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NOTE

From: Presidency
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Subject: Draft Regulation implementing enhanced cooperation on the establishment
of the European Public Prosecutor's Office
- Declaration of the Commission

The declaration of the Commission in Annex will be inserted in the minutes of the Council on
8-9 June 2017.

Declaration of the Commission

Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office

The Commission welcomes the Council's general approach on the proposal for a Regulation for the establishment of a European Public Prosecutor's Office. The European Public Prosecutor's Office should become a key actor and hence a milestone in the protection of the Union's financial interests. It will be also a significant step towards the creation of a genuine area of criminal justice in the European Union.

Although the Commission considers the draft Regulation to be a good basis for the establishment of the European Public Prosecutor's Office, it would like to make the following declaration regarding its outstanding concerns on Articles 31, and 65, as well as Chapter VI of the draft Regulation.

On Article 31:

The Commission considers that the principle of free admissibility of evidence must be preserved in the investigations and prosecutions carried out by the European Public Prosecutor's Office, i.e. evidence lawfully gathered in one Member State should be admissible before the trial court in another Member State. The review by the trial court of the admissibility of evidence presented by the EPPO should thereby be limited to checking compliance with the rights enshrined in the Charter of Fundamental Rights of the EU, in particular those contained in Title VI ("Justice") and not be based on any other criteria stemming from national law. The Commission is of the view that the draft Regulation, in particular recital 70, lacks the necessary clarity and as a result thereof could be interpreted in a way that the trial courts may deny admission of evidence presented by the European Public Prosecutor's Office on any ground stemming from national law. This interpretation would undermine the mutual trust required for the operation of the European Public Prosecutor's Office as a single office and ultimately impair the effectiveness of its cross-border investigations. The Commission wishes to stress that this does not prejudice the right of the trial court to freely assess the evidence presented to it.

On Article 65:

Given the rights foreseen in Article 15 TFEU and Article 42 of the European Charter of Fundamental Rights, which provide for a right of access to documents of all Union institutions, bodies, offices and agencies, the Commission considers that Regulation 1049/2001 should be fully applicable to all documents held by the European Public Prosecutor's Office. The full application of Regulation 1049/2001 would not endanger European Public Prosecutor's Office operations in any way, as it foresees specific exceptions for investigations and court proceedings and allows for the establishment of general presumptions of non-accessibility. These features adequately address confidentiality requirements whilst balancing them with the public interest.

On Chapter VI – Data Protection regime:

The Commission considers the stand-alone data protection regime for the European Public Prosecutor's Office as only a temporary solution. In accordance with Article 73a of the draft Regulation, and in the light of the position the European Court of Justice may take in its Opinion 1/15 as regards the legal basis for data protection rules, the Commission will consider submitting a legislative proposal with a view to amending or repealing the provisions relating to the protection of natural persons with regard to the processing of personal data by the European Public Prosecutor's Office. In addition to the legal basis, the Commission has specific concerns in particular with regard to Article 36e(2)(c), which makes the processing of data by the European Public Prosecutor's Office for purposes other than those for which they were collected subject to national procedural law.