspects'.

As far as cross-border organised crime in the financial field, in particular, is concerned, the 1998 Criminal Law Amendment Act is worthy of mention: this transposed into domestic law the EU Convention and Protocols on protection of the European Community's financial interests and against bribery as well as the OECD bribery convention, thereby making it possible to ratify them.

The Act introduced a new offence of 'abuse of a subsidy'. In the light of the international legal acts, definitions of offences were also amended or supplemented. In particular, the following points were introduced:

1. Creation of an offence of abuse of a subsidy, particularly to implement the EU Convention on protection of the European Community's financial interests (Art. 153, Criminal Code);
2. Broadening of the definition of money laundering by deleting the lower limit of 100 000 schillings in order to improve harmonisation with the EC money laundering directive and by including smuggling and evasion of import and export levies;
3. Extending the definition of the offence of accepting a gift as a public official to include officials of other Member States of the European Communities, Community officials and members of Community institutions (Art. 304, Criminal Code);
4. Extending the definition of the offence of bribery as in the case of Art. 304 and, in addition, to foreign officials as referred to in the OECD bribery convention;
5. Increasing the maximum penalty for bribery as an inducement to dereliction of duty (Art. 307, Criminal Code);
6. Extending the definition of the offence of unlawful intervention to include foreign officials as referred to in the OECD bribery convention (Art. 108, Criminal Code);
7. Extending the definition of the offence of divulging official secrets to include those privy to Europol secrets, in accordance with the Europol Convention (Art. 310, Criminal Code).

In the run-up to these amendments of the criminal law, the subject was also publicly debated in Austria, although combating corruption and fraud are of course an important concern for the citizens of our country, albeit not at the very top of their list of priorities. The work of the Austrian Member of the European Parliament Herbert Bösch helped to keep this subject in the public eye through the media.

Opinions on harmonisation of European criminal law are divided. Some people believe that it is very important, while others consider that the criminal-law systems which we have in Europe

have grown organically, and that radical harmonisation must remain a very long-term project. At all events, minimum standards should exist in certain fields of the criminal law.

Institutional cooperation to protect the financial interests of the EU should be further developed particularly by stepping up judicial assistance and police cooperation. However, more intensive cooperation with the Commission's anti-fraud agency, UCLAF, is also important in this connection.

There is no need to assume that cooperation between the investigative bodies of the Member States and the European Union necessarily requires harmonisation of the administrative and criminal-law provisions of the Member States. It is possible to cooperate successfully without greater harmonisation. It is important that confidence should be felt in partner countries' legal systems. As already mentioned, far-reaching harmonisation is a long-term and difficult process.

Mrs Patrizia SCHULZ (*Germany*), European Affairs Committee, *Bundestag (secretariat)*

During the recent parliamentary term, protecting financial interests had been a priority for the Legal Affairs Committee, the Internal Affairs Committee, the Finance Committee and the European Affairs Committee. With regard to the Convention on the protection of the European Communities' financial interests, the ratifying legislation required for transposition had been adopted in the Bundestag. Realising that European harmonisation was needed in order to protect financial interests, the Bundestag had sought to adopt all the necessary legislation before the September 1998 elections; the ratification acts had been adopted in plenary on 24 June 1998. The Bundesrat had endorsed them on 22 September 1998.

As regards the second additional protocol to the agreement, however, no ratification act had been debated in the Bundestag; thus no start had yet been made on transposing it into national law. For the time being, the federal government had not presented any report shedding light on the problem.

There had not been a parliamentary debate on the *Corpus Juris* in the Bundestag, nor, therefore, had the Bundestag adopted any official position with regard to it.

Mr Henrik LAX *(Finland),* chairman, Legal Affairs Committee, *Eduskunta*

The *Corpus Juris*, a European judicial area - the way I see things, we already have a European judicial area in the form of the corruption convention and additional protocols, even though their ratification is not yet complete. Accordingly, I regard the *Corpus Juris* as an ambitious attempt to broaden and deepen this judicial area. The *Corpus Juris* manifestly raises many sensitive issues, for example the choice between action at Union or national level, and the text will undoubtedly be amended many times before it enters into force, if indeed it ever does. As I noted yesterday, Finland for its part has already approved and harmonised its criminal-law provisions in accordance with the conventions already signed. We in Finland are prepared to go further in harmonising criminal-law provisions, although we may encounter certain difficulties, for instance when it comes to adopting more precise definitions of various offences - but in spite of everything, these are minor difficulties in this context.

When it comes to the actual sentences and their execution, the *Corpus Juris* contains proposals which deviate quite radically from Finland's existing provisions, and this will naturally cause problems. As regards criminal procedure, Finland has just recently completely overhauled and

reorganised its prosecution system. The reform was preceded by a wide-ranging debate on issues of principle, and it is quite clear that the possible establishment of a European Public Prosecutor's Office would also require amendments to our constitution. As we all know, amending any constitution is a time-consuming and intricate process. It is proposed that the European Public Prosecutor should be assigned very far-reaching powers, inter alia in the field of preliminary investigations; the power to use means of compulsion, such as telephone tapping, something which we have just recently made possible for our police authorities in Finland for the first time. It was by no means politically easy to introduce these powers at national level; I am sure it would not be any easier to establish supranational powers in the same field.

I should like to conclude with a few words about the courts. Here too we have implemented a complete reform, which was actually only completed last year. This proposal lays down, inter alia, that offences against the Union's economic interests must be dealt with by a court consisting solely of professional judges. In Finland, after thorough consideration, we decided in favour of retaining a kind of lay magistrate system at first instance. We face problems here if we are required to harmonise our judicial system with the *Corpus Juris* in its existing form. Many speakers here have criticised Member States' reluctance even to adopt the means made available by the Amsterdam Treaty and the corruption convention. It seems, therefore, as if the establishment of a European Public Prosecutor's Office could be a very long way off yet, but I believe that it is worth keeping the idea of such an authority alive. To my mind this could promote change, and it is important not to lose momentum in this area. A first step in this direction, it seems to me personally, could be to see what practical measures could be taken to coordinate matters here and ensure that the Union gives national authorities unambiguous encouragement to prosecute offenders. This first practical step could surely teach us much, and perhaps also to some extent demystify the idea of the European Public Prosecutor.'

Mr Pierre FAUCHOM *(France)*, Committee on Legislation, *Sénat*

There was much talk about international crime, but that did not necessarily mean that enough was known about it. In reality, there were various aspects to it: fraud against Community rules, drug trafficking, arms tracking, terrorism, and so on. All these led to different methods of laundering money and to the accumulation of probably very large sums of money.

