



HOUSE OF LORDS

European Union Committee

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4th Report of Session 2014–15

**The impact of the  
European Public  
Prosecutor's Office  
on the United  
Kingdom**

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The Committee considers matters relating to the European Union.

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## SUMMARY

In July last year the Commission brought forward a proposed Regulation designed to establish the European Public Prosecutor's Office (EPPO). The EPPO would be responsible for investigating, prosecuting and bringing to judgment the perpetrators of offences against the Union's financial interests (PIF crimes). The proposal is subject to the UK's opt-in arrangements, but the Coalition Agreement of 2010 had ruled out the UK's participation. In October 2013, alongside the national parliaments of 10 other Member States, this House, and the House of Commons, issued reasoned opinions challenging the Commission's proposal on the grounds of subsidiarity. Sufficient reasoned opinions were submitted by national parliaments triggering a 'yellow card', and the Commission was forced to review the proposal. In December 2013, it announced its decision to persevere with the proposed Regulation unamended.

The Commission's disappointing response to the 'yellow card' was the catalyst for our decision to launch this inquiry into the proposed EPPO and its ramifications for the UK, in particular the UK's future relationship with the EU's current anti-fraud body OLAF and Eurojust. In June, following the completion of our formal evidence sessions on the Commission proposal, the Government submitted an Explanatory Memorandum on a revised proposal produced by the Greek Presidency. This text was endorsed but not agreed by the Council. Crucially, neither text addressed the question of safeguards for non-participating Member States.

This report sets out our concerns with the two texts currently under discussion in the Council and their potentially significant impact on the UK's future relationships with OLAF and Eurojust. We fear that under the Commission's proposed model an EPPO enjoying exclusive competence for PIF crimes would be in danger of being overwhelmed by its workload, and its structure would not be sufficiently robust to enable it to monitor its investigations and prosecutions in the Member States. We see a similar problem with the Presidency's alternative proposal. The evidence we received on the proposed introduction of a collegiate structure into the EPPO overwhelmingly suggests that this would complicate the prosecution of these crimes even further.

As for the implications of the EPPO for the UK, we are concerned that it could seriously undermine the UK's important relationships with OLAF and Eurojust. We call on the Government and other parties involved in the proposal's negotiation in the Council and in the European Parliament to include assurances within the adopted text safeguarding the position in OLAF and Eurojust of those Member States not participating in the EPPO.

# The impact of the European Public Prosecutor's Office on the United Kingdom

## CHAPTER 1: INTRODUCTION

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1. On 17 July 2013 the European Commission published its long awaited proposal for a Regulation establishing a European Public Prosecutor's Office.<sup>1</sup> It was accompanied by a Regulation reforming the EU's Agency for criminal justice cooperation, Eurojust.<sup>2</sup> Both proposed Regulations were brought forward under Title V of the Treaty on the functioning of the European Union (TFEU), to which the UK's opt-in protocol applies.<sup>3</sup> We retain both proposals under scrutiny.
2. The Treaty states that any European Public Prosecutor's Office (EPPO) will be made "responsible for investigating, prosecuting and bringing to judgment ... the perpetrators of ... offences against the Union's financial interest" and will be empowered to "exercise the functions of prosecutor in the competent courts of the Member States".<sup>4</sup> It was clear from the outset that such a body would raise profound questions for all the EU's Member States regardless of whether they participated in the EPPO or not. The Coalition Agreement was clear that the Government "will not participate in the establishment of any European Public Prosecutor".<sup>5</sup> Since May 2010 the Government's policy of non-participation has been reinforced by the enactment of the European Union Act 2011 which makes the UK's future participation in the EPPO subject to a referendum and an Act of Parliament.<sup>6</sup>
3. This Committee's report looking at fraud on the EU's budget, published in 2012, did not consider the arguments for or against the EPPO, but highlighted many of the institutional and practical problems that the Member States and Commission face when dealing with such fraud.<sup>7</sup> Indeed, many of the report's findings and conclusions are echoed in the

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<sup>1</sup> Council Regulation on the establishment of the European Public Prosecutor's Office, [COM\(2013\) 534 final](#)

<sup>2</sup> Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust), [COM\(2013\) 535 final](#)

<sup>3</sup> By virtue of Protocol 21 EU legislation brought forward under Title V of the TFEU only applies to the UK if the UK Government notify the President of the Council of their intention to opt in within three months of the legislation's publication. The Coalition Agreement rules out the Government's participation in the EPPO; and the Government decided not to opt in to the Eurojust Regulation, a decision opposed by this Committee.

<sup>4</sup> Article 86, Treaty on the Functioning of the European Union

<sup>5</sup> HM Government, *The Coalition: our programme for government*, 20 May 2010, p 19

<sup>6</sup> The European Union Act 2011, Section 6(3)

<sup>7</sup> European Union Committee, *The Fight Against Fraud on the EU's Finances*, (12th Report, Session 2012–13, HL Paper 158)

Commission's arguments in support of the EPPO.<sup>8</sup> The report expressed the Committee's disappointment with the Government's decision to rule out the UK's participation in the EPPO before the Commission had even brought forward a proposal.<sup>9</sup>

4. Nevertheless, in October 2013, following the EPPO proposal's publication, this Committee published a report suggesting the House issue a reasoned opinion challenging the EPPO on the grounds of subsidiarity.<sup>10</sup> In the subsequent debate the House approved the reasoned opinion and, because the number of reasoned opinions submitted by national parliaments reached the 'yellow card' threshold, the Commission was obliged to review the proposal.<sup>11</sup> The Commission undertook its review<sup>12</sup> and, in December 2013, signalled its intention to persevere with the proposal unamended.<sup>13</sup>
5. One of the key concerns expressed in the reasoned opinion was that the EPPO would adversely impact upon the work of the European Anti-Fraud Office (OLAF) and Eurojust, the EU's existing bodies operating in this field, "without there being any guarantee that the untried additional entity would provide adequate replacement".<sup>14</sup> The Commission's disappointing decision to continue with the proposal unamended was the catalyst for our decision to launch this inquiry. We wanted to appraise the Government's stated policy of non-participation in the EPPO and the extent to which it would insulate the UK from any potential threats to the UK's continued engagement with OLAF and Eurojust. To that end, the Justice, Institutions and Consumer Protection Sub-Committee, whose members are listed in Appendix 1, published a call for evidence in December 2013.<sup>15</sup> We received written evidence and took oral evidence from the witnesses listed in Appendix 2. We are very grateful for their contributions.
6. The direct impact of the EPPO will be most strongly felt in those Member States that will participate; the UK will not be one of those states and we take this opportunity to endorse the Government's decision not to opt in to

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<sup>8</sup> For example, a lack of enthusiasm displayed by the Member States in reporting fraud to the Commission coupled with a lack of uniformity in the definition of fraud on the EU's finances (para 25); no reliable estimate on the extent of EU fraud (para 26); and the lack of a coordinated response to fraud on the EU's budget which undermines the effectiveness of OLAF (para 93).

<sup>9</sup> *The Fight Against Fraud on the EU's Finances*, para 101

<sup>10</sup> European Union Committee, *Subsidiarity Assessment: The European Public Prosecutor's Office* (3rd Report, Session 2013–14, HL Paper 65)

<sup>11</sup> A reasoned opinion from one of the 15 unicameral Parliaments counts as two votes; a reasoned opinion from a chamber in one of the 13 bicameral Parliaments counts as a single vote. There are 56 votes available in total. If reasoned opinions are submitted comprising more than one third of the total votes, a yellow card is triggered. For legislative proposals concerning police co-operation or criminal justice (such as the proposal for the EPPO), the threshold is one quarter of votes, not one third.

<sup>12</sup> In January the Committee wrote to the Commission to express its dissatisfaction with aspects of the Commission's review; in particular, the Commission's failure to address specific arguments the House raised in its reasoned opinion. The Commission replied in March.

<sup>13</sup> Communication from the Commission on the review of the proposals for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol 2, [COM\(2013\) 851](#). The Committee has corresponded with the Commission expressing its dissatisfaction with the handling of the yellow card procedure, particularly the speed with which the review was conducted and the Commission's application of the principle of subsidiarity.

<sup>14</sup> *Ibid.*, para 14

<sup>15</sup> Reproduced in Appendix 3

the Commission's proposal. In considering the Government's policy we have sought to restrict our comments to those aspects of the EPPO that will directly affect the UK's position. We have departed from this approach only where we felt that the evidence pointed to a significant problem with the texts currently under discussion in the Council.

7. **We make this report to the House for debate.**

## CHAPTER 2: TWO PROPOSED VISIONS OF THE EPPO

### Introduction

8. The creation of an EU body empowered to investigate and prosecute offences against the EU's financial interest, the so-called PIF crimes (from the French acronym: *protection des intérêts financiers*) has been on the agenda since before the publication of the *Corpus Juris* project in April 1997.<sup>16</sup> The Treaty on the Functioning of the European Union, which came into effect in December 2009, foresaw the creation of an EPPO “from Eurojust”<sup>17</sup> and the Commission's proposal of July 2013 was its legislative response to the Treaty's call (see Box 1).

