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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT  
*Accompanying the document*  
Proposal for a Council Regulation  
on the establishment of the European Public Prosecutor's Office

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**COMMISSION STAFF WORKING DOCUMENT**

**EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Council Regulation**

**on the establishment of the European Public Prosecutor's Office**

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# COMMISSION STAFF WORKING DOCUMENT

## EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

### *Accompanying the document*

#### **Proposal for a Council Regulation**

#### **on the establishment of the European Public Prosecutor's Office**

### **1. PROBLEM DEFINITION**

#### **1.1. Limits of existing measures**

Enforcement is often weak or deficient due to the absence of a European enforcement structure, the lack of continuity in enforcement action and the lack of an underlying common European prosecution policy. Whereas offences affecting the EU's financial interests are genuine European crimes, the current institutional and legal framework suffers from a fragmented enforcement regime almost solely based on national responses.

In addition, whilst Eurojust and Europol can and do assist the Member States in dealing with these cases, neither of these organisations can address all of the issues identified, in particular due to the fact that they cannot direct national investigations and prosecutions. Although OLAF is a key player at EU level in the fight against fraud and irregularities, it is limited in its activities to administrative investigations, and submitting the results to national authorities, who may decide against any criminal law follow-up.

Existing and planned measures, including the Commission's Anti-Fraud Strategy (CAFS) and the reforms of Eurojust, Europol and OLAF are insufficient to address these problems, even if all possibilities offered by the Treaty were to be used to the maximum extent.

#### **1.2. Low levels of investigation, prosecution and deterrence**

Prosecuting offences against the EU budget is generally considered of secondary importance by the authorities in a number of Member States. As there is no EU authority for investigation and prosecution of cross-border offences affecting the EU's financial interests, national law enforcement efforts remain fragmented.

Current levels of information exchange and coordination at national and European level are insufficient to effectively prosecute offences affecting the EU's financial interests. Coordination, cooperation and information exchange obstacles occur at different levels and between different authorities and are a major impediment to the effective investigation and prosecution of offences affecting the EU's financial interests.

Only a very small part of the total amount of fraud is ever recovered from criminals: below 10%. The deterrent effect of the current enforcement regime is therefore insufficient.

**There is no centrally placed body that can deal with these obstacles and ensure continuity in the investigation and prosecution process.**

**2. RIGHT TO ACT, SUBSIDIARITY AND FUNDAMENTAL RIGHTS**

**2.1. Legal basis**

Article 86 TFEU states that the EPPO will have to combat crimes against the financial interests of the EU, must be established ‘from Eurojust’, and shall be responsible for investigating, prosecuting and bringing to justice the perpetrators of these offences. Article 86 TFEU also specifies a special legislative procedure for setting up the EPPO: the Council needs to decide this unanimously after obtaining the consent of the European Parliament.

**2.2. Subsidiarity and need for EU action**

Member States' criminal investigation and prosecution authorities are currently unable to achieve an equivalent level of protection and enforcement. As the EU is best placed to protect its own financial interests, taking into account the specific EU rules which apply in this field, it is also best placed to ensure the prosecution of offences against these interests.

**3. OBJECTIVES**

<b>Objectives:</b>	
<b>General</b>	<ul style="list-style-type: none"> <li>To contribute to the <u>strengthening of the protection of the Union's financial interests</u> and further development of an area of justice, and to enhance the trust of EU businesses and citizens in the Union’s institutions, while respecting all fundamental rights enshrined in the Charter.</li> </ul>
<b>Specific Operational</b> /	<ul style="list-style-type: none"> <li>To establish a <u>coherent European system for investigation and prosecution</u> of offences affecting the EU’s financial interests.</li> <li>To ensure a more <u>efficient and effective investigation and prosecution</u> of offences affecting the EU’s financial interests.</li> <li>To <u>increase the number of prosecutions, leading to more convictions and recovery</u> of fraudulently obtained Union funds.</li> <li>To ensure <u>close cooperation and effective information exchange</u> between the European and national competent authorities.</li> <li>To <u>enhance deterrence</u> of committing offences affecting the EU’s financial interests.</li> </ul>

#### **4. POLICY OPTIONS AND THEIR IMPACT**

##### **Options not establishing a European Public Prosecutor's Office**

##### **4.1. Policy option 1: Base-line scenario - No policy change**

No new action would be taken at EU level. Offences affecting the EU's financial interests would continue to be prosecuted solely at national level.

