

THE EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION

THE EPPO'S STRUCTURE AND CHARACTERISTICS

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The EPPO'S Structure and Characteristics

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I. Characteristics



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Relevant Legal Framework



- Art. 86 TFEU
- Regulation (EU) 2017/1939 – Chapters II and III
- Internal rules of procedure of the EPPO (consolidated version) – Title II
- Decisions of the College ([Public access here](#))

Art. 86 TFEU – Primary Law characteristics

1. In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.
 - In the absence of unanimity in the Council, a group of at least nine Member States may request that the draft regulation be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.
 - Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft regulation concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.
2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.
3. The regulations referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.
4. The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.

Art. 86 TFEU: From Eurojust?



What does it mean? Pre-EPPO Regulation discussion...

- ✘ A body linked to Eurojust, either using its administrative structure or its staff, establishing a relationship of interdependence between the two bodies
- ✘ A body established from the administrative structure of Eurojust and which would exercise supervisory functions over the operational work of Eurojust
- ✘ A body established on the basis of Eurojust structure, but with a completely separate scope and mandate
- ✘ A body established on the basis of Eurojust and which will replace this agency, becoming its natural successor

What does it actually involve?

- Fact: EPPO has not been established “from” Eurojust [Regulation (EU) 2017/1939 (EPPO Reg) vs Regulation (EU) 2018/1727 (Eurojust Reg)]
- Recital 10 EPPO Reg: “In accordance with Article 86 TFEU, the EPPO should be established from Eurojust. This implies that this Regulation should establish a close relationship between them based on mutual cooperation”.
- The current relationship between the EPPO and Eurojust is not only based on mutual cooperation (e.g. operational work), but in complementarity (e.g. material scope of application). There are also strong links at the institutional and administrative level.
- Further details: Working arrangement between the EPPO and Eurojust (February 2021)

Art. 86 TFEU: investigating, prosecuting and bringing to judgment (...)

What does it mean?

- Totally new approach in EU integration: truly autonomous powers in criminal matters granted to an EU body for the first time
- EPPO becomes the Prosecution office of the EU: powers are equivalent to those already granted to Public Prosecutors in (some) Member States
- Investigations and proceedings are conducted before national courts
- EPPO Reg determines the conditions governing the performance of its functions, the rules of procedure applicable to its activities (including admissibility of evidence and judicial review)

What is it in practice?

- Shared competences between the EPPO and the national authorities: Centralised and decentralised level structure
- National Criminal Procedure law of Member States mainly applies to EPPO proceedings
- Comprehensive Judicial Review system: National (main) and supranational (specific acts)

Art. 86 TFEU: PIF crimes?