### Box 1: The Commission's proposal

The Commission proposed an EPPO that would have responsibility for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, offences affecting the financial interests of the Union<sup>18</sup> as broadly defined (the PIF offences).<sup>19</sup> Prosecutions would be carried out in the criminal courts of the Member States. The EPPO would enjoy exclusive competence to investigate and prosecute these offences,<sup>20</sup> meaning that national police and prosecution authorities would be excluded from doing so without permission from the EPPO. The EPPO would also deal with other offences “inextricably linked” to a PIF offence if certain criteria were met.<sup>21</sup> The EPPO would be obliged to act impartially and proportionately, to investigate “without undue delay”, and prosecute “speedily”.<sup>22</sup> It would be independent and accountable through an obligation to provide an annual

<sup>16</sup> See this Committee's report: European Union Committee *Prosecuting Fraud on the Communities' Finances—the Corpus Juris*, (9th Report, Session 1998–99, HL Paper 62). In addition, during the Committee's inquiry into fraud in the 2012–13 Session, we heard from Professor Spencer, who favours the creation of an EPPO, as to how controversial a subject the EPPO has been and the extent to which successive UK Governments have opposed its creation. For example, when asked why the EPPO provokes “such passion” in the UK the Professor said: “The European Public Prosecutor has got deeply confused in this country. Somehow or another, the idea got abroad when the *Corpus Juris* project was published that here was a Brussels plot to overthrow the common law. It was presented to the world, basically in those terms, by the *Daily Mail* and the *Daily Telegraph* and has sunk into the political consciousness of quite a lot of people that this is so, most unfortunately”.

<sup>17</sup> Article 86(1), TFEU

<sup>18</sup> Article 4, Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, [COM\(2013\) 534](#)

<sup>19</sup> Article 2 of [COM\(2013\) 534](#) defines the financial interests of the Union as meaning all revenues, expenditures and assets covered by, acquired through, or due to the Union budget and the budget of institutions, bodies, offices and agencies established under the Treaties and budgets managed and monitored by them. Article 12 also limits this competence by reference to the offences covered by the proposed Directive on the fight against fraud to the Union's financial interests by means of criminal law. This may be significant in determining whether the EPPO would have exclusive competence in respect of VAT fraud, for example. The Committee retains the proposed Directive under scrutiny. It is currently under discussion by the Council, Commission and European Parliament.

<sup>20</sup> Article 11, [COM\(2013\) 534](#)

<sup>21</sup> Article 13, [COM\(2013\) 534](#). If (a) joint investigation and prosecution are in the interests of the good administration of justice, (b) the offence(s) affecting the financial interests of the Union are “preponderant”, and (c) the other offences are based on identical facts, then the ancillary offences will fall within the EPPO's jurisdiction. If not then the national authorities will enjoy competence. National judicial authorities would resolve any uncertainty as to the operation of these criteria.

<sup>22</sup> Article 11, [COM\(2013\) 534](#)

report of its general activities to the European Parliament, the Council and the Commission.<sup>23</sup>

In terms of structure, the Commission suggested a central European Public Prosecutor (EPP) assisted by Deputies. In each Member State there would be at least one European Delegated Prosecutor (EDP). The EDPs would have the main task of carrying out the bulk of investigations and prosecutions under the authority and management of the EPP. Any conflicts of interests of an EDP would be resolved by giving priority to the European function. An EDP could instruct national law enforcement authorities to act on his or her behalf.<sup>24</sup>

9. The fact that 14 reasoned opinions were issued by the Member States' national parliaments in October last year suggested that the Commission's proposal was not well received by many national legislatures, in addition to this House and the House of Commons.<sup>25</sup> It now appears that some national Governments also had doubts about aspects of the Commission's proposal. Indeed, the Home Secretary, the Rt. Hon Theresa May MP, told us that "a number of Member States were less comfortable with the model proposed by the Commission".<sup>26</sup>
  10. In response to these concerns, in March the Greek Presidency proposed an alternative text which introduced a collegiate element into the EPPO's institutional structure.<sup>27</sup> This text emerged from the Council in the week before we held our first formal evidence session.<sup>28</sup>
  11. The Greek Presidency text was billed as a "first revision" of the Commission's proposal and was designed to incorporate the results of preliminary discussions in the Council and to take account of the views of the national parliaments that issued reasoned opinions. The text revised Articles 1–17 of the Commission's original proposal but, crucially in the context of this inquiry, it did not address the later articles governing the EPPO's interrelationship with other EU bodies such as OLAF and Eurojust.
- The Government's Explanatory Memorandum dated 11 June 2014**
12. In June, after the Committee had concluded its formal evidence sessions, the Government submitted an Explanatory Memorandum (EM) on the Greek Presidency's alternative text. It was now a reworking of Articles 1–19 of the Commission's proposal and aspects of the text had changed again (see

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<sup>23</sup> Articles 5 and 70, [COM\(2013\) 534](#)

<sup>24</sup> Articles 6 and 18, [COM\(2013\) 534](#)

<sup>25</sup> Other than this House and the House of Commons, the Commission received reasoned opinions from the Czech Senát; the Cypriot Vouli ton Antiproponon; both chambers of the Dutch Parliament; the French Sénat; Hungarian Országgyűlés; the Irish Houses of the Oireachtas; Maltese Kamra tad-Deputati; Romanian Camera Deputatilor; Slovenian Državni zbor; and the Swedish Riksdag.

<sup>26</sup> [Q 51](#)

<sup>27</sup> The text numbered DS 1154/14 is dated 17 March 2014. It was discussed by a Friends of the Presidency group on 25 March 2014.

<sup>28</sup> See written evidence from Jorge Espina ([PPO0012](#)); the Crown Office and Procurator Fiscal Service ([PPO0020](#)); [Q 2](#) (Prof Dr Katalin Ligeti and Prof Valsamis Mitsilegas); [Q 44](#) (the President, Eurojust); and [Q 51](#) (Theresa May MP).



Box 2).<sup>29</sup> According to the Government this text was endorsed but not agreed by the Justice and Home Affairs Council held in March. The Commission remains committed to its own proposed text and has expressed “strong reservations” about the Presidency’s text.<sup>30</sup>

### **Box 2: The Presidency Text endorsed by the Council in March 2013**

The Government’s June EM covers the Greek Presidency’s revision of Articles 1 to 19 of the Commission’s proposal.

Under this text the EPPO will investigate, prosecute and bring to judgment the perpetrators of criminal offences affecting the financial interests of the EU as defined in the PIF Directive.<sup>31</sup> The EPPO will “be organised at a central level and at a decentralised level”.<sup>32</sup> The central level will be the EPPO’s seat consisting of the College and its Permanent Chambers.<sup>33</sup> The decentralised level will consist of the EDPs who will be national prosecutors acting on behalf of the EPPO; EDPs will retain their right to function as national prosecutors where it does not prevent them from fulfilling their responsibilities to the EPPO.<sup>34</sup>

The text introduces the idea of a collegiate model into the EPPO’s institutional structure via the College of European Prosecutors.<sup>35</sup> The College will be responsible for monitoring the EPPO’s activities and for taking decisions on strategic matters, in particular, ensuring that the EPPO’s prosecution policy is applied coherently and consistently throughout the participating Member States.<sup>36</sup> The members of the College, the European Prosecutors, will be appointed on the basis of one member per participating Member State. The EPPO will be led by the European Chief Prosecutor (ECP), who will be chosen from among the College members.<sup>37</sup>

The College will set up “Permanent Chambers”<sup>38</sup> tasked with directing and monitoring the EPPO investigations conducted in the Member States.<sup>39</sup> The actual investigation and prosecution will be carried out on behalf of the EPPO by the EDPs under the relevant European Prosecutor’s supervision.<sup>40</sup> The text says that they “shall function as liaisons and channels of information between the Permanent Chambers and the European Delegated Prosecutors”.<sup>41</sup>

<sup>29</sup> The Committee is basing its findings in this report on the Commission’s proposal brought forward in July 2013 and the Presidency text endorsed, but not agreed, by the Council in March 2014.

<sup>30</sup> See supplementary written evidence from OLAF ([PPO0025](#)), particularly regarding the EPPO’s independence and its structure.

<sup>31</sup> Article 5(4) of the Proposal for a Regulation on the establishment of the European Public Prosecutor’s Office-state of play/orientation debate, [Council document number 9834/14](#), 21 May 2014.

