To the attention of
Ms Veronica Gaffey, Director-General, DG for Digital Services
European Commission

Subject: request for amicable settlement of a dispute arising in the implementation of the SLA No DIGIT-069-00, Appendix A-5

Dear Director-General,

Pursuant to Article 11 of Part I of the Service Level Agreement No DIGIT-069-00 between the services of the European Commission and the European Public Prosecutor’s Office (“the SLA”), I submit by the present letter a

REQUEST FOR AMICABLE SETTLEMENT

of a dispute arising in the implementation of this agreement.

General framework of the SLA

1. Under the SLA, DG DIGIT provides services, goods and works to the EPPO, which are essential for the EPPO’s functioning and operations. Among these, DIGIT provides Digital Workplace Services (Digital Working Place, or “DWP”) and corresponding IT infrastructure, as detailed in Appendix A-5 to the SLA. In particular, Article 3.1 of the Appendix A-5 to the SLA concerns the provision of IT-related services covering “workstation management, office automation services (file, print, terminal server, telephony etc.) and logistic services (i.e. delivery, installation/ uninstallation, replacement, management of stock and inventory”.

2. The date of start of the provision of the service under the Appendix A-5 is the 1st of June 2019. It has no end date.

3. It is pertinent to mention that according to Article 2(1) of the Part I – “General conditions” of the SLA, the parties commit to implement the SLA “in a spirit of cooperation, transparency and efficiency”. Moreover, Article 2(4) of Part I of the SLA requires that the parties “adopt measures to continue operations in order to facilitate continuity of the
provision of services”. In the event of disputes, as stated in the article 11 of Part I of the SLA, the parties shall aim to reach an amicable agreement in the spirit of good cooperation.

4. It should be recalled that, according to Article 7(2) of Part II of the SLA, “[s]hould any of the Parties wish to terminate the provision of the services under a specific service Appendix, it should provide at least 3 months prior written notice to the other party, unless otherwise agreed in the Appendix”. In the present case, Appendix A-5 is concluded for an indefinite period of time and the notice period required by Article 2(4) of the Appendix A-5 “cannot be less than 6 months”, period that may be shortened or extended by common agreement of the parties. As regards the written prior notice, what is of upmost importance is that this prior notice shall be of a sufficient duration to allow any management or budgetary consequences caused by the termination to be integrated into the management and budget plan of the two parties.

The dispute

5. On 5 February 2024 the Commission has informed the EPPO in writing (letter of 5 February 2024 from the European Commission, Directorate-General for Justice and Consumers, Ares(2024)842502 – 05/02/2024) that the provision of DWIP to EPPO will terminate on 31 December 2024. Although to date, no formal written notice has been provided by DG DIGIT with regard to the termination of the Appendix A-5 to the SLA according to Article 7(2) of Part II of the SLA, the above mentioned letter states this intention in unequivocal terms and has the same effect.

6. As will be illustrated in detail below, termination of these services by 31 December 2024 would seriously jeopardise the operational capabilities of the EPPO. The provision of DWIP by DG DIGIT has been an essential element to ensure the functioning of the EPPO so far. While it is in the interest of the EPPO to reinforce its position of independence, including from the Commission, also in the area of IT services, in order to do so the EPPO must be granted adequate budgetary means.

7. However, all requests to be awarded sufficient resources (financial and human resources) necessary to build such IT independence have been so far entirely denied by the Commission. Consequently, the EPPO has essentially been put in a situation of impossibility to provide on its own these indispensable services.

8. While continuing to rely on the Commission for provision of these services is suboptimal from the point of view of the EPPO’s independence, in the absence of viable alternatives it is the only possibility for the EPPO to continue operating. In this context, a unilateral decision of DG DIGIT to terminate the provision of digital workspaces to EPPO under Appendix A-5 on 31 December 2024 would constitute a flagrant violation of the terms
and conditions of the SLA, in particular of Articles 2 and 15 of Part I of the SLA, Article 7 of Part II, “Special conditions” of the SLA and Articles 1 to 3 of the Appendix A-5 to the SLA. In addition, it would certainly infringe the obligation of sincere cooperation between the Commission and the EPPO.

9. It is incumbent on the Commission to abstain from any measure that could jeopardize the attainment of the Treaty objective entrusted to EPPO in combating crimes affecting the financial interests of the Union.

