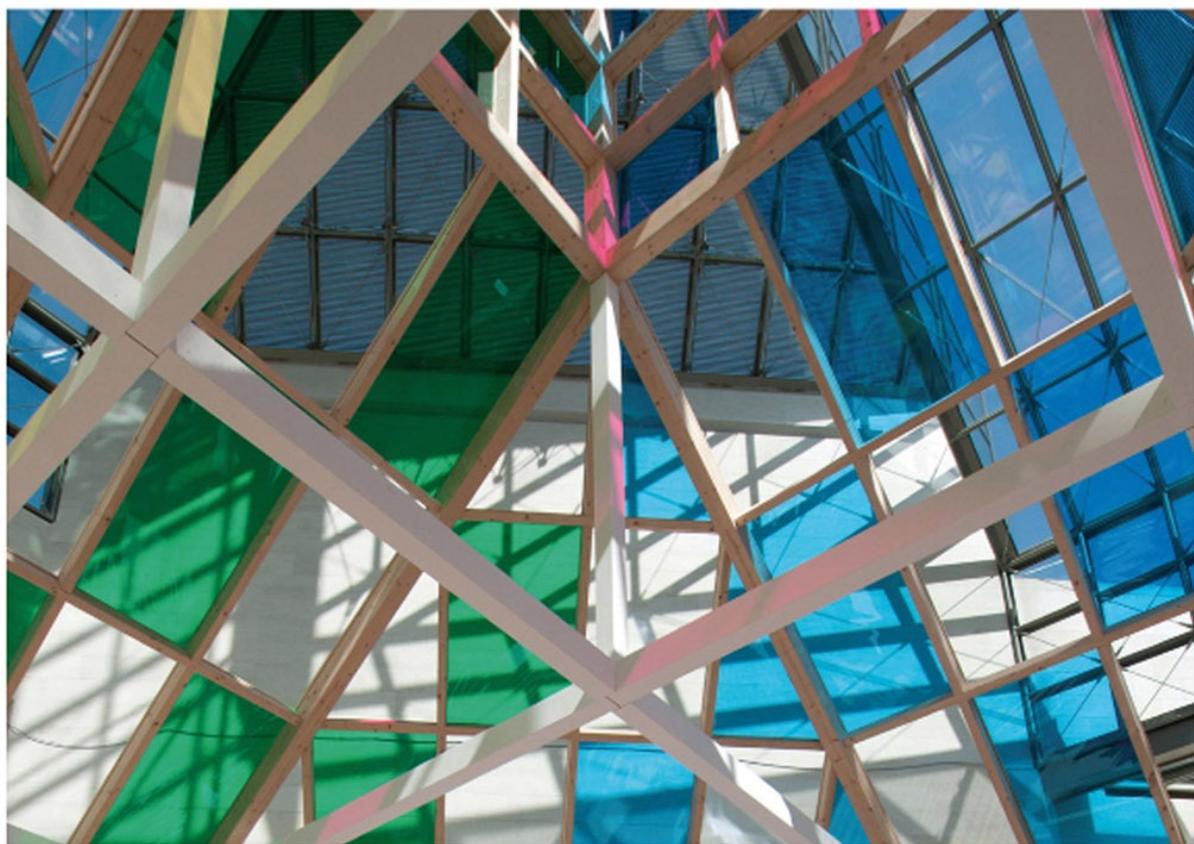


COLLECTION LIGNES DE REPÈRES



SCHUMAN REPORT ON EUROPE STATE OF THE UNION 2020

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The European Prosecutor's Office: hopes and challenges

Laura Codruta KÖVESI

The vital experience of honesty, as well as the willingness to respect the democratically adopted laws and to administer justice fairly and effectively, gives the rule of law a social meaning.

Conversely, failure to respect the rule of law undermines the very foundation of the European Union, since it is conceived as the ever-closer union of living democracies.

The crisis of confidence that the European Union is experiencing as a result of uncontrolled migration, certain forms of international terrorism, the urgency of environmental challenges or, more simply, the collapse of economic models has been described at length elsewhere.