<sup>32</sup> *Ibid.*, Article 7(2)

<sup>33</sup> *Ibid.*, Article 7(3)

<sup>34</sup> *Ibid.*, Article 12(5)

<sup>35</sup> *Ibid.*, Article 8

<sup>36</sup> *Ibid.*, Article 8(2)

<sup>37</sup> *Ibid.*, Article 13

<sup>38</sup> *Ibid.*, Article 8(3)

<sup>39</sup> *Ibid.*, Article 9(2)

<sup>40</sup> *Ibid.*, Article 12

<sup>41</sup> *Ibid.*, Article 11(1)

The text also includes provisions addressing the EPPO's competence and jurisdiction. The EPPO's jurisdiction is the same as under the original Commission proposal; it will prosecute offences affecting the financial interests of the Union as broadly defined.<sup>42</sup> The EPPO's ancillary competence to prosecute offences has been widened: offences which are "identical or inextricably linked" to a PIF offence will fall within the EPPO's jurisdiction provided the offence is "preponderant". There is no longer a good administration of justice test, as in the original proposal,<sup>43</sup> and disagreements as to the exercise of ancillary competence will be adjudicated by the "competent national authorities" of the relevant Member State.<sup>44</sup>

Significantly, the EPPO no longer enjoys exclusive jurisdiction to prosecute these crimes. Instead competence is shared with the Member States, although if the EPPO decides to act, then the national authorities must not.<sup>45</sup> The EPPO "may" investigate and prosecute a PIF offence where the offence was (i) wholly or partly committed on the territory of one or several Member States, or (ii) when committed outside the Member States by an EU national, or a Union staff member.<sup>46</sup>

13. Before we received the Government's EM Professor Dr Katalin Ligeti, Professor of Criminal Law at the University of Luxembourg, told us that the Greek Presidency text was "not yet a consensual proposal coming from the Council"; she expected the text would change in the course of negotiations.<sup>47</sup> The Government's EM suggested that the Greek text would "form the basis for future work" on the EPPO but, was "still subject to extensive negotiation and should be regarded as a work in progress".<sup>48</sup>
14. These developments in the Council delayed publication of this report, but confirmed the evidence we received from the Home Secretary and others that the negotiations in the Council remain "fluid".<sup>49</sup> When asked to estimate how long this uncertainty would remain she replied: "for some time".<sup>50</sup> What is clear is that every text that the Committee has seen is silent on the position of non-participating Member States.<sup>51</sup> Moreover, the focus of the Presidency's text bears out the evidence presented to us that the two most problematic aspects of the Commission's proposal are the EPPO's exclusive competence and its structure.

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<sup>42</sup> Article 2(c) (*ibid.*) defines the financial interests of the Union as meaning all revenues, expenditures and assets covered by, acquired through, or due to the Union budget and the budget of institutions, bodies, offices and agencies established under the Treaties and budgets managed and monitored by them. As in the original proposal, Article 17 also limits this competence by reference to the offences covered by the proposed Directive on the fight against fraud to the Union's financial interests by means of criminal law.

<sup>43</sup> *Ibid.*, Article 18(1)

<sup>44</sup> *Ibid.*, Article 18(6)

<sup>45</sup> *Ibid.*, Article 19(2)

<sup>46</sup> Article 19(1) (*ibid.*) applies provided the Member State concerned already enjoys jurisdiction for offences committed outside its territory.

<sup>47</sup> [Q 2](#)

<sup>48</sup> Explanatory Memorandum [36044/14](#)

<sup>49</sup> [Q 51](#). See also [Q 57](#) where the Home Secretary said, given the lack of clarity concerning how the EPPO will operate, she did not envy the Committee its task in undertaking this inquiry.

<sup>50</sup> [Q 57](#)

<sup>51</sup> See for example, the written evidence from Jorge Espina ([PPO0012](#)) and the Home Office ([PPO0002](#))

**Problem one: exclusive competence and the EPPO's potential workload**

15. The Commission's proposal was founded on the principle of exclusive competence: in other words, that the EPPO would be responsible for investigating and prosecuting all PIF crimes to the exclusion of the national bodies responsible for these criminal offences.<sup>52</sup> The Director-General of OLAF, Giovanni Kessler, argued that this would ensure the EPPO's independence and accountability to the EU's institutions,<sup>53</sup> avoiding the risk and the waste of resources of parallel investigations, and ensuring consistency in prosecution policy.<sup>54</sup> In addition, given the difficulty of quantifying PIF crimes, he felt that for the first time "we will have a comprehensive picture that will greatly enhance our capacity to detect these transnational crimes".<sup>55</sup>
16. Professor Ligeti and Professor John Vervaele (Professor of Economic and European Criminal Law, University of Utrecht) agreed that the EPPO's "primary added value" would lie in its ability to ensure consistency in the prosecution of PIF crimes. At the same time, they believed that competence for investigating and prosecuting PIF crimes should be shared with national authorities.<sup>56</sup>
17. Jorge Espina, Prosecutor at the International Cooperation Unit of the General Prosecutor's Office of the Kingdom of Spain, shared many of the Director-General's views regarding the EPPO's independence. However, he suggested that the Commission's proposal had gone "too far" in conferring exclusive competence.<sup>57</sup> He said that exclusivity would lead to an "excessive workload of cases for the EPPO including minor cases ... that could be dealt with by national authorities".<sup>58</sup> Evidence from other witnesses supported this view.<sup>59</sup>
18. Under the Commission proposal, in addition to possessing exclusive competence for all PIF crimes, the EPPO would be competent to investigate and prosecute other offences "inextricably linked" to PIF offences, if certain criteria were met.<sup>60</sup> Professor Valsamis Mitsilegas, Head of the Department of Law, Queen Mary, University of London, described the EPPO as a "strongly centralised structure with exclusive competence for offences affecting the financial interests of the European Union" and added that it would also have "primary competence for ... ancillary offences".<sup>61</sup> Dr Anna Bradshaw, of the Law Society of England and Wales, noted that the category of PIF crimes was "enormous" and added: "if the EPPO is to have jurisdiction over ancillary offences as well, then the category becomes

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<sup>52</sup> See, for example, [Q 1](#) (Prof Valsamis Mitsilegas): "The EPPO would have exclusive competence, meaning that in these cases national authorities would lose their competence".

<sup>53</sup> Written evidence from OLAF ([PPO0014](#))

<sup>54</sup> [Q 34](#)

<sup>55</sup> [Q 34](#). See also written evidence from Dr Marianne Wade ([PPO0021](#))

<sup>56</sup> Written evidence from Prof Dr Katalin Ligeti and Prof John A E Vervaele ([PPO0022](#))

<sup>57</sup> Written evidence from Jorge Espina ([PPO0012](#))

<sup>58</sup> *Ibid.*

<sup>59</sup> Written evidence from Mike Kennedy ([PPO0017](#)) and Dr Marianne Wade ([PPO0021](#))

<sup>60</sup> See Article 13 of the proposal ([COM\(2013\) 534](#)) headed "Ancillary Offences" in and footnote 21.

<sup>61</sup> [Q 1](#)

huge”.<sup>62</sup> James MacGuill of the Association of European Bars and Law Societies (the CCBE) went further, warning that the EPPO was in danger of being “strangled at birth by taking on an entirely excessive, unmanageable workload”.<sup>63</sup>

### *Potential workload*

19. The Committee’s report into fraud on the EU’s budget acknowledged that fraud is inherently opaque, and highlighted the difficulty of quantifying EU financial crimes.<sup>64</sup> The Commission’s official figure for fraud on the EU’s budget for 2011 (the year which formed the focus of the Committee’s fraud inquiry) was €404 million.<sup>65</sup> By extrapolating UK figures for fraud on the public purse supplied to the Committee by the now defunct National Fraud Authority, we estimated that the actual figure for EU fraud was closer to €5 billion.<sup>66</sup> In its impact assessment, which accompanied the proposal, the Commission estimated that about €3 billion a year could be at risk from fraud.<sup>67</sup>
20. In an effort to gauge the likely workload facing the EPPO, we have endeavoured during this inquiry to form a clearer picture of the current levels of PIF crimes committed in the EU. However, the problems in quantifying fraud on the EU’s budget that we experienced during our fraud inquiry remain. Ms Michèle Coninsx, the current President of Eurojust, said that precise figures relating to these crimes did not exist in many Member States. She concluded that, in the absence of such data, “it is difficult to have a clear-cut opinion on what will be the crystallised workload of the EPPO”.<sup>68</sup>
21. Mike Kennedy, former President of Eurojust, also recognised the difficulty of quantifying the problem. While both the Commission and OLAF accepted that fraud was a “big problem”, he believed that the size of the problem might still have been underestimated.<sup>69</sup> The Home Secretary also acknowledged that fraud was a “real issue”. Like other witnesses she believed that the problem was very difficult to quantify, and she argued that it was “impossible for anybody to give the correct figure”.<sup>70</sup>
22. We accept that PIF crimes are difficult to quantify and that nobody knows the correct figure for fraud on the EU’s budget. Nevertheless, both the Commission’s and this Committee’s estimates of the scale of the problem, which have not been challenged by any evidence we have received during this inquiry, indicate a significant level of PIF criminality.

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<sup>62</sup> [Q 23](#)

<sup>63</sup> [Q 15](#)

<sup>64</sup> *The Fight Against Fraud on the EU’s Finances*, para 26

<sup>65</sup> This figure is based on figures supplied to the Commission by the individual Member States. In 2012, the figure was €392 million. In 2013 the amount was €309 million.

<sup>66</sup> In its formal response to the inquiry the Government said they did not recognise this figure.