Mr Fauchom had met French judges who had participated in the 'Geneva appeal' and who had told him that the amount of money invested in tax havens or, in various guises, in various different banks was under-estimated. During the current financial crisis there had been much talk of the role of American pension funds and savings funds, but it was quite possible that these other sources of funds were just as important, even if their role was inadequately recognised.

It would be interesting to carry out a study to assess the extent of the problem.

If there was one case where the subsidiarity principle ought to operate in favour of the highest level, this was it. Nations acting in isolation were technically ill equipped to combat an international phenomenon; objectively speaking, timidity in these areas was tantamount to complicity.

Mr Fauchom remembered having accompanied the French Minister of Justice at a colloquium on international crime in Naples. They had spent three days discoursing on these great issues without arriving at any practical resolution, however slight. Mr Fauchom had said to the Minister of Justice: "This is all very disheartening; let's hope at least that the Mafia pays for colloquiums like this one." It was primarily in the Mafia's interest that the debate should continue from conference

to conference with the participants pretending to resolve the problem but not genuinely seeking to do so.

Clearly, there was a need to move on from harmonisation to unification when that became possible, which raised the problem of the *Corpus Juris*. Mrs Theato had concluded that a political authority was needed to oversee everything because no technical organisation could take on this task.

In the context of the second pillar there had been much talk of a 'Mr CFSP', but no sign of his arrival. One should start to consider the possible role of a 'Mr Rule of Law' who would assume this overall responsibility and would emanate directly from the Council of Heads of State and of Government.

The technical tasks ought not to present any great difficulties. On the subject of the *Corpus Juris* it was important to bear in mind that the result we were striving so painfully to achieve had been achieved previously in much the same geographical area by the Romans, and that their version of it had worked admirably.

Who would take the initiative to get the process started? The European Parliament was the legitimate institution to take initiatives and, perhaps, to inaugurate a process of interparliamentary cooperation which would make it possible to spur on the other partners sufficiently to break the current log-jam. There was certainly plenty of scepticism on the subject. But on the eve of 11 November one could reasonably say that nations which had been capable of conducting two world wars in 30 years might also be capable of producing a *Corpus Juris* within a period of a few years.

Mrs Märta JOHANSSON (*Sweden*), Justice Committee & European Affairs Committee, *Riksdag*

Was the *Corpus Juris* compatible with the Swedish Constitution? Some articles in it were not. The European Public Prosecutor would have powers in Sweden: that was not possible, because those powers were reserved for the Swedish Public Prosecutions Department. As for freedom of the press, freedom of expression, the *Corpus Juris* violated Swedish law by providing (in Article 34) that the media are banned from publishing information at this stage [at the time of hearings before the judge of freedoms] relating to the evidence[11]. The procedure for amending the Constitution was very complex, and when it came to freedom of the press and freedom of exprssion, it was very unlikely that any amendment could be made.

Was the *Corpus Juris* compatible with Swedish criminal law? With the exception of Article 11 of the Swedish Criminal Code, it was possible to take the view that it was. The rest of the provisions did not present too many problems.

11 Article 34 – Publicity and secrecy

1. – Investigations carried out under the authority of the EPP are secret and authorities participating in these investigations are bound to respect the rule of professional secrecy.
2. – Hearings before the judge of freedoms may be published if all parties consent to it, unless publicity would be likely either to harm either the smooth running of the investigation, or to damage the interests of a third party; or endanger public order or morals. In any case, the media are banned from publishing information at this stage relating to the evidence.
3. – The judgement must be given publicly, but access to the court may be denied to the press and the public, during all or part of the proceedings, under the conditions stipulated in Article 6(1) ECHR. Publicity may include recording and broadcasting the proceedings audiovisually if the national law of the State concerned allows it and under the conditions which it imposes.

Liability of legal persons existed only in the context of economic offences.

In theory, it would be possible to allow a European authority to exercise certain criminal-law powers in Sweden, provided that the Swedish Criminal Code was amended first. Sweden had no judge responsible for adjudicating on issues of freedom in the broad sense, nor any provisions concerning the use of illegally obtained evidence. Important amendments would therefore need to be made to Swedish legislation in order to incorporate the *Corpus Juris* in it.

Mr Nicolas ESTGEN *(Luxembourg)*, Finance Committee, *Chambre*

Luxembourg intended to ratify the EU Council's anti-fraud instruments in full. A bill to authorise ratification of the Convention on the protection of the European Communities' financial interests of 26 July 1995 and the protocol to that Convention of 27 September 1996 was currently before the Council of State, awaiting its opinion. As for the second protocol, of 19 June 1997, the legislative approval procedure would be initiated after the EU Council had adopted the explanatory report relating to it.

Articles 7 to 11 of the second protocol to the Convention on the protection of the European Communities' financial interests of 26 July 1995 instituted the principle of and arrangements for cooperation and exchanges of information between the Member States; under Article 7(1), second subparagraph, the Commission was to provide all necessary technical and operational assistance to facilitate the coordination of investigations undertaken by the competent national authorities.

At this stage, and until such time as it was possible to assess the practical implementation of these provisions and of any problems which might arise in practice, Mr Estgen considered that it was neither necessary nor desirable to go beyond this.

It was worth recalling that, as regards the transfer of powers, both the Parliament and Government of Luxembourg had constantly argued in favour of stepping up cooperation in the field of justice and home affairs.

As regards the attitude of the citizens of Luxembourg to the idea of the European judicial area, it would be possible to arrive at a considered position only once the concept had been clearly and precisely defined, which was still not the case. Members of the public had only a vague idea of the existence of one jurisdictional institution or another.

In this context, a word of warning was appropriate. It would be extremely damaging to paint the benefits of a European area in glowing colours without having first studied the pros and cons, without having analysed public opinion, before which a major information campaign would be required. It would be wrong, therefore, to act overhastily and, as a result, without common sense or realism.

The Grand-Duchy of Luxembourg was in favour of harmonising judicial procedures. Harmonisation in this field was essential to enable Europol and UCLAF to work effectively.

On the subject of fighting crime, the effectiveness of the instruments available to the Member States must be improved at all costs. Experience of Europol and UCLAF confirmed that investigations by these organisations were effective; this was especially true of Europol's ability to detect criminal operations. However, serious problems, calling into question the effectiveness of this work, arose after the offenders had been identified, at the prosecution stage. It was necessary to bear in mind that in comparison with the scope available to some partners, certain

countries like Luxembourg had relatively limited resources and stood to gain a great deal if the potential of Europol and UCLAF were enhanced by harmonising judicial procedures.

