

# The Future of the European Union's Financial Interests

Financial Criminal Law Investigations under the Lead of a European Prosecutor's Office



## Article

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### ABSTRACT

The article reflects on the future of financial criminal law investigations of the EU. It departs from the experts' studies conducted which have developed the Corpus Juris Model, and recalls the historic development of the subsequent institutional debate up to the Lisbon Reform Treaty. The reform on OLAF's functional independence and accountability is put into the context of a possible work plan to complete the reflections. Ultimately, the author outlines a way ahead, which possibly enables financial criminal investigations of the EU to be conducted under the lead of a European Public Prosecutor's Office.

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## I. Introduction

Over the past ten years the OLAF operational function has confirmed its potential as an effective administrative investigative mechanism stimulated and assisted by a European Commission service, which is independent with respect to the exercise of its inquiries. Designed to facilitate cooperation with national law enforcement and criminal justice partners, it follows an approach aimed at empowering Member States authorities to operate better within their respective national legal systems to protect the interests of the European Union (EU) against financial offences. This approach has been a considerable step forward in the effort to achieve more efficient crime prevention and sanctioning as can be seen from the statistics on the follow-up to investigations.<sup>1</sup>

Administrative investigations may be opened independently on the initiative of OLAF and evidence may be collected on economic operators on the spot in the Member States. The information collected is destined to serve in national criminal investigations and proceedings. But this mechanism, reliant upon action conducted consecutively by different European and national lead services in accordance with their respective mandate and legal competence, also has certain limits and handicaps. Published statistics show that while there are of course excellent achievements there are still too many judicial follow up recommendations in case reports by OLAF, which are unsuccessfully implemented by national authorities. This is sometimes due to the excessive length of the judicial procedures causing time limitation, difficulties for the administration of the evidence or national practices which tend to identify priorities in a way which is different from the perception at a European level. Frequently retention of information occurs or there simply is a lack of specific feedback by Member States authorities on the motives of their inaction.<sup>2</sup> Notwithstanding the direct applicability of Community law in the Member States and its European-wide uniform character, the national practices on the legal protection of financial interests condition the effective follow-up to OLAF investigations. Their practices diverge widely and their efficiency varies greatly.

Moving on from this introductory assessment it is necessary that a reflection on the future of financial criminal law investigations of the EU depart from the experts studies conducted which have developed the Corpus Juris Model (II.), and recall the historic development of the subsequent institutional debate (III.) up to the Reform Treaty (IV.). The reform on OLAF's functional independence and accountability (V.) needs to be put into the context of a possible work plan to complete the reflections (VI.). This may ultimately open a way ahead (VII.) which possibly enables financial criminal investigations of the EU to be conducted under the lead of a European Public Prosecutor's Office.

## II. The Corpus Juris Model

For this reason more ambitious and determined answers to the challenges of fraud and corruption at a European level have been considered since the first experiences with the three pillar structure of the EU Treaty in the early nineties of the last century. In fact the origins of the project for a European Prosecutor's Office to protect the vital financial interests of the European Union go back to 1997 and even precede the creation of OLAF. The Corpus Juris study dealt with the introduction of penal provisions for the purpose of protecting the financial interests of the European Union and suggested "a radically new response to the absurdity, widely condemned but still tolerated, which consists in opening up borders to criminals whilst closing them to law enforcement agencies." Thirty-five rules based on seven principles were suggested in this study departing from the analysis that the objectives of the EC Treaty regarding "assimilation", "cooperation" and "harmonisation" were not up to the challenges of a "fairer, simpler and more efficient system of repression" in a relatively new area dealing with the protection of supranational interests. The

qualities of justice, simplicity and efficiency in this area could only be joined by way of "unification". The seven lead principles enshrined in the Corpus Juris project for unification of certain elements of a European criminal law consist not only of (1) the legality of crimes and of penalties, (2) the principle of fault as a basis of criminal liability, and (3) the proportionality of penalties. They comprised also and more particularly (4) European territoriality, (5) the principle of judicial control, (6) proceedings which are "*contradictoire*", and (7) the subsidiary application of national law.<sup>3</sup>

Those principles, illustrated by a set of 35 revised rules also governed a more comprehensive and developed comparative law study to give follow-up to the Corpus Juris in the years 1999/2000.<sup>4</sup> Its main objective was an in-depth analysis of the need and feasibility for a unified system of criminal law protection of the EU's financial interests through a European Financial Prosecutor's Office.

