



European Public Prosecutor's Office

Offences falling within the competence of the European Public Prosecutor

Investigation

Organization:

- European Prosecutor
- European Delegated Prosecutors
- Competence and territorial jurisdiction of the European Delegated Prosecutors
- Instructions concerning the European Arrest Warrant

Material Competence:

Criminal offences affecting the financial interests of the Union provided for in the Directive (EU) 2017/1371, as implemented by national law (article 22 Reg. UE 1939/2017)

Procedural Questions:

- Division of competences between National Prosecutors and Eppo
- Questions on the application of art. 31 Reg. Legislative Decree No 9 of 2 February 2021
- Relations with the judicial police and the national judicial authorities

/Pv



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

m

**Provisions for the adaptation of national legislation to the provisions of Council
Regulation (EU) 2017/1939 of 12 October 2017 on the implementation of
enhanced cooperation on the establishment of the European Public
Prosecutor's Office "EPPO"**

The Italian Representative as European Prosecutor is **Danilo Ceccarelli**

The European Delegated Prosecutors are distributed in nine cities (Palermo, Catanzaro, Bari, Naples, Rome, Bologna, Venice, Turin, Milan). The territorial distribution of the European Delegated Prosecutors is the following:

Palermo: **Calogero (Gerry) Ferrara** and **Amelia Luise**

Catanzaro: -

Bari: -

Naples: **Maria Teresa (Molly) Orlando** and **Valeria Sico**

Rome: **Alberto Pioletti**, **Francesco Testa** and **Maria Rosaria Guglielmi**

Bologna: **Elisa Moretti** and **Pasquale Profiti**

Venice: **Donata Costa** and **Emma Rizzato**

Turin: **Stefano Castellani** and **Adriano Scudieri**

Milan: **Giordano Baggio**, **Sergio Spadaro** and **Gaetano Ruta**

Four Prosecutors must still be appointed to the seats not covered yet (Catanzaro, Bari)

/Pv



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

m

Article 9 of the Legislative Decree No 9 of 2 February 2021 **Powers of the European
Delegated Prosecutors and of the European Prosecutor**

1. In relation to the proceedings in which the European Prosecutor's Office decides to open or evoke an investigation, **the Deputy European Prosecutors shall act exclusively in the interest of the European Prosecutor's Office** and in accordance with the dispositions of the Regulation and **exercise the functions and powers of national public prosecutors.**
2. Without prejudice in any case to the ordinary rules of jurisdiction of the court European Delegated Prosecutors **shall exercise their functions throughout the national territory, irrespective of the place of assignment.**
3. European Delegated Prosecutors, in exercising the functions referred to in paragraph 1, **shall not be subject to the powers of direction conferred on the Chief Prosecutor, nor to the supervisory activity of the General Prosecutor at the Court of Appeal.**

Article 15 of the Legislative Decree No 9 of 2 February 2021

Provisions on the European Arrest Warrant

1. The surrender procedures concerning European Arrest Warrants issued by European Delegated Prosecutors are governed by Law No 69 of 22 April 2005.
2. Concerning the passive surrender procedure, the "issuing Member State" shall mean the Member State of the European Union in which the European Delegated Prosecutor, who issued the European arrest warrant, is located.

(in accordance with Article 33, paragraph 2, Reg. UE 2017/1939)

The competent Authority for the European Arrest Warrant is in Italy the Court of Appeal where the measure is carried out

/Pv



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

m

Legislative Decree 14 July 2020, No 75

Implementation of Directive (EU) 2017/1371 (PIF) on combating against fraud to the detriment of the financial interests of the Union through criminal law.

There is not a detailed list of offences within the competence of the European Public Prosecutor's Office.

The unifying element of competence is the damage to the financial interests of the European Union, according to the quantitative thresholds of importance, contained in the PIF Directive and the implementing law.

In order to establish the competence of the European Public Prosecutor's Office, it is essential to check whether the financial resources of the European Union have been affected.

These are the areas of competence of Eppo:

- a. Expenditure, for offences committed, inter alia, also in the context of procedures concerning public procurement, by using or submitting false, inaccurate or incomplete declarations and/or documents, failure to provide due information and misappropriation of funds or assets for purposes other than those intended;
- b. customs for offences covered by Presidential Decree no. 43 of 23 January 1973 - Consolidated Law on Customs (in force for the part concerning penalties) as well as by the new Union Customs Code in force since 1 May 2016 - including EU Regulation (main) no. 952/2013 and subsequent amendments;
- c. embezzlement by public officials for offences of active and passive corruption with regard also to the money laundering deriving from offences damaging the economic and financial interests of the Union (Article 314 et seq. CP). Specifically, by way of example, reference is made to offences against
 - the public administration contained in Title II of the Criminal Code "Crimes against the Public Administration, including: embezzlement, undue receipt of public funds, corruption, extortion, fraud in public supply (excluding the crime of trafficking in unlawful influence because it does not fall within the definition of "corruption" provided for by the PIF directive, except for its connection with the offences covered by it);
 - the assets contained in Title XIII - Chapter II "Crimes against assets through fraud" of the Penal Code, including: aggravated fraud for the obtainment of public funds, money laundering and reuse;

