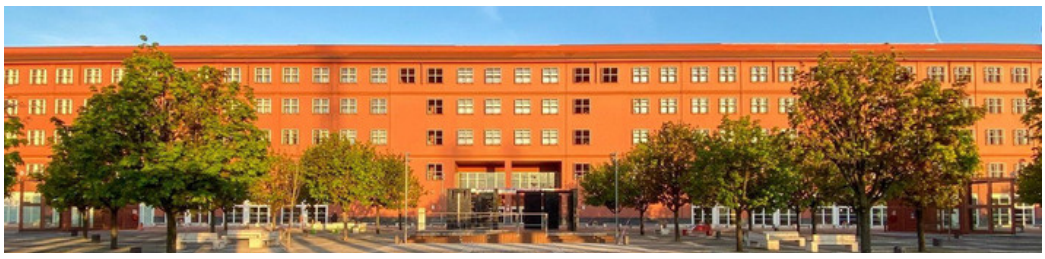
THE EPPO and EU LAW: A STEP FORWARD IN EU INTEGRATION

A Digital Collection of Lectures
2021-2022



UNIVERSITÀ DEGLI STUDI DI MILANO BICOCCA

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Benedetta Ubertazzi (Ed)

FOREWORD

The European Commission (Jean Monnet Module, *The EPPO and EU Law: A Step Forward in Integration)* and the University of Milan-Bicocca (European Union Law Chair) joined forces to organise a series of lessons that were scheduled between March and April 2022 around the topic of the European Public Prosecutor's Office (the EPPO). All lessons were free, and participation was highly encouraged. Lessons were organised so to allow for both online and in person presence, with participants having the opportunity to engage with the sessions as they appeared live, or at a later date. Speakers were selected from among the most relevant scholars and professionals all over the world. Speakers derived from leading EU bodies and institutions, such as the EPPO and Court of Justice of the European Union (CJEU), as well as Italian authorities, including the Bank of Italy and the General Prosecutor's Office of the Court of Auditors.

The situation we live in has highlighted and made unstoppable that which we have long known. That we are heading towards a world in which European Union funds (including those of the NextGenerationEU) will be used to recover from the health, environmental and financial consequences of the COVID-19 pandemic. Further, these funds will prove important in recovering from the humanitarian, energy and environmental crises posed by the Ukrainian-Russian conflict. Therefore, a world where solidarity and sustainable development will be the keywords for the future. So, the following question is posed: If EU funds are increasingly important, how is the EU, and EPPO in particular, duly equipped to respond to the needs of this new world? This issue was addressed by speakers with competence and courage, and we are very proud to present this Digital Collection of Lectures as a step forward in EU integration.

Professor Benedetta Ubertazzi
Aggregate Professor of EU Law, Milano-Bicocca School of Law
Jean Monnet Module Coordinator

Overall, this first cycle of *The EPPO and EU Law: A Step Forward in Integration* was a positive step forward for integration. Between the first session on March 1st and the final session on April 20th, 2022, the program attracted more than 450 participants both in person at the University of Milano-Bicocca, as well as through online modalities. These participants included lawyers, students, academics, trainees, citizens, and the Finance Police.

An important element of our first cycle was the creation of a website: www.steppo-eulaw.com This website contains all of the lectures from the first cycle, as well as recordings and a regularly updated blog on important and interesting evolutions in the EPPO in the European Community. This website attracted almost 550 new visitors during March and April. Further, the program also benefitted from having a social media presence on Instagram, Facebook, Twitter, and LinkedIn. There are now almost 350 individuals engaging with the program through these social networks. This Digital Collection of Lectures was compiled during the course of the sessions and reflects summarised versions of each author's original presentations. Each presentation is accompanied by links to the author's recordings as well as their slides and other media sources used during the sessions.