It was through the contacts established between UCLAF and officials at public prosecutions departments, examining magistrates' offices and national administrations, when dealing with specific cases of fraud against the financial interests of the Community, that the value of this cooperation had already been established.

Maintaining these contacts by holding regular seminars to exchange experience and information on technical aspects of the fraud detected could help to develop this cooperation.

Mr Manuel NIETO (*Spain*), Committee on Economic and Financial Affairs, *Senado*

As soon as one introduces free movement of capital, it is essential to create the conditions and designate the instruments, both individually and for purposes of cooperation, to fight effectively the international crime which such movement of capital can generate and is generating.

It is necessary to tackle by means of appropriate judicial instruments any cases of corruption which may occur and which damage the objectives of the various budget expenditure programmes. Measures are also called for to protect the Community budget.

With the entry into force of the Amsterdam Treaty, its new Article 280 firstly provides us with a legal basis for Community legislation against fraud, to be adopted under the codecision procedure, and secondly obliges the various national administrations, including those responsible for pursuing fraud jointly with the Commission, to cooperate.

We consider that previous harmonisation of the fiscal treatment of interest on capital would help to prevent the offences committed in relation to it.

Conditions surrounding criminal proceedings should be such that the preliminary judicial examination can always be carried out with the full cooperation of the authorities of any other Member State where the proceedings have an impact. In particular, means must be provided to guarantee that cooperation is provided swiftly enough and that proceedings do not fail.

Where offences are committed multinationally, the lack of a responsible European authority to take control of criminal proceedings along the lines proposed, the *Corpus Juris*, makes itself felt.

In the field of prevention, we consider that, with due regard for their different characters, the education systems of the various Member States could help to foster a sense of European citizenship.

Mrs Anne BAASTRUP (*Denmark*), vice-chairman of the Legal Affairs Committee, *Folketing*

I do not believe that the European Parliament should be the only democratic body responsible for control under the third pillar. In Denmark, for instance, several committees analyse issues in detail. The Danish Parliament has just as much power in relation to the third pillar as in relation to the first. The debate on the *Corpus Juris* is very lively, not because we do not wish to combat fraud but for a far more fundamental reason: like other Member States, we have a legal order based on a culture which has 'matured' in the course of several centuries. It is dangerous, therefore, to impose new criminal-law systems which disregard the national States. This would destroy the traditional legal order and would alienate the public from a criminal law with which they could no longer identify.

We ought to act quickly, efficiently and with commitment, developing practical cooperation among the various bodies responsible for preliminary judicial examinations. Periodic common reports should be drafted. Rules should be introduced to harmonise the definition of the concept of fraud and to place fraud and other offences against the financial interests of the Union and against national interests on an equal footing. As regards the European Parliament, it should above all adopt readily comprehensible rules for its own action, in order to cultivate public awareness as satisfactorily as possible. We need to be aware that the public are not eager to see cross-border measures developed. In particular, the Danish public are very aware of what goes on at European level and are often opposed to proposals to develop the EU. It is certainly necessary to take account of this. As the French representative has suggested, we shall propose the setting-up of an interparliamentary committee under the third pillar. I hope the conventions will be ratified soon, and I would recall that under the Amsterdam Treaty conventions may be implemented even if not all countries have yet ratified them. Lastly, I think that police cooperation should be encouraged and should, for example, also involve joint training programmes with police forces in Central and Eastern Europe which have local mafias to contend with.

Mr Salvatore SENESE (Italy), Justice Committee, Senato

Those who have observed that the citizens of the various Member States were not interested in fraud against the financial interests of the European Union and are concerned rather about problems which have a direct impact on their daily lives are no doubt right about this. Even so, it is equally true that these same citizens are far more aware than one might suppose of corruption, abuses and misuse of their money by public institutions.

The task for the European Parliament and national parliaments is to inform public opinion that fraud and corruption against the financial interests of the EU affect them in the same way as fraud and corruption against national, regional or local budgets.

Unless this European area, which permits the free movement of persons, goods and capital, is accompanied by a European judicial area, that will merely strengthen the hand of fraud and corruption. Some have said that rather than undertaking the extremely difficult task of unifying criminal law, it would be better at first to concentrate on prevention, but a battery of effective penalties under the criminal law to enforce respect for fundamental rights is a sine qua non for any preventive action.

The *Corpus Juris* is in some ways a visionary project, which would make it possible to embark upon a medium- and long-term action programme. No doubt it will take years to attain it, but that is not a sufficient reason not to start this work straight away.

Some technical problems have been identified. If problems are identified, proposals for overcoming the difficulties ought at the same time to be made. The point of departure in defining the problem is an observation: the Amsterdam Treaty does not provide an adequate legal basis, in relation to Italian law, for action by a European Public Prosecutor. The new Article 280(4)[12]

12 Article 280(4) of the Amsterdam Treaty: 'The Council, acting in accordance with the procedure referred to in Article 251, after consulting the Court of Auditors, shall adopt the necessary measures in the field of the prevention of and fight against fraud affecting the financial interests of the Community with a view to affording effective and equivalent protection in the Member States. These measures shall not concern the application of national criminal law or the national administration of justice'.

excludes from the scope of the measures to which it refers not only the application of national criminal law but also the administration of justice in the Member States. Under the Italian system, the concept of the administration of justice covers not only the jurisdictional aspect of the decision but also the period of the investigation by an independent magistrate.

The first problem is that of the compatibility of Article 19 of the *Corpus Juris* (seisin of the EPP and opening of proceedings) with the principle, as laid down in the Italian Constitution, that prosecution is compulsory. Article 19(4)(b) lays down that the EPP may "drop the case, if the accused, having admitted guilt, has made amends for the damage caused and, as the case may be, returned funds received illegally". This compatibility problem could easily be overcome by providing for the possibility of extinction of criminal proceedings.

The second problem concerns the compatibility with compulsory prosecution of Article 19(4)(c) of the *Corpus Juris*, which provides that the EPP may "grant an authorisation for settlement to a national authority which has applied for it", according to the conditions set out in Article 22(2)(b). In this case too, the problem could easily be overcome by providing that the national authorities can propose to the EPP an authorisation for settlement.

On the other hand, the problem of compatibility with the Italian Constitution is more serious in the case of the provisions of the *Corpus Juris* concerning identification of the court which has jurisdiction.

