

## **Status of the Deputy European Public Prosecutors**

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As proposed by the Commission in subsection 4.2. of the Green Paper the overall architecture of the prosecution service is based on a division of tasks between a chief European Public Prosecutor, who would provide the minimum degree of centralisation necessary at Community level, and Deputy Prosecutors, who would be integrated into the national justice systems and who would actually bring offences to trial. The European Public Prosecutor would rely on Deputy European Public Prosecutors in the Member States, so as to secure the link between the Community mechanism and the national systems of justice. The Deputy Prosecutors would have a vital role to play: anything the chief Prosecutor could do he could delegate to his Deputies. In practice they would be the channel through which he acted, because in most cases it would be a Deputy Prosecutor who would actually handle investigations or prosecutions.

### **Independence of the Deputy European Public Prosecutors**

The Deputy Prosecutors (DP-s) would be appointed by the chief Prosecutor; candidates would be nominated by their Member State of origin, from among national officials who conduct criminal prosecutions in the particular Member State and who can therefore claim relevant experience. DP-s would be designated for a specified period.

Here we are facing the problem that, the nomination procedures will vary in different countries. Most probably national Parliaments will be regulating the nomination procedures. And it will not be easy to assure comparable degree of independence of nominees. As to the DP-s will not apply the non-renewability clause, their independence could be hindered by their interest in re-nomination. Applying non-renewability clause to the DP-s would not solve the problem, because in majority of cases they would be looking for an appointment in a national prosecutor's office after their term as a DP.

For Estonia the problem is even somewhat worse, because in Estonia the pre-trial investigation is a police-function and the prosecutor's office is mostly active only at the trial stage. Therefore there are no officials, who conduct the full scope of activities of the future EPP.

There is an extra problem with the independence of the DP-s because the Green Paper states that it does not necessarily envisage that the Deputy Prosecutors should have autonomous status. They could retain their national status in all respects regarding recruitment, appointment, advancement, remuneration, social protection, routine management, etc. Their hierarchical and disciplinary status would alone be affected for the duration of their term of office, as set out below. Therefore in all other aspects they could be not independent from national authorities.

This clause made me think that may be the Green Paper does not consider the DP's independence necessary. I was glad to find another clause stating that the rules applicable to the Deputy European Public Prosecutors should be reviewed in close

cooperation with the Member States, particularly in order to secure a genuine assurance of independence.

### **Could this European office be combined with a domestic one?**

The Green Paper offers three options:

The first is that a Deputy European Public Prosecutor might be excluded from holding any other office.

Secondly, the office of Deputy European Public Prosecutor might be simply a specialisation (“two hats”).

Third option: leave each Member State free to opt between the first two options.

The efficiency goal might suggest to the second and third option, because the number of prosecutions may be (and hopefully will be) small (especially in small countries like Estonia). And in “hybrid cases” these options could allow economy by allowing the person to be a European and a national prosecutor in the case.

Nevertheless, if the independence of the DP’s should be taken seriously the only option should be the first one, excluding holding other judicial, prosecutorial or investigative offices.

### **Means of action of the Deputy European Prosecutors**

According to the Green Paper the European Public Prosecutor should have his own budget, charged to the general budget of the European Communities. This budget would be managed on a totally independent basis by the European Public Prosecutor. But the Deputy European Public Prosecutors would remain subject to national rules and be remunerated by the Member State. Only if there are extra operational costs for the Member States as a result of the European Prosecution Service, they could be charged to the European Public Prosecutor’s budget.

These provisions would create extra problems for the European Prosecution Service (EPS). If the DP’s will be financially dependent from the national budgets it will be difficult to envisage principle of indivisibility in the operation of the European Prosecution Service. But for the EPS to be effective it is essential that any DP could be authorised by the EPP to take action in any other Member State, in cooperation with the DP for that jurisdiction and Deputy Prosecutors should have a duty to assist one another.

For all these cases Member States should apply for reimbursement from the EPP budget. This would cause unnecessary unproductive paperwork. The indivisibility principle would be much easier to maintain via common budget for European Prosecution Service including costs of the DP’s.