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*Plenary sitting*

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**A8-0290/2017**

29.9.2017

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## **RECOMMENDATION**

on the draft Council regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO") (09941/2017 – C8-0229/2017 – 2013/0255(APP))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Barbara Matera

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the draft Council regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO") (09941/2017 – C8-0229/2017 – 2013/0255(APP))**

**(Special legislative procedure – consent)**

*The European Parliament,*

- having regard to the draft Council regulation (09941/2017),
  - having regard to the request for consent submitted by the Council in accordance with Article 86 of the Treaty on the Functioning of the European Union (C8-0229/2017),
  - having regard to Rule 99(1) and (4) of its Rules of Procedure,
  - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A8-0290/2017),
1. Gives its consent to the draft Council regulation;
  2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## EXPLANATORY STATEMENT

The protection and prosecution of offences against the EU budget and the financial interests of the EU is currently within the exclusive competence of Member States. OLAF, Eurojust and Europol do not have the mandate to conduct criminal investigations and the EPPO will fill this institutional gap.

The establishment of the EPPO will bring about substantial change in the way the Union's financial interests are protected. It will combine European and national law-enforcement efforts in a unified, seamless and efficient approach to counter EU-frauds. Currently, only national authorities can investigate and prosecute EU-fraud and their competences stop at their national borders.

On the 17 July of 2013, the European Commission submitted a proposal for a regulation of the Council to set up the European Public Prosecutor's Office (EPPO) defining its competences and procedures. Article 86 of the Treaty on the Functioning of the EU (TFEU) provides with the legal basis and the rules for setting up the EPPO. Under Art. 86, the proposed regulation is to be adopted in accordance with the Consent legislative procedure: the Council is to decide unanimously after obtaining the consent of the European Parliament.

On 7 February 2017, the Council registered the absence of unanimity in support of the proposal. Under Article 86 of the Treaty on the functioning of the EU, this opens the way for a group of at least nine Member States to refer the text for discussion to the European Council for a final attempt at securing consensus. The rapporteur regrets that only 20 Member States participate, to date, at the enhanced cooperation and encourages non-participating Member States to join as well in the future.

On 8 June, the Member States participating in enhanced cooperation adopted a general approach on the proposal.

The EP has adopted 3 interim reports (2014, 2015 and 2016) related to EPPO where it has raised number of concerns regarding the competences of the EPPO, PIF directive and VAT fraud, structure, investigations, procedural rights, judicial review and relations with other relevant EU agencies.

- **The structure of the EPPO**

The EPPO will be a body of the Union with a decentralised structure with the aim of integrating the national law enforcement authorities. A European Public Prosecutor will head the EPPO and every participating member will be represented with one prosecutor. According to the Regulation the investigations will be carried out by European Delegated Prosecutors (EDPS) located in each Member State. The number of EDPs for Member States will be decided nationally but each one should have at least one. The Delegated Prosecutors will be

an integral part of the EPPO but also continue to exercise their functions as national prosecutors. When acting for the EPPO, they will be fully independent from the national prosecution bodies.

- **Competences**

The EPPO will be responsible for investigating, prosecuting and bringing to judgment the perpetrators of offences against the Union's financial interests. The functions of prosecutor will be carried out within the competent courts of the Member States in relation to such offences.

The set of competences and proceedings for the EPPO, include the proposed directive on fighting fraud against the Union's financial interests by means of criminal law ('PIF directive'). In December 2016, the EP and the Council reached a provisional agreement on the PIF proposal. They agreed to include serious cases of cross-border VAT frauds in the scope of the directive, setting the threshold value at €10 million.

The rapporteur welcomes that the "damage" criterion has been largely mitigated by exceptions introduced and is no longer applicable to Art 3(a), (b) and (d) of the PIF Directive (non-procurement related expenditure; procurement related expenditure and revenue arising from VAT own resources). The possibility to transfer cases from national authorities to EPPO, for which EPPO otherwise would not be able to exercise competence, has been introduced.

The EPPO regulation widens the scope of reporting obligations by national authorities and gives EPPO more possibilities to request additional information. The cross-border dimension of the serious crimes that fall under the competences of the EPPO could, in the future, be extended.

- **Judicial review**

The EPPO Regulation ensures a comprehensive system of judicial review by national courts and allows for possibilities of direct review by the ECJ (EPPO decision to dismiss a case, contested on the basis of EU law, disputes relating to compensation of damage caused by the EPPO, disputes concerning arbitration clauses, staff-related matters and decisions affecting data subjects' rights such as the right of public access to documents).

- **Investigative measures**

EPPO will have sufficient investigative measures available to conduct its investigations. Art. 30 of the regulation provides for a list of measures where the offence subject to the investigation is punishable by a maximum penalty of at least four years of imprisonment. In this regard, the co-legislators have agreed on criteria for Member States to make requests for investigative measures based on the principle of mutual recognition set out in Directive 2014/41/EU regarding the European Investigation Order in criminal matters.

- **Procedural safeguards**

The protection of the procedural rights of suspected and accused persons is guaranteed in full compliance with the rights of suspects and accused persons enshrined in the Charter of Fundamental Rights. The regulation provide for rights of defence for EPPO suspects, in particular the right to legal aid, the right to interpretation and translation, the right to information and access to case materials, and the right to present evidence and to ask the EPPO to collect evidence on behalf of the suspect.

