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P8_TA(2015)0173

European Public Prosecutor's Office**European Parliament resolution of 29 April 2015 on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office (COM(2013)0534 — 2013/0255(APP))**

(2016/C 346/04)

The European Parliament,

- having regard to the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office (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 Office ⁽¹⁾,
 - 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 taken ⁽²⁾,
 - 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 Articles 86, 218, 263, 265, 267, 268 and 340 thereof,
 - 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 to the opinion of the Committee on Legal Affairs (A8-0055/2015),
- A. whereas data collected and analysed by the Commission have led to the identification of suspected fraud to the financial interests of the Union averaging about EUR 500 million per annum, although there are good reasons to believe that as much as EUR 3 billion per year could be at risk from fraud;
- B. whereas the rate of indictment is low — standing at approximately 31 % in the eight years from 2006 to 2013 — compared to the number of judicial recommendations issued by the European Anti-Fraud Office (OLAF) to the Member States; whereas one of the aims of the European Public Prosecutor's Office (EPPO) is to bridge this gap;
- C. whereas certain Member States might be less effective as regards the detection and prosecution of fraud affecting the EU's financial interests, thus harming the taxpayers of all the Member States who contribute to the Union's budget;
- D. whereas in its resolution of 12 March 2014, Parliament asked the Council for extensive involvement in the legislative work through a constant flow of information and ongoing consultation;

⁽¹⁾ Texts adopted, P7_TA(2014)0234.

⁽²⁾ Texts adopted, P7_TA(2013)0444.

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- E. whereas different jurisdictions, legal traditions, law enforcement and judicial 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 also financed by organised crime, with criminal groups collecting funding through fraud;
- G. whereas Article 86 of the Treaty on the Functioning of the European Union allows for the extension of the powers of the EPPO to include serious crimes having a cross-border dimension; whereas this possibility may be taken into account by the Council once the EPPO has been established and is functioning well;
1. Reaffirms its strong willingness to address the priorities for the establishment of the EPPO and to identify the principles and conditions under which it may give its consent;
 2. Reiterates the contents of its previous interim report, adopted in its resolution of 12 March 2014, and seeks to supplement and update them following the latest developments in the Council debate;
 3. Calls on the Council to ensure transparency and democratic legitimacy by keeping Parliament fully informed and regularly consulting it; urges the Council to take its views duly into account, as a precondition to securing consent for the adoption of the EPPO Regulation;
 4. Recalls that the EPPO should have competence for offences related to fraud against the financial interests of the Union; recalls, in this connection, that the relevant criminal offences are to be set out in the proposed directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive); calls on the Council, while acknowledging the progress made by the co-legislators in negotiations for the adoption of the PIF Directive, to renew its efforts to find agreement on the latter for the establishment of the EPPO;
 5. Believes that an innovative approach is needed for investigating, prosecuting and bringing to court 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 taxpayers' confidence in the EU institutions;
 6. Deems it crucial to ensure 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 believes that any weaker solution would be a cost for the Union's budget;

An independent European Public Prosecutor's Office

7. Emphasises that the structure of the EPPO should be fully independent of national governments and the EU institutions and protected from political influence and pressure; calls, therefore, for openness, objectiveness and transparency in the selection and appointment procedures for the European Chief Prosecutor, his/her deputies, the European Prosecutors and the European Delegated Prosecutors; believes that in order to prevent any conflicts of interests, the position of European Prosecutor should be a full-time position;
8. Stresses the importance of its involvement in the appointment procedures of the European Prosecutors and suggests an open competition for candidates who meet the necessary criteria of integrity, professionalism, experience and skills; believes that the European Prosecutors should be appointed by the Council and Parliament by common accord on the basis of a shortlist drawn up by the Commission, following an evaluation by an independent panel of experts chosen from among judges, prosecutors and lawyers of recognised competence; the European Chief Prosecutor should be appointed in accordance with the same procedure following a hearing by Parliament;

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9. Believes that the members of the College should be dismissed following a decision by the Court of Justice of the European Union, upon request by the Council, the Commission, Parliament and/or the European Chief Prosecutor;

10. Stresses that Member States must involve national self-governing judicial bodies in the nomination procedures for European Delegated Prosecutors, in accordance with national laws and practices;

11. Welcomes the provision contained in the Council text regarding an annual report to the EU institutions in order to guarantee a continuous assessment of the activities carried out by the new body; calls on the Council to ensure that the annual report contains, inter alia, details on the willingness of national authorities to cooperate with the EPPO;

A clear division of jurisdiction between the EPPO and national authorities

12. Believes that rules governing the division of jurisdiction between the EPPO and the national authorities should be clearly defined in order to avoid any uncertainty or 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; believes that the EPPO should first decide whether it has competence and before national authorities initiate their own investigations, in order to avoid parallel investigations which are inefficient;

13. Insists that national authorities that carry out investigations of offences which may fall under the competence of the EPPO should be obliged to inform it of any such investigations; reiterates the need for the EPPO to have the right to take over such investigations, where it determines that that is appropriate, so as to ensure the independence and effectiveness of the Office;

14. Reiterates that the powers of the European Public Prosecutor's Office should extend to offences other than those affecting the Union's financial interests only where cumulatively:

(a) the particular conduct simultaneously constitutes an offence affecting the Union's financial interests and other offences; and

