



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2013)

Opinion

Title

DG JUST/OLAF - Impact Assessment on a Proposal for a Regulation setting up a European Prosecutor's Office (EPPO) to combat crimes against the Union's financial interests

(Resubmitted draft version of 23 April 2013) *

(A) Context

Both the Union and the Member States have a duty "to counter fraud and any other illegal activities affecting the financial interests of the Union" as well as to "afford effective protection" to such interests. Despite this clear obligation the Union's financial interests are still not protected sufficiently. The Union's current actions to protect these interests include administrative investigations, controls and audits, as well as legislative action, including the Commission's proposal for a Directive on the fight against fraud to the Union's financial interest by means of criminal law, appear not to address the deficiencies identified. Whilst current and planned actions at Union level will have a positive effect on the protection of the EU's financial interests, they do not necessarily address the deficiencies with respect to the investigation and prosecution of criminal offences. This gap in the "enforcement cycle" is the focus of this report.

(B) Overall opinion: POSITIVE

While the report has been improved along the lines of the Board's first opinion it should be further strengthened in a number of respects. The reasoning as to why some Member States can achieve over 90% conviction rates for crimes relating to EU finances despite the apparent weaknesses in the EU governance framework should be further strengthened. There is also scope to better explain the divergent performance of specific Member States in terms of investigation and prosecution. The report should better explain why several horizontal issues, such as the rules on cooperation between authorities and the procedural rules to be applied when handling offences related to EU finances are no longer addressed in this version of the report, given their potentially significant impacts. The report needs to better justify the significant jump in the expected benefits from deterrence and recovery for the decentralised EPPO option compared to the other options, in particular since these are directly linked to the estimate for overall levels of EU fraud which the report acknowledges is uncertain.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

(C) Main recommendations for improvements

(1) Strengthen the problem definition. While the analysis of the problem(s) has been refocused, particularly on the need to strengthen investigation and prosecution of criminal offences concerning EU financial interests and the gaps in the current framework are better explained, the reasoning as to why some Member States can achieve over 90% conviction rates for crimes relating to EU finances despite the apparent weaknesses in the EU regulatory architecture should be strengthened. There is scope also to better explain the data relating to the performance of different Member States and how this relates to the problems at hand. Where possible the performance of different Member States on EU related crimes should be compared with the performance of national systems in similar national offences.

(2) Strengthen the intervention logic. The Board notes that several horizontal issues which were addressed in the first version of this report, such as the rules on cooperation between authorities and the procedural rules to be applied when handling offences related to EU finances are no longer addressed in this version. The report should explain whether new rules in these areas could have significant impacts and why these issues are not addressed in this report given that they may form part of the legislative proposals. Concerning the objectives, the report should still identify a set of quantifiable operational objectives against which the success of the new EPPO (for example) could be assessed. More explanation should be given as to how the options, such as the decentralised EPPO, would work in practice and the differences between them.

(3) Improve the analysis of impacts. While greater attention has been paid to describing the institutional and organisational changes that each option will/will not deliver, the reasons why an EPPO will be more effective, given no increase in resources, should be further strengthened. Concerning the economic benefits, the report needs to better justify the significant jump in the expected benefits from deterrence and recovery for the decentralised EPPO option compared to the other options, in particular since these are directly linked to the estimates for overall levels of EU fraud which the report acknowledges is uncertain. The report should therefore test the robustness of the estimates of benefits through sensitivity analyses (i.e. variations in the assumed overall levels of EU fraud).

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

Stakeholders' views are better presented although there is scope to differentiate more between categories of stakeholders.

(E) IAB scrutiny process

Reference number	2013/JUST+/007
External expertise used	No
Date of IAB meeting	Written procedure An earlier version of this report was submitted to the IAB in March 2013, for which the Board issued an opinion on 12 April 2013