



11.11.2013

## **NOTICE TO MEMBERS**

**(98/2013)**

**Subject:** Reasoned opinion by the Slovene National Assembly on the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office  
(COM(2013)0534 – 2013/0255(APP))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

Please find attached, for information, a reasoned opinion by the Slovene National Assembly on the above-mentioned proposal.

In accordance with paragraph 6 of Article 154m of the Rules of Procedure of the National Assembly, the Committee on European Union Affairs, at its 79th meeting of 25 October 2013, adopted the following

### DECISION:

**The Committee on European Union Affairs finds that the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (COM(2013) 534 final) does not comply with the principle of subsidiarity as laid down in Article 5 of the Treaty on European Union and in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.**

#### Justification:

As is clear from the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, the Commission justifies its proposal – in terms of complying with the principle of subsidiarity – by stating that the envisaged measure of establishing a European Public Prosecutor's Office, as a new investigation and prosecution body for criminal offences affecting the financial interests of the Union, is of major importance for the Union, since the steering and coordination of the investigation and prosecution of offences affecting its financial interests, the protection of which is required of both the Union and the Member States in accordance with Articles 310(6) and 325 of the Treaty on the Functioning of the European Union (TFEU), should be carried out at Union level. The Commission argues that in accordance with the subsidiarity principle, given the scale and effects, this objective can only be achieved at Union level, since the present situation in which the prosecution of offences affecting the Union's financial interests is exclusively the responsibility of the Member States' authorities is not satisfactory and does not sufficiently achieve the objective of effectively tackling offences affecting the Union budget.

The Committee on European Union Affairs has taken note of the content of the proposed Regulation. The Committee stresses that the establishment of the European Public Prosecutor's Office per se does not constitute a violation of the principle of subsidiarity, since the possibility of its establishment is provided for in Article 86 TFEU. The Committee agrees on the need to achieve the objective of maximising the effectiveness of the fight against offences affecting the Union's financial interests in all Member States, but believes that this objective could be achieved using measures other than the establishment of a European Public Prosecutor's Office as a new Union body. In this regard the Committee believes that the content of the proposed Regulation does not comply with the principle of subsidiarity.

The Committee believes that the Commission has not satisfactorily explained why the objective – i.e. effectively tackling offences affecting the Union's financial interests – cannot be achieved by measures at national level and with the participation of existing Union bodies (such as Eurojust, Europol and Olaf). The Committee notes that the Commission's assertion – which is the assumption underlying the proposed measure – that action taken by Member States to tackle offences affecting the Union's financial interests is ineffective, is not true in the case of Slovenia, since the competent Slovene authorities do successfully investigate and

prosecute such offences. It should be noted that certain other EU Member States have also been successful in investigating and prosecuting such offences. Therefore the Committee believes that issues relating only to certain Member States cannot be resolved by means of such a significant measure at Union level, applying to all Member States. The Committee believes that the objective should be achieved by other measures (e.g. by Member States regularly reporting to the EU institutions), that greater attention should be paid to improving cooperation between the Member States' competent authorities, that the functioning of the existing EU bodies should be made as effective as possible and that cooperation between them and the national bodies should be improved.

The Committee notes that the establishment of the European Public Prosecutor's Office with exclusive competence to investigate and prosecute offences affecting the Union's financial interests would have far-reaching consequences for Slovenia's constitutional and legal arrangements and the work of the competent Slovene bodies.

The Committee also believes that it is necessary to wait until the conclusion of negotiations and the adoption of the Proposal for a Directive of the European Parliament and of the Council on the fight against fraud affecting the Union's financial interests by means of criminal law (COM(2012) 363), since only then will all the criminal offences within the competence of the European Public Prosecutor's Office be known, and the Member States will be required to transpose the adopted directive into their national legal systems and implement it.

The Committee therefore believes that offences affecting the Union's financial interests should be tackled effectively using the mechanisms which already exist at both national and Union level.