



**COUNCIL OF
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NOTE

from:	Presidency
to:	Delegations
Subject:	The European Public Prosecutor's Office in the European judicial area

The European Public Prosecutor's Office in the European judicial area

The entry into force of the Treaty of Lisbon strengthens the European Union's action in the area of freedom, security and justice and opens up new possibilities for boosting and supporting Member States' activities in combating crime, especially organised cross-border crime which has become one of the most serious threats to their systems of coexistence and the security of their citizens.

This strengthening of the area of freedom, security and and justice enshrined in the Treaty of Lisbon is not only reflected in the reinforcement of the principle of mutual recognition, the extension of the areas subject to legislative harmonisation and further development of existing structures in the field of judicial cooperation such as Eurojust, but also takes the form of provision for new instruments, such as the European Public Prosecutor's Office provided for in Article 86 of the Treaty on the Functioning of the European Union, which offer new prospects for action.

The Stockholm Programme, in line with this new legislative framework for the European Union, lays down in point 1 that "all opportunities offered by the Lisbon Treaty to strengthen the European area of freedom, security and justice for the benefit of the citizens of the Union should be used by the Union institutions" and, accordingly, envisages in its point 3.1.1 the setting up of a European Public Prosecutor's Office on the basis of the relevant provisions of that Treaty.

Taking account of the Lisbon Treaty provisions and in accordance with the abovementioned points of the Stockholm Programme, the necessary steps for implementation should be taken with a view to achieving in an appropriate and functional manner the objectives in Article 86 of the Treaty of the functioning of the European Union, which lays down the rules for setting up a European Public Prosecutor's Office.

Article 86 of the Treaty on the Functioning of the European Union provides for the possibility of establishing a European Public Prosecutor's Office in order to combat crimes affecting the financial interests of the Union, and also provides in paragraph 4 for the possibility of the European Council, at the same time or subsequently, extending the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension.

The fact that the Treaty of Lisbon is getting into its stride in 2010 should constitute an incentive to discuss the new mechanisms it contains and lay some firm foundations for making full use of them. In view of the potential and the usefulness of this new cooperation instrument, the Spanish Presidency therefore wishes to launch discussion of the European Public Prosecutor's Office at this JHA Council in order to find out the Member States' positions on the setting up and thereby facilitate the Commission's work on the matter. The Presidency accordingly proposes that discussion should focus on the following:

- What is the most suitable procedure to be followed by the European Union in effectively implementing Article 86 of the Treaty on the Functioning of the European Union?

 - Is it appropriate to consider the possibility provided for in Article 86(4) right from the start of that procedure?
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