### III. Historic Development of the Institutional Debate

Notwithstanding the circumstances of fraud and mismanagement, which had shaken the European institutions and led in 1999 to the creation of OLAF,<sup>5</sup> the proposal made by the European Commission at the intergovernmental conference for the Nice-Treaty in 2000 to insert the basic features of the Corpus Juris for a genuinely European prosecution body into an article of the Treaty (Art. 280 bis)<sup>6</sup> was not adopted. Instead, an article on Eurojust was inserted. In accordance with the third pillar Council Decision setting up Eurojust,<sup>7</sup> the latter is described as a coordinating body at European level between national services without, however, any unified criminal investigative and prosecuting functions enabling it to bring cases of financial crime against the interests of the EU to justice.

With its 2001 Green paper on criminal-law protection of the European financial interests,<sup>8</sup> however, the European Commission provided a public opportunity for debate. In 2002, an open discussion took place on the possibility of a European Public Prosecutor's Office. The invitation to submit opinions and statements was widely followed by the national authorities, the European institutions, professional legal associations, and experts working in the area of criminal justice. In the follow-up report in 2003, the European Commission drew up an agenda for further activities on the topic.<sup>9</sup> It included a detailed examination of the relationship between the European Prosecutor and existing European authorities, the defence rights and the administration of evidence, as well as the connection of the Prosecutor with the national criminal law systems.

A European Financial Prosecutor's Office has continuously remained on the institutional agenda for a new Treaty since starting in 2003 with the work of the Convention, followed by the 2004 Constitutional Treaty<sup>10</sup> and later confirmed by the Lisbon Reform Treaty of 2007.<sup>11</sup> Notwithstanding this, the horizontal political strategy concept papers for a single European judicial area have remained silent on this institution. The Tampere conclusions of 1999<sup>12</sup> and The Hague agenda of 2004<sup>13</sup> indeed ignored the topic, which national departments of justice by their vast majority may consider a highly *avant-garde* challenge. But it is fair to say, that a European Public Prosecutor's Office for a more effective fight against fraud and corruption is in accordance with the citizens' and tax payers' expectations who consider the current responses insufficient to achieve a satisfactory degree of law enforcement and sanctions.<sup>14</sup>

### IV. The Legal Framework of the Reform Treaty

#### 1. The Relevant Reform Treaty Provisions

The Lisbon Treaty provides the legal basis for the establishment of a European public financial prosecutor's office in Art. 86 (1) TFEU:<sup>15</sup>

"In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament."

It allows for this body to be created in accordance with Treaty principles on performance of its functions which provide the investigation, the prosecution and judgments of cases of fraud to be brought (Art. 86 (2) TFEU):

"The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences."

It will lay the ground in Art. 86 (3) TFEU for the development of the general rules applicable including rules on statutory accountability and independence and rules of procedure on preliminary criminal investigations such as on evidence taking and judicial review:

"The regulations referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions."

The Lisbon Reform Treaty eventually sets out a consolidation of powers in criminal law matters in Art. 325 TFEU. The last sentence in the current Art. 280 paragraph 4 TEC<sup>16</sup> shall be deleted.

1. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union 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, and in all the Union's institutions, bodies, offices and agencies.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

3. Without prejudice to other provisions of the Treaties, the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, 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 Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies.

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."

## 2. The Possible Legal Basis for Administrative Penal Law Investigations on Anti-Fraud Matters

OLAF draws its powers from those of the Commission. A consolidated anti-fraud reform package would need to be structured and organised using Arts. 325 and 86 TFEU in a coordinated and complementary way. It would be necessary to identify which aspects are covered under which legal basis. The legal basis under the Treaty currently allowing OLAF to operate in the area of administrative investigations is Art. 280 TEC and will in future be Art. 325 TFEU after the Lisbon Treaty comes into force.

However, the question of whether a possible extension of OLAF investigative powers into the criminal law field would be covered equally under Art 325 TFEU is more challenging. At first glance, this article could serve as a basis for the legal reform of this aspect of OLAF investigations. The second sentence of current paragraph 4 of Art. 280 TEC on the exception of measures which concern the administration of justice and the application of national criminal law has been removed from Art. 325. However, it can be argued that, for matters regarding criminal procedural law concerning the protection of the financial interests of the Union, Art. 86 TFEU constitutes a more specific legal basis and applies under a different procedure which includes a unanimity requirement and opt-out possibilities for certain Member States.