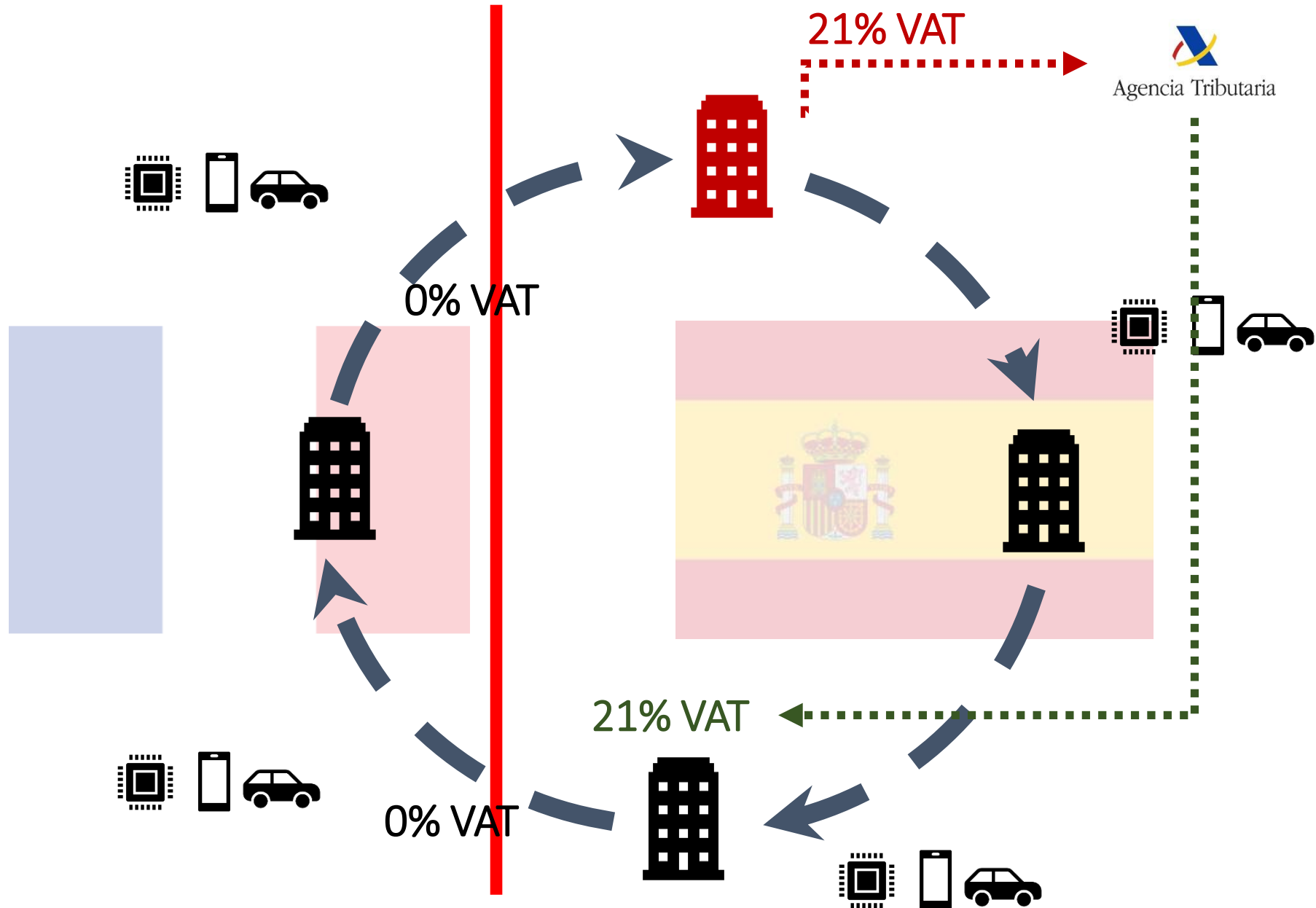
What does it mean?

- PIF Offences provided for in Directive (EU) 2017/1371 as implemented by national law.
- This is translated into the material scope of competence of the EPPO
 - PIF Offences provided for in Directive (EU) 2017/1371 as implemented by national law
 - VAT fraud: cross-border dimension involving a damage of at least EUR 10 million (VAT carousel fraud)
 - Participation in a criminal organisation if the focus of criminal organisation is to commit PIF offences
 - Any criminal offence inextricably linked to a PIF offence; money laundering

Is it limited to PIF Crimes?

- Currently it is limited to PIF crimes and criminal offences inextricably linked to a PIF offence.
- Art. 86 TFEU allows to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension . Can be extended in the future [e.g. cross-border terrorist crimes, see COM(2018) 641 final]
- Conflicts of competence: In the case of disagreement between the EPPO and the national prosecution authorities, national authorities competent to decide on the attribution of competences concerning prosecution at national level shall decide who is to be competent for the investigation of the case.
 - The national decision can be subject to a judicial review by the ECJ via Art. 267 TFEU.
 - Spanish regime: national authority competent to decide may vary (General Prosecutor or Supreme Court)

VAT CAROUSEL FRAUD – BASIC SCHEME



EPPO: Main Characteristics

- EPPO is an **independent body of the European Union** with own legal personality
- **Prosecution office of the European Union**
- Material scope of competence is currently limited to **PIF crimes**
 - Territoriality and active personality principles also applies
- 22 participant Member States
 - Non-participants: Hungary, Ireland, Poland and Sweden (may join in the future)
 - Denmark (opt-out from AFSJ)
- Operational phase started on 1 June 2021



EPPO Headquarters in Luxembourg

EPPO: Basic Principles

- **Independence**
 - Shall act in the interest of the Union as a whole and neither seek nor take external instructions
 - Rule of law
 - Accountability: European Parliament, Council and Commission
- **Respect the rights enshrined in the CFREU**
- **Proportionality**
- **Impartiality**
- **Shared competence with national authorities**
- **Sincere cooperation**