Background to the dispute

10. In support of our request, you may find below a brief summary of the background to the situation and the underlying budgetary issues which led to the current dispute:

- In the Explanatory Memorandum to the 2013 Commission’s proposal\(^1\) for a Regulation on the establishment of the European Public Prosecutor’s Office, it was stated that “*the proposal seeks to be cost-efficient for the EU budget: part of OLAF’s current resources will be used for setting up the central headquarters of the European Public Prosecutor’s Office, which in turn will rely on the administrative support of Eurojust.*” [emphasis added]. No budgetary allocations were therefore foreseen for IT services in the Legislative Financial Statement attached to the Commission’s proposal.

- While Regulation(EU) 2017/1939\(^2\) (“the EPPO Regulation”) significantly departed from the original Commission’s proposal, including from the original idea of EPPO’s reliance on Eurojust’s IT infrastructure, nevertheless Article 100 (4) still provides that “[t]he EPPO may rely on the support and resources of the administration from Eurojust”. However, such support was never provided, for objective reasons, including the fact that the EPPO has its seat in Luxembourg and not in The Hague, in the immediate vicinity of Eurojust, as once envisaged. Despite this, the amended Legislative Financial Statement accompanying the adoption of the EPPO Regulation still did not contain indications of future resources to be used for IT services (other than those necessary for the setting up of the EPPO’s own Case Management System).

- Given the above, the SLA with DG DIGIT has been considered by the Commission and the EPPO as the appropriate solution until the EPPO would have the capacity of full IT independence. From the early stages of the EPPO’s setting-up process, it was clear

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\(^1\) COM(2013) 534 final.

to all parties involved that DG DIGIT will continue to provide IT services to the EPPO until the latter will have the capacity to ensure its IT autonomy.

• The budget allocated to the EPPO until its start of Operations (1 June 2021) was primarily absorbed by the need to set up its operational capacity. No significant resources were available for administrative costs, including for beginning to set up IT independence.

• In the amending letter No 1 to the Draft General Budget 2022\(^3\), the Commission explained the adjustment of the EPPO budget and staff resources “so as to allow the EPPO to deal with the backlog of cases in a reasonable timeframe”. Therefore, no additional resources were foreseen for the purpose of the EPPO’s progress towards IT independence.

• For 2023 budget, the EPPO did not request any budget for reaching its IT independence, following an agreement between the EPPO and the Commission which took into account the substantial budget increase received by EPPO in 2022 for the aforementioned purpose of dealing with the higher than expected case load. However, the EPPO requested, on 2 June 2023, 21 additional establishment plan posts and financial resources to put in place a minimal security structure. In 2023 the EPPO was awarded 8 additional posts (of the 21 requested) and EUR 0.5 million, which were destined, as per request, to address security concerns.

• In this situation, and given the need to continue relying on the SLA and its Appendix A-5 for the provision of the DWP services, in the course of 2023 the Commission and EPPO corresponded extensively at technical level to ensure continuity of these services. This was, in particular, made necessary by the fact that the Commission had meanwhile begun the migration of its IT services to the “WELCOME” environment, while the services provided to the EPPO were (are) still based on the “NET1” environment, due to be phased out.

• In light of this dynamic situation, on 9 June 2023, the Administrative Director of EPPO, Mr Ramsayer, addressed a letter to the Director of Digital Workplace & Infrastructure, DIGIT.DDG.C, Mr Van Damme, seeking to ascertain the planning of the provision of the services in question and to determine whether DG DIGIT could help to remove limitations currently experienced by EPPO, described in the Annex to the letter.

• On 25 July 2023, DG Digit replied that the services to EPPO would be provided only until mid-2024 and DG Digit would not be able to reengineer the new DWP “WELCOME” environment to allow the provisioning of DWP services to EPPO after mid-2024.

• On 20 September 2023, the Administrative Director of EPPO replied that he was unaware until that moment of such an intended termination of the services by mid-

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\(^3\) COM(2021) 642 final.
2024. He underlined that the internal assessment of feasibility and risks to EPPO operations rendered such a time limit unacceptable. He stressed the need to reconsider such a time limit and invited the DG DIGIT service to a consultation in order to consider alternatives and discuss the technical and budgetary implications.