Article 26 (trial) of the *Corpus Juris* lays down (paragraph 2) that "each case is judged in the Member State which seems appropriate in the interests of efficient administration of justice, any conflict of jurisdiction being settled according to the rules set out hereafter (Article 28). The principal criteria for the choice are the following:

(a) the State where the greater part of the evidence is found;

(b) the State of residence or of nationality of the accused (or the principal persons accused);

(c) the State where the economic impact of the offence is the greatest."

The criteria laid down in Article 26(2) are too vague and flexible to enable the provisions of the Italian Constitution to be respected. It would therefore be desirable to make them more precise so as to reconcile them with the Italian Constitution.

Other obstacles would be difficult to overcome. The requirement under Article 19(1) of the *Corpus Juris* for national authorities to inform the EPP at the latest when a suspect is "formally 'under investigation'" (in the sense of Article 29(2) of the *Corpus Juris*) or when coercive measures are employed (particularly arrest, searches and seizures or when a person's telephone is to be tapped) is contrary to the principle that prosecution is compulsory, as laid down by Article 112 of the Italian Constitution.

Withdrawing such cases from the cognizance of the national courts would violate the principle that only Italian courts have jurisdiction (Articles 101, 102 and 104 of the Italian Constitution).

The exclusion by the *Corpus Juris* of any pardon or amnesty is likewise problematic in relation to the Italian Constitution.

However, it be wrong to give up. As regards the Italian Constitution, a possible solution would be to adopt a treaty or convention; Article 11 of the Constitution recognises the international principle whereby certain aspects of national sovereignty may be surrendered. The Constitution could be amended by means of reciprocity agreements. A convention or integration of the *Corpus*

Juris into the Amsterdam Treaty would no doubt make it possible to overcome these constitutional obtacles. Italy's assessment of the *Corpus Juris* is favourable.

Mr Michael AHERN, (*Ireland*), chairman, Joint Committee on Finance and Public Service, *Dail Eireann*

The Irish Parliament was currently reviewing all its anti-crime legislation, taking account of the complexity of international crime and new forms of crime, such as misappropriation of microfiches and of computer components, which were causing damage worth millions and were currently impossible to tackle. Ireland was thus updating its legal system while bearing in mind the need for a balance with human rights and freedoms. All necessary safeguards should be laid down by law.

In Ireland, the penalties for money laundering and drugs trafficking were relatively mild; this was a field where stricter provisions were needed and cooperation and joint action should be developed.

The Irish criminal investigation bureau had achieved some successes. The police authorities generally took part in joint operations with Europol; the government had undertaken to make funding available to enable the police to continue to fight organised crime.

The European proposals were ambitious and potentially worthwhile, provided that they were amended so as to arrive at a genuine European model.

Lord GOODHART QC (*United Kingdom*), *House of Lords*

There are many ways in which we could and should strengthen the war against fraud and corruption affecting the finances of the European Communities. These include:

- the ratification of the 1995 Convention on the protection of the financial interests of the European Communities, the strengthening of UCLAF or its replacement by a stronger and more independent OLAF,
- the creation of a simplified and accelerated extradition process,
- greater judicial cooperation, and, fifth, the adoption of the draft convention on mutual legal assistance subject to dealing with certain remaining concerns about civil liberties.

Should we proceed beyond these steps to adopt the *Corpus Juris*? The *Corpus Juris* includes many bold and exciting proposals. I believe that we in the United Kingdom would welcome a common body of substantive law against fraud in the institutions of the European Union. This would, among other things, remove the problems of dual incrimination in extradition proceedings. I am less certain about some other proposed procedural rules in the *Corpus Juris*. In this I am influenced by the fact that I come from a state which has two quite separate legal systems - one in England and Wales and the other in Scotland - which have coexisted successfully for nearly three hundred years and apply many of the same laws. Indeed, there is a third separate system in Northern Ireland. For example the *Corpus Juris* excludes jury trials. In the United Kingdom fraud trials have to have juries. There are indeed proposals to abolish juries in complex fraud cases in the United Kingdom. But these proposals are still very much a matter for debate and are far from adoption. The United Kingdom would be very unlikely to accept that there should be no juries in cases involving fraud on the European Community's finances, so long as frauds on the United Kingdom government or on private victims still require trial by jury. We

would be concerned by article 17(2) of the *Corpus Juris* which excludes the application of national laws against fraud where an action is criminal both under the *Corpus Juris* and under national law.

Also, the courts of the United Kingdom would be reluctant to accept that rules about the admissibility of evidence should be less strict in cases of European Union fraud than in any other type of criminal case. This is certainly the view of senior prosecutors who have been consulted on that question.

There are, however, other provisions of the *Corpus Juris*, such as the admission of the European Union as a 'partie civile' (joined party) which would be another novelty in the United Kingdom but might well be acceptable. Similarly the getting of evidence by video link is increasingly used in the United Kingdom and could well be extended to the European Union and other cross-border fraud cases.

The proposals for a European public prosecutor are again a matter of some difficulty to us. These proposals would involve a separate prosecuting body, to handle what would almost certainly be a limited number of cases in any one country. The national prosecuting authorities would have much greater experience of handling cases in their own national courts. And it might therefore be better to persuade the Member States of the European Union to set up special units within their own prosecuting authorities to prosecute frauds and to cooperate with each other for that purpose.

I therefore believe, like the representatives from the Scandinavian countries, that the *Corpus Juris* requires a good deal of further study and that immediate priority should be given to bringing into force and strengthening the other existing and proposed mechanisms for controlling fraud which I mentioned earlier.

2.3. ***Debate***

Mr Rinaldo BONTEMPI (PSE, Italy), Committee on Civil Liberties and Internal Affairs, EP

The *Corpus Juris* clearly poses problems. But why do not the parliaments of the Member States ratify the Convention on protection of financial interests? We have made progress in the economic and monetary field. Why can we not display our political will to make progress in the judicial field?

Mr Herbert BÖSCH (PSE, Austria), rapporteur on OLAF, EP

The European Parliament, Member States and the Commission are involved in the same work. The financial interests of the Community are not opposed to those of the Member States. In the cigarette sector, for instance, there is a good deal of fraud, and it has an obvious impact on national budgets. The public are not clearly aware of what is going on, and they make non-existent distinctions; it is a fundamental error to distinguish between the financial interests of the Union and those of the Member States.

The Union budget lends itself to fraud, perhaps because we enthusiastically took up the cause of the single internal market at a time when the protection of that market was in its infancy.

No one seems to realise that the ratification of the conventions and protocols adopted by the 15 is one of the main priorities in the Union. The European Parliament cannot do anything: it is up to national parliaments to act.

