

Thursday 27 March 2003

3. Calls on the Commission to propose an adjustment to the requirement that the EUR 12 000 premiums be refunded on a pro rata temporis basis, so that the 12 months of professional inactivity as fishermen can be calculated as from 1 January 2002;
 4. Instructs its President to forward this resolution to the Council and Commission.
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P5_TA(2003)0130**Protection of the financial interests of the Community and the European Prosecutor****European Parliament resolution on the Commission Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor (COM(2001) 715 – C5-0157/2002 – 2002/2065(COS))***The European Parliament,*

- having regard to the Commission Green Paper (COM(2001) 715 – C5-0157/2002),
 - having regard to Article 280(1) and (4) of the EC Treaty,
 - having regard to its resolutions of 13 April 2000 containing its proposals for the Intergovernmental Conference⁽¹⁾ of 16 May 2000 on the 1998 annual report by the Commission on protecting the Communities' financial interests and the fight against fraud⁽²⁾, of 13 December 2000 on the Commission communication on protection of the Communities' financial interests⁽³⁾ and of 29 November 2001 on the constitutional process and the future of the Union⁽⁴⁾,
 - having regard to the Commission communication entitled 'A project for the European Union' (COM(2002) 247),
 - having regard to Rule 163(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinions of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Constitutional Affairs and the Committee on Petitions (A5-0048/2003),
- A. whereas fraud prejudicial to Community financial interests (which amounts each year to approximately EUR 1 billion and is constantly increasing) is a scourge which is recognised and condemned by all the Member States, and whereas the Community has an obligation to fight this fraud,
- B. whereas the ultimate victim of this type of fraud is the European taxpayer,
- C. whereas the existing legal instruments do not enable effective action to be taken against such fraud, owing to the fact that the 1995 Convention on the protection of the European Communities' financial interests⁽⁵⁾ and its additional protocols have only very recently been ratified by all the Member States, the provision of mutual assistance in criminal matters is cumbersome and there are limits stemming from the administrative nature of OLAF investigations,
- D. whereas only 5 % of the total number of cases dealt with by OLAF are followed up by national judicial authorities, thus demonstrating the need for a European investigative agency,

⁽¹⁾ OJ C 40, 7.2.2001, p. 409.

⁽²⁾ OJ C 59, 23.2.2001, p. 61.

⁽³⁾ OJ C 232, 17.8.2001, p. 191.

⁽⁴⁾ OJ C 153 E, 27.6.2002, p. 310.

⁽⁵⁾ OJ C 316, 27.11.1995, p. 49.

Thursday 27 March 2003

- E. whereas Eurojust exists but has an intergovernmental basis, the purpose of which is to facilitate judicial cooperation in respect of organised crime but with no scope for bringing cases to court and no power of jurisdiction, and whereas it cannot be regarded in its present form as a permanent obstacle to the establishment of a European Public Prosecutor,
 - F. whereas the above observations led the Commission to submit a contribution at the December 2000 Nice Intergovernmental Conference (IGC) which contained a proposal calling for the amendments to the Treaties to include the incorporation of an Article 280a which would enable the European Public Prosecutor to be established with the basic task of directing and coordinating cross-border investigations and proceedings in respect of offences relating to EU finances, and whereas this was in response to Parliament resolutions,
 - G. whereas the Nice Conference did not take up the Commission proposal but it noted the Commission's contribution and the Member States have agreed that the proposal will be considered with a possible view to being incorporated into the Treaty at the appropriate time,
 - H. whereas, pursuant to Declaration 23, annexed to the Treaty of Nice, on the future of the Union, a Convention has been set up in order to prepare the work of the next Intergovernmental Conference, which is due to take place by the next European Parliamentary elections,
 - I. whereas Parliament, in its abovementioned resolution of 29 November 2001, took the view that 'the agenda for the reform of the Treaties should include issues which were not tackled or not resolved under the Treaty of Nice and which are essential if the Union institutions are to operate more democratically and more effectively, such as (...) the establishment of an independent European Public Prosecutor's office empowered to bring cases before the competent Member State jurisdictions in the context of the protection of the Community's financial interests',
 - J. whereas, it could be necessary to make OLAF an independent and separately resourced body, with an officer in each Member State's anti-fraud office;
 - K. whereas 80 % of EU finances are spent within the Member States;
 - L. whereas the establishment of a European Union body of substantive and procedural criminal law should be thoroughly assessed by the Convention on the Future of Europe and the Member States, and should be considered in unitary terms, avoiding proposals for partial solutions which might cause intolerable harm to the personal freedom of citizens,
 - M. whereas the establishment of a European Public Prosecutor by the 2004 Intergovernmental Conference will create a major new source of Union power in relation to which legal safeguards must be provided for European citizens,
1. Calls for the protection of the Community's financial interests as a priority objective; considers that there can be no question of returning Community powers to national level;
 2. Welcomes the Green Paper on the criminal-law protection of the financial interests of the Community and the establishment of a European Public Prosecutor;
 3. Supports the idea of establishing a European Public Prosecutor and notes the importance of protecting the Community's financial interests by a variety of means; calls at the present time on the European Convention and, in due course, on the 2004 Intergovernmental Conference, i.e. on the governments of the Member States, to ensure that the forthcoming institutional reform actually includes the establishment of a European Public Prosecutor's office;
 4. Calls upon the governments of all Member States and candidate countries to hold a substantive debate within their national political and legal establishments on the importance of combating cross-border crime;

