

Editorial

“Habemus EPPO!” After a long process of elaboration, the European Public Prosecutor’s Office (EPPO) is now an official project of the EU–Commission. Fifteen years after the first pioneering projects of the *Corpus Juris*¹ and the Green Paper², according to the new legal basis of the Lisbon Treaty, we are, perhaps, in condition to take a new historical step in the construction of a European system of Criminal Justice. On 17th July, 2013, the Commission presented “a package of legislative measures to enhance the institutional aspects of protecting the Union’s financial interests – and thus taxpayers’ money – in accordance with the Commission’s policy established in 2011³. The package consists of a proposal for a Regulation on the establishment of the European Public Prosecutor’s Office⁴, and a proposal for a Regulation on the establishment of the European Agency for Criminal Justice Cooperation („Eurojust“)⁵. In addition, the package includes a Communication on OLAF’s governance and the enhancement of procedural guaranties in investigations, in view of establishing the European Public Prosecutor’s Office⁶.

The main aim to be achieved by creating the EPPO and reforming Eurojust is to fight fraud. The Union and the Member States have a duty to „counter fraud and any other illegal activities affecting the financial interests of the Union“ and „afford effective protection“ to those interests (Art. 325 TFEU). This duty is particularly relevant in “a time when many Member States are implementing fiscal adjustments which place considerable burdens on many citizens”, as the Commission expressly recognises. “Despite this clear obligation, imposed by EU treaties and the case-law of the European Court of Justice⁷, the Union’s financial interests remain insufficiently protected in Member States: fraud, corruption and other offences affecting the Union’s budget are significant and largely non-prosecuted. The Commission has identified an average of about #500 million of suspected fraud in each of the last three years, but the actual amount of fraud is likely to be significantly higher”⁸.

“Whereas tackling cross-border fraud cases would require closely coordinated and effective investigations and prosecutions at European level, the current levels of information exchange and coordination are not sufficient to achieve this, despite the intensified efforts of Union bodies, such as Eurojust, Europol and the European Anti-Fraud Office (OLAF). Coordination, cooperation and information exchange face numerous problems and limitations owing to a split of responsibilities between authorities belonging to diverse territorial and functional jurisdictions. Gaps in the judicial action to fight fraud occur daily at different levels and between

¹ *M. Delmas-Marty* (ed.), *Corpus Juris portant dispositions pénales pour la protection des intérêts financiers de l’Union européenne*, Economica, 1997; *M. Delmas-Marty/J. A. E. Vervaele* (eds.), *The Implementation of the Corpus Juris in the Member States*, Intersentia, 2000.

² Green Paper on Criminal Law protection of the financial interests of the Community and the establishment of a European Public Prosecutor, 11 December 2001, COM (2001) 715 final.

³ On the protection of the financial interests of the European Union by criminal law and by administrative investigations, 26 May 2011, COM (2011) 293.

⁴ Proposal for a Council Regulation on the establishment of the European Public Prosecutor’s Office, Brussels, 17. 7. 2013, COM (2013) 534 final.

⁵ Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust), Brussels, 17. 7. 2013, COM (2013) 535 final.

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Better protection of the Union’s financial interests: Setting up the European Public Prosecutor’s Office and reforming Eurojust, Brussels, 17. 7. 2013, COM (2013) 532 final.

⁷ 21 September 1989, Case 68/88, *Commission v. Greece* [1989] ECR 2965.

⁸ Communication, cit. (Fn. 6), p. 3.

different authorities and are a major impediment to the effective investigation and prosecution of offences affecting the Union's financial interests"⁹.

