



11.11.2013

NOTICE TO MEMBERS

(0101/2013)

Subject: Reasoned opinion by the Swedish Parliament (Riksdag) 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 Swedish Parliament on the above-mentioned proposal.

Reasoned opinion by the Swedish Parliament (Riksdag)

In examining the application of the principle of subsidiarity in the Commission proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (COM(2013)534), as set out in the Justice Committee report 2013/14:JuU 13, the Riksdag considers that the proposal in its entirety conflicts with the subsidiarity principle. The Commission has not been able to show that the objective it seeks to achieve with the proposal, i.e. to effectively counter offences affecting the EU's financial interests, cannot be achieved by measures at national level with the support of intergovernmental cooperation as offered for example by Eurojust. Nor, in the Riksdag's opinion, has the Commission shown that the objectives of the proposed measures could be better achieved by further measures at Union level rather than at national level. The Riksdag also takes the view that the proposal does not meet the proportionality criterion which forms part of the assessment under the subsidiarity principle.

The Riksdag agrees with the Commission that it is of great importance to be able to effectively counter offences affecting the Union's financial interests. However, this is a far-reaching proposal that entails the establishment of a new, supranational Public Prosecutor's Office which would be granted exclusive competence in respect of offences affecting the Union's financial interests. It is clear that the introduction of such a new system would have major repercussions both for Swedish legislation and for the activities of the Swedish authorities. Furthermore, Article 86 of the TFEU provides for a future extension of the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension. With that in mind it is hard to see at present what the proposal for a European Public Prosecutor's Office would actually entail, particularly in the longer term.

Under the subsidiarity principle, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, and can therefore be better achieved at EU level. In the Riksdag's opinion the Commission has not been able to show that what it seeks to achieve with the proposal, i.e. to effectively counter offences affecting the EU's financial interests, could not be achieved by measures at national level with the support of intergovernmental cooperation as offered for example by Eurojust. The Riksdag also notes that the full potential of Eurojust is not known, as not all Member States have yet implemented the most recent Eurojust decision (2009/426/RIF). Furthermore, it may be advisable to await the negotiations on and the 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 on whether the objectives of the proposed measures might not be sufficiently achieved by the Member States. Nor, in the Riksdag's opinion, has the Commission shown that the objectives of the proposed measures could be better achieved by further measures at Union level rather than at national level.

In considering the need for a European Public Prosecutor's Office it should also be noted that the Member States' results in terms of the investigation and prosecution of offences affecting the Union's financial interests seem to vary widely. The Riksdag feels it is disproportionate to seek to tackle a problem which principally affects only certain Member States by

introducing a system which would have such an intrusive impact on all Member States.

The Riksdag also takes the view that the proposal is so far-reaching as to raise the question whether the proposed measures go beyond what is needed to achieve the proposal's objective of protecting the EU's financial interests. There should be less drastic alternative ways of achieving the aim of the proposal, e.g. by adopting further preventive measures to combat offences against the EU's financial interests. The EU's demand that the Member States effectively combat such offences could be clarified, for example, by requiring specific resources to be allocated for this purpose and by imposing a stricter requirement for reporting to the EU. Even if it should be regarded as necessary to establish a special office at EU level with the task of protecting the EU's financial interests, it should be possible to achieve these objectives using a less far-reaching model than the one proposed here. In the light of the above, the Riksdag takes the view that the proposal does not comply with the proportionality criterion which forms part of the assessment in the light of the subsidiarity principle.

To sum up, the Riksdag considers that the proposal, in its current form, is incompatible in its entirety with the subsidiarity principle.