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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a Council Regulation

on the establishment of the European Public Prosecutor's Office

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1. PROBLEM DEFINITION

1.1. Limits of existing measures

Enforcement is often weak or deficient due to the absence of a European enforcement structure, the lack of continuity in enforcement action and the lack of an underlying common European prosecution policy. Whereas offences affecting the EU's financial interests are genuine European crimes, the current institutional and legal framework suffers from a fragmented enforcement regime almost solely based on national responses.

In addition, whilst Eurojust and Europol can and do assist the Member States in dealing with these cases, neither of these organisations can address all of the issues identified, in particular due to the fact that they cannot direct national investigations and prosecutions. Although OLAF is a key player at EU level in the fight against fraud and irregularities, it is limited in its activities to administrative investigations, and submitting the results to national authorities, who may decide against any criminal law follow-up.

Existing and planned measures, including the Commission's Anti-Fraud Strategy (CAFS) and the reforms of Eurojust, Europol and OLAF are insufficient to address these problems, even if all possibilities offered by the Treaty were to be used to the maximum extent.

1.2. Low levels of investigation, prosecution and deterrence

Prosecuting offences against the EU budget is generally considered of secondary importance by the authorities in a number of Member States. As there is no EU authority for investigation and prosecution of cross-border offences affecting the EU's financial interests, national law enforcement efforts remain fragmented.

Current levels of information exchange and coordination at national and European level are insufficient to effectively prosecute offences affecting the EU's financial interests. Coordination, cooperation and information exchange obstacles occur at different levels and between different authorities and are a major impediment to the effective investigation and prosecution of offences affecting the EU's financial interests.

Only a very small part of the total amount of fraud is ever recovered from criminals: below 10%. The deterrent effect of the current enforcement regime is therefore insufficient.

There is no centrally placed body that can deal with these obstacles and ensure continuity in the investigation and prosecution process.

2. RIGHT TO ACT, SUBSIDIARITY AND FUNDAMENTAL RIGHTS

2.1. Legal basis

Article 86 TFEU states that the EPPO will have to combat crimes against the financial interests of the EU, must be established ‘from Eurojust’, and shall be responsible for investigating, prosecuting and bringing to justice the perpetrators of these offences. Article 86 TFEU also specifies a special legislative procedure for setting up the EPPO: the Council needs to decide this unanimously after obtaining the consent of the European Parliament.

2.2. Subsidiarity and need for EU action

Member States' criminal investigation and prosecution authorities are currently unable to achieve an equivalent level of protection and enforcement. As the EU is best placed to protect its own financial interests, taking into account the specific EU rules which apply in this field, it is also best placed to ensure the prosecution of offences against these interests.

3. OBJECTIVES

Objectives:	
General	<ul style="list-style-type: none">• To contribute to the <u>strengthening of the protection of the Union's financial interests</u> and further development of an area of justice, and to enhance the trust of EU businesses and citizens in the Union's institutions, while respecting all fundamental rights enshrined in the Charter.
Specific Operational /	<ul style="list-style-type: none">• To establish a <u>coherent European system for investigation and prosecution</u> of offences affecting the EU's financial interests.• To ensure a more <u>efficient and effective investigation and prosecution</u> of offences affecting the EU's financial interests.• To <u>increase the number of prosecutions, leading to more convictions and recovery</u> of fraudulently obtained Union funds.• To ensure <u>close cooperation and effective information exchange</u> between the European and national competent authorities.• To <u>enhance deterrence</u> of committing offences affecting the EU's financial interests.

4. POLICY OPTIONS AND THEIR IMPACT

Options not establishing a European Public Prosecutor's Office

4.1. Policy option 1: Base-line scenario - No policy change

No new action would be taken at EU level. Offences affecting the EU's financial interests would continue to be prosecuted solely at national level.

4.2. Policy option 2: No new regulatory actions at EU level

No legislative action would be taken at EU level, and no new bodies would be set up. However, national and Union-level actions to fight the relevant offences would be strengthened through non-legislative measures.

4.3. Policy option 3: Strengthening of the powers of Eurojust

This option would mean that Eurojust would be given new powers to trigger investigations throughout the Union. Eurojust and its national members would have the right to give binding instructions to national prosecution services to initiate investigations and propose prosecutions in Member States in accordance with Article 85 TFEU.

Options for establishing a European Public Prosecutor's Office

4.4. Policy option 4a: Creation of an EPPO unit within Eurojust

This option would entail the creation of a central EPPO Unit within Eurojust, which would thus become the EPPO's holding structure as a "parent agency". An EPPO Unit would have exclusive jurisdiction over cases affecting the EU's financial interests, and would be composed of prosecutors and investigators specialised in financial crimes.

4.5. Policy option 4b: Creation of a College-type EPPO

Similar to how Eurojust is organised, the EPPO would be organised in the form of a College of national members appointed by the Member States, but with a clearer and stronger mandate for all members. The EPPO College would take majority decisions as regards investigations and prosecutions of offences affecting the EU's financial interests throughout the EU.

