



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 December 2013

18168/13

Interinstitutional File:
2013/0255 (APP)

EPPO 38
EUROJUST 156
CATS 108
FIN 972
COPEN 255
GAF 56

NOTE

from: Presidency
to: Working Party on Cooperation in Criminal Matters

No. initiative : 12558/13 EPPO 3 EUROJUST 58 CATS 35 FIN 467 COPEN 108

Subject: Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office
- Discussion paper - Discussion paper

The incoming Greek Presidency of the Council will continue the thematic discussions commenced during the Lithuanian Presidency.

This discussion paper outlines a number of questions that will be the basis for the discussions at the first COPEN meeting under the Greek Presidency. Delegations are invited to consider the questions in view of the discussions in COPEN on 13-14 January 2014.

I. Competence

The proposal (Article 14) foresees that the EPPO shall exercise its competence to investigate and prosecute offences that affect the Union's financial interests on the basis of certain grounds defined by it.

Question:

Do delegations agree that the EPPO shall exercise its competence on the basis of the grounds defined by Article 14 in the proposal, or should other grounds be considered?

II. Jurisdiction

Article 27 (4) in the proposal foresees that the EPPO shall choose, in close consultation with the European Delegated Prosecutor, the jurisdiction of trial and determine the competent national court, taking four specified criteria into account:

Questions:

- a) Delegations are invited to reflect on how the jurisdiction of trial shall be chosen by the Central Office of the EPPO¹?
- b) Do delegations agree with the criteria for the choice of jurisdiction of trial proposed by the Commission, or should alternative criteria be considered?
- c) Should the criteria for the choice of jurisdiction of trial and competent court be expressed in a way that make them more binding for the decision-maker than what is currently proposed and if yes how?
- d) Should the Regulation clarify that the choice of jurisdiction is challengeable by the suspect and, if so, which court should control this choice?

¹ The Presidency notes that the issue of the level of decision-making as regards jurisdiction of trial has already been preliminarily discussed during the Lithuanian Presidency.

III) Dismissal of cases and transactions

Article 28 foresees that the EPPO shall/may dismiss the case where prosecution has become impossible/unjustified on account of a number of grounds outlined in paragraph 1 ("shall dismiss") and paragraph 2 ("may dismiss").

Article 29 includes rules on transactions with a suspected person.

Questions:

- a) Do delegations agree with the criteria suggested for dismissal of cases as foreseen in Article 28(1) and 28(2)?
- b) Do delegations agree with the system for transactions proposed by the Commission? Are there alternative mechanisms for transactions that should be considered?
- c) Do delegations consider that decisions on dismissal and transaction should be subject to judicial control?

IV) Admissibility of evidence

The proposal foresees that evidence presented by the European Public Prosecutor's Office to the trial court shall, where the court considers that its admission would not adversely affect the fairness of the procedure or the rights of defence, be admitted in the trial without any validation or similar legal process.

Questions:

- a) Do delegations agree with the principle that evidence presented by the EPPO should be, under the condition that it does not adversely affect the fairness of the procedure or the right of the defence, automatically considered admissible in trial courts?
- b) Would the system of admissibility of evidence as proposed by the Commission produce any specific or general difficulties in the national legal orders?

c) Would more detailed rules on admissibility of evidence, and in particular a definition of what constitutes "adversely affect the fairness of the procedure or the rights of defence", be necessary or add value to the provision?

(d) Should a system of review before the competent (national) court of evidence that deems to have an adverse effect on the fairness of the procedure or the right of defence, be provided ?

e) Would delegations support a procedure of certification in the Member State where the evidence is collected?

V) Confiscation

The proposal foresees a specific mechanism for the disposition of confiscated assets.

Question:

Delegations are invited to reflect on the mechanism for disposition of confiscated assets proposed.