Mrs Diemut THEATO (PPE, Germany), chairman, Committee on Budgetary Control, EP

The Convention on the protection of financial interests must be ratified by all Member States before it can enter into force. The deadlines for ratification, which fell in mid-1998, have been missed. Moreover, in the eyes of the European Parliament this convention is in any case no more than a minimalist solution. A directive would have been preferable.

The Amsterdam Treaty provides encouragement, at European level and in the field of the criminal law, for filling the gaps in national legislation. This is a very sensitive field, where it is necessary to move cautiously, respecting the subsidiarity principle. It is not up to the European Parliament to arrogate powers to itself, but it is important to recognise where there are gaps in legislation. This has become clear when cross-border fraud against Community finances has occurred. The loopholes need to be filled. That is why the European Parliament should be looking to the future.

It is also necessary to ascertain to what extent the European Public Prosecutor can work in collaboration with national public prosecutors and what possibilities there are of setting up bodies to enable investigations to be conducted in each Member State.

National law needs to be supplemented, not replaced. This task is urgent.

Mr Per Brix KNUDSEN, Directeur, UCLAF, Commission

The *Corpus Juris* was presented at an interparliamentary conference. Parliament called for the relationship between the *Corpus Juris*, as a study, and the provisions of the national criminal code of each Member State to be studied. This is currently being done, and will make it possible to think and to debate further. A first study was begun in 1994, after the Essen summit. Then, at the end of 1995, the idea of a more detailed study, for which questionnaires would be sent to the Member States, was put forward. This work is now in progress; the results are expected to be presented before the end of 1999, first to the Council of Ministers, as part of a debate on this issue among the Ministers of Finance.

For the moment, the priority is for the Convention on the protection of the Union's financial interests to be ratified by all Member States and then enter into force. Once this has happened, once the national implementation measures have been adopted, it will be necessary to see how the Member States comply with the provisions of the Convention.

Mrs Anne BAASTRUP (*Denmark*), vice-chairman, Legal Affairs Committee, *Folketing*

In Denmark, a committee whose remit is to propose amendments to the criminal law with the aim of dealing more harshly with organised crime will be publishing a report shortly. We shall be happy to forward it to you when it is published.

Mrs Diemut THEATO, President of the committee on Budgetary Control, EP

The Amsterdam Treaty will increase our powers. We should be preparing for this right now. If measures are taken by the Danish Parliament to tackle economic and financial crime, it would be useful to take account of European data, in order to avoid too great a contrast between the way in

which the fight against fraud is conducted at European and national level. The initial situation in Europe in this respect needs to be taken into account.

It has been said that in the *Corpus Juris* an effort will be made to supplement national provisions where they contain loopholes. If the State does this itself, so much the better. That would represent distinct progress towards a European legal and judicial area, which is the ultimate objective.

Mr John VERVAELE, expert of the Center for Enforcement of European Law, Utrecht

Mr Vervaele did not conceal his surprise at the criticisms. Certainly, it would be surprising if a project like the *Corpus Juris* proved to be completely compatible with national laws and no work were required to apply it. The study group and national experts were thinking about the difficulties involved in transposing the *Corpus Juris* and trying to draft Community rules in this context.

When a new body of law was adopted, whether under the first pillar, the third pillar, traditional international law or the Council of Europe (e.g. the European Convention on Human Rights), it also modified national law. It was not possible to pretend that no amendments to national law would be required.

The *Corpus Juris* was very ambitious: in the light of these discussions, it was clear that it would be necessary to move gradually and, during the first stage, work to harmonise substantive law. Criminal-law definitions would first have to be examined, even though these were to a large extent covered by conventions. This would be the easiest point.

Next would come procedural issues. Here the problems were more serious. It would be necessary to harmonise procedures. The third point would concern the aspects of transnational criminal law in EU territory.

The *Corpus Juris* did not constitute a completely new system of criminal law. As Article 35 confirmed, the *Corpus Juris* was subsidiary to national criminal law. The aim was to harmonise certain parts of national law, not to replace them with the *Corpus Juris*. Nor was the idea to establish supranational bodies.

The most problematic point was the European Public Prosecutor. The texts referred to cooperation between national public prosecutors, not to setting up a supranational authority. The aim, therefore, was to arrange cooperation between national public prosecutions departments, coordinated by an appropriate light-weight structure.

The keyword in the debate was clearly 'cooperation'. But, above all, a certain harmonisation of national provisions was called for. This need made itself felt both in the field of administrative cooperation and with regard to criminal matters.

The *Corpus Juris* had been an attempt to arrive at a common criminal-law strategy, with the possibility of exceptions. The same aim had been secured with regard to relations between public prosecutions departments and traditional adjective law. The *Corpus Juris* also contained a concept - that of the judge of freedoms - intended to ensure compliance with the Convention on Human Rights, which it should be possible to transpose into European criminal law.

2.4. ***Conclusions***

Mr Bernhard FRIEDMANN, President of the Court of Auditors, EU

In considering the role and experience of the Court of Auditors in relation to protecting the financial interests of the EU citizen, it is first necessary to distinguish between preventing irregularities, fraud and corruption and investigating them. Actually investigating fraud and corruption do not fall within the remit of the Court of Auditors, which has neither the requisite powers nor the resources. The Court's audit work is analogous to that of all external audit bodies responsible for monitoring public finances in that it is designed to check whether the implementation of the budget accords with the relevant provisions and with the principles of economy, cost-effectiveness and efficiency. The deliberate nature of fraud and corruption implies that perpetrators seek to conceal them. In most cases, therefore, protracted investigations, using special police methods and powers, are needed to reveal such offences, and these are in no way compatible with the Court's audit work.

This is not to say that the Court of Auditors does not attach any importance in its work to cases of fraud and corruption; far from it, the Court plays an important role in preventing them. In planning its audit programmes, the Court takes account, inter alia, of the particular susceptibility to fraud and corruption which exists in many sectors. A refined method of ascertaining which sectors entail high risks will therefore be extremely useful in preventing and detecting fraud and corruption. At Community level, preventing fraud and corruption undoubtedly implies an effort constantly to improve legal provisions and subsequently their application to ensure economic budget implementation.

Thus the Court of Auditors has an important role to perform in accordance with the duties entrusted to it by the Maastricht Treaty. After ratification of the Amsterdam Treaty these duties will be defined even more broadly: the Court will then be asked for an opinion on every set of draft financial provisions connected with Community measures against fraud and corruption.

