



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 April 2014

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

8999/14

LIMITE

**EPPO 21
EUROJUST 84
CATS 61
FIN 310
COPEN 123
GAF 24**

NOTE

from: Presidency
to: CATS
Subject: European Public Prosecutor's Office (EPPO)

Background

The Commission's proposal for a Regulation on the establishment of the European Public Prosecutor's Office (EPPO) was adopted on 17 July 2013, and has since then been discussed in the competent Council Working Party (COPEN), as well as in CATS and JHA Councils.

State of Play

In March 2014, the Presidency proposed¹ a first revision of parts of the Commission proposal, in order to integrate the preliminary results of the discussions in Council to date and to take the views expressed by national parliaments in the reasoned opinions emitted in 2013 into account. In particular, the text integrates one key principle on which Member States generally agree, namely that the future EPPO shall be based on a College of prosecutors from all participating Member States. This first revised draft by the Presidency has been discussed at two meetings of Friends of Presidency (25 March and 14 April 2014).

¹ DS 1154/14.

The discussions have been constructive and delegations appear to be in broad agreement on many points of principle in relation to the question how the collegial principle shall be implemented in practice and be expressed in the legal text.

On the basis of these discussions, the Presidency has in the annex to this note outlined a number of broadly agreed principles as regards the structure. Delegations are requested to confirm that the Working Group shall continue the work on the basis of the annex.

Proposed alternative structure of the Central Office of the EPP

1. Key Features

The model maintains most of the core features of Options 1 and 2, as outlined in DS 1188/14. However, its structure builds on a set number of Permanent Chambers, instead of the single Permanent Chamber of the said Option 1 or the Ad Hoc Chambers of the said Option 2. This alternative structure should ensure clear decision-making rules, provide the same structure for all cases (cases concerning only one Member State and cases concerning more than one Member State) and ensure coherence in the work of the Office.

2. The College

The College shall be responsible for strategic matters and shall have a global competence to monitor the activities of the Office. The College shall not be involved in operational decisions in individual cases. However, questions of principle which may arise in an individual case shall be referred to the College for it to take decisions on strategic matters, in particular in view of ensuring coherence and consistency in the prosecution policy. The College shall meet regularly.

3. The European Chief Prosecutor

The European Chief Prosecutor shall be in charge of the distribution of cases to Permanent Chambers in accordance with detailed criteria to be included in the Regulation and/or the Rules of Procedure. The European Chief Prosecutor, or a deputy, shall lead the work of each Permanent Chamber and have a casting vote in the event of a tie vote on any matter.

4. European Prosecutors (Members)

The main task of the European Prosecutors will be to ensure relations between the Chambers and EDP's in their Member States of origin. They will also, on behalf of the Chambers, supervise² the investigations and prosecutions of the EDPs, in accordance with the decisions taken by the Chambers.

5. Permanent Chambers

A set number of Permanent Chambers, emanations of the College, shall be set up, possibly on the basis of specialised competence areas. Each Chamber shall consist of the European Chief Prosecutor, or one of his Deputies, and three European Prosecutors. The Permanent Chambers will have the overall responsibility for the supervision and coordination of the operational work of the European Delegated Prosecutors.

Operational key decisions - such as on the opening of an investigation, on the choice of the Member State in which an indictment shall be submitted, on dismissal of a case, on transactions or on taking a case to Court - shall be taken by one of the Permanent Chambers in an enlarged composition, in which the European Prosecutor from the Member State concerned by the case will also participate in decision-making³. The Chambers may also invite EDP's involved in a case to participate in its handling. Decisions taken by the Chambers shall be handed by the respective European Prosecutors to the competent EDPs for execution.

² The notion of supervision should be given a detailed definition in the Regulation. The Presidency considers that the notion must in any case encompass powers to under certain circumstances intervene in the case-handling of EDPs.

³ The notion of European Prosecutor or Member States "concerned" by a case will have to be defined in detail in the Regulation. One option would be to let the notion of "concerned" in this context include only Member States that would have jurisdiction in the relevant case.

6. European Delegated Prosecutors

The EDPs shall be responsible for the daily case work. They will be competent to open investigations and take all operational decisions which do not fall under the competence of the Chambers. EDPs shall also be entitled to take the necessary provisional measures and shall then subsequently refer the decision to the Chamber for confirmation. The EDP's shall regularly, through the competent European Prosecutors, report to the Chambers on the cases allocated to them. The EDPs will execute the decisions of the Central Office.
