

STATEMENT OF THE GRAND COMMITTEE 1/2013

Government report on the proposed Council regulation establishing a European Public Prosecutor's Office

PRELIMINARY REMARKS

The Speaker sent the government's report on the proposed Council regulation establishing a European Public Prosecutor's Office (U 64/2013) to the Grand Committee for decision and to the Law Committee for opinion on 27 September 2013. The Grand Committee decided to request the opinion also of the Administration Committee.

(The list of evidence, document references and the summary of the Commission's proposal, as well as the government's opinion have been omitted from the translation.)

OPINION OF THE GRAND COMMITTEE

The Grand Committee agrees with the sector committees' assessment of the proposal and considers that the government is right to have reservations about EPPO, even though the regulation's objective of protecting the economic interests of the EU is worthy of support. The Grand Committee agrees with the Law Committee that the EPP regulation raises important issues of constitutional, criminal and procedural law. The proposal is also important in principle as a new form of cooperation in criminal justice. The proposal goes far beyond current criminal justice cooperation, which is based on mutual recognition and approximation of material criminal law. In view of this, the proposal contains some significant problems.

The Grand Committee observes that the Legal Affairs Committee and the Administration Committee have identified in detail the conditions that need to be fulfilled before it is in Finland's interest to be part of EPPO. The Grand Committee agrees with the government's position that the decision on whether or not to participate in this enhanced cooperation has to be taken when the proposal has been clarified and when the views of other member states are known.

The Grand Committee draws particular attention to the fact that the Commission's draft regulation would extend EPPO's competence from the crimes against the economic interests of the EU foreseen in article 86, paragraphs 1 and 3 TFEU to so-called ancillary crimes (article 13 of the draft regulation). This approach causes complications in terms of the Finnish constitution. It will be recalled that article 86 TFEU was one of the reasons that the Lisbon treaty needed to be approved in the special procedure for derogations from the constitution, in this case the constitutions sections 1 (sovereignty) and 104 (the public prosecution service).

The Grand Committee otherwise refers to the opinions of the sector committees and confines itself to a few remarks on the subsidiarity principle.

As noted in the preliminary remarks *(omitted from the translation)* the Grand Committee did not propose that the Eduskunta expresses a reasoned opinion to the Commission. The Grand Committee took

note of the government's view that the proposal does not breach the subsidiarity principle. The Grand Committee took particular note of the fact that the Lisbon treaty's subsidiarity mechanism in its current form is a singularly ineffective way to affect European legislation. The Grand Committee continues to have grave reservations about the effectiveness of the subsidiarity procedure. In the committee's experience, the Commission regularly responds to national parliaments' reasoned opinions with many months' delay, and in very general terms that in practice make no attempt to address the substantive remarks of parliaments. In the committee's assessment national parliaments' inputs have had little if any effect on legislative outcomes, unless the corresponding national government has raised the parliament's observations in the Council of its own accord, either because it is constitutionally obliged to do so, or for other reasons. It is also possible for national parliaments and governments to express conflicting views on subsidiarity. The treaty provisions on the subsidiarity mechanism do not oblige national governments to represent in the Council their parliaments' views on the application of the subsidiarity principle. In Finland there is such an obligation owing to the established constitutional position that the views of parliament are the normative point of departure for the government's actions in the EU.

The Grand Committee emphasises that its decision not to submit a reasoned opinion does not permit the inference that Finland is ready to take part in enhanced cooperation on EPPO.

The Grand Committee stresses that the decision to take part in or to opt out of this enhanced cooperation will be taken in a different context and mainly for different reasons than the assessment required by protocol N:o 2 of the Lisbon treaty. It will be recalled that a reasoned opinion on subsidiarity limits a national parliament to the original Commission proposal and to the very limited legal question of the right level of legislative activity. Although the issue of subsidiarity remains relevant throughout the legislative process, the question of whether or not to take part in this enhanced cooperation involves a wider legal and political assessment of the proposal's benefits and possible problems (including constitutional issues) compared to the status quo. On the same grounds, the Grand Committee observes that a national parliament's decision to question a proposal on subsidiarity grounds must not be used against the members state in Council negotiations; the treaty requires that all member states participate in the Council's and its working groups' deliberations on the basis of equality.

Statement

The Grand Committee states as its opinion

that it agrees with the sector committees and with the government position.