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Provisional edition

European Public Prosecutor's office P8_TA-PROV(2016)0376 B8-1054/2016
and Eurojust

► European Parliament resolution of 5 October 2016 on the European Public Prosecutor's Office and Eurojust (2016/2750(RSP))

The European Parliament,

- having regard to the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office (COM(2013)0534),
- having regard to its resolution of 12 March 2014 on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office(1) ,
- having regard to the working document of its Committee on Civil Liberties, Justice and Home Affairs of 14 March 2014 on the European Union Agency for Criminal Justice Cooperation (Eurojust) (PE530.084),
- having regard to its resolution of 29 April 2015 on the proposal for a Council regulation on the establishment of the European Public Prosecutor's Office(2) ,
- having regard to the 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 (COM(2012)0363),
- having regard to the proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) (COM(2013)0535),
- having regard to the Treaty on the Functioning of the European Union, in particular Articles 85, 86, 218, 263, 265, 267, 268 and 340 thereof,
- having regard to the questions to the Council and to the Commission on the European Public Prosecutor's Office and Eurojust (O-000092/2016 – B8-0715/2016 and O-000093/2016 – B8-0716/2016),
- having regard to Rules 128(5) and 123(2) of its Rules of Procedure,

A. whereas Article 86 of the Treaty on the Functioning of the European Union states that in order to combat crimes affecting the financial interests of the Union, the

Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office after obtaining the consent of the European Parliament;

B. whereas according to the recent 'Study and Reports on the VAT Gap in the EU-28 Member States: 2016 Final Report' (TAXUD/2015/CC/131), an overwhelming EUR 159,5 billion in value added tax (VAT) revenues was lost across the EU in 2014;

C. whereas it is important that the EU and all its Member States detect and prosecute in an effective and dissuasive manner fraud affecting the EU's financial interests, thus protecting the taxpayers of all the Member States who contribute to the Union's budget;

D. whereas Eurojust has facilitated coordination and cooperation between national investigative and prosecution authorities in dealing with cases affecting a number of Member States, and Eurojust has helped to build mutual trust and to bridge the EU's wide variety of legal systems and traditions; whereas Eurojust has facilitated the execution of requests for cooperation and the application of mutual recognition instruments, thereby improving cross-border prosecution;

E. whereas organised cross-border crime has increased in the past decade and is committed by extremely mobile, flexible groups, which are active in many Member States and areas of crime;

F. whereas in Case C-105/14 (Taricco and others) the European Court of Justice stated that the concept of 'fraud' as defined in Article 1 of the Convention on the Protection of the European Communities' Financial Interests covers revenue derived from VAT;

1. Reaffirms Parliament's longstanding support for the establishment of an efficient and independent European Public Prosecutor's Office (EPPO) in order to reduce the current fragmentation of national law enforcement efforts to protect the EU budget, thus strengthening the fight against fraud in the European Union;

2. Calls on the Council to provide an unambiguous and clear set of competences and proceedings concerning the EPPO based on the proposed directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive); calls on the Council to strengthen its efforts to find agreement on the PIF Directive which includes VAT in its scope, and to reopen negotiations with Parliament, in order to enable the EPPO to be established; stresses that the EPPO should have priority competence for offences defined in the PIF Directive; deeply regrets that the Council does not allow the EPPO to be competent in PIF cases where EU funding exceeds EUR 10 000 but does not represent 50 % or more of the co-

financing; calls on the Council, therefore, to abandon the rule depriving the EPPO of the possibility of exercising competence for all PIF offences where the damage to the Union budget is equal to or less than damage to another victim; calls on the Council to ensure that the EPPO is immediately informed by the national authorities of all cases related in any way to the PIF Directive both before and during an investigation;

3. Calls on the Council to reopen the debate on Articles 17 to 20 of the consolidated text (11350/1/16) of the EPPO proposal in order to ensure more clarity and efficiency for the EPPO; calls on the Council to clarify the prosecution competences of the EPPO and the national prosecutors in cases of (a) multiple offences (one organised group committing several crimes, e.g. money laundering and trafficking in human beings) and (b) mixed offences (more than one criminal offence committed in one criminal act, e.g. VAT fraud and money laundering); deeply regrets that in the event of disagreement between the EPPO and the national prosecution courts over the question of competences, the final decision will not be taken by an independent court such as the European Court of Justice; emphasises that the efficiency of the EPPO will depend on clarification of competences and that if they fail to achieve this, the EU legislators will not be able to ensure the effectiveness of the EPPO, thus crossing one of the European Parliament's red lines;

4. Takes the view that the EPPO should have sufficient investigative measures available to conduct its investigations; recalls in this regard that the co-legislators have agreed on criteria for Member States to make requests for investigative measures based on the principle of mutual recognition set out in Directive 2014/41/EU regarding the European Investigation Order in criminal matters;

5. Believes that, in order to ensure the effectiveness of judicial review in line with Article 47 of the Charter of Fundamental Rights of the European Union and with the Treaties, any operational decision affecting third parties taken by the EPPO should be subject to judicial review before a competent national court; considers that direct judicial review by the European Court of Justice should be possible;

6. Notes that it is of paramount importance to avoid any adverse effects from the so-called 'national link'; calls in this context on the Council to ensure that there are adequate safeguards ensuring the independence of the EPPO, such as a provision allowing derogation from the national link on grounds related to the proper functioning of the office;

7. Deems that the protection of the procedural rights of suspected and accused persons must be guaranteed; in particular, the regulation should provide for additional rights of defence for EPPO suspects, in particular the right to legal aid, the right to information and access to case materials, and the right to present evidence

and to ask the EPPO to collect evidence on behalf of the suspect;

8. Calls on the Commission to come up with adjusted estimations of the budgetary implications of the collegiate structure within its cost and benefit analysis, and to provide Parliament with results of the ‘reality check exercise’, and recalls that Parliament will take this information into account before taking its final decision;

9. Recalls the importance of Eurojust’s role in improving the judicial cooperation and coordination of the relevant judicial authorities of the Member States and in supporting investigations involving non-EU countries, and calls on the Council to clarify the relations between Eurojust and the EPPO, and in particular the implications of the collegiate structure, as well as the EPPO’s relation with OLAF, in order to differentiate between their respective roles in the protection of the EU’s financial interests;

10. Believes that it would be best for the EPPO and Eurojust to operate in the same location if the cooperation and information exchange between them is to operate efficiently;

11. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.

(1) Texts adopted, P7_TA(2014)0234.

(2) OJ C 346, 21.9.2016, p. 27.

Last updated: 6 October 2016

Legal notice