



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 June 2014

10859/14

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

**EPPO 29
EUROJUST 115
CATS 87
FIN 403
COPEN 173
GAF 35**

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 JHA Council on 5-6 June 2014, the Presidency proposes COPEN to return to Section III in Chapter III of the Commission proposal at its meeting of 19 June 2014. A detailed examination of Articles 25-26 will thereby be undertaken¹.

¹ The estimation of the Presidency that a full working day can be used to discuss these Articles. If there is still time left after this discussion, the Presidency will propose to continue with a first reading of Articles 48-53 in the proposal.

The Presidency would recall that the issue of investigation measures has been discussed briefly and on a thematic basis already during the Lithuanian Presidency. Written comments were provided by ten delegations, indicating that there are important differences between the positions of Member States¹. In the Report on the State of Play of 20 December 2013², the Lithuanian Presidency summarized the positions of COPEN delegations as follows:

A majority of the delegations agree that a list of the investigation measures that must be available to the EPPO in all Member States shall be included in the Regulation. Some delegations are not convinced that such a list is necessary and would prefer if national law is applied in this regard. Many delegations have asked for more precise conditions and restrictions of the use of the listed investigation measures to be introduced. Some delegations have suggested that more than one list should be included in the Regulation, covering more and less intrusive measures, as the applicability of the measures could also depend on the seriousness of an offence.

Many Member States suggested that the notion of competent judicial authority in Article 26 of the proposal should be interpreted in a broad manner, in order to allow prosecutors and other authorities in charge of investigations at national level to decide on certain measures under their own authority. The Commission argued in favour of a more restrictive interpretation so that only courts are covered under the term “judicial authority”. It was also suggested that, in situations where urgent investigation measures are required, it should be possible to obtain judicial confirmation after the measures have been taken rather than advance authorisation.

The Presidency asks delegations to consider their positions on this matter in the light of general developments and of the advances made on other Chapters of the Regulation. Delegations are invited to express their view on each of the investigation measures mentioned in Article 26 of the Commission proposal.

¹ Doc. 6116/14 EPPO 5 EUROJUST 29 CATS 11 FIN 100 COPEN 37 GAF 7.

² Doc 18120/13 EPPO 37 EUROJUST 153 CATS 106 FIN 966 COPEN 252.