



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 June 2013

11628/13

**EUROJUST 50
COPEN 101
DROIPEN 83**

COVER NOTE

From: Eurojust
To: delegations
Subject: Meeting of the Consultative Forum
of Prosecutors General and Directors of Public Prosecutions
of the Member States of the European Union
The Hague - 26 April 2013

Delegations will find in the Annex Conclusions on the practical operation of the proposed European Public Prosecutor's Office (EPPO) at national level as well as a summary of the replies to the questionnaire on the EPPO.

CONCLUSIONS
ON
THE PRACTICAL OPERATION OF THE PROPOSED
EUROPEAN PUBLIC PROSECUTOR’S OFFICE AT NATIONAL LEVEL

On 25 April 2013, the practical operation of the proposed European Public Prosecutor’s Office (EPPO) was discussed in a Workshop comprising members of the Consultative Forum, other experts from the Member States, members of the College of Eurojust and representatives of the EU institutions. This Workshop encompassed four working groups, each one focusing on a specific phase or relevant aspects of the work of the EPPO. In particular, starting from a common case study and some questions raised in a discussion paper circulated prior to the meeting: working group 1 was devoted to “Preliminary phase and initiation of investigations”; working group 2 to “From investigation to prosecution and trial”; working group 3 to “Gathering and admissibility of evidence”; working group 4 to “Practical cooperation with non-participating Member States and third States”. The conclusions of the working groups were presented and further discussed by the Forum members during the meeting of the Consultative Forum that was held on 26 April 2013. The main goal of this discussion was to present the opinion of the Consultative Forum on the practical operation of the proposed EPPO at national level to the EU legislator.

The main outcome of the discussion in the Consultative Forum and the advance written contributions of the Forum members¹ can be summarised as follows:

General aspects:

Common views were shared by the Forum members on the following aspects:

1. The EPPO must bring real added value to the work of national prosecutors. To this end, it will be crucial to establish clear rules on competence and powers to act, on judicial review and on accountability. The question of pre-eminence, either of the EPPO or of national authorities, should also be determined.

¹ A questionnaire on “The establishment of a European Public Prosecutor’s Office” was prepared by the Irish Presidency and circulated to the Forum members prior to the meeting of 26 April 2013. A summary of Forum members’ replies to such questionnaire is attached to these Conclusions (see Annex).

2. The EPPO must be independent from European institutions and in some respects from national authorities. Continuous dialogue, consultation and synergies with national authorities will be required.
3. In several Member States, the setting up of the EPPO will require profound constitutional and statutory changes, for instance in systems where the investigative and prosecutorial functions are split or where national prosecutors are independent and have the authority to prosecute all serious crimes under their jurisdiction.

The replies provided by Forum members to the questionnaire prepared by the Irish Presidency on “The establishment of a European Public Prosecutor’s Office” show that the independence and the decision-making authority of Prosecutors General vary in a significant way across the Member States, depending on the operating legal national systems. The same can be stated with regard to the authorities competent for investigations and prosecutions in the Member States: the authorities responsible for initiating and directing investigations, starting, directing or discontinuing prosecutions, or seeking international cooperation are different across the Member States, depending on the applicable national rules.

Specific aspects:

Structure

4. All Forum members agreed on the merits of a decentralised model well integrated in the national systems. However, different views were expressed as to how such model could best work in each Member State: either by means of national EPPO delegates, with a “single hat” or with “two hats”; or exclusively via a central European Public Prosecution Office with its own statutory power and personnel; or even by means of an EPPO referring cases to national authorities which would then make their own decisions.

