

Public hearing on the Green Paper on the protection under criminal law of the Communities' financial interests and the establishment of a European Public Prosecutor, Brussels on 16-17 September 2002

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Madame President,

I am here representing Finnish academic expertise (as a University Professor), having been the Finnish national reporter for the Corpus Juris study (II, 2000) and being the Chairman of the Finnish Association for European Criminal Law.

We have heard very critical comments on the Green Paper by the representatives of the Finnish Ministries and other authorities. Much in that critics is what an academic scholar shares: When a new European agency, European Public Prosecutor (EPP), and even more – a new legal structure for a vertical cooperation – is under planning, it is reasonable to expect that the preparation is based on rational argumentation and on the experience from the existing or just adopted alternative means (i.e., of the horizontal cooperation, Eurojust, European arrest warrant) as well as on the cost – effectiveness -analysis of the proposed new agency and its legal structure.

On the other hand, the responsible organs of the EU must also prepare visionary planning papers for the future when the enlargement of the EU has been realized. The development and implementation of such planning papers require several years. During that time we can learn about the experience of those alternative means. The development towards more harmonized European criminal laws and criminal procedures obviously continues at the same time and will make it easier to introduce new models for a vertical cooperation.

Generally, the Corpus Juris study and the EPP-proposal represent such kind of comprehensive conceptions of European criminal policy which aim at increased coherence and rationality at the EU level. It has often been said that the preparation of new legal instruments within EU's third pillar is too fragmentary and lacking those planning qualities. Nevertheless, when striving for a new comprehensive and coherent legal structure (like the EPP-proposal) , it should also have enough added value in relation to the already existing legal instruments – so that this value is clearly seen in the Member-States.

Firstly, the most important added value could concern the strengthening of individual rights in the international, border-crossing proceedings. Corpus Juris study expressly would set out common rules regarding the rights of the defence, and would put the police investigation powers under the control of a judge of freedoms or a European preliminary Chamber. This aspect should be particularly taken into consideration when the next version of the EPP-proposal will be developed. By strengthening the protection of fundamental rights at the pre-trial stage we could also increase the legitimacy and mutual confidence towards a vertical cooperation between the Member-States.

Secondly, in line with the subsidiarity principle governing the EU law, the competence of the EPP should be arranged according to a similar principle of complementarity as relates to the competence of the Prosecutor of the International Criminal Court in the Rome Statute (1998): only in case the Member-State is unwilling or unable genuinely to carry out the investigation or prosecution the EPP should have the primacy over the national authorities. When this kind of complementarity

principle were adopted the EPP could have even wider jurisdiction over offences violating the financial interests of the EU (cf. Corpus Juris study in this respect).

As to the question of the EPP's independence, Finland represents such a European country where the Prosecutor General and the prosecution service under his supervision already have a very independent status as organs of the criminal justice system. The public prosecutor is a strong actor in the adversarial proceedings, which is to be complied with the principles of oral, immediate and concentrated procedure. On the other hand, the role of the public prosecutor in conducting pre-trial investigations as well as the role of the court or a judge in controlling the investigations and the use of coercive measures are more limited as in many other European countries. (See, in more detail, M. Joutsen, R. Lahti, P. Pölonen: Finland. Criminal Justice Systems in Europe and North America. Helsinki 2001.)

It is obvious that the increased harmonization of European procedural laws would facilitate the establishment of the EPP. I personally do not see the establishment of the European Prosecution Service as such a threat to the legal cultures of Member-States or of such a homogenous sub-region as the Nordic countries, as I regard the increasingly used legal instruments for harmonizing and even unifying substantive criminal law and the system of penal sanctions. In particular, the system of penal scales and sentencing practices should leave place for cultural differences at least in cases where the offences in question do not violate the financial interests of the EU or are not by nature serious transnational crimes. When speaking in favour of cultural differences I have in mind such defensible values which are characteristic of the legal culture in the Nordic countries: for instance, the primary role of crime prevention, and the requirements – in criminal policy – of legitimacy, a relatively low level of repression and humaneness. (See, in more detail, R. Lahti: Towards a Rational and Humane Criminal Policy – Trends in Scandinavian Penal Thinking. Journal of Scandinavian Studies in Criminology and Crime Prevention, vol. 1, pp. 141-155, 2000.)