III

(Preparatory acts)

COMMITTEE OF THE REGIONS

105TH PLENARY SESSION, 30–31 JANUARY 2014

Opinion of the Committee of the Regions — The Establishment of the European Public Prosecutor’s Office

(2014/C 126/10)

1. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

1. welcomes the Commission’s proposal to create a comprehensive framework for implementation of the Lisbon Treaty to prosecute offences against the financial interests of the European Union by establishing a European Public Prosecutor’s Office. The proposal provides a basis for a fruitful discussion;

2. welcomes the proposal’s objective of creating an independent institution to prosecute cross-border offences against the financial interests of the Union that involve more than one Member State, since, by having its own legal personality and financial resources, the Union would no longer depend exclusively on national law enforcement agencies, whereas at the moment it has no comparable tools to protect its own interests;

3. also welcomes this objective because systematic prosecution of fraud and abuse encourages compliance, thereby securing the economic competitiveness of the Union and its Member States;

4. underlines the importance to local and regional authorities in particular of effectively protecting the Union’s financial interests, since a significant proportion of such offences are connected to the use of Structural Funds, and targeted and efficient deployment of European aid invested in local and regional authorities is vital;

5. stresses the importance of protecting regions against (economic) damage and taking decisive action to combat misuse of European aid;

6. particularly welcomes the Commission’s announcement on improving legal education and training so that such offences can be prosecuted effectively;

7. has no fundamental subsidiarity-related objections per Article 86 of the TFEU to giving a European Public Prosecutor’s Office the power to prosecute offences against the Union, despite the impact this will have on national sovereignty in one of the most sensitive areas;

8. in this connection, notes the concerns expressed in the course of subsidiarity checks by the national parliaments and the ‘yellow card’ they issued, obliging the Commission to re-examine and possibly amend its proposal; stresses that the concerns expressed partly relate to subsidiarity, while others criticise either the proportionality of the proposed measures or the procedure;

9. notes that national/regional law enforcement authorities are already responsible for prosecuting offences against the Union, and emphasises, therefore, its interest and readiness to play a role in the rest of the process;
10. notes the Communication of the Commission replying to the reasoned opinions of national parliaments and chambers (1); reminds the Commission that it has a fundamental obligation to justify its proposals for legislative acts as regards subsidiarity and proportionality; therefore calls on the Commission to provide the requisite, detailed grounds in good time and to ensure they are accessible to all parties involved in the procedure; points out that in its Communication the Commission does not adequately consider the sub-national dimension when assessing the sufficiency of Member State action, whereas the principle of subsidiarity as enshrined in Article 5 (3) of the Treaty on European Union differentiates between the central, regional and local levels; therefore urges the Commission to take the regional and local dimensions of subsidiarity adequately into account in future;

Legislative method

11. stresses that the financial interests of the Union must be protected in all Member States without exception, which is why a supranational framework and institution can provide added value in comparison with national law enforcement;

12. notes, moreover, that the added value of establishing a European Public Prosecutor's Office would be greatest if all Member States take part rather than only some, since the financial interests of the Union must be protected in all Member States without exception;

13. regrets, therefore, that the establishment of a European Public Prosecutor's Office through enhanced cooperation could entail significantly higher costs for Member States, because the existing structures (the European Anti-Fraud Office (OLAF), Eurojust) would need to be preserved and expanded;

14. notes that some national parliaments have raised subsidiarity-related objections, and expects these objections to be addressed as the proposal moves forward;

Establishment and design

15. welcomes in principle the concept in the Commission proposal of establishing a central structure for the European Public Prosecutor's Office that would delegate to prosecutors in the Member States, who, as European Delegated Prosecutors, would act in a dual law enforcement capacity on behalf of both the European Union and their Member State;

16. recommends, however, amending the proposal to effect that each Member State should have at least one national/regional member at the seat of the European Public Prosecutor's Office, so as to be able to take advantage of national/regional linguistic and legal expertise during investigations and investigative measures;

17. welcomes the fact that experienced national/regional European Delegated Prosecutors with an understanding of local conditions and circumstances will be given responsibility for prosecuting complex cases, so that prosecutions are carried out quickly and successfully;

18. welcomes the fact that the proposal, in its provisions on instructions from the European Public Prosecutor's Office to European Delegated Prosecutors, takes account of the fact that the latter are also national public prosecutors, and understands that the European Public Prosecutor's Office will consider the interests of national/regional law enforcement agencies when issuing instructions;

Cooperation between the European Public Prosecutor's Office and judicial authorities in the Member States

19. underlines the need for close and trusting cooperation between the national/regional law enforcement authorities and the European Public Prosecutor's Office if investigations are to be carried out successfully with an understanding of regional procedures and circumstances;

20. points out that the responsibilities of a European Public Prosecutor's Office concerning certain offences against, or directly related to, the financial interests of the Union should be limited in order to take into account the subsidiarity-related concerns that have been raised;

21. recommends setting out the criminal offences that are to fall within the remit of the European Public Prosecutor's Office in an annex to the proposal for the sake of legal and procedural clarity, which will need to be ensured precisely and unequivocally;

(1) Communication from the Commission to the European Parliament, the Council and the national parliaments on the review of the proposal for a Council Regulation on the establishment of the European Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2, COM (2013)851
22. feels that it is important that investigations should be quick and effective, and that it would make sense to address existing enforcement shortcomings by appealing to Member States to step up their own efforts to tackle fraud and abuse;

23. feels that the proposal to give the European Public Prosecutor's Office exclusive responsibility for prosecuting offences against the interests of the Union goes too far, and recommends that the Member States and the European Public Prosecutor's Office be given concurrent responsibility, whilst at the same time making it possible for the European Public Prosecutor's Office to take over investigations (evocation) if national prosecutors are already investigating and it turns out that the financial interests of the Union are at stake;