Effective audits greatly limit the chances of success of fraud and corruption. As the external auditor responsible for monitoring the cost-effectiveness of the execution of the Community budget, the Court thus plays a key role in preventing such offences.

The audits which the Court performs to check the effectiveness of the Commission's measures to combat fraud and corruption may, for example, yield findings which enable the Commission to improve the efficiency of its work.

In its audits the Court may also encounter instances - or more likely indications - of fraud or corruption. Information of this kind is passed on as quickly as possible to the appropriate Community institutions for action, where appropriate in cooperation with the relevant national authorities. In accordance with the existing legal basis the Court cooperates directly with national judicial authorities, studying all requests for legal assistance extremely carefully.

As part of its customary audits, the Court has examined the work of the Commission's units responsible for combating fraud, particularly UCLAF. It emerged that there was sometimes a lack of continuity in the latter's work, as half of its staff are employed on temporary contracts. Moreover, UCLAF's databases are neither always in working order nor as effective as they might be, and are little used. There is no uniform method of keeping documentation and administering documents, and the unit has too little management information to deal properly with the numerous cases identified. With regard to cooperation between the Commission and Member States, the Court has observed that UCLAF needs staff who are familiar with national legal provisions on fighting fraud. Inevitably, UCLAF's on-the-spot investigations are affected by the

unit's status as a Community agency. Moreover, procedures and powers for combating internal corruption are neither clearly nor comprehensively regulated. UCLAF's organisational structure ought therefore to be improved. Security measures, internal administrative processes, intelligence and information systems, and cooperation with Member States should likewise be improved.

One reason why the situation is problematic is because there is no body which has powers in respect of all Community institutions. This is why the European Parliament considered the idea of setting up an agency independent of the Community institutions, called OLAF, within the framework of the existing legal provisions. The Commission was not averse to the idea. Such a system would have the advantage that the new unit would be completely independent of the Commission; at the same time, however, an important element in the Commission's internal audit system would be lost. The independence of the body responsible for combating fraud could also be increased by giving the head of UCLAF - like the financial controller, for example - a special status under the provisions governing the employment of officials and by letting him be appointed by the Commission at the proposal of all the other institutions. In addition, UCLAF could, as already proposed, receive a similar status within the Commission to that enjoyed by DG XX.

Another consideration is the internal audit arrangements currently in place (particularly DG XIX, DG XX, the Inspectorate-General and UCLAF). The problems with regard to irregularities, fraud and corruption have by no means been solved there. It is therefore open to question whether setting up an additional agency would really improve the situation or whether even more complex audit structures would not create an additional element of risk.

The reality is that the Community budget consists to a very large extent of transfers of public funds to individuals. Such transfers undoubtedly strongly attract fraud and corruption. Ought not this aspect also, therefore, to be taken into account?

Setting up a European judicial authority and - as various parties have advocated - creating a European judicial area would make it possible for the various agencies responsible for protecting the financial interests of the Communities to carry out their duties more efficiently.

Mr Jacques SANTER, President of the European Commission

In the past two days you have held discussions, which, I hear, have been lively and constructive, on protecting the financial interests of the EU citizen. As we all agree, this is a vital endeavour, calling for concerted action by all the institutional protagonists of the Union: both the Community institutions and the Member States.

For its part, the Commission began several years ago to tailor its management capacity better to the volume of funds it is required to manage, by making its audit instruments more rigorous.

Improving the protection of financial interests requires long-term measures which will have a lasting effect.

The Commission has adopted and will persist with its SEM 2000 initiative (Sound and Efficient Management), by means of which it is substantially improving the proper management and auditing of the use of Community revenue.

It will continue to modernise its administration and operation by means of the MAP 2000 programme (Modernisation of Administration and Personnel). The ideas and measures involved will contribute to a genuine policy of medium-term fraud prevention.

They form part of a wider and more ambitious programme to reform the Commission so as to equip it with the necessary management instruments to enable it to face the future and play its full part in the functioning of the Union as a whole: this is the initiative 'The Commission of Tomorrow'.

The Commission believes that each Community institution should review its internal organisation and operation and should draw up a modernisation programme: this would improve the functioning of the whole Union.

National authorities should play to the full their role of implementing and checking the implementation of the Community expenditure and revenue for which they are responsible. In this context, national parliaments occupy the central position appropriate to the authority responsible for exercising control over public revenue and expenditure. This role will not be reduced in the future: quite the opposite.

As regards more specifically protecting financial interests, anti-fraud measures are being developed in close cooperation with Member States.

This cooperation firstly entails **information**: the setting-up of specialised task groups to share operational information, with coordination of investigations by UCLAF. This association of the specialised agencies of the Member States and the Commission is a formula for the future, as the Commission has no pretensions to take over responsibility for combating fraud from Member States or to monopolise intelligence work, but only to impart significant added value in cases which are complex on account of their transnational character.

It is also in a spirit of cooperation that the Commission is applying Regulation 2185/96 concerning **on-the-spot checks and inspections** by the Commission, which are fairly systematically conducted jointly with the appropriate national authorities in a constructive partnership from the stage at which missions are prepared up to the point when conclusions are drawn from the findings on the spot.

Lastly, at the stage of the **judicial action** to be taken after investigations, there will also have to be greater cooperation between the Member States and the Commission. The need for it is now recognised, and facilitation and coordination of procedures should be a shared objective.

The Commission has moved in this direction, for example by seting up a criminal-law expertise unit which figures in UCLAF's new organogram and has this shared-interest objective.

The Amsterdam Treaty and its protocol on the role of national parliaments in the European Union will make it possible to develop the protection of financial interests on a new basis.

Article 280 of the Amsterdam Treaty **alters the legal basis** for combating fraud in accordance with the wish expressed in April 1996 and April 1997 by the preceding interparliamentary conferences, which had drawn attention to the disparity between the rules for adopting the budget and the rules required to protect the Community's finances.

Soon, qualified majority voting and codecision by the European Parliament will eliminate this disparity and make it possible to step up Community measures to combat fraud in all areas of he Community budget and throughout the territory of the Union.

In the context of this institutional change it should be recalled that the Amsterdam Treaty also seeks to **encourage greater participation by national parliaments** in the work of the Union. A specific protocol, which replaces a mere declaration in the Maastricht Treaty, is now annexed to the Treaty, with the aim of involving national parliaments more.

It seeks to ensure that they are informed quickly of the Commission's working documents and legislative proposals. The Conference of bodies concerned with Community affairs in the Parliaments of the European Community may also submit any appropriate contribution, particularly relating to the area of freedom, security and justice which is explicitly mentioned in the protocol.

