



CORTE DEI CONTI

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# The EPPO working arrangement with the General Prosecutor's Office

*VPG Arturo Iadecola – 6 April 2022*



CORTE DEI CONTI



# Guarantees of independence of the magistrates of the Corte dei conti

The independence of the magistrates is guaranteed by the Italian Constitution.





- art. 100 establishes the independence of the Corte dei conti and its members from the Government;
- art. 101: “judges are subject only to the law”;



- art. 104: “the magistracy is autonomous and independent of other powers”;
- art. 107: immovability of the magistrates.



# The Corte dei conti manages its budget autonomously.





Most magistrates of the Corte dei conti are appointed following an open competition.





# The Corte dei conti, under the Italian Constitution, has **jurisdiction** on:

- public accounting, including administrative liability;
- other matters determined by specific acts of the Parliament.



## Administrative liability

- Administrative liability implies a damage to public funds and entails its reparation.
- It is governed by special rules, different than the ones governing civil liability.
- Both individuals or companies are subject to it.





- It pursues the further objective of ensuring the sound management of public resources.
- It exists not only when the damage has been caused intentionally, but also in case of gross negligence (unlike, in most cases, criminal liability).



# The **damage** caused by unlawful acts can include:

- illegal expenses or waste of money;
- loss or reduction of incomes;
- costs incurred to ascertain irregularities;



- detriment caused by inefficiency of the public service;
- loss of reputation of the entity involved;
- costs of rectifying quality or quantity of public works.





Since 2006, the jurisdiction of the Corte dei conti on frauds in public grants and misuse of them, including EU funds, has been recognized (Cass., Sez. Un., ord. n. 4511/2006).





## The Financial Public Prosecutor (FPP)

When a damage to public resources is ascertained, the claim for administrative liability is brought by the FPP at the Corte itself.





He carries investigations about damages and sues in front of the Corte dei conti those who are deemed responsible for them.



## Powers attributed to the FPP (according to the Code of Accounting Justice, issued in 2016)

The FPP is entitled to:

- request documents held by the judiciary and administrative authorities;
- make direct inspections and verifications;
- hire technical consultants;
- delegate investigations to civil servants;



- order the production and even the confiscation of documents;
- delegate investigations or specific inspections to the Guardia di Finanza and other police bodies (Carabinieri, State Police, ecc.);







- ask the judge to issue precautionary measures, in any phase of the procedure, even at the end of the investigations, before the trial.



## ...in particular: precautionary measures

- The aim of precautionary measures is to allow the **enforcement** of the judgment once the defendant has been condemned to compensation.
- They prevent the defendant from dispersing his assets before the Corte reaches its decision.



- The FPP can freeze all the assets of the defendant.
- Precautionary measures are often used in case of frauds in detriment of public funds.





- For example, in cases of illicit behaviours related to public grants, they are used to guarantee the amount correspondent to the whole loss to be compensated.



- Therefore, precautionary warrants requested by the FPP can overlap to the ones disposed by the Criminal Public Prosecutor.





## Duty to report

- Administrative authorities: administrative and accounting bodies (accountants and internal auditors).





- All kind of magistrates; in particular, the Criminal Prosecution Office.



- Police force.



## Other sources

- Whistle-blowers.



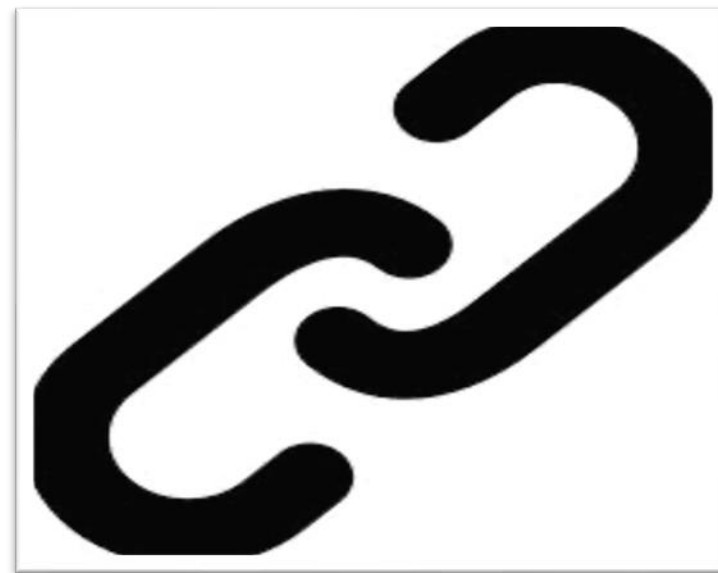
- Press articles.





## Links between criminal Court and the FPP

- The FPP's activity is independent of Criminal Prosecutor's investigations.
- There are, however, important procedural links between Criminal and Financial Public Prosecutors, which guarantee adequate protection to public resources.



- The Criminal Prosecution Office is, in particular, obliged to inform the FPP when public resources are involved in criminal proceedings.
- The FPP is, on the other hand, obliged to report to the CPO any crimes it is made aware of (art. 331 c.p.p.)