<sup>67</sup> European Commission, Impact Assessment accompanying the proposal for a Council Regulation on the establishment of the European Public Prosecutor’s Office, [SWD\(2013\) 275 final](#), 17 July 2013, p 7

<sup>68</sup> [Q 45](#)

<sup>69</sup> [Q 21](#)

<sup>70</sup> [Q 55](#)

23. While acknowledging that nobody can predict accurately the level of criminality that the EPPO is likely to confront in participating Member States, **we are concerned that under the Commission’s proposal the EPPO is at risk of being overwhelmed by its workload; this risk would be particularly acute for an EPPO enjoying exclusive competence for all PIF crimes in conjunction with a shared responsibility for ancillary offences.**

*Competence under the Presidency text*

24. Under the Presidency text the EPPO would no longer enjoy exclusive competence to investigate and prosecute all PIF crimes; instead competence would be shared with the Member States.<sup>71</sup> The Director-General of OLAF said that the only advantage of shared competence would be “political”, in that it would make it likelier that the participating Member States would accept the concept of an EPPO.<sup>72</sup> Professor Mitsilegas described the change as a “major shift in the balance of powers between the EPPO and the Member States”, but warned that it raised “complex” legal issues.<sup>73</sup> The Law Society described this as a “major change”, but argued that it was “disruptive” and likely to “undermine the objective of increasing efficiency”.<sup>74</sup>
25. The rules in the Presidency text on how to allocate competence between national authorities and the EPPO are, in Professor Ligeti’s words, “rather vaguely defined”.<sup>75</sup> Professor Mitsilegas explained that, if the EPPO had not acted in the Member State concerned then competence to prosecute would remain with the Member State authorities; the EPPO would only acquire competence to prosecute once it had acted and not before.<sup>76</sup> Eurojust suggested that the EPPO would retain priority to investigate while also enjoying the right to take on specific investigations begun by the national authorities.<sup>77</sup> The CCBE said that “it would be far better that all these offences remained domestic until something happens at the hand of the prosecutor”.<sup>78</sup>
26. The Home Secretary agreed with Professor Ligeti<sup>79</sup> and the Government warned that “not knowing who is dealing with an offence will make it extremely difficult for anyone involved to know their legal rights and roles”.<sup>80</sup> Eurojust also agreed, and called for clarification of the criteria governing shared competence.<sup>81</sup>

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<sup>71</sup> Written evidence from Jorge Espina ([PPO0012](#)); [Q 2](#) (Prof Valsamis Mitsilegas and Prof Dr Katalin Ligeti); [Q 34](#) and [Q 44](#).

<sup>72</sup> [Q 34](#)

<sup>73</sup> Supplementary written evidence from Prof Valsamis Mitsilegas ([PPO0026](#))

<sup>74</sup> Supplementary written evidence from the Law Society of England and Wales ([PPO0024](#))

<sup>75</sup> [Q 2](#)

<sup>76</sup> [Q 2](#)

<sup>77</sup> Supplementary written evidence from Eurojust ([PPO0023](#))

<sup>78</sup> [Q 24](#)

<sup>79</sup> [Q 51](#)

<sup>80</sup> Written evidence from the Home Office ([PPO0002](#))

<sup>81</sup> Supplementary written evidence from Eurojust ([PPO0023](#))

27. As for ancillary offences, the Presidency text states that the EPPO will continue to share responsibility for ancillary offences, and it appears that the criteria to be applied have been widened.<sup>82</sup> The Law Society warned that disputes could arise over the operation of the EPPO's ancillary competence. In its EM on the Presidency's text the Government argued that the "complex interplay" of the proposed interaction between the EPPO's competence for PIF offences and ancillary offences "creates confusion".<sup>83</sup>
28. Given the doubts over the ability of the EPPO to cope with its workload under the Commission proposal, we can understand why the Presidency has proposed that the EPPO should share competence with the participating states. It is clear from the evidence, however that, far from solving this difficult problem, the Presidency's current text adds another layer of complexity to an already intricate arrangement.
29. **If the principle is retained that the EPPO should share competence for PIF crimes and ancillary offences with participating Member States, we urge all those involved in negotiations to ensure that the text includes clear rules for the operation of shared competence.**

#### **Problem two: the EPPO's structure**

30. Under the Commission's proposal the European Public Prosecutor (EPP) will direct and supervise prosecutions and investigations, which will be carried out in the Member States by European Designated Prosecutors (EDPs). EDPs will be national prosecutors operating in national courts, instructed by the EPPO (the double-hatted or double-headed idea).<sup>84</sup>
31. Professors Ligeti and Vervaele highlighted the dual nature of this proposed structure: on the one hand decisions to investigate and prosecute would be centralised in an autonomous EPP, while on the other hand, the effect of "prescribing national criminal procedural law for the use of coercive investigative powers by the EPPO" would add an element of decentralisation.<sup>85</sup> Dr Marianne Wade (Senior Lecturer, Birmingham Law School, University of Birmingham) suggested that this structure was "undoubtedly the result of careful consideration of what an EPPO needs to embody and the objections of the member states to such an institution".<sup>86</sup>
32. The Director-General of OLAF argued that the Commission's proposal would enable the EPPO to be small because the EDPs located in the Member States would generally conduct investigations and prosecutions;<sup>87</sup> he suggested that the central office would be staffed by roughly 20 prosecutors. This structure would enable the "national prosecutors acting as European prosecutors to do more and to do better than they are already

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<sup>82</sup> Article 18(1) of Council document number [9834/14](#). The Presidency text has removed the application of a good administration of justice test, from the criteria governing competence for ancillary offences (see footnote 21)

<sup>83</sup> Explanatory Memorandum [36044/14](#)

<sup>84</sup> Article 6, [COM\(2013\) 534](#)

<sup>85</sup> Written evidence from Prof Dr Katalin Ligeti and Prof John A E Vervaele ([PPO0022](#))

<sup>86</sup> Written evidence from Dr Marianne Wade ([PPO0021](#))

<sup>87</sup> Written evidence from OLAF ([PPO014](#))

doing”.<sup>88</sup> Jorge Espina agreed with the Director-General and praised the “cost-effective” benefits of the Commission’s model.<sup>89</sup>

33. Mike Kennedy was more circumspect, suggesting that it would not be possible to assess the Commission’s proposed structure without seeing it operate in practice.<sup>90</sup> He argued that the EPPO would need to be robust and of a reasonable size to monitor the “quality of the investigation, the shape of the investigation, [and] the subsequent prosecution”, adding that the EPPO would also have to be aware of the amount of money spent on each investigation.<sup>91</sup>
34. The Law Society praised the efficacy of existing mechanisms such as Mutual Legal Assistance<sup>92</sup> in combating crime across the EU and argued that the Commission’s proposal would place an unnecessary “supranational layer of authority” on these matters, which in turn, would impair crime detection by depleting resources that were already stretched.<sup>93</sup> The Government criticised the lack of clarity in the Commission’s proposal, arguing that it was based on a “complex structure” which had left Member States questioning where powers affecting investigations and prosecutions would really lie.<sup>94</sup>

#### *The Presidency’s proposed structure*

35. The Presidency’s text changes the EPPO’s institutional structure. It retains the concept of EDPs, who will conduct investigations and prosecutions in the Member States, but introduces a College of European Prosecutors and Permanent Chambers.
36. Mike Kennedy recognised the appeal of Eurojust’s collegiate model but pointed out that Eurojust does not enjoy coercive powers; its powers are restricted to making requests of the relevant national authorities.<sup>95</sup> In contrast, the EPPO will have powers to investigate and prosecute crimes, and he argued that, in this context a collegiate basis did not offer the requisite solution: “Making decisions quickly ‘in committee’ on a collegiate basis about investigations and prosecutions is hugely challenging”. Members of the College would have to familiarise themselves with large quantities of information relevant to each individual investigation being undertaken by the EPPO before making any decisions. He described this as an “impossible task”, concluding that, “the speedy decisions and action that will be required are unlikely to be forthcoming employing a collegiate approach”.<sup>96</sup> Other

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<sup>88</sup> [Q 37](#)

<sup>89</sup> Written evidence from Jorge Espina ([PPO0012](#))

<sup>90</sup> Written evidence from Mike Kennedy ([PPO0017](#))

<sup>91</sup> [Q 17](#)

<sup>92</sup> Mutual Legal Assistance (MLA) is the formal mechanism by which states request and provide assistance in criminal matters to each other chiefly in respect of evidence requests. In 2000 the EU Member States agreed a Convention designed to facilitate MLA requests. (See the Official Journal 2000/C 197/01)

<sup>93</sup> Written evidence from the Law Society of England and Wales ([PPO0016](#))

<sup>94</sup> Written evidence from the the Home Office ([PPO0002](#))

<sup>95</sup> See also [Q 5](#) (Prof Valsamis Mitsilegas)

<sup>96</sup> Written evidence from Mike Kennedy ([PPO0017](#))

witnesses shared Mr Kennedy’s doubts about the merit of the collegiate model.<sup>97</sup>

37. The Lord Advocate, Frank Mulholland QC, praised existing cooperation measures used by the Member States to deal with crimes. He questioned the added value of a collegiate model EPPO, arguing that it would only duplicate Eurojust.<sup>98</sup> Professor Mitsilegas also described the proposed collegiate model and the inclusion of Permanent Chambers as “complex ... overcomplicated and unduly bureaucratic”.<sup>99</sup>
38. The Law Society rejected both proposed models arguing that the investigation and prosecution of PIF crimes should remain a national concern; but, on balance, they preferred an “enhanced collegiate model”.<sup>100</sup>
39. Given the status of negotiations in the Council the Home Secretary was reluctant to comment on the detail of the structure proposed by the Presidency, although she said it was not entirely clear.<sup>101</sup> The Government’s EM on the Presidency’s text struck the same note: “the multi-layered structure is highly complicated and it is still not clear where decision making and supervision should lie”.<sup>102</sup>
40. We note that the Presidency text endorsed (but not agreed) by the Member States forms the Council’s initial response to the Commission’s proposal. None of the evidence we received suggests that an EPPO structure based on a collegiate model and introducing Permanent Chambers offers a clear or viable way forward. All those who submitted evidence on this point argued that the Presidency’s proposed structure would complicate the prosecution of PIF offences even further.
41. **It is essential that the EPPO’s structure should be robust and capable of effectively monitoring investigations in the Member States while supporting fast and efficient investigation decisions; both the Commission’s model and the college model currently fail to achieve this aim.**

#### *The Government’s alternatives*

42. The Government was clear that it opposed the creation of the EPPO; this is unsurprising given the clear stance taken in the Coalition Agreement. As for the proposed structure(s) for the EPPO the Government said that as it “has argued against the creation of an EPPO, the natural extension of that position is to conclude that there is no correct model”.<sup>103</sup> Throughout our

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<sup>97</sup> Written evidence from Jorge Espina ([PPO0012](#)) Prof Dr Katalin Ligeti and Prof John A E Vervaele ([PPO0022](#)); [QQ 2 and 7](#) (Prof Dr Katalin Ligeti); [Q 2](#) (Prof Valsamis Mitsilegas) and supplementary written evidence from Prof Valsamis Mitsilegas ([PPO0026](#))

<sup>98</sup> Written evidence from the Crown Office and Procurator Fiscal Service ([PPO0020](#))

<sup>99</sup> Supplementary written evidence from Prof Valsamis Mitsilegas ([PPO0026](#))

<sup>100</sup> Written evidence from the Law Society of England and Wales ([PPO0016](#)). See also the Law Society’s supplementary evidence ([PPO0024](#)) where they express reservations about the development but argue that the collegiate structure is an improvement on the Commission’s proposal.

