



Frequently Asked Questions on the European Public Prosecutor's Office

Brussels, 8 June 2017

Today in the Justice council, 20 Member States reached a political agreement on the establishment of the new European Public Prosecutor's Office under enhanced cooperation.

What is the European Public Prosecutor's Office?

The European Public Prosecutor's Office will be an independent and decentralised prosecution office of the European Union with competence for investigating, prosecuting and bringing to justice crimes against the EU budget, such as fraud, corruption or cross-border VAT fraud above 10 million euros.

The European Public Prosecutor's Office will operate as a single office across participating Member States and will combine European and national law-enforcement efforts in a unified, seamless and efficient approach.

Why do we need a European Public Prosecutor's Office?

Today, the EU's financial interests are not sufficiently protected and cross-border VAT fraud constitutes an important loss for national budgets.

Firstly, the existing EU bodies – OLAF (the European Anti-Fraud Office), Eurojust (the European Agency for criminal justice cooperation) and Europol (the European Police Office) – cannot conduct criminal investigations or prosecute fraud cases. OLAF can only refer the results of its *administrative* investigations to the competent national authorities which then decide independently whether or not to initiate criminal proceedings based on OLAF's findings.

Secondly, national law enforcement efforts are fragmented across Member States, which do not always take the action required to tackle crimes against the EU budget. Today, only around 50% of the judicial recommendations transferred by OLAF to the national prosecution authorities lead to an indictment. The indictment rates vary considerably among Member States.

Thirdly, the low number of prosecutions is accompanied by low recovery rates of amounts lost to fraud. Fraudsters targeting the EU budget or setting up complex VAT fraud, costing every year at least EUR 50 billion of revenues to national budgets, know that they have a good chance of keeping the proceeds of their crimes, banking on a lack of consistent enforcement efforts in the EU.

What will be the key features of the European Public Prosecutor's Office?

The European Public Prosecutor's Office will be an independent and highly specialised prosecution office. Prosecutors of the Office will carry out their investigations across all participating Member States in a coordinated manner, rapidly exchanging information and joining efforts to ensure coordinated investigations, fast freezing or seizure of assets and, where necessary, request the arrest of suspected criminals, all this within a common European investigation and prosecution strategy.

The European Public Prosecutor's Office will draw on Member States' capacities and will pool expertise in areas such as crime analysis, tax, accounting, or IT, and guarantee smooth communication channels without any language barriers. The European Public Prosecutor's Office investigators will operate through smooth procedures as a single office, going beyond the more time-consuming and complicated *ad hoc* cooperation between different national authorities on a case-by-case basis.

Moreover, the European Public Prosecutor's Office will have the "big picture" of the situation and thus more easily detect and follow up on fraud and other crimes.

What does the structure of the European Public Prosecutor's Office look like?

The European Public Prosecutor's Office will have an Office built on two levels: the central level and the national level. The central level will consist of the European Chief Prosecutor, 20 European Prosecutors (one per participating Member State), two of whom as Deputies for the European Chief Prosecutor, the Administrative Director and dedicated technical and investigative staff. The decentralised level will consist of European Delegated Prosecutors who will be located in the participating Member States. The central level will supervise the investigations and prosecutions carried out at the national level.

How will the European Delegated Prosecutors work?

The European Delegated Prosecutors will be part of the European Public Prosecutor's Office. As a rule, it will be the European Delegated Prosecutors who will carry out the investigation and prosecution in their Member States, working hand-in-hand with national law enforcement bodies and applying national law. Their actions will be coordinated by a central office headed by the European Chief Prosecutor who will ensure coherence and efficiency throughout participating Member States.

This decentralised structure makes national expertise directly accessible to the European Public Prosecutor's Office, such as in-depth knowledge of the national judicial system, knowledge of local language, integration into the local prosecution structure, practice in handling local court cases, etc.

The European Delegated Prosecutors may continue their functions as national prosecutors (wearing a 'double-hat'). However, when acting under the mandate of the European Public Prosecutor's Office, the Delegated Prosecutors will be fully independent of their national prosecution authorities.

What is the legal basis for the European Public Prosecutor's Office?

