

ROADMAP	
TITLE OF THE INITIATIVE	<b>Proposal on the establishment of a European Public Prosecutor's office (EPPO) for the protection of the EU financial interests from Eurojust</b>
TYPE OF INITIATIVE	<input checked="" type="checkbox"/> CWP <input type="checkbox"/> Non-CWP <input type="checkbox"/> Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	JUSTICE, Unit B2 jointly with OLAF D4
EXPECTED DATE OF ADOPTION	Month/Year: 2 <sup>nd</sup> half 2013
VERSION OF ROADMAP	No: 1      Last modification:      Month/Year: 09/2011

**This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.**

A. Context, problem definition
<p>(i) What is the political context of the initiative?</p> <p>(ii) How does it relate to past and possible future initiatives, and to other EU policies?</p> <p>(iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?</p>
<p>(i) Article 86 of the TFEU provides 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 from Eurojust. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.</p> <p>3. The regulations referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.</p> <p>4. The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.</p> <p>(ii) The Stockholm Programme provides that on the basis of an assessment of the implementation of the Council Decision 2009/426/JHA of 16 December 2008 on the Strengthening of Eurojust, "new possibilities could be considered in accordance with the relevant provisions of the Treaty, including (...) the setting up of a European Public Prosecutor". This initiative is a follow-up to the Communication on the protection of the financial interests of the European Union by criminal law and by administrative investigations of 26 May 2011, COM(2011)293. It is also related to the legislative proposals of OLAF - DG JUST on protection of the financial interests of the European Union, including by criminal law (substantive criminal law) (planned for 2012) and on the protection of the financial interests of the European Union, strengthening administrative and criminal law procedures, including mutual assistance (planned for 2013).</p> <p>(iii) The future set-up of the EPPO has not been directly subject to an ex-post analysis. However, initial ex-post analysis elements could be taken into account from the analysis on the protection of the EU financial interests in the OLAF annual reports produced according to Art.325 TFEU as well as from the Commission Staff Working Document accompanying the PIF Communication COM (2011)293 (see above (ii)).</p>
<p>What are the main problems which this initiative will address?</p>
<p>The initiative will seek to address the obstacles to an effective fight against crimes affecting the financial interests of the Union (EU-fraud). These obstacles derive partly from the fragmentation of criminal law and procedures in the European Union, where the definitions of EU-fraud still vary despite the 1995 Convention, which had harmonised its principal elements. More importantly, the initiative will seek to ensure that Member States attach a high priority in their criminal policy to investigating and prosecuting offences affecting the EU financial interests and dedicate the necessary resources for that purpose. Once set up, the European Public Prosecutor's Office will require that national authorities carry out investigations under its authority, that they meet deadlines, and otherwise ensure full coordination with the EPPO. Such "supranational" fraud investigations and</p>

<p>prosecutions will raise a host of legal and practical issues (jurisdiction, evidence, defence rights, etc), which the initiative must also address.</p> <p>The scale of the problems would also depend on the scope of the legislative proposal (see item 4. above), i.e. whether the European Public Prosecutor's Office should also deal with serious cross-border crime from the outset or focus initially on PIF offences,</p>
<p>Who will be affected by it?</p>
<p>Member States, national police and judicial authorities, Eurojust, other EU bodies and institutions; citizens and businesses.</p>
<p>(i) Is EU action justified on grounds of subsidiarity?  (ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test)  (iii) Can the EU achieve the objectives better? (Test of EU Value Added)</p>
<p>(i) The foreseen action has an intrinsic EU dimension as it implies the creation of a new EU body: a European Public Prosecutor's Office.</p> <p>(ii) Differences in the legal framework of the Member States and the resulting operational and organisational barriers to cross-border investigations within the EU mean that the financial interests of the EU are not equivalently protected across the EU. Currently offences against PIF are prosecuted exclusively on the decision of national judicial authorities and according to divergent national legal frameworks, which impedes the equivalent protection of the EU interests across the EU. Art.86 TFEU provides for the possibility to set up an EPPO responsible for investigating, prosecuting and bringing to judgement perpetrators of offences against the Union's financial interests.</p> <p>(iii) A specialised European prosecution authority such as a European Public Prosecutor's Office could contribute to establishing a common level playing field by applying common rules on fraud and other offences against the financial interests of the Union in a consistent and homogeneous way, investigating, prosecuting and bringing to court the perpetrators of, and accomplices in offences against the Union's financial interests.</p>

B. Objectives of the initiative
<p>What are the main policy objectives?</p>
<p>Effective fight of, in particular, offences affecting the financial interests of the Union.  Enhanced and equivalent protection of taxpayers' money across the Union.</p>
<p>Do the objectives imply developing EU policy in new areas?</p>
<p>No, they will rather involve a better implementation of existing policies (judicial cooperation, protection of the financial interests of the Union, fight against serious cross-border crime).</p>

