

# The European Public Prosecutor's Office

L.H. Erkelens · A.W.H. Meij  
M. Pawlik  
Editors

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An Extended Arm or  
a Two-Headed Dragon?



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*Editors*

L.H. Erkelens  
A.W.H. Meij  
M. Pawlik  
EU Law  
T.M.C. Asser Instituut  
The Hague  
The Netherlands

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# Foreword

The conference on the plans to create a European Public Prosecutor's Office (EPPO) held by the T.M.C. Asser Institute in The Hague early September 2013 took place at a highly opportune moment. July 2013 had seen the publication of the European Commission Proposal for a Council Regulation on the establishment of the EPPO.<sup>1</sup> The conference was thus the first opportunity to discuss, from a scholarly perspective, both the proposal itself and the problems identified in a number of political commentaries. One of the questions it addressed was whether the EPPO should be seen as 'an extended arm or a two-headed dragon': should it operate as the long arm of the law, reaching down from European level to tackle at national level crimes that harm the EU's financial interests, or is it likely to become an ungovernable monster, with its European and national 'heads' squabbling about who is in control?

This book is the outcome of discussions at the conference. Debate on the proposal is now in full swing. From the outset, the Commission had a less than easy ride: parliaments in 11 Member States, including the Dutch assembly, gave it a yellow card because they believed the proposal did not comply with the subsidiarity principle. This compelled the Commission to take another look at the matter to see if modification or even withdrawal was the next logical step. However, the Commission saw no reason to do either, and decided to maintain the original proposal.

On 12 March 2014, the European Parliament adopted a resolution on the proposal on the EPPO. The resolution entailed a rather long range of 'political guidelines' addressed to the Council. At the same time, it suggested some amendments. These recommendations included strict observance of the right to a fair trial, precise determination of the scope of the EPPO's competence, and the availability of uniform investigative tools and investigation measures compatible with the legal systems of the Member States. The optimistic response of the Commission's Vice-President Viviane Reding, the EU's Justice Commissioner, and Algirdas Semeta, the EU Anti-Fraud Commissioner, to the European Parliament's

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<sup>1</sup> COM (2013) 534 final of 17 July 2013.

backing was: ‘Today’s vote by the European Parliament is good news for Europe’s taxpayers and bad news for criminals. The EPPO will make sure that every case of suspected fraud against the EU budget is followed up so that criminals are brought to justice’.

I use the word ‘optimistic’ in light of the next step along the road to establishing the EPPO: the proposal will now be submitted to the Council of the European Union. To pass this hurdle, the proposal must be adopted unanimously, in accordance with Article 86, paragraph 1, second sentence of the Treaty on the Functioning of the European Union. As yet, unanimity is far from guaranteed. Even before the yellow cards were issued, it was clear that the chance that the Member States would unanimously accept the proposal was small. The objections of the 11 parliaments made that even clearer. The Commission and the Parliament are therefore assuming that the EPPO will come into being via the ‘enhanced cooperation’ procedure also laid down in Article 86, paragraph 1. This entails a compromise in which at least nine Member States will jointly set up an EPPO which can only operate in the participating states. In this case too unanimity is an issue, since a proposal for enhanced cooperation requires consensus in the European Council. Part V of this book deals with questions regarding the feasibility—and consequently the effective functioning—of the EPPO if it is established under the enhanced cooperation procedure.

But this is just one of the issues covered in this book. At the root of the problems identified above and the criticism of the proposal lies a political question: what kind of Europe do the Member States want? For some the proposal does not go far enough; they believe the Commission has missed the opportunity to create European rules of criminal procedure alongside the EPPO. Others are convinced the decentralised model chosen by the Commission, in which prosecution is based on the criminal procedure of the Member State in question, is in itself too great an interference with the sovereignty of the Member States in criminal matters, since the initiative to prosecute will come from Europe. In this book, these opposing political views are being discussed from a scholarly viewpoint.

This book offers a useful basis for further debate on whether an EPPO is desirable and feasible, and if so, how it should work.

The Hague, May 2014

J.W. Fokkens  
Procurator General at the  
Supreme Court of the Netherlands

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# Abbreviations

Acquis	<i>acquis communautaire</i> : the accumulation of EU Treaties, EU legislation and EU Court decisions
AFSJ	Area of Freedom, Security and Justice
AG	Advocate General (at the European Court of Justice)
AIDP	l'Association Internationale de Droit Pénal
Cepol	European Police College
CFR	Charter of Fundamental Rights
CISA	Convention Implementing the Schengen Agreement
CMS	Case Management System
COM	European Commission
EAW	European Arrest Warrant
EC	European Community
ECHA	European Chemicals Agency
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
ECLAN	European Criminal Law Academic Network
ECtHR	European Court of Human Rights
EDP	European Delegated Prosecutors
EDPS	European Data Protection Supervisor
ENCS	Eurojust National Coordination System
EPP	European Public Prosecutor
EPPO	European Public Prosecutor's Office
EU	European Union
EUCrim	European Criminal Law Association's Forum
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union's Law Enforcement Agency
IGC	Intergovernmental Conference
JIT	Joint Investigation Team
MLA	Mutual Legal Assistance
OHIM	Office for Harmonization in the Internal Market

OJ	Official Journal of the EU
OLAF	Office de Lutte Anti-Fraude (European Anti-Fraud Office)
PIF	Protection des Intérêts Financiers (Protection of EU Financial Interests)
PPS	Public Prosecution System
REACH	Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals
RIDP	Revue Internationale de Droit Pénal
SWD	Staff Working Document (European Commission)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TWF	Temporary Work File
UK	United Kingdom
USA	United States of America
ZIS	Zeitschrift für Internationale Strafrechtsdogmatik