- **Eurojust, OLAF and Europol**

As a necessary tool for exercising its duties, the EPPO may have to establish and maintain cooperative relations with existing Union agencies, offices or bodies such as Eurojust, OLAF and Europol.

EPPO and Eurojust in particular need to see their competences defined clearly in order to ensure legal certainty. With the aim of avoiding detrimental repetition and overlapping competences between the two offices, competences must be clearly delimited and defined. On a case-by-case basis, based on precise criteria, the two offices can work closely sharing information on their investigations.

In its relations with OLAF, the EPPO shall establish a close cooperation especially on information exchange. Provisions in the regulation provide for avoiding parallel investigations into the same facts. EPPO may request OLAF to provide information, facilitate coordination and conduct administrative investigations.

The relationship between EPPO and Europol will be based on strict cooperation and EPPO, when necessary for the purpose of its investigations, shall be able to obtain any relevant information held by Europol.

- **Non-Participating countries**

The rapporteur welcomes the Council decision to include in the provisions of Art. 59a, concerning the relations between the EPPO and the Member States that do not participate in enhanced cooperation, the request for these to notify the EPPO as a competent authority for the purpose to respect the judicial cooperation in criminal matters.

- **Conclusions**

Even though the rapporteur would welcome a more ambitious regulation, she considers that the EP concerns has been largely addressed in the text as it stands now.

The rapporteur regrets that not all the Member States of the EU participate to the establishment of the European Public Prosecutor Office but welcomes the fact that 20 of them reached a general approach that includes particularly PIF crimes and in particular serious VAT frauds. The rapporteur encourages non-participating Member States to join the enhanced cooperation in the future.



## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	European Public Prosecutor's Office			
<b>References</b>	09941/2017 – C8-0229/2017 – COM(2013)0534 – 2013/0255(APP)			
<b>Date of consultation / request for consent</b>	17.7.2017			
<b>Committee responsible</b> Date announced in plenary	LIBE 11.9.2017			
<b>Committees asked for opinions</b> Date announced in plenary	BUDG 11.9.2017	CONT 11.9.2017	JURI 11.9.2017	PETI 11.9.2017
<b>Not delivering opinions</b> Date of decision	BUDG 27.9.2017	CONT 27.9.2017	JURI 27.9.2017	PETI 27.9.2017
<b>Rapporteurs</b> Date appointed	Barbara Matera 10.11.2015			
<b>Previous rapporteurs</b>	Monica Macovei			
<b>Discussed in committee</b>	29.11.2016	25.9.2017	28.9.2017	
<b>Date adopted</b>	28.9.2017			
<b>Result of final vote</b>	+ : 40 - : 5 0 : 2			
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Heinz K. Becker, Malin Björk, Michał Boni, Caterina Chinnici, Rachida Dati, Agustín Díaz de Mera García Consuegra, Frank Engel, Cornelia Ernst, Tanja Fajon, Laura Ferrara, Lorenzo Fontana, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Monika Hohlmeier, Brice Hortefeux, Sophia in 't Veld, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Marju Lauristin, Juan Fernando López Aguilar, Monica Macovei, Roberta Metsola, Louis Michel, Péter Niedermüller, Soraya Post, Judith Sargentini, Birgit Sippel, Helga Stevens, Traian Ungureanu, Marie-Christine Vergiat, Josef Weidenholzer, Cecilia Wikström			
<b>Substitutes present for the final vote</b>	Marina Albiol Guzmán, Anna Hedh, Livia Járóka, Sylvia-Yvonne Kaufmann, Jean Lambert, Gilles Lebreton, Angelika Mlinar, Emil Radev, Christine Revault d'Allonnes Bonnefoy, Jaromír Štětina			
<b>Substitutes under Rule 200(2) present for the final vote</b>	Maurice Ponga, Cristian Dan Preda			
<b>Date tabled</b>	29.9.2017			

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

40	+
PPE	Heinz K. Becker, Michał Boni, Rachida Dati, Agustín Díaz de Mera García Consuegra, Frank Engel, Monika Hohlmeier, Brice Hortefeux, Lívia Járóka, Barbara Kudrycka, Roberta Metsola, Maurice Ponga, Cristian Dan Preda, Emil Radev, Traian Ungureanu, Jaromír Štětina
S&D	Caterina Chinnici, Tanja Fajon, Ana Gomes, Sylvie Guillaume, Anna Hedh, Sylvia-Yvonne Kaufmann, Cécile Kashetu Kyenge, Dietmar Köster, Marju Lauristin, Juan Fernando López Aguilar, Péter Niedermüller, Soraya Post, Christine Revault d'Allonnes Bonnefoy, Birgit Sippel, Josef Weidenholzer
ECR	Monica Macovei
ALDE	Nathalie Griesbeck, Sophia in 't Veld, Louis Michel, Angelika Mlinar, Cecilia Wikström
Verts/ALE	Jan Philipp Albrecht, Jean Lambert, Judith Sargentini
EFDD	Laura Ferrara

5	-
ENF	Lorenzo Fontana, Gilles Lebreton
GUE/NGL	Marina Albiol Guzmán, Malin Björk, Cornelia Ernst

2	0
ECR	Helga Stevens
GUE/NGL	Marie-Christine Vergiat

Key to symbols:

+ : in favour

- : against

0 : abstention