A regulation based on Art. 86 may indeed specify the allocation of the European Public Prosecutor as a judicial body including its working relationship with investigative bodies such as national and European police and investigative services. However, as this provision is situated in the chapter on judicial cooperation in criminal matters of the TFEU, administrative penal procedural rules would fall under Art. 325 TFEU. Art. 325 in its turn allows for the adoption of all *necessary* measures in the field of the fight against fraud. The decisive element is the question of what will be required for the achievement of an effective implementation of the EU's objectives in this policy area. Legislation under this article might be needed precisely to allow the Commission (OLAF) to cooperate with and investigate on behalf of a European Public Prosecutor's Office. Art. 325 accordingly includes the basis for measures necessary in order to complete the framework put in place by Art. 86.

## V. The Future Debate on the Reform of OLAF's Functional Independence and Accountability

After ten years of existence, OLAF is still a young service. However, its experience is a sufficient basis for clarification of reform objectives. The Lisbon Reform Treaty is silent on OLAF's future role. OLAF is clearly distinct from a European financial prosecutor and will be external to it. But its functions will need to be redefined within the new institutional framework.

The current OLAF reform proposal of 2006<sup>17</sup> focuses on an increased efficiency and information exchange in administrative investigations, and more cooperation in the follow-up to operational matters. This is acceptable, but it is likely to create much additional red tape. The outcome of the reform will hopefully achieve a more efficient OLAF. However, OLAF will continue conducting investigations under the authority of its Director General. Neither a review advisor, nor the Supervisory Committee nor the political guidance exercised by the institutions may replace him in the exercise of this responsibility.

The Lisbon Reform Treaty offers new perspectives. A future "EU Prosecutor's office" would not be primarily a control body. But by its judicial nature it may be a more adequate response to reconcile functional independence with the necessary degree of accountability of the investigative action. Investigations conducted under the authority of a European Financial Prosecutor would be at least subject to a specific reporting duty and

could only be carried out with the instructions of the prosecutor. This creates conditions where a great deal of reliability and uniformity of the investigative action can be achieved. A better interface between preventive administrative investigations and the criminal law follow-up could also be expected. The judicial advice function currently already exercised by lawyers with a background as prosecutors and "magistrates" and embedded into the organisation of OLAF would become the bridge between administrative investigations and criminal investigations conducted on the request of a European Financial Prosecutor. Looking beyond individual cases, a permanent dialogue and working relationship between OLAF and the European Financial Prosecutor would provide strong possibilities to establish a high degree of mutual understanding on policy objectives and practical priorities. The chances of an effective, proportionate and dissuasive criminal law follow-up to OLAF investigations could be further increased. OLAF operational practices would be further developed in accordance with judicial guarantees.

In the current situation OLAF has already made great progress. A strong presence of operational staff with a background as criminal lawyers and the existence of the previously mentioned judicial advice function which has been in place in OLAF for several years have contributed to this effect. Increasingly, this practice has allowed an internal judicial ethics to be developed and an output oriented priority setting to be achieved. OLAF is not an intelligence service but is bound to produce evidence which can be used in judicial proceedings.

An EU Prosecutor's Office would bring additional changes in that it would create conditions for a functionally hierarchical working relationship which enables instructions on any issues necessary and suitable for the steering of penal investigations. This objective cannot be achieved in a partnership with national judicial authorities or even with Eurojust as long as its powers are not clearly distinguished from the exercise of national prerogatives.

The question therefore ultimately arises as to how OLAF should serve as an officer of justice under the authority of the European Public Prosecutor's Office. The future relationship of OLAF with an financial prosecutor's office of the EU would not only be a logical continuation of the criminal law oriented anti-fraud approach chosen in 1999. It would also create conditions under which a legitimate decision maker may select cases which require a judicial response as opposed to irregularities which require an administrative, disciplinary or purely financial follow-up. OLAF judicial follow-up recommendations could be prepared together with and approved by a Prosecutor's Office. This creates better chances for OLAF recommendations to be followed more systematically if not in every case.

