

The Lord Boswell of Aynho  
Chairman of the Select Committee on the European Union  
Committee Office  
House of Lords  
London  
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## **Response to the House of Lords' European Union Committee's Report on 'The impact of the European Public Prosecutor's Office on the United Kingdom'**

The Government would like to express its sincere thanks for the Committee's work on this inquiry and your report, 'The impact of the European Public Prosecutor's Office on the UK'. We consider it important that Parliament is given every opportunity to scrutinise the European Commission's proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (EPPO) and analyse the implications it may have for non-participating Member States, such as the UK.

As the Committee has acknowledged in its report, the possible structure of the EPPO has changed significantly since the publication of the European Commission's original proposal in July 2013. Under the Greek and Italian Presidencies, participating Member States have sought to ensure that the EPPO works closer to the national level and respects the differences between national law systems.

This is a contentious and fluid negotiation and it is difficult to assess at this stage how an EPPO may impact on any non-participating Member State. Much will depend on the outcome of the separate negotiations on a Directive on the fight against fraud to the Union's financial interests by means of criminal law (known as the 'PIF Directive'), which will form the basis for the EPPO's competence; a consensus on an EPPO's structures and where its powers to act lie within that structure; and a separate proposal to change the European Anti-Fraud Office ('OLAF'). Only once these factors are settled will a full assessment be possible. Member States are also yet to decide if an EPPO will be taken forward unanimously or under enhanced cooperation by a group of nine or more Member States.

Despite the fact that we are clear that the UK will not participate in an EPPO, the Government is fully engaged in this negotiation, and is constantly reviewing the proposal. Be assured that, where issues raised may impact on the UK, we actively remind others of our concerns.

With that in mind, the Annex attached addresses each of the points you raise in turn. We will, of course, continue to keep the Committee updated as negotiations progress.

I am copying this letter to Sir William Cash MP, Chair of the Commons European Scrutiny Committee; and to Chris Johnson, Clerk to the Lords Committee; Sarah Davies, Clerk to the Commons Committee; Arnold Ridout, Legal Adviser to the Commons Committee; Les Saunders (Cabinet Office); and Deborah Maggs, Departmental Scrutiny Coordinator for the Home Office.

**The Rt Hon Theresa May MP**

## **ANNEX:**

### **Government's Response to the House of Lords' EU Committee Inquiry on the impact of the European Public Prosecutor's Office on the UK**

#### 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)*

- A number of Member States have raised their concerns in relation to the EPPO's workload as part of the ongoing negotiation. The Government recognises the Committee's concern in this regard, particularly if the EPPO Regulation and the PIF Directive give the EPPO a wide remit, and has and will continue to raise this point in negotiations, as appropriate.

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 Government agrees with the Committee. We have made it clear during negotiations that rules on the operation of shared competence are essential so that practitioners, in participating as well as non-participating Member States, understand who is allowed to do what under the auspices of the EPPO. We will continue to press on this issue.

#### 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)*

- This issue was discussed in detail under the Greek Presidency. The Government agrees with the Committee that the resulting "college" model text (covering only Articles 1 to 19) left many questions unanswered. Like the Committee, the Government would like to see EU fraud tackled in a robust manner.
- On the Justice Day of the December Justice and Home Affairs Council, Ministers concluded that there was a need to strengthen independence within the supervisory regime of the EPPO. The Government noted the Italian Presidency's suggested drafting but, as Ministers mandated further discussion at expert level on the strengthening of the rules, we are now waiting for the Latvian Presidency in 2015 to deliver its vision of the text.

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 Government takes financial management of EU funds very seriously and we have taken a leading role in pushing for improvements in the management of the EU budget by the Commission, its Offices, and individual Member States. Recently agreed reforms will improve reporting processes and increase the quality of EU fraud evidence for use in national court cases, if they are fully in place. Therefore, we have and will continue to argue that all Member States should complete implementation of and then use EU anti-fraud mechanisms, including those embedded into funding processes and other cooperation arrangements.
- The Government has also made clear that we regard the EPPO measure as unnecessary. However, a number of Member States strongly support the principle of establishing an EPPO. As such, the Government is actively engaging in these discussions, as well as advocating an alternative vision of how to address the problem of fraud on the EU's budget.

#### 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 Government is committed to tackling fraud. Were we to have evidence that people in the UK were involved in fraud, either now or in a future where an EPPO was acting in some Member States, we would expect UK authorities to take appropriate action. However, as the Government has highlighted, this is a contentious and fluid negotiation. The final form an EPPO might take, and how it will interact with non-participating Member States, remains unclear. As such, while we do not intend to undertake a specific consultation on the subject, I can reassure the Committee that we will continue to scrutinise the proposal as it develops and will continue to analyse it against our existing legal framework, which we keep under constant review. We are also in regular contact with prosecuting and law enforcement authorities across the UK who have the potential to be impacted by EU proposals, including the EPPO.

#### The EPPO's impact on the European Anti-Fraud Office (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)*

- The Government shares the Committee's disappointment on this matter. The Government values OLAF's work to detect and tackle fraud and seek financial redress for the EU budget. We reiterate our concern that OLAF's responsibilities may be scaled back significantly and staff transferred from OLAF to the EPPO, with an as yet unqualified impact for Member States in OLAF but not participating in the EPPO.
- We believe that the EPPO Regulation should not have the effect of changing another EU Body or Agency, and that any changes to OLAF's remit and processes as a result of the EPPO must require separate legislation.

*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 Government agrees with the Committee's concerns in this regard. We will continue to stress the need for the existing Regulations governing OLAF to be fully implemented by all Member States and remain in force so that Member States not participating in the EPPO can continue work to tackle EU fraud. It should be noted that if OLAF changes are brought forward in a separate proposal, then the UK will be an active participant in that negotiation and will have a vote on that text.

#### The EPPO's impact on the EU's Judicial Cooperation Unit (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)*

- The Government agrees with the Committee that the proposed Regulation to reform the EU's Judicial Cooperation Unit (Eurojust) should clearly address the position of non-participating Member States in relation to the EPPO, as should the separate Regulation establishing the EPPO. Moreover, the Government believes that any obligations on Eurojust in relation to the EPPO must be set out in the proposed Eurojust Regulation, rather than in the proposed EPPO Regulation.

*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)*

- The Government has made it clear that the position of non-participating Member States must be considered as part of the EPPO negotiation and that has been acknowledged by the Commission and Member States. The Government is taking an active role in both the EPPO and Eurojust negotiations in order to advance the

UK's position, and there has been a first, albeit inconclusive, exchange of views on the question of non-participating States in relation to the EPPO. As the Committee will be aware, Eurojust's relationship with the EPPO was not covered in the partial general approach agreed at the Justice and Home Affairs Council on 4-5 December, as one of two issues still to be resolved (the other being the data protection regime).

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