Chapter 10
Concluding remarks

Are the public prosecution services in all Member States the same? To what extent do they differ? Are there European standards for PPSs? How far can the organisation of a PPS and its role in criminal prosecutions differ between Member States but at the same time comply with pre-accession criteria?

Even if the public prosecution services in the four continental law systems studied have the same root (see for the Netherlands 4.1.1, Poland 5.2.1.2 and 5.3.1, and for the Czech Republic 7.1.1 and 7.2.1), its transplantation into different legal cultures and the unique historical developments in each culture have led to different developments and specific characteristics. Comparison reveals multiple areas of similarity between the four prosecution authorities. However, these should not be viewed as European standards given the limited scope (four of twenty-seven countries) of this study. Although it is currently impossible to say what should be constant across all Member States, it is possible to say where systems converge and, within these points of convergence, where variations are possible. I will first look at where these points converge.

Secondly, the study demonstrates that the notion of diversity in the organisation and functioning of the public prosecution services in the European Union cannot be ignored. To facilitate the cooperation of the judicial authorities of the Member States, this diversity must remain within certain limits. These limits are naturally implicit in the phrase ‘stable institutions guaranteeing democracy, the Rule of Law, human rights and respect for and protection of minorities’. It seems that a stable PPS, guaranteeing democracy, the Rule of Law, human rights and respect for and protection of minorities should be organised and function according to four principles – independence from unfair or illegal intervention, democratic control, efficiency in the defence of the public interest and respect for human rights. Although

530 See Chapter 1 on the Copenhagen criteria.
many other interpretations could be put forward, I will consider these standards as the barriers beyond which national diversity would be open to criticism. The methods employed in each constitutional tradition to secure the organisation of the PPS within these limits is not necessarily the same. A multitude of combinations is possible. As an example, I will apply this test to the four countries studied and underline the weaknesses of certain national characteristics.

10.1 Converging trends

1. In the four democratic societies based on the continental legal tradition studied here, one of the current fundamental goals of the PPS is to defend the so-called ‘public’ or ‘general interest’ by representing society in criminal justice. This function is a priority for public prosecutors. The importance of this concept is obvious if the aim of the PPS in Communist Poland and Czechoslovakia is compared to the aim of the PPS in modern-day Poland, the Czech Republic, the Netherlands and France. During the Communist era, the Party interest – the achievement of Communism – was the priority and its defence took precedence over the public interest of society as a whole in the case of conflict. To the extent that an absolute monarchy is comparable with a totalitarian regime, this instrumentality of the prosecution authority is unsurprising, since the Prokuratura originated in the absolute monarchy of the French Ancien Régime where the defence of the interests of the king was the primary task of the public ministry (2.4). Although the task was not completely disregarded during the Ancien Régime, the defence of the public interest only really became a priority after the French Revolution (2.2.2.1, 2.6). Despite taking place two hundred years later, the collapse of Communism had a similar impact on the Prokuratura. The notion of the defence of the public interest is one of the first modifications made in the new regimes.

2. The PPS represents society, which defines part of the public interest through a democratic process. It is concluded that the four countries' systems each refer to the public interest in the functioning of their respective PPS (9.1.1). Public prosecutors approach the defence of the public interest by upholding the law and representing

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531 Society is understood here to be a particular community of people living in a country or region, and having shared customs, laws and organisations; see Compact Oxford English Dictionary of Current English, Third Edition.

532 It should, however, be mentioned that modifications were simplified by the fact that before the Communist system was transplanted into Poland and Czechoslovakia, a post-French Revolution-like PPS was already in place.
only one client against crime in justice – society. Again, this act of representing and defending a ‘client’ flows from the French Ancien Régime, in the early days of which avocats and procureurs du roi were private lawyers defending the interests of the King (2.4.1). Today, society replaces the Crown, implying that society establishes what interests are to be protected and how to safeguard them. In the four countries studied, society expresses the public or general interest through legislative powers to pass laws and the executives that initiate the legislative process, and it explains by means of guidelines how to implement these laws. The PPS in all four countries, especially but not exclusively, upholds criminal law in the public interest. With these laws and guidelines, society defines crimes. Indeed, who could claim that it is not in the public interest, for example, to prevent citizens from killing each other or stealing each other’s property? Such prohibition is necessary for the proper functioning of society and to protect it against chaos and barbarity. At first glance, the PPS defends a public interest that seems to have by definition a national scope. However, this begs the question of what the role of public prosecutors is if the scope of the public interest reaches a Community level. If necessary, should public prosecutors be able to refer directly to the public interest, as defined in Community legislation?533