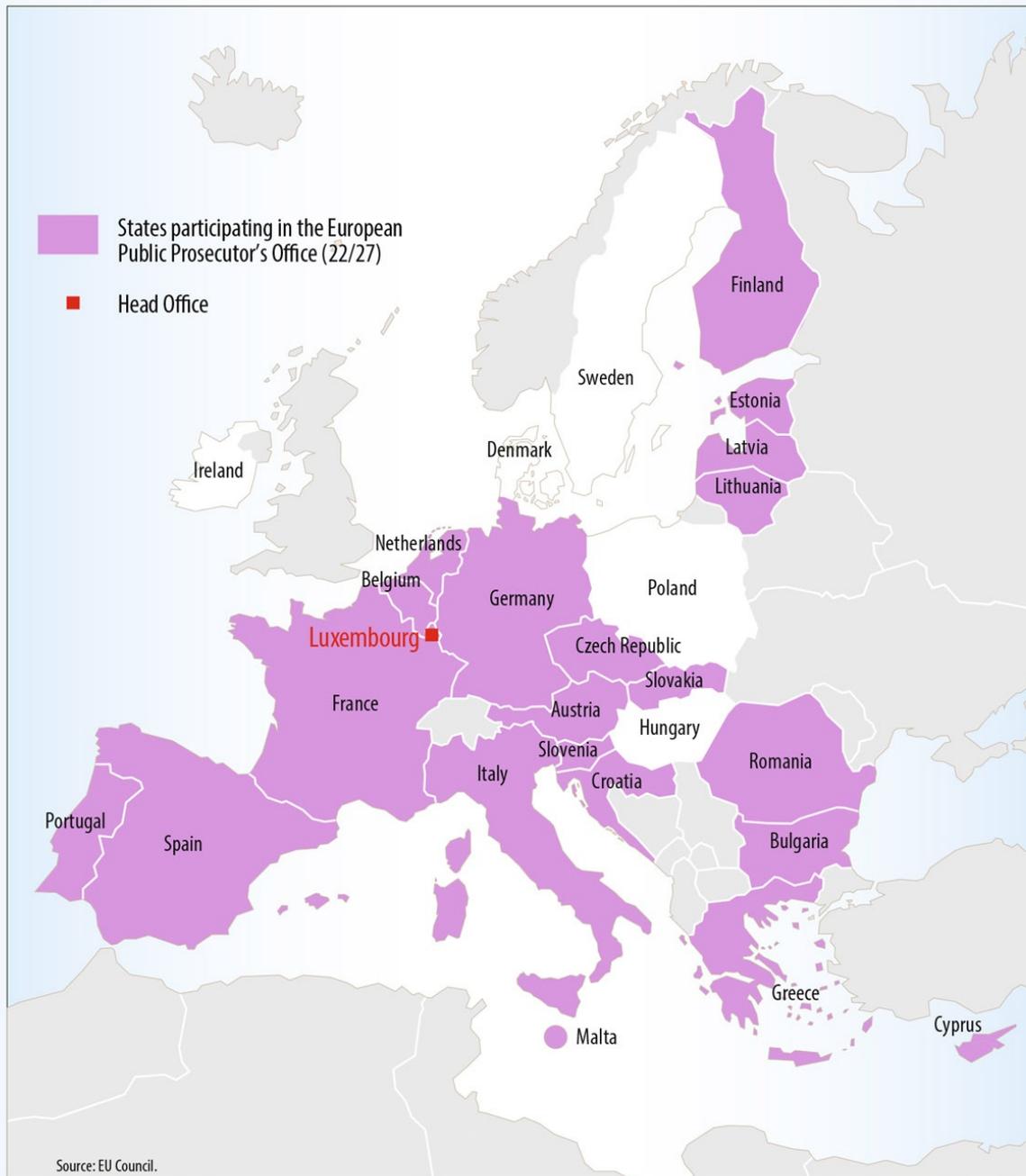
However, wouldn't it be fair to say that this European Union, born through the pooling of factors of production, supplemented by common sectoral policies, the police and judicial cooperation and crowned by the coordination of foreign, economic and monetary policies needs a bit of soul in any case?

After more than twenty years of discussions and four years of negotiations, the creation of the European Public Prosecutor's Office has, or so I hope, strengthened the very basis of the Union's democratic legitimacy.

