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DRAFT INTERIM REPORT

on the proposal for a Council regulation on the establishment of the European
Public Prosecutor's Office
(COM(2013)0534 – 2013/0255(APP))

Committee on Civil Liberties, Justice and Home Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office (COM(2013)0534 – 2013/0255(APP))

The European Parliament,

- having regard to the proposal for a Council regulation (COM(2013)0534),
 - having regard to its resolution of 12 March 2014 on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office¹,
 - having regard to the proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law (COM(2012)0363),
 - having regard to its resolution of 23 October 2013 on organised crime, corruption, and money laundering: recommendations on action and initiatives to be taken²,
 - having regard to the proposal for a regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) (COM(2013)0535),
 - having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, to Articles 2, 6 and 7 of the Treaty on European Union and to the Charter of Fundamental Rights of the European Union,
 - having regard to the Council resolution of 30 November 2009 on a roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings,
 - having regard to the Treaty on the Functioning of the European Union, in particular its Articles 86, 218, 263, 265, 267, 268 and 340,
 - having regard to Rule 99(3) of its Rules of Procedure,
 - having regard to the interim report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgets and the Committee on Budgetary Control (A8-0000/2015),
- A. Whereas data collected and analysed by the Commission identify suspected fraud to the financial interests of the Union averaging about €500 million yearly, although there are good reasons to believe that about €3 billion per year could be at risk from fraud;
- B. Whereas the rate of indictment is low - approximately 31% in eight years from 2006 to 2013 - compared to the number of judicial recommendations by OLAF to the Member States, and one of the aims of the European Public Prosecutor's Office (EPPO) is to bridge this gap;

¹ Texts adopted, P7_TA(2014)0234.

² Texts adopted, P7_TA(2013)0444.

- C. Whereas some Member States might be less effective in the prosecution of fraud affecting the EU financial interests, thus harming the taxpayers of all EU Member States who contribute to the Union budget;
- D. Whereas in its resolution of 12 March 2014 it asked the Council for an extensive involvement in the legislative work through a constant flow of information and ongoing consultation;
- E. Whereas different jurisdictions, legal traditions and law enforcement systems in the Member States should not hinder or undermine the fight against fraud and crime affecting the Union's financial interests;
- F. Whereas terrorism is financed also by organised crime, and criminal groups collect funds through fraud;
1. Reaffirms its strong willingness to address the priorities for the establishment of the EPPO and to identify the principles and the conditions under which it might give its consent;
 2. Reiterates the contents of its previous interim report adopted by resolution of 12 March 2014 and seeks to supplement and update them following the latest developments in the Council's debate;
 3. Calls on the Council to keep it fully informed and constantly consulted; urges the Council to take its views also into due account, as a necessary precondition to ensure the broadest consensus on the legislative outcome;
 4. Considers that an innovative approach is needed for investigating, prosecuting and bringing to courts perpetrators of fraud to the Union's financial interests in order to increase the efficiency of the fight against fraud, the rate of recovery and the taxpayers' confidence in the EU institutions;
 5. Deems it crucial to ensure within a short period of time the establishment of a single, strong, independent EPPO that is able to investigate, prosecute and bring to court the perpetrators of criminal offences affecting the Union's financial interests; and considers that any weaker solution would be a cost for the Union budget;

An independent European Prosecutor

6. Emphasises that the structure of the EPPO should reflect a maximum degree of independence and therefore calls for openness and transparency in the selection and appointment procedures of the European Prosecutors;
7. Stresses the importance of its involvement in the appointment procedures and suggests an open competition for candidates with adequate professionalism, experience and skills, who might be shortlisted by the European Commission, evaluated by a panel of experts and heard by the European Parliament;
8. Welcomes the provision of an annual reporting to the EU Institutions in order to

guarantee a continuous assessment of the activities carried out by the new body;