3. An independent PPS is possible and advisable. The PPS does not have to depend entirely on the legislature, the executive or the judiciary. In the State organisation of the four countries studied, the PPS is positioned between the national and Community legislatures that issue laws expressing the public interest, an executive that gives guidelines to the PPS on how to enforce laws in the public interest, such as by means of a criminal policy, and a judiciary that interprets these laws in the public interest. The fundamental aim of the PPS is not exclusively the aim of any one of the three powers. In fact the defence of the public interest should motivate the executive, the legislature and the judiciary. Nevertheless, the ‘checks and balances’ inherent in the separation of powers necessarily also imply

533 According to the principle of supremacy, all Member States have limited their sovereign rights; Case 6/64 Flaminio Costa v. E.N.E.L. [1964] ECR 585. In the Case 68/88 Commission v. Greece [1989] ECR 2685, the Court of Justice decided that the Member States have an obligation to ensure that ‘infringements of Community law are penalized under conditions, both procedural and substantive, which, in any event, make the penalty effective, proportionate and dissuasive’. Later, (e.g. in the Case 333/99 Commission v. France [2001] ECR I-1025), the Court sanctioned Member States that fail to prosecute or take administrative action against individuals breaching EC law.
divergences in interpretation. It is therefore understandable that public prosecutors cannot be expected to be more dependent on one power than on another. Comparison of the organisation of the PPS in the four systems (9.1.1) revealed no uniformity in this respect. In exercising its functions in criminal justice, the PPS does not have to represent one power more than another. Accordingly, the independence of the PPS from the three powers can be perceived as necessary because the defence of the public interest is not the exclusive preserve of any one power. At the same time, it can also be regarded as one of the best ways to achieve a fair balance between the three.

4. If a Member State chooses a PPS dependent on the executive, the latter can limit its role to the mere administration of the service and/or also supervise the activity of prosecutors in criminal justice. The Minister of Justice can have both roles, administrative and supervisory, however, this is not a necessity. This is witnessed in the example of the Czech Republic, where neither the head of the PPS, i.e. the general prosecutor, nor the other prosecutors receive instructions from the Minister of Justice regarding criminal prosecutions. The administration of the PPS by the Ministry of Justice means that the executive handles issues concerning the appointment and discipline of public prosecutors, and sometimes the budget. The comparison of the systems revealed that the status of prosecutor is awarded for an unlimited period and may be revoked only after disciplinary proceedings establish a breach of duty. Public bodies other than the Minister of Justice can participate in the appointment and disciplinary proceedings. It seems that the more these public bodies become independent representatives of society, the more independent the public prosecutors are in the performance of their functions. Nevertheless, exceptions are possible with regard to the highest-ranking prosecutor, who may be dismissed on the basis of a purely political decision without disciplinary proceedings, as in Poland and the Czech Republic. Such an exception is open to criticism with regard to the independence from political pressure that public prosecutors should enjoy, unless the system provides for sufficient democratic control over instructions from superiors.

5. If the Minister of Justice or the highest-ranking prosecutor where he is politically accountable to the government, intervenes in the activities of public prosecutors, his intervention must be transparent and amenable to democratic control. In this case the Ministry of Justice should be responsible along with the PPS for the establishment and enforcement of criminal policy. As a
representative of society, the executive exercises influence over the way public prosecutors perform their duties in criminal proceedings. The Minister of Justice can supervise the way public prosecutors act in criminal proceedings by way of published general instructions (9.1.2.4.1) and can sometimes issue specific instructions in pending cases (9.1.2.4.2). Such specific instructions are preferred in writing. Moreover, the recipient should have the right to refuse an instruction or to ask for his exclusion from a case in order to preserve his or her independence. In principle, the Minister of Justice can only issue positive instructions, such as to order the prosecution of a case or to continue dismissed proceedings. Prosecutors enjoy discretion in determining whether or not society has been harmed by the commission of a crime. This boils down to a public prosecutor having the power to decide to drop a case despite the person involved in the case having acted contrary to a criminal statute (see 9.4.2.3). Ministers also have the right to order the dropping of a case, as illustrated by the Netherlands. Nevertheless, such an instruction should only be valid if the legislative and judiciary powers are properly and strictly informed (4.3.4.2.2).

