



Fiscalía
General del
Estado

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)
 - Follow up Report (2003)
- Constitutional Treaty (2005)
- Lisbon Treaty (2007)

THE EUROPEAN UNION

The European Communities EC

Common Foreign and Security Policy CFSP

Cooperation in Justice and Home Affairs CJHA

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

Foreign Policy

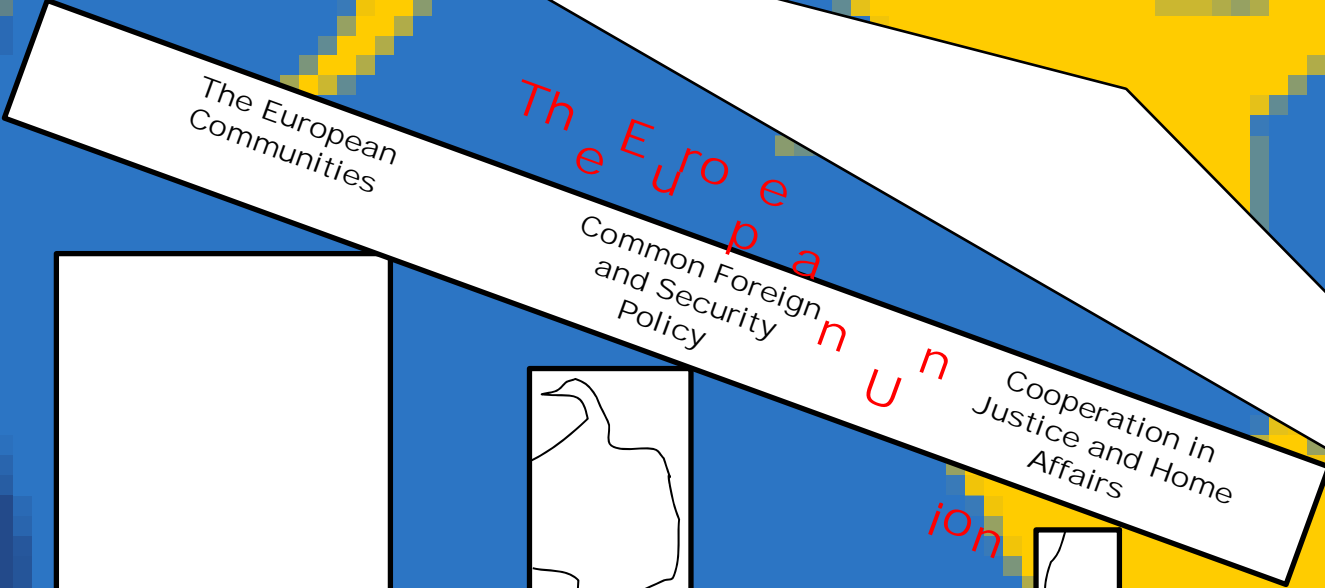
- Cooperation, common positions and measures
- Peacekeeping
- Human rights
- Democracy
- Aid to non-member countries

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 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



How many pillars?

THE EUROPEAN UNION

NEW FRAMEWORK UNDER THE LISBON TREATY



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 Europarlament 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.

The EPPO: art. 86 TFEU

- 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.

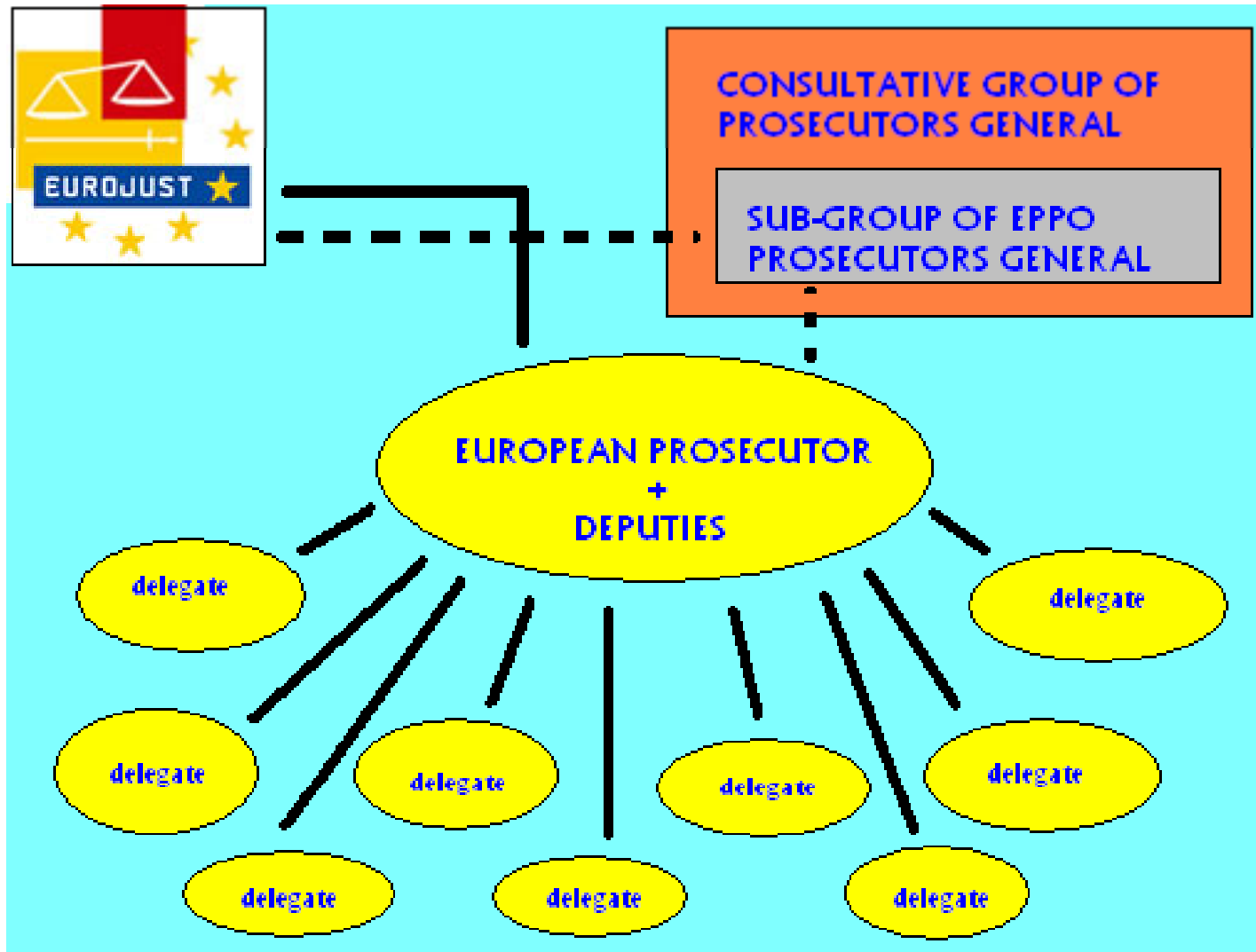
Basic Assumptions

- 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

ESP

Conclusions of the Spanish GPO

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EUROPEAN PUBLIC PROSECUTOR WORKING GROUP
CONCLUSIONS

MADRID

29th June to 1st July, 2009

*“Walker, there are no roads.
You make your own path as you walk”.*



Thank You



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