##### **4.2. Policy option 2: No new regulatory actions at EU level**

No legislative action would be taken at EU level, and no new bodies would be set up. However, national and Union-level actions to fight the relevant offences would be strengthened through non-legislative measures.

##### **4.3. Policy option 3: Strengthening of the powers of Eurojust**

This option would mean that Eurojust would be given new powers to trigger investigations throughout the Union. Eurojust and its national members would have the right to give binding instructions to national prosecution services to initiate investigations and propose prosecutions in Member States in accordance with Article 85 TFEU.

## **Options for establishing a European Public Prosecutor's Office**

### **4.4. Policy option 4a: Creation of an EPPO unit within Eurojust**

This option would entail the creation of a central EPPO Unit within Eurojust, which would thus become the EPPO's holding structure as a "parent agency". An EPPO Unit would have exclusive jurisdiction over cases affecting the EU's financial interests, and would be composed of prosecutors and investigators specialised in financial crimes.

### **4.5. Policy option 4b: Creation of a College-type EPPO**

Similar to how Eurojust is organised, the EPPO would be organised in the form of a College of national members appointed by the Member States, but with a clearer and stronger mandate for all members. The EPPO College would take majority decisions as regards investigations and prosecutions of offences affecting the EU's financial interests throughout the EU.

### **4.6. Policy option 4c: Creation of a decentralised EPPO**

In this option the EPPO would consist of a central EU prosecutor's office assisted by European Delegated Prosecutors located in the Member States and integrated in national systems, having full prosecutorial authority under national law. The central office would have the hierarchical power of instruction over European Delegated Prosecutors. The EPPO would cooperate with the national police and prosecution services for carrying out its tasks, and would be responsible for bringing cases to trial.

### **4.7. Policy option 4d: Creation of a centralised EPPO**

This option would entail the creation of a central EPPO possessing the full legal and practical capacity required to conduct investigations and prosecutions of the relevant offences, without depending on the national prosecution services.

### **4.8. Horizontal issues for options 4a-4d**

#### *1.1.1. Cooperation between the EPPO and Eurojust*

The four options which entail the setting up of the EPPO need to address the crucial matter of its relationship with Eurojust. The sharing of administrative and functional services must be part of any option.

#### *1.1.2. Use of OLAF resources in the setting-up of the EPPO*

A part of OLAF's resources would be used in order to set up the EPPO, taking into account their experience in the conduct of investigations.

#### *1.1.3. Cooperation with third countries*

The different options identified for establishing the EPPO will also have to take account of the fact that the EPPO will need to cooperate with the authorities of third countries. However, the differences between the different options on this point are marginal and should not influence the final choice between them.

## 5. ASSESSMENT OF POLICY OPTIONS

### 5.1. Status quo (policy option 1) – Baseline scenario

Expected Impact	
<b>Effectiveness in meeting the policy objectives</b>	Low. There are no reasons to expect that the weak incentives and the frequently limited national capacity to deal with the complex nature of EU fraud cases will be overcome without decisive corrective measures.
<b>Impact on fundamental rights</b>	None. Fundamental rights will be unaffected. The Charter of Fundamental Rights will be applied only when EU law is involved, for example under the regime of the European Arrest Warrant.
<b>Feasibility</b>	High.
<b>Impact on the legal system of Member States</b>	None. The baseline scenario is the option that is the least intrusive of all options.
<b>Impact on existing Union institutions</b>	None.
<b>Costs</b>	None.
<b>Benefits</b>	Very small.

