

## The European Public Prosecutor's Office, a new player in negotiated justice

On 3 March 2020, the French Senate passed at first reading, by 318 votes to 3, bill no. 283 on the European Public Prosecutor's Office and specialised Criminal Justice (hereafter "the Bill"), presented to the Council of Ministers on 29 January 2020 by the Minister of Justice.

Created by (EU) Regulation 2017/1939 of the Council of 12 October 2017 (hereafter "the Regulation"), the mission of the European Public Prosecutor's Office is to prosecute offences affecting the financial interests of the European Union (VAT fraud/VAT carousel fraud, embezzlement of European public funds, corruption of European public officials...)<sup>1</sup>. Its organisation is partly decentralised: Deputy European Prosecutors are appointed by the Member States in order to conduct the investigations and represent the European Public Prosecutor's Office before national Courts.

The Bill's report shows that this decentralised organisation was not the one that had been presented in 2013 by the European Commission, which originally had in mind the creation of a single Public Prosecutor, having exclusive jurisdiction to conduct investigations throughout the European Union<sup>2</sup>. Faced with the objection expressed by fourteen national Parliaments, including the French Parliament, the Commission decided to implement the so-called enhanced cooperation procedure.

The European Regulation of 12 October 2017, which created the European Public Prosecutor's Office, an independent European body having for the first time its own judicial powers in criminal matters, therefore only applies to the 22 Member States<sup>3</sup>, including France, which take part in the enhanced cooperation.

Article 8 of the Regulation establishes the structure of the European Public Prosecutor's Office, on two levels:

- a central level, the central office located in Luxembourg, which will consist of the European Chief Prosecutor, the Deputy European Chief Prosecutors, a panel of 22 European Prosecutors (one per participating Member State) and the Administrative Director, and

- a decentralised level within each participating Member State, consisting of European Delegated Prosecutors in charge of the operational oversight of investigations and prosecutions in the Member States.

Pursuant to Article 6 of the Regulation, the European Public Prosecutor's Office is independent. All its members, including the European Delegated Prosecutors in the Member States do not fall under the jurisdiction of the National Public Prosecutor's Office. They are not obliged to implement the guidelines of the criminal policy set by the Minister of Justice, nor the instructions given by the General Public Prosecutor before the Court of Appeal, but they have to implement the guidelines set by the college of the European Public Prosecutor's Office.

Having the same prerogatives as the Judges of the Public Prosecutor's Office in the field of investigations, prosecutions and bringing cases to judgment, European Delegated Prosecutors shall be responsible for those investigations and prosecutions that they have initiated, that have been allocated to them or that they have taken over using their right of evocation. They shall also be responsible for bringing cases to judgment and will support the indictment at hearings before national Courts<sup>4</sup>.

The European Public Prosecutor's Office is intended to take care of large-scale complex or cross border cases of fraud (for example, when a criminal sentence can cause damage worth over 10,000 Euros to the financial interests of the Union). In the case of a conflict of jurisdiction, it is up to the national authorities to decide who has jurisdiction to hear the case<sup>5</sup>.

<sup>1</sup> These offences are defined by the "PIF" Directive 2017/1371 of 5 July 2017, transposed into French Law by Order no. 2019-963 of 18 September 2019.

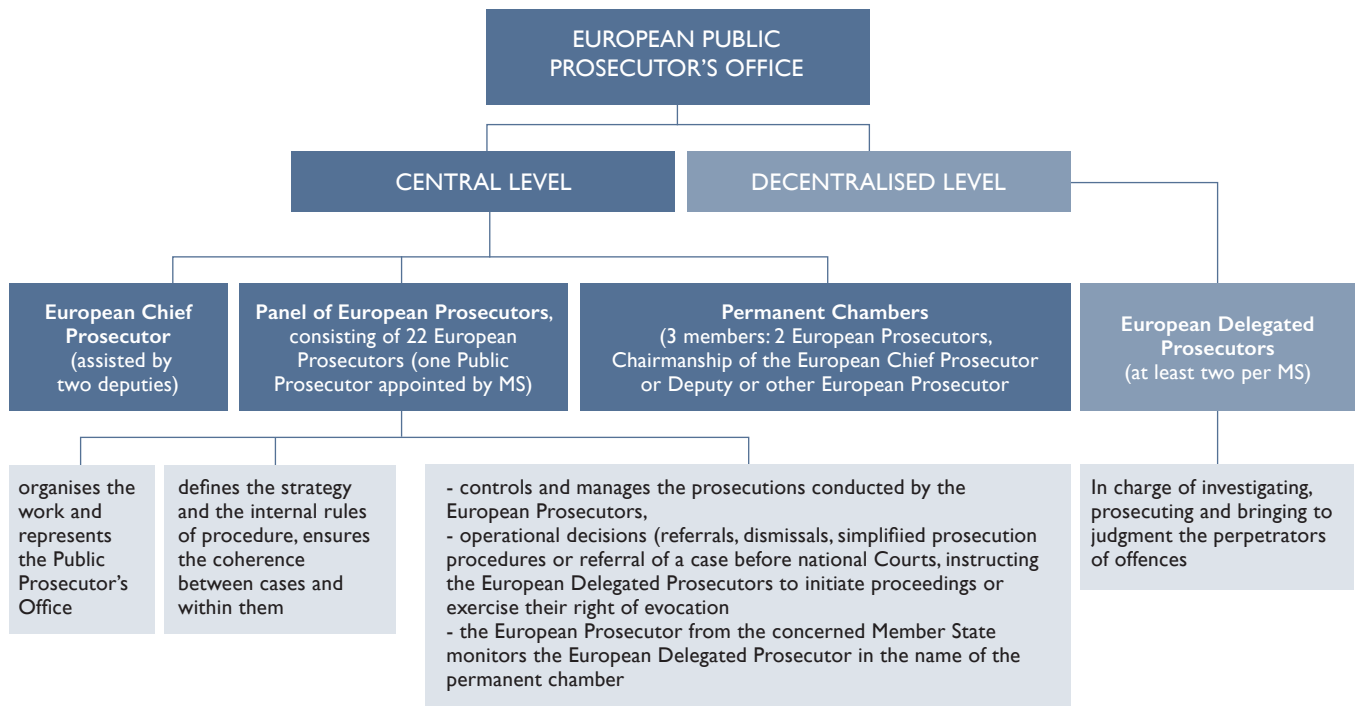
<sup>2</sup> Report from Senator Philippe Bonnecarrère, registered with the Presidency of the Senate on 19 February 2020, p.8