Thursday 27 March 2003

5. Recognises the importance of not delaying this amendment to the Treaties beyond the next IGC, for the Treaties may not be modified again in the near future, and the protection of the Community's financial interests in an enlarged Union must be secured; stresses, however, that this must not become an obstacle to successful enlargement in 2004;
6. Supports the Commission's proposal, which is in accordance with Parliament's call for the third-pillar competences to be transferred and for the establishment of the European Public Prosecutor to be provided for in the context of a unified treaty;
7. Notes that the establishment of a European Public Prosecutor on a first pillar basis is a further step away from the demarcation of EU powers into three areas with their separate rules and instruments in the three-pillar architecture and finds it clear that criminal law can no longer be envisaged as an area for Union regulation only in the third pillar of the EU Treaty;
8. Stresses the need for democratic control, via Parliament, over the exercise of power by the European Public Prosecutor, who has a direct influence on the rights and freedoms of European citizens;
9. Is of the opinion that the European Public Prosecutor should be appointed by the European Parliament, with the assent of the Council, following a nomination by the Commission of at least two candidates; furthermore, believes that this will provide the Prosecutor with the necessary democratic endorsement;
10. Supports the procedure proposed by the Commission under Article 251 of the EC Treaty as regards the terms and conditions under which the European Public Prosecutor will perform his/her duties as this will give Parliament a role as co-legislator in this matter;
11. Takes the view that, in order to be effective and transparent, the European Public Prosecutor must inform the Parliament of the progress of his/her work, the trend in crime and the progress in cooperation with the national public prosecutors; considers that he/she should do this by submitting annual reports to the Parliament, in which he/she should also propose a budget;
12. Insists that the system, as proposed by the Commission in its Green Paper, be refined so as to meet efficiency criteria;
13. Stresses that it is absolutely essential to improve and supplement the system proposed by the Commission in the Green Paper in order to ensure that fundamental rights are fully upheld and protected in the course of the new authority's work, particularly the rights of those citizens against whom the European Public Prosecutor initiates proceedings; underlines that the European Public Prosecutor should be bound by Article 6(2) of the Treaty on European Union and the Charter of Fundamental Rights, which are destined to become a legally binding part of the future Constitutional Agreement and should form an integral part of the new provisions;
14. Takes the view that, at all events, the envisaged system of criminal law and criminal proceedings must guarantee the protection of the basic rights of those concerned on the basis of the Charter of Fundamental Rights and subject to the control of European courts;
15. Notes that the Commission proposal does not contain any list of the procedural rights of those charged or accused and therefore calls upon the Commission to add a detailed catalogue to its proposal;
16. Considers that it is absolutely vital to the rule of law that the offences which constitute damage to the Community's financial interests should be specified in precise detail;
17. Considers that a uniform set of criminal acts and penalties is needed; notes that the Council has still not submitted a common position on the 23 May 2001 proposal for a directive on the criminal-law protection of Community's financial interests⁽¹⁾ which Parliament wishes to convert into a regulation; calls once again upon the Member States' representatives to ensure that political declarations condemning fraud prejudicial to the Community budget are followed up by legislative measures;

⁽¹⁾ OJ C 240 E, 28.8.2001, p. 125.