5. In any event, it was generally felt that the two-hat position of EPPO delegates in the Member States could provide practical solutions to many issues possibly arising in the operation of the EPPO (e.g. easier access to national databases, handling of connected cases, use of existing EU / international instruments with non-EPPO Member States / third States). According to some Forum members, however, such a system can also create problems (e.g. with regard to independence, accountability, conflicts of priorities, status). This is why, for the majority of the Forum members, a clear definition of the role and status of national prosecutors when acting as EPPO is of major importance.
6. Several Forum members considered that the EPPO delegates should have the status of public prosecutors; several members specified that the EPPO delegates should be granted a high hierarchical position so as to have more independence and more powers when taking judicial decisions at national level; others suggested that the EPPO delegates should be placed in specialised prosecution offices. In any event, it was felt that EPPO delegates should be provided with minimum harmonised powers in all Member States.
7. The Consultative Forum took note of the common position of the Ministers of Justice of France and Germany. Significant concerns were raised as to the collegial structure proposed for the EPPO at central level by this common position paper: several Members stressed that such structure would not be compatible with the responsibilities of an effective “European Public Prosecutor”, who should be provided with decision-making powers that require a hierarchical structure. On the other hand, it was pointed out that this structure has the potential to build trust between Member States with varying rules. However another key feature of that proposal that EPPO prosecutors would have “double hats” was widely seen to have many advantages as outlined at paragraph 5.

Competence-related issues

8. It was recognised that the harmonisation of offences which would form the scope of competence of the EPPO is essential for effective prosecution in all Member States. In this regard, the adoption of the PIF Directive currently under discussion is expected.
9. All Forum members agreed that clear criteria are needed to define the respective competences of the EPPO and the national authorities. In this respect, it was generally felt that a mere monetary criterion, such as the proposed fixed threshold of € 10,000, would not be appropriate or, at least, not sufficient. Some Forum members suggested that those criteria should include the seriousness of the case, and the availability of resources at national level. During the discussion, reference was made to the Draft European Model Rules for the Procedure of the future European Public Prosecutor's Office, resulting from the research project of the University of Luxemburg ("Draft Model Rules")¹.
10. Many Forum members stressed that overlaps and duplications can happen in practice, in particular in "connected cases", i.e., in cases relating to an offence affecting both the financial interest of the Union (PIF-crime) and national interests and cases of PIF crimes committed in conjunction with other types of crimes. Several Forum members suggested that such cases should be handled as one case in order to avoid the risk of double jeopardy and to guarantee fundamental rights. Diverging opinions, however, were expressed with regard to the authority competent to investigate or prosecute such cases, i.e., either the EPPO or the national authorities.
11. In any event, several Forum members observed that a flexible approach is needed in cases where a national investigation is already effectively dealing with PIF-crimes. In such cases, transfer of competence to the EPPO should not become mandatory, a flexible approach should prevail and any unnecessary bureaucracy should be avoided.

¹ Rule 3 of the Draft Model Rules.

12. Some Forum members suggested that the competent jurisdiction could be agreed on a case-by-case basis, while others stressed that the decision on the competent jurisdiction should always be taken on the basis of clear criteria, pre-defined by law. In particular, some Members underlined that the EPPO should have exclusive competence, while keeping the possibility to refer a case back to the national authorities, and that legal certainty should be guaranteed, so as to safeguard the rights of the defence and to prevent any violation of the *ne bis in idem* principle.
13. Views diverged also with regard to the authority which should resolve disputes on issues of competence. According to some Forum members, it should be the responsibility of national authorities; according to others, it should be the EPPO, either via the central Office or the EPP national delegates; for a few others, such decisions should be taken by the European Court of Justice.

Information flow and initiation of investigations

14. Several Forum members underlined that, to be truly operational and efficient, the EPPO should have access to any relevant databases, in the same way as a national prosecutor would have. However, national regulations should apply and issues related to data protection could arise.
15. It was generally agreed that all competent authorities should inform the EPPO of any crime that could constitute an offence falling under its competence. Yet, some Forum members underlined that such an obligation may result in a too heavy burden for their national authorities due to a large number of small PIF cases detected and investigated in their jurisdictions. However, the EPPO should be proactive and able to initiate its own investigations without having to wait to be informed, including by giving instructions to the EPP national delegates. In particular, the EPPO should start an investigation when it has reasonable grounds to suspect that an offence under its competence has been committed. Some Forum members suggested that common standards of suspicion should be established.

