Editorial

The Proposal for a Regulation on the Establishment of an European Public Prosecutor’s Office: Everything Changes, or Nothing Changes?

Michele Caianiello*
Department of Juridical Sciences, School of Law, Alma Mater Studiorum, University of Bologna, Bologna, Italy

1. Introduction
As announced on various occasions, on July 17th 2013 the Commission finally presented a proposal for regulation on the establishment of an European Public Prosecutor’s Office (EPPO).¹

Of course we cannot tell, so far, if the European Union will ever have a Public Prosecutor, as there are too many variables at stake. It is almost sure that unanimity will not be reached²; it is possible, but far from sure, that the establishment of the EPPO will eventually come into being through enhanced cooperation. However, and despite all the possible variables, we can affirm that — as André Klip pointed out — the realpolitik of the day makes this possibility more probable

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²) As provided for in para. 47 of the introductory remarks, the United Kingdom, Ireland and Denmark will not be part of the EPPO. The United Kingdom and Ireland will maintain the opt-in prerogative, while Denmark will remain out of the system.
than not, as it is confirmed by the recent proposal of regulation (hereinafter, EPPO’s proposal).

Therefore, it is worth keeping our attention on this issue, which is probably the most topical in the current EU criminal policy agenda. For the first time in a while, we have a legal text as a field of analysis, rather than theoretical projects or studies. In my contribution I will focus on various procedural aspects of the EPPO’s proposal, with the goal of drawing some preliminary considerations on the predictable identity of the EPPO, as emerging from the Commission’s proposal.

2. The Goal of the Commission: Reducing Complexity

The first aspect which is worth considering concerns the approach taken by the Commission in its proposal. Far from focusing merely on the EPPO, the Commission is aware that the establishing of the EPPO is likely to interfere with other existent bodies. Therefore, the EPPO proposal is part of a more comprehensive legislative package, which includes regulations on Eurojust and OLAF. The same day of the EPPO’s proposal, the Commission presented two other proposals, dealing, respectively, with Eurojust and re-launched the idea of reforming OLAF. This approach has indeed to be welcomed. The comprehensive plan unequivocally shows that the Commission is aware of the urgent need for simplification, at any level, in EU criminal matters.

Complexity has been so far the actual mark of the EU criminal justice. This is due to various factors. The first cause can be called “sources’ complexity”, and it is well known to any jurist who has been required to apply (or refer to) Union provisions in criminal matters. Since 1992, the European Union has introduced various legal sources in criminal matters, each one different from the other for characteristics and effects. Starting with the first soft law sources — such as the 1992 common positions and recommendations — we had, at the end of the last century (1997-1999), the so-called “semi-hard sources”, such as the Framework Decisions. These sources proved to be far more effective than the EU

