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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	European Public Prosecutor's Office
	- Study on the functioning of the EPPO
	- Relations with national authorities

Delegations will find attached the above-mentioned Presidency note.

Introduction

Following the adoption of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), the EPPO started its operational activities on 1 June 2021.

Article 119(1) of the Regulation states that the Commission is to commission an evaluation on the implementation and impact of the Regulation, as well as on the effectiveness and efficiency of the EPPO and its working practices. Article 119(2) adds that the Commission is to submit legislative proposals if it concludes that it is necessary to have additional or more detailed rules on the setting up of the EPPO, its functions or the procedure applicable to its activities, including its cross-border investigations. This evaluation report on the implementation and impact of the Regulation is to be presented no later than by 1 June 2026, five years after the start of the operational activities of the EPPO.

At the informal CATS meeting held in Madrid on 8 September 2023, participants exchanged views on the cooperation between national justice systems and the European Public Prosecutor's Office.

During the CATS meeting held on 17 November 2023, the Commission was invited to present the main findings of a study on the EPPO Regulation which it had commissioned in 2022. The study itself was distributed after that meeting. The Commission stressed that the conclusions of the study did not necessarily reflect the opinion of the Commission and would not replace the evaluation report based on Article 119 of the Regulation, although they would feed into it.

The initial focus of the study, i.e. the compatibility of the national legislation of Member States participating in the enhanced cooperation with the EPPO Regulation, has been extended to include some issues concerning the efficiency and effectiveness of the EPPO's activities arising from the text of the Regulation itself, irrespective of the Member States' implementation. Regarding the methodology, two different approaches were followed. To assess the national legislation, the contractor collected data from the 22 participating Member States with the support of a team of national legal experts who also interviewed the European Prosecutor (EP) or a European Delegated Prosecutor (EDP) from each participating Member State. National legal experts drafted the correlation tables and the national summary reports that provide an overview of the national legal framework and its compliance with the Regulation. To assess the issues of effectiveness concerning the Regulation itself, the contractor carried out desk research and interviewed the EPPO staff at the Central Office and at the decentralised level. The study focuses on some provisions of the EPPO Regulation when analysing, on the one hand, national laws and, on the other, the issues connected with the Regulation itself. In terms of the compliance of national laws with the EPPO Regulation, the main areas of concern were found to be the role of investigative judges and other national authorities in the context of EPPO's investigations, EPPO's independence, reporting, registration, and verification of information, and resolution of conflicts of competence. In terms of the issues connected with the text of the Regulation itself, the main areas of concern are the EPPO's material competence, the EPPO's right of evocation, cross-border investigations, and a broader analysis of the EPPO's independence.

The study considers that the national legislation may not be fully compliant with the Regulation in a number of participating Member States and, therefore, the EPPO may be prevented from properly exercising its functions. Based on such findings, the Commission indicated that it would engage on with Member States on a bilateral basis to further discuss the possible non-compliance issues and ways to resolve them.

The study deserves further discussion in the Council's preparatory bodies.

In the meantime, and with the study as a background, the Presidency considers that it is useful to take stock of the first two and a half years of operational activities of EPPO and reflect on the experience gained so far, in particular with regard to relations between the EPPO and the national authorities. These relations are essential for the good functioning of the EPPO. They cover issues such as adequate resources, availability of specialised investigators, channels of communication and reporting, division of competences, etc. Most aspects are dealt with in the EPPO Regulation but we now have experience of how it is being implemented and what the challenges are.

Question to Ministers

Against this background, ministers are invited to provide their views on the relations between their national authorities and the EPPO, indicating possible difficulties or shortcomings encountered since the EPPO started its activities as well as possible areas for improvement.