The **instruments currently being ratified** are the Convention of 26 July 1995 on the protection of financial interests and its two protocols which have not yet entered into force because they await national ratification. Since national parliamentary delegations are present here, I should like to take this opportunity to appeal for the rapid approval of the instruments adopted under the third pillar.

Finally, I should like to say a few words about UCLAF, the Unit for the Coordination of Fraud Prevention, its structure and its position among the Commission's departments.

The report by Mr Bösch of the European Parliament's Committee on Budgetary Control, adopted on 6 October 1998, gave us the opportunity to think deeply about a whole range of questions, for which I am very grateful to him. I expressed views on those questions that same day when addressing the European Parliament in plenary session.

Today I should like to repeat to you two concepts which I regard as fundamental:

- Firstly, UCLAF's investigative function should continue to be reinforced.
- Secondly, if other instutions call into question or denigrate our efforts to combat fraud because UCLAF forms part of the Commission, this investigative function should be removed outside it.

I believe that in the light of past experience, UCLAF's external and internal investigative functions should be reviewed and intensified.

I have therefore proposed that an external and internal investigative body should be set up which is completely independent and in no way subordinate to the Commission. This would have a further advantage: it would make it easier for this future body to extend its investigations to all the Community institutions and all other Community bodies.

I have instructed a senior Commission official to draft a decision which, once adopted by the Commission, will be forwarded to the other institutions concerned in early December this year. As I said at the beginning, protecting financial interests is a common cause. It requires a joint effort, a collective endeavour.

Investigations into fraud are important. In fact, they are too important to be carried out by one institution or another. They would forfeit all credibility it they were used for political ends.

They should be a common asset, a shared responsibility, something to which everybody is committed.

Mrs Diemut THEATO (PPE, Germany), chairman, committee on Budgetary Control, EP

At a conference such as this, very disparate views are bound to be expressed as to how we can quickly achieve effective and equal protection of the financial interests of the European tax-payer and also how we can meet the major challenges arising from the introduction of the euro in a Europe without frontiers and the forthcoming enlargement of the European Union.

Even so, it seems we are agreed that organised crime does not only affect the European budget but always has an impact on national budgets too: the evasion of customs duties and taxes in the transit procedure has clearly shown this.

Similarly, it will not be possible to make arrangements purely at European level for protecting our future common currency against manipulation and forgery. Nor, on the other hand, can such protection be left to be provided solely by means of cooperation between Member States.

It was therefore a good thing - and I was very pleased to observe this - that we have not succumbed to sectarianism over the issue of whether we should resort to third-pillar instruments or rather assign priority to those of the first pillar. In order to make progress, all available instruments should be used. In each situation, it is necessary to find the most effective combination possible. It is up to our parliaments - both national and the European Parliament - to provide the impetus for this. In the long run, genuinely perceptible progress will be made only if we seize the initiative jointly and bring pressure to bear to get things moving.

The Amsterdam Treaty contains new provisions on participation by national parliaments in the work of the European Union. I believe that the subjects we have been debating are the ideal area in which to try out these new possibilities through cooperation in a spirit of partnership - the point being that in this field powers are so interlinked and the problems requiring solution are so complex.

So let us seek procedures for more intensive cooperation here, if this is possible in connection with conferences at two-yearly intervals.

Let us try out this cooperation in the light of the new Article 280 of the EC Treaty. The new article allows the European Parliament to participate in Community anti-fraud legislation on a footing of equality with the Council.

We at the European Parliament should give an undertaking to coordinate our efforts regularly and systematically with our colleagues in the appropriate committees of national parliaments when we exploit these new opportunities for shared legislative decision-making.

Moreover, the Amsterdam Treaty explicitly provides for cooperation between the European Union and national parliaments. The relevant provisions are to be found in the additional protocol.

We should call on the Commission, when making proposals pursuant to Article 280, to give preference to **Directives** as the legislative instrument, as these allow national legislatures a genuine input of their own.

The Member States should ratify the Convention on the protection of the European Communities' financial interests as soon as possible. If this does not happen reasonably soon, use should be made of the Amsterdam Treaty, particularly the new Article 280.

I should be happy if you were to return home from this conference with a recognition that we shall not be able to avoid setting up some kind of European prosecuting authority - not as a substitute for, or to provide competition to, the competent national authorities, but as a necessary supplement to them.

In my view, the proposals in the Corpus Juris point us in the right direction: such a prosecuting authority could delegate much of its work to national authorities.

The aim, therefore, is not to create a huge apparatus. On the contrary, it is simply to develop procedures and define powers to ensure that an EU employee who manipulates the awarding of

tenders, takes bribes or falsifies documents will have to seriously consider the possibility that he may be quickly and effectively called to account. And that the reach of the public prosecutor will extend not only to him but also to his accomplices, be they in a private technical-aid consultancy or in a management committee appointed by the Council. And, of course, that it will extend to the wire pullers who set up whole networks of firms in order to plunder the Community's coffers on a grand scale.

For this purpose we also need a more effective means of detecting fraud and irregularities.

We at the European Parliament have given this means the title OLAF, and it has been debated here yesterday and today. OLAF is intended to replace UCLAF, so it will not mean setting up any additional organisation.

And OLAF should be located **within** the Commission, at least until the European prosecuting authority comes into being.

Mrs Hedy d'ANCONA, President of the committee on Civil Liberties and Internal Affairs, EP

After these two days during which we have worked together, we can state some quite precise conclusions:

- The phenomenon of international crime, particularly financial crime, is causing growing concern among the 370 million European citizens.
- Public opinion is increasingly well informed, and insists that political decision-makers should shoulder their responsibilities and respond; the EU Member States, both amongst themselves and together with the European Union, have taken steps to cooperate in protecting the **vital interests** of the Union and its citizens, first and foremost as regards financial interests; these vital financial interests are directly affected by increasingly pervasive and sophisticated forms of crime; apart from the economic damage it causes, it also constitutes a threat to the public because it is liable to impair the functioning of the democratic system.
- The differences between the provisions in force in our countries lead to the fact that certain conduct is defined as a criminal offence in one place but not in another, because of the different systems under which our law, administration, customs services, police forces and the administration of justice operate.
- The increasingly close union of our European countries, the citizens' Union, the Union which is soon to be enlarged, requires, above all, recognition of the community of values, democratic principles and judicial culture. Only this recognition can enable us to put forward proposals such as those for unifying certain sectors of the legal orders of the Member States, as proposed by the Corpus Juris, with the aim of attaining homogeneous protection of the interests at stake.