I would like to thank the STEPPO staff who helped considerably in bringing together this first cycle of *The EPPO and EU Law: A Step Forward in Integration.* Particularly, I would like to thank Stanislav Fumagalli, Alessia Pati and Ashleigh White for their hard work on the program. I would also like to thank the staff from Milano-Bicocca School of Law. Please enjoy perusing the Digital Collection of Lectures as much as the team have enjoyed engaging with the content in this Jean Monnet Action, *The EPPO and EU Law: A Step Forward in Integration.*

Mr. Giovanni Crespi
STEPPO Staff Coordinator

INDEX

THE TOPICS

Sessions Blog About Us

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1

The Road to EPPO

Objectives

This initial topic sets the scene for the Jean Monnet Action *THE EPPO AND EU LAW: A STEP FORWARD IN INTEGRATION* by contextualising the events which led to the creation of EPPO.

THE SESSIONS

Launch of the activities of EPPO

Why we did (do) need an EU prosecutor

How did enhanced cooperation on EPPO begin and pay off?

LAUNCH OF THE ACTIVITIES OF EPPO

1ST MARCH, 2022

Objectives

This initial session looks at what exactly is the European Public Prosecutor's Office. This session includes some initial reflections on the events between 1995 and the present day which led to the EPPO's establishment.

THE AUTHOR

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The EPPO represents not just a new teaching field, but a challenge and an achievement for the European Union as a whole. It is not by chance that this Jean Monnet program has a full title of 'EPPO and the EU Law: A Step Forward in Integration'.

In 1995, this pathway to today began with a study which focused on both substantial criminal law and procedural criminal law. However, it was only in 2007 with the Lisbon Treaty ('TFEU') that the EU was finally provided with a legal basis to establish the EPPO. Then, we needed another ten years to convince Member States to pursue this project, because at that time, this vision was not shared by all Member States. Yet, in 2017, two legal instruments were enacted.

One is called the 'PIF Directive', which frames the offences to the EU budget and the other one, is the 'EPPO Regulation', which sets out to establish the EPPO.

The EPPO Regulation was achieved through enhanced cooperation, but what does this mean? Enhanced cooperation is very specific to EU law, and one will not find it elsewhere. Enhanced cooperation ensures that a Regulation, which sets uniform rules can be produced when unanimity is lacking.

However, generally, this Regulation will not apply to all EU Member States, but only to those Member States who participate in enhanced cooperation. Yet, the experience of the EPPO shows us that enhanced cooperation can attract the participation of Member States who were first not committed to a Regulation but decide to join later on. With this experience in mind, this program will explore how the EPPO came to be through enhanced cooperation, and how the EPPO continues to grow to be a key EU institution in protecting the interests of the European Union.

UNIVERSITÀ DEGLI STUDI DI MILANO BICOCCA

THE AUTHOR

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On 1 June 2021, the EPPO was launched, with its competence to investigate and prosecute crimes against the financial interests of the EU.

Laura Kövesi, European Chief Prosecutor, at the time said:

'We are here to fight fraud. It is not an easy job, because there is no precedent for the EPPO. It is very difficult to apply 22 different criminal codes, but we have the right spirit, the right focus, the right determination to make the EPPO a strong, independent, and efficient institution, trusted by the citizens of Europe.'

The EPPO's Annual Report, published in early 2022, illustrates the breadth and extensiveness of the EPPO's activities during its first year. By December 31, 2021, the EPPO had launched 515 investigations, of which 27.5% of them had a cross-border dimension and resulted in seizures of 147.3 million Euros.

But these successes also raise many questions surrounding the EPPO. These questions include minimum standards in criminal procedural law between the Member States of the EPPO. Also, how can the EPPO effectively cooperate with third States in implementing its mandate? How will the operationalisation of the EPPO contribute towards the digitalisation of justice in the EU? What about the EPPO's competences and future competences in addressing cross-border terrorism in the EU?

All of these questions will be explored in our program, *The EPPO and EU Law: A Step Forward in Integration.* This program is a Jean Monnet Action, funded by the European Commission for three years, beginning with this first

cycle in 2022. Jean Monnet Actions are designed to address EU Studies and foster dialogue between the academic world and society about EU institutions and their role in a globalised world. *The EPPO and EU Law: A Step Forward in Integration,* received 95% of good notes during its original evaluation by the European Commission, and provides EU citizens with a deep introductory insight into the EPPO through dialogue between prosecutors, law enforcement officers, EU officers, practitioners, academics, students, and the general public.