## VI. Reflections to be Completed

It is of course also necessary to address the more critical questions. A smaller "EU code" of preliminary criminal investigations conducted by the prosecutor of the EU is a necessary instrument to complement the principle of mutual recognition and to bring the risks of fundamental rights being disregarded down to a very acceptable and low level.<sup>18</sup> Only if properly integrated into the emerging structures for the EU's administration of criminal justice, an EU Prosecutor could be considered a proportionate answer on how to complement the national justice systems. The restriction of the scope of activities of a European Financial Prosecutor's office to only one specific area of material competence defined in relation with a specific Union interest has been criticised.<sup>19</sup> But it might contribute to preventing additional bureaucracy and conflicts of authority with national prosecution services. In certain areas, the system might be better coordinated through the mechanisms set up by Eurojust and the European Judicial Network. If it is shown that the European Public Prosecutor can start its work based on a proportionate and limited additional effort which does not require the establishment of a huge new administration it would be even more evident that it is a

justified and proportionate solution to the problem of the effective and dissuasive protection of specific European interests against fraud and other offences.

OLAF's experience and proper involvement can decisively contribute to demonstrate that it would not simply add complexity to the system of divided competences between the EU and the Member States but that it would mainly have a guaranteed added value. However, in order to respond to all the objectives of the EU's policy on better regulation a solid and realistic work plan needs first to be established:

- A European financial prosecutor's office can only be envisaged with a solid impact assessment and intensive consultations with all institutional partners. The follow-up agenda to the Green paper includes continued analyses, consultations and specific institutional initiatives.<sup>20</sup>
- A comparative study on criminal justice systems should analyse national experiences on the development of criminal investigative competences. It will emerge from this study whether national systems may equally have developed parallel and complementary regional and federal competences on matters of criminal justice and how they work.
- A further study should take stock of the current situation in an empirical way with respect to the follow-up of OLAF investigations and the effective protection of the EU's financial interests. It is necessary to identify clearly the problems regarding the current cooperation mechanisms between OLAF and the national judicial authorities. The study should help to further identify the types of cases and the areas of offences with serious consequences for the European tax payer for which the current cooperation model does not offer a satisfactory approach to achieve better protection.
- For the preparation of a future white paper of the Commission a comparative law research might be needed to identify a number of component elements on the establishment and functioning of a European Public Prosecutor's office for a possible set of rules on preliminary criminal investigations in financial matters. It should give a strategic answer to the question which is the necessary degree of harmonisation and unification of rules and under which conditions mutual recognition may be accepted.

## VII. The Way Ahead

Even if the Lisbon Treaty has not created a perspective for the development of general European criminal investigative powers the Treaty does contain a possibility to develop, in so far as necessary, penal investigative powers in the restrictive field of the protection of the financial interests in Arts. 86 and 325 TFEU.

### 1. The Role of the European Partner Agencies in the Context of an EU Prosecutor's Office

All the European bodies competent for combating fraud, cooperating in criminal matters or in matters of police cooperation are called upon to contribute to the exercise of the prosecution function within the limits of their respective attributions as developed under the Lisbon Treaty. Coordination and support functions for criminal investigations may be entrusted to Eurojust (Art. 85 TFEU) and Europol (Art. 88 TFEU). The provision on a European Public Prosecutor's Office in Art. 86 TFEU explicitly establishes the link with both bodies in the setting up of the office and in the possible liaison for purposes of investigations (see IV). However, their own mandate is respectively circumscribed in Arts. 85 and 88. Under these provisions, their tasks extend to the coordination, cooperation and liaison with national law enforcement and judicial authorities in the implementation of their national investigative and operational action. This would for instance include judicial,

administrative and intelligence support and could in the case of Eurojust in the future include “the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities”. But it does not extend to the actual conduct of criminal investigations. The formula in Art. 86 TFEU whereby the EU Public Prosecutor’s Office is established “from Eurojust” aims at the exploitation of the administrative and, in so far as possible, judicial framework of Eurojust for the purpose of setting up the EU Prosecutor’s Office.<sup>21</sup> Eurojust would however remain a distinct body. A complete institutional and functional merger whereby Eurojust would fully participate in the powers of a European Public Prosecutor’s Office to include EU-wide criminal investigations and prosecutions into its mandate is not foreseen under Art. 85 TFEU.