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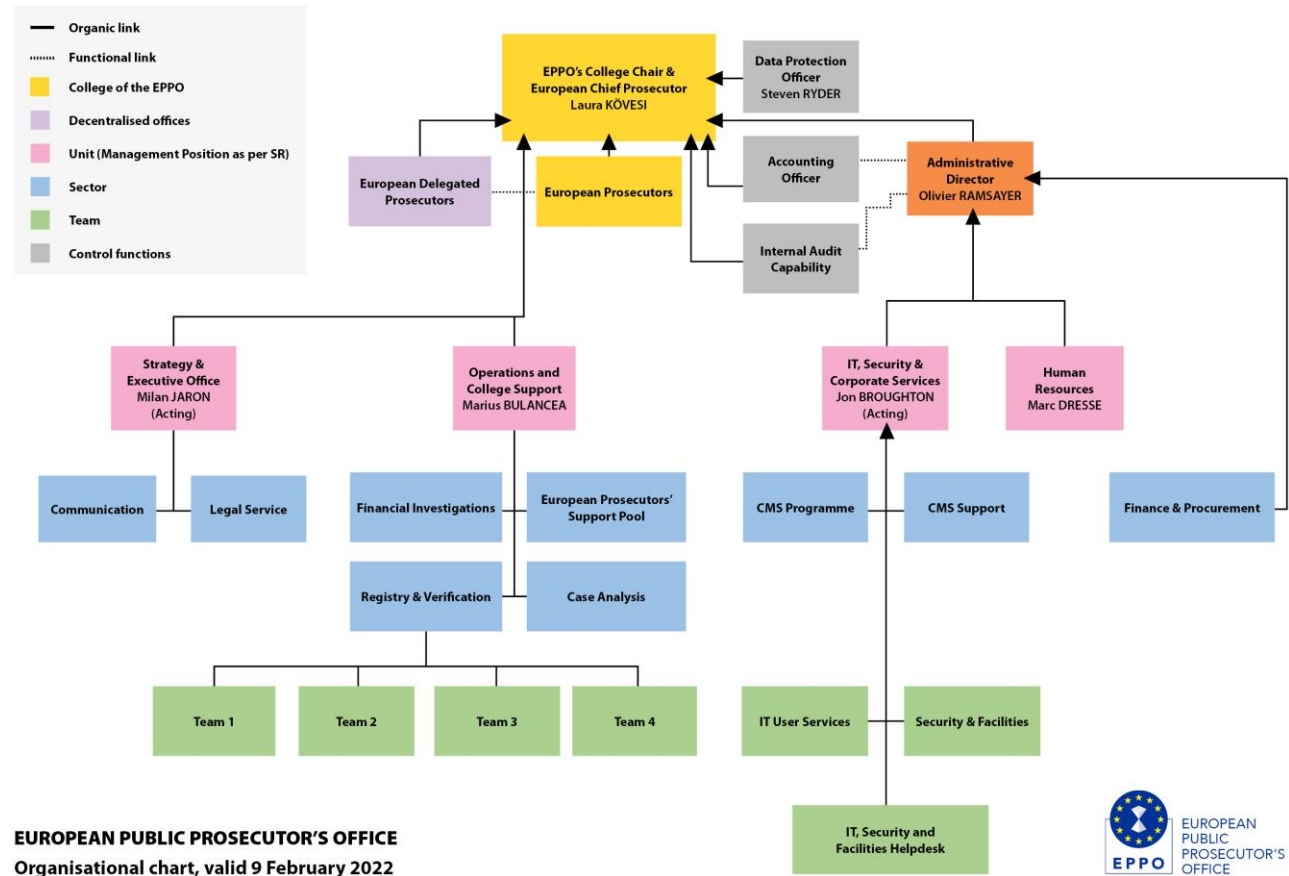
II. Structure



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EPPO Structure Overview

- The EPPO is an indivisible Union body which operates as one single office with a decentralised structure
- Central structure (The College, European Chief Prosecutor, European Prosecutors, Permanent Chambers, Administrative Director)
- Decentralised structure (European Delegated Prosecutors)
- Assisted in their work by a number of experts in areas including administrative, technical, operational and legal-technical support.



