Editorial

1. On the occasion of the 2018 State of the Union, the Commission presented a number of measures to strengthen security in the EU and to reinforce the protection of the EU's external borders (see the Sixteenth Progress Report towards an effective and genuine Security Union, COM (2018) 690 final, Brussels, 10.10.2018). The most impressive amongst the proposed measures has been the initiative to extend, over time, the competence of the EPPO to terrorist crimes affecting more than one Member State (COM (2018) 641 final, Brussels 12.9.2018). This initiative is not only problematic, it is also premature. It is problematic, because cross-border terrorist crimes violate normally first and foremost the security and the public order of the member states. They affect genuinely the EU, only when they are directed against its institutions and their function. Thus member states' competence for the criminal repression of such offences should be given priority. On the other hand, such a step is premature for a series of reasons. The most important of them are:

(i) the need to abide by the subsidiarity principle. According to it, the Commission should first of all prove (using empirical and well-founded data) that the Member States cannot tackle the problem efficiently by themselves and that the EPPO involvement is absolutely necessary to achieve better results. However, in the field of terrorism already exists a wide array of extremely extended pre-emptive instruments (e.g. PNR-agreements, the instruments of the Prüm-convention, the terrorist financing tracking program, etc)that make the Member States' action against it sufficiently efficient. Besides, the planned enforcement of the interoperability principle with regard to the EU-data bases will be a further step in the same direction. On the other hand, as far as the penal repression itself is concerned, the jurisdiction for terrorist crimes is also extended and some Member States even use the so-called universality principle for prosecuting terrorist offences without making use of the double criminality requirement. Last but not least, the police and judicial cooperation in matters of terrorism is the most developed one that exists at present in the EU;
(ii) the special characteristics of terrorist crimes, which pose sensitive questions with regard to fundamental principles of criminal law and make necessary a thorough review of the function of an EPPO in this field, if not a totally new institutional scheme;
(iii) the non-existence of an EPPO's evaluation at the moment, which would give an idea of its function in practice and the relevant risks for an extension of its material competence to terrorist offences;
(iv) the non-existence of a *European* institution for supporting the rights of suspects or accused persons in cross-border proceedings (e.g. a Euro-defense), which

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would counter-balance the equality of arms in this field of enhanced criminal repression; and last but not least,

(v) the existence of legal obstacles (see under 2).

2. The extension of the EPPO's competence can only be achieved through a unanimous decision of the Council (Art. 86 para 4). Even if such a decision were to be achieved, in practice, the extension of the EPPO's competence would be possible only at a point of time that *all* Member States would agree to be part of the EPPO's structure. The reason is that no decision of an extension of competence can be valid stemming from a Member State that does not recognize the institution itself, which competence should be further extended.

3. Acknowledging an EPPO's competence for terrorist-related offences, as defined in the directive 2018/541, would go too far, even if agreed upon:

- First, because not all of these offences bear a cross-border character,
- second, because for reasons of abiding by the subsidiarity and the proportionality principle, the EPPO's competence should be limited only to *serious* terrorist cross-border offences that would have to be exactly defined in terms of the quality of their seriousness,
- third, because the fundamental problem of defining the act "terrorism" in a way which is sufficiently clear and delimited still remains, to date, unsolved, and
- last but not least, because genuine competence of an *EU institution* for investigating and prosecuting terrorist offences only exists when such offences are directed against the EU institutions and their function and not against the security or public order of the member states.

The above arguments show that the idea of the Commission for an EPPO's extension of competence to cross-border terrorist crimes is extremely problematic. The Commission's initiative shows that this step is planned rather in a state of panic than after a thorough examination of its risks for the Rule-of-Law and this is surely not beneficial for our common European legal values.

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