As compared to Eurojust and Europol, OLAF is not expressly mentioned but Art. 325 TFEU refers to the key role of the Union and of the Commission for the protection of its financial interests and the combat against fraud. The current anti-fraud experience of OLAF would support the idea of a need for an attribution of genuine investigative powers to a European body to achieve better and speedier criminal investigations and prosecutions in cases of EU fraud and corruption.<sup>22</sup> The most evident need potentially exists in the area of internal investigations within the EU institutions and for cases which relate to fraud in the area of direct expenditure. Member States’ administrative authorities are here in general not operationally present. The added value would become particularly apparent in these areas without regard to whether all of them involve transnational organised crime and affect two or more Member States. From the perspective of the establishment of a moderately sized European Public Prosecutor’s Office the EU’s judicial authority would in practice need to rely on administrative investigations conducted under its instructions by a service of the EU.

## 2. OLAF as an Administrative Host Structure of a Criminal Investigative Function of the EU

The functions of OLAF would need to be re-organised, clearly distinguishing administrative and criminal law investigations. But its current mandate would seem to make it an ideal host structure for the additional criminal investigative function. Under an organisational and administrative perspective, this function would need to be exercised by OLAF on behalf of the Commission as mentioned in Art. 325 (3) TFEU. This approach is the most realistic in accordance with the principle of limited transfer of powers. An executive administrative anti-fraud agency with investigative powers is not mentioned by the Treaty and therefore not an option in a sensitive area of responsibilities with great impact on human rights and where a great deal of discretion therefore needs to be exercised in the conduct of the operations.

Investigative procedures might – as is currently the case – continue to be exercised by OLAF as a Commission service which is functionally independent and not subject to instructions from the outside. However, regarding criminal investigations it might be advisable to use the same administrative structure headed by a Director, while abolishing the Supervisory Committee.<sup>23</sup> Criminal investigations would need to be carried out under the judicial control and under the instructions of the European financial prosecutor’s office. The administrative service (like the financial police or customs) would carry out its criminal investigations on behalf or under the lead of the EU Prosecutor outside the judicial structure of the EU Prosecutor’s Office. Considerable additional manpower and expenditure creating possible duplication with existing administrative structures must be avoided. The judicial control would be exercised by the European Courts of Justice based on the instructions OLAF would receive from the Prosecutor.

Criminal investigative functions would need to be based on a set of specific rules. The further development of the investigative anti-fraud function could possibly follow relevant examples of the national administrative systems. Administrative services have been vested with customs, fiscal and financial police investigative powers. Within the organisational structures of OLAF, a different set of administrative units should be

responsible for administrative and penal investigations respectively. The judicial advice function would be developed to establish a permanent liaison with the European Public Prosecutor's Office as is currently already the case in relation with Eurojust. Criminal investigative assistance would need to be exercised as an officer (auxiliary) under the authority of a European public prosecutor.

## VIII. Conclusion

These possibilities should be duly analysed. The next ten years of OLAF will be decisive to confirm whether the EU is committed to meet the challenges of an effective, proportionate and dissuasive protection of the EU's financial interests. Nobody can currently fully predict the future. But the Reform Treaty potentially offers specific opportunities to modernise the European anti-fraud policies. It would allow for an increase in the efficiency and the operational accountability of OLAF in cooperation with a European Prosecutor's Office. The efficient protection of the EU's financial interests through criminal law remains a vital challenge following the latest enlargement to Romania and Bulgaria. The European Union already faces – especially under a post Reform Treaty scenario – the perspective of new accessions by Western Balkan countries. This further enlargement would call for even more effective anti-fraud and corruption policies to be enacted, including the option of a penal administrative investigative function at the European level.

All initiatives in this field must be accompanied by a degree of pragmatism and flexibility. Should unanimity requirements impede concrete and tangible progress for the foreseeable future, an EU Prosecutor's Office can be envisaged at a first stage on the basis of the mechanisms of enhanced cooperation. In accordance with Art. 86 (1) of the Reform Treaty it may be created if nine Member States so agree. However, to develop its full potential, an EU Public Prosecutor's Office will crucially need to rely on the assistance of existing national and European bodies including OLAF. The pilot area of the protection of the financial interests has in the past served as a model for the development of standards on penal law approximation in the EU.<sup>24</sup> There is some likelihood that it will become a test case for the determination to adapt the EU's criminal law protection and its framework to the challenges of the next decade.