C. Options
<p>(i) What are the policy options being considered?  (ii) What legislative or 'soft law' instruments could be considered?  (iii) How do the options respect the proportionality principle?</p>
<p>(i) Too early to define. Overall options could range from doing nothing to the set-up of a European Public Prosecutor in the fields of the prevention of and fight against fraud affecting the financial interests of the Union to a body with competences for further offences. The following 3 main options may be considered within the range of options concerning the scope of the initiative:</p> <ul style="list-style-type: none"> <li>• Doing nothing – criminal investigations of PIF offences are (still) conducted by Member State authorities exclusively;</li> <li>• Setting-up the EPPO with a limited mandate (PIF offences) – EPPO has priority competence to order investigations and direct prosecutions into PIF offences</li> <li>• Setting up the EPPO with an extended mandate (PIF offences and serious cross-border crimes) – EPPO has exclusive/shared competence to order investigations and direct prosecutions into PIF offences and other serious cross-border crimes (money laundering, corruption, accounting offences)</li> </ul> <p>Besides these 3 options regarding scope, the Commission will need to consider a series of significant legal, institutional and organisational matters (relationship with Eurojust, OLAF, national authorities, judicial review) which could be formulated as sub-options. Moreover, particular procedural issues (EP involvement, legislative</p>

process, if unanimity requirements is not met, enhanced cooperation with which member States, etc) should be considered in these options.

(ii) In accordance with Art.86 the proposal could include one or more regulations covering different aspects of the setting up of an EPPO. Soft law instruments are not relevant as legislative measures are needed to address criminal offences and law enforcement.

(iii) None of the options will go beyond what is necessary to achieve the objectives.

**D. Initial assessment of impacts**

What are the benefits and costs of each of the policy options?

Likely impacts will include a more effective, dissuasive and equivalent criminal law protection of the Union's financial interests. Irregularities affecting the European budget may reach or exceed 1 Billion Euro per year, from which around 280 Million Euro could be suspected EU-fraud cases to be investigated within the EPPO's competence.. This amount could be significantly reduced if the EPPO were to direct investigations and prosecutions throughout the EU, acting on all cases of PIF offences. Moreover, economies of scale might be achieved for the benefit of justice budgets of Member States, due to a streamlining of the judicial procedures involving EU financial interests across the EU.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

Depending on how the relationship between the EPPO and the national authorities will be defined the impact will be primarily on national police and judicial authorities, which will certainly have to cope with the new framework for investigations and prosecutions ordered by the EPPO. The administrative burden depends on the new relations established between the EPPO and the national authorities and whether the initiative will impose new information obligations on MS.

(i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start? (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?

(i) Yes. The draft Impact Assessment will be presented in 2013. (ii) Studies to be used as a support for the IA have already been produced or are ongoing (cf. E below). An additional preparatory IA study is foreseen for this initiative and is likely to be conducted during 2012. (iii)- (iv) An inter-service group is likely to start meeting beginning 2012. As a minimum JUST, OLAF, SG, LS will be invited.

(i) Is any of options likely to have impacts on the EU budget above €5m?  
(ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.

No

**E. Evidence base, planning of further work and consultation**

(i) What information and data are already available? Will existing impact assessment and evaluation work be used?  
(ii) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?  
(iii) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?  
(iv) Is any particular communication or information activity foreseen? If so, what, and by when?

(i) Preparatory work, in particular the 2001 Green paper on the establishment of a European Prosecutor will be taken into consideration. Existing studies and evaluations, in particular the Criminal Justice Systems Study, the Euroneeds Study, the Pretrial investigative model rules, the Spanish Presidency Report, etc. and studies regarding Eurojust, will provide valuable input.

(ii)(iii) An additional IA Study by an external contractor is foreseen for this initiative. It is likely to be conducted during 2012. The IA should build on a considerable number of earlier studies which have analyzed different issues with a close link to the setting up of the European Public Prosecutor. The IA will integrate parts of these studies, in particular as regards assessments of advantages and disadvantages with the current framework. The additional IA Study will also endeavour to formulate indicators that can be used to analyse the costs and benefits of the creation of an EPPO.

In addition to the IA study, at least the following major studies are under way, on:

(i) model rules for pre-trial criminal investigation and prosecution

(ii) the functioning of Eurojust

(iii) criminal law protection of EU financial interests.

Parts of the findings of these studies will feed into the impact assessment report.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

Consultation of a wide range of stakeholders (Member States, including national Parliaments, national judicial and prosecutorial authorities, Eurojust national members, etc) will take place by means of structured interviews and expert panels, in the framework of the additional IA study and of the ongoing studies mentioned in E above. Consultation of judicial stakeholders has already taken place in the Euroneeds study. Additional means of consultation are envisaged, including several expert consultations organised by the Commission, general public consultation in the form of hearings (possibly also organised by EP) and a web-based consultation.