<sup>101</sup> [Q 51](#). See also the written evidence from the Home Office ([PPO0002](#))

<sup>102</sup> Explanatory Memorandum [36044/14](#)

<sup>103</sup> Written evidence from the Home Office ([PPO0002](#))



considerable recent work on EU fraud<sup>104</sup> the Government's oft-repeated solution has been to argue for a greater focus on fraud prevention by improving the accountability of the mechanisms governing the management of EU funds. The Home Secretary repeated this argument in oral evidence.<sup>105</sup> The Director-General of OLAF also recognised the importance of fraud prevention.<sup>106</sup>

43. Asked whether the Government had put forward an alternative strategy to the Commission's proposed EPPO, the Home Secretary was not sure whether, for example, the Government had specifically said to the Commission "here are six things that you could do to prevent fraud"; she felt the matter would be the Treasury's responsibility.<sup>107</sup>
44. **We recommend that the Government should do more in the Council and the Commission to promote its vision of how to address the problem of fraud on the EU's budget; namely, by means of fraud prevention and improved accountability of the mechanisms governing the management of EU funds.**

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<sup>104</sup> Other than the proposals establishing the EPPO and reforming Eurojust and the annual fraud reports of the Commission and OLAF, relevant anti-fraud legislation brought forward by the Commission since 2011 and considered by one or other of our Sub-Committees includes: a Regulation concerning investigations conducted by OLAF, [COM\(2011\) 135 final](#); a Commission Communication setting out the Commission's anti-fraud strategy, [COM\(2011\) 376 final](#); a Communication on the protection of the financial interests of the European Union by criminal law and administrative investigations, [COM\(2011\) 293 final](#); a Communication on fighting corruption in the EU, [COM\(2011\) 308 final](#); a package of proposals published in December 2011 designed to modernise the EU's public procurement rules, [COM\(2011\) 895](#), [896](#) and [897 final](#); a Directive on the protection of the EU's financial interests by means of the criminal law, [COM\(2012\) 363 final](#); a Directive amending the existing legislation governing the Quick Reaction Mechanism against VAT fraud, [COM\(2012\) 428 final](#); and, a Directive on the protection of the Euro and other currencies against counterfeiting by criminal law, [COM\(2013\) 42 final](#).

<sup>105</sup> [Q 54](#)

<sup>106</sup> [Q 36](#)

<sup>107</sup> [Q 54](#)

## CHAPTER 3: THE IMPLICATIONS OF THE EPPO

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### Introduction

45. In this chapter we consider the position of those states that will not participate in the proposed EPPO. We also look at the potential impact of the proposed EPPO on the two EU agencies most closely affected by the proposal, the European Anti-Fraud Office (OLAF) and Eurojust.
46. Professor Mitsilegas described the relationship between the Member States, OLAF and Eurojust as a “very complex legal reality”.<sup>108</sup> He suggested that the additional distinction between participating and non-participating EPPO Member States would complicate the situation further. The texts under discussion in the Council gave “little consideration” to this reality nor did they address the future relationship of the non-participating Member States with OLAF or Eurojust.<sup>109</sup>

### At least two non-participating Member States

47. The proposal was brought forward on the basis that all Member States would participate.<sup>110</sup> None of the texts currently under discussion in the Council “contains information on how issues of competence and jurisdiction will relate to non-participating Member States”.<sup>111</sup>
48. The Lisbon Treaty indicates that Denmark will not participate in the proposal;<sup>112</sup> the UK and Ireland both have the right to opt in (or not).<sup>113</sup> Opting in has been ruled out by the Government. The legal basis under which the EPPO proposal has been brought forward allows a group of Member States to pursue the EPPO via enhanced cooperation.<sup>114</sup> Thus, it is clear from the Treaties that there are likely to be Member States working outside the EPPO.<sup>115</sup>

### The EPPO’s impact on the non-participating Member States

#### *The obligation to cooperate*

49. As we noted in our report on fraud on the EU’s budget, whether or not Member States participate in the establishment of the EPPO,<sup>116</sup> the Lisbon Treaty makes both the Commission and the Member States responsible for countering fraud and protecting the EU’s financial interests.<sup>117</sup> In addition,

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<sup>108</sup> [Q 10](#)

<sup>109</sup> Written evidence from the Home Office ([PPO0002](#)); see also [Q 13](#) (Prof Valsamis Mitsilegas)

<sup>110</sup> [Q 10](#) (Prof Dr Katalin Ligeti)

<sup>111</sup> Written evidence from the Home Office ([PPO0002](#));

<sup>112</sup> Protocol 22 to the Treaties, on the position of Denmark

<sup>113</sup> Protocol 21 to the Treaties, on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice

<sup>114</sup> Article 86 of the TFEU sets out specific rules governing the operation of enhanced cooperation if at least nine Member States wish to establish the EPPO.

<sup>115</sup> See [Q 7](#) (Prof Dr Katalin Ligeti)

<sup>116</sup> *The Fight Against Fraud on the EU’s Finances*, para 12

<sup>117</sup> Article 325(1) of the TFEU. See also written evidence from Jorge Espina ([PPO0012](#))

all Member States are under an obligation to cooperate with the competent EU authorities responsible for combating fraud.

50. Jorge Espina argued that the principle of loyal cooperation meant that “all Member States including those who choose to remain outside the EPPO-zone will have to accept its existence and competence at least within such zone”.<sup>118</sup> Professor Ligeti was sure that the non-participating Member States would continue to be bound by their Treaty obligations, but in the absence of specific provisions in the proposal addressing non-participating Member States she questioned “the extent this applies, and what this loyal cooperation should look like in practice”.<sup>119</sup>
51. At the practical level, many witnesses raised the prospect that the UK authorities would be faced with requests from the EPPO for assistance.<sup>120</sup> Mike Kennedy argued that the financial basis of PIF crimes made it likely that money would pass through the UK banking system. This raised the possibility that the UK authorities would receive requests from the EPPO for evidence located in this country. This would, in turn, lead to applications to the UK courts by the EPPO for the release of such evidence. Drawing parallels with the Costa del Sol of 20 years ago, he feared that if the UK did not get its legislation in order to deal with requests from the EPPO, “we will be seen as a safe haven for funding that has been obtained criminally and moved to this country”.<sup>121</sup>
52. The Law Society also predicted applications by the EPPO in UK courts for evidence, and warned that the extent of the EPPO’s jurisdiction meant that UK citizens would be “at risk of being at the receiving end of an extradition request ... by the EPPO”.<sup>122</sup>
53. The Director-General of OLAF was more positive. He argued that, in future, instead of receiving applications from 27 other Member State authorities, the UK authorities and courts would be faced with requests from the EPPO and any non-participating Member States. He said that the UK only needed to confer on the EPPO the same authority to make request for assistance as currently enjoyed by the Member States. He concluded that, in “the worst case scenario”, the UK Government, “might have to make an agreement with the European Union that recognises that the EPPO has the same scope ... or the same ability to make a request to the UK that you have already recognised can be made to other Member States—no more than that”.<sup>123</sup>
54. The Government called for “our bilateral and EU agreements with participating Member States, non-participating Member States and third countries ... to be respected as per the Treaties”.<sup>124</sup> The Home Secretary emphasised that it was still too early to speculate on the detail of the UK’s responsibilities, as a non-participating Member State, to the EPPO. She said

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<sup>118</sup> Written evidence from Jorge Espina ([PPO0012](#))

<sup>119</sup> [Q 7](#)

<sup>120</sup> [Q 7](#) (Prof Dr Katalin Ligeti)

<sup>121</sup> [Q 26](#)

<sup>122</sup> [Q 25](#)

<sup>123</sup> [Q 42](#)

<sup>124</sup> Written evidence from the Home Office ([PPO0002](#))

that if evidence of EU fraud emerged in the UK she would expect the UK authorities to deal with that crime.<sup>125</sup> Regarding evidence and extradition requests from the EPPO, the Home Secretary warned that there were “legal arguments about how those are drawn up and whether they would in fact in these circumstances be required to be responded to by the United Kingdom”.<sup>126</sup>