4.6. Policy option 4c: Creation of a decentralised EPPO

In this option the EPPO would consist of a central EU prosecutor's office assisted by European Delegated Prosecutors located in the Member States and integrated in national systems, having full prosecutorial authority under national law. The central office would have the hierarchical power of instruction over European Delegated Prosecutors. The EPPO would cooperate with the national police and prosecution services for carrying out its tasks, and would be responsible for bringing cases to trial.

4.7. Policy option 4d: Creation of a centralised EPPO

This option would entail the creation of a central EPPO possessing the full legal and practical capacity required to conduct investigations and prosecutions of the relevant offences, without depending on the national prosecution services.

4.8. Horizontal issues for options 4a-4d

1.1.1. Cooperation between the EPPO and Eurojust

The four options which entail the setting up of the EPPO need to address the crucial matter of its relationship with Eurojust. The sharing of administrative and functional services must be part of any option.

1.1.2. Use of OLAF resources in the setting-up of the EPPO

A part of OLAF's resources would be used in order to set up the EPPO, taking into account their experience in the conduct of investigations.

1.1.3. Cooperation with third countries

The different options identified for establishing the EPPO will also have to take account of the fact that the EPPO will need to cooperate with the authorities of third countries. However, the differences between the different options on this point are marginal and should not influence the final choice between them.

5. ASSESSMENT OF POLICY OPTIONS

5.1. Status quo (policy option 1) – Baseline scenario

Expected Impact	
Effectiveness in	Low. There are no reasons to expect that the weak incentives and the

meeting the policy objectives	frequently limited national capacity to deal with the complex nature of EU fraud cases will be overcome without decisive corrective measures.
Impact on fundamental rights	None. Fundamental rights will be unaffected. The Charter of Fundamental Rights will be applied only when EU law is involved, for example under the regime of the European Arrest Warrant.
Feasibility	High.
Impact on the legal system of Member States	None. The baseline scenario is the option that is the least intrusive of all options.
Impact on existing Union institutions	None.
Costs	None.
Benefits	Very small.

5.2. No new regulatory actions at EU level (policy option 2)

Expected Impact	
Effectiveness in meeting the policy objectives	Low. This option would to some degree contribute to the creation of a more coherent European system for investigation and prosecution of the relevant offences, thereby also possibly strengthening the deterrent effect of law enforcement. However, this contribution would remain limited.
Impact on fundamental rights	Low. Fundamental rights will <i>a priori</i> be little affected by this option.
Feasibility	Medium. This option will be difficult to implement in practice as it requires a multitude of efforts in different fields.
Impact on the legal system of Member States	Low. An improved use of Union bodies as well as MLA tools and similar judicial cooperation tools would have some positive impacts in Member States.
Impact on existing Union	Low. A limited effect on the functioning of Eurojust and OLAF can be expected.

institutions	
Costs¹	Moderate. Costs under this option would amount to about €35 million. ²
Benefits	The benefits of increased recovery and deterrence under this option are projected to be about €265 million.

5.3. A strengthened Eurojust (policy option 3)

Expected Impact	
Effectiveness in meeting the policy objectives	Low. The investigation and prosecution of the relevant offences would only be strengthened to a limited extent, as Eurojust would continue to have no authority over national prosecutions.
Impact on fundamental rights	Low. Fundamental rights will only be affected to a limited degree by this option.
Feasibility	High. The option would to a large extent build on existing institutions and relevant Union legislation.
Impact on the legal system of Member States	Low to medium. Eurojust would have the powers to initiate investigations and propose prosecutions, but the court proceedings as such would continue to be purely national.
Impact on existing Union institutions	Low to medium. Eurojust would in this option acquire some additional powers but would continue to be a European body composed of national members.
Costs	Medium. Costs under this option would amount to about €50 million.
Benefits	The benefits of increased recovery and deterrence under this option are projected to be about €400 million.

5.4. Creation of an EPPO unit within Eurojust (policy option 4a)

Expected Impact	
Effectiveness in meeting the policy objectives	Medium. Current national priorities could still override the EPPO Unit's priorities.
Impact on fundamental rights	Low. As in Option 3, with the necessity of judicial control as in Options 4b-4d.

¹ All costs and benefits are expressed in cumulative present values (in 2012 prices), over a period of 20 years.

² For details of the costs calculations please see Annex 4 to the Impact Assessment.

Feasibility	This option's political feasibility is limited, since conflicts of interest and differences in working culture between the EPPO Unit and Eurojust could influence the effectiveness of this option.
Impact on the legal system of Member States	Medium. Member States would need to adapt their systems to a new EPPO/Eurojust equipped with certain direct powers.
Impact on existing Union institutions	Medium to High. Eurojust would need to create a new administrative entity and ensure that the latter benefits from its administrative structures.
Costs	Moderate. Costs under this option would amount to about €40 million.
Benefits	The benefits of increased recovery and deterrence under this option are projected to be about €500 million.