(b) the offences affecting the Union's financial interests are predominant and the others are merely ancillary; and

(c) the other offences would be barred from further trying and punishment if they were not prosecuted and brought to judgment together with the offences affecting the Union's financial interests;

believes, also, that in case of disagreement; between the EPPO and the national prosecution authorities over the exercise of competence, the EPPO should decide, at central level, who will investigate and prosecute; believes, furthermore, that the determination of competence, in accordance with those criteria, should always be subject to judicial review;

An efficient structure for the effective management of cases

15. Finds it regrettable that the option of a collegiate structure is being considered by the Member States, instead of the hierarchical one initially proposed by the Commission; believes, in this regard, that the decision to prosecute, the choice of the competent jurisdiction, the decision to reallocate or dismiss a case and the decision on transactions should all be taken at central level by the Chambers;

16. Underlines the fact that the Chambers should play a leading role in investigations and prosecutions and not limit their activities to mere functions of coordination, but should supervise the work of the European Delegated Prosecutors in the field;

17. Is concerned over the automatic link between a European Prosecutor in the Central Office and a case lodged in his/her Member State, owing to the fact that this could lead to evident shortcomings in terms of the independence of the prosecutors and the even distribution of cases;

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18. Calls, therefore, for the rational organisation of the workload of the Office at central level; notes, in this connection, that the system for allocating cases among the Chambers should follow predetermined and objective criteria; suggests, also, that at a later stage a specific specialisation of the Chambers could be envisaged;

19. Is convinced that the necessary knowledge, experience and expertise of the national law enforcement systems will also be guaranteed by the EPPO personnel in the Central Office;

Investigative measures and admissibility of evidence

20. Calls on the legislator to guarantee streamlined procedures for the EPPO to obtain authorisation for investigative measures in cross-border cases, in accordance with the law of the Member States, where the measure in question is executed; recalls that the co-legislators agreed on criteria for Member States to make requests as regards investigative measures based on the principle of mutual recognition in Directive 2014/41/EU regarding the European Investigation Order in criminal matters; believes that the same criteria should apply in respect of investigative measures to be authorised by the EPPO, particularly with regard to grounds for refusal;

21. Calls on the Council to ensure the admissibility of the evidence gathered by the EPPO with full respect for the relevant European and national legislation across the Union, as this is crucial for ensuring the effectiveness of prosecutions, in accordance with Article 6 TEU, the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights;

22. Reiterates the need for the EPPO to seek out all relevant evidence, whether inculpatory or exculpatory; insists, furthermore, that it is necessary to grant suspects or accused persons in any investigation undertaken by the EPPO certain rights concerning evidence, in particular:

- (a) The suspect or accused should have the right to present evidence for the consideration of the EPPO;
- (b) The suspect or accused should have the right to request that the EPPO gather all evidence of relevance to investigations, including appointing experts and hearing witnesses;

23. Believes, given the possible multiple jurisdictions for cross-border offences falling under the competence of the EPPO, that it is essential to ensure that the European Prosecutors, European Delegated Prosecutors and national prosecuting authorities respect fully the principle of *ne bis in idem* with regard to prosecutions involving offences which fall under the competence of the EPPO;

Access to judicial review

24. 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; believes, therefore, that any decision taken by the EPPO should be subject to judicial review before the competent court; stresses that the decisions taken by the Chambers, such as the choice of jurisdiction for prosecution, the dismissal or reallocation of a case or a transaction, should be subject to judicial review before the Union courts;

25. 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 to be a national authority before the competent courts of the Member States;

Coherent legal protection for suspects or accused persons

26. Recalls that the new Office should carry out its activities with full respect for the rights of suspects or accused persons which are enshrined in Article 6 TEU, Article 16 TFEU and the Charter of Fundamental Rights of the European Union, and in those legislative measures already adopted at Union level on the procedural rights of suspects and persons accused in criminal proceedings and on the protection of personal data;

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27. Affirms that the future directive on legal aid should apply equally to all suspects or accused persons who are under investigation or are being prosecuted by the EPPO; calls on the Member States, in the absence of an EU directive, to ensure effective access to legal aid in accordance with the relevant national laws;

28. Emphasises that all suspects or accused persons who are under investigation or are being prosecuted by the EPPO have the right to the protection of their personal data; underlines, in this regard, the fact that the processing of personal data carried out by the EPPO must be subject to Regulation (EC) No 45/2001; stresses that any specific provisions on data protection contained in the Council regulation on the establishment of the EPPO may only complement and further elaborate the provisions contained in Regulation (EC) No 45/2001, and only to the extent that it is necessary;

29. Reaffirms its strong willingness to establish the EPPO and to reform Eurojust, as has been anticipated by the Commission in both of its proposals; requests that the Commission readjust estimations of the budgetary impact of the collegiate structure; calls for clarification on the relations between Eurojust, the EPPO and OLAF in order to differentiate their respective roles in the protection of the EU's financial interests; calls on the Council and the Commission to examine the possibility of a stronger integrated approach of these agencies in order to make investigations more effective;

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30. Urges the Council to follow these recommendations and underlines the fact that the aforementioned conditions are essential for Parliament to give its consent to the Council's draft regulation;

31. Instructs its President to forward this resolution to the Council and the Commission.
