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Committee on Budgetary Control

2013/0255(APP)

18.2.2014

OPINION

of the Committee on Budgetary Control

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council regulation on the establishment of the European
Public Prosecutor's Office
(COM(2013)0534 – C7-0000/2014 – 2013/0255(APP))

Rapporteur (*): Ingeborg Gräble

(*) Associated committee – Rule 50 of the Rules of Procedure

SUGGESTIONS

The Committee on Budgetary Control calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its interim report:

Recommendations

1. Supports the Commission's approach of focusing the scope and mandate of the European Public Prosecutor's Office (EPPO) on the protection of the Union's financial interests against fraud and other illegal activities harmful to the EU budget, as provided for in Article 86 of the Treaty on the Functioning of the European Union (TFEU);
2. Calls on the Council to clarify the competence of each existing body in charge of protecting the Union's financial interests; points out that it is of the utmost importance that the relationship between the EPPO and other existing bodies, such as Eurojust and OLAF, be further defined and clearly demarcated; stresses that the EPPO should take advantage of OLAF's long-term expertise in conducting investigations, at both national and Union level, in areas pertaining to the protection of the Union's financial interests, including corruption; stresses, in particular, that the Council should clarify the complementarity of OLAF and EPPO action when it comes to 'internal' and 'external' investigations; emphasises that the Commission's current proposal clarifies neither its relationship with the EPPO nor how internal investigations within the EU institutions are to be performed; demands, in this context, that EU officials be put on an equal footing with other Union citizens by means of amendments to Article 11(a) of the Protocol on the Privileges and Immunities of the European Union and Article 19 of the Staff Regulations of the Union, thereby allowing immediate action by the EPPO;
3. Considers that further analysis of the concurrent functioning of OLAF, Eurojust and the EPPO should be carried out in order to limit the risk of conflicting competences; invites the Council to clarify the respective competences of these bodies, to identify potential shared competences and inefficiencies, and to suggest remedies where appropriate;
4. Stresses, at the same time, that the complementary and ancillary competences of the competent national authorities and the EPPO should be further highlighted and clarified in order to avoid any inefficient and costly overlapping of action at the two levels; requests that an analysis be carried out to this end; invites the Council to consider the implementation of a right of evocation whereby the Member States' law enforcement authorities must be informed by the EPPO of its investigations and given the possibility of investigating and prosecuting criminal offences affecting the Union's financial interests, including cases in which the EPPO has not started an investigation, or has closed such an investigation without follow-up;
5. Considers the procedure for appointing the EPPO, as set out in the Commission proposal, to be undemocratic and opaque; demands that Parliament be given a more central role in the appointment procedure and, in particular, that it be given the right to appoint half the members of the selection panel responsible for drawing up the shortlist of candidates; points out that, in order to ensure his or her independence, the chief prosecutor should be

appointed by common accord between Parliament and the Council; suggests that a formal procedure for the dismissal of the EPPO be included in the EPPO regulation; considers, in this regard, the provisions currently set out in Article 8 of the Commission proposal to be insufficient;

6. Welcomes the idea of embedding the EPPO in existing decentralised structures through the participation of national delegated prosecutors as ‘special advisers’; sees the need to elaborate further on the delegated prosecutors’ independence vis-à-vis the national judiciary, and on transparent selection procedures in order to avoid any suggestion of favouritism on the part of the EPPO; calls for an analysis to be carried out to assess the costs to the EU budget of setting up the EPPO, along with any spill-over into the Member States’ budgets; calls for such an analysis to assess the benefits as well;
7. Requires – given that several Member States will probably opt out of the EPPO proposal – an analysis to clarify which OLAF units, and which members of its staff, are to be transferred to the EPPO, and which are to remain with OLAF; requires that OLAF retain the necessary resources to carry out any anti-fraud activity that does not fall within the EPPO’s mandate;
8. Points out that OLAF will remain competent for those Member States which do not participate in the EPPO, and that they should be afforded an equivalent level of procedural safeguards;
9. Calls on the Commission, therefore, to include, among the changes to the OLAF Regulation resulting from the establishment of the EPPO, sufficient procedural safeguards, including the possibility of a judicial review of investigative measures taken by OLAF;
10. Calls on the Council and the Commission to clarify how the EPPO would function and be financed in the event that the Commission proposal is implemented under the enhanced cooperation procedure, as made possible by Article 20 and Articles 326 to 334 TFEU;
11. Calls on the Council, in the spirit of the deepest respect for the rule of law, to consider the following recommendations:
 - a. the EPPO should operate in strict observance of the rule of natural justice, whereby it is necessary to make clear, ex ante, the principle of mandatory prosecution; the EPPO should prosecute every alleged offence within its competence, based on transparent and objective criteria that determine which courts will have jurisdiction;
 - b. the material scope of competence, and in particular the ancillary competence, of the EPPO should be defined as precisely and unambiguously as possible in order to ensure uniform application in each Member State and allow the EPPO to exercise its mandate effectively, and should be inextricably linked to the protection of the Union’s financial interests; to this end, Parliament suggests a careful review of the definition of its ancillary competence set out in Article 13 of the Commission proposal;
 - c. the investigative tools available to the EPPO should be homogeneous and based on EU legal provisions applicable throughout the entire single area of freedom, security and justice; furthermore, they should be compatible with the law of the Member State in

