

ECBA Press Release 17 July 2013
European Commission's proposal for a
Council Regulation on the Establishment of "EPPO"

ECBA welcomes the integration of certain procedural safeguards in the EC's regulation proposal on EPPO

The European Criminal Bar Association (ECBA) follows certain EU proposals for legislation in the area of criminal justice to ensure that the rights of all citizens, including the fundamental rights of persons under investigation, suspects, accused and convicted persons, are considered and respected (www.ecba.org). From March to June 2012 the European Commission (EC) carried out a public consultation on "protecting the EU's financial interests and enhancing prosecutions". Since June 2012 the results of an EU funded project on the potential establishment of a European Public Prosecutor's Office (EPPO) have been introduced to the public (www.epppo-project.eu). The research for this project relied on existing research in this field, in particular the Corpus Juris Study (2000), the "Structures and Perspectives of European Criminal Justice" and the "EuroNEEDs" (2012/2013) studies of the Max Planck Institute as well as the "Effective Criminal Defence in Europe" study of the University of Maastricht, Open Society Institute and JUSTICE (2010). In November 2012 and in April 2013 the ECBA was consulted and invited – together with the CCBE – by the EC to comment on the current political plan to present a draft regulation on EPPO mid-2013. In February 2013 the ECBA has published the "ECBA Cornerstones on EPPO" statement which refers to 14 principal political points that should be used as touchstones for the coming up political discussion:

1. Sufficient evidence for the need of EPPO (no symbolic politics)
2. Restriction to cases where Member States are unwilling or unable to prosecute (rule of complementarity) and to substantial cases (rule of proportionality), as far as in compliance with Art. 86 TFEU
3. Equality of arms between state powers and individual rights of natural and legal persons and procedural safeguards (including access to a lawyer and reasonable EU funded legal aid in all Member States concerned)
4. EPPO proceeding safeguards standard at the highest level - also in the "grey" area of "pre"-investigation (not common minimum and additional to other EU legislation such as directives on minimum standards)
5. EPPO gathering of evidence at the highest safeguard level - also in the "grey" area of "pre"-investigation (e.g. recognition of legal privileges) and ban of use of evidence in cases of infringements of legal rules (in order to minimise investigation and forum shopping)
6. Effective judicial control during the proceedings practically guaranteed - also in the "grey" area of "pre"-investigation (European or national courts, especially in terms of any coercive measures and recognition of negative decisions)
7. Balance and coordination of state powers and competences at European level
8. Political and democratic control versus independence of EPPO (accountability)
9. Hierarchy and coordination of European and national powers
10. Conflict of jurisdiction and termination of proceeding (ne bis in idem)
11. Concurrence of investigation and jurisdiction (especially in mixed cases with dual offences, not only "PIF" crimes)
12. Rules for prosecuting and bringing to judgment including judicial review and appropriate remedies for defence before trial (to minimise "trial" shopping)
13. Compensation mechanism for wrongful investigation or prosecution by EPPO
14. Translation and interpretation services (accessible also for defence)

The specific "ECBA-Cornerstones" on the procedural regime of an EPPO are:

1. Art. 86 par. 3 TFEU legally binding rules including catalogue of rights for EPPO proceedings
2. Immediate access to a lawyer of his choice at any stage of the proceeding (see ECBA press release 19 June 2013)
3. Absolute right to silence (principle of human dignity)
4. Right not to incriminate oneself (also for witnesses)
5. Right to information and to be cautioned (Letter of Rights)
6. Mandatory defence and issues of waiver
7. Legal aid on a reasonable and fair financial basis (EU funded)
8. Legal aid in all concerned Member States (see also ECBA Touchstones on Legal Aid, published in June 2013)
9. Right to information (access to the file, translation of documents etc.)
10. Right to gather evidence and to question witnesses (or to ask EPPO)
11. Legal privileges of defence lawyers
12. Effective legal remedies and judicial review
13. Compensation mechanism

Today the EC has adopted the proposal of a Council Regulation on the establishment of an "EPPO". In the "Communication" document of today, 17 July 2013, the EC explains its position. The ECBA welcomes the EC's initiative and will contribute constructively to the debate again after careful consideration of the proposal in near future. The ECBA welcomes especially the integration of certain procedural safeguards in this proposal in order to guarantee robust safeguards of procedural rights although certain rights are not harmonised by EU legislation yet, e.g. the right to silence or the right to legal aid or the right to hear witnesses. We consider this as practical recognition of our intensive engagement in terms of procedural safeguards in criminal proceedings in the EU generally and in EPPO proceedings in particular. More details of the proposal will have to be discussed in the near future. The ECBA autumn conference in Venice on 11/12 October will give an opportunity for further discussions (programme, general information and registration under www.ecba.org).

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