55. While the precise detail of the non-participating Member States’ responsibilities to the EPPO are unclear, the Government cannot ignore the fact that once the EPPO is established it is inevitable that it will make requests for assistance to the UK authorities and the UK courts. **We are concerned by the Home Secretary’s intimation that the UK might not be legally obliged to respond to requests for assistance from the EPPO, particularly given the risk that a UK unable (or unwilling) to cooperate with the EPPO’s requests could become a safe haven for illegally obtained EU funds. We recommend that the Home Office urgently initiate a consultation on the legislative changes necessary in order to ensure that the UK authorities and courts are able to respond to requests for assistance from the EPPO.**

## The EPPO and OLAF

### *The European Anti-Fraud Office*

56. The European Anti-Fraud Office, OLAF (from the acronym for the French title of the agency: *Office de Lutte Anti-Fraude*) was established in March 1999 in the wake of the mass resignation of the Santer Commission. OLAF lies at the heart of the EU’s anti-fraud infrastructure. Its task is to protect the EU’s financial interests<sup>127</sup> and its role is (i) to protect the EU’s financial interests by investigating fraud and corruption; (ii) to detect and investigate serious matters relating to the discharge of professional duties by members and staff of the EU institutions and bodies; and, (iii) to support the EU Commission in the development and implementation of fraud prevention and detection policies.
57. OLAF fulfils its role by conducting administrative<sup>128</sup> investigations into the abuse of EU funds both internally,<sup>129</sup> by EU officials, and externally,<sup>130</sup> in the individual Member States. OLAF also assists the relevant national authorities in the conduct of criminal investigations.<sup>131</sup> Where it finds evidence of misconduct it passes its findings in the form of a report to the relevant authority; this may be to the relevant EU institution in cases where disciplinary action may follow; or, where OLAF concludes that criminal

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<sup>125</sup> [Q 57](#)

<sup>126</sup> [Q 57](#)

<sup>127</sup> OLAF was established by Commission decision [1999/352/EC](#) dated 28 April 1999. [Regulation 1073/99](#) and [Regulation 1074/99](#) define its role.

<sup>128</sup> [Regulation 1073/99](#), Article 2

<sup>129</sup> [Regulation 1073/99](#), Articles 1(3) and 4

<sup>130</sup> [Regulation 1073/99](#), Article 3

<sup>131</sup> [Regulation 1073/99](#), Article 1(2)

behaviour is involved, it will pass its findings to the relevant prosecuting authority in the individual Member State.<sup>132</sup>

58. Since its creation OLAF's role has been the subject of on-going discussion, and in December 2013 the Council finally agreed a Regulation amending aspects of its role.<sup>133</sup>

*OLAF's work with the United Kingdom*

59. Member States are under an obligation to cooperate with OLAF. The Commission's *Protection of the European Union's financial interests—Fight against fraud 2012 Annual Report* called on all EU Member States to establish a single point of contact (AFCOS) for OLAF, in order to encourage a consistent approach to tackling fraud across the EU.<sup>134</sup> We endorsed this recommendation in our 2013 report.<sup>135</sup> We also welcome the confirmation by the City of London Police during the current inquiry that they “have been working with OLAF, acting as their single point of contact ... on behalf of the UK.”<sup>136</sup>
60. At the same time, and for the reasons set out below, we are concerned that the creation of the EPPO poses a serious danger to the UK's relationship with OLAF, putting this progress in jeopardy.

*EPPO's potential impact on OLAF*

61. The reasoned opinion agreed by the House last year stated that the establishment of the EPPO would have significant ramifications for the continuing existence of OLAF and the position of non-participating Member States. The evidence submitted to this inquiry overwhelmingly supports this concern.<sup>137</sup>
62. The Director-General of OLAF, while acknowledging that “a good share of OLAF's resources will be used to set up” the EPPO's central office, was the one exception to this prevailing view. He argued that sufficient resources would remain available to maintain OLAF's current commitment to the UK, adding that the creation of the EPPO might, in fact, improve the UK's situation.<sup>138</sup> Mike Kennedy, on the other hand, said that “one would expect that OLAF and its staff will move either to those Member States which are participating in the EPPO or to the HQ of the new EPPO.”<sup>139</sup> Professor Mitsilegas argued that once the EPPO was created one could not

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<sup>132</sup> [Regulation 1073/99](#), Article 9 and 10

<sup>133</sup> Regulation 2006/84. The Regulation does not offer substantial reform of OLAF, rather it clarifies a number of issues including: the Director-General's role, procedural guarantees for those suspected of fraudulent behavior, cooperation with Europol and Eurojust, and the respective roles of OLAF and its Supervisory Committee.

<sup>134</sup> [COM\(2013\) 548 final](#)

<sup>135</sup> *The Fight Against Fraud on the EU's Finances*, paras 87–88

<sup>136</sup> Written evidence from the City of London Police ([PPO0015](#))

<sup>137</sup> See for example, the written evidence from the Association of Chief Police Officers ([PPO0019](#)); Jorge Espina ([PPO0012](#)); Mike Kennedy ([PPO0017](#)) OLAF ([PPO0014](#)); the Law Society ([PPO0016](#)) Dr Marianne Wade ([PPO0021](#)); and [Q 3](#). (Prof Dr Katalin Ligeti)

<sup>138</sup> [Q 35](#). The Director-General argued that “We might even be able to dedicate a few more resources to the UK after the establishment of the EPPO”.

<sup>139</sup> Written evidence from Mike Kennedy ([PPO0017](#))

be sure that the UK's needs would remain a priority for OLAF.<sup>140</sup> The Law Society argued that it was “hard to see how the creation of the EPPO would not direct resources from non-participating states”, and called on the Government to seek assurances that the assistance given the UK by OLAF would not be undermined.<sup>141</sup>

63. The Government also warned that the creation of the EPPO would have a significant impact on OLAF's resources, responsibilities and staff.<sup>142</sup>
64. It is difficult to see how the UK, as a non-participating Member State, would benefit from the envisaged transfer of expertise and resources from OLAF to the EPPO. There is potential for the UK and other non-participating Member States to cease to be a priority for assistance and support from OLAF. It is deeply disappointing that the Commission decided to bring forward a proposal with so little regard for the EPPO's impact on OLAF and on the position of the non-participating Member States. This is still more disturbing given that a new Regulation amending OLAF's role was agreed by the Council only in December last year.
65. The Home Secretary promised us that the UK would work “very hard” to ensure that OLAF continued to operate in the UK's interests.<sup>143</sup> In her view, it was important to achieve clarity in the Regulation itself regarding the nexus between OLAF and the EPPO.<sup>144</sup> We endorse her words and support the Government's efforts in this regard.
66. **It is deeply disappointing that the Commission failed to address the EPPO's impact on OLAF and the knock-on effect for non-participating Member States in its proposal. It is of paramount importance that the relationship between OLAF and the EPPO should be defined within the Regulation and that due regard should be given to the position of the non-participating Member States.**
67. **We further recommend to the Government that it should seek to ensure that the text of the Regulation provides an assurance that the quality and level of assistance received by the UK from OLAF will not be diminished following the establishment of the EPPO.**

### **The EPPO's impact on Eurojust**

#### *The European Union Agency for Criminal Justice Cooperation*

68. The European Union Agency for Criminal Justice Cooperation, or Eurojust, is the EU's judicial cooperation unit in The Hague. It is officially an agency of the EU, and is comprised of national prosecutors, magistrates or police officers from each Member State. It is designed to assist Member States by coordinating investigations into prosecutions of criminal matters; in particular, by facilitating requests for mutual legal assistance and extradition, and by supporting the exchange of information between national authorities engaged

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<sup>140</sup> [Q 8](#)

<sup>141</sup> [Q 32](#)

<sup>142</sup> Written evidence from the Home Office ([PPO0002](#))

<sup>143</sup> [Q 56](#)

<sup>144</sup> [Q 53](#)

in investigating transnational crime.<sup>145</sup> Eurojust acts in response to requests from the relevant individual Member State authorities; it does not enjoy any power to initiate or investigate criminal behaviour of its own volition.

69. In certain circumstances, acting either as a college or through an individual national member, Eurojust can ask the relevant Member State authorities to undertake an investigation; but the Member State authorities are not obliged to accede to such requests.<sup>146</sup> If the Member State refuses Eurojust's requests it must give reasons for its inaction, unless doing so would harm national security interests.<sup>147</sup>
70. Eurojust was established in 2002<sup>148</sup> as part of the European Council's programme to create an area of freedom, security and justice within the EU.<sup>149</sup> In 2008 the Member States agreed a Decision to strengthen its role.<sup>150</sup> The Commission is currently undertaking a review of the operation of the Decision. The Member States agreed provisions in the Lisbon Treaty explicitly recognising the importance of Eurojust's mission, and requiring the EU's institutions to pass legislation in the form of Regulations to "determine Eurojust's structure, operation, field of action and tasks". The Treaty also called for any Regulation to involve the European Parliament and national parliaments "in the evaluation of Eurojust's activities".<sup>151</sup>
71. As we have already indicated, the Treaties also envisaged the EPPO and Eurojust being closely associated: Article 86 TFEU states that "in order to combat crimes affecting the financial interests of the Union, the Council ... may establish a European Public Prosecutor's Office from Eurojust". To that end, the two proposals brought forward by the Commission in 2013 weave the two bodies closely together.<sup>152</sup> The Eurojust Regulation calls on the agency to establish and maintain a "special relationship with the [EPPO] based on close cooperation and the development of operational, administrative and management links".<sup>153</sup>

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<sup>145</sup> Eurojust is often described as having a hybrid nature because despite the fact that it is one of the EU's official agencies under the two Decisions establishing Eurojust the national members derive their powers from national law not EU law. The current legislation requires the individual Member States to empower its national officials seconded to Eurojust with the requisite powers so far as possible under national law.

