



**COUNCIL OF
THE EUROPEAN UNION**

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**EPPO 1
EUROJUST 12
CATS 7
FIN 47
COPEN 17
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NOTE

from: Presidency
to: Working Party on Cooperation in Criminal Matters

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
- Discussion paper

Following the discussions in COPEN on 13-14 January 2014, the Presidency will continue the thematic discussions with an examination of topics regarding judicial review - considered as form of judicial control - and procedural safeguards. This discussion paper outlines a number of questions regarding these topics, which will be the basis for the discussions at the upcoming COPEN meeting of 29 January 2014. COPEN will also discuss the issue of disposition of confiscated assets, as outlined in section V of Council document 18168/13.

I) Judicial review

The proposal foresees that the EPPO shall be considered as a national authority for the purpose of judicial review. It will therefore be up to national courts to ensure the judicial review of acts of investigation and prosecution of the European Public Prosecutor's Office. The proposal also explicitly foresees that certain decisions, for example the decision to dismiss cases after a transaction (Article 29(4)), shall not to be subject to judicial review.

Unless judicial review before national courts is expressly excluded, the proposal defers to national law to determine the extent and timing of such review. Evidently, this does not affect the jurisdiction of the ECJ to give preliminary rulings under Art. 267 TFEU (e.g. concerning the choice of jurisdiction under Art. 27 (4)).

Questions

- a) Do delegations believe that the system for judicial control proposed by the Commission will lead to a sufficient level of judicial control in respect of decisions taken by the EPPO and will ensure a coherent application of the law throughout the jurisdiction of the EPPO? Should other alternative mechanisms for judicial control and judicial review be considered?
- b) Should in principle all decisions by the EPPO be covered by a right of judicial review, or could certain acts be excluded from this right?
- c) Should a more extensive role for a jurisdiction (ECJ or other) at European Union level be foreseen as regards judicial review of decisions taken by the EPPO? In case of positive response to the above, should a distinction between decisions be made as far as the competent court (at European level or national) is concerned?

II. Procedural safeguards

Chapter IV in the proposal includes rules on procedural safeguards. In particular, Article 32 foresees that any suspect and accused person shall, as a minimum, have certain procedural rights as foreseen in Union legislation and national law.

Questions

- a) Do delegations agree that the Regulation shall foresee certain minimum procedural rights for any suspect and accused person, under the conditions foreseen in Article 32 in the proposal?
- b) Do delegations agree with the list of procedural rights proposed by the Commission in Article 32(2) and if so, do they consider the reference to “national law” appropriate?
- c) Considering that certain of the procedural rules safeguards proposed by the Commission do not correspond to any (at least yet) agreed EU standard (Art 32(2)(d), (e) and (f), and Art 33-35), do delegations foresee difficulties in the application of these rights?
