



Informal Justice and Home Affairs Ministers' meeting 8-9 July 2014, Milano

Discussion Paper

Judicial control and judicial review in the Regulation on the establishment of the European Public Prosecutor's Office

Background

The establishment of a European Public Prosecutor Office (EPPO) will be a crucial step in the creation of a single area of Justice where the Union's financial interests are granted an effective and equivalent protection, including by way of criminal prosecutions.

This process must be accompanied with the highest level of guarantees in relation to procedural safeguards and the judicial review of the investigation measures, the prosecution decisions and trial proceedings.

The proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office raises a number of issues about the role for national judicial authorities with regard to the actions of the EPPO in a number of contexts, mainly:

a) Investigation measures (Article 26): The proposal foresees that Member States shall ensure that the most intrusive investigative measures available to [requested or ordered by] the EPPO (as specified in the text) are subject to authorization by the competent judicial authority of the Member State where they are to be carried out. Other investigative measures foreseen in the Regulation shall be subject to judicial authorization if required by the national law, but can otherwise be ordered directly by the EPPO. The EPPO may also request from the competent judicial authority the arrest or pre-trial detention of the suspected person in accordance with national law.

b) Dismissal of a case/Transactions (Article 28-29): The proposal foresees that the EPPO may dismiss a case on specific grounds defined in the text of art. 28 and 29.

Article 28, the general provision on dismissals, which provides for grounds of both mandatory (para. 1) and facultative (para. 2) dismissal, does not foresee (nor explicitly excludes) the judicial review of dismissal decisions.

Against this general background, the specific provision on transactions (Article 29) expressly excludes the judicial review of the dismissal following a transaction decision; the current text of the proposal also seems to exclude any other role for a judicial authority (e.g. under the form of a previous "authorization" or an endorsement) along all the phases of the transaction procedure.

c) Judicial review (Article 36): The proposal foresees that the EPPO shall be considered as a national authority for the purpose of judicial review. National Courts will thus be competent to review the procedural measures adopted by the EPPO. It is also understood that the European Court of Justice *may*, and in case of courts of last resort *must*, be involved through the preliminary rulings procedure (Art. 267 TFEU).

Questions

In light of the above, the Presidency invites Ministers to consider the following questions:

- 1) Does the proposal provide an appropriate system of judicial review of the actions of the EPPO? If not, what additional or alternative rules should be introduced?**

- 2) In particular, does the regulation need to foresee that some or all categories of dismissal decisions, including transactions, are subject to judicial review? If so, according to what method and by which jurisdiction?**