Investigations, prosecutions and applicable rules for gathering and admissibility of evidence

16. It was generally agreed that, although acting in a single legal area (principle of European territoriality), the EPPO will need to be able to effectively coordinate investigations and prosecutions in cross-border cases, i.e., in cases involving two or more Member States participating in the EPPO. Clear rules and mechanisms will have to be defined to this end.
17. Some Forum members underlined that clear criteria will also be needed in order to determine the Member State in which the prosecution should be initiated and in which the trial should eventually take place. It was felt that the Draft Model Rules¹ might provide some guidance in this respect.
18. As to the applicable procedural rules, the majority of Forum members suggested that the rules of the Member States in which the criminal investigation/prosecution is to be conducted should apply. It was observed, however, that major problems may arise when two or more Member States are involved, for instance with regard to the admissibility of evidence.
19. In this regard, while the wide variety of procedural, evidential, investigative rules amongst Member States were identified, it was acknowledged that each achieved its own balance. Therefore, several Forum members were inclined to favour a pragmatic approach: accordingly, the best and easiest solution would be to use existing national procedural rules which are already part of effective systems, recognised by national judicial authorities and clearly established for accused and prosecution. These considerations endorsed the overall view of the Forum that whatever model is employed, it should be decentralised and integrated as much as possible within the existing structure of each Member State. Benefits would also accrue the earlier the Member State in which the prosecution is to be conducted was identified.

¹ Rule 64.

20. Moreover, it was suggested to complement the application of those existing rules by a set of EU minimum common procedural rules aimed at reducing the risk of inadmissibility of evidence before national courts (that would more easily accept evidence gathered in compliance with standard rules), guarantee fundamental rights and avoid forum shopping. However, some Forum members observed that the adoption of a full new set of procedural rules might be difficult to reach in a reasonable time. It was also remarked that the proposed Draft Model Rules are too ambitious and detailed and, sometimes, inconsistent with existing national rules. For instance, a particular problem was noted in relation to rule 19 of the Draft Model Rules, which impose an admissibility of evidence principle which was acknowledged might be inconsistent with common law jurisdictions, and might require fundamental constitutional changes. For these reasons, full incorporation of those rules was deemed impracticable at this point in time.

Practical cooperation with non-participating (non-EPPO) Member States and third States, and Eurojust's role

21. Since PIF-cases can easily have a transnational dimension, it will be crucial for the EPPO to interact with Member States that will not be part of the EPPO and third States. As mentioned above under point 5., some Forum members observed that EPPO delegates with a two-hat position could facilitate cooperation, by making use of existing EU and international instruments applicable in the relations between their Member State and other non-EPPO Member States or third States. On the other hand, if EPPO delegates would be acting as “European” authorities, it would be necessary for the EPPO to conclude specific MLA agreements and international treaties. However, that solution was not considered as being practicable.

22. It was generally agreed that Eurojust can bring clear added value to the work of the EPPO. For example, given its function and experience, Eurojust could effectively assist in parallel investigations also including non-EPPO Member States (e.g. prevention and solution of conflicts of jurisdiction, set up of Joint Investigation Teams, hold coordination meetings et cetera). Furthermore, Eurojust could also facilitate investigations and prosecutions in cases of connected crimes, or facilitate judicial cooperation and coordination in cases involving third States, or assist in the referral of cases from the national authorities to the EPPO.

Judicial review and accountability

23. The majority of Forum members agreed that the decisions of the EPPO should be subject to judicial review. However, diverging views were expressed as to the authority which should be competent for such review: according to some members, it should be the national courts, others preferred the European Court of Justice; according to several others, the competent authority (either the national courts or the European Court of Justice) should be determined according to the cases; a few members also mentioned the need to establish a new European criminal court for this specific purpose.
24. Most Forum members highlighted the need for a form of accountability for the EPPO but they also emphasised the importance of the independence of the EPPO. While few Forum members would place the responsibility for this task on the central EPPO, several Forum members considered that this function would be better placed with the European Parliament and a few considered other EU institutions (either the Council or the European Commission) appropriate.

