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

LIMITE

**EPPO 1
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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	15760/16
Subject:	Proposal for a Regulation on the establishment of the European Public Prosecutor's Office <i>- Consolidated text - preparation of a general approach</i>

Background

The proposal was presented in July 2013 and has been negotiated intensively for more than three years. The file has in particular been discussed by ministers at thirteen (13) Councils (JHA), and more than 60 days of meetings in the competent working party (COPEN) have been organised, as well as several meetings of JHA Counsellors.

At the Council (JHA) of 8 December 2016, it was concluded that there is broad support for the text of the Regulation as set out in document 15200/16. Further, it was concluded that the text is a good basis for the establishment of the Office, but that a few details needed further discussions. Several delegations underlined that they felt that the best possible outcome had been reached and that they could agree to the text as it stood. However, one Member State (Sweden) announced that it would in any case not take part in the adoption of the European Public Prosecutor's Office, and a few other Member States noted their hesitations in the same sense.

Following the said Council, the previous Slovak Presidency of the Council continued its efforts, during the last weeks of its mandate, to find agreement on the few remaining open issues of the text. Substantial advances were thereby made, and important issues were clarified and/or solved. On this basis, the Presidency on 22 December 2016 issued a new version of the full text of the draft Regulation ¹ (hereafter: the 22 December text), whereby it concluded that an agreement on the full text was now within reach.

Way forward

The Maltese Presidency considers that the 22 December text constitutes a balanced compromise on the full text of the Regulation. It is obvious that the complex character of the draft Regulation implies that all delegations have had to make concessions on one or several provisions. The Slovak Presidency, similar to previous Presidencies, undertook all possible efforts to find solutions to the issues on which delegations had noted reservations, and managed to find compromise solutions to most of these issues. Although a few delegations may still have substantial concerns regarding certain individual provisions, the last few months of negotiations have clearly shown that the margin of manoeuvre is now minimal, in the light of the agreed objective to ensure that all or at least a vast majority of Member States will participate in the establishment of the EPPO.

It is in this light that the Presidency considers that the 22 December text is now sufficiently stable for it to be referred to Council for a formal position (registering the lack of unanimity on the text or otherwise). The Presidency therefore plans to organise such a submission to Council in the coming month. Considering the Swedish position, as expressed in the December 2016 Council, it is most likely that this will lead to the conclusion that there is an absence of unanimity in Council. It also appears that all or almost all of the other Member States will be in a position to accept the text. Such a conclusion would open the possibility for at least nine Member States to - if they so wish - refer the file to European Council in accordance with Article 86 TFEU.

Given this situation, the Presidency has convened a meeting of JHA Counsellors on 12 January 2016 with a view to preparing a formal position in Council and its follow-up.

¹ Doc 15760/16 COR 1.