The European Public Prosecutor’s Office: forgetting about borders?

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IAP 11th European Regional Conference
The Hague, 16-18 February 2011
Background

- Corpus Iuris (1997)
  - Corpus Iuris 2000

- EC Green Paper (2001)

- Constitutional Treaty (2005)

THE EUROPEAN UNION

The European Communities EC

- EC
  - Customs union and single market
  - Agricultural/fisheries policy
  - Structural policy
  - New or amended provisions on:
    - EU citizenship
    - Education and culture
    - Trans-European networks
    - Consumer protection
    - Healthcare
    - Research and environmental law
    - Social policy
    - Asylum policy
    - External borders
    - Immigration policy

Euratom

ECSC

Common Foreign and Security Policy CFSP

- Foreign Policy
  - Cooperation, common positions and measures
  - Peacekeeping
  - Human rights
  - Democracy
  - Aid to non-member countries

- Security policy
  - Drawing on the WEU: questions concerning the security of the EU
  - Disarmament
  - Financial aspects of defence
  - Long-term: Europe’s security framework

Cooperation in Justice and Home Affairs CJHA

- Cooperation between judicial authorities in civil and criminal matters
- Police cooperation
- Combating racism and xenophobia
- Fighting drugs and the arms trade
- Fighting organised crime
- Fighting terrorism
- Criminal acts against children, trafficking in human beings
- Fraud

PILLARS OF THE EUROPEAN UNION
The European Communities

Common Foreign and Security Policy

Cooperation in Justice and Home Affairs

How many pillars?
Official Statements

- **Stockholm Programme**
  - “(...)
new possibilities could be considered (...)
including (...)
the
setting-up of a European Public Prosecutor”.

- **Spanish Presidency (and Trio of Presidencies) priority**
  - “explore the possibilities for establishing a EPPO”
  - Presentation in Brussels, March 2010
  - Discussion at the Europarliment LIBE Committee, April 2010

- **Action Plan**
  - “The Commission will prepare the establishment of a EPPO”.
  - EC Communication envisaged by 2013
The EPPO: art. 86 TFEU

- The Council (unanimously or through enhanced cooperation of at least nine MS) may establish a EPPO
  - From Eurojust
  - to combat crimes affecting the financial interests of the Union
    - May be extended –through unanimity- to serious crime having a cross-border dimension
- The EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, such offences.
- It shall exercise the functions of prosecutor in the competent courts of the MS in relation to such offences.
Specific regulations shall determine

- the general rules applicable to the EPPO,
- the conditions governing the performance of its functions,
- the rules of procedure applicable to its activities,
- the rules governing the admissibility of evidence, and
- the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.
Basic Assumptions

- EPPO will not be Eurojust II
  - Different nature, scope, objectives and means
- Not another macro-structure
- Need to cooperate (at different levels) with
  - Eurojust
  - OLAF
  - National Prosecution Services
  - Europol
Possible Structure for the EPPO

- Small central prosecutorial structure
  - One European Prosecutor assisted by several Deputy Prosecutors (one per participating MS?)
- Non-collegial structure
- Delegates within the various national jurisdictions
  - Double hatted prosecutors
- Institutional and logistic support offered by Eurojust
- Advisory role of National Prosecution Services (through Consultative Forum of Prosecutors General?)
- Operational support offered by OLAF
Structure
Basic Principles

- Independence
- Legality / Opportunity
  - Flexibility:
    - Possibility to transfer cases to domestic prosecution service
    - Investigations carried out at the MS level could be prosecuted by EPPO.
- Primacy of EPPO
- EPPO as authority for MLA and MRP instruments
Towards a European Criminal Court?

- “European” Judge of freedoms, or “National” judge of freedoms
  - Effective control over certain investigative measures
  - Investigation continues despite remedies being filed
- Adjudication by domestic jurisdictions
- Need to avoid the risk of “forum-shopping”, through a clear set of obligatory rules based on
  - Territoriality
  - Situation of the accused and possibilities for surrendering him/her
  - Interests of victims and witnesses
  - Entity of the sanctions…
- Remedies to challenge the choice made
  - Before the chosen jurisdiction/ before the rejected jurisdictions?
  - Before the Court of Justice of the EU?
Scope: helping define a EU Substantive Criminal Law

- As a first step, EPPO should focus on PFI

- Secondly, the question of connected offences like money laundering, corruption, etc, should be addressed.

- Finally (if ever), the expansion of the scope to serious crime with cross-border dimension.
The protection of EU financial interests

- Need to define clearly what is included in PIF
  - Corpus Iuris, PIF Convention, Regul. 2988/95 as a base
  - Need to define the crimes and other categories (subsidies, public official, etc…)

- Legal certainty

- Adequate coordination with administrative sanctions

- Expansion to other fields
  - Competition Law?
  - To defend the Euro?

- Need of common standards on
  - Substantive matters
  - Procedural matters
  - Institutional models
The Consultative Forum on Public Prosecution

- Informal advisory mechanism for EU policymakers
  - Meetings in The Hague at least once a year
- Contribute to strengthen the judicial dimension of the EU internal security sector
  - Through COSI
  - Through SOCTA
- Contribute to EU legislative initiatives
- (Liaise with EPPO)
Criteria for setting up the EPPO

- Efficiency
- Simplicity
- Prudence
“Walker, there are no roads. You make your own path as you walk”.
Thank You

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