<sup>146</sup> In relation to the crimes covered by Eurojust's jurisdiction it can ask the Member State authorities to: (i) undertake an investigation or prosecution; (ii) to accept that one of them is in a better position to undertake an investigation or prosecution; (iii) to coordinate the relevant Member state authorities; (iv) to set up a Joint Investigation Team; (v) to provide it with any necessary information.

<sup>147</sup> Article 8, [Council Decision 2002/187/JHA](#)

<sup>148</sup> *Ibid.*

<sup>149</sup> Para 46 of the Tampere European Council Conclusions October 1999.

<sup>150</sup> [Council Decision 2009/426/JHA](#). The negotiation of the legislation governing Eurojust initially proved difficult but following the terrorist attacks in the USA on 11 September 2001 the negotiations gained new momentum and the Member states agreed the legislation to establish Eurojust in February 2002; although Eurojust had been operating for the previous 12 months on a provisional basis as pro-Eurojust.

<sup>151</sup> Article 85 of the TFEU

<sup>152</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *Better protection of the Union's financial interests: Setting up the European Public Prosecutor's Office and reforming Eurojust*, [COM\(2013\) 532](#). See for example, Article 41 of the Regulation reforming Eurojust, and Article 57 of the EPPO proposal.

<sup>153</sup> Article 41(1) of [COM\(2013\) 532](#). There is a reciprocal arrangement in the EPPO proposal ([COM\(2013\) 534](#)), see Article 57.

72. The UK Government decided against opting in to the negotiation of the Regulation reforming Eurojust, despite our recommendation that it should do so.<sup>154</sup>

*Eurojust and the EPPO: a special relationship*

73. The proposed establishment of the EPPO would affect Eurojust in three significant ways. First, depending on the outcome of the discussion of the EPPO's competence, the EPPO would gain sole responsibility for investigating cases of fraud against the EU's interests, to the potential detriment of Eurojust. Second, in order to facilitate close cooperation between Eurojust and the EPPO, the proposed EPPO Regulation states that the EPPO can request Eurojust to act. This would include investigations, coordination and the sharing of information relevant to PIF crimes and ancillary offences with the EPPO.<sup>155</sup> The Eurojust Regulation requires the agency to deal with any such request without delay and as if it had been received from a relevant national authority.<sup>156</sup> Third, the legislation requires Eurojust to provide a range of information and technical support services to the EPPO, including access to Eurojust's Case Management System<sup>157</sup> and IT infrastructure.<sup>158</sup> The precise detail of the third obligation will be set out in an agreement once the two Regulations are agreed by the Member States.<sup>159</sup>

*Detrimental impact on Eurojust*

74. Mike Kennedy, a former President of Eurojust, argued that there was a "real danger that the resources, administrative capacity and legal expertise required to create an EPPO 'from Eurojust' might ... undermine the effectiveness and ability of Eurojust to assist" the Member States.<sup>160</sup> He rejected the idea put forward by the Commission that Eurojust would be able to support the EPPO administratively on a zero-cost basis.<sup>161</sup> Professor Ligeti agreed: with regard to Eurojust's perceived future running costs, she was "not convinced that the calculations that have been put forward [by the Commission] could live up to all the tasks that will be given to Eurojust in future".<sup>162</sup> Dr Marianne Wade warned that the requirements on Eurojust to "fuel" the EPPO's informational needs would increase the agency's workload.<sup>163</sup>
75. The current President of Eurojust said that the increase in crime attributed to the financial crisis meant that Eurojust was increasingly faced with having to do more with less.<sup>164</sup> She felt that Eurojust was being asked to engage in

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<sup>154</sup> European Union Committee, *The Eurojust Regulation: Should the UK Opt-In?* (4th Report, Session 2013–14, HL Paper 66)

<sup>155</sup> Article 57(2) of [COM\(2013\) 534](#)

<sup>156</sup> Article 41(2) of [COM\(2013\) 535](#)

<sup>157</sup> Article 41(5) of [COM\(2013\) 535](#)

<sup>158</sup> Article 41(7) of [COM\(2013\) 535](#)

<sup>159</sup> Article 41(7) of [COM\(2013\) 535](#)

<sup>160</sup> Written evidence from Mike Kennedy ([PPO0017](#))

<sup>161</sup> [Q 31](#)

<sup>162</sup> [Q 6](#)

<sup>163</sup> Written evidence from Dr Marianne Wade ([PPO0021](#))

<sup>164</sup> [Q 46](#)



new tasks and was being expected to do it “with the same staff”. She said that Eurojust would be expected to do this without any “guarantee or assurance that this support to the EPPO will not put in danger the services to be rendered to the Member States”.<sup>165</sup> She also believed that Eurojust would have its workload increased by the coordination role it would have to play between participating and non-participating Member States.<sup>166</sup> She described the Commission’s claim that the support provided by Eurojust to the EPPO should be on a zero-cost basis as “unrealistic”, and warned that the resource implications for Eurojust of the EPPO jeopardised “Eurojust’s ability to meaningfully contribute to the fight against serious cross-border crime”.<sup>167</sup> In her supplementary evidence taking account of the Presidency’s proposed text she warned of the high costs inherent in the establishment of the EPPO as envisaged by the text. She concluded that “it will not be feasible for Eurojust to support this ambitious EPPO project on the basis of its current means”.<sup>168</sup>

76. The Government’s views were constrained by the fact that Council discussion of the Eurojust proposal had so far been overshadowed by the EPPO.<sup>169</sup> It pointed out that the text of the Commission’s EPPO proposal did not consider the position of states participating in Eurojust but not the EPPO. It did though reject the principle that Eurojust should be obliged to act on EPPO requests for action and information.<sup>170</sup> As with OLAF, the Home Secretary promised to work to ensure that Eurojust would continue to operate “as we wish [it] to”.<sup>171</sup>
77. The potentially detrimental impact of the EPPO on Eurojust cannot be underestimated, and all our witnesses were clear that the creation of the EPPO would have profound practical and resource implications for Eurojust. This would, in turn, have an impact on Eurojust’s ability to support all EU Member States, not just those Member States participating in the EPPO, in their efforts to combat crime.
78. **We urge that the Regulation reforming Eurojust and establishing the EPPO should clearly address the position of non-participating Member States. It should include provisions to ensure that the establishment of the EPPO will not adversely affect the ability of Eurojust to support all Member States regardless of their participation in the EPPO.**
79. There is also a risk that the UK’s continued membership of Eurojust will be placed in jeopardy unless the proposals deal adequately both with Eurojust’s interrelationship with the EPPO, and with the position of the non-participating EPPO Member States. Last year the Government decided not to opt in to the negotiation of the proposed Eurojust Regulation, in part because of the provisions in the Eurojust proposal addressing the EPPO. A solution must be found that will enable Eurojust to continue to provide a

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<sup>165</sup> [Q 46](#)

<sup>166</sup> [Q 47](#)

<sup>167</sup> Written evidence from Eurojust ([PPO0003](#))

<sup>168</sup> Supplementary written evidence from Eurojust ([PPO0023](#))

<sup>169</sup> [Q 53](#)

<sup>170</sup> Written evidence from the Home Office ([PPO0002](#))

<sup>171</sup> [Q 56](#)

service both to Member States which are not participating in the EPPO, and also the EPPO itself and those Member States that fully participate within it.

80. **We seek assurances from the Government that it is taking adequate steps to ensure that all parties involved in discussion of the EPPO and of its impact upon Eurojust are made aware that the position of non-participating Member States must be considered as a key part of this discussion.**

## **SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

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### **Exclusive competence and the EPPO's potential workload**

1. We are concerned that under the Commission's proposal the EPPO is at risk of being overwhelmed by its workload; this risk would be particularly acute for an EPPO enjoying exclusive competence for all PIF crimes in conjunction with a shared responsibility for ancillary offences. (Paragraph 23)
2. If the principle is retained that the EPPO should share competence for PIF crimes and ancillary offences with participating Member States, we urge all those involved in negotiations to ensure that the text includes clear rules for the operation of shared competence. (Paragraph 29)

### **The EPPO's structure**

3. It is essential that the EPPO's structure should be robust and capable of effectively monitoring investigations in the Member States while supporting fast and efficient investigation decisions; both the Commission's model and the college model currently fail to achieve this aim. (Paragraph 41)
4. We recommend that the Government should do more in the Council and the Commission to promote its vision of how to address the problem of fraud on the EU's budget; namely, by means of fraud prevention and improved accountability of the mechanisms governing the management of EU funds. (Paragraph 44)

### **The EPPO's impact on the non-participating Member States**

5. We are concerned by the Home Secretary's intimation that the UK might not be legally obliged to respond to requests for assistance from the EPPO, particularly given the risk that a UK unable (or unwilling) to cooperate with the EPPO's requests could become a safe haven for illegally obtained EU funds. We recommend that the Home Office urgently initiate a consultation on the legislative changes necessary in order to ensure that the UK authorities and courts are able to respond to requests for assistance from the EPPO. (Paragraph 55)