It is a 48-hours-per-year teaching programme concentrated on this new EU body, emphasising its role in the EU dimension against the background of the intertwining of its competences with national ones, without any limiting focus on a national system or another. The visibility and awareness of the program targets students, lawyers, professionals and international participants.

The program explores the EPPO, one year into its operation through seven distinct topics, which include: 1) The Road to the EPPO; 2) The EPPO; 3) The EPPO and National Authorities; 4) The EPPO Programming 2021-2023: Highlights; 5) The EPPO, Judicial Cooperation and Internal and External Security; 6) The EPPO and Other Bodies Joining Forces and 7) The EPPO Protecting European Taxpayers' Money from Criminals.

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European Delegated Prosecutor - Milan

The long road to the EPPO began in 1995. Article 86 of the Lisbon Treaty on the Functioning of the European Union ('TFEU') sets out the establishment of EPPO. The EPPO Regulation (EU) 2017/1939 and the PIF Directive (EU) 2017/1371 are the two most relevant legal instruments we need to take into consideration when we talk about EPPO and the role of EPPO in EU and national jurisdictions. If we think to the national context, in Italy for example, a Decree was needed to implement the EPPO, because the Italian system had to adapt its internal law to the newness introduced by the EPPO Regulation. This Decree, D.L.vo/2021, entered into force on February 6th 2021, and foresees the EPPO in the Regulation, with the Regulation being a source of EU law which is integrated into the national law.

So, by considering these two main legal instruments, the PIF Directive and the EPPO Regulation, and national level legal instruments, there is an evolving framework for the EPPO to exercise its competence and its activity in the fighting of specific offences against the financial interests of the EU.

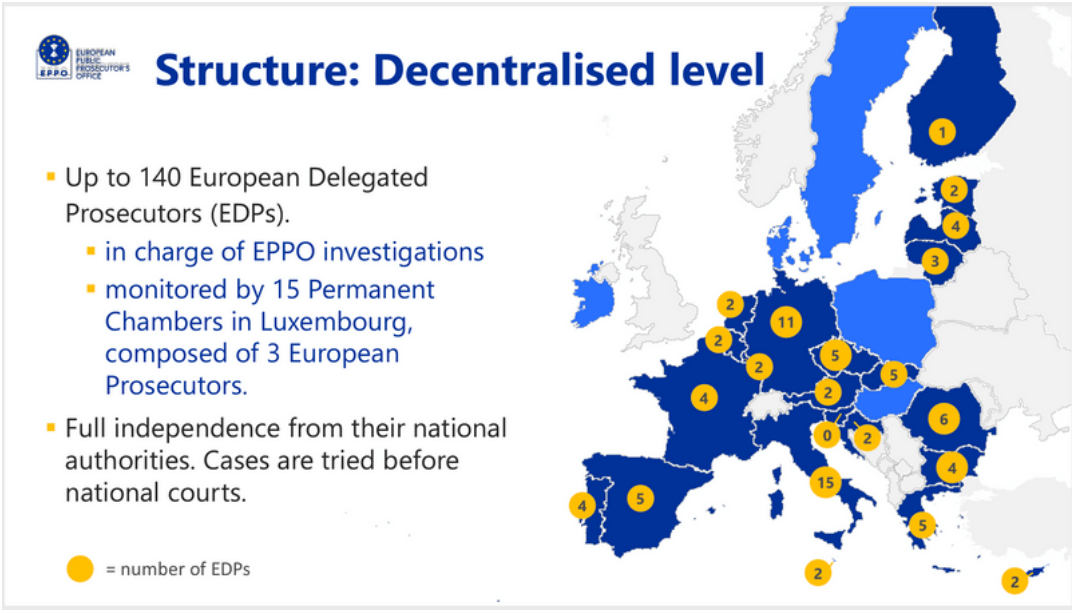
One of the EPPO's main characteristics is the fact that is an entirely new and independent, prosecutorial authority. This independence is enshrined in the first few articles of the EPPO Regulation. For example, Article 5 outlines the main fundamental principles of the EPPO's activities. From this Article we can see that independence of the EPