



EUROPEAN PARLIAMENT

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*Committee on Legal Affairs*

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**2013/0255(APP)**

27.1.2014

# **AMENDMENTS**

## **1 - 28**

**Draft opinion**  
**Evelyn Regner**  
(PE526.192v01-00)

European Public Prosecutor's Office  
(COM(2013)0534 – 2013/0255(APP))

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PE527.985v01-00

**EN**

*United in diversity*

**EN**

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**Amendment 1**  
**Evelyn Regner**

**Draft opinion**  
**Recital -1 (new)**

*Draft opinion*

*Amendment*

***-1. Whereas the EPPO will be a supranational body within the area of freedom, security and justice and should, therefore, comply with the objectives of that area, namely 'respect for fundamental rights and the different legal system and traditions of the Member States' in accordance with Article 67 TFEU,***

Or. en

**Amendment 2**  
**Evelyn Regner**

**Draft opinion**  
**Recital -1 a (new)**

*Draft opinion*

*Amendment*

***-1a. Whereas in the famous Greek maize case, the Court of Justice ruled that the Member States are under the obligation to protect the European Communities' interests by means equivalent to those by which they protect their own respective interests<sup>1a</sup>; whereas the establishment of the EPPO can be seen as the logical development of that fundamental judgment,***

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<sup>1a</sup> Case 68/88 *Commission v Greece* (1989) ECR 2965, paras. 23-25.

Or. en

**Amendment 3**  
**Evelyn Regner**

**Draft opinion**  
**Recital -1 b (new)**

*Draft opinion*

*Amendment*

***-1b. Whereas the principle of mutual recognition should become the cornerstone of judicial cooperation in criminal matters and be seen as the motor of European criminal law integration,***

Or. en

**Amendment 4**  
**Francesco Enrico Speroni**

**Draft opinion**  
**Recommendation 1 – point i**

*Draft opinion*

*Amendment*

***(i) the criteria governing the ancillary competence of the EPPO under Article 13 of the proposal should be clearly defined beforehand. In particular,***

***(i) notwithstanding the conclusions put forward in the Commission communication of 17 November 2013 (COM(2013)0851), the establishment of the EPPO does not appear to be in accordance with the principle of subsidiarity, as set out in Article 5(3) of the Treaty on European Union, or with the principle of proportionality, as set out in Article 5(4) thereof;***

***a) the offences referred to in Article 13 should only be those provided for in legislative acts of the Union;***

***b) such offences should be considered as ‘inextricably linked’ with the offences referred to in Article 12 whenever they are instrumental in committing them;***

***c) the condition that the offences referred***

*to in Article 12 are preponderant should also include a qualitative – and not only a quantitative – assessment;*

*d) the condition that the offences referred to in Article 13 are based on identical facts should be deleted, so that the ancillary competence would cover both cases where the same offender commits several separate criminal acts and cases where one and the same act is an offence against several different provisions;*

Or. it

**Amendment 5**  
**Giuseppe Gargani**

**Draft opinion**  
**Recommendation 1 –point i – point a**

*Draft opinion*

*Amendment*

*a) the offences referred to in Article 13 should only be those provided for in legislative acts of the Union;*                      *deleted*

Or. it

*Reason*

*Given that, for operating purposes, the EPPO will be equated with a national body, its action should not be confined solely to offences provided for in EU legislation, but also extend to offences defined in national laws.*

**Amendment 6**  
**Evelyn Regner**

**Draft opinion**  
**Recommendation 1 – point i – point b**

*Draft opinion*

b) such offences should be considered as ‘inextricably linked’ with the offences referred to in Article 12 whenever they are instrumental in committing them;

*Amendment*

b) such offences should be considered as ‘inextricably linked’ with the offences referred to in Article 12 whenever they are instrumental in committing them ***or perpetrated in order to ensure their impunity;***

Or. en

**Amendment 7**  
**József Szájer**

**Draft opinion**  
**Recommendation 1 – point i – point d**

*Draft opinion*

***d) the condition that the offences referred to in Article 13 are based on identical facts should be deleted, so that the ancillary competence would cover both cases where the same offender commits several separate criminal acts and cases where one and the same act is an offence against several different provisions;***

*Amendment*

***deleted***

Or. en

**Amendment 8**  
**Francesco Enrico Speroni**

**Draft opinion**  
**Recommendation 1 – point ii**

*Draft opinion*

***(ii) relations of the EPPO with Eurojust, Europol and OLAF should be regulated to the greatest extent possible in the regulation establishing the EPPO. The agreements referred to in Articles 57 and***

*Amendment*

***(ii) the Commission proposal does not allow for the possibility referred to in Article 5(3) of acting at regional or local level by taking alternative measures (including, to give an example mentioned***

*58 of the proposal should, therefore, only relate to merely practical arrangements;*