6. When interventions by the Minister of Justice in the exercise of public prosecution are possible, a distinction can be drawn between countries where the principle of compulsory prosecution is in force (the Czech Republic and Poland) and those enforcing the opportunity principle (France and the Netherlands). Intervention concerning legal issues, such as the explanation of new legal concepts or the strict application of the law in a specific case, is possible in both systems. An intervention concerning certain categories of objectives, such as the prosecution of one type of crime rather than another or the dropping of a crime that a prosecutor considers harmless, should in theory only be possible in countries where the opportunity principle is in force. In other countries, public prosecutors have the duty to always prosecute a person suspected of having committed a crime. In either case, executive interventions in pending cases should be extremely rare and must only be motivated by the public interest and the necessity to monitor the correct application of the law.

7. The democratic control of the activities of the PPS in criminal justice is necessary. The idea that the PPS represents society by upholding the public interest against crime is justification for the work of prosecutors to be checked and supported by society, through parliament, for example. If a Member State chooses to create a PPS dependent on the executive, control can be exercised indirectly
through the political accountability of the Minister of Justice. In the countries studied, parliaments control the administrative and supervisory powers of the executive over the PPS by means of a vote of confidence in the government and through budgetary control. This vote can affect a government as a whole, or a Minister in particular. Firstly, such controls can lead to the issuing of new legislation, the amendment of existing criminal law and procedure or the modification of prosecution guidelines, e.g. modification of a criminal policy. Secondly, if the public interest was neglected, such controls can lead to disciplinary sanctions and ultimately the dismissal of prosecutors or even the dismissal of the Minister of Justice, as the highest-ranking prosecutor, where he or she is politically accountable to the government. Since there is no uniformity in PPS organisation between the systems, and since the PPS can fall under the authority of powers other than the executive, the direct accountability of the PPS to parliament is a possibility. Such accountability could be an efficient solution in systems where the PPS establishes in part or in whole the criminal policies, as in the Netherlands or the Czech Republic, and especially if the opportunity principle is in force, because public prosecutors can then justify decisions in criminal proceedings that conflict with political concerns. Nevertheless, such accountability should only apply exceptionally in very sensitive cases to ensure that the PPS is required to justify a decision on a prosecution or the refusal of an instruction. To avoid instability in criminal policy, parliament should not be able to instruct the PPS.

8. A hierarchy within the PPS is necessary to ensure the effective control of the organisation of the service and of prosecutors’ activities, and to promote an efficient and fair criminal justice system. The structure of the hierarchy can take various forms. PPSs are organised into offices and there is always a hierarchy within each office in that there is subordination between the office head and his deputies. As in the Netherlands, there is no need for a hierarchical relationship between offices at different levels, such as between district and appellate offices. Nevertheless, there must be at least one level superior to the office conducting criminal prosecutions in a given jurisdiction, whether at the first instance or the appellate level. There is no requirement for the Minister of Justice to supervise the highest-ranking level because the PPS may or may not fall within his authority. The subordination of lower prosecutors to superior prosecutors exists for organisational – such as office management – and functional purposes. This is important for the efficient and fair defence of the public interest and to ensure the coherence of the
prosecutors’ actions. For example, if a lower prosecutor refuses to commence criminal proceedings, a plaintiff always has the right to report this refusal to the prosecutor’s superior (9.4.1.1). The superior may then take the necessary measures if such a refusal was not in the public interest.