In addition to strengthening the mechanism responsible for protecting the Union's financial interests, the creation of the European Public Prosecutor's Office strengthens the pillar of the European judiciary. Beyond that, it strengthens the values of the rule of law, anchored at the heart of the European project, and the balance of powers.

The European Public Prosecutor's Office

(inauguration: November 2020)



Prosecuting crimes and guaranteeing the right to a fair trial

The immediate objective of a common approach to the prosecution of offences affecting the European Union's financial interests must make us regret that not all Member States have participated in this undertaking from the outset. The European Public Prosecutor's Office is indeed the result of an enhanced cooperation procedure that might be a source of frustration for the advocates of European integration.

The effectiveness of proceedings, which the European Public Prosecutor's Office is intended to strengthen, can only be achieved in compliance with the fundamental guarantees given to the citizens who are subject to the law. After all, the creation of this new judicial authority also ensures and makes effective the right to a fair trial recognised by Article 6 of the European Convention for the Protection of Human Rights.

Short term implementation stages

Each preparatory decision has an immediate impact on the primary objective of starting operations by the end of 2020. Each decision also has a longer-term impact. This is particularly true of the definition of the multiannual financial framework, which covers a period of 7 years (2021-2027).

Specifically, what needs to be done in the short term, i.e. by the end of the year 2020?

- The Member States must transpose the Directive on the protection of the European Union's financial interests in good time and decide, within their own territory, on the legislative and regulatory adaptations necessary for the proper functioning of the European Public Prosecutor's Office in their respective territories;
- The European Public Prosecutors must be appointed and have moved to Luxembourg, so that they can constitute the College and take the strategic decisions provided for in the Regulation establishing the European Public Prosecutor's Office;
- Agreements must be reached with the Member States on the number of Deputy European Public Prosecutors, their selection and the staff and resources needed to support them;
- The case management system still needs to be set up and the staff needed to handle the cases from day one must be recruited and trained.

In essence, for the European Public Prosecutor's Office to be operational:

- It must be able to receive information, complaints and files from participating Member States, EU institutions, agencies, bodies, legal entities and individuals;
- It must be capable of recording everything, translating what is necessary and analysing all the data in order to open an investigation or evocate a case on the basis of objective criteria while respecting legality;
- Finally, it must be able to initiate prosecutions and participate in legal proceedings.

The challenges to be overcome in the long term

While the creation of the European Public Prosecutor's Office has a historical dimension, the negotiations leading up to its creation have nevertheless reduced the level of ambition of the initial project.

Thus, the relative imprecision of the Regulation on the European Public Prosecutor's Office regarding the modalities of cooperation between the European Public Prosecutor's Office and non-participating Member States is a first obstacle to be overcome. Another is the tension in the Regulation on the European Public Prosecutor's Office between, on the one hand, the search for greater efficiency in investigations and, on the other hand, compliance with national legal systems. A further degree of complexity arises when the investigation and prosecution of an offence takes on a cross-border dimension.

The innovative solutions in the Regulation establishing a European Public Prosecutor's Office involve a combination of provisions drawn from Union law and national legal systems. Finally, the Regulation could have been more ambitious in defining the powers of the European Public Prosecutor's Office and the provisions relating to the admissibility of evidence.

It is enough to say that, in a medium or long-term perspective, the European Public Prosecutor's Office will also have to face these difficulties.

Some reasons to be hopeful

The establishment of the European Public Prosecutor's Office opens up important new perspectives for the judicial pillar of the European Union for two main reasons.

The dynamic relationship that will develop between the permanent chambers, the European Public Prosecutors and the Deputy European Public Prosecutors should guarantee the independence of the European Public Prosecutor's Office and its effective resistance to any kind of pressure.

The functioning of the European Public Prosecutor's Office implies the implementation of specific prosecution mechanisms without prior harmonisation of the provisions of the criminal law of the Member States. Once they have proved their effectiveness, these mechanisms could be extended to other areas of law.

Both challenges and obstacles are clearly identified. Now it is time to move forward. Every effort must be made to ensure that the European Public Prosecutor's Office is operational by the end of 2020. It will strengthen the protection of the European Union budget, but above all it will create a new dynamic in the field of justice. The challenge now is to win the confidence of European citizens.