*by the British House of Commons, preventive measures to be implemented at the time when an application is made for EU funding) and/or strengthening judicial cooperation among Member States and the coordination and investigation machinery existing at European level (Eurojust, Europol, and OLAF);*

Or. it

**Amendment 9**  
**Francesco Enrico Speroni**

**Draft opinion**  
**Recommendation 1 – point iii**

*Draft opinion*

*(iii) on no account should the EPPO exercise its competence with regard to offences committed before it becomes fully operative. Article 71 of the proposal should be amended accordingly;*

*Amendment*

*(iii) in addition, the Commission is not confining itself to what is necessary to achieve its aim of exercising greater oversight, but is overriding the prerogatives of the Member States and interfering in a matter within their competence, criminal law;*

Or. it

**Amendment 10**  
**Giuseppe Gargani**

**Draft opinion**  
**Recommendation 1 – point iii**

*Draft opinion*

*(iii) on no account **should** the EPPO exercise its competence with regard to offences committed before it becomes fully operative. Article 71 of the proposal should be amended accordingly;*

*Amendment*

*(iii) on no account **must** the EPPO exercise its competence with regard to offences committed before it becomes fully operative. Article 71 of the proposal should be amended accordingly;*

Or. it

**Amendment 11**  
**Francesco Enrico Speroni**

**Draft opinion**  
**Recommendation 1 – point iv (new)**

*Draft opinion*

*Amendment*

*(iv) the EPPO appears to have been granted unduly sweeping powers: the powers in question should continue to be exercised by national authorities;*

Or. it

**Amendment 12**  
**Giuseppe Gargani**

**Draft opinion**  
**Recommendation 1 – point iv (new)**

*Draft opinion*

*Amendment*

*(iv) to make for greater certainty as to the law, the competent court should be determined beforehand, in keeping with the principle of the ‘natural adjudicator’. Article 27 of the proposal should be amended accordingly;*

Or. it

**Amendment 13**  
**Giuseppe Gargani**

**Draft opinion**  
**Recommendation 1 – point v (new)**



*Draft opinion*

*Amendment*

***(v) the European Public Prosecutor should be appointed for a term of four years, renewable once only. Furthermore, Deputies of the European Public Prosecutor should be appointed for a term of three years, renewable once only. Article 8 and Article 71(2) of the proposal should be amended accordingly;***

Or. it

**Amendment 14  
Giuseppe Gargani**

**Draft opinion  
Recommendation 1 – point vi (new)**

*Draft opinion*

*Amendment*

***(vi) the means of investigation should be uniform, in order to avert forum shopping, and they should be compatible with the legal systems of the Member States;***

Or. it

**Amendment 15  
Francesco Enrico Speroni**

**Draft opinion  
Recommendation 2**

*Draft opinion*

*Amendment*

***2. welcomes the fact that, under the regime applicable to non-contractual liability of the EPPO, the Court of Justice shall have jurisdiction in disputes over compensation for damage in similar terms to those set out in Article 268 TFEU;***

***2. instead of setting up new bodies, existing bodies should be strengthened through exchange of best practice;***

*however, considers it problematic that two different courts – at EU and national level respectively – shall hear actions for non-contractual liability of the EPPO and actions for annulment of its procedural measures, including those from which a right to compensation for damage may arise, and recommends to the Council that Articles 36 and 69 of the proposal be amended accordingly;*

Or. it

**Amendment 16**  
**Giuseppe Gargani**

**Draft opinion**  
**Recommendation 2**

*Draft opinion*

2. welcomes the fact that, under the regime applicable to non-contractual liability of the EPPO, the Court of Justice shall have jurisdiction in disputes over compensation for damage in similar terms to those set out in Article 268 TFEU; *however, considers it problematic that two different courts – at EU and national level respectively – shall hear actions for non-contractual liability of the EPPO and actions for annulment of its procedural measures, including those from which a right to compensation for damage may arise, and recommends to the Council that Articles 36 and 69 of the proposal be amended accordingly;*

*Amendment*

2. welcomes the fact that, under the regime applicable to non-contractual liability of the EPPO, the Court of Justice shall have jurisdiction in disputes over compensation for damage in similar terms to those set out in Article 268 TFEU;

Or. it

**Amendment 17**  
**Francesco Enrico Speroni**

**Draft opinion**  
**Recommendation 3**

*Draft opinion*

**3. deploras that, notwithstanding Article 86(1) TFEU clearly lays down that the Council may establish an EPPO ‘from Eurojust’, the Commission envisages a major transfer of human resources from OLAF to the EPPO, instead of taking advantage of the expertise and the added value of Eurojust’s staff members;**

*Amendment*

**3. among the national parliaments, 14 chambers have delivered an unfavourable opinion on the proposal, and their views should not be ignored;**