- d. Framework 2008/841/JHA with regard to participation in a criminal organization, taking into account the so-called associative crimes, aimed at carrying out the criminally relevant conduct indicated in the above-mentioned PIF Directive;
- e. all other "inextricably linked" offences;
- f. offences of instigation, aiding and abetting, and attempt, if related to the preceding offences
- g. offences relating to the "Administrative liability of entities" for conduct sanctioned by Legislative Decree no. 231 of 8 June 2001, if falling within the jurisdiction of the European Public Prosecutor's Office.

One of the "typical" offences falling within the operational scope of the European Public Prosecutor's Office is the so-called carousel fraud, concerning VAT, due to the fact that it is carried out cyclically, in the manner of a carousel, by using or submitting false or incomplete statements or documents, by means of conduct related to them, which allow the creation of non-existent VAT credits or refunds that are not due and any benefits deriving from illegal "upstream" commercial transactions. These offences, which have a strong propensity to evade VAT, fall within the competence of Eppo if they are committed at a transnational level (involving several Member States) and have caused damage exceeding 10 million euros.

Infringements in the field of direct taxation do not fall within the competence of Eppo, even if they are related to offences falling within the competence of Eppo (Article 22(4) of the Regulation).

On the level of adaptation of domestic legislation, it is worth mentioning one intervention of the national legislator on the side of tax offences:

- Law no. 157 of 19 December 2019, converting Decree-Law no. 124 of 26 October 2019, has affected the system of penalties, through a significant tightening of the penalty limits provided for many of the crimes included in Decree 74/2000 and, for the first time, has opened the doors of the administrative liability of entities with respect to tax crimes;
- Legislative Decree No. 75 of 14 July 2020, implementing Directive (EU) 2017/1371 (the so-called PIF Directive) on the fight against fraud affecting the financial interests of the Union through criminal law. As a result of this reform, the range of predicate offences for the purposes of the administrative liability of entities has been expanded and the punishability by way of attempt has been introduced for certain offences, committed transnationally.

/Pv



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

m

Articles 14 and 16 of the Legislative Decree No 9 of 2 February 2021

Division of competences between National Prosecutors and Eppo

The competence of the European Public Prosecutor's Office is alternative to the competence of the national prosecutor's office. A system of assigning the same proceedings to the two authorities is not allowed.

Article 14 governs the way in which the report of an offence is communicated and the relationship between the different authorities in determining jurisdiction.

Article 16 refers to the conflicts of competence between the European Delegated Prosecutor and the National Prosecutor. According to this provision “The Chief Public Prosecutor at the Court of Cassation shall be the competent authority to decide in cases of conflict between the European Public Prosecutor's Office and one or more national prosecutors' offices according to Article 25(6) of the Regulation”.

/Pv



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

m

The meaning of inextricable connection and the difference with the prevision of the joining of proceedings in the Italian code of criminal procedure

Differences between Article 22, paragraph 3 Council Regulation (UE) 2017/1939 and Article 12 of the Italian code of criminal procedure

The meaning of inextricable connection

«On the basis of its rationale to avoid *ne bis in idem* issues, one or more offences are to be considered **inextricably linked** if the prosecution of one offence would bar the prosecution of the other offence on that basis. This interpretation is highlighted by the existing ECJ case law on *ne bis in idem*, which refers to the “identity of the material facts (or facts which are substantially the same), understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together in time and space”. In contrast, the “legal classification of the acts” or “the protected legal interest” are, according to the jurisprudence of the ECJ, no valid criteria to determine inextricably linked offences» (D. Brodowski, Sub Article 22, European Public Prosecutor’s Office, Article by Article Commentary, p. 169)

Cases of joining of proceedings (Article 12 c.p.p.)

