



Tweede Kamer

DER STATEN-GENERAAL

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Standing Committee on Security and Justice

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Dear Ms Jourová,

On 12 September 2018, the Standing Committee on Security and Justice of the Dutch House of Representatives of the States General received the EU proposal 'A Europe that protects: an initiative to extend the competences of the European Public Prosecutor's Office to cross-border terrorist crimes' COM(2018)0641. Six parliamentary groups¹ have comments and questions about this proposal which they would like to address by means of a political dialogue with the European Commission. The Standing Committee on Security and Justice looks forward to your response with interest and would very much appreciate to receive your answer at the earliest possible opportunity, but at the latest within three months of the date of this letter.

Motion in the Dutch House of Representatives

On 13 September 2018, the House of Representatives determined its position with regard to the proposal by adopting a motion put forward by the Member of Parliament Renske Leijten. This motion² was as follows:

"The House, having heard the deliberations,

- noting that, even before the European Public Prosecutor's Office (EPPO) has become operable, proposals are being made for EPPO also to be given responsibility for combating terrorism;

¹ Contributions were received from VVD, CDA and D66 (coalition parties) and PVV, SP and SGP (opposition parties).

² House of Representatives, 2017–2018 session, 21 501-20, no. 1360 ([link](#)). The motion was approved by VVD (33 seats), PVV (20 seats), CDA (19 seats), SP (14 seats), ChristenUnie (5 seats), PvdD (5 seats), 50-plus (4 seats), SGP (3 seats) and FvD (2 seats); the motion was opposed by: D66 (19 seats), GroenLinks (14 seats), PvdA (9 seats) and DENK (3 seats). There are 150 seats in the House of Representatives in total.



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- noting that investigation and prosecution are national competences, backed up by democratic safeguards;
- calls on the government to oppose the extension of the EPPO's mandate to include the combating of terrorism, and proceeds to the order of the day".

Questions from parliamentary groups

Proposal: motivation, timing, parameters for mandate

The members of the VVD (People's Party for Freedom and Democracy) parliamentary group wonder when the idea emerged to extend the competencies of the European Public Prosecutor's Office (hereinafter: EPPO). They also wonder, as do the members of the D66 (Democrats 66) parliamentary group, which Member States take a positive view towards the proposal and which have responded more hesitantly. The members of the CDA (Christian Democratic Party) parliamentary group would also like to ask the Commission why an extension of the EPPO's competences is proposed while it has not yet even been established with its current competences. The members of the SGP (Reformed Political Party) parliamentary group wonder if the Commission can issue a statement that this extension of the mandate was not a subject for discussion when the EPPO was being developed. Is it a deliberate choice to raise this issue now? The members of the D66 parliamentary group would like to ask the Commission what possibilities Member States will still have after the extension of the EPPO mandate to cover terrorism to exercise an influence on specific proposals from the Commission to extend the EPPO's sphere of operation or to put forward their own proposals. The members of the SP (Socialist Party) parliamentary group note that combating terrorism is important, but that this applies equally to combating child pornography and the fight against cybercrime and against financial/economic criminality. They wonder why the Commission is now submitting a separate proposal to extend the EPPO's mandate especially to include combating terrorism.

Potential for further extensions to the EPPO's mandate

The members of the VVD parliamentary group note that Article 86 (4) of the Treaty on the Functioning of the European Union in principle makes it possible to extend the EPPO's mandate to include "serious crime having a cross-border dimension". They wonder whether the Commission intends to come forward with a new proposal to extend the competences of the EPPO even further than the current mandate and the proposed extension to include terrorism. Are there Member States who would wish to see that happen? Can the Commission provide an indication of the forces at play in this regard? The members of the D66 parliamentary group also have questions concerning this. They wonder what opportunities the Commission envisages in which the EPPO may in the future be of use to Member States in other spheres of operation, such as corruption and other forms of financial/economic criminality. In addition to financial/economic criminality, does the Commission envisage any other spheres of



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operation in which the EPPO can be of added value in the collaboration between Member States in prosecuting criminal offences?

The members of the SP parliamentary group wonder if the Commission can rule out more proposals being made in the future to further extend the EPPO's mandate? If not, why not? These members point out that they already warned in the past of the creeping expansion of the EPPO's mandate and note that this is already happening even before the EPPO has begun operating. They ask the Commission to reflect on this. The members of the SGP parliamentary group argue that, in general, great restraint is desirable when infringing on the national sphere of criminal law. They also wonder if the Commission has more concrete intentions to restrict national competences in the sphere of criminal law in favour of the EPPO or other European bodies.