9. A PPS is always a unified and indivisible institution. The representation of society through the defence of the public interest justifies the unity and indivisibility of the prosecution authority, and that in turn implies that prosecutors can substitute for one another (9.3.1). Public prosecutors defend one public interest and are accountable to one ‘client’ – society. If the unity in the organisation seems to impose a strict general standard implying a common status for all prosecutors and an impersonal accountability of the whole service for the activities of its members, the specific unity in the performance of the prosecutors’ duties can vary. This is particularly the case in countries where the opportunity principle is in force and where, according to various factors, local chief prosecutors may interpret the law in their own way. Such interpretations are often justifiable in specific circumstances, but they may lead to differences in the protection of the rights of individuals. Differences culminate in the right of a chief prosecutor to decide, in very exceptional circumstances, to refuse to carry out a superior order – e.g. the case of France and the pouvoir propre of procureurs de la République (3.3.3.1). Of course, this power should not be abused and disciplinary proceedings should sanction possible abuses. However, it seems advisable that the unity of the PPS in the performance of the prosecutors’ functions should be of the same nature as in the organisation of the service. Such unity could be enhanced, as it is in the case of the Netherlands, by a series of very detailed instructions listing the responses that can be adopted in similar exceptional circumstances by all prosecutors.

10. Public prosecutors enjoy a monopoly in the defence of the public interest in criminal justice. While organs other than public prosecutors can intervene in the upholding of the law and the public interest in non-criminal proceedings, prosecutions remain, in principle, within the exclusive jurisdiction of public prosecutors. Only a public prosecutor can decide to divert a case from prosecution (9.4.2.2) or to prosecute criminals before a court and thus file an indictment, summon the accused, withdraw an indictment or take another diversion decision (9.4.2.1). This monopoly does not mean that only a public prosecutor has the right to institute criminal proceedings. Other bodies, such as the police or a plaintiff, may also
have this right. If, for example, mainly private interests are affected by a crime, other bodies or persons, such as a plaintiff, can have the right to bring their own indictment, as in Poland (6.4.2.3) or France (3.4.2.1). However, if the public interest requires it (in Poland), or as soon as the indictment is served (in France), the PPS regains its monopoly fully and conducts the prosecution before a court. The monopoly over prosecution justifies a certain ‘omnipresence’ of the PPS in criminal justice. A public prosecutor always supervises preliminary proceedings carried out by the police and is responsible for the legal qualification of the charges brought against a suspect. A public prosecutor always takes part in criminal court hearings and always has a right to appeal a decision taken by a court, either during preliminary proceedings or after a hearing. Society is represented by a public prosecutor at all stages of the criminal process, thus before courts of first instance, the courts of appeal and the Supreme Court. On the matter of representation before the latter court (Hoge Raad), the Dutch case should be highlighted. This system no longer maintains a prosecution office, there but independent advisers receive opinions from all parties, thus also from the PPS (see 4.3.1.2.3 and 4.5.3.3).

11. Comparison shows a general trend towards enhancing efficiency in criminal justice. The PPS should be efficient and cope with the overloaded criminal justice system whether the principle of compulsory prosecution or the opportunity principle is in force. The establishment of simplified proceedings, out-of-court settlements or conviction without hearing allows public prosecutors to offer efficient judicial protection and rapidly settle petty or simple criminal cases (9.4.2.2). Efficiency and public interest do not always mean that a criminal case should end in a positive decision, i.e. prosecution or diversion. In the four countries studied, public prosecutors always have the right to drop a case even if it should technically be prosecuted. The fact that a system follows either the principle of compulsory prosecution or opportunity does not matter; public prosecutors in fact enjoy power of discretion (9.4.2.3). The PPSs also contribute to this efficiency trend by reducing the inertia caused by the hierarchy of prosecutors. All the systems grant public prosecutors independence in the exercise of their functions. In the absence of instructions from his superior, a public prosecutor must act independently and take decisions based on his personal judgement as to what is in the public interest. The best illustration of this independence is the reception of the principle that during a hearing la plume est serve, la parole est libre (9.3.2.3).
12. In all circumstances, public prosecutors should ensure the respect of human rights and fundamental freedoms. As we saw in the introduction, the implementation of the *acquis communautaire* includes the signature and ratification of international conventions on human rights and fundamental freedoms by all Member States. Although the signature and ratification of a convention such as the 1950 European Convention for the Protection of Human Rights is easy to trace, the tracing of its implementation and enforcement in day-to-day justice is much more difficult.\(^{534}\) The obligation to respect the Convention has led to modifications in criminal procedure and the rights of public prosecutors in previously Communist countries, as well as in ‘old’ Member States. For example, the general prosecutor formerly had an indefinite right to challenge final judgements by way of extraordinary appeal, even though this was a concrete breach of legal certainty (see 5.6.3.2 for Poland and 7.2.3.3 for the Czech Republic). Through application of the case law of the European Court of Human Rights, this institution has been repealed.\(^{535}\) In the countries studied, public prosecutors therefore play an essential role and are obliged to uphold fundamental human rights as defined by international conventions (see 9.1.1 *in fine*). They must always try to find the right balance between the protection of human rights and freedoms, and the public interest in fighting crime. This also militates in favour of more independence in the public prosecutors’ activities.