The Lisbon Treaty puts particular emphasis on combating serious financial and economic crimes with a cross-border dimension. The legal basis and the rules for the set-up of the European Public Prosecutor's Office are laid down in Article 86 of the Treaty on the Functioning of the European Union (TFEU) which states:

"In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulation adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust."

Article 86 of the TFEU also foresees the possibility of establishing the European Public Prosecutor's Office under enhanced cooperation, if a group of at least 9 European Member States wishes to do so.

The EPPO will be competent for offences affecting the Union budget, as defined in the Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive), which will be adopted shortly.

What is enhanced cooperation and does establishing the European Public Prosecutor's Office under enhanced cooperation make sense?

Enhanced cooperation is a procedure whereby a minimum of nine Member States agree to move ahead and establish a closer cooperation in a specific area. This procedure has been applied in the fields of divorce law, patents and property regimes.

By setting up the European Public Prosecutor's Office, 20 Member States want to join forces and strengthen the protection of the Union's financial interests.

The European Public Prosecutor's Office will be a key actor in fighting crimes against the EU budget. This will be a major step forward for the protection of the EU financial interests.

The non-participating Member States will always be able to join the European Public Prosecutor's Office at a later stage.

Which Member States will be part of the European Public Prosecutor's Office?

On 8 June 2017, 20 European Member States reached a general approach on the establishment of the European Public Prosecutor's Office under enhanced cooperation. The Member States concerned are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Spain and Slovenia.

At this stage, not all Member States wish to participate in the European Public Prosecutor's Office, but these non-participating Member States may join at any time after the adoption of the Regulation.

Why shouldn't fraud be combated directly by the Member States?

Currently, only national authorities can conduct criminal investigations and prosecute fraud against the Union's financial interests. But their powers stop at national borders. Crimes against the EU budget are often complex. They involve several actors, complicated and elaborate fraud schemes, various countries and different national jurisdictions. Moreover, successful investigations of fraud require an in-depth understanding of the relevant legal and administrative framework.

Effective cooperation between Member States is difficult due to the different criminal law systems, unclear jurisdiction, time-consuming legal assistance procedures, language problems, lack of resources and varying priorities.

This may result in fraud against the EU budget being regarded nationally as time- and personnel-consuming. As a result, such fraud may not be tackled at all or cases might be dropped as soon as difficulties appear. In some cases, national authorities may decide to only investigate 'their' national part of a crime, disregarding the potentially much wider implications of a fraud scheme.

What will change under the European Public Prosecutor's Office?

The European Public Prosecutor's Office will operate as a single office across the participating Member States and will not need to rely upon traditional instruments of EU law for cooperation among judicial authorities of different Member States.

It will pool expertise and experience and operate as a single office across all participating Member States. It will be able to act quickly across national borders, without the need for lengthy judicial cooperation proceedings. It will also allow for a common prosecution policy, putting an end to the current fragmented approach.

The European Public Prosecutor's Office will overcome the current shortcomings and tackle fraud involving EU funds of over €10,000 as well as complex cross-border VAT fraud cases, involving a damage above €10 million.

The European Public Prosecutor's Office is expected to lead to more successful prosecutions and a better recovery of the defrauded money.

How will the independence of the European Public Prosecutor's Office be ensured?

Firstly, the Regulation stipulates that the staff of the European Public Prosecutor's Office shall act in the interest of the Union as a whole and **neither seek nor take instructions** from any outside instance. This ensures that Union institutions, bodies, offices or agencies and the Member States respect the independence of the European Public Prosecutor's Office and do not seek to influence it in the exercise of its tasks.

Secondly, the European Public Prosecutor's Office will be **structurally independent** because it will not be integrated into another institution or service of the EU.

Thirdly, the **appointment** of the European Chief Prosecutor will take place following an open call for candidates and will be made by the European Parliament and the Council. A panel composed of former members of the Court of Justice, members of national supreme courts, national public prosecution services and/or lawyers of recognised competence will help shortlist the candidates. The term of office is limited to seven years and is not renewable thereby ensuring that the European Chief Prosecutor will not be guided by considerations seeking re-appointment. The European Chief Prosecutor can be **dismissed** only by a decision of the Court of Justice, following an application by the European Parliament, the Council or the Commission.