5.5. College-type EPPO (policy option 4b)

Expected Impact	
Effectiveness in meeting the policy objectives	Low to Medium. The disadvantages associated with a College-type structure would negate most of the benefits.
Impact on fundamental rights	Medium. Improved coordination and cooperation could potentially have a slight impact on the protection of personal data.
Feasibility	Medium. The establishment of a College-type central office which would direct and coordinate investigations as well as decide on the prosecutions to be brought will have a negative impact on the feasibility of this option.
Impact on legal systems of Member States	Medium. The Member States would need to adapt their systems to the new competence of the EPPO to direct national law enforcement and prosecution authorities and intervene in national trials.
Impact on existing Union institutions	Medium to high. This option would have a limited impact on Eurojust. The remaining parts of OLAF would retain their competence to exercise certain administrative functions.
Costs	Moderate. Costs under this option would amount to about €70 million. ³
Benefits	Moderate. The benefits of increased recovery and deterrence under this option are projected to be about €500 million.

³ For the calculation of costs and benefits, see Annex 4 to the Impact Assessment.

5.6. EPPO with decentralised hierarchical organisation (policy option 4c)

Expected Impact	
Effectiveness in meeting the policy objectives	High. This option implies the establishment of a specialised body which handles both investigations and prosecutions in a coordinated and integrated manner.
Impact on fundamental rights	Medium. Improved coordination and cooperation could potentially have a slight impact on the protection of personal data.
Feasibility	Medium to high. Consultations with stakeholders confirm that this should be a feasible option.
Impact on legal systems of Member States	Medium. The Member States would need to adapt their systems to the new competence of the EPPO to direct national law enforcement and prosecution authorities and intervene in national trials.
Impact on existing Union institutions	Medium to high. This option would have a limited impact on Eurojust. A reduced OLAF would retain its competence to exercise certain administrative functions.
Costs	Moderate. Costs under this option would amount to about €370 million.
Benefits	The benefits of increased recovery and deterrence under this option are projected to be about €3 200 million.

5.7. EPPO with centralised hierarchical organisation (policy option 4d)

Expected Impact	
Effectiveness in meeting the policy objectives	High. The EPPO would be given powers to control and steer investigations.
Impact on fundamental rights	Medium to high. The analysis made as regards option 4c applies here too.
Feasibility	Medium. This option would imply very important changes in the administrative and judicial systems of the Member States.
Impact on the legal system of Member States	High. Member States would need to adapt their systems to a new external body intervening directly in national courts.
Impact on existing Union institutions	High. Same as for options 4b and 4c.
Costs	Medium to high. Costs under this option would amount to about €820 million.

Benefits	The benefits of increased recovery and deterrence under this option are projected to be about €2 900 million.
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5.8. The horizontal issues

1.1.4. Cooperation of the EPPO with Eurojust

For their mutual benefit, the sharing of Eurojust's administrative and support services with the EPPO seems not only necessary but also feasible.

1.1.5. Use of OLAF resources in the setting-up of the EPPO central office-implications

A part of OLAF's current resources would serve for the setting up of the EPPO central office. However, certain administrative investigation functions of OLAF which are not of a criminal nature must continue to be exercised.

1.1.6. Cooperation with third countries

As stated above, the difference between the options in this respect do not justify using this criterion as decisive for the choice between the different options

6. COMPARATIVE ASSESSMENT

Objectives/ costs	Policy option 1	Policy option 2	Policy option 3	Policy option 4a	Policy option 4b	Policy option 4c	Policy option 4d
Meeting the policy objectives	Low	Low	Medium	Medium	Medium	High	High
Annual net benefit⁴	No major impact	€25 million	€35 million	€50 million	€50 million	€315 million	€250 million
Cost effectiveness⁵	-	Low	Medium	Medium	Medium	High	Medium
Impact on fundamental rights	-	Low	Low	Low	Medium to High	Medium to high	Medium to High
Feasibility	High	High	High	Medium	Medium	Medium to High	Medium
Impact on existing Union institutions	-	Very low	Low to Medium	Medium to High	Medium to High	Medium to high	High
Impact on legal systems of Member States	-	-	Low	Medium	Medium	Medium	High

⁴ See Annex 4 for further details.

⁵ Indicates the results of the cost/benefit analysis per option.

7. ENHANCED COOPERATION

As indicated above, the Treaty foresees the possibility of establishing the EPPO through enhanced cooperation, should decision-making by unanimity fail in the Council. This Impact Assessment does not examine in detail what the specific impact of the various options would be under a different legislative procedure.

8. MONITORING AND EVALUATION

The Commission envisages carrying out a specific statistical study two to four years after the set-up of the EPPO is completed. The study should in particular analyse the number of cases and amounts involved in the activities of the EPPO.