

The EPPO and the Court of justice: “neighbours” and yet so different?

Giordana Aquilea, référendaire, Chambers of judge N. Jääskinen, ECJ

Alessandro Marciano, référendaire, Chambers of judge A. Arabadjiev, ECJ

N.B.: The views and opinions expressed in this presentation are those of the authors and do not represent official position of the European Court of justice.



Establishment, Mission and Principles.

ESTABLISHMENT (I)

EPPO

- 1) Article 86 TFEU.
- 2) Council Regulation (EU) 2017/1939.

➤ Article 3

“1. The EPPO is hereby established as a body of the Union.”

- ✓ EPPO is a “body” of the Union

ECJ

- 1) Article 13 TEU.
- 2) TFEU (Section 5) + Protocole n°3
(Statute).

➤ Article 13 TEU

“1. [...]

The Union's institutions shall be:

- *the European Parliament,*
 - *the European Council,*
 - *the Council,*
 - *the European Commission,*
 - *the Court of Justice of the European Union,*
 - *the European Central Bank,*
 - *the Court of Auditors.”*
- ✓ ECJ is an “institution” of the Union

ESTABLISHMENT (II)



CONSEQUENCES:

- 1) Special legislative procedure to: *a)* change the structure or functioning of EPPO (ex article 86 TFEU) and certain features of the functioning of the ECJ; *b)* abolish EPPO (ex article 86 TFEU) but not the ECJ.
- 2) “*Acquis*” of the EU = the body of common rights and obligations that are binding on all EU countries, as EU Members. Applicant countries are required to accept the *acquis* before they can join the EU.

MISSIONS

- **EPPO = EU body responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the EU.**

According to PIF directive, these include several types of fraud, VAT fraud with damages above 10 million euro, money laundering, corruption, etc.

- **Article 4**

“The EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union which are provided for in Directive (EU) 2017/1371 and determined by this Regulation. In that respect the EPPO shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of.”

- ✓ **A mission to the benefit of the Union**

- As part of its mission, the ECJ:
 - reviews the **legality of the acts of the institutions** of the European Union;
 - **ensures that the Member States comply with obligations** under the Treaties, and;
 - **interprets European Union law** at the request of the national courts and tribunals;

- **BUT ALSO...**

- **“avis”** (article 218 TFEU);
- **legislative initiative**;

- **AND ALSO...**

- **compensation for damages** (article 268 TFEU);
- **disputes between the Union and its servants** (article 270 TFEU);
- **contract concluded by or on behalf of the Union**, whether that contract be governed by public or private law (article 272 TFEU).

- ✓ **From the “infinitely large” to the “infinitely small”**

PRINCIPLES (I)

➤ Article 5

“1. The EPPO shall ensure that its activities respect the rights enshrined in the Charter.

2. The EPPO shall be bound by the principles of rule of law and proportionality in all its activities.

3. [...]

4. The EPPO shall conduct its investigations in an impartial manner and shall seek all relevant evidence whether inculpatory or exculpatory.

5. The EPPO shall open and conduct investigations without undue delay.

6. The competent national authorities shall actively assist and support the investigations and prosecutions of the EPPO. Any action, policy or procedure under this Regulation shall be guided by the principle of sincere cooperation.”

▪ Principles. Case law:

- C-58/12P, Groupe Gascogne/Commission, paragraphs 72-98 on the need to respect article 47 of the Charter and namely on the failure to adjudicate within a reasonable time;
- C-542/18RX, Simpson/Council, on principle of the tribunal established by law.

▪ Impartiality.

➤ Article 2 Statute

“Before taking up his duties each Judge shall, before the Court of Justice sitting in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.”

- Delays: Chapter 3 of the Statute, internal regulation.

PRINCIPLES (II)

➤ Article 6

“1. The EPPO shall be independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors, the Administrative Director, as well as the staff of the EPPO shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the EPPO, any Member State of the European Union or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States of the European Union and the institutions, bodies, offices and agencies of the Union shall respect the independence of the EPPO and shall not seek to influence it in the exercise of its tasks.

[...]”

➤ Article 253

“The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence; they shall be appointed by common accord of the governments of the Member States for a term of six years, after consultation of the panel provided for in Article 255.

[...]”

➤ Article 254

[...]”

The members of the General Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office[...].”

Structure, competences, language and relations with other institutions.

STRUCTURE (I)

- Independent Union body operating as one single Office with decentralized structure.
- Central VS Decentralized level:
 - **Central level:** College, Permanent chambers, European Chief Prosecutor ('ECP'), Deputy European Chief Prosecutors, European Prosecutors and Administrative director.
 - **Decentralized level:** European Delegated Prosecutors in each MS. (article 8 of the EPPO regulation) Why? Recitals 20-22 of the EPPO regulation.
- **ECP:** head of the EPPO, organize the work, direct its activities. He/she has 2 deputies to assist, discharge and replace if necessary (article 11 of the EPPO regulation).
- Single and centralized institution of the EU, with seat in Luxembourg.
- Consists of two courts: the Court of Justice and the General Court (created in 1988). N.B.: The Civil Service Tribunal, established in 2004, ceased to operate on 1 September 2016.
- **The Court of Justice:** 27 Judges (1 per MS) and 11 Advocates General [Articles 19 and 252 TFUE + Council decision 2013/336/EC]. **The General Court:** made up of two judges from each MS (article 48 of the Statute).
- Decentralized level? The role of national courts.
- **The President** directs the work of the Court and presides at hearings and deliberations of the full Court or the Grand Chamber. **The Vice-President** assists the President in the exercise of his duties and takes his place when necessary (articles 9 and 10 of the Rules of Procedure of the Court).

STRUCTURE (II)

- **European Prosecutors:** supervise the investigations and prosecutions of the European Delegated Prosecutors (article 12 of the EPPO regulation).
- **European Delegated Prosecutors (EDP):** act on behalf of the EPPO in their respective MS with same powers as national prosecutors (article 13 of the EPPO regulation).
- **Permanent Chambers:** composed by ECP (or deputy + 2 permanent members). Monitor and direct the investigations conducted by the Delegated Prosecutors (article 10 of the EPPO regulation).
- **Administrative director:** appointed by the College for a mandate of 4 years extendable for a period of max 4 years. He/She manages the EPPO for administrative and budgetary purposes (articles 18 and 19 of the EPPO regulation).
- **College** (article 9 of the EPPO regulation): **ECP + one prosecutor per MS.** General oversight of the activities, takes decisions on strategic matters and general issues. No operational decision on individual cases. Takes decisions by simple majority.
- **Presidents of chambers and judges “simples”.**
- **Chambers:** The Court may sit as a full court, in a Grand Chamber of 15 Judges or in Chambers of three or five Judges (article 16 of the Statute). The General Court may sit in chambers of 5 or 3 judges or in Grand Chambers (article 50 of the Statute).
- **The Registrar:** The Court of Justice shall appoint its Registrar (article 253 TFEU). 6 years mandate (article 19 of the RP of the Court, Responsibilities listed in article 20 of the RP of the Court).
- **The General meeting** (article 25 of the RP of the Court): All the Judges and Advocates General shall take part and have a vote. Adopts decisions on administrative issues or actions to be taken in relation to a case.

APPOINTMENT AND DISMISSAL OF THE MEMBERS (I)

- **ECP:** appointed by the Parliament and the Council by common accord for a non renewable term of 7 years. The ECJ may dismiss the ECP upon application of the Parliament, the Council or of the Commission if it finds that he/she is no longer able to perform duties or guilty of serious misconduct (article 14 of the EPPO regulation).
- **Deputy European chief Prosecutors (2):** appointed by the College for 3 years renewable. Dismissal: same rule as for the ECP (article 15 of the EPPO regulation).
- **European Prosecutors:** Appointed by the Council from a list of 3 candidates proposed by each MS, for a mandate of 6 years non renewable but may be extended by the Council for a max of 3 years. Dismissal: same rule as for the ECP (article 16 of the EPPO regulation).
- **EDP:** upon a proposal by the ECP, the College shall appoint the EDP nominated by the MS, appointed for a renewable term of 5 years. Dismissal: if the College finds that he/she no longer fulfils the requirements, is unable to perform the duties or is guilty of serious misconduct (article 17 of the EPPO regulation).
- **All the members of the ECJ are appointed by common accord of the governments of the MS after consultation of the “255 panel”** (article 253 TFEU).
- **Art 255 panel** is composed by seven persons chosen from among former members of the ECJ, national supreme courts and lawyers of recognized competence. (Article 255 TFEU).
- **The judges elect a President and a Vice-President** for a renewable term of three years (article 9a of the Statute).
- **End of functions** for the ECJ members:
 - **article 5 of the Statute:** The duties of a member of the ECJ shall end when he/she resigns;
 - **article 6 of the Statute** : procedure to deprive a ECJ member of his office.

COMPETENCES

- **Material competence** (article 22 of the EPPO regulation):
 - 1) Criminal offences provided for in the PIF directive;
 - 2) Offences regarding participation in a criminal organization as defined in framework decision 2008/841.
- **Territorial and personal competence** (article 23 of the EPPO regulation):
 - 1) Offences committed in whole or in part within the territory of one or several MS;
 - 2) Offences committed by a national of a MS;
 - 3) Offences committed by EU staff provided that a MS has jurisdiction for such offences if committed outside its territory.
- **Material Competence** “by elimination”:
 - **article 275 TFEU**: no jurisdiction with respect to provisions relating to the common foreign and security policy;
 - **article 276 TFEU**: in certain domains of the FSJ area, no jurisdiction to review the validity of operations carried out by police or the exercise of the responsibilities of the MS with the maintenance of law and order and the safeguarding of internal security.
- **Territorial Competence** : Ireland and Denmark do not participate to the cooperation in the FSJ area.

LANGUAGE ARRANGEMENTS

- **College's decision of 30/09/2020**: working language = English.
- **French + English in the relations with the ECJ.**
- **Article 107 of the EPPO** regulation: Regulation 1/58 shall apply to the internal rules of procedure of EPPO and to implementing rules.
- **Working language = French.**
- **Articles 36 to 42 of the RP:**
 - Article 37 RP: determination of the language of a case;
 - Article 38 RP: governing the use of the language of the case.
- **Language of the publications** of the ECJ: Regulation 1/58 shall apply (article 40 of the RP).

RELATIONS WITH OTHER INSTITUTIONS, STATES OR ORGANIZATIONS

- **Articles 99 to 105** of the EPPO regulation: cooperation with Eurojust, OLAF, EUROPOL, other institutions and bodies of the EU, third countries and international organizations, MS not participating in the enhanced cooperation on the establishment of the EPPO.
- **Article 108 of the EPPO regulation**: the EPPO may conclude working arrangements in particular to facilitate cooperation and the exchange of information. NB: No binding effects on MS or the Union.
- **Independence of the Court = no cooperation with actors that can become parties!**
- **Article 253 TFEU**: the Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt (reminder!).
- **Article 4 of the Statute**: incompatibilities of the ECJ's members.

Thank you for your attention!

