



**COUNCIL OF
THE EUROPEAN UNION**

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**EPPO 8
EUROJUST 86
CATS 57
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NOTE

from: Presidency
to: Working Party on Cooperation in criminal matters (EPPO)

No. initiative : 12558/13 EPPO 3 EUROJUST 58 CATS 35 FIN 467 COPEN 108

Subject : *Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office*
- Follow-up to the first meeting of the Working Party

1. On 17 July 2013, the Commission adopted a proposal for a *Regulation on the establishment of the European Public Prosecutor's Office*¹. The proposal aims at enhancing the prosecution of offences against the EU budget through the set up of a dedicated prosecution Office.
2. The Commission proposal was presented to the JHA Council on 7 October 2013. In general, the Council welcomed the proposal and noted that a number of issues need clarification and further development, with a view to ensuring the participation of as many Member States as possible in the European Public Prosecutor's Office (hereinafter referred to as EPPO).
3. The proposal has previously also been discussed in CATS on 23 September 2013, where a number of delegations - while welcoming the proposal in general - expressed concerns as regards the proposed structure of the Office as well as the need to attribute the Office with exclusive competence for the criminal offences falling under its remit.

¹ 12558/13 EPPO 3 EUROJUST 58 CATS 35 FIN 467 COPEN 108.

4. In the meeting of the Working Party on 1-2 October 2013 an "article-by-article" examination covering Articles 1-11 was carried out. Delegations shared the view that many issues were dependent on the future structure and competence of the EPPO, which require further examination. A number of delegations submitted general and parliamentary scrutiny reservations.
5. As for the structure of the EPPO, many delegations welcomed the proposed decentralised structure of the EPPO relying on European Delegated Prosecutors. However, different views have been expressed as to how such a model could work best, and in particular the organisation of the central level and the powers attributed to its "staff" raised many questions. A considerable number of delegations expressed support for a collegial structure established at central (EU) level and composed of prosecutors from each participating Member State, which would be supported by European Delegated Prosecutors. According to those delegations, it would be possible to reconcile efficiency and independence in prosecution with this model. The Commission and some Member States questioned whether the collegial structure would ensure sufficient efficiency and independence and challenged the assumption that such a solution would bring sufficient added value.
6. As for the attribution of powers to the central level of the EPPO, many delegations emphasized that the balance between the national and the EU level should be reflected in the distribution of powers between the central office, on the one hand, and the European Delegated Prosecutors, on the other. It was argued by some delegations that in the Commission proposal the central EPPO has been attributed powers that can be considered as too extensive, in particular as regards investigations. It was thereby noted that this consideration is valid regardless of whether the central office will be organised in a hierarchical form where the EPPO is headed by the European Public Prosecutor with an assistance of four deputies (as in the proposal), or in a different type of structure. The delegations however did not pronounce themselves on exactly what attributions the central level should have, but called for a delimitation of powers with a clear and detailed criterion for the competences of the central level of the EPPO and of the delegated national level of the EPPO. This issue will have to be further explored.

7. The Commission proposal gives the central level in principle the following main attributions:
- (a) Direction and supervision of investigations, and carrying out of acts of prosecution, including the dismissal of the case (Art 4(2) and Art 6(4)),
 - (b) Exercise of the functions of prosecutor in the competent courts of the Member States in respect of defined offences, including lodging of indictment and any appeal (Art 4(3)),²
 - (c) When necessary, in more exceptional circumstances, direct exercise of investigative and prosecutorial authority (Art 6(4) and Art 18(5)),
 - (d) Adoption, together with a specific entity of deputies and some delegated prosecutors, of internal rules of procedure (Art 7),
 - (e) Appointment and dismissal of European Delegated Prosecutors (Art 10(1) and Art 10(3)).
8. A key question in this sense appears to be the following:

Should the central level of the EPPO (whether in a hierarchical form where the EPPO is headed by the European Public Prosecutor with an assistance of four deputies (as in the proposal) or in a different type of structure) be attributed with powers to take decisions on investigations and prosecutions in individual cases? Or should the central level rather have a supervisory role, combined with a right to take over a case from the European Delegated Prosecutor, when this is justified on specified grounds?

If the central level should have specific powers, what would those powers be and what would be the necessity to give such powers to the central level? The following is a non-exhaustive list of possible powers for the central level:

- a) Direct exercise of investigative and prosecutorial authority, including taking over of a case already opened by a European Delegated Prosecutor, as well as referral of the case to national authorities,
- b) Proposing a transaction to a suspect,
- c) Initiation of an investigation,

² It should be noted that these powers will in practice often be exercised by the European Delegated Prosecutors.

- d) Taking urgent measures necessary to ensure effective investigation and prosecution of the case,
- e) Instructing a European Delegated Prosecutor to bring the case before competent national court or to refer it back for further investigation,
- f) Dismissal of a case,
- g) Bringing the case to the competent national court,
- h) Choice of the jurisdiction of trial and determination of the competent national court,
- i) Lodging of appeals and exercise of available remedies.

9. Delegations are requested to consider this question in view of the COPEN meeting of 24-25 October.
