



Romanian Parliament  
Senate

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Bucharest, October 28

**OPINION**

**of the Romanian Senate regarding the Proposal of the Council for the  
REGULATION of ESTABLISHMENT of the  
EUROPEAN PUBLIC PROSECUTOR OFFICE - COM (2013) 534 final**

Based on the provisions of art. 67, art. 148 al. (2) și al. (3) of the Romanian Constitution, republished, and the Protocol (no.2) attached to the Lisbon Treaty, concerning the changing of the Treaty regarding European Union and the Treaty of Establishment of European Union, approved by Law no. 13/2008

Based on the COMMON REPORT of the Committee for European Affairs and of the Juridical Committee on Nominations, Discipline, Immunities and Validations no. XIX/ 260/ 23.10.2013

Art. 1. Romanian Senate adopts the following Point of View:

**The Juridical Committee on Nominations, Discipline, Immunities and Validations** has been notified, by the address 260/18.09.2013, to **elaborate a common report together with the Committee for European Affairs regarding the Proposal of the Council for the REGULATION of ESTABLISHMENT of the EUROPEAN PUBLIC PROSECUTOR OFFICE – COM (2013) 534 final**, concerning the parliamentary control regarding a project of legislation, according to the attributed stipulated in the TEU and TFEU.

The establishment of the European Public Prosecutor Office (EPPO) is provided within TFEU, in the context for liberty, security and justice area. The Treaty expressly provides that the European Prosecutor Office shall be founded based on Eurojust, which implies that the regulation should create links between these organizations. The Treaty provides that the mandate of the European Prosecutor Office is to fight crimes against financial interests of the Union.

According to the initiators, this proposal for regulation emerges in the context that the prosecution of crimes against EU budget are in the exclusive competence of the member states and there is no European authority within EU. Although the potential prejudice of these crimes is very important, the crimes are not always investigated and prosecuted by the competent national authorities, mainly because of the lack of resources. Therefore, the efforts of the national authorities for ensuring the law abiding often remain fragmented, and the border-crossing dimension of these crimes usually eludes the authorities' attention.

Even though that the border-crossing frauds need investigations and prosecutions strictly and efficiently coordinated at European level, the actual levels of exchanging informations and coordination are not enough to fulfill the objective, despite the intensified efforts of the Union's organizations – like Eurojust, Europol and OLAF. Coordination, cooperation and intelligence exchange meet several problems and limitations due to the responsibility fragmentation of the authorities that belong to multiple territorial and functional jurisdictions. Gaps in legal actions of fighting frauds occur on a daily basis, which constitutes a major drawback for the investigation and prosecution of the crimes against Union's financial interests.

The juridical ground of the proposal is article 86 of the Treaty.

According to the first paragraph (1) of this article, in order to fight crimes that prejudice Union's financial interests, the Council, deciding via a special legal procedure, may create an European Prosecutor Office, based on Eurojust. The Council unanimously decides, after the approval of the European Parliament”.

Second paragraph (2) of this disposition defines the responsibility of the Prosecutor Office, as follows: The European Prosecutor Office has the competence of investigating and prosecuting – as applicable by cooperating with Europol – the authors and co-authors of the crimes that target Union's financial interests, according to the norms stipulated in the regulations within paragraph (1). The European Prosecutor Office wields in front of the competent instances of the member states the public action regarding these crimes”

Third paragraph (3) of the article 86 defines the material application domain of the regulations that are to be adopted accordingly: „The regulations stipulated within paragraph (1) define the statute of the European Prosecutor Office, the conditions of exerting its responsibilities, the procedure regulation applicable to its activities, and the norms that stipulate the admissibility of evidence and the applicable norms to jurisdictional control of the acts of procedure that are adopted in exertion of its responsibilities

*As a conclusion, corroborated as well by the point of view of the Ministry of Justice, it can be considered that, for the first time, an European entity is created that will hold the competences and will have the necessary resources to investigate, prosecute and sue the people accused of frauding or other illicit activities against Union's financial interests, either at national level, or cross-border level. This is a turning point in the process of construction the area of liberty, security and justice in EU.*

According to the proposal for regulations, The European Public Prosecutor Office is created as an organization within EU with de-centralised structure, has juridical personality, includes the European Prosecutor, his deputies, the staff that support them in executing their tasks in conformity with the present regulation, and the delegated European prosecutors assigned in the member states. The European Public Prosecutor Office is led by the European Prosecutor who controls and organizes the activities of the Office. The European Prosecutor has four deputies.

The European Prosecutor represents the European Prosecutor Office in front of the Union institutions, member states, and third parties. He is appointed by the Council, with the approval of the European Parliament, for a mandate of 8 years, which cannot be re-newed. The European Prosecutor is elected from the personalities that offer all warranties of independence and that meet the required conditions in order to exert the highest jurisdictional activities and necessary level of experience as prosecutors.

The European Prosecutor is accountable to the European Parliament, the Council and the European Committee for the general activities of the European Prosecutor Office, especially by presenting an annual report. According to article 340 of the Treaty, the European Prosecutor Office is accountable for any unauthorised or incorrect processing of the personal data.

**As basic principles of the European prosecutor's office we mention the following :**

- **respecting the rights enshrined in the Charter of Fundamental Rights of the EU;**
- **proportionality;**
- **the application, firstly, of the current Regulation** and secondarily of the national law (of the member states where the incrimination takes place). In case of conflict between the national law and the Regulation, the latter prevails;
- **exclusive competence** for the criminal investigation and prosecution of the crimes committed **against the EU's financial interests;**
- **impartiality** in conducting the cases with the gathering of all the relevant evidence, both in accusation and defence;
- **celerity** of both the criminal investigation and the prosecution.