### 10.2 A test for a democratically efficient prosecution service in the Member States of the European Union

As already mentioned, a public prosecution service should respect four main principles in its organisation and functioning – independence from unfair or illegal intervention, democratic control of prosecution activity, efficiency in the defence of the public interest against crime and respect for human rights. Those principles may cover very different notions at various stages in the organisation and functioning of a PPS. It is not my purpose to test all the systems

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\(^{534}\) ETS No 005.

\(^{535}\) See on the illegality of the extraordinary appeal, the Case EChHR *Brumarescu v. Romania* [1999] Appl. No. 28342/95: ‘The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question.’ (61)
studied against all these notions. Nevertheless, as an example, I will look at the position of the PPS and its relationship to the Minister of Justice and test the limits offered by national diversity in the countries studied. If a country decides to establish its PPS within the scope of executive power, the Minister of Justice will have a supervisory power that is more or less influential on public prosecutions. Public prosecutors decide whether to prosecute suspects or not and therefore they should enjoy enough independence to resist unfair and illegal influences originating from a variety of sources, such as politics. In this respect, one of the ongoing issues with regard to the organisation of public prosecution services is their position in the separation of powers. There are various solutions to protect public prosecutors from abusive intervention. A heavy dependence on the executive is possible, as in the Netherlands or Poland, but extra guarantees or advantages must then be offered in terms of democratic control, efficiency in the defence of the public interest or respect for human rights.

In the Netherlands, the Minister of Justice may order the dismissal of a case (negative instruction). This position illustrates a strong dependence of prosecutors on politics. The Dutch system is the only one that establishes this right, albeit only in very exceptional situations which are justified on political grounds. Abuses of this right and unfair prosecutions, or withdrawals from prosecution, are also facilitated because the country applies the opportunity principle to public prosecutions (4.4.2.1), meaning that the dismissal of a case grounded on opportunity could easily be motivated by purely political reasons contrary to the public interest. However, the Dutch system only authorises this right after rigorous democratic control (4.3.4). By means of this control, I believe the risk of abusive interventions is reduced and the public interest is necessarily the main motivation for the intervention. Moreover, the system has a strong non-political counterbalance in the form of the Board of General Prosecutors, which exercises the main supervision over the PPS. It is conceivable that negative instructions from the Minister of Justice could be justified with limited risk of abuse if the principle of compulsory prosecution were in force, as is the case in Poland (6.4.2.1) or the Czech Republic (8.4.1.1), as a means to supervise the correct application of the law. Indeed, according to this principle, the dismissal of a case can only be ordered in cases provided by law and not for opportunity reasons, meaning that a dismissal ordered by the Minister of Justice would only be possible under circumstances provided for in law and not for political reasons. However, we saw that the principle of compulsory prosecution alone
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is insufficient as a guarantee against political interventions and possible unfair prosecutions and withdrawals (9.4.2.3). Unless a system establishes democratic supervision and transparency in political influence of the right of a Minister of Justice to issue negative instructions, this right trespasses the limits beyond which a PPS would become incompatible with the democratic principles of law.