A clear division of jurisdiction between EPPO and national authorities

9. Believes that rules governing the division of jurisdiction between the EPPO and the national authorities should be clear and avoid any misinterpretation in the operational phase: the EPPO should have jurisdiction to investigate and prosecute the offences constituting fraud to the Union's financial interests according to the directive on the fight against fraud to the Union's financial interests by means of criminal law;

An efficient structure for the effective management of the cases

10. Takes note that the option of a collegiate structure is under scrutiny by the Member States, instead of the hierarchical one initially proposed by the European Commission; in this regard, believes that the decisions concerning the choice of the competent jurisdiction, the dismissal of a case and the transaction should be taken at the central level by the Chambers;
11. Underlines that the Chambers should play a leading role in investigations and in the prosecutions and not limit their activities to mere functions of coordination, but should supervise the work of the European Delegated Prosecutors in the field;
12. Is concerned over the automatic link between a European Prosecutor in the central Office and a case lodged in his or her Member State, because this could lead to evident shortcomings in terms of the independence of the prosecutors and the even distribution of the cases;
13. Calls therefore for a rational organisation of the workload of the Office at the central level: the allocation system of the cases among Chambers should follow predetermined and objective criteria, and at a later stage a specific specialisation of the Chambers might be envisaged;
14. Is convinced that the necessary knowledge, experience and expertise of the national law enforcement systems will be guaranteed also by the EPPO personnel in the central office;

Investigative measures and admissibility of evidence

15. Calls on the legislator to ensure streamlined procedures for the EPPO to obtain the authorisation of investigative measures in cross-border cases, in accordance with the law of the Member States where the measure in question is executed;
16. Calls on the Council to ensure the admissibility of the evidence gathered by the EPPO throughout the Union, as this is crucial for the effectiveness of the prosecutions;

Access to judicial review

17. Affirms that the right to a judicial remedy should be upheld at all times in respect of the EPPO's activity and recognises also the need for the EPPO to operate effectively without undue delay;

18. Believes that for the purposes of the judicial review of all investigative and other procedural measures adopted in its prosecution function, the EPPO should be considered a national authority before the competent courts of the Member States;

A coherent legal protection to suspected and accused persons

19. Recalls that the new Office should carry out its activities with full respect for the rights enshrined in the Charter of Fundamental Rights of the European Union as well as in the legal framework provided by the Union on the procedural rights of suspected and accused persons in criminal proceedings and on the protection of personal data;
20. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

The added value of the European Public Prosecutors' Office shall consist of having criminal investigations and prosecutions by a single and independent Office at the European level in the cases of fraud against EU funds, increased prosecutions, funds' recovery and trust of taxpayers in the European Institutions. The current system, even if working well in some Member States, proved to be rather inefficient throughout the Union in terms of prosecutions and funds' recovery.

In general terms, the creation of a European Public Prosecutor Office should be driven by the concrete need to correct the status quo where the rate of indictment of the judicial recommendations by OLAF has been on average 31% in eight years (2006-2013). Consequently, the recovery of our citizens' money has been low and this is unacceptable and needs a serious change.

The Rapporteur would like to deliver a new interim report, outlining the political priorities of the European Parliament and underlining principles and conditions under which the Parliament might consent to the legislator's proposal. Since the adoption of the Commission's proposal in July 2013, the European Parliament has shown a great interest and commitment in taking part in the legislative process. In its resolution of 12 March 2014, the Parliament called the Council to be extensively involved in its work and made a number of political suggestions addressing some of the most crucial aspects at stake: structure, independence, decision making process, competence, investigation tools, admissibility of evidence, judicial review, legal protection.

The orientations expressed so far in the Justice and Home Affairs Council go towards a collegial body composed of one European Prosecutor by Member State headed by a Chief Prosecutor and a concurrent jurisdiction between the new Office and the national prosecution services. The decisions on these matters will have a positive or a negative impact on the effectiveness of the EPPO activities as well as on the overall added value of the new Union body.