Thursday 27 March 2003

18. Notes that the Convention on the protection of the European Communities' financial interests finally entered into force following ratification by all Member States; calls upon the Member States to abide by their commitments under the Convention and ratify the additional protocols;

19. Supports the principle behind the establishment of an European Public Prosecutor and greater cooperation between national judicial authorities in a European area of security and justice, but insists that there are a number of substantive issues that have to be regulated in part under secondary legislation, such as differing legal systems and practices, language and administrative practice, the consequences for national criminal law, the risk of double jeopardy and the overlapping of competences between national and European Prosecutors, the admissibility of evidence, mutual recognition etc;

20. Makes the following remarks:

- as regards the independence both of the European Public Prosecutor and of his/her deputy: insists that such independence be unconditionally guaranteed, with due regard for the separation of powers, and that it be accompanied by the principle of mandatory prosecution; as regards the various possible statutes for Deputy Prosecutors, permitting such individuals to hold one office only would certainly exclude any possible conflict of interest or hierarchical dependence, even though there would be practical advantages in allowing them to wear 'two hats' in the event of cases falling under more than one jurisdiction, a category into which most cases are likely to fall; wonders, therefore, how the principle of subordination to the European Public Prosecutor would actually be applied and protected, inter alia, as regards the disciplinary procedures applying to Deputy Prosecutors; calls, likewise, on the Commission to clarify the funding of the major portion of the Deputy Prosecutors' human resources and operating costs;
- takes the view that the European Public Prosecutor and his/her deputies must work in conjunction with the national public prosecutors in the Member States, with a view to enhancing the effectiveness of their inquiries and investigating various practical problems relating to the judicial systems of the Member States;
- believes that the Prosecutor should not have a discretionary right to close cases, but that this decision should be subject to judicial control; also takes the view that detailed criteria should be established to govern the choice of the Member State as to where the trial is to be held, in order to avoid the risks of 'forum shopping';
- also calls upon the Commission to consider the case of illegal investigations by the Prosecutor and possible means of redress through the courts;
- as regards area of competence: considers that the existing system should initially prove itself in the field of financial interests; takes the view that this will largely depend upon the proposals from the European Convention and the decisions in the IGC as concerns communitarisation of the instruments under the third pillar;

21. Calls on the Commission to clarify its proposal on the subject of relations between the Prosecutor and existing structures:

- as regards relations with Eurojust, asks the European Convention to clearly define the relationship between the European Public Prosecutor and Eurojust, through the clarification of their respective powers and responsibilities; takes the view that, in future, in the interests of effective criminal law enforcement, the development of overlapping structures should be avoided and that a parallel structure with Eurojust on the one hand and a European Public Prosecutor on the other, with a partial overlap of responsibilities and powers, is not rational;
- is of the opinion that the tasks of the European Public Prosecutor could be taken over by a strengthened Eurojust provided that Eurojust is transferred to the first pillar and there is special emphasis on the protection of the financial interests of the Community;
- as regards relations with OLAF: regrets the fact that the Commission has not yet submitted an assessment of the current OLAF system to complement the proposal under consideration; considers that OLAF currently lies at the heart of the system to combat Community fraud but that it must be

Thursday 27 March 2003

improved in such a way as to embody the legal guarantees which it requires if it is to acquire the legitimacy which it lacks; considers that OLAF should assist the European Public Prosecutor both in the forwarding of information and in the carrying out of investigations; considers, therefore, that it is quite acceptable to enlarge OLAF's remit to include powers of criminal investigation (accompanied by the necessary provisions relating to protection of the individual) and to make OLAF an entirely independent body; awaits the Commission's proposals on this point; considers that the substantial shortcomings in terms of OLAF's legal status must be remedied and that this applies both to its legal basis and to judicial control of OLAF's activities;

- calls on the Commission to specify the nature of relations between the European Public Prosecutor and OLAF, in the context of the reform of the latter's status and objectives, and with Eurojust;

22. Asks the Commission to consult it on the revised draft of the Green Paper which will be forwarded to the European Convention; stresses that the system should be efficient, transparent and credible, and believes that resistance to it rests on a political rather than a legal basis; demands once again that the European Convention seize this historic opportunity;

23. Instructs its President to forward this resolution to the Council, the Commission and the European Convention.