### **The EPPO's impact on OLAF**

6. It is deeply disappointing that the Commission failed to address the EPPO's impact on OLAF and the knock-on effect for non-participating Member States in its proposal. It is of paramount importance that the relationship between OLAF and the EPPO should be defined within the Regulation and that due regard should be given to the position of the non-participating Member States. (Paragraph 66)
7. We further recommend to the Government that it should seek to ensure that the text of the Regulation provides an assurance that the quality and level of assistance received by the UK from OLAF will not be diminished following the establishment of the EPPO. (Paragraph 67)

### **The EPPO's impact on Eurojust**

8. We urge that the Regulation reforming Eurojust and establishing the EPPO should clearly address the position of non-participating Member States. It

should include provisions to ensure that the establishment of the EPPO will not adversely affect the ability of Eurojust to support all Member States regardless of their participation in the EPPO. (Paragraph 78)

9. We seek assurances from the Government that it is taking adequate steps to ensure that all parties involved in discussion of the EPPO and of its impact upon Eurojust are made aware that the position of non-participating Member States must be considered as a key part of this discussion (Paragraph 80)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATION OF INTERESTS

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### Members

Lord Anderson of Swansea  
Lord Blair of Boughton  
Baroness Corston (Chairman)  
Lord Dykes  
Baroness Eccles of Moulton  
Viscount Eccles  
Lord Elystan-Morgan  
Lord Hodgson of Astley Abbotts  
Baroness Liddell of Coatdyke  
Baroness O'Loan  
Baroness Quin  
Lord Rowlands (until May 2014)  
Lord Stoneham of Droxford

### Declaration of Interests

No interests relevant to the subject-matter of the report were declared by Members of the Sub-Committee.

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell of Aynho  
Earl of Caithness  
Lord Cameron of Dillington  
Baroness Corston  
Baroness Eccles of Moulton  
Lord Foulkes of Cumnock  
Lord Harrison  
Baroness Hooper  
Lord Kerr of Kinlochard  
Lord MacLennan of Rogart  
Baroness Prashar  
Baroness Quin  
Earl of Sandwich  
Baroness Scott of Needham Market  
Lord Tomlinson  
Lord Tugendhat  
Lord Wilson of Tillyorn

During consideration of the report the following Members declared an interest:

Lord Kerr of Kinlochard  
*Chairman, Centre for European Reform*

A full list of Members' interests can be found in the Register of Lords Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

## **APPENDIX 2: LIST OF WITNESSES**

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Evidence is published online at [www.parliament.uk/european-public-prosecutor-office](http://www.parliament.uk/european-public-prosecutor-office) and available for inspection at the Parliamentary Archives (020 7219 5314)

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \*\* gave both oral evidence and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### **Oral evidence in chronological order**

**	Professor Dr Katalin Ligeti, Professor of Criminal Law, University of Luxembourg	<a href="#"><u>QQ 1–13</u></a>
**	Professor Valsamis Mitsilegas, Professor of European Criminal Law, Queen Mary, University of London	
*	James MacGuill, Chairman, Criminal Law Committee, Council, Council of Bars and Law Societies of Europe	<a href="#"><u>QQ 14–33</u></a>
**	Dr Anna Bradshaw, Member of the Law Society’s EU Committee	
**	Mike Kennedy, former President, Eurojust and former Chief Operating Officer, Crown Prosecution Service	
**	Giovanni Kessler, Director-General European Commission European Anti-Fraud Office (OLAF)	<a href="#"><u>QQ 34–43</u></a>
**	Ms Michèle Coninx, President, Eurojust	<a href="#"><u>QQ 44–50</u></a>
**	Rt. Hon. Theresa May MP, Home Secretary	<a href="#"><u>QQ 51–61</u></a>
**	Emma Gibbons, Deputy Director, International Directorate, Home Office	
**	Sunil Teeluck, Legal Adviser, Home Office	

### **Alphabetical list of all witnesses**

	The Association of Chief Police Officers	<a href="#"><u>PPO0019</u></a>
	City of London Police	<a href="#"><u>PPO0015</u></a>
	Crown Office and Procurator Fiscal Service (COPFS)	<a href="#"><u>PPO0020</u></a>
	Jorge Espina, General Prosecutor’s Office of the Kingdom of Spain	<a href="#"><u>PPO0012</u></a>
**	Eurojust (QQ 44–50)	<a href="#"><u>PPO0003</u></a>
		<a href="#"><u>PPO0004</u></a>
		<a href="#"><u>PPO0005</u></a>
		<a href="#"><u>PPO0006</u></a>
		<a href="#"><u>PPO0007</u></a>
		<a href="#"><u>PPO0008</u></a>
		<a href="#"><u>PPO0009</u></a>

**	Eurojust (QQ 44–50) [continued]	<a href="#"><u>PPO0010</u></a>
		<a href="#"><u>PPO0011</u></a>
		<a href="#"><u>PPO0023</u></a>
**	European Commission European Anti-Fraud Office (OLAF) (QQ 34–43)	<a href="#"><u>PPO0014</u></a>
		<a href="#"><u>PPO0025</u></a>
	Europol	<a href="#"><u>PPO0013</u></a>
**	Home Office (QQ 51–61)	<a href="#"><u>PPO0002</u></a>
**	Mike Kennedy, former President, Eurojust and former Chief Operating Officer, Crown Prosecution Service	<a href="#"><u>PPO0017</u></a>
**	The Law Society of England and Wales	<a href="#"><u>PPO0016</u></a>
		<a href="#"><u>PPO0024</u></a>
**	Professor Dr Katalin Ligeti, Professor of Criminal Law, University of Luxembourg (QQ 1–13)	<a href="#"><u>PPO0022</u></a>
	Professor John A E Vervaele, Professor of Economic and European Criminal Law, University of Utrecht	
**	Professor Valsamis Mitsilegas	<a href="#"><u>PPO0026</u></a>
	Dr Marianne Wade, Senior Lecturer and Director of the Institute of Judicial Administration, Birmingham Law School, University of Birmingham	<a href="#"><u>PPO0021</u></a>

### APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords EU Committee, chaired by Lord Boswell of Aynho, is launching an inquiry into the European Public Prosecutor's Office (EPPO) and its potential implications for the United Kingdom. We invite you to contribute evidence to this inquiry. Written evidence is sought by **Thursday 10 April 2014**. The inquiry will be conducted by the Justice, Institutions and Consumer Protection Sub-Committee, chaired by Baroness Corston.

#### Background

On 17 July 2013 the Commission published its proposals dealing with the establishment of the EPPO under Title V of the Treaty on the Functioning of the European Union (TFEU).<sup>172</sup>

The proposal would create the EPPO as a “body of the Union” with a separate legal personality. It would be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, offences affecting the financial interests of the Union as broadly defined. The prosecution function would be carried out in the criminal courts of the Member States. The competence of the EPPO to investigate and prosecute these offences would be exclusive, which means that national police and prosecution authorities would be excluded from doing so without permission from the EPPO.

The EPPO would also be competent to investigate and prosecute other offences inextricably linked to an offence affecting the financial interests of the Union. It would be headed by a central European Public Prosecutor (EPP) assisted by Deputies and a staff. In each Member State there would be at least one European Delegated Prosecutor (EDP) who would be “an integral part” of the EPPO. National authorities would be under an obligation actively to assist and support the EPPO, and in particular to bring possible offences to the attention of the EPPO. The EPP would be able to choose the jurisdiction to prosecute and with the EDP would have the same powers as national prosecutors and a specific power to discontinue a prosecution—including by taking a lump sum fine from the defendant.

There are provisions in the proposal enabling the EPPO to co-operate with EU agencies and bodies, third countries, international organisations and Interpol. The co-operation with Eurojust is particularly deep including: sharing information which the EPPO has acquired and which is outside of its remit; EPPO's access to Eurojust's case management system; the exchange of personal data; and a power for the EPPO to call upon Eurojust for back office and other support.

The Coalition Agreement indicates that the UK will not opt in to an EPPO proposal and, under the European Union Act 2011, a referendum would be required approving the UK's participation before it could do so.

During the summer, enough national parliaments submitted reasoned opinions on the proposal to reach the ‘yellow card’ threshold. On 4 December, the Commission

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<sup>172</sup> [COM\(2013\) 534](#)



published a formal response to the ‘yellow card’. Upon reviewing its proposal, the Commission has decided to press ahead under enhanced cooperation.<sup>173</sup>

Particular questions raised to which we invite you to respond are as follows (there is no need for individual submissions to deal with all of these issues)

1. Is the proposed structure of the EPPO, as a supranational authority, the right one? Are there other models which would be more appropriate, for example the collegiate model followed by Eurojust?
2. Should the EPPO have exclusive competence in matters affecting the EU’s budget? Or should the competence be shared with Member States?
3. What effect would the EPPO as proposed have on the UK’s investigative, prosecuting and judicial systems?
4. What would be the effect of establishing the EPPO as proposed on Eurojust, OLAF, Europol and other EU agencies?
5. How would the operation of the EPPO as proposed affect the relationship of the UK’s investigation, prosecuting and judicial authorities with those of:
  - (a) participating Member States;
  - (b) non-participating Member States; and
  - (c) third countries?

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<sup>173</sup> [COM\(2013\) 851](#)