

Università degli Studi di Milano-Bicocca

THE EPPO PROGRAMMING 2021-23 HIGHLIGHTS

**THE EPPO AND EU LAW: A STEP
FORWARD IN INTEGRATION**

Presentation by the EU Expert

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- The EPPO and the European Commission's Anti-Fraud Strategy 2019

The start of the operations of the EPPO should be an important step forward in bringing new impetus to the overall anti-fraud architecture of the union. The EPPO will endeavour to be actively involved in the main strategic EU initiatives in this area, notably the revised 2019 Commission's Anti-Fraud Strategy (CAFS);

- **EPPO: Regulation 2017/1939 12th October 2017**
- **History of the EPPO IDEA IS DATED BACK TO 1997 REACHING 2000 AND THE 2001 Green paper of the Commission and its integration in Article 86 of TFEU reaching the 2013 Commission Proposal for a Regulation on the establishment of it;**
- **In Italy : the implementation Decree is the Decree 29/01/2021 N.9**

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- DO WE NEED AN EUROPEAN PROSECUTOR? IF YES WHY DO WE NEED IT AND IN WHICH TERMS!!!!
- To a certain extent, the EPPO has been politically engineered with a view to strengthening the common European Project.
- This presentation will be have a more practical aspect and particularly will give you also the point of view of the everyday work , where you have to combine the theory with the practice.

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- ENHANCED COOPERATION: MAGIC WORD FOR THE EPPO
- From enhanced cooperation there are two ways of working with and within the EPPO:

Some non EU countries and some MSs are not part of the EPPO SYSTEM and this brings more difficulties because the cooperation is based on multi or bilateral agreements which can cause difficulties in the qualification of the crime.

See example of Italy: Art. 730 of the Criminal Procedure Code: Acknowledgement of foreign penal judgements effecting the Penal Code;

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- ROOM FOR NEGOTIATIONS WITH THOSE COUNTRIES WHICH AT PRESENT ARE NOT PART OF THE EPPO.
- In the absence of a specific legal cooperation instrument - the Regulation foresees possible notification of the EPPO for application and implementation of existing EU legal instruments on judicial cooperation in criminal matters (EIO - EAW)
- Negotiations are still on-going and probably Hungary will join, while for the moment Poland and Denmark opt out.
- **EPPO AND EUROJUST:** Many experts argue that it is a double or a second judicial body.
- Can the two bodies became one? Could be this advantageous?
- Art. 83 of the TFEU extend competency on serious crimes to the EPPO and it is interesting to consider the types of crimes included:
 - - Terrorism
 - - Trafficking in human beings

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- - Money laundering
- - Corruption-
- - Counterfeiting of means of payment -
- - Computer Crime -
- - Organized Crime
- The Directive on EPPO replaces the European Communities Financial interests Convention of 26th July 1995 (the step from the Convention to the Directive is huge)
- EU PROJECT for an area of freedom, security and justice (the original architecture has been amended so many times that the result is a “*broader comfortable zone for the sovereignty of the MSs*”

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- Peculiarity of the EPPO is the RIGHT OF EVOCATION (Art. 27) : it must be redefined because from the experience of this last year it is not so easy: Starting point could be the EIO; *********
- Example of the Carousel Fraud
- EIO is regulated by the Directive 2014/41/EU and is prior to the Directive Regulating the EPPO.
- In the case of the Carousel Fraud, since the amount of money is huge and it reaches the ten million Euro established by EPPO, the competence should only be of the EPPO, but since the investigations of the EIO are not in the hands of the executing country, which only comply with the request, this cannot happen, so the procedure is inadmissible and the investigations are only executed on the grounds of the EIO.

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- Indeed in the EPPO Regulation is written: recital 13:

“This regulation provides for a system of shared competence between the EPPO and national authorities in combating crimes affecting the financial interests of the Union, based on the right of evocation of the EPPO” and in the subsequent recital 14 it is established: “In the light of the principle of sincere cooperation, both the EPPO and the competent national authorities should support and inform each other with the aim of efficiently combatting the crimes falling under the competence of the EPPO”.

Full respect of rights as enshrined in Article 48 of the Charter of fundamental Rights.

EJN - European Judicial Network

CCBE : The European Bars of Lawyer

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- Association or EU bodies which can help in the cooperation:
The meaning of cooperation in this field is to have a brader net as possible and you are the best in your job in the way you are the best in having a net.

EJN European Judicial Network

CCBE The Council of Bars and Law Societies of Europe - Find Lawyer Search Engine

FAIR TRIAL

FRA Fundamental Rights Agency

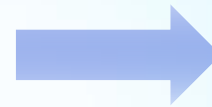
Each country has a liaison judge form other countries (not all countries) but if there is one , it helps a lot.

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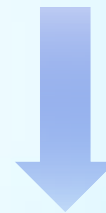
- Another critical point is the judicial remedy: contrary to the Directive on EIO or the EAW where all the safeguards are enshrined in fact in this field there is still a lack of clear remedy of violation of procedural rights especially towards third parties involved in the investigations:
- The solution is to include the EPPO in the national system in the same way as a national Prosecutor: but the inequality is always there, because according to the sensibility of the different MSs the rights could be interpreted in a more restricted or extensive way.

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- Activities of the EPPO must be in full compliance with the rights of suspects and accused persons;
- Regarding minimum rights the Regulation refers to the adopted EU Directives on procedural safeguards: the right to interpretation and translation, the right to information, access to a lawyer [*****]...
- Judicial review of EPPO procedural acts



NATIONAL
COURTS



May initiate
preliminary ruling procedures
before the CJEU

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- **Art. 103 Relationships with the EU institutions:**
- Strong relationship of cooperation with the Commission since the primary aim of the EPPO is the protection of the financial interests of the EU.
- For this reason it is important the following document:
- **Commission Anti Fraud Strategy Action plan - state of Play June 2021 - 32nd Annual report on the protection of the European Union's financial interests - Fight against fraud - 2020**
- **4 - existing inventory of IT tools:** Directive on E-Evidence
ARACHNE SYSTEM (operative only in 21 MSs) : it is still less implemented and ad hoc trainings should be supplied, because it is a system which detect shell companies and at the same time it matches the beneficiaries with the operators from the single person to the biggest company and this is an helpful system to avoid frauds (for instance convicted people);

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- 6 - conferences and studies on selected topics;
- 8 - Develop country profiles to better analyse and assess MSs, antifraud actions (lack of uniformity of which it has been discussed in the previous slide)

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- 10 - Intensify the work of the Commission Fraud Prevention and Detection Network by choosing agenda items that relate to colleagues' daily work experiences for "hands-on" collaboration;
- 16 - Maintaining and refine a corporate anti-fraud training cycle, including regular refresher courses;
- 37 - Encourage MSs to put in place national anti-fraud strategies and provide advice and support in this request;
- 53 - Cooperation with the EPPO- Procedures with OLAF; EU institutions and body may make use of OLAF for the Preliminary evaluation (recital 51) - as explained in the previous slides the question is controversial because as in case of EIOs, it should not be reported to OLAF but to the Delegated EPPO Prosecutor.

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- 58 EDES SYSTEM: Evaluate and optimise the EDES including cooperation with OLAF
- The European Investigation Order is still in the EDES SYSTEM with the evidence codex project
- <https://evidence2e-codex.eu/>
- There should be a synergy between all the tools to be put on the EDES SYSTEM.

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- OLAF GUIDELINES ON INVESTIGATION PROCEDURES :
- Very important for the workflow from OLAF to EPPO:
- Special Unit to avoid duplication of cases;
- Whistle-blower Directive 2019/1937: important because it stops the fragmentation on evidence gathering in these cases because now the evidence is gathered and used in the same way in all MSs

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THANK YOU FOR YOUR ATTENTION!!!!

??????QUESTIONS??????