### 5.2. No new regulatory actions at EU level (policy option 2)

Expected Impact	
<b>Effectiveness in meeting the policy objectives</b>	Low. This option would to some degree contribute to the creation of a more coherent European system for investigation and prosecution of the relevant offences, thereby also possibly strengthening the deterrent effect of law enforcement. However, this contribution would remain limited.
<b>Impact on fundamental rights</b>	Low. Fundamental rights will <i>a priori</i> be little affected by this option.
<b>Feasibility</b>	Medium. This option will be difficult to implement in practice as it requires a multitude of efforts in different fields.
<b>Impact on the legal system of Member States</b>	Low. An improved use of Union bodies as well as MLA tools and similar judicial cooperation tools would have some positive impacts in Member States.
<b>Impact on</b>	Low. A limited effect on the functioning of Eurojust and OLAF can be

<b>existing Union institutions</b>	expected.
<b>Costs<sup>1</sup></b>	Moderate. Costs under this option would amount to about €35 million. <sup>2</sup>
<b>Benefits</b>	The benefits of increased recovery and deterrence under this option are projected to be about €265 million.

### 5.3. A strengthened Eurojust (policy option 3)

<b>Expected Impact</b>	
<b>Effectiveness in meeting the policy objectives</b>	Low. The investigation and prosecution of the relevant offences would only be strengthened to a limited extent, as Eurojust would continue to have no authority over national prosecutions.
<b>Impact on fundamental rights</b>	Low. Fundamental rights will only be affected to a limited degree by this option.
<b>Feasibility</b>	High. The option would to a large extent build on existing institutions and relevant Union legislation.
<b>Impact on the legal system of Member States</b>	Low to medium. Eurojust would have the powers to initiate investigations and propose prosecutions, but the court proceedings as such would continue to be purely national.
<b>Impact on existing Union institutions</b>	Low to medium. Eurojust would in this option acquire some additional powers but would continue to be a European body composed of national members.
<b>Costs</b>	Medium. Costs under this option would amount to about €50 million.
<b>Benefits</b>	The benefits of increased recovery and deterrence under this option are projected to be about €400 million.

### 5.4. Creation of an EPPO unit within Eurojust (policy option 4a)

<b>Expected Impact</b>	
<b>Effectiveness in meeting the policy objectives</b>	Medium. Current national priorities could still override the EPPO Unit's priorities.
<b>Impact on fundamental rights</b>	Low. As in Option 3, with the necessity of judicial control as in Options 4b-4d.

<sup>1</sup> All costs and benefits are expressed in cumulative present values (in 2012 prices), over a period of 20 years.

<sup>2</sup> For details of the costs calculations please see Annex 4 to the Impact Assessment.



<b>Feasibility</b>	This option's political feasibility is limited, since conflicts of interest and differences in working culture between the EPPO Unit and Eurojust could influence the effectiveness of this option.
<b>Impact on the legal system of Member States</b>	Medium. Member States would need to adapt their systems to a new EPPO/Eurojust equipped with certain direct powers.
<b>Impact on existing Union institutions</b>	Medium to High. Eurojust would need to create a new administrative entity and ensure that the latter benefits from its administrative structures.
<b>Costs</b>	Moderate. Costs under this option would amount to about €40 million.
<b>Benefits</b>	The benefits of increased recovery and deterrence under this option are projected to be about €500 million.

### 5.5. College-type EPPO (policy option 4b)

<b>Expected Impact</b>	
<b>Effectiveness in meeting the policy objectives</b>	Low to Medium. The disadvantages associated with a College-type structure would negate most of the benefits.
<b>Impact on fundamental rights</b>	Medium. Improved coordination and cooperation could potentially have a slight impact on the protection of personal data.
<b>Feasibility</b>	Medium. The establishment of a College-type central office which would direct and coordinate investigations as well as decide on the prosecutions to be brought will have a negative impact on the feasibility of this option.
<b>Impact on legal systems of Member States</b>	Medium. The Member States would need to adapt their systems to the new competence of the EPPO to direct national law enforcement and prosecution authorities and intervene in national trials.
<b>Impact on existing Union institutions</b>	Medium to high. This option would have a limited impact on Eurojust. The remaining parts of OLAF would retain their competence to exercise certain administrative functions.
<b>Costs</b>	Moderate. Costs under this option would amount to about €70 million. <sup>3</sup>
<b>Benefits</b>	Moderate. The benefits of increased recovery and deterrence under this option are projected to be about €500 million.

<sup>3</sup> For the calculation of costs and benefits, see Annex 4 to the Impact Assessment.