With regard to the Commission's proposal, the members of the VVD parliamentary group note that, if the EPPO's mandate is extended to include cross-border terrorism a "variable geometry" within the EPPO in the sense that Member States could choose to participate in the EPPO on the basis of the original mandate or the original mandate extended to include cross-border terrorism will not be possible. Why will this not be made possible? These members wonder whether it would not be better to leave the choice to Member States themselves.

The members of the CDA parliamentary group would also like to ask the Commission how it judges European bodies such as EuroJust or Europol and whether these organisations do not have a facilitating role in international cooperation in combating terrorism. They also wonder, as do the members of the VVD, what purpose these bodies would still serve if the EPPO also had this competence.

National, inter-state and/or EU approach to combating terrorism

The members of the VVD parliamentary group note that, in the EU proposal, the Commission expresses its disappointment that there is currently no European-level prosecution of cross-border terrorist crimes. These members point out that this is precisely because this is "a power of the national investigating authorities". They ask the Commission if it recognises that the Dutch Public Prosecution Service currently has the jurisdiction to prosecute criminal offences in the Netherlands, including terrorist crimes, and whether it acknowledges that extending the EPPO's competence would limit the jurisdiction of the Dutch Public Prosecution Service? They also ask the Commission if it can provide a detailed explanation of the consequences of the proposal for the Dutch Public Prosecution Service's prosecution monopoly? In which areas have the public prosecution services in the Member States failed to function effectively in the Commission's view to such an extent that it is necessary to restrict their prosecution monopoly? In this respect, how does the Commission assess the functioning of the Dutch Public Prosecution Service? What stance do the national investigation authorities, such as the Dutch Public Prosecution Service, take with regard to the proposed extension of the EPPO's competences? Can the Commission provide an overview of this?

The members of the CDA parliamentary group ask the Commission what its judgement is on the principle of subsidiarity with regard to this proposal to extend the mandate of the



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still-to-be-established European Public Prosecution Office. They also ask if the Commission can explain how this proposal relates to the principle of proportionality. Do not most European countries already focus sufficiently on combating terrorism at national level? How does the Commission judge the European cooperation that already exists in combating terrorism? Are there no possibilities for facilitating European cooperation in combating terrorism that are less far-reaching?

The members of the CDA parliamentary group note that the Commission points out in the EU proposal that inter-state cooperation between different EU countries in combating terrorism has improved significantly in recent years. They therefore ask the Commission why it is necessary to accord the yet-to-be-established European Public Prosecution Office the additional or exclusive competence to investigate and prosecute cross-border terrorism. The members of the D66 parliamentary group ask the Commission to provide a more detailed explanation of the need for prosecution at European level raised in this proposal, and in doing so to take account of the significant progress in cross-border collaboration in investigating terrorist suspects and the improved information sharing in this regard. The members of the D66 parliamentary group read in the proposal that the powers of the national law enforcement and judicial authorities stop at the national borders, whereas terrorist crimes frequently involve a cross-border dimension. They ask the Commission to explain which practical problem the EPPO will solve with regard to terrorist crimes in this case now that cooperation between national authorities is increasingly improving. The members of the VVD parliamentary group ask if it would not be a better idea to invest in resolving any gaps in the sharing of information. Did the Commission already consider this before proceeding to the proposal to extend the competences of the EPPO? These members note that the EU proposal refers to a “comprehensive set of investigation measures” that the EPPO can use to collect evidence. Can the Commission provide an overview of this comprehensive set of measures?

The members of the SGP parliamentary group have the impression that the Commission is placing its central focus primarily on the desire to vest the powers in a single authority and is less concerned about the question whether actual problems emerge from the existing cooperation between Member States in combating terrorism. They ask the Commission whether it is correct to assume that there are no problems in effectively responding to requests for support in investigations by other Member States. Why would it still be necessary to proceed to this extension of the EPPO’s competences? Is it not possible to achieve at least the same level of protection through effective collaboration by Member States?

Delineating powers

The members of the VVD parliamentary group note in the EU proposal that the extension of the EPPO’s powers is said to concern “terrorist offences affecting more than one Member State” and in terms of the exact parameters of which offences are involved refers to Directive (EU) 2017/541. They wonder if it is not the case that all offences in this Directive involve offences affecting more than one Member State. Can the Commission provide examples of terrorist offences that do not affect more than one Member State



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and for which therefore the national investigative authorities will remain competent? If a terrorist offence occurs that affects more than one Member State, does this therefore mean that the national investigative authority will no longer be competent to prosecute? What happens if national prosecution is instigated despite this? In that case, what means will the EPPO have to draw the prosecution up to European level?

The members of the CDA parliamentary group ask the Commission to explain how it judges the relative competence of the yet-to-be-established European Public Prosecution Office. How does this relate to the relative competence of national authorities competent in investigating and prosecuting terrorist offences? They also ask in which area of combating terrorism the EPPO will effectively serve to complement the current efforts by separate countries to combat terrorism.

