



Comité de surveillance
de l'OLAF

Luxembourg / Brussels, 4th December 2002
D (14242)

Monsieur Valéry Giscard d'Estaing
Président de la Convention européenne
B 1048 - BRUXELLES

Sir,

We follow with a great deal of attention your work and have noted with interest that you had introduced among the topics to be dealt with by the Convention the question of the establishment of a European Public Prosecutor for the protection of the financial interests of the European Union. Having taken note of the report of the Working Group "Freedom, security and justice" of the Convention and following the hearing of Mr. Brüner on 25 September by the same group, our opinion is that the suggestions in this report will not allow for progress to prosecute effectively crime undermining the financial interests of the Community. Our approach is based on our respective responsibilities concerning the European Anti-Fraud Office's investigation activities and is in line with the extension of the Commission's proposals, in particular the contributions of Commissioners Schreyer, Vitorino and Barnier addressed to the Working Group on 19 November, as well as being in line with the speeches of numerous members of the Convention.

Firstly, on the eve of the expansion of the Union, to defer once again this reform by reference to an enabling clause for the Council would, in a Europe of 25 Member States, be to renounce it for many years. Beyond the current recasting of the treaties, any isolated project could be doomed in future to failure, given the constraints of ratification. It is within the general framework of the constitutional treaty, which you are preparing for the European Union of the next fifty years, that the establishment of a European public prosecutor finds its place and its sole legitimacy. The public would not be happy with formulas without any content or promises without any future. There is here and now the possibility of preserving the future of Europe, by better protecting its financial interests ensuring concrete results in accordance with the expectation of European citizens.

Our investigation experience in the field of the fight against fraud is up to now without precedent at European level. We have been able to identify the existing gaps in the framework of judicial cooperation with the Member States and credible solutions to the lack of effectiveness and legitimacy which currently weakens the fight against fraud. Moreover, within the framework of our respective functions, we have noted the degree to which public opinion is sensitive to the question of the protection of public funds and of the European taxpayer.

The Treaties attributed to the Community institutions the responsibility to protect the Communities' financial interests. Nevertheless, the means placed at their disposal have remained, even after the creation of the "financial police force" which the Office constitutes, both ineffective and not providing legal certainty. In fact, this reform was adopted in May 1999, as a matter of urgency in four months, that is to say within a period which did not allow for a complete system to be put in place, this requiring the adoption of specific provisions in the Treaty. The Intergovernmental

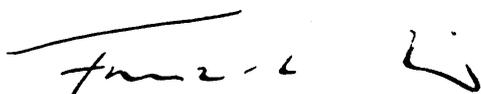
Conference in Nice considered that such provisions should at the proper time be the subject of consideration in an overall framework.

The investigation tools of OLAF remain in theory of an administrative nature and do not include most of the legal means reserved for criminal investigations, which are essential in financial matters, such as having access to bank account details. Moreover, since OLAF's investigations do not extend to the prosecution phase, the number of cases prosecuted and where penalties have been imposed remains extremely limited. At the same time, these investigations, which may impact on the rights of individuals, in particular within the Community institutions, take place in the absence of a permanent and regular ex ante judicial review, which could seem to be contrary to the "principle of the rule of law", which is enshrined in the Preamble to the Charter of fundamental rights of the European Union.

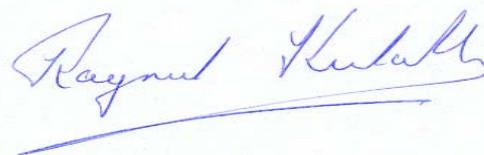
As it concerns an area under the responsibility of the Community, the solution envisaged to transform Eurojust in the long term into a Prosecution service seems to us to be inappropriate. It is limited to implementing the methods of transnational judicial cooperation in a field where integrated methods based on the concept of European territoriality are already applicable as regards OLAF investigations. This is why we consider that the proposal for a European Public Prosecutor with a judicial statute to guarantee his independence as submitted by the Commission since the Intergovernmental Conference of Nice, constitutes a realistic and coherent solution. This Prosecutor should be endowed with the power to issue instructions as to the general direction of investigations and, jointly with the deputy public prosecutors, to indict in national jurisdictions. The expansion of his responsibilities to crimes specifically directed against Europe seems in the long term a desirable prospect to us.

The number and importance of the speakers within the Convention Working Group in favour of the establishment of a European Public Prosecutor and Prosecution service show that constructive dynamics on this topic exists within the Convention. It is with this prospect that we insist on recalling the importance of establishing a European Public Prosecutor for the protection of the Union's financial interests in the constitutional treaty itself, its status and key operating arrangements to be regulated subsequently by way of an organic law.

Yours faithfully,



Franz-Hermann BRÜNER
Director General of OLAF



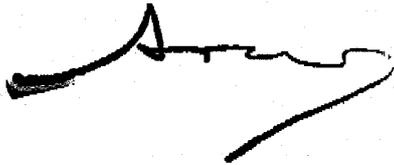
Raymond KENDALL
Président of the Supervisory Committee



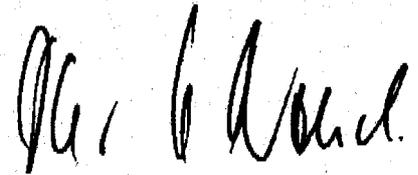
Edmondo BRUTI LIBERATI
Member of the Supervisory Committee



Mireille DELMAS-MARTY
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Alfredo José DE SOUSA
Member of the Supervisory Committee



Dr. Harald NOACK
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