The past two days' work has been very important because it constitutes the first steps in an analysis, thanks to the statements and the sensitivity of political decision-makers, of those in the judicial sector, of experts belonging to law enforcement bodies, making it clear that **different approaches need to be adopted** in order to define a **European judicial area.**

The barriers which hamper national investigating authorities and the discrepancies regarding evidence, in a word, the legal obstacles which exist are no longer appropriate to the age in which we are living or to the state of progress towards European integration, and they have already persuaded some of us that we should set up a European Public Prosecutor's Office to prosecute

those who commit offences against the interests of the Union, to designate the appropriate national authority, to facilitate the execution of letters rogatory, etc.

If thinking could continue in the long term with **greater participation by the parliaments of the Member States and public opinion** and if a clear political will could be expressed, we could become aware of the desirability of tackling other areas of serious international crime by means of instruments better geared to reality.

With the aid of the progress made by the Amsterdam Treaty, which states that one of the objectives of the Union is to create an area of freedom, security and justice, and with the adoption of minimum rules to partially harmonise the criminal law (definitions of offences, penalties) and a stronger role for Europol in sectors vulnerable to organised crime, a Union body analogous to a Public Prosecutor's Office could be developed and could assist the competent national authorities in an appropriate manner in investigating offences and prosecuting offenders.

Yesterday the Vice-President of the European Parliament reminded us of the conclusions of the Avignon colloquium organised by the French Ministry of Justice, at which the hope was expressed that the establishment of the European judicial area would be the EU's next major project: clearly it would be absurd to talk about a European judicial area without unified legislation and particularly without incorporating into national criminal codes a whole range of European offences.

This whole extremely delicate process of cooperation in unifying the criminal law necessitates the full and active participation of the only bodies which can be considered legitimate and competent to legislate on the criminal law in our States where the rule of law prevails and in accordance with the principle of legality: national parliaments and the European Parliament.

Whatever happens, this process must not take place at the expense of respect for our cultural heritage, traditions and the legal common denominator enshrined in the provisions to protect fundamental rights laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its additional protocols, Article F of the Maastricht Treaty and the new provisions in the Amsterdam Treaty, as well as the constitutions and legislation of the Member States.

It follows that the principles of legality and culpability must be recognised as the criteria which inspire our work of preparing Community legislation on criminal matters and respect for the rights of the defence, which is an essential requirement.

The Corpus Juris is neither complete nor immediately applicable, but it is a point of reference for us.

The area of freedom, security and justice is the framework which we must now look forward to and help to develop and which could provide the instruments required to protect the interests of European Union citizens.

ANNEX 2

ANNEX TO MRS THEATO'S CONCLUSIONS

Five ideas for improving the protection of European Union citizens' financial interests

While cross-border crime seems to become more difficult to combat by the day, the traditional instruments of international law by means of which international criminal-law cooperation is supposed to be organised are unanimously regarded as ineffective.

A European police agency specialising in fraud, corruption and other crimes against the EU budget needs to be set up.

I. *The European institutions are working on the setting-up of OLAF, an independent anti-fraud body with powers of administrative inquiry, information gathering and technical assistance to national judicial authorities in the field of offences against the Community. It will be up to Member States to cooperate to render OLAF's action effective and, if appropriate, give it specialised international criminal investigation powers and organise its cooperation with Europol.*

A European police agency, whether concerned with the criminal law or with administrative/criminal investigations, must always be accountable to a judicial body: this is the rule in democracies. This problem does not arise in the case of Europol, which does not yet possess investigating powers. However, it will arise for OLAF. This body will be compelled to enter into a dialogue with national prosecuting authorities.

II. *The Union institutions should do everything in their power to ensure that OLAF is assigned powers to coordinate and inform national prosecuting autorities. The latter should be given the task of supervising OLAF's operations in the Member States concerned and promoting its initiatives.*

Everyone agrees that the coordination work which OLAF could perform would certainly not resolve the problems of international cooperation among prosecuting authorities. Conflicts of competence, delays in letters rogatory and many other problems would continue to hamper the work of the judicial authorities. However, even judicial control over OLAF would not be easy if it were exercised on a multilateral basis.

III. *The problem of a European prosecuting authority is unavoidable. The European institutions may think about proposals to make to the Member States. But it is the latter who have the important task of setting up the institution, giving it the character best designed to take account of the legal and constitutional peculiarities of their systems. The proposals in the Corpus Juris are indicative in this respect: however, it seems that provision for delegating powers to national authorities could provide maximum flexibility.*

The work of the bodies which protect the Union's financial interests should be based on a homogeneous framework of rules: on this we have achieved unanimity. The sensitivity which exists in this respect is shown not only by the convention and protocols which have been signed

under the third pillar but, as we have learned during the conference, also by the initiation (at long last!) of the ratification procedures by certain Member States.

IV. The Convention on the protection of the financial interests of the Union should be ratified as soon as possible. Although the mid-1998 deadline which the Madrid European Council set for ratification has long since passed, it would be appropriate to wait and see whether the parliaments of the Member States act unanimously. If they are not unanimous, however, it will be necessary to resort to the more flexible and swifter instruments afforded by the Treaty establishing the European Community, notably as amended by the Amsterdam Treaty. Article 280 of the latter Treaty will give Parliament a power of codecision with the Council to legislate against fraud.

Even if the Convention on the protection of the European Communities' financial interests were to enter into force, it would certainly not cover all of the aspects which require regulation. Protecting the finances of the Union is a vast and varied field, subject to rapid change as European integration progresses. Let me quote just one example. What about protecting the euro against counterfeiting? Numerous complex measures will be required to provide information, train experts and harmonise the criminal law; this work needs to be performed at various levels: administrative, legislative and probably in various legal frameworks, including by means of international agreements under the third pillar and by more typically Community means. But the various facets of this reality should be synthesised in the initiative of a political authority.

V. *The European Parliament should be responsible for planning and following up politically any initiative to protect the financial interests of the Union. But in this work it must make sure that it discusses matters with the parliaments of the Member States: otherwise, it would be vain to launch major political and legislative initiatives, as they would fail to take account of political, legal and constitutional realities in the Member States. Constant consultation is therefore called for between the specialist committees of the European Parliament and of national parliaments: the interparliamentary conference has shown that such consultation is not only necessary but worthwhile and productive. The necessary steps should be taken, with due regard for the protocol to the Amsterdam Treaty on the participation of national parliaments in the work of the Union.*

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