The members of the VVD parliamentary group note that the EU proposal states that “in several recent terrorist cases two or more Member States claimed, in parallel, jurisdiction for prosecuting the same offence on different grounds, such as the victim’s nationality or territorial competence. Such parallel prosecutions could give rise to situations of *ne bis in idem*”. They ask the Commission when this happened. Did it result in a situation in which the *ne bis in idem* principle applies? Can the Commission provide concrete examples of this?

The members of the SGP parliamentary group note that it currently still remains unclear what the relationship will be between the EPPO and the national authorities and what consequences this will have for investigation and prosecution in other (national or local) cases. These members ask the Commission to rule out any infringement of the right of national authorities to set their own priorities in investigation and prosecution policy. These members also wonder how increasingly far-reaching interference in national jurisdiction will be prevented. The SGP members also point out that involvement at local level is essential in the fight against terrorism and that it is undesirable for the fight against terrorism to become further removed from the site where specific problems are occurring. Does the Commission share this view? How will these proposals prevent this from happening? Does the Commission share the view that it is undesirable to weaken rather than strengthen the involvement of local police and investigators? Finally, these members call for a focus on the ways in which terrorist offences and other forms of (local) criminality are intertwined. What will be the consequences for the investigation and prosecution policy in this kind of situation? Is there not a significant risk that there may be a clash of investigative interests between the EPPO and the national authorities? The members of the SGP parliamentary group wonder who will have the jurisdiction to investigate criminal activities as a whole in such cases?

The members of the CDA parliamentary group ask the Commission if it can explain what consequences this EU proposal will have for the principle of opportunity (*opportuiniteitsbeginnel*) as it applies in the Netherlands, and also to explain what consequences this proposal has for the principle of legality as it applies in other European countries, e.g. Germany and France?



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General comments by parliamentary groups

The members of the **VVD parliamentary group** point out that they have taken note with concern of the proposal to extend the competences of the European Public Prosecution Office to combating cross-border terrorism. They value the opportunity to enter into a political dialogue with the European Commission on this proposal.

The members of the **PVV parliamentary group** point out that, in view of the Leijten motion passed in Parliament, it is abundantly clear that a majority of the House of Representatives opposes the extension of the European Public Prosecution Office's mandate to include combating cross-border terrorism and, in line with the wishes of a majority of the House of Representatives, the Netherlands must speak out firmly against this mandate in the European Council, regardless of the position of other countries concerning this extension. They assert: the Dutch parliament was never an advocate of the European Public Prosecution Office, but the second Rutte government still foisted this on us by means of enhanced cooperation. The European Public Prosecution Office is not even half-established and yet the power-hungry European Commission again wishes to remove more control from Member States and extend the mandate. The Netherlands must veto this crazy mandate.

The members of the **CDA parliamentary group** point out that they took cognizance of the European Commission's proposal with some dismay.

The members of the **D66 parliamentary group** indicate that they have taken cognizance of the European Commission's proposal.

The members of the **SP parliamentary group** point out their readiness to make use of the opportunity to conduct a political dialogue with the European Commission about this proposal. These members argue that the aforementioned Leijten motion is clear: the Dutch government must oppose the extension of the EPPO's mandate to include terrorism. They also point out that the Dutch Minister of Justice and Security has repeatedly spoken out against extending the EPPO's mandate to include combating cross-border terrorism, for example, and argue that the Netherlands must be decisive in maintaining this line. The members of the SP parliamentary group point out that they already had major doubts about the founding of the EPPO with regard to combating fraud involving EU funds because it was not clear why the establishment of the EPPO would make combating fraud more effective. The members of the SP parliamentary group also emphasise their fundamental objections, as this concerns the transfer of powers to Europe.

The members of the **SGP parliamentary group** point out that they have significant concerns about the EU proposal to extend the competences of the EPPO. They also point out that they did not support the setting up of the EPPO, because of its far-reaching and direct influence on national investigation and prosecution authorities. These members share the Commission's view that it is important to exercise care in the fight against



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terrorism. However, they take the view that the present proposal is not necessary to achieve this, does not meet the requirements of subsidiarity or proportionality and that – especially in view of the fact that the EPPO was only recently instigated – it is essential to exercise great caution in extending its competences.

Yours faithfully,

P. van Meenen

Chair of the Standing Committee on Security and Justice of the House of Representatives

CC:

- Mr J-C. JUNCKER, President of the European Commission
- Mr J. KING, EU Commissioner for Security Union
- Mr C. MORAES, Chair of the LIBE Committee of the European Parliament
- Mr J. MOSER, Austrian Minister of Justice, current Chair of the JHA-Council
- Mr F. GRAPPERHAUS, Minister of Justice and Security