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NOTE

From: Presidency
To: Council

Subject: Proposal for a Regulation on the establishment of the European Public Prosecutor's Office
- *State of Play/Orientation debate*

A. Background

The Commission's proposal for a Regulation on the establishment of the European Public Prosecutor's Office (EPPO) was adopted on 17 July 2013, and has since then been discussed at numerous occasions in the competent Council Working Party (COPEN), as well as in CATS and several JHA Councils.

On 6 June 2014, the JHA Council welcomed a revised draft of the first 19 Articles of the Regulation as a basis for further work. The new draft in particular integrated the concepts of:

- a Collegial structure of the Office,
- a concurrent competence of the Office and national prosecution services to investigate offences against the financial interests of the Union.

B. State of Play

The Italian Presidency has continued the work to redraft parts of the proposal that was initiated by the Greek Presidency. The proposal has been discussed during 6 working days in COPEN (including 6-7 October), and thematic discussions have been held twice in CATS. In addition, aspects of the file were discussed at the informal ministerial meeting in Milan in July.

Building on the 19 Articles elaborated under Greek Presidency, the focus of the Presidency has thereby been to examine the rules on investigations and procedural safeguards (Articles 15-19 and 25-36 in the Commission proposal), in view of finding agreement on a text covering the topics mentioned in those Articles. The new text on these topics would then be merged with the above mentioned 19 Articles, after which the complete text will undergo a new revision in view of establishing a coherent and consolidated text.

C. In particular on the concept of single legal area

Article 25 of the proposal, with the title "The European Public Prosecutor's Office's authority to investigate", has the following wording:

1. For the purpose of investigations and prosecutions conducted by the European Public Prosecutor's Office, the territory of the Union's Member States shall be considered a single legal area in which the European Public Prosecutor's Office may exercise its competence.
2. Where the European Public Prosecutor's Office decides to exercise its competence over an offence which was partly or wholly committed outside the territory of the Member States by one of their nationals, by Union staff members or by members of the Institutions, it shall seek assistance to obtain the cooperation of the third country concerned pursuant to the instruments and procedures referred to in Article 59.

The provision, which is of key importance for the whole Regulation, as it will have a decisive influence on the functioning of the Office, has been debated intensively in the competent Working Party (COPEN). Many delegations has thereby expressed support for the underlying principle of the provision, while noting that certain aspects need to be reviewed. Some delegations have thereby suggested that the provision is deleted completely, and others have suggested that the words "single legal area" should be replaced as being potentially misleading.

The Presidency would summarize the underlying principle of the provision as follows:

The concept of the single legal area means that the EPPO will not need to have recourse to instruments facilitating mutual assistance or of mutual recognition of judicial decisions in its work. The EPPO shall operate as one single Office, and all cooperation and interaction between the Central Office and European Delegated Prosecutors based in different participating Member States, as well as between European Delegated Prosecutors between them, shall be organised with full account taken of this principle.

Following the discussions in the Working Party, the Presidency considers it likely that Article 25 will need to be redrafted in certain details **and the discussions in the Working Party will continue in this sense**. However, the Presidency also estimates that there is already broad support for the general idea of considering the EPPO to be one single office which will function over the borders of participating Member States without having recourse to traditional forms of mutual assistance or mutual recognition. It is on this basis of this estimation that the following question is submitted to Ministers:

D. Question to Ministers

*The Presidency invites the Council to **discuss whether the EPPO should** operate as one single Office, and in principle not have recourse to instruments of mutual legal assistance or mutual recognition when acting within the territory of participating Member States.*