EPPO Structure: central level: The College

Composition

- European Chief Prosecutor (Chair)
- One European Prosecutor per participating Member State (22)

Main tasks

- General oversight of the activities of the EPPO
- Determine the priorities and the investigation and prosecution policy of the EPPO (proposed by the ECP)
- Take decisions on strategic matters
- Take decisions on general issues arising from individual cases (NOT operational decisions)
- Set up Permanent Chambers (on a proposal by the ECP)
- Adopt internal rules of procedure (2/3 majority)



EPPO Structure: central level: European Chief Prosecutor (ECP)

- **Head of the EPPO**

- Appointed by common agreement between the European Parliament and the Council
- Open call: candidates must be public prosecutors, members of the judiciary or active European Prosecutors whose independence is beyond doubt and possess the qualifications required for appointment on the highest prosecutorial or judicial offices in their respective countries and due practical experience
- Non-renewable term of 7 years
- The Court of Justice can dismiss the ECP if it is no longer able to perform her duties or that she is found guilty of serious misconduct (upon the application of the European Parliament, of the Council or of the Commission)

- **Tasks**

- Organise the work of the EPPO
 - Direct its activities and take decisions in accordance with the EPPO Regulation and the internal rules of procedure
 - Represent the EPPO
- May delegate her tasks in one of the **Deputy European Chief Prosecutors (2)** or to a European Prosecutor
 - Deputy European Chief Prosecutors are elected from among the 22 European Prosecutors by secret ballot based on a proposal made by the European Chief Prosecutor
 - The Deputy European Chief Prosecutors are appointed for a renewable mandate of 3 years



EPPO Structure: central level: The European Prosecutors (EP)

- **Representatives of each participant Member State in the College (22)**
 - Appointment: each Member State nominates three candidates for the position. A selection panel gives a reasoned opinion; the Council selects and appoints the candidate
 - National candidates must be active members of the public prosecution or judiciary, whose independence is beyond doubt and who possess the qualifications required for appointment to high prosecutorial or judicial office in their respective Member States and due practical experience
 - Non-renewable term of 6 years (the Council may decide to extend the mandate for a maximum of 3 years at the end of the 6 year-period)
 - Every 3 years there shall be a partial replacement of 1/3 of the EPs. Transitional rules apply for the first mandate period (see Council Implementing Decision 2019/598)
 - The Court of Justice can dismiss a EP if it is no longer able to perform his/her duties or that he/she is found guilty of serious misconduct (upon the application of the European Parliament, of the Council or of the Commission)
 - European Delegated Prosecutors can act as interim European Prosecutor in these cases
 - Substitution between European Prosecutors is allowed for short periods of time (Internal rules of procedure)



EPPO Structure: central level: The European Prosecutors (EP)

• Tasks

- On behalf of the Permanent Chamber, supervise the investigations and prosecutions for which the EDP handling the case in their Member State of origin are responsible
- On an exceptional basis, may request that the supervision of investigations and prosecutions of individual cases handled by EDP in his/her Member State of origin be assigned to other European Prosecutors (ECP will decide)
- Give in a specific case instructions to the handling European Delegated Prosecutor in compliance with the instructions given by the Permanent Chambers
- Review of certain acts taken by the European Delegated Prosecutor where the national law of a Member State provides for the internal review of such acts within the structure of a national prosecutor's office
- Serve as liaisons and information channels between the Permanent Chambers and the EDPs in their respective Member States of origin
 - Monitor the implementation of the tasks of the EPPO in their respective Member States in consultation with the EDPs
 - Ensure that all relevant information from the Central Office is provided to EDPs and vice versa.



