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NOTE

from: Presidency
to: Working Party on Cooperation in criminal matters (EPPO)

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Subject : *Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office*
- Discussion paper

This paper focuses on three issues that were highlighted in the discussions in COPEN in its meetings of 1-2 October and 24-25 October, namely the future competences of the EPPO, the role of delegated prosecutors and the structure of the office. Delegations are requested to consider the questions included in this paper in view of the COPEN meeting of 5-6 November (note that the first day of this meeting will be in a Friends of Presidency format).

I) Competence

a) Substantive competence

Article 13 in the proposal foresees an ancillary competence of the EPPO for offences "inextricably linked with criminal offences other than" the offences contained in the PIF-Directive.

Questions:

Do delegations agree with the system of ancillary competences proposed by the Commission? What are the advantages and disadvantages? Could alternative solutions to address the issue of inextricably linked offences be considered?

b) Exclusive competence?

Article 12 in the Regulation foresees that the EPPO shall have exclusive competence in respect of the criminal offences affecting the financial interests of the Union, as provided for by the PIF-Directive and implemented by national law.

Questions:

What are the advantages and disadvantages if the EPPO is given exclusive competence in the area of its substantive competence?

Should alternative models be considered, for example:

- a system of concurrent competence of national authorities and the EPPO;
- a system in which the EPPO would have exclusive competence only for offences which concern a criminal advantage or loss above a certain threshold, or for offences concerning certain subjects of law, i.e. officials of the European institutions;
- a system of "primary" competence for the EPPO, meaning that both the national authorities and the EPPO would have competence in principle, but that the EPPO would have the right of evocation of any case handled by national authorities within the scope of its general substantive competence;
- a combination of the systems just mentioned, for example by foreseeing exclusive competence for the EPPO as regards offences which concern a criminal advantage or loss above a certain threshold, and a primary competence for the EPPO on all other cases?

Alternatively, would delegations be of the opinion that a differentiated system with an exclusive competence of the EPPO in certain types cases and a concurrent competence of the EPPO and national authorities in other types of cases should be considered? If yes, what system of competence should in principle apply to:

- minor cases of PIF-offences;
- PIF-offences with a cross-border character;
- offences committed by EU officials?

II) The role of delegated prosecutors

The role of European delegated prosecutors is outlined in Article 6, complemented by a number of other Articles in the proposal. In principle, investigations and prosecutions of the EPPO shall be carried out by European delegated prosecutors under the direction and supervision of the European Public Prosecutor. The Central office may also exercise its authority directly in accordance with Article 18(5).

Questions:

- 1) Would delegations agree with the role of delegated European prosecutors, as proposed by the Commission? What are the advantages and disadvantages?
- 2) In cross-border cases, how should the cooperation between delegated European prosecutors in different states ideally be organised?

III) The structure of the European Public Prosecutor's Office

In a non-paper distributed by six delegations on 24 October 2013 (DS 1892/13), a collegial structure for the EPPO is proposed and explained. In the view of delegations, what would be the advantages and disadvantages of such a structure in comparison with the proposal of the Commission?