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1. Report of the European Anti-Fraud Office, Eighth Activity Report for the Period 1 January to 31 December 2007, Point 3.4, which shows a considerable number of cases (584) concluded since the creation of OLAF with recommendations of judicial follow-up.<sup>25</sup>
2. Ibid, point 3.4.2.1. Judicial follow up.<sup>26</sup>
3. *Delmas-Marty, M* (ed.), *Corpus Juris* introducing penal provisions for the purpose of the financial interests of the European Union, *Económica*, Paris, 1997.<sup>27</sup>
4. The European Parliament in its resolutions of 12 June and , asked the Commission to carry out a study on the feasibility of the *Corpus Juris*. The publication of the follow-up study consists of four volumes: *Delmas-Marty, M.* and *J.A.E. Vervaele* (eds.), *The Implementation of the Corpus Juris in the Member States. Vol I-IV*, *Intersentia*, , 2000-2001.<sup>28</sup>
5. Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), OJ L 136, 31.5.1999.<sup>29</sup>
6. Cf. *Vervaele*, in this issue.<sup>30</sup>
7. OJ L 63 of , p. 1.<sup>31</sup>
8. Commission Green Paper on criminal-law protection of the financial interests of the Community and the establishment of the European Prosecutor, COM (2001) 715, 11 December 2001.<sup>32</sup>
9. Follow-up report on the Green Paper COM (2003) 128, . See: [http://ec.europa.eu/anti\\_fraud/green\\_paper/index\\_en.html](http://ec.europa.eu/anti_fraud/green_paper/index_en.html).<sup>33</sup>
10. Treaty establishing a Constitution for , Official Journal, C 310 of . See <http://eur-lex.europa.eu/JOHml.do?uri=OJ:C:2004:310:SOM:en:HTML>.<sup>34</sup>
11. Treaty of amending the Treaty on European Union and Treaty establishing the European Community, OJ, C 306 of . See <http://eur-lex.europa.eu/en/treaties/index.htm>.<sup>35</sup>
12. See conclusions OJ C 54 of 25 February 2000, p. 93; and work programme, OJ C 12 of 15 January 2001, p.10; [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm)<sup>36</sup>
13. Council of the European Union, The Hague Programme: strengthening freedom, security and justice in the European Union, 16054/04 JAI 559, December 2004, OJ C 53 of 3 March 2005, p.1; see also Council and Commission Action Plan, OJ C 198 of 12 August 2005, p.1. See [http://ec.europa.eu/justice\\_home/doc\\_centre/doc/hague\\_programme\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/doc/hague_programme_en.pdf).<sup>37</sup>
14. Cf. Special Eurobarometer Survey No 291 on corruption perception, published in April 2008, [http://ec.europa.eu/public\\_opinion/archives/ebs\\_291\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs_291_en.pdf)., which reflects at question QB 1.6. that the vast majority of the EU citizens do not consider that there are enough prosecutions in their country to deter people from giving or taking bribes.<sup>38</sup>

15. Consolidated version of the Treaty on the Functioning of the European Union, OJ C 115 of (<http://eur-lex.europa.eu/JOIndex.do?year=2008&serie=C&textfield2=115&Submit=Search&ihmlang=en>).<sup>15</sup>
16. "These measures shall not concern the application of national criminal law or the national administration of justice."<sup>16</sup>
17. Commission Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigation conducted by the European Anti-Fraud Office (OLAF), COM (2006) 244. Cf. Staicu, in this issue and eucrim 1-2/2006, pp. 6-7. For the European Parliament report see eucrim 1-2/2008, p. 12 with further reference.<sup>17</sup>
18. Follow up Report, COM (2003) 128, point 3.2.2., Law of criminal procedure.<sup>18</sup>
19. Follow up Report, COM (2003) 128, , point 3.2.1.1., Fn 74–76; Flore, the project of a European Prosecutor, in: ERA-Forum, Volume 9, Number 2 (2008), p.229.<sup>19</sup>
20. See points 3 and 4 of the Follow up Report.<sup>20</sup>
21. See Lopes da Mota, Eurojust – The Heart of the Future European Public Prosecutor's Office, eucrim 1-2/2008, p.62 (63).<sup>21</sup>
22. See Kuhl, OLAF, the Protection of the Community's Financial Interests and the Outcome of the IGC, in: Vervaele, European Evidence Warrant (2005), p. 167 (172).<sup>22</sup>
23. See Arts. 11 and 12, Regulation (EC) 1073/99, OJ L 136 of , p.1.<sup>23</sup>
24. See contribution by Salazar in this issue.<sup>24</sup>

## \* Author statement

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