<sup>3</sup> The participating countries are: Germany, Austria, Belgium, Bulgaria, Cyprus, Croatia, Spain, Estonia, Finland, France, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, the Czech Republic, Romania, Slovakia and Slovenia.

<sup>4</sup> Regulation, Article 13

<sup>5</sup> Regulation, Article 25

The structure of the European Public Prosecutor's Office can therefore be outlined as follows:



If the regulation is directly applicable, national criminal proceedings must however adapt their legislation to the European Public Prosecutor's Office, the establishment of which is planned for 20 November 2020 at the earliest<sup>6</sup>.

The Bill passed at first reading by the Senate last March, to adapt our legislation to the European Public Prosecutor's Office, is structured in three parts: (i) the provisions relating to the European Public Prosecutor's Office, (ii) provisions relating to specialised criminal justice and (iii) miscellaneous provisions.

In a first part, the Bill inserts a new title in the French Code of Criminal Procedure entitled "*The European Public Prosecutor's Office*". It details the powers and remit of the European Delegated Prosecutors, sets guidelines for the conduct of the investigations by the European Delegated Prosecutors before the French Courts and addresses the issues of conflicting jurisdiction between the European Public Prosecutor's Office and the national judicial authorities.

As for title II, it concerns the provisions on specialised criminal justice, namely the fight against organised terrorism, criminality and delinquency, economic and financial delinquency as well as environmental damage. The powers of the National Antiterrorism Prosecution Service (PNA) as well as those of the National Financial Prosecutor's Office (PNF) in the fight against anticompetitive practices are enhanced.

Regarding the fight against environmental damage, the Bill puts into place an Ecological Judicial Agreement, inspired by the

Public Interest Judicial Agreement ("*CJIP*") set up by the Sapin 2 Law<sup>7</sup> for integrity violations and tax fraud, as well as specialised regional units, at each of the 36 Courts of Appeal and consisting of specialised Judges.

The creation of a new *CJIP* regarding environmental matters is part of the consolidation of a growing practice of negotiated justice. The creation of a European Public Prosecutor's Office, at the European level, and of European Delegated Prosecutors, at the national level, conducting investigations in its name, also reinforces the prosecution of multilocation offences.

These developments are in line with the exponential growth of the cooperation between foreign prosecution authorities, as observed in the *Société Générale* and *Airbus* cases, which led to prosecutions, for acts of corruption of foreign Public Officials, by the National Financial Prosecutor's Office (PNF), working closely with the English Serious Fraud Office (SFO) and the American Department of Justice (DOJ). This cooperation leading to the *CJIP* and DPA (Deferred Prosecution Agreement) being entered into simultaneously.

There is therefore every reason to imagine, with the creation of this European Public Prosecutor's Office, an even stronger cohesion between prosecution authorities. For Jean-François Bohnert, French Financial Public Prosecutor since October 2019, the European Public Prosecutor's Office will be "a major contact of the PNF", "*the national integration of which will result from the appointment of European Delegated Prosecutors, who could have their operational seat within the PNF itself*"<sup>8</sup>.

**AUTHORS:** [Nicolas Brooke](#) & [Camille Gravis](#)

<sup>6</sup> Regulation, Article 120

<sup>7</sup> Law no. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life

<sup>8</sup> OJP, Interview of Jean-François Bohnert, 17 April 2020