Or. it

**Amendment 18  
Giuseppe Gargani**

**Draft opinion  
Recommendation 3**

*Draft opinion*

**3. deploras that, notwithstanding Article 86(1) TFEU clearly lays down that the Council may establish an EPPO ‘from Eurojust’, the Commission envisages a major transfer of human resources from OLAF to the EPPO, instead of taking advantage of the expertise and the added value of Eurojust’s staff members;**

*Amendment*

**3. recommends that, in accordance with the provisions laid down in Article 86(1) TFEU, whereby the Council may establish an EPPO ‘from Eurojust’, the Commission envisage merely a transfer of financial resources from OLAF to the EPPO and that EPPO take advantage of the expertise and the added value of Eurojust’s staff members;**

Or. it

**Amendment 19  
Antonio López-Istúriz White**

**Draft opinion  
Recommendation 3 a (new)**

*Draft opinion*

**3a. recalls, however, that the limitation**

*Amendment*

*that national courts are only allowed to refer questions concerning the interpretation of law to the European Court of Justice in relation with the procedural measures of the European Prosecutor's Office – which shall be considered as national authority for the purpose of judicial review – is in breach with the principle of equality of arms, and recommends therefore that Article 36(2) be amended accordingly;*

Or. en

**Amendment 20**  
**Francesco Enrico Speroni**

**Draft opinion**  
**Recommendation 4**

*Draft opinion*

*4. considers that appropriate training in EU criminal law for European Delegated Prosecutors and their staff should be provided in a uniform, effective way;*

*Amendment*

*4. the Committee on Legal Affairs therefore calls on the Committee on Civil Liberties, Justice and Home Affairs not to approve the Commission proposal;*

Or. it

**Amendment 21**  
**Evelyn Regner**

**Draft opinion**  
**Recommendation 4 a (new)**

*Draft opinion*

*4a. calls on the Commission to develop a coherent legislative framework for the EPPO and Eurojust that reflects the different functions of the two bodies as enshrined in Articles 85 and 86 TFEU respectively;*

*Amendment*

**Amendment 22**  
**Evelyn Regner**

**Draft opinion**  
**Recommendation 4 b (new)**

*Draft opinion*

*Amendment*

***4b. urges the Commission, in case of Member States opting out or enhanced cooperation being established in accordance with Article 86(1) TFEU, to make appropriate proposals in order to regulate judicial cooperation between participating and non-participating Member States, with special regard to cases where cross-border offences are committed, or offenders are based, in non-participating Member States;***

Or. en

**Amendment 23**  
**Evelyn Regner**

**Draft opinion**  
**Recommendation 4 c (new)**

*Draft opinion*

*Amendment*

***4c. deplores that, based on the current experiences of mutual recognition, it is hard to expect that Member States will be willing to recognize and admit evidence which was gathered in other Member States on the basis of substantially different standards; points out that the divergence between the national laws of the Member States is particularly striking in relation to special investigation techniques, as it is often the case that, whereas a certain technique is strictly***

*regulated in some Member States, it is not regulated at all in others;*

Or. en

**Amendment 24**  
**Evelyn Regner**

**Draft opinion**  
**Recommendation 4 d (new)**

*Draft opinion*

*Amendment*

*4d. takes the view that the EPPO could join the College of Eurojust as an extra member whenever matters related to the protection of financial interest of the Union are discussed;*

Or. en

**Amendment 25**  
**Evelyn Regner**

**Draft opinion**  
**Recommendation 4 e (new)**

*Draft opinion*

*Amendment*

*4e. points out the criteria for selecting candidates to hold the position of European Delegated Prosecutor, conditions for and periods of assignment, as well as status and matters relating to pay should be the same in all Member States;*

Or. en

**Amendment 26**  
**Evelyn Regner**

**Draft opinion**  
**Recommendation 4 f (new)**

*Draft opinion*

*Amendment*

*4f. considers that the area of applicability of national procedural law should be carefully examined and, possibly, restricted, for variable geometry as to the powers of the EPPO would undermine its efficiency and encourage forum shopping, as well as affecting the rights of the suspect or accused person;*

Or. en

**Amendment 27**  
**Evelyn Regner**

**Draft opinion**  
**Recommendation 4 g (new)**

*Draft opinion*

*Amendment*

*4g. considers that, should the Court of Justice become an instance for judicial review in cases dealt with by the EPPO, significant additional resources in terms of judges, staff, infrastructure and training will have to be put in place in advance of the establishment the EPPO;*

Or. en

**Amendment 28**  
**Evelyn Regner**

**Draft opinion**  
**Recommendation 4 h (new)**

*Draft opinion*

*Amendment*

*4h. welcomes the training courses for lawyers jointly organised by the European*

*Criminal Bar Association (ECBA) and the Academy of European Law (ERA) and encourages tailored courses in order to enhance the quality of defence in criminal proceedings brought by the EPPO;*

Or. en