which the alleged crime is being prosecuted;

- d. a special set of rules should be created at Union level to strengthen data protection and ensure harmonised protection for whistleblowers;
 - e. particularly intrusive investigative tools should be subject to judicial authorisation by the competent national courts, in accordance with harmonised and approximated standards and criteria laid down at Union level; decisions which affect individuals' fundamental liberties in an intrusive way should be subject to appeal through the hierarchy of courts and, ultimately, before the Court of Justice of the European Union;
 - f. the admissibility of evidence collected by the EPPO in disregard of national law, as provided for in the 32nd recital and Article 30 of the Commission proposal, should be forcefully rejected in order to avoid the parallel application of two different kinds of law in the Member States, protect the procedural rights of the people concerned and enhance the legal certainty of the EPPO's activities;
 - g. in order for the EPPO to pursue its investigations successfully, it must have a thorough knowledge of the legal systems of the countries involved; the organisational structure of the EPPO should therefore ensure that it has, at a central level, expertise regarding the legal system of each Member State, including their respective procedural and fundamental rights; this organisational structure should respect the cost-efficiency principle and have a limited impact on the EU budget;
 - h. the EPPO's decisions on forum choices, the dismissal of cases and transactions should also be subject to appeal through the hierarchy of courts and, ultimately, before the Court of Justice of the European Union;
 - i. the obligations imposed on national authorities to inform the EPPO of any conduct which might constitute an offence within its competence should be aligned with, and not exceed, those in place at Member State level, and respect the independence of those authorities;
 - j. compliance with the *ne bis in idem* principle should be ensured;
12. Deplores the fact that the EPPO proposal is accompanied neither by a proposal for the establishment of a European Criminal Tribunal as a specialised court attached to the General Court, to be established in accordance with Article 257 TFEU, nor by a proposal for a European procedural law framework; requests that an analysis be carried out in this regard;
13. Requests the establishment of an EU budget line for granting legal aid to indigent individuals prosecuted by the EPPO;
14. Stresses that all of the EPPO's activities should reconcile the need for legal certainty with the protection of personal data and meet the highest standards regarding the rights of defence, bearing in mind that the roadmap concerning safeguards in criminal proceedings has not yet been completed and that it merely refers to the national legal systems for those rights; requests that the staffing of the EPPO ensure balanced geographical and gender representation at all hierarchical levels;

15. Calls on the Council to work in close cooperation with Parliament during the negotiations on the legislative proposal to set up an EPPO; is confident that, during the negotiations, the principles enshrined in the Commission proposal – which is based on a comprehensive impact assessment, including a comparative analysis of the current legal systems and a Green Paper – will remain the basis for an open and transparent discussion among the Member States and provide constructive inspiration for the setting up of the EPPO;
16. Calls on the Council to take the time necessary for a thorough evaluation of the Commission proposal, and not to finalise its negotiations in a rush; stresses that a premature transition to the enhanced cooperation procedure should be avoided;
17. Calls on the Council to improve further the efficiency and effectiveness of the respective courts of justice in the Member States, which are indispensable for the success of the EPPO project.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	18.2.2014
Result of final vote	+: 21 -: 4 0: 1
Members present for the final vote	Marta Andreasen, Inés Ayala Sender, Zigmantas Balčytis, Ryszard Czarnecki, Tamás Deutsch, Martin Ehrenhauser, Jens Geier, Gerben-Jan Gerbrandy, Ingeborg Gräßle, Rina Ronja Kari, Bogusław Liberadzki, Jan Mulder, Monika Panayotova, Crescenzo Rivellini, Paul Rübig, Petri Sarvamaa, Theodoros Skylakakis, Georgios Stavrakakis, Michael Theurer
Substitute(s) present for the final vote	Philip Bradbourn, Karin Kadenbach, Marian-Jean Marinescu
Substitute(s) under Rule 187(2) present for the final vote	Peter Jahr, Iosif Matula, Godelieve Quisthoudt-Rowohl, Marie-Thérèse Sanchez-Schmid