European criminal proceedings — maintaining constitutional standards and protecting fundamental rights

24. underlines the need to maintain constitutional standards and safeguard the fundamental rights and existing national rights of the parties to any prosecution as part of procedural arrangements;

25. emphasises that the powers and practice of the European Public Prosecutors Office must respect the body of fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights and the constitutional traditions of the Member States;

26. underlines that the Member States would also be bound by their own fundamental rights and by the European Convention on Human Rights (ECHR) when implementing the Regulation, to the extent that this involved applying their own national law;

27. feels that, in this connection particularly, the European Public Prosecutor's Office's powers to transfer personal data and information to the responsible authorities in the Member States in order to prosecute and prevent offences or to avert a direct and serious threat to public security should be appropriately regulated in such a way as to ensure that due account is taken of the data protection requirements provided for in the proposal with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and the free movement of such data (COM(2012) 10);

28. considers the standard established by Council Framework Decision 2008/977/JI of 27 November 2008 on the protection of personal data to be appropriate for the transfer and processing of personal data exchanged between the European Public Prosecutor's Office and the Member States; however, the possibility of further protection measures should remain open;

29. feels that it is imperative that rules be laid down to ensure that information and personal data from the criminal proceedings of the Member States not be passed on to third states, international organisations or other third parties unless the authorities that have provided it have given their express consent;

30. feels that it is urgently necessary to set out in the Regulation individual intrusive investigative powers of the European Public Prosecutor's Office, on the one hand, and the minimum procedural standards that must be observed, on the other;

31. feels, moreover, that all intrusive investigative measures should be subject to review by a judge, and that the admissibility of evidence should be limited to procedures carried out by the European Public Prosecutor's Office;

32. notes that, under the proposal, the responsibility of the European Public Prosecutor's Office would end once a judgment took effect, and that the proposal contains no provisions on enforcement of sentences, on which there will need to be rules;

33. recommends setting out rules on procedural and enforcement costs;

34. considers that in ‘mixed’ cases in which the financial interests of a Member State or other national legal entity within a Member State have also been damaged, concluding an investigation with a transaction for the sake of expediency should require the agreement not just of the suspect but also of the Member State concerned;

35. believes that when a case is settled through imposition of a fine, the money from this fine should go to the State that brought the case;

36. considers it important that injured parties whose injury has been caused by a prosecution should be able to make claims under the material and procedural law of the Member State, and in the Member State, to which they belong.
II. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1
Article 6(2)(2) (and new subparagraph (3))

Reason
Each Member State should have at least one national/regional member in the College of Deputies at the seat of the European Public Prosecutor’s Office, so that it can take advantage of national/regional linguistic and legal expertise during investigations and investigative measures.

Amendment 2
Article 9(3)

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<th>Text proposed by the Commission</th>
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<td>The selection shall be based on an open call for candidates, to be published in the Official Journal, following which the European Commission shall draw up and submit, in agreement with the European Public Prosecutor, a shortlist to the European Parliament and the Council, reflecting the demographic balance and geographical range of the Member States.</td>
<td>The selection shall be based on an open call for candidates, to be published in the Official Journal, following which the European Commission shall draw up and submit for each Member State, in agreement with the European Public Prosecutor, a shortlist to the European Parliament and the Council, reflecting the demographic balance and geographical range of the Member States.</td>
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Reason
The procedure for selecting the Deputies of the European Public Prosecutor should be amended to reflect the proposal to appoint at least one Deputy for each Member State (Amendment 1).

Amendment 3
Article 29(1)(2) (and new subparagraph (3))

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<td>If the suspected person agrees, he/she shall pay the lump sum fine to the Union.</td>
<td>If the suspected person agrees, he/she shall pay the lump sum fine to the Union. If the financial interests of a Member State or other legal entity within a Member State have also been damaged by the offence being prosecuted, the agreement of both the suspect and that Member State shall be needed. The Union shall transfer the sum to the Member State(s) pro rata, to the extent that its or their law enforcement and judicial authorities were or are involved in the case. If there is more than one Member State, the sum shall be distributed amongst them in proportion to the degree of involvement of their law enforcement and judicial authorities.</td>
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Reason
Cases concluded with a transaction for the sake of expediency may be ‘mixed’, meaning the financial interests of a Member State or other national legal entity within a Member State have also been damaged. In such cases, the injured Member States, or those in which the injured national legal entity is located, should be given a say in the settlement of cases.

Given that the law enforcement and judicial authorities of the Member States often play an important role in criminal proceedings, it would also be appropriate to give them a proportional share of any revenue they produce.
Amendment 4
Article 69, new paragraph (3)(a), and (4)

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<td>3. a) Injured parties whose injury has been caused by a prosecution shall be able to make claims under the material and procedural law of the Member State, and in the Member State, to which they belong.</td>
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<td>4. Paragraph 3 shall also apply to damage caused through the fault of a European Delegated Prosecutor in the performance of his duties.</td>
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Reason
Despite the differing terminology, Article 69(3) and (4) could be interpreted to mean that independent claims may arise irrespective of whether there is fault. It seems unreasonable to refer injured parties whose injury has been caused by a prosecution to a body of law that is unfamiliar to them and to recourse to the European Court of Justice. Injured parties whose injury has been caused by a prosecution should therefore be able to make claims under the material and procedural law of the Member State, and in the Member State, to which they belong.

Brussels, 30 January 2014

The President
of the Committee of the Regions

Ramón Luis VALCÁRCEL SISO