The main elements of the EPPO in the Proposal of the Commission are the following¹⁰:

- The competence of the EPPO is exclusively focused – in accordance with Art. 86 (1) TFEU – on those “crimes affecting the financial interests of the Union”, as provided for by the Directive on the fight against fraud regarding these interests¹¹, as implemented by national law (Art. 2.a, 4.1 and 12 of the Proposal), with the possibility of an extension of the EPPO's competence to “other criminal offences” “inextricably linked” with offences affecting EU-financial interests (“ancillary competence”: Art. 13 of the Proposal).
- The EPPO is “established as a body of the Union with a decentralised structure” (Art. 3.1 of the Proposal). The structure of the EPPO “shall comprise a European Public Prosecutor, his/her Deputies¹², the staff supporting them in the execution of their tasks under this Regulation, as well as European delegated Prosecutors located in the Member States” (Art. 6.1 of the Proposal). The Prosecutor will be supported by a hierarchical structure and is able to act in all Member States through the “double hatted” European Delegated Prosecutors, integrated in the judicial systems of the Member States. “The European Delegated Prosecutors may also exercise their function as national prosecutors” (Art. 6.6 of the Proposal). As intended by the Commission, “choosing a decentralised structure which will be integrated in the judicial systems of the Member States will ensure that the European Public Prosecutor's Office acts fast, consistently and efficiently to protect taxpayers' interests and integrate smoothly into national justice systems and rely on their expertise and resources”¹³.
- The EPPO shall be independent and accountable to the EU-Parliament, Council and Commission (Art. 5 of the Proposal).
- The EPPO will be able to employ a wide range of investigative measures to investigate the criminal offences affecting the financial interests of the Union, in order to ensure an equivalent fight against these frauds throughout the Union, and in the area of its competence take the final decision on the prosecution (chapter III of the Proposal: “Rules of procedure on investigations, prosecutions and trial proceedings”).
- The exercise of these uniform investigation powers must be accompanied by a system of judicial review and measures to safeguard the rights of suspected persons, witnesses and victims, at the Union and national level (chapter IV-VI of the Proposal: “Procedural Safeguards”, “Judicial Review”, “Data Protection”).
- According to Art. 86 TFEU, there will be positive synergies (“a privileged partnership”) between the EPPO and Eurojust: “Eurojust shall establish and maintain a special relationship with the European Public Prosecutor's Office based on close cooperation and the development of operational, administrative and management links between them as defined below. To this end, the European Public Prosecutor and the President of Eurojust shall meet on a regular basis to discuss issues of common concern” (Art. 41.1 of the Eurojust-Proposal: “Relations with the European Public Prosecutor's Office”).
- Relationship with OLAF: OLAF remains competent as before for administrative anti-fraud investigations, where there are no suspicions of criminal behaviour; “[...] in the future, OLAF will report suspicions of such criminal offences, at the earliest stage, following a preliminary evaluation of allegations brought to its attention in accordance with the current legal framework, to the European Public Prosecutor's Office”¹⁴.

As it is evident through this short and partial description of the contents of the Proposal of the EU Commission, there are a lot of open ended questions about the project of establishment of the EPPO. As K. Ligety said two years ago in this same Review¹⁵: “Art. 86 TFEU is one of the most delicate provisions of the new Treaty. It is sensitive both from a political and a legal point of view: The establishment of the EPPO –

⁹ See the “Explanatory Memorandum” of the EPPO-Proposal, cit. (Fn. 4), p. 2.

¹⁰ See the Communication, cit. (Fn. 6), p. 7–8.

¹¹ Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law, 11 July 2012, COM (2012) 363 final.

¹² “The European Public Prosecutor shall be assisted by four Deputies” (Art. 6.2 of the Proposal).

¹³ Communication, cit. (Fn. 6), p. 5.

¹⁴ Communication, cit. (Fn. 6), p. 9.

¹⁵ K. Ligety, The European Public Prosecutor's Office: How Should the Rules Applicable to its Procedure be Determined?, EuCLR 2/2011, p. 123, who describes the history of the European Public Prosecutor and the different models suggested for establishing the EPPO.

both because of its strong symbolic value and because of the potential powers it may have – clearly challenges Member States' sovereignty and the powers, institutional organisation and realistic aspirations of existing EU Criminal Justice bodies. On the other hand, from the legal point of view, its implementation raises a list of questions without straightforward answers". To improve the public debate regarding these problems and open ended questions, this Review will offer scholars, practitioners and any interested person, a free forum for the discussion of these matters with no ideological, political or institutional prejudice or obstacle.

The Editors

