

**Commission's Public Hearing on the establishment of a  
European Public Prosecutor**

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*Section 3*

*Presented by*

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### **1. The decline of national sovereignty**

The decline of national sovereignty as the result of e.g. the international cooperation in economical, military affairs and migration as well or with other word the globalization is an undeniable fact. The consequence of it was the cutting down of the structure of the national state on the one side and the reinforcing of the national policy on the other. This process concerned the law as well. The grade of involvement of law branches in this process was different. On the field of civil commercial, competition and financial law the progress of harmonisation is going without any particular shock despite of the criminal law where this way is not smooth. The criminal law has not been being a strategic branch of law till now.

The one reason of it is that the birth of criminal law is a process which is, historically speaking, closely related to the emergence of the central powers of the State. Defining and punishing crime has been the insign of state power. With the famous definition of the German scholar Max Weber the state is the only agency entitled to use power legitimately. And this power is the organic part of the sovereignty. If a state delegates it in favor of an other State or *horribile dictu* to an international organization at the same time resigns from the still remaining part of sovereignty.

The second is that in spite of the common legal values based on roman legal traditions the legal institutions differ State by State and each State is bound to and proud of its legal traditions and to the values which are conveyed by this traditions. The spirit of cooperation on the field of criminal law and criminal justice has always been present in the various traditional forms of international cooperation. At the same time it is an undeniable fact that the emerging of the EU, the eliminating the borders between the Member States, the developing and restructuring of the international criminality e.g. international financial crimes (fraud) especially against the financial interests of the EU produce a new situation which has gone beyond the traditional frameworks of cooperation. The progress of economical integration was not followed by the integration of criminal justice. Not even the sectoral integration. It is not in contradiction with the reality that international criminal law is increasingly becoming the fact of day to day life in an ever- globalizing economy.

## **2. The necessity of a criminal law enforcement agency on EU level**

The conveyors of this process are the big international organizations as the EU playing an outstanding role in urging their Member States to accept international criminal law regulations, although the fact is that there is no strong link between criminal law and the EU. Each Member States has a unified system of criminal law, but no such system exists throughout the European Union. In spite of this fact the Community law has had a tangible effect on national criminal law without any integrated implementation mechanism except the competition law. The responsibility of implementing the community law rests upon the "shoulders" of the Member States. One of the classical tools for carrying out the rules is the national criminal law charging the offender under national law where there is either special law or not to govern the situation.

The second method is the requiring the Member States to punish breaches of Community law in a given fashion imposing penalty that has been more or less prescribed at Community level.

The third method is taking in consideration the aforementioned sectoral integration to create unified EU level criminal law rules and a law enforcement agency for EU wide enforcing these rules. The harm of the EC budget which was estimated € 413 m in 1999 can show the practical need for such rules. It is easy to realize that the financial interests of the EU are independent legal objects which are good basis for establishing special unified criminal law rules for protecting the financial interests of the EC. Neglecting this view can lead to the fragmentation of the criminal law which makes the EU wide enforcement very complicated and inefficient and can cause disfunctions in the work of a possible EU-wide law enforcement agency. Only the unification can serve as a reasonable ground for creating the European Public Prosecutor. The idea of the European Public Prosecutor deserves the full support. Either political or professional. Sorry to say that the political hostility against this institution stemming from defending (not in good sense) the sovereignty is strong and the national prosecution services are also looking at this organization as an enemy, a possible rival which can curtail their competence. This resistance has to be overcome by the EU for a successful creation of this organization. Of course this is not enough. The devil lies in the details says the proverb. Setting up a European Public Prosecutor (EPP) there are several problems which have to be faced. I would like to reflect to these problems only briefly.

### **3. The Green Book as a possible ground of setting up an EPP**

a/ The decentralized structure of the EPP has to be integrated in the legal system without creating a central authority while it would be rigid and not flexible. This could help to avoid the possible confrontation with the national prosecution

service. The EPP's and the Deputy EPP's independency has to be ensured defining the detailed rules of removal from office by the judiciary.

b/ Taking into consideration the principal of opportunity (Opportunitätsprinzip) it should concretely be specified the law breaching activities which should be referred to the EPP with the restriction of 'minima non curat praetor'. I would like here to refer to the importance of the unified criminal law regulations.

There is no obligatory referral but the EPP can initiate the procedure 'ex officio'. A considerably discretionary power should the EPP be given to decide whether the case is suitable and ready for prosecution.

c/ As the cases belonging to the competence of the EPP are cross border financial crimes (fraud) being either clear or hybrid there is a need to define the minimum rules of investigation acceptable for all Member States as the European Protocol in the Corpus Juris 2000 and to define the criteria of the mutual admissibility of evidence.

d/ Parallel of creating the prerequisites of mutual recognition of investigation and evidence the minimum criteria of the accused rights in criminal procedure taking into consideration the regulation of the Human Rights documents (ECHR, EU Charter of Fundamental Rights) and the case law of the ECHR