EPPO Structure: central level: The Permanent Chambers

- **Composition**

- 3 members: one chair (ECP, DECP or EP) and two permanent members (EP)
- 15 Permanent Chambers (Decision 15/2020 of the College)

- **Decisions**

- Decisions are taken by simple majority
- Each member have one vote (chair have a casting vote in the event of a tie)
- The EP supervising an investigation or prosecution shall participate in the deliberations of the Permanent Chamber and have a right to vote (limited)
- The chairs of the Permanent Chambers shall keep the College informed of the decisions taken



EPPO Structure: central level: The Permanent Chambers

- **Tasks**

- Monitor and direct the investigations and prosecutions conducted by the EDP
- Ensure the coordination of investigations and prosecutions in cross-border cases
- Ensure the implementation of decisions taken by the College
- Core of the operational work at the centralised level of the EPPO. Decide on:
 - Bring a case to judgment (can be delegated to the EP)
 - To dismiss a case (can be delegated to the EP)
 - To apply a simplified procedure and to instruct the EDP to act with a view to finally dispose the case
 - To refer a case to the national authorities
 - To reopen an investigation
 - To instruct the EDP to initiate an investigation where no investigation has been initiated
 - To instruct the EDP to exercise the right of evocation where the case has not been evoked
 - To refer to the College strategic matters or general issues arising from individual cases
 - To allocate or reallocate a case
 - To approve the decision of a EP to conduct the investigation



EPPO Structure: central level: The Administrative Director


- **Legal representative of the EPPO for administrative and budgetary purposes** (not operational work)
 - Appointed by the College from a list of candidates proposed by the ECP
 - 4 years term of office (can be extended once)
 - Can be removed by the college upon a decision on the basis of a 2/3 majority
- **Main tasks:**
 - Day-to-day administration of the EPPO and staff management
 - Providing administrative support to facilitate the operational work of the EPPO
 - Providing support to the ECP and the DECP in the carrying out of their duties
 - Preparing proposals for the annual and multi-annual programming document, action plans following-up the conclusions of internal and external audit reports, an internal anti-fraud strategy for the EPPO
 - Implementing the decisions adopted by the ECP or the College

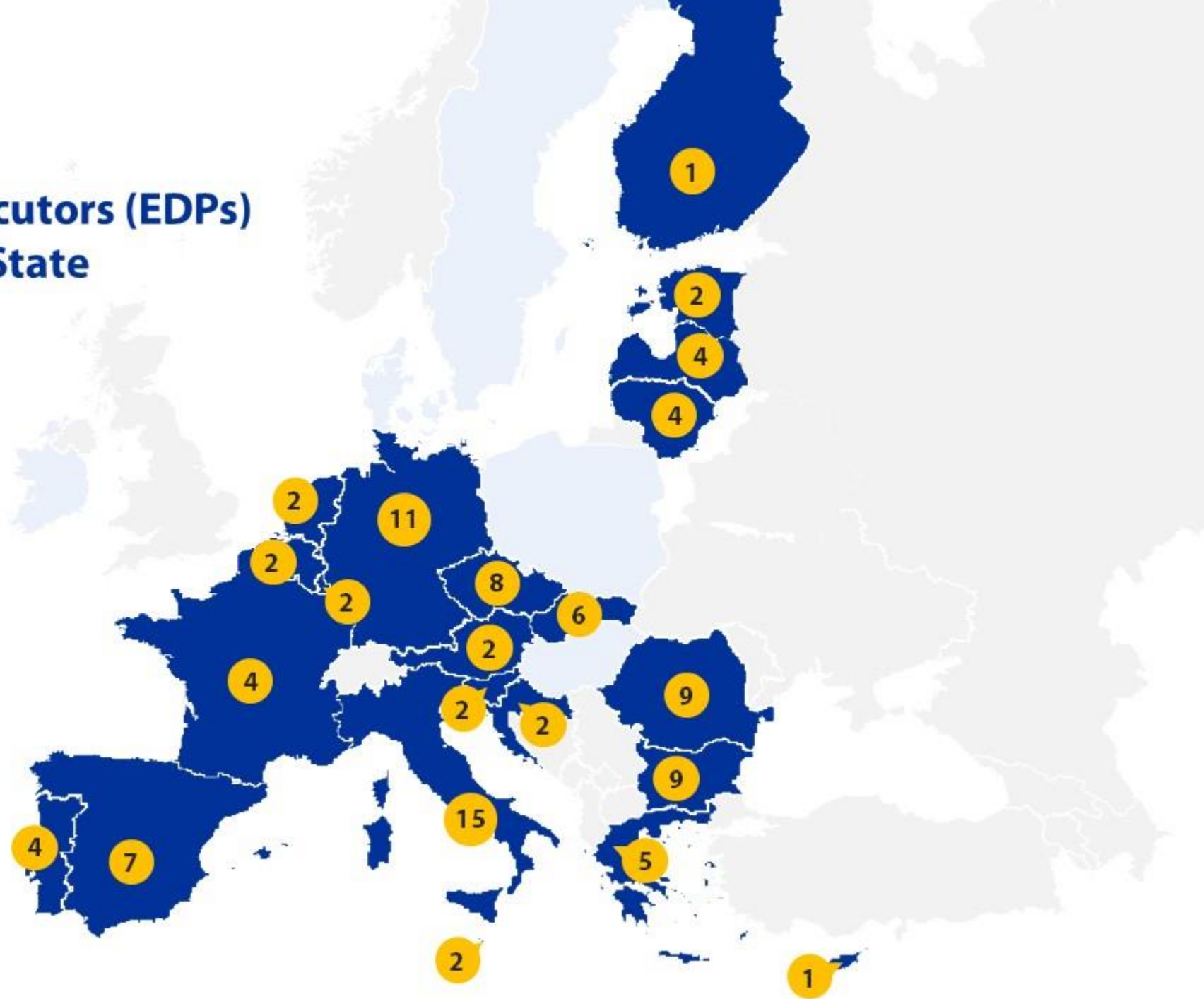
EPPO Structure: decentralised level: European Delegated Prosecutors (EDP)

