



Council of the  
European Union

Brussels, 30 September 2016  
(OR. en)

12775/16

---

---

**Interinstitutional File:  
2013/0255 (APP)**

---

---

**LIMITE**

**EPPO 27  
EUROJUST 121  
CATS 72  
FIN 615  
COPEN 278  
GAF 58  
CSC 271**

**NOTE**

---

From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	12774/16
Subject:	Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office = Policy debate/Partial general approach

---

Three years after the Commission's proposal, the negotiations on the EPPO Regulation are in a defining phase. As announced previously, Presidency aims to bring this file to a close at the Council level, if possible, together with the related PIF Directive and the Eurojust Regulation.

Based on the work of previous Presidencies and in particular following the outcomes of the Council discussions of December 2015 and June 2016, the Presidency is now able to present the full operative part of the EPPO Regulation on which broad conceptual support was found and will be requested at the meeting of 14 October. <sup>1</sup>

The Commission is expected to present its costs-benefit analysis of EPPO as it emerges from the negotiations of the last 3 years.

---

<sup>1</sup> See document 12774/16.

The full text together with the cost benefit analysis allows Ministers to have a global look at the EPPO package for the first time.

In doing so, Ministers are asked to take into account that many Articles constitute a delicate balance between Member States' different interests, and therefore they should not be subject to substantial changes, except for technical clarifications. One can mention e.g. Article 9 which divides competences between the European - central level (Permanent Chambers) and the local - decentralised level (EDPs) or Articles related to investigations, the judicial review or data protection. Changes to these provisions could cause unbalances which would not be acceptable to a majority of Member States.

Ministers are at the same time reminded of the criteria that followed from their informal debate in Bratislava on 8 July 2016. The negotiations have been guided by the Council wishes to set up an EPPO that is efficient, independent and complementary to the existing legal and institutional framework which protect the financial interests of the EU.

The independence criterion could be viewed from the perspective of the institutional and financial independence of the EPPO, as well from the perspective of the statutory independence of the EDP.

The complementarity could be considered from the European perspective (complementarity to Eurojust, OLAF, Europol) or from the national perspective (complementarity and a good coexistence with national investigation, national prosecution and national courts).

The evaluation of efficiency also allows several approaches where the most important should be the efficiency of the investigation and prosecution. Crucial aspect of efficiency is also a definition of material competence of the EPPO, including whether it would be able or not to prosecute cross-border VAT fraud.

However, the interpretation and understanding of these criteria differ between Member States, notably because there are differences between Member States in the ways these criteria are implemented. A balance must be found between rights and obligations, costs and benefits. Finding such a balance for one criterion influences the balance for other criteria.

Moreover, for the EPPO, this must be done in such a way that the EPPO can work with and within the different national legal systems.

As a consequence, the implementation of these criteria depends on the interaction of many, if not all of the Regulation's provisions.

We should aim at maximal efficiency of the global package, so that the EPPO is able to bring the greatest added value comparing to the existing system.

In that light, delegations will understand the call from Presidency to indicate only their main outstanding concerns that would substantially affect their cooperation with and use of the EPPO.

**Ministers are invited to:**

- 1. exchange views about the full text bearing in mind the set criteria and the cost-benefit analysis**
- 2. Express outstanding main substantial concerns**
- 3. encourage experts to continue negotiations with a view to finding a definitive agreement on the full text at the December Council**

---