In Poland such negative instructions are not possible, but the dependence of public prosecutors on the Minister of Justice remains extremely strong since the Minister is also the head of the PPS (6.3.2.2). This plurality of functions may have been necessary during the transition period from Communism to democracy, but I have my doubts whether this is still the case now. Indeed, the Minister of Justice clearly lacks independence in the exercise of his functions as the highest-ranking prosecutor, and may favour interests contrary to the public interest. The Minister can exercise concrete supervision over prosecutors in almost all circumstances (6.3.4.2). This could affect the respect for human rights and fundamental freedoms in prosecution. The four guarantees offered by the system against this risk seem weak. Firstly, law provides for the independence of prosecutors. However, this does not prevent indirect interventions (6.3.5.2). Secondly, instructions must be in writing and added to the file submitted to the court. However, while prosecutors must still comply with their superiors’ instructions or ask for their exclusion from a case, it may be difficult for a prosecutor to uphold the law if he believes that the instruction is contrary to the public interest. Thirdly, the principle of compulsory prosecution in force in Poland limits political intervention. However, as we saw above, it does not preclude all abuses and possible unfair prosecutions or withdrawals. Lastly, democratic control over the Minister of Justice is direct because he is individually accountable before parliament. This seems the most efficient guarantee to ensure that prosecutions are fair and non-abusive. Nevertheless, I doubt whether this guarantee would remain efficient if the intervention was indirect.

More independence from superiors could be provided to prosecutors, as is the case in France, where chief district prosecutors enjoy a pouvoir propre (3.3.3.1). According to this setup, no superior can force a chief district superior to act or not to act in any given case. This is favourable to the public prosecutors’ independence. However, it may be detrimental to the efficacy of the defence of the public interest because unity in the execution of prosecutors’ functions is more difficult to achieve. For example, the
treatment of a particular offence in a particular district can lead to a
different solution than for the same offence in another district. I have
to question whether this does not create inequality between citizens
in the protection of the public interest. The lack of efficiency is
amplified by the fact that in contrast to other countries, there is no
central supervision of prosecutors by a general prosecutor or a
Board of General Prosecutors, as in the Netherlands. The Minister of
Justice, who is not a prosecutor but a political body, centralises this
supervision, which could lack stability. It seems that the supervision
of prosecutors by prosecutors at a national level could improve an
efficient defence of the public interest. The suppression of the
intermediate level of subordination (appellate offices 3.3.2.3) would
probably not have the same positive effect as in the Netherlands
(4.3.3.3), because the geographical scale of the two countries is
different and also because guidelines and instructions might be less
detailed and binding. Nevertheless, the Minister of Justice should
remain accountable for the enforcement of criminal policy by the
PPS. Such accountability is necessary for the exercise of democratic
control.

Indeed, democratic control of the activities of prosecutors is a
necessity. There are doubts whether such control is effective in the
Czech system. The independence of public prosecutors from
political interventions and possible unfair prosecutions could be
ensured by the limitation of the right of sole supervision over the
administration of the PPS, as in the Czech Republic, where the
Minister has no right to issue instructions to public prosecutors
concerning the discharge of their duties (8.3.2). Nevertheless, the
system triggers the risk of non-transparent political influences in
public prosecution, since the Minister is officially unaccountable for
the enforcement of criminal policy, but is responsible for the
appointment and dismissal of prosecutors (8.3.4.1). No democratic
control can be implemented if this influence is exercised. Some form
of control is indirectly exercised on the general prosecutor, the
highest-ranking prosecutor of the PPS (8.3.3.3), who is politically
accountable to the government (8.3.4.1). However, this is a minimal
control because it is exercised by the government and the general
prosecutor is not the head of the PPS but has rather important
powers within it (8.3.4.3). It seems logical that the respect for human
rights and the efficient defence of the public interest would be
enhanced if clear accountability for PPS activity in criminal justice
was established. This could be achieved if the general prosecutor
became the head of the PPS and accountable to parliament rather
than the government. Under these circumstances, the general
prosecutor and not the Minister of Justice should be able to recommend the appointment and dismissal of prosecutors. From these remarks it follows that a PPS can be highly dependent on the executive if there is a transparent series of relationships between the two powers, and a counterbalancing power prevents the exercise of unfair influence. A more independent PPS can, however, result in less efficiency in the defence of the public interest, and in such cases the centralised supervision of prosecutors by other prosecutors is advisable. Considering the growing influence of European Union Law on domestic criminal systems, it is very likely that future public prosecutors will have to defend more than one national public interest and one national criminal policy. Can it be imagined that the development of a European public interest will encroach upon national public interests? Will the European Union develop a criminal policy with clear guidelines for public prosecutors? If this is to be the case, should democratic control of public prosecutors remain at the national level? Has the time not come to provide prosecutors with more independence – or even total independence? Indeed, has the time not come to open the door to a Quatuor Politica instead of a Trias Politica?