



Council of the
European Union

Brussels, 13 February 2018
(OR. en)

6099/18

LIMITE

EPPO 2
CATS 7
FIN 118
COPEN 32
GAF 6
CSC 44

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

NOTE

From: Presidency
To: CATS
Subject: European Public Prosecutor's Office
- Cooperation with partner agencies and offices, in particular OLAF -
EPPO and Eurojust EPPO

1. Introduction

The creation of the European Public Prosecutor 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 all available means are used to safeguard the EU's financial interests.

The EPPO Regulation requires OLAF, as with any other institution, body, office or agency of the Union, as well as competent national authorities, to report to the EPPO 'without undue delay' any criminal conduct on which OLAF could exercise its competence.

At the same time, the EPPO Regulation contains several provisions concerning the flow of information from EPPO to OLAF in cases where OLAF may consider administrative action (such as Article 39(4) on the referral of dismissed cases to OLAF for recovery or administrative follow-up, or Article 101(4) on transmission of information on cases where EPPO decides not to conduct an investigation). In this way, the flow of information between the two bodies will enable the necessary response at criminal or administrative level.

Furthermore, Article 101 sets out two main principles on EPPO/OLAF relations, namely the need to avoid duplication of investigations and the possibility for the EPPO, in the course of its criminal investigations, to request support or complementary activity on the part of OLAF.

The question of relations between the EPPO and other EU agencies, and OLAF and Eurojust in particular, was discussed at the informal meeting of the Ministers for Justice and Home Affairs in Sofia (25-26 January). In the course of the discussions, Ministers stressed the point that cooperation between the EPPO, Eurojust, OLAF and Europol would be essential and should be based on a clear division of competencies and responsibilities, as well as on equality and complementarity. This should exclude any kind of competition or duplication of work.

With a view to harnessing synergies which would help counter forms of crime targeting the EU budget, there is a need to integrate the above principles of the EPPO Regulation within OLAF's legal framework. There is also a need to develop further the operative rules governing cooperation between OLAF and the EPPO.

In this regard, the Commission adopted its evaluation report on the application of the OLAF Regulation (Regulation 883/2013) on 2 October 2017¹. The Commission explained, for instance, how the creation of the EPPO will mean that changes will need to be made to the way in which OLAF carries out its work. Effective cooperation between the EPPO and OLAF will help ensure the highest level of protection of the financial interests of the Union. Accordingly, a proposal for the amendment of Regulation 883/2013 is being drafted. It will be presented in the first half of 2018. The aim is to set up new arrangements by the time the EPPO becomes operational (at least three years after the entry into force of the EPPO Regulation, i.e. not before November 2020).

¹ See the Commission evaluation report in 12809/17 + ADD 1 (COM(2017) 589 final).

In addition, specific operative rules and procedures could take the form of working arrangements between the EPPO and OLAF, as provided by Article 99(3) of the EPPO Regulation.

The Council Working Party on Combating Fraud considered the Commission's evaluation report on two occasions during the Estonian Presidency of the Council. These discussions have continued under the Bulgarian Presidency.

In this context, the Presidency would invite CATS to contribute to the reflections on the future relations between EPPO and OLAF and between EPPO and Eurojust.

2. The relations between EPPO and OLAF

On 5 February this year, the Working Party on Combating Fraud convened to discuss possible conclusions and recommendations in relation to the Commission's revision plans². It was generally agreed that the Commission should be asked to focus primarily, for the time being, on the rules that are needed to enable OLAF to cooperate smoothly with the EPPO, though without extending OLAF's current competencies and powers. More specifically, it was suggested that the focus should be on:

- rules that will ensure complementarity and a clear division of competences between OLAF and EPPO, by providing for an early determination of the respective competence, for ways to launch supporting and complementary investigations and to avoid duplication between the activities of OLAF and EPPO, and for the requirement that OLAF inform the EPPO about ongoing investigations and organise their cooperation in practice, for example through liaison officers;
- provisions that regulate in detail the exchange of information between OLAF and EPPO, including rules on the admissibility of evidence collected by one of the bodies for use by the other;

² The Presidency is currently preparing an outcome of proceedings from these discussions, which is expected to be published towards the end of February.

- provisions that regulate cooperation with Member States that are not participating in the EPPO, whereby it was underlined that such provisions should not have any negative implications for those States;
- rules on cooperation between national anti-fraud coordination services and OLAF in cases where the EPPO is or could be involved.

More generally, it was also requested that any additional administrative burden or additional resources for OLAF should be avoided, though it should be ensured that OLAF was equipped to continue to fulfil its mandate.

Questions

CATS delegations are invited to

1. **reflect on the above-mentioned suggestions made in the Working Party on Combating Fraud;**
2. **consider whether there are any other issues of importance for cooperation between EPPO and OLAF that they wish to highlight at this stage.**

3. The relations between EPPO and Eurojust

The relations between the EPPO and Eurojust are regulated by Article 100 of the EPPO Regulation and Article 41 of the draft Eurojust Regulation. The latter Regulation, and Article 41 thereof, are still under negotiation with the European Parliament. The provisions in the two Regulations mirror each other well, although there are some minor divergences³ between the current draft Eurojust text and the EPPO Regulation. In substance, the provisions lay out a general obligation of mutual cooperation, rules on how mutual requests for support are to be treated, on when EPPO and Eurojust may associate each other in their respective activities, on how they can access each other's case management systems and on mutual support for their respective administrations. The substantive discussions on the rules regarding processing of personal data from the case management system of Eurojust have not yet begun.

Question

CATS delegations are invited to consider whether there is any issue of importance for the cooperation between EPPO and Eurojust that they wish to highlight at this stage.

³ For example: Eurojust can '*request*' support from the EPPO in accordance with Article 41(4) of the Eurojust Regulation, whereas the EPPO may '*invite*' Eurojust to do the same; the word '*indirect*' is included in paragraph 5 of Article 41 in the Eurojust text, but not in the parallel EPPO text.