... Proceedings are joined if:

- a) The offence being prosecuted is committed by several persons acting jointly or in cooperation, or if several persons acting independently cause the event;
- b) A person is accused of several offences committed in either a single action or omission or several actions or omissions related to the same criminal intention;
- c) The offences being prosecuted are committed to carry out or conceal the joined offences

/Pv



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

m

Means for obtaining evidence

Measures that can be taken by order of the Public Prosecutor and in any case executed without the judge's authorisation

Inspections (of persons, places and objects ordered by reasoned decree if it is necessary to find traces and other material items of the offence)

Searches (ordered if there are reasonable grounds to believe that someone is concealing the corpus delicti or material items related to the offence; or that objects are located in certain place or stored in a computer or electronic system);

Seizures (of the corpus delicti and of material items related to the offence necessary for ascertaining the facts of the case)

Gathering information (summary information from persons who may be able to provide information that is useful for investigative purposes)

Questioning of a person accused in joined proceedings (persons accused in joined proceedings under Article 12 shall be questioned with the assistance of a lawyer)

Questioning of the suspect

/Pv



EUROPEAN
PUBLIC
PROSECUTOR'S
OFFICE

m

Means for obtaining evidence

Measures that can be taken by order of the Public Prosecutor and in any case executed with the judge's authorisation

Interception of conversations or communications (in cases of urgency the Public Prosecutor shall order the interception, but the judge shall decide on its validation)

Acquisition of telephone records (in cases of urgency the Public Prosecutor shall order the interception, but the judge shall decide on its validation)

Forced collection of biological samples from living persons (when the person concerned has not given his consent)

Relations with the judicial police and the national judicial authorities

The European Public Prosecutor performs an operational function. The Deputy European Public Prosecutors perform the functions of the Public Prosecutor on national territory, which are fully comparable to the functions performed by the national authority.

Therefore, the rules governing the division of functions between the Public Prosecutor and the Judicial Police according to the Code of Criminal Procedure apply also with respect to relations with the Judicial Police. In other words, also with respect to the position of the European Public Prosecutor's Office, the principle laid down in Article 109 of the Constitution, according to which "The judicial authority disposes directly of the judicial police" applies. The provisions of Articles 347 et seq. of the Code of Criminal Procedure apply to the judicial police and 358 et seq. of the Code of Criminal Procedure to the Public Prosecutor. The provisions of Articles 55 et seq. of the Code of Criminal Procedure are only applied to a limited extent, at least at present, because the judicial police sections at the European Public Prosecutor's Office have not yet been established. The principle of the functional subordination of the investigative activity of the judicial police to the Public Prosecutor remains unchanged, regardless of the evolving organizational aspects.

In this sense, an important junction is constituted by the modalities of transmission of the crime report. This is a procedurally very delicate aspect and, by its nature, of extreme importance. Delicate because the substantial profiles, it must be acknowledged, present margins of uncertainty: Articles 22 and 25 of the constituent Regulation refer to a definition of the area of competence in the matter which cannot be easily identified in concrete terms (with regard to the thresholds of quantitative importance, to the trans-national nature of the crime, to the interpretation of the concept of "indissoluble connection", to the identification of the most serious crime).

As delicate as it is, for the reasons of substantive law set out above, the transmission of the report of an offence is the unavoidable step for the European Public Prosecutor to initiate criminal proceedings. The founding Regulation governs the relationship between the national prosecution offices and the European Public Prosecutor's Office, which is referred to in the following paragraph.

Here it is worth noting the importance of the role of the judicial police in the transmission of information on offences. The matter is governed by Article 14 of Legislative Decree 9/2021, entitled "Communication and recording of information on offences falling within the jurisdiction of the European Public Prosecutor's Office", according to which: "1. Communications referred to in Article 347 of the Code of Criminal Procedure, complaints, claims and other acts, however they are called, concerning offences in relation to which the European Public Prosecutor's Office may exercise its competence under Articles 22 and 25(2) and (3) of the Regulation shall be submitted or forwarded to the Deputy European Public Prosecutor in addition to the national public prosecutor. When he receives or acquires, on his own initiative, information about one of the offences referred to in paragraph 1, the public prosecutor shall take the steps provided for by article 335, paragraph 1, of the Code of Criminal Procedure, if the European Public Prosecutor's Office has not already communicated that it is exercising its competence and it is necessary to perform urgent acts or there

is, in any case, reason to believe that a delay in commencing the investigation could jeopardise its outcome. Apart from the cases provided for in paragraph 2, the Public Prosecutor shall enter the report of the offence in a special register, kept in automated form, which the Minister of Justice shall establish by decree to be adopted within thirty days from the entry into force of this Decree. 4. When the Public Prosecutor's Office communicates that it does not intend to exercise its competence and, in any case, after thirty days have elapsed from the entry under paragraph 3, the Public Prosecutor's Office shall immediately proceed with the fulfilments envisaged by article 335, paragraph 1, of the code of criminal procedure. 5. The Public Prosecutor shall inform the European Public Prosecutor's Office of the registration of the proceedings and of the commencement of the preliminary investigations pursuant to paragraph 2".

This provision aims to coordinate the position of the two different authorities in the genetic phase of the proceedings, in line with the legal framework of Article 24 of the founding Regulation, which requires Eppo to be informed without delay of offences within its competence.