



**COUNCIL OF
THE EUROPEAN UNION**

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**EPPO 31
EUROJUST 119
CATS 91
FIN 436
COPEN 178
GAF 37**

NOTE

from: incoming Italian Presidency

to: CATS

No. Prop.: 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 (EPPO)

State of Play

The Commission's proposal for a Regulation on the establishment of the European Public Prosecutor's Office (EPPO) has been discussed and developed substantially under the Lithuanian and the Hellenic Presidencies. Following these developments, the Hellenic Presidency started to revise the Commission proposal, focusing on 19 Articles concerning mainly the structure and the competence of the EPPO. On 6 June 2014, the JHA Council generally welcomed the revised text of the first 19 Articles of the Regulation¹ and confirmed the text as the basis for future discussions.

¹ Doc 9834/1/14 EPPO 24 EUROJUST 97 CATS 69 FIN 361 COPEN 150 GAF 28.

Some of the other key features of the proposal (in particular investigations measures, admissibility of evidence, procedural safeguards and judicial review) have already been discussed on a thematic basis under the Lithuanian Presidency and the discussion on investigations measures was re-launched by the Hellenic Presidency in the COPEN meeting of 19 June 2014.

Against this background, the incoming Italian Presidency proposes, at this stage, to continue the examination of the remaining parts of the text, starting with the issues of judicial control and judicial review and of admissibility of evidence.

1) Judicial control and judicial review

Articles 26-36 in the proposal contain a number of rules on the role for national judicial authorities with regard to the actions of the EPPO. A general exchange on certain aspects of these rules will be organised at the informal Ministerial in Milan on 8-9 July, and the Presidency will thereby ask ministers the following questions:

1) Does the proposal provide an appropriate system of judicial control and judicial review of the actions of the EPPO, including the respective roles of national courts and the European Court of Justice? If not, what additional and/or alternative rules should be introduced?

2) In particular, does the Regulation need to foresee that some or all categories of dismissal decisions, including transactions, are subject to judicial review or judicial control? If so, according to what method and by which jurisdiction?

The Presidency invites delegations to engage in a preliminary tour de table on these questions which could also serve to prepare the discussions of Ministers at the informal Council.

2) Admissibility of evidence

Article 30 in the proposal seeks to ensure the admissibility of evidence collected by the EPPO, in particular evidence obtained in jurisdictions other than that of trial, and foresees that the evidence presented by the EPPO shall be admitted in the trial without any validation or similar legal process, where the court considers that its admission would not adversely affect the fairness of the procedure or the rights of defence. The Hellenic Presidency held a thematic discussion on the issue of admissibility of evidence at the meeting of COPEN on 13-14 January. The outcome of the discussions was summarized as follows by the Presidency¹:

Many delegations agree with the principle of admissibility of evidence as proposed by the Commission, provided that this does not undermine the rights of defence of the suspect. Other delegations have spoken out against the proposed principle. In particular, the need to ensure a freedom of appreciation for the competent judge has thereby been underlined. There is however general agreement that the principle of admissibility of evidence will not bind the competent court in its assessment of the value or merit of the evidence. The idea of introducing a procedure of certification of evidence in the Member State where the evidence is collected found no support among delegations.

On the assumption that the principle of admissibility of evidence as proposed by the Commission, subject to appropriate safeguards, could be accepted by the Council, the Presidency considers that in particular the following two aspects of the admissibility issue need to be considered further:

- *The legality of evidence collected*
- *Conditions for admissibility of evidence:*

Though it is agreed that the principle of admission of evidence will only apply to the extent that the "admission would not adversely affect the fairness of the procedure or the rights of defence", as enshrined in Articles 47 and 48 of the Charter, it has not been clarified what the applicable law would be when a trial court is to assess whether a piece of evidence has been collected legally and to what extent the trial court is supposed to verify the legality of (foreign) evidence in the light of the law of the Member State where it was collected. It has also been suggested that the freedom of appreciation of a judge may enable rejection of the evidence presented also on other grounds linked to procedural safeguards, i.e. not only those referred to in Articles 47 and 48 of the Charter.

¹ Doc 6490/1/14 EPPO 9 EUROJUST 38 CATS 23 FIN 117 COPEN 53 GAF 10.

Question:

On the understanding that the final assessment on the evidence at trial will be entirely in its hands, could a national Court be entitled to refuse the admission of evidence presented by the EPPO for reasons other than the fact that it would affect the fairness of the procedure or the rights of defence under the Charter of Fundamental Rights?
