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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: European Public Prosecutor's Office
- Implementation

1. Preparation of implementation

The adoption of the EPPO Regulation in October was the start of an implementation process that will last at least two years and encompass many different strands of work.

At the beginning of February, the Commission services informed the Parliament and the Council of the ongoing preparations (see document 6083/18) and explained them in detail at the CATS meeting of 19 February 2018. This concerns notably

- the appointment of the interim Administrative Director
- the setting up of the EPPO Expert Group
- the delegated Act listing the categories of operational personal data and the categories of data subjects
- the selection and appointment of the European Chief Prosecutor

- the vacancy notice for the European Chief Prosecutor
- the selection of the European Prosecutors
- the Case Management System
- the budget.

The Commission has given an assurance that it will closely associate the Member States in the development of these preparations as well as in the overall implementation work, which includes measures to be taken in the participating Member States. To facilitate this process of implementation and the smooth integration of the EPPO into national systems, the EPPO expert group will regularly exchange information on national implementing measures and provide guidance as necessary.

2. Cooperation with OLAF

The creation of the European Public Prosecutor's Office (EPPO) will contribute to countering fraud impacting on the Union budget and will help bring about an integrated policy as regards criminal and administrative investigations at EU level. In this regard, OLAF's overall mandate for administrative investigations, as defined today by the relevant legal acts, will not change. The cooperation between EPPO and OLAF in accordance with the EPPO Regulation (Article 101(1)) should ensure that the principles of complementarity and non-duplication of investigations are fully respected while all available means are used to safeguard the EU's financial interests.

In recent months, the Council (Working Party on Combating Fraud) has intensively debated the Commission's report on the evaluation of the application of the current OLAF Regulation. The Commission proposes to submit in the first half of 2018 a targeted revision of the said Regulation, which will address the relationship between OLAF and the European Public Prosecutor's Office (EPPO) and possibly include additional targeted changes. It was agreed that the scope of the upcoming proposal could be limited as suggested in order to ensure the speedy adoption of the targeted revision. The Commission was asked to focus primarily on the topics for this first revision that are necessary to enable OLAF to cooperate smoothly with EPPO without, however, extending the competencies and powers that are currently conferred on OLAF (see doc. 6004/18).

The considerations are the same as those expressed at the informal ministerial meeting on 26 January 2018, ie. a clarification of the competences of OLAF in relation to EPPO's competences in order to guarantee smooth cooperation and avoidance of duplication, while ensuring complementarity, the exchange of information and the cooperation of OLAF with Member States not participating in the EPPO. Some other concerns, not shared by all delegations, were also raised, including the admissibility of evidence collected by OLAF and EPPO for use by the other office.

The matters concerning the future cooperation between OLAF and EPPO were also discussed at the CATS meeting of 19 February 2018. Delegations agreed that a synergy should be maintained in the reform process of OLAF in terms of a consistent set-up of EPPO and the building up of a proper level of cooperation so that OLAF could assist EPPO to properly exercise its competences under the EPPO Regulation. The characteristics of EPPO as an investigative agency should be taken into account when information and reports necessary to trigger the criminal investigations are provided by OLAF. Creating mutual trust between EPPO and OLAF, timely information flow (especially timely reporting by OLAF for any suspicion of fraud with EU funds), avoidance of parallel investigations and proper staffing are important issues that need to be properly addressed by all the concerned stakeholders.

3. Cooperation with Eurojust

The relationship between EPPO and Eurojust will certainly be of a privileged nature, as both EPPO and Eurojust will play very important roles in the area of judicial cooperation in criminal matters and the protection of the Union's financial interests, thus contributing to upholding the rule of law. It should be recalled that a strong link of this kind between these two bodies follows already from the wording of the Treaty, which provides that the EPPO will be created 'from Eurojust'.

There are a number of generally held provisions that regulate cooperation in the EPPO Regulation as well as in the draft Eurojust Regulation (still under negotiation), but it is clear that the details of the administrative and operational cooperation will need to be developed further in arrangements between them. At the above-mentioned CATS meeting of 19 February 2018, delegations briefly discussed the future relations between EPPO and Eurojust. Views based on those expressed at the informal ministerial meeting on 26 January 2018 were developed, in particular as regards the need to ensure complementarity and exchange of information, and as appropriate, the mechanism for and rules on the handling of evidence between them, as well as EPPO access to the Eurojust information system.

4. Questions

The Commission is invited to provide Ministers with further updates on and details of the implementation of the EPPO Regulation.

Ministers are invited to exchange views on the above-mentioned issues.
