Luxembourg, 26 January 2021
EPPO/LCK/2021/021

To the attention of
Commissioner Johannes Hahn
Commissioner Didier Reynders
European Commission

Dear Commissioners,

Since the appointment of the European Chief Prosecutor and even more so of the College of the EPPO, the intense preparation of the operational start of the EPPO has brought to light several previously unidentified issues. In particular, this led to a thorough re-evaluation of the EPPO budget.

Based on an updated estimate of its expected workload, the EPPO had requested 219 central office staff in 2021. In their letter dated 10 September 2020 (EPPO/LCK/2020/100), the European Chief Prosecutor and the European Prosecutors asked the budgetary authority “to address the remaining critical personnel gaps in the EPPO’s central office”.

By increasing the EPPO budget 2021 from 13.2 million EUR to 44.9 million EUR, the budgetary authority significantly improved the EPPO’s starting point. The decision of the budgetary authority could enable the EPPO to recruit around 50 additional staff members. Although it would not allow the EPPO to cover the needs of a number of key sectors (administration, IT, executive office, security), concentrating these additional resources in the operational sector would render an adequate management of the first phase of its operational life possible.

The EPPO establishment plan for 2021 limits the number of EPPO staff to 130 full time posts¹, out of which 112 have already been filled (the remaining 18 positions will be filled as soon as

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¹ The College of the EPPO duly noted the European Parliament resolution of 18 December 2020 on the Council position on the second draft general budget of the European Union for the financial year 2021 (P9_TA-PROV(2020)0385) welcoming “EUR 7.3 million [more compared to the Commission proposal] for the European Public Prosecutor’s Office mainly for staff reinforcements”. 
This does not allow the EPPO to sufficiently address the risk of a "blockage of the EPPO and [of] high legal and reputational risks for the EPPO", as reported to you early October 2020 in the Explanatory note on critical personnel gaps in the central office.

The College of the EPPO understands the Commission’s imperative to ensure a consistent implementation of a general policy towards decentralised bodies and agencies.

However, according to recital 111 of the EPPO Regulation “to guarantee the full autonomy and independence of the EPPO, it should be granted an autonomous budget”.

The EPPO is not a decentralised agency, but the Public Prosecution Service of the European Union. The EPPO is a judicial body, which abides by principles different from any EU agency. The EPPO acts in the interest of justice and enjoys a total operational independence. The operational work of the EPPO is based on the principle of mandatory prosecution and strict procedures.

The EPPO will be obliged to analyse all the cases, in respect of which the EPPO could exercise its competence, initiated by the prosecution service of the 22 different Member States after 20 November 2017 (‘backlog’) as well as all the new incoming information, which could result in initiating new investigations and prosecutions (‘influx’).

The College of the EPPO also understands the Commission’s imperative not to allocate more staff than strictly necessary considering the possible long-term budgetary liabilities as well as the Commission’s persistent doubts with regard to the most updated estimates of the likely workload of the EPPO as from the start of its operations.

However, the personnel needs underlying the EPPO budgetary request for 2021 are based on a very conservative workload estimate, taking into account only a solid projection of ‘influx’ of new cases and not the initial ‘backlog’.

Even though in reality there will always be a ‘backlog’ of cases at the EPPO (it is not possible to close all the cases opened in a given year within that same year), the College of the EPPO agrees that its accurate assessment will be possible only after the EPPO will have been operational for some time. This is the reason why the College of the EPPO is grateful for the Commission’s openness to a budgetary revision after the start of operations.

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2 See in particular Articles 10(4.a), 10(9), 27(1), 27(6, second sub-paragraph) of the EPPO Regulation
Finally, the College of the EPPO understands the Commission’s pragmatic approach, according to which in the event that, in the course of operations, a new need arises to supplement the current staff, this would be technically possible at any point in the year.

However, while this could help the EPPO to adjust on time to significant variations in its workload, it has only a very limited potential to be a solution in a situation where the operational capability of the EPPO could be seriously endangered, considering the incompressible lengths of the EU budgetary and HR procedures.

The College of the EPPO remains convinced that there is a serious risk that such situation arises given the strict procedural obligations and the specific nature of the competence of the EPPO. The permanent chambers and the European Prosecutors will not be in a position to cope with their legal obligations within the mandatory deadlines, without enough qualified legal, operational and administrative staff to support them.

In order to mitigate this risk, after careful consideration and having weighed different solutions, the College of the EPPO requests the competent services of the Commission to authorize the EPPO to recruit up to 42 more staff under budget 2021 (17 Seconded National Experts, and 25 Contractual Agents ). This would address the remaining critical personnel gaps in the central office as well as the Commission’s main concern of not creating long-term budgetary liabilities.

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