



Paris, 16 May 2019

POLITICAL OPINION

on judicial cooperation in criminal matters and the establishment of the European Public Prosecutor's Office

- 1 Having regard to Articles 82 to 86 of the Treaty on the Functioning of the European Union,
- 2 Having regard to the European Resolution of 28 October 2013 setting out the reasoned opinion of the Senate on compliance with the principle of subsidiarity of the Proposal for a Regulation on the establishment of the European Public Prosecutor's Office (COM (2013) 534 final),
- 3 Having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office,
- 4 Having regard to the communication from the Commission to the European Parliament and the European Council entitled "A Europe that protects: an initiative to extend the competences of the European Public Prosecutor's Office to cross-border terrorist crimes" of 12 September 2018, COM (2018) 641 final,
- 5 Having regard to the communication from the Commission presenting the annual report 2017 on the application of the principles of subsidiarity and proportionality of 23 October 2018, COM (2018) 490 final,
- 6 Having regard to Council Decision 7626/19 on the exercise of powers by the Secretary-General of the Council as regards complaints submitted to the Council by candidates for the position of European Chief Prosecutor,

- 7 The Senate European Affairs Committee:
- 8 Reiterates that the construction of an area of freedom, security and justice is an essential objective of the European Union and that judicial cooperation in criminal matters contributes significantly to the achievement of this objective; notes that such cooperation requires the effective application of the principle of mutual recognition of judgements and judicial decisions and the establishment of minimum standards for the harmonisation of charges and penalties in the European Union's areas of competence in criminal matters; welcomes the great success of the European Arrest Warrant;
- 9 Urges the development of training programmes to help practitioners better understand and use all the instruments of judicial cooperation in criminal matters; calls for communication about this cooperation to be improved so that European citizens can gain a greater understanding of European added value in this area;
- 10 Reiterates its strong attachment to the establishment of a European Public Prosecutor's Office as an independent body competent to investigate, prosecute and bring to trial the perpetrators of, and accomplices in, crimes affecting the financial interests of the Union and therefore the European budget; points out that the establishment of a European Public Prosecutor's Office will permit the investigation of complex transnational cases that are currently treated insufficiently at the national and European level, and will also provide assistance to participating Member States whose judicial systems show malfunctions;
- 11 Welcomes the fact that the decentralised and collegial structure of the European Public Prosecutor's Office and its organization into permanent chambers ultimately complies with the principle of subsidiarity, as originally requested by the Senate;
- 12 Notes that the European Public Prosecutor's Office has been established in the form of enhanced cooperation between twenty-two Member States at present, and expresses the wish that non-participating Member States will eventually join the European Public Prosecutor's Office;
- 13 Insists that the European Public Prosecutor's Office should be operational by the scheduled date of 20 November 2020 and calls upon the European co-legislator to appoint a European Chief

Prosecutor at the earliest opportunity; recalls that the procedure for appointing the key personnel to the European Public Prosecutor's Office must be transparent and fair, and based on the principle of sincere cooperation so as to ensure that their legitimacy is unquestionable; considers that the European Public Prosecutor's Office must have sufficient financial and human resources to fulfil its mandate without reducing the resources of the European agencies working in the area of freedom, security and justice, whose duties will continue to be developed;

- 14 Deems it indispensable for the European Public Prosecutor's Office and the European agencies working in the area of freedom, security and justice to maintain close relationships based on trust and mutual cooperation so as to avoid redundant work and possible loss of competences in different geographical areas; calls, therefore, for special attention to be given to coordinating the activities of the European Public Prosecutor's Office with that of the European Anti-Fraud Office (OLAF), Europol and Eurojust, while respecting the mandate of each of these agencies;
- 15 Reiterates its demand for more effective information sharing between national judicial and law enforcement agencies and European agencies operating in the area of freedom, security and justice, in compliance with the principles of data protection and ownership that the European Public Prosecutor's Office must respect when various different information systems are to be interconnected; emphasizes, in this respect, that securing the means of communication between national services, agencies, and the European Prosecutor's Office is both a priority and an incentive to exchange more information;
- 16 Notes that the rapid growth of cybercrime poses a threat to the European Union and its Member States, and may take a variety of forms with potentially very serious consequences; considers that cyber-threats should also be treated within the framework of judicial cooperation in criminal matters; calls for more effective international cooperation in the fight against cyber-threats so as to promote the greater security and stability of cyberspace, which requires responsible behaviour by States and respect for fundamental freedoms and the rule of law;
- 17 Calls on the European Public Prosecutor's Office and the National Public Prosecutor's Office to maintain close and complementary relations;

18

Notes that the extension of the competences of the European Public Prosecutor's office to include cross-border terrorist crimes has been the subject of several proposals; considers such a prospect interesting in a context marked by the persistence of the terrorist threat in Europe; recalls, nevertheless, that this objective, the achievement of which would require unanimity in the European Council, would affect the sovereignty of the Member States and must therefore also be assessed in light of the principle of subsidiarity; considers that it is necessary to avoid any haste, insofar as the European Public Prosecutor's Office is not yet operational and will need to establish its legitimacy and demonstrate its usefulness both within the European institutional landscape and in the legal systems of the participating Member States; considers that the competences of the European Public Prosecutor's Office may be extended, if necessary, only after a thorough, independent evaluation of its functioning, in which the new National Anti-Terrorist Prosecutor's Office will have to participate; considers, therefore, that priority must be given to fulfilling the conditions enabling the European Public Prosecutor's Office to fulfil its mandate completely and that an extension of its scope of competences can only be envisaged in the medium or long term.