- EDPs act on behalf of the EPPO in Member States and are responsible for investigating, prosecuting and bringing to judgment cases.
 - Appointment: the College appoints the EDPs nominated by Member States upon a proposal by the ECP.
 - National candidates must be active members of the public prosecution service or judiciary. Their independence shall be beyond doubt and they shall possess the necessary qualifications and due practical experience and knowledge of their national legal system
 - Renewable term of 5 years
 - Two or more EDPs in each Member State – up to 140 EDPs
 - ECP shall agree with authorities of the Member States the number of EDPs and the functional territorial division of competences within each Member State.
 - The College shall dismiss EDPs if it finds that he/she no longer fulfils the requirements, is unable to perform his/her duties or is found guilty of serious misconduct.
 - If a Member State decides to dismiss or take disciplinary action against a national prosecutor appointed as EDP for reasons not connected with his responsibilities under the EPPO Reg: shall inform the ECP beforehand.
 - If a Member State wants to dismiss or take disciplinary action against a national prosecutor appointed as EDP for reasons connected with his responsibilities under the EPPO Reg: ECP must consent (Member State can request the College to review the decision).

European Delegated Prosecutors (EDPs) per participating Member State

23/02/2022

 Active number of EDPs



EPPO Structure: decentralised level: European Delegated Prosecutors (EDP)

- Tasks
 - Shall act on behalf of the EPPO in their respective Member States and shall have “at least” the same powers as national prosecutors in respect investigations, prosecutions and bringing cases to judgment
 - The EDPs shall be responsible for bringing a case to judgment/present trial pleas/participate in evidence gathering and exercise remedies provided by national law.
 - Major legislative adjustments needed in some member States (e.g. Spain)
 - They are in charge of EPPO investigations: they are responsible of 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.
 - The EDPs shall follow the direction and instructions of the Permanent Chamber as well as from the supervising EP
 - The “double hat” system: Art. 13(3) EPPO Reg allows EDPs to also exercise functions as national prosecutors to the extent that this does not prevent them from fulfilling their EPPO obligations.
 - Part-time EDPs? Effectiveness? Independence?
 - Avoided in practice: full-time EDPs (e.g. Spain Arts. 15-16 LO 9/2021)

European Chief Prosecutor (ECP)

- Supported by 2 Deputies
- Heads the EPPO, organises the work
- Represents the EPPO vis-à-vis the institutions of the EU, Member States and third parties



European Delegated Prosecutors (EDPs)

- At least 2 EDPs per participating Member State
- Responsible for investigating, prosecuting and bringing to judgment cases falling within the EPPO's competence



