

Statement by the Committee on Justice
2013/14:JuU13.

Subsidiarity check on the proposal on the establishment of the European Public Prosecutor's Office

Annex 2

Reasoned opinion of the Swedish Parliament

Concerning the subsidiarity check of the Commission proposal for a Council regulation on the establishment of the European Public Prosecutor's Office (COM (2013)534) which is reported in the Committee on Justice Statement 2013/14:JuU13, the Riksdag considers that the proposal as a whole is not compatible with the principle of subsidiarity. The Commission has not been able to show that the aim of this proposal, i.e. to efficiently combat crimes against the financial interests of the EU, cannot be achieved via measures at national level with the support of inter-governmental cooperation provided by organisations such as Eurojust etc. In the opinion of the Riksdag, neither has the Commission shown that the objectives of the proposed measure can be better achieved via further measures at EU level instead of at national level. In addition the Riksdag considers that the proposal does not fulfil the proportionality criterion that is included in the subsidiarity check.

The Riksdag shares the Commission's opinion that it is immensely important to combat crimes against EU financial interests efficiently and effectively. However this proposal is extremely far-reaching and would mean the establishment of a new, supranational Prosecutor's Office which would be allocated exclusive rights as concerns crimes against EU financial interests. It is clear that the introduction of such a new organisation would impact greatly on both Swedish legislation and Swedish authorities' operations. Article 86 of the Treaty on the Functioning of the European Union does enable a future expansion of the European Prosecution Authority's powers to include other serious, cross-border crime. It is consequently difficult at this time to foresee what the proposal of such a European Prosecutor's Office would mean in practice, especially in the long term.

According to the subsidiarity principle the Union will, in areas which do not fall within its exclusive competence, act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states themselves, and can therefore be better achieved at Union level. In the opinion of the Riksdag, the Commission has not been able to show that the aim of this proposal, i.e. to efficiently combat crimes against the financial interests of the EU, cannot be achieved via measures at national level with the support of inter-governmental cooperation provided by organisations such as Eurojust etc. The Riksdag notes, in this context, that the full potential of Eurojust is not yet observable as all member states have not yet implemented the latest Eurojust decision (2009/426/RIF). There may also be reason to wait until the negotiations on, and implementation of, the Directive on the fight against fraud to the Union's financial interests by means of criminal law (COM(2012)363) before drawing any conclusions as to why the objectives of the planned measures cannot be achieved sufficiently well by the member states. In the opinion of the Riksdag, neither has the

Commission shown that the objectives of the proposed measure can be better achieved via further measures at EU level instead of at national level.

When assessing the necessity of establishing a European Prosecutor's Office, it should also be remembered that the results achieved by the various member states as concerns investigation and prosecution of crimes against EU financial interests appear to vary considerably. In the opinion of the Riksdag it appears disproportional to attempt to solve a problem that primarily concerns certain member states by introducing a measure that impacts all member states in such a comprehensive manner.

In addition the Riksdag considers that the proposal is so far-reaching that the question must be put as to whether the proposed measures exceed what is necessary to achieve its objective i.e. to protect EU financial interests. There should be other, less comprehensive, alternatives that would achieve the objectives of this proposal, e.g. using further measures to prevent crimes against EU financial interests. The EU requirement that member states efficiently and effectively combat this form of criminality could be specified by requiring, for example, special resources to be allocated to these measures and by imposing increased reporting obligations to EU. Even if it is considered necessary to establish a special function at EU level tasked to protect EU financial interests, it should be possible to achieve the objectives with a less far-reaching model than the one currently proposed. Based on the above, the Riksdag considers that the proposal does not fulfil the proportionality criterion that is included in the subsidiarity check.

In summary the Riksdag consequently considers that the proposal in its current form, as a whole, is not compatible with the principle of subsidiarity.