### 5.6. EPPO with decentralised hierarchical organisation (policy option 4c)

Expected Impact	
<b>Effectiveness in meeting the policy objectives</b>	High. This option implies the establishment of a specialised body which handles both investigations and prosecutions in a coordinated and integrated manner.
<b>Impact on fundamental rights</b>	Medium. Improved coordination and cooperation could potentially have a slight impact on the protection of personal data.
<b>Feasibility</b>	Medium to high. Consultations with stakeholders confirm that this should be a feasible option.
<b>Impact on legal systems of Member States</b>	Medium. The Member States would need to adapt their systems to the new competence of the EPPO to direct national law enforcement and prosecution authorities and intervene in national trials.
<b>Impact on existing Union institutions</b>	Medium to high. This option would have a limited impact on Eurojust. A reduced OLAF would retain its competence to exercise certain administrative functions.
<b>Costs</b>	Moderate. Costs under this option would amount to about €370 million.
<b>Benefits</b>	The benefits of increased recovery and deterrence under this option are projected to be about €3 200 million.

### 5.7. EPPO with centralised hierarchical organisation (policy option 4d)

Expected Impact	
<b>Effectiveness in meeting the policy objectives</b>	High. The EPPO would be given powers to control and steer investigations.
<b>Impact on fundamental rights</b>	Medium to high. The analysis made as regards option 4c applies here too.
<b>Feasibility</b>	Medium. This option would imply very important changes in the administrative and judicial systems of the Member States.
<b>Impact on the legal system of Member States</b>	High. Member States would need to adapt their systems to a new external body intervening directly in national courts.
<b>Impact on existing Union institutions</b>	High. Same as for options 4b and 4c.
<b>Costs</b>	Medium to high. Costs under this option would amount to about €820 million.

<b>Benefits</b>	The benefits of increased recovery and deterrence under this option are projected to be about €2 900 million.
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## 5.8. The horizontal issues

### 1.1.4. Cooperation of the EPPO with Eurojust

For their mutual benefit, the sharing of Eurojust's administrative and support services with the EPPO seems not only necessary but also feasible.

### 1.1.5. Use of OLAF resources in the setting-up of the EPPO central office-implications

A part of OLAF's current resources would serve for the setting up of the EPPO central office. However, certain administrative investigation functions of OLAF which are not of a criminal nature must continue to be exercised.

### 1.1.6. Cooperation with third countries

As stated above, the difference between the options in this respect do not justify using this criterion as decisive for the choice between the different options

## 6. COMPARATIVE ASSESSMENT

Objectives/ costs	Policy option 1	Policy option 2	Policy option 3	Policy option 4a	Policy option 4b	Policy option 4c	Policy option 4d
<b>Meeting the policy objectives</b>	Low	Low	Medium	Medium	Medium	High	High
<b>Annual net benefit<sup>4</sup></b>	No major impact	€25 million	€35 million	€50 million	€50 million	€315 million	€250 million
<b>Cost effectiveness<sup>5</sup></b>	-	Low	Medium	Medium	Medium	High	Medium
<b>Impact on fundamental rights</b>	-	Low	Low	Low	Medium to High	Medium to high	Medium to High
<b>Feasibility</b>	High	High	High	Medium	Medium	Medium to High	Medium
<b>Impact on existing Union institutions</b>	-	Very low	Low to Medium	Medium to High	Medium to High	Medium to high	High
<b>Impact on legal systems of Member States</b>	-	-	Low	Medium	Medium	Medium	High

<sup>4</sup> See Annex 4 for further details.

<sup>5</sup> Indicates the results of the cost/benefit analysis per option.

## **7. ENHANCED COOPERATION**

As indicated above, the Treaty foresees the possibility of establishing the EPPO through enhanced cooperation, should decision-making by unanimity fail in the Council. This Impact Assessment does not examine in detail what the specific impact of the various options would be under a different legislative procedure.

## **8. MONITORING AND EVALUATION**

The Commission envisages carrying out a specific statistical study two to four years after the set-up of the EPPO is completed. The study should in particular analyse the number of cases and amounts involved in the activities of the EPPO.