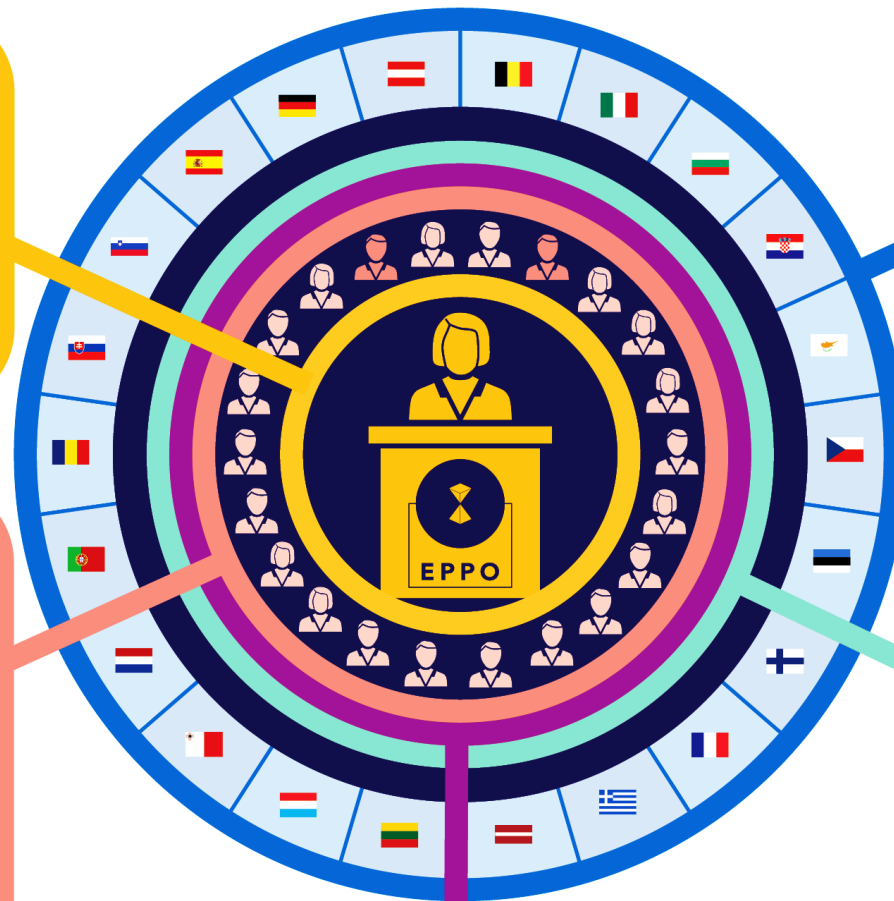
College of the EPPO

- The ECP + 1 European Prosecutor (EP) per participating Member State
- Decision-making on strategic matters to ensure coherence, consistency and efficiency in the prosecution policy
- Adoption of internal rules of procedure



Support Staff

- Staff at the central office provide support to the College and Permanent Chambers



Permanent Chambers

- Each has 3 members: 2 EPs + Chair (ECP, one of the Deputies, or an EP)
- Monitor and direct the investigations and prosecutions by the EDPs
- Operational decisions: bringing a case to judgment; dismissing a case; applying simplified procedure; referring case to national authorities; instructing EDPs to initiate investigation or exercise right of evocation
- European Prosecutors supervise EDPs in their Member States on behalf of Permanent Chambers



Luxembourg: Central Office

Offices in participating Member States

II. Judicial Review



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Judicial review system:

Combines National Judicial review (main) with supranational judicial review (specific acts)



- **National Judicial Review – National Courts**

- All procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties shall be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law
- All failures of the EPPO to adopt procedural acts which are intended to produce legal effects vis-à-vis third parties and which it was legally required to adopt under this Regulation

- **Supranational Judicial Review – ECJ**

- In accordance with Art. 267 TFEU (preliminary ruling requests)
 - the validity of procedural acts of the EPPO, in so far as such a question of validity is raised before any court or tribunal of a Member State directly on the basis of Union law
 - Interpretation or validity of Union Law (especially EPPO Reg)
 - Interpretation of conflicts of competence between the EPPO and competent national authorities
- In accordance with Art. 263 TFEU (annulment): any natural or legal person may institute proceedings against decisions that affect data subject's rights or decisions that are not procedural acts (e.g. decision dismissing EDPs)
- In accordance with Arts. 268, 270 and 272 TFEU: Damage, staff-related matters, arbitration clauses in contracts
- In accordance with EPPO Reg: Dismissal of the ECP or European Prosecutors



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