

**English Courtesy Translation of the
Reasoned opinion finding the lack of conformity of the Proposal for a Council
Regulation on the establishment of the European Public Prosecutor's Office with
the principle of subsidiarity – COM(2013)534**

Having regard to the Treaty of Lisbon, especially to Articles 5 and 12 TEU and Protocols No 1 and 2 attached to the Treaty,

Having regard to the Constitution of Romania, republished, especially to Article 148 thereof,

Having regard to the Resolution No 11/2011 of the Chamber of Deputies,

Taking into account the minutes of proceedings of the Standing Committee for Defence, Public Order, and National Security of the Chamber of Deputies, adopted in its sitting of 1 October 2013,

Taking into account the final draft reasoned opinion passed by the Committee on European Affairs in its sitting of 22 October 2013,

Having regard to the approval of the Standing Bureau of the Chamber of Deputies granted in its sitting of 28 October 2013,

The Chamber of Deputies, according to provisions of Article 26(b) of the Chamber of Deputies Decision No 11/2011, in pursuing its right to scrutiny the compliance with the principles of subsidiarity and proportionality, adopts the present **reasoned opinion**:

The Chamber of Deputies:

1. Holds that the conditions provided for in the Treaties that proposal should be subject to parliamentary scrutiny concerning its compliance with subsidiarity are met: it has legislative nature and belongs to non-exclusive competences of the European Union, according to Article 4(1) TEU, Article 5(2) TEU and Article 2(6) TFEU respectively;
2. Accepts the validity of the legal basis relied by its author, meaning Article 86 TFEU;
3. Agrees with the interest expressed by the Standing Committee for Defence concerning the possibility of the European Public Prosecutor's Office to propose a transaction to the suspect for committing an offence affecting the Union's financial interests, leading to the closure of the case, after the damage has been compensated and a lump-sum fine was paid, and assesses that this new procedure from the domestic judicial system point of view may be assimilated and is liable to contribute towards attaining the objectives of the proposal for a Regulation;

Duly notes the conclusion expressed by the Standing Committee for Defence that the proposal consolidates the procedural rights of suspected persons subject to investigations carried out by the European Public Prosecutor's Office;

4. Duly notes the preliminary position expressed by the Government of Romania, that is open in principle to any proposal at the European Union level liable to ensure

efficiency of measures to fight corruption, in general, and frauds in European money, in particular;

5. Duly notes the intention expressed by the Government of Romania to raise in the EU Council the need for an in-depth analysis of the proposal for a Regulation, having regard to numerous debatable or unclear issues;

6. Duly notes the position expressed by the Ministry of Justice that the proposal of a Regulation concerns certain debateable issues, pending to analysis, yet the proposal is compliant with the principles of subsidiarity and proportionality;

7. Holds that, procedurally, according to Article 76 TFEU concerning the area of freedom, security and justice, the threshold provided for this legislative proposal in order to establish noncompliance with the principle of subsidiarity is set to a quarter of all votes held by national parliaments; holds also that this proposal is subject to a special legislative procedure, so that it may be passed only if the Council acts unanimously after obtaining the consent of the European Parliament; holds also that Denmark, Ireland, and the United Kingdom, having opt out arrangements, are free to choose not to apply this act, even when adopted;

8. Duly notes the fact that the establishment of the European Prosecutor's Office is already provided for in Article 86(1) TFEU, and its power to investigate, prosecute, and bring to judgment the perpetrators of, and accomplices in, offences against the Union's financial interests, and also that of exercising the functions of prosecutor in competent courts of the Member States in relation to such offences are already provided for in Article 86(2) TFEU;

9. Acknowledges the importance of effective fight against frauds concerning the European financial interests, yet holds that the phrase "Union's financial interests" is not provided for in, so that, especially in complex cases, it might be difficult to prove what offences affect only the Union's financial interests, and what offences that clearly affect the Union's financial interests affect also national legislation; for that reason, the extension of actions performed by the European Prosecutor's Office beyond the object of Article 86 TFEU becomes possible, and the risk of overlapping the powers of national prosecutor's office and the European Prosecutor's Office, along with the risk of hindering the criminal prosecuting offences carried out at national level is significant;

10. Judges that the added value of carrying out this new competence of EU in the field of prosecuting offences is not sufficiently reasoned by the Commission and in that regard it holds the following:

- even if Article 86 TFEU is the legal basis for the establishment of a future European Prosecutor's Office, paragraph (1) of this article provides the establishment of the European Prosecutor's Office "from Eurojust", but the European Commission did not assess the functioning of Eurojust and more precisely the results achieved by Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust, circumstance that equates to lack of reasoning of the proposal of a Regulation;

- the European Commission should have provided sufficient reasons for rejecting a collegiate management system for the European Prosecutor's Office and also for the limits reached in what concerns the functioning of Eurojust, circumstances that would not allow the establishment of such a Prosecutor's Office even within (or from) Eurojust;

- the European Commission was called to establish the insufficient nature of prosecuting offences against the Union's financial interests, by taking into account that such offences have mainly a national and local dimension;

- the European Commission should have explained in detail the issue of judicial review of procedural measures taken by the European Public Prosecutor's Office.

11. Believes that, as a fraud is committed at national or local level, fighting appropriately against this fraud depends mainly on measures taken at these levels; in this framework, the exclusive competence of the European Public Prosecutor's Office in investigating, prosecuting, and bringing to judgment the perpetrators of offences against the Union's financial interests and ancillary competence of prosecuting linked offences rise uncertainties concerning the compliance with the principle of legal certainty as this competence is not subject to any review;

12. Thinks that the optimal use of European co-ordination mechanisms in criminal field already in place has not been completely achieved, even if these mechanisms provides sufficient facilities in order to effectively fight fraud in European money, also expressing its option for strengthening Eurojust and European Anti-Fraud Office (OLAF), and for maximal use of the powers granted to these bodies, as well.

For the above reasons, the Chamber of Deputies decided to adopt a reasoned opinion, holding that the proposal for a Regulation is not compliant with the principle of subsidiarity.

This reasoned opinion will be sent to the Presidents of the European Parliament, the Council and the Commission, and to the Government of Romania.

SPEAKER

Valeriu Ștefan ZGONEA