

HOUSE OF LORDS

European Union Committee

4th Report of Session 2014–15

**The impact of the
European Public
Prosecutor's Office
on the United
Kingdom**

SUMMARY

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The European Union Committee

The Committee considers matters relating to the European Union.

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The Committee also conducts inquiries and makes reports. The Government is required to respond in writing to a report's recommendations within two months of publication. If the Committee wishes, the report is debated in the House of Lords, during which a Minister responds to the points made by the Committee and the speakers during the debate. Reports are also usually sent to the European Commission, for it to consider and respond to any relevant points and recommendations.

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External Affairs
Agriculture, Fisheries, Environment and Energy
Justice, Institutions and Consumer Protection
Home Affairs, Health and Education

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Committee Staff

The current staff of the Committee are Paul Hardy (Legal Adviser), Tim Mitchell (Assistant Legal Adviser) Luke Hussey (Clerk) and Amanda McGrath (Committee Assistant).

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website. General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW. General enquiries 020 7219 5791. The Committee's email address is euclords@parliament.uk

This document is an excerpt

This document contains the summary of the EU Committee's full report, and its Conclusions and Recommendations. The Committee's detailed analysis of the issues and the evidence received is contained in the full report, which is available on our website:

The impact of the European Public Prosecutor's Office on the United Kingdom

<http://www.publications.parliament.uk/pa/ld201415/ldselect/ldcom/53/53.pdf>

SUMMARY

In July last year the Commission brought forward a proposed Regulation designed to establish the European Public Prosecutor's Office (EPPO). The EPPO would be responsible for investigating, prosecuting and bringing to judgment the perpetrators of offences against the Union's financial interests (PIF crimes). The proposal is subject to the UK's opt-in arrangements, but the Coalition Agreement of 2010 had ruled out the UK's participation. In October 2013, alongside the national parliaments of 10 other Member States, this House, and the House of Commons, issued reasoned opinions challenging the Commission's proposal on the grounds of subsidiarity. Sufficient reasoned opinions were submitted by national parliaments triggering a 'yellow card', and the Commission was forced to review the proposal. In December 2013, it announced its decision to persevere with the proposed Regulation unamended.

The Commission's disappointing response to the 'yellow card' was the catalyst for our decision to launch this inquiry into the proposed EPPO and its ramifications for the UK, in particular the UK's future relationship with the EU's current anti-fraud body OLAF and Eurojust. In June, following the completion of our formal evidence sessions on the Commission proposal, the Government submitted an Explanatory Memorandum on a revised proposal produced by the Greek Presidency. This text was endorsed but not agreed by the Council. Crucially, neither text addressed the question of safeguards for non-participating Member States.

This report sets out our concerns with the two texts currently under discussion in the Council and their potentially significant impact on the UK's future relationships with OLAF and Eurojust. We fear that under the Commission's proposed model an EPPO enjoying exclusive competence for PIF crimes would be in danger of being overwhelmed by its workload, and its structure would not be sufficiently robust to enable it to monitor its investigations and prosecutions in the Member States. We see a similar problem with the Presidency's alternative proposal. The evidence we received on the proposed introduction of a collegiate structure into the EPPO overwhelmingly suggests that this would complicate the prosecution of these crimes even further.

As for the implications of the EPPO for the UK, we are concerned that it could seriously undermine the UK's important relationships with OLAF and Eurojust. We call on the Government and other parties involved in the proposal's negotiation in the Council and in the European Parliament to include assurances within the adopted text safeguarding the position in OLAF and Eurojust of those Member States not participating in the EPPO.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Exclusive competence and the EPPO's potential workload

1. We are concerned that under the Commission's proposal the EPPO is at risk of being overwhelmed by its workload; this risk would be particularly acute for an EPPO enjoying exclusive competence for all PIF crimes in conjunction with a shared responsibility for ancillary offences. (Paragraph 23)
2. If the principle is retained that the EPPO should share competence for PIF crimes and ancillary offences with participating Member States, we urge all those involved in negotiations to ensure that the text includes clear rules for the operation of shared competence. (Paragraph 29)

The EPPO's structure

3. It is essential that the EPPO's structure should be robust and capable of effectively monitoring investigations in the Member States while supporting fast and efficient investigation decisions; both the Commission's model and the college model currently fail to achieve this aim. (Paragraph 41)
4. We recommend that the Government should do more in the Council and the Commission to promote its vision of how to address the problem of fraud on the EU's budget; namely, by means of fraud prevention and improved accountability of the mechanisms governing the management of EU funds. (Paragraph 44)

The EPPO's impact on the non-participating Member States

5. We are concerned by the Home Secretary's intimation that the UK might not be legally obliged to respond to requests for assistance from the EPPO, particularly given the risk that a UK unable (or unwilling) to cooperate with the EPPO's requests could become a safe haven for illegally obtained EU funds. We recommend that the Home Office urgently initiate a consultation on the legislative changes necessary in order to ensure that the UK authorities and courts are able to respond to requests for assistance from the EPPO. (Paragraph 55)

The EPPO's impact on OLAF

6. It is deeply disappointing that the Commission failed to address the EPPO's impact on OLAF and the knock-on effect for non-participating Member States in its proposal. It is of paramount importance that the relationship between OLAF and the EPPO should be defined within the Regulation and that due regard should be given to the position of the non-participating Member States. (Paragraph 66)
7. We further recommend to the Government that it should seek to ensure that the text of the Regulation provides an assurance that the quality and level of assistance received by the UK from OLAF will not be diminished following the establishment of the EPPO. (Paragraph 67)

The EPPO's impact on Eurojust

8. We urge that the Regulation reforming Eurojust and establishing the EPPO should clearly address the position of non-participating Member States. It should include provisions to ensure that the establishment of the EPPO will not adversely affect the ability of Eurojust to support all Member States regardless of their participation in the EPPO. (Paragraph 78)
9. We seek assurances from the Government that it is taking adequate steps to ensure that all parties involved in discussion of the EPPO and of its impact upon Eurojust are made aware that the position of non-participating Member States must be considered as a key part of this discussion (Paragraph 80)