Fourthly, with regard to the European Delegated Prosecutors, the Regulation ensures that the national prosecutors appointed to work for the European Public Prosecutor's Office shall be completely independent from national prosecution authorities.

What about the procedural rights of suspected persons?

It is important to strengthen the legal safeguards that protect individuals and companies affected by investigations or prosecutions in the European Union. The Regulation includes a robust and comprehensive set of procedural safeguards, which will ensure that the rights of suspects and other persons involved in the investigations of the European Public Prosecutor's Office are protected both by existing EU legislation and by national defence rights.

The Regulation ensures that the suspected person has all rights granted by EU legislation and the Charter of Fundamental Rights of the European Union. These rights are listed explicitly, and include the rights to:

- interpretation and translation,
- information and access to the case materials,
- access to a lawyer and to communicate with and have third persons informed in case of detention,
- remain silent and to be presumed innocent,
- legal aid,
- present evidence, appoint experts and hear witnesses.

In addition, the suspected person has the defence rights granted by the national law governing the procedure.

What will Eurojust's role be once the European Public Prosecutor's Office is set up?

Eurojust helps national investigating and prosecuting authorities cooperate and coordinate in around 1500 cross-border cases a year. It has helped to build mutual trust and to bridge the EU's wide variety of legal systems and traditions. Eurojust, however, has no competence to conduct criminal investigations or to prosecute fraud cases. In 2013, the Commission proposed a reform of Eurojust with the aim of further improving its overall functioning and to enable its College and National

Members to focus on their operational tasks, i.e. to coordinate and encourage cooperation between the national judicial authorities in the fight against cross-border crime.

The reformed Eurojust will support the European Public Prosecutor's Office in the fight against fraud against the EU budget. It will assist in ensuring coordination of the investigations of the European Public Prosecutor's Office with the investigative authorities of the Member States that do not participate in setting up the Office. Eurojust may provide support and resources of its administration to the European Public Prosecutor's Office. The details of this arrangement will be laid down in an agreement between the European Public Prosecutor's Office and Eurojust.

What will be OLAF's role once the European Public Prosecutor is set up?

OLAF will remain responsible for *administrative* investigations into irregularities, including fraud, affecting the EU's financial interests and serious misconduct of EU staff.

As not all Member States participate in the European Public Prosecutor's Office, OLAF will continue with its administrative investigations in relation to non-participating Member States in the same way as it does today.

In the participating Member States, in areas which fall under the competence of the EPPO, the EPPO and OLAF will need to establish and maintain a close cooperation aimed at ensuring the complementarity of their mandates, and avoiding duplication. In this regard, OLAF will not open any administrative investigations parallel to an investigation conducted by the EPPO into the same facts. In such cases, the EPPO may request OLAF to support or complement the EPPO's activity. Conversely, in cases where the EPPO is not conducting an investigation, OLAF will retain its power to start an administrative investigation on its own initiative, in close consultation with the EPPO, and the EPPO will be able to provide relevant information to OLAF for it to consider appropriate administrative action.

A close cooperation between the EPPO and OLAF –and the continued activities of OLAF within its mandate – will allow a significant improvement in the protection of the Union's financial interests.

Will the European Public Prosecutors' Office start arresting people with its own police force?

No. Only national authorities will be able to arrest people for offences within the European Public Prosecutor's Office competence. The European Delegated Prosecutors will carry out the investigations and prosecutions in the participating Member States hand in hand with the national police and law enforcement agencies. The European Public Prosecutor's Office will only be allowed to request the judicial authorities to arrest a suspect if it considers that this is absolutely necessary for its investigation and if less intrusive measures cannot achieve the same objective. Such requests will be assessed and authorised on the basis of national law by the competent national judicial authorities.

Where will the European Public Prosecutor's Office have its seat?

The office will have its seat in Luxembourg.

When will the European Public Prosecutor's Office start its operations?

Following the general approach reached in the Council on 8 June 2017 among 20 European Member States, the European Parliament has to give its consent. After this, the Regulation establishing the European Public Prosecutor's Office can be adopted and the work on setting up the Office can begin. It is envisaged that the build-up phase will take two to three years. This means that the European Public Prosecutor's Office could take up its functions between 2020 and 2021

For more information

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