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THE EUROPEAN UNION**

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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 10 February and in CATS on 25 February¹, the Presidency will continue the first reading of the content of the proposal with an examination of the financial provisions, the staff provisions and the rules on data protection and on transfer of personal data. This discussion paper outlines a few key questions as regards these topics and will be the basis for the discussions at the COPEN meeting of 10-11 March 2014.

To the extent there is time available, the Presidency will also proceed with a preliminary article-by-article examination of Articles 37 - 47 (data protection), 48 - 53 (financial provisions), Articles 54 - 55 (staff provisions) and of Articles 60 - 61 (transfer of personal data).

¹ Before the COPEN meeting of 10 March 2014, the file will also have been discussed in the JHA Council of 3-4 March 2014.

I). Financial provisions

The proposal included detailed rules on in particular financial actors, budgetary issues - in particular on how the Office will be financed via the general budget of the Union - and on accounts and discharge. However, the proposal does not indicate what implications the proposed rules will have for non-participating Member States (DK, UK, IE) by virtue of their opt-in/opt-out regimes under Title V TFEU, nor for those Member States which would chose, eventually, not to participate in the setting of the Office, should it be set up on the basis of an enhanced cooperation. For the latter situation, Article 332 TFEU provides some guidance .

In Article 52(1) in the proposal, it is also proposed that the accounting officer of Eurojust shall act as accounting officer of the EPPO, and that necessary arrangements so as to avoid any conflict of interest shall be made.

Questions:

- 1) Delegations are asked to reflect whether the budgetary provisions in the draft Regulation would sufficiently and appropriately cover all situations, including where not all Member States participate in the Office, bearing in mind the relevant Treaty provisions.

- 2) Delegations are asked to consider whether it would be appropriate to let the accounting officer of Eurojust act as the accounting officer of EPPO, bearing in mind that the general support services to be made available by Eurojust to the EPPO would also include accounting services under Article 57.

II. Staff provisions

The proposal (Article 54 - 55) includes, *inter alia*, rules on the application of the Staff Regulations of the European Union on the staff of the EPPO. In particular, a specific rule indicates that the European Delegated Prosecutors shall be engaged as Special Advisors to the EPPO. Special Advisors are regulated by Articles 5, 123 and 124 of the Conditions of Employment of Other Servants of the European Union (hereinafter “CEOS”), providing that:

- 1) they may be engaged, by reason of their “special qualifications” and “notwithstanding gainful employment in some other capacity”, to assist one of the institutions of the Union “either regularly or for a specified period”;
- 2) they are remunerated from the Union budget (under the section of the budget relating to the institution which they serve) on the basis of a contract (2 years, renewable)
- 3) they are bound by those rights and obligations, applicable to officials of the Union under the Staff Regulation, which are expressly set out in Article 124 CEOS, in particular the obligation of loyalty¹ towards the Union.

Question:

Delegations are invited to reflect on the appropriate status of the European Delegated Prosecutors. Would the status as special advisors and the proposed provisions in the Regulation ensure a sufficient independence of the European Delegated Prosecutor in relation to national authorities? Would the said status render it difficult in practice, at national level, for the European Delegated Prosecutors to exercise functions as national prosecutors in accordance with Article 6(6) in the proposed Regulation? What are the possible alternative solutions compatible with the European character of the EPPO?

¹ “An official shall carry out his duties and conduct himself solely with the interests of the Communities in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Communities ».

III). Data protection

The proposal includes detailed rules on data protection and transfer of personal data applicable to the EPPO. The respective competent Council Working Parties have already discussed the data protection regimes proposed for the new Europol and Eurojust instruments. These regimes have very strong similarities with the regime proposed for the EPPO.

Question:

Do delegations believe that it should be ensured that the data protection regime of the EPPO is as coherent as possible with the corresponding regimes applicable to Eurojust and/or Europol, considering that the proposal foresees that the EPPO will make use of Eurojust's Case Management System?