**SUMMARY OF THE REPLIES TO THE QUESTIONNAIRE ON THE EPPO
WORKSHOP ON THE EPPO AND CONSULTATIVE FORUM MEETING
(THE HAGUE, 25-26 APRIL 2013)**

This summary has been prepared on the basis of the 24 replies provided to date (11 June 2013) by the Forum members to the questionnaire on “The establishment of a European Public Prosecutor’s Office”, generated by the Irish Presidency and circulated to the Forum members prior to the meeting.

The replies have been submitted by the Forum members of the following Member States¹: Austria (AT), Belgium (BE), Bulgaria (BG), Czech Republic (CZ), Germany (DE), Denmark (DK), Greece (EL), Spain (ES), Finland (FI), France (FR), Hungary (HU), Ireland (IE), Italy (IT), Lithuania (LT), Luxembourg (LU), Latvia (LV), Malta (MT), Netherlands (NL), Poland (PL), Portugal (PT), Romania (RO), Sweden (SE), Slovenia (SI) and Slovakia (SK).

I. INDEPENDENCE

1. *What independence if any does the Prosecutor General enjoy in your jurisdiction?*
 - (a) *fully independent of government*
 - (b) *some independence but oversight by another body/institution e.g. Attorney General/Minister*
 - (c) *no independence e.g. Attorney General/Minister is the prosecutor*
 - (d) *independent insofar as Attorney General/Minister exercises independence when carrying out prosecutorial functions*
 - (e) *other*

¹ The full replies of the Forum members are compiled in the document “Compilation of replies” distributed to all participants in the meeting.

(f)

In most of the Member States for which a reply was provided, the Prosecutor General is fully independent of the government. In several other Member States, the Prosecutor General is independent for decision when carrying out prosecutorial functions, but is subject to an oversight by the Minister of Justice for some purposes or by the Prime Minister; he/she is appointed by the Government or by the President or by the Parliament; the funds for the prosecution service is part of the budget of the Ministry of Justice or the prosecution service is part of the public administration under the Ministry of Justice; he/she is accountable to the President of the State and the Parliament or only to the Parliament.

2. *Who within your organisation has ultimate decision-making authority in an individual case?*

(a) *The Prosecutor General who is authorised to override any decision*

(b) *A senior prosecutor within a state, province or county*

(c) *The prosecutor to whom the particular case has been assigned*

(d) *Other*

In the majority of the Member States for which a reply was received, the ultimate decision-making authority in an individual case is the prosecutor to whom the particular case has been assigned. However, in some of these Member States, the prosecutor's decision is or may be subject to the review of a hierarchical superior prosecutor and/or of the court and, in some cases, of the Prosecutor General. In some other Member States, the ultimate decision-making authority is the Prosecutor General who is authorised to override any decision. In one Member State, the ultimate decision-making authority is a senior public prosecutor acting under the supervision of the Federal Ministry of Justice. In one Member State, the exclusive decision on whether or not to institute criminal proceedings lies with the police, but this decision can be challenged before a Court of Magistrates.

3. *It is envisaged that the EPP will have autonomous powers of investigation and prosecution, with strong safeguards to ensure its independence of both EU institutions and national authorities – What implications if any would such a proposal have for the independence of the existing Prosecutor General/ultimate decision-making authority in your Member State?*

Most of the Forum members who replied to the question considered that the establishment of an EPPO granted with autonomous powers of investigation and prosecution and protected by strong safeguards to ensure its independence would not have any implications for the independence of the existing Prosecutors General, provided that: the delineation of competence between the EPPO and the national prosecution offices is clearly drawn; the role of national prosecutors when acting as delegated European prosecutors is clearly defined; or the EPPO has no power to interfere with national cases brought before national courts. However, some considered that mechanisms for solving possible conflicts or clarifying situations should be set up. Some Forum members underlined that constitutional implications or amendments to the existing legal framework should be taken into consideration or that the right of prosecution should remain within the competence of the national authorities. Some other Forum members stated that the establishment of an EPPO with autonomous powers of investigation and prosecution would be contrary to the principle following which the Prosecutor General or Director of Public Prosecutions is the ultimate independent decision-making authority or would have implications in relation to the discretionary powers of national public prosecutors, for instance the power to follow an alternative multidisciplinary approach when dealing with fraud-related cases.