**The proposal of a regulation has been transmitted by the two committees for expressing a point of view towards the following institutions/Romanian state authorities: the High Court of Casation and Justice, Superior Council of Magistracy, Prosecutor's Office of the High Court of Casation and Justice, Ministry of Justice, Ministry of Foreign Affairs as well as to the National Supervisory Authority for Personal Data Processing.**

The Superior Council of Magistracy analyzed the two projects of European legislative acts in its plenary session on October 8th, 2013, on which occasion expressed a point of view with multiple assessments on the impact of such regulation would have on judicial organization, on the magistrates' status in Romania, on the procedure of appointing the European Prosecutor delegated by our country, on the need to amend the powers of the N.A.D., as well as, accordingly, on the redefining and adapting the role of the Superior Council of Magistracy after the entry into force of this proposal of regulation.

The National Supervisory Authority for Personal Data Processing, by the address no. 0018897/25.09.2013, communicated the fact that it has no observations on the chapter addressed to personal data processing

On the occasion of analyzing the point of view conveyed by the Ministry of Justice, according to which, the current proposal is respecting the principles of subsidiarity and proportionality, it has been noted that **the position of Romania is preliminary, the project of the instrument is undergoing further analysis and consultation and it is envisaged that specific draft Regulation establishing a European Public Prosecutor Office, however, requires enactment debate within a group of technical experts (given the many problems related to the structure, powers and functioning of the institution, the status of prosecutors in the EPPO, the procedure for conducting investigations, applicable law, rules of admissibility of evidence, the national courts competence, judicial review of EPP acts and recover legal expenses advanced by Member States).**

Moreover, these concerns arise as well from the point of view submitted by the Attorney General, Mr. Tiberiu-Mihail Nitoiu, as comments and suggestions regarding the status of prosecutors in the the structure of the European Public Prosecutor Office, prosecutors' Statute of the European Public Prosecutor and the procedure for investigation, prosecution, and trial.

The most relevant of these are related to :

- including of provisions introducing more safeguards towards equality of opportunity for all prosecutors delegates regardless of population size of the represented state; the possibility of being elected among the five delegates of

European prosecutors in accordance with Art. 7 paragraph 1, together with the European Parliament and the four Deputy Prosecutor shall participate in the adoption of rules of procedure of the European Public Prosecutor.

- establishment of procedures related to: recovery of damages to persons investigated or prosecuted unlawfully or abusive; recovering legal expenses advanced by the Member States, investigations conducted by the central structure of the European Public Prosecutor during prosecution

**The Committee of European Affairs at its meeting of October 8, 2013 found by majority vote, that the proposal complies with the principles of subsidiarity and proportionality.** In the debates from the Ministry of Internal Affairs participated the State Secretary, Mr. Marian Tutilescu.

**At its meeting of October 22, 2013, the Juridical Committee on Nominations, Discipline, Immunities and Validations debated the draft regulation, noting, unanimously, that the proposal complies with the principles of subsidiarity and proportionality.** In the debates participated, in accordance with Art. 61 of the Rules of the Senate, Mrs. Madalina Manolache, Director at the Ministry of Justice, which has supported the adoption of this draft European legislative act.

Within the debate, it has been emphasized that the discussions in working groups is still in its infancy, following to be taken into account the correlation of more technical aspects of regulatory options regarding: the dualism which may affect the delegated European Prosecutor responsibility, its appointment procedure, the applicable criminal law, the recovery of damage suffered by the Member States etc.

Analyzing the consistency and the impact of this draft regulation regarding existing national regulations, members of the two committees have adopted the following observation:

To comply with national legislation regarding the national judicial organization, and, in this case, with the acquisition of the status of magistrates (prosecutors), is proposed to delete the following phrase : "*... if, on the date of appointment as European prosecutor delegate, one does not already have this status*" from the third thesis of Paragraph 2 of Article 10 - *Appointment and dismissal of prosecutors European delegates*, the text being modified as follows:

(2) The European Prosecutors delegates meet the qualifications required for appointment to the highest judicial offices and a relevant experience as a prosecutor. Their independence must be beyond doubt. Member States shall designate the delegate European Public Prosecutor of the prosecutors having such status under national law.

**We consider necessary that the delegate European Prosecutor selection can only be made among the prosecutors who have acquired this status under national law, respectively, in Romania's case only through competition for admission to magistracy. Otherwise, automatically acquiring prosecutor status under national law, at the same time with the acquiring of European public prosecutor delegate quality, would represent an interference with the judicial organization of the Member States, in violation of the principle of subsidiarity**

The members of the two committees have found that as regarding the act under discussion, except for the provision amended above, it complies with the principle of subsidiarity. Achieving the objectives through new regulation can not be sufficiently achieved by the Member States only, the achievement of which being better accomplished at the Union level, through concerted action, within a single system.

It is also considered that the draft regulation is in accordance with the principle of proportionality, as its scope is limited to what is strictly necessary to achieve the objectives, the options chosen being generally the least intrusive for the legal systems and institutional structures of the Member States .

*This Opinion has been adopted by the Romanian Senate within the session of October 28, 2013, in compliance with the provisions of the article 76, paragraph (2) of the Romanian Constitution, republished.*

p. PRESIDENT OF THE SENATE  
Cristian Sorin DUMITRESCU

