



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
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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

(draft version of 15 March 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: NEGATIVE

The report needs to be significantly improved in a number of important respects. The analysis should be refocused on the specific problem(s), which should be better aligned with the underlying drivers and solutions, by providing stronger argumentation, particularly on the need to strengthen investigation and prosecution concerning EU financial interests. In so doing, it should better explain how this initiative fits within the wider range of activities aimed at combatting EU fraud and why existing measures or those in the pipeline such as proposals to reform Eurojust and OLAF are not sufficient to address the problems identified. It should then discuss in greater depth the nature and scale of the weaknesses at the national level and explain why some Member States can achieve over 90% conviction rates for crimes relating to EU finances despite the apparent weaknesses in the EU architecture. The report should better explain how the options would work in practice, such as the governance structures for a new EPPO within Eurojust. It should better explain why the results of investigating or prosecuting offences relating to EU finances will be better in the future. It also should better explain the assumptions and methodology underlying the expected benefits and costs and in particular the basis for the relatively high estimates for deterrence/recovery of assets

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

and proceeds for the decentralised EPPO option compared to the other options. Given the acknowledged high uncertainty, the estimated costs and benefits should be presented with appropriate caution and suitably qualified.

Given the nature of these concerns, the IAB requests DG JUST and DG OLAF to submit a revised version of the IA report on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Strengthen the problem definition and the baseline scenario. The analysis of the problem(s) should be refocused on the specific problem(s), which should be better aligned with the underlying drivers and solutions, by providing stronger argumentation, particularly on the need to strengthen investigation and prosecution of criminal offences concerning EU financial interests. In doing so it should focus less on generally discussing the overall scale of fraud or irregularities relating to EU finance but should rather better explain how this initiative fits within the wider range of activities aimed at combatting EU fraud. In that context, the report should better identify and explain where exactly the gaps in the current EU framework are, including for proposals not yet adopted or currently in the legislative process such those to reform Eurojust and OLAF and the proposal to support the protection of EU financial interests by criminal law. It should provide more information and a better explanation of how these various measures complement each other and why existing measures or those in the pipeline have not proved sufficient to address the problems identified. It should discuss in greater depth the nature and scale of the weaknesses in investigating and prosecuting crimes relating to EU finances in the Member States and should better explain the underlying drivers i.e. why conviction rates at national level have ranged from 19,2% to 91,7%. It should also better explain why some Member States can achieve over 90% conviction rates for crimes relating to EU finances despite the apparent weaknesses in the EU architecture.

(2) Strengthen the intervention logic. Based on a more focussed problem definition, the report should establish a clearer linkage between the problems, objectives and the options. For example, the objective to ensure a higher degree of specialisation in investigation and prosecution of offences is not clearly identified as a problem or indeed as a feature of the options. To improve clarity, the report should therefore include a table or a diagram linking the options to the problems and objectives to establish a clear intervention logic. Concerning the objectives, the report should identify a set of quantifiable operational objectives against which the success of the new EPPO (for example) could be assessed. It should be considered whether some options could be discarded at an earlier stage enabling more attention to be devoted to the more realistic choices. More explanation should be given as to how the options would work in practice in particular as to the governance structures for a new EPPO within Eurojust. Options related to horizontal factors such as the need for complementary rules on cooperation between administrative and judicial authorities should also be more clearly linked back to specific investigation and enforcement problems.

(3) Improve the analysis of impacts. The report should better assess the likely effectiveness of the options, and in particular why, given that additional human resources are not envisaged, the overall effect on investigating or prosecuting offences relating EU finances will in the future be more positive. The report should include a more detailed assessment of the organisational impacts on EU bodies such as OLAF and Eurojust and better explain how these changes would fit with the other proposed changes affecting these bodies. It should explain in greater depth why a 'college type' structure is considered not to be as effective as a single

prosecutor approach and how this would function in light of the envisaged changes to Eurojust's structure. The report should better explain the assumptions and methodology underlying the expected benefits and costs. In particular, it should explain the basis for the relatively high estimates for deterrence/recovery of assets and proceeds for the decentralised EPPO option compared to the other options. Given the acknowledged high uncertainty the estimated costs and benefits should be presented with appropriate caution and suitably qualified.

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

The views of the different categories of stakeholders and Member States should be presented in a more balanced manner and better integrated throughout the text, particularly in the problem definition and the impacts of options section. The presentation and the analysis of the impacts of the different options against the baseline should be completed and the comparison of options across stakeholder groups should be strengthened.

(E) IAB scrutiny process

Reference number	2013/JUST+/007
External expertise used	No
Date of IAB meeting	10 April 2013