II. FUNCTIONS

4. *Who within your jurisdiction has the authority*

- *to initiate an investigation?*

In the vast majority of Member States for which a reply was given, the prosecutor and the police (and in some Member States also the investigating judge, the customs authority and specialised agencies); in few Member States, only the prosecutor; in few Member States, only the police; in one Member State, the court and the prosecutor; in one Member State, the prosecutor and the investigating judge; and in one Member State, the prosecutor as well as, under certain conditions, the victim.

- *to direct coercive investigations?*

In most Member States, the prosecutor or the prosecutor and the investigating judge/court or the investigating judge/court; in several Member States, the police, the prosecutor or the court, according to the circumstances; and in few Member States, (mainly) the police.

- *to investigate and gather evidence ?*

In the vast majority of Member States, the police (or other investigating authority, e.g. customs) and the prosecutor or the police under the prosecutor's authority; in a few Member States, only the police; in other Member States, only the prosecutor and the investigating judge; and in one Member State, the police, the prosecutor and the court of first instance.

- *to direct the commencement of a prosecution?*

In most Member States, the prosecutor; in some Member States, the police under the prosecutor's authority; in some Member States, the prosecutor and the judge; in one Member State, the prosecutor and in some minor cases the police or other investigative agencies; and in one Member State, the prosecutor, the Federal Ministry of Justice and the court of first instance.

- *to discontinue a prosecution ? and*
- *to direct if and when a prosecution should be withdrawn?*

With regard to both points, in most Member States, the prosecutor; in few Member States, the prosecutor or the court or only the court; in one Member State, the investigating judge or the court according to the stage of proceedings; in one Member State, the prosecutor and the Federal Ministry of Justice; and in one Member State the prosecutor and the police.

- *to seek international cooperation within Member States for*
 - *police intelligence/information?*

In most Member States, the police or customs and border authorities; in some Member States the police and the prosecutor; in a few Member States, the prosecutor and the investigating magistrate; in some Member States, the police, the prosecutor and the investigating judge/court; in one Member State, only the prosecutor; and in one Member State, the police, the prosecutor and the Federal Ministry of Justice.

- *evidence for the purpose of prosecution?*

In most Member States, the prosecutor; in some Member States, the prosecutor or the police; in some Member States, the prosecutor or the investigating magistrate; in one Member State, the prosecutor, the police and the court; and in one Member State, the prosecutor and the Federal Ministry of Justice.

○ *A European arrest warrant ?*

In many Member States, the prosecutor only; in several Member States, the examining magistrate or the court; in some Member States, the prosecutor and/or the judge/court; in few Member States, the prosecutor or the investigating magistrate; in one Member State, the prosecutor, the police and the court; in one Member State, the Prosecutor's General Office and the Ministry of Justice as issuing authorities and the court as executing authority.

5. *What issues if any would the combined investigative and prosecution function of the proposed EPPO pose in your Member State?*

A majority of the replies given indicate that the combined investigative and prosecution function of the proposed EPPO would not pose any particular problem, as the national prosecution offices already exercise such combined function or work closely with the police. It was however highlighted that this function should be exercised by delegated European prosecutors that are familiar with the applicable national law, and that coordination between the national offices involved and the EPPO as well as special training for prosecutors would be needed. Some Forum members considered that the expected Proposal on the EPPO must clearly define such combined function.

Some Forum members have identified the following issues:

- Issue of principle as the investigative and prosecution powers are invested respectively to law enforcement authorities and the Prosecution Service and the introduction of a “civil law prosecution system” to run alongside the pre-existing “common law system” could cause confusion between the respective functions;
- Issue related to independence and resources;
- Issue for the accused persons' rights that in the national system are protected by the neutral role of the investigating judge;
- Issue linked to the coexistence of a national system based on independent investigating judges with an EPPO based on investigating prosecutors and risk for the overall consistency of the system;

- Issue linked to the court's authority to initiate judicial investigation on request of the prosecutor;
- Issue in reconciling the EPP's powers with those of the Commissioner of Police and the Attorney General;
- Financial matters, consequences of disciplinary measures and problems of having two hierarchies and possible conflicting orders;
- Constitutional problems if it is envisaged that the EPPO acts in accordance with the principle of opportunity in a system where the principle of legality (i.e. mandatory prosecution) applies at national level.

6. *It is proposed that the EPPO shall directly investigate and prosecute offences against the Union's financial interests through the use of "delegated European Prosecutors" appointed in each Member State and directed and co-ordinated by a central EPPO.*

What status would such a delegated prosecutor (position in hierarchy / reporting line, etc.) need in order to operate effectively within your Member State?

Generally Forum members considered that the status of the delegated European prosecutors should be determined in accordance with their respective law and system in order for them to be provided with all powers needed to investigate and prosecute. Several Forum members think that the delegated European prosecutors would need a high position in their internal hierarchy which would ensure more independence and powers to take judicial decisions. According to other several Forum members, they should have the status of public prosecutor. Some Forum members indicated that the delegated European prosecutors would be better placed in specialised prosecution's offices, such as the units in charge of fraud cases.

Can you identify any difficulties with the existence of a delegated European Prosecutor particular to your Member State?

Some Forum members did not identify any particular difficulties in relation to the existence of a delegated European prosecutor in their Member State, provided that wide independence, clear division of competence between national and European prosecutors and adequate resources are ensured. Others replied that it is difficult to estimate difficulties at this stage.

Some Forum members have identified the following difficulties (*see also replies to question 5*):

- Need for changes to the core national laws and question of consistency with constitutional provisions;
- Issues regarding the prosecutors' independence or the independence of the Director of Public Prosecutions/Attorney General;
- Dual role ("double-hat") of the delegated prosecutor that needs to have clearly defined powers;
- Possible conflict between the opinions expressed by the European and the national Prosecutor General and need to clearly regulate interaction and relationship between them;
- Differences in national criminal proceedings in the Member States, e.g. regarding admissibility of evidence;
- In case of lack of powers of the delegated prosecutor upon the resources, limits in conducting the pre-trial investigations;
- Lack of expertise and technical problems due to the fact that national prosecutors do not conduct investigations;
- Opposition to the pre-existing division between investigative and prosecutorial function.

III. COMPETENCE

7. *If a particular case of a PIF crime also includes related domestic fraud offences how do you see the issue of power to prosecute being resolved between national authorities and EPPO in your Member State?*
- (a) by agreement one prosecutor would absorb the offences under the jurisdiction of the other*
 - (b) the domestic prosecutor would prosecute all offences as one case*
 - (c) they would be treated as separate cases*
 - (d) other*

Several Forum members replied that if a PIF crime case also includes related domestic fraud offences, the domestic prosecutor would prosecute all offences as one case. It was observed that the duality of the delegated European prosecutor/national prosecutor (“double-hat”) would simplify the prosecution in these cases.

According to some other Forum members, in such cases, one prosecutor would, by agreement or - better - by law, absorb the offences under the jurisdiction of the other. Others considered that, as the EPPO should prosecute on the basis of the exclusivity principle, its competence should be extended to such connected offences.

A few Forum members expressed the view that the PIF crime and the domestic fraud offences would be treated as separate cases while, according to one reply, all options mentioned above are conceivable depending on the case and, according to another reply, the delegated European prosecutor would work together with the domestic prosecutor in the same case.

In any event, it was underlined that such cases should be clearly regulated in the regulation.

8. *Do you think it is possible to have a clear division of competence between an EPPO and national prosecutors?*

The majority of Forum members considered that it is not only possible but necessary to have a clearly regulated division of competence, also for constitutional reasons. However, some Forum members underlined that it will be difficult to apply them in practice and it was suggested to allow the EPPO to choose the complex cases to be investigated at supranational level. According to few Forum members, it is very difficult to have a clear division of competence between the EPPO and national prosecutors, unless the offences over which the EPPO has competence are clearly defined (*see also replies to question 7*).

Where do you see potential overlaps and duplications?

Many Forum members see potential overlaps and duplications in practice when a case includes both national and PIF offences, even if the division of competence is clearly regulated by the legislation, or when a case includes PIF and other types of offences committed by the same criminal organisation, or when the definition of PIF offences does not meet the standards of definition of an offence under national law. Other potential problems mentioned concern cases where more perpetrators are involved and minor cases within the scope of the EPPO. The latter could be solved e.g. introducing a certain threshold of damage inflicted to attribute cases to the EPPO.

According to some Forum members, the action of the EPPO, as specialised office, should be given priority. According to others, such cases should be dealt with by the national prosecution offices (*see also replies to question 7*).

How, for instance, would you envisage offences which retain elements both within and outside the proposed competence of the EPPO should be dealt with?

According to some Forum members, the same (national) prosecutor should deal with offences which retain elements which are both within and outside the proposed competence of the EPPO. Some Forum members considered that the EPPO's competence should prevail. One Forum member suggested that in purely PIF cases exclusive competence lies with the EPPO and, in all other cases, the EPPO retains residual competence. Some others underlined that the regulation on the EPPO should clearly deal with this issue (*see also replies to question 7*).

What authority in your view should most appropriately decide disputes on issues of competence i.e. which prosecutor should prosecute an offence within a Member State?

Several Forum members replied that issues of competence should be the responsibility of the Prosecutor General or relevant national authorities, e.g. domestic court and underlined that the EPPO should not be able to issue any binding decisions for them. It was also noticed that a delegated European prosecutor with “double-hat” would minimize the risks of potential conflicts.

Several other Forum members replied that such decision should most appropriately be decided by the EPPO – central or delegated prosecutor, jointly or after consultation with the Prosecutor General or with the relevant national authorities. However, constitutional aspects should be taken into account.

According to some Forum members such decision should be taken by the European Court of Justice.

The task of solving conflicts of jurisdiction within different EPP offices or branches could be assigned to Eurojust according to one Forum member.

One Forum member underlined that the independence of both EPPO and national authorities would be undermined if one or the other could decide disputes on issues of competence, and suggested the adoption of a set of rules laid down by legislation.

9. *If you had a choice which model do you feel would work best in your Member State:*
- (a) that cases where decisions were made by the European Public Prosecutor would be investigated and prosecuted by that Office through their own statutory power and personnel in the Member State;*
 - (b) European Public Prosecutor to be allowed to direct authorities in a Member State instigate an investigation or maintain a prosecution where the national authority has not made the decision;*
 - (c) European Public Prosecutor to refer cases to the authorities of a Member State with a recommendation that an investigation or prosecution be undertaken, which Authorities could then make their own decision;*
 - (d) European Public Prosecutor to refer cases with a recommendation and assistance for investigation/prosecution, to the national authority who could then make the formal decision in the matter and investigate, prosecute and bring to judgement the case on a delegated basis;*
 - (e) Other (please specify)*

Several Forum members indicated option (a) as the model that would work best in their Member States and be in line with Article 86 TFEU. Some replies highlighted the importance of having delegated European prosecutors with “double-hat”.

The same number of Forum members indicated option (d) as the best model.

Some Forum members preferred option (c). It was also underlined that options (c) and (d) better preserve the principle of opportunity of prosecution and that, in any case, any solution needs to be sufficiently flexible in order to take into account the different prosecutorial systems of the Member States.