- A number of meetings between the Commission services and the responsible technical services of the EPPO were held following this letter (Q4 of 2023) to try and establish an amicable solution to the issue. In the course of these meetings EPPO envisaged the possibility to progress towards IT autonomy for the provision of DWP services by mid-2025, provided that sufficient resources (staff and financial) would be awarded to it. A specific transition plan, setting out the specific steps and needs required by the EPPO, was shared with the Commission services during this dialogue.

- Indeed, in its budget request for 2024, the EPPO had requested 188 additional positions, out of which 45 positions necessary for reaching the IT independence. However, the Commission rejected the request, considering that those resources were not necessary because adequate services would be available from DIGIT. The EPPO was instead solely awarded additional 13 posts and EUR 6 million in total, of which EUR 4 million in conciliation, which were the residue from the 21 posts and financial resources requested in 2023 for the reinforcement of the EPPO’s security capacity. Again, no resources were awarded for IT autonomy.

- In spite of this persistent denial of necessary resources, on 5 February 2024, DG Justice and Consumers, Directorate A-Justice Policies, directed by Mr Sonnenschein, addressed the letter recalled above to the Administrative Director of EPPO, stating that DG DIGIT would be able to continue providing the EPPO its services only until the end of December 2024. It was also stated that the Commission considered that for 2024 and coming years the EPPO has the necessary resources to implement the necessary IT transition.

**Request for amicable settlement and Conclusion**

11. Contrary to the consideration of the Commission highlighted above, the EPPO does not currently dispose of sufficient financial and human resources to ensure its IT independence. The unilateral decision by DG DIGIT to terminate, on 31 December 2024, the provision of the mentioned services to the EPPO risks that the Union’s independent prosecution office will be in the impossibility to carry out its tasks and achieve its mission.

12. While DG DIGIT might not have the whole picture of the magnitude of the impact of its decision to terminate the respective services by the end of this year, the Commission
should be fully aware that the EPPO, as a prosecution office, cannot simply “shut down” due to the termination of key digital services by the services of the Commission.

13. The termination of the provision by DG DIGIT of DWP services should only happen at a date allowing the EPPO to deal with the corresponding management and budgetary consequences.

14. While in the DG JUST Note to the file of 5 February 2024, annexed to the letter of 5 February 2024, it is noted that “DIGIT and the EPPO agreed that DIGIT could not provide such services on a long-term basis but would be able to continue providing them during a 2/3-year “transition out” phase after the start of the EPPO’s operational activities (1 June 2021)”, in light of the open-ended nature of the SLA and its Appendix A-5, this indication must be understood as having been discussed in a merely indicative manner, to be verified in light of the EPPO’s progress towards IT autonomy. It does not mean that mid-2024 has at any stage been agreed as the termination date for the provision of the respective services.

15. Against this background, should DIGIT unilaterally terminate the provision of “DWP” Services to EPPO by the end of 2024, this would not only represent a violation of the SLA by DG DIGIT, but would equate to lack of sincere cooperation from the Commission in the exercise of its executive and management functions, since, on the one hand, in the budgetary process the services provided by DG DIGIT are mentioned as reason to reject additional resources to the EPPO, and, on the other hand, DG DIGIT would cease to provide the mentioned services.

In light of the above:

With a view to reaching an amicable settlement of this dispute, the EPPO proposes 30 June 2025 as the earliest termination date for the provision by DG DIGIT of the DWP Services referred to in the Appendix A-5 to the SLA, provided that the EPPO will be granted in the shortest possible time the necessary resources to progress towards its IT independence, as requested repeatedly over the past years.

If this were not possible, the EPPO requests that the Commission continue providing the services identified in Appendix A-5 to the SLA until such time as the EPPO would be put in a budgetary situation conducive to the process above.
Given the urgency of the matter and in line with the obligations under Article 11 (4) of the SLA it is requested that the Commission respond within 15 working days to this letter, with a view to reaching an amicable settlement within 30 days from the date of the request.

Yours sincerely,

Laura Codruța Kövesi
European Chief Prosecutor

Cc.: Ana Gallego Torres, European Commission, Director-General, DG Justice and Consumers
     Stéphanie Riso, European Commission, Director-General, DG Budget

     Andrés Ritter, EPPO, Deputy European Chief Prosecutor
     Petr Klement, EPPO, Deputy European Chief Prosecutor
     Milan Jaroň, EPPO, Acting Head of Executive Office Unit
     Luca De Matteis, EPPO, Acting Head of the Legal Service Unit