Editorial

The Substantive Criminal Law Jurisdiction of the European Public Prosecutor’s Office

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Introduction

At various occasions, Commissioner Reding has announced that she will present a proposal for the establishment of a European Public Prosecutor’s Office (EPPO) before the summer of 2013. Whereas the reasons to establish such an office may still need some further substance, I am quite convinced that in the realpolitik of the day, it eventually does not really matter whether Europe needs an EPPO or not, but that it will come, sooner or later. It is therefore time to think about the construction of such an EPPO. In this contribution I will focus on the competence ratione materiae (substantive criminal law jurisdiction), as well as the way the competing jurisdiction of the EPPO and the Member States could be regulated. When pondering about the structure of an EPPO, one should start with these elements as they determine procedural and evidentiary topics. I will

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therefore neglect most procedural issues, as these have already been dealt with in the Luxembourg Model Rules. 

2. Why Do We Need an EPPO?

With each and every measure, and even more with the establishment of a new office, it should be proven that there is a need to take such a measure. In its Resolution on an EU approach to criminal law, the European Parliament formulated principles or criteria on the basis of which new legislative proposals in the area of criminal law should be assessed. This fits in to the ideas of the Commission to formulate a more consistent and coherent criminal policy.

In its proposal for a new Directive protecting the Union’s financial interests, the Commission estimated that around EUR 600 million is defrauded within the Union annually to the detriment of the European Union. It is unclear how this figure has been calculated. As we deal with illegal activity it is impossible to make a reliable assessment. However, even when one would take this figure seriously, it does not seem to be a very impressive amount of money given the quantity of the annual EU budget, which is just over almost EUR 150 billion for 2013. The fraud affecting the financial interests of the EU would then not be more than 0.004% of the budget, in absolute terms certainly a lot of money, but in relative terms it raises the question of whether it does require setting up a new common European prosecutor’s office.


4) See the European Criminal Bar Association, Cornerstones for a Draft Regulation on the Establishment of a European Public Prosecutor’s Office (“EPPO”) in accordance with Article 86, paras 1–3 TFEU, available online at <www.ecba.org>.