Few Forum members referred to option (b) as an alternative preferred option.

According to another model proposed, the EPP would decide to take a case and request the prosecutor’s office to conduct the investigation under national authorities’ supervision and according to national law.

According to another model proposed, the EPPO would be instituted as a College composed of delegated national prosecutors that would be entitled to refer the cases and transmit instructions to the domestic authorities of their Member State.

IV. RESOURCES

10. *One of the arguments in favour of an EPPO is that we do not have at present the full institutional framework to fight fraud against the financial interests of the EU. EPPO is said to be aimed at dealing with perceived problems at national level. Do any of the following constitute problems in your Member State in relation to offences against the financial interests of the EU:*

(a) *Insufficient Resources:*

The majority of Forum members replied “no”. However, several replied “yes”.

(b) *Insufficient Expertise:*

Some Forum members replied “yes”, while all the others replied “no”.

(c) *Lack of ownership:*

All Forum members except for one replied “no”.

(d) *Low priority:*

All Forum members except for two replied “no”.

(e) *Other – please specify.*

One Forum member commented that according to the principle of subsidiarity, PIF offences would be better dealt with at European level by an EPPO. Others explained further the functioning of their national system in relation to offences against the financial interests of the EU. One Forum member considered that there may be a lack of expertise in identifying an offence and gathering the evidence in a cross-border situation.

V. PROCEDURAL RULES

11. *What procedural rules do you think should apply to an investigation / prosecution brought by the European Public Prosecutor?*

- (a) the rules on procedure and evidence of the Member State where only one involved;*
- (b) the rules of the Member State with some modifications common to all Member States;*
- (c) a full new set of procedural rules to apply in these cases e.g. the Luxemburg Model Rules for the Procedure of the EPPO (<http://www.eppo-project.eu>);*
- (d) a minimal set of procedural rules (e.g. enshrining basic principles like the EU territory principle);*
- (e) other (specify).*

Many Forum members considered that the procedural rules of the only Member State involved (option (a)) should be applied or, more generally, the rules of the Member State in which the investigation/prosecution is carried out.

Several others preferred a minimal set of common procedural rules complementary to the national rules (option (d)), sometimes in combination with option (a).

A full new set of procedural rules (option (c)) was indicated by some Forum members as the best option. However, harmonisation of procedural rules in this sense was considered by some Forum members difficult to reach in reality within reasonable time.

A few Forum members indicated option (b) - rules of the Member State with some common modifications - as the preferred one.

VI. ACCOUNTABILITY AND JUDICIAL REVIEW

12. (a) *In your view how would an EPPO be held accountable?*
- (i) *in the exercise of its powers to investigate / prosecute*
 - (ii) *as to the overall performance of its assigned duties/functions*

Most Forum members who provided a reply see the need for a form of accountability for the EPPO but emphasized at the same time the importance of its independence. While few Forum members would place the responsibility for this task on the central EPPO, others see a function for bodies at EU level, especially the European Parliament and the Council or the Commission. Other Forum members replied that in the exercise of its powers to investigate/prosecute, the EPPO should be accountable by way of judicial review (*see also replies to question 12(b)*). One Forum member suggested the establishment of an independent body of specialists appointed by the European Parliament.

- (b) *Should its decision be subject to judicial review and if so before which judicial forum (national / European Court of Justice)?*

The majority of Forum members who replied agreed that the decisions of the EPPO should be subject to judicial review. Many Forum members would prefer this review to be conducted by the national courts; several others, by both national courts and European Court of Justice according to the cases. Other Forum members see the European Court of Justice as the competent court for review of decisions taken by the EPPO and two Forum members also mentioned the need to establish a European Criminal Court for this purpose.

- (c) *Are investigative / prosecutorial decisions in your jurisdiction subject to judicial review?*

While the specificities differ from Member State to Member State, all Forum members reported that the main decisions of prosecutors, e.g. decisions on custody, searches, indictments etc., are subject to judicial review in their national systems.