## **Art. 24, par. 1, Regulation (EU) 2017/1939**

The institutions, bodies, offices and agencies of the Union and the authorities of the Member States competent under applicable national law shall without undue delay report to the EPPO any criminal conduct in respect of which it could exercise its competence (...)



## **Art. 36, par. 6, Regulation (EU) 2017/1939**

Where necessary for the purposes of recovery, administrative follow-up or monitoring, the Central Office shall notify the competent national authorities, interested persons and the relevant institutions, bodies, offices and agencies of the Union of the decision to prosecute.



## **Art. 39, par. 4, Regulation (EU) 2017/1939**

Where a case has been dismissed, the EPPO shall officially notify the competent national authorities (...). The dismissed cases may also be referred to OLAF or to the competent national administrative or judicial authorities for recovery or other administrative follow-up.



13 September 2021



WORKING ARRANGEMENT between  
THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE  
and THE ITALIAN GENERAL PROSECUTOR'S OFFICE  
OF THE COURT OF AUDITORS



## Article 1 - Purpose and scope

1. This Working Arrangement aims to provide a structured framework for cooperation between the EPPO and the Italian General Prosecutor's Office of the Court of Auditors.
2. (...)
3. This Working Arrangement aims to establish and maintain a cooperative relationship between the Parties.



## **Article 2 - Exchange of information**

1. Without prejudice to the obligations of the Parties pursuant to Articles 24(1), 36(6) and 39(4) of the EPPO Regulation, the EPPO and the General Prosecutor's Office of the Court of Auditors will exchange information also in the following cases...





## Article 2 - Exchange of information

a) The General Prosecutor's Office of the Court of Auditors, either directly or via the Regional Prosecutor's Office in charge of the investigation, will inform the EPPO of any credible allegations of fraud, irregularities or any other misconduct affecting the financial interests of the Union, of non-criminal nature, when:





## Article 2 - Exchange of information

- I. The misconduct caused or it is likely to cause damage to the Union's financial interests of at least EUR 100 000;
- II. The case might have repercussions at Union level;
- III. Officials or other servants of the Union, or members of the institutions of the Union, are suspected of being responsible of the misconduct; or
- IV. The misconduct has a cross-border dimension involving at least two participating Member States.



## Article 2 - Exchange of information

b) The EPPO will inform the competent Regional Prosecutor's Office and the General Prosecutor's Office of the Court of Auditors of any investigations, in respect of which the EPPO exercised its competence, which could entail a damage to the financial interest of the Member State or of the European Union, in order to enable the initiation of an investigation necessary for the possible filing of the indictment before the Court of Auditors and for the purpose of recovery.



## **Article 2 - Exchange of information**

2. Upon the other party's request or at its own initiative, each Party may transfer to the other Party specific documents part of the respective case-file.





## Article 2 - Exchange of information

3. The EPPO will inform the other Party respecting the applicable rules on confidentiality of the criminal investigations, in accordance with the Regulation and the applicable national legislation on the secrecy of pre-trial investigations.





## **Article 3 - Access to relevant information in the General Prosecutor's Office of the Court of Auditors' databases**

In accordance with Article 43 of the Regulation, upon a reasoned request addressed to the contact person specifying the relevant information needed, the competent Prosecutor's Office of the Court of Auditors will provide the EPPO with an immediate access to the relevant information in its databases or secure such information for later collection.



## Article 4 - Coordination in case-related matters

1. When, following the exchange of information foreseen in this agreement, the EPPO and the Prosecutor's Office of the Court of Auditors in charge of the investigations respectively carry out connected investigations, the Parties will coordinate each other in respect of investigative actions.
2. The Parties may invite each other to participate on a peer-to-peer basis to coordinating meetings or other coordinating initiatives.



## Article 5 - Contact persons

1. The Parties shall designate contact points for exchange of information and operational cooperation. They shall notify each other of such designation by means of exchange of letters.
2. Any subsequent change of the designated contact points will be notified without delay in writing.





## Article 6 - Training and workshops

1. The Parties will cooperate on training in areas of common interest, as appropriate.
2. Training programs of the General Prosecutor's Office of the Court of Auditors and of the EPPO may be open to participation of the staff of the other party.
3. The General Prosecutor's Office of the Court of Auditors and the EPPO may exchange trainers and organise joint training activities.



## The results of the activity of the FPP

**Since 2011 to 2021:** more than 400 final judgments related to public grants have been issued, condemning defendants to compensation for € 550.380.293,37.





The judicial activity of the Corte dei conti, related to administrative liability, has proved to be an effective deterrent, since it allows to recover assets or money obtained through illegal activities.





In this way, it can prevent illicit behaviours, because the offenders should know that they won't get any advantages from their conduct.





Therefore, the Corte may play a leading role in the fight to illicit behaviours in detriment of the Next Generation EU – PNRR funds.



The Working arrangement with EPPO goes in this direction



*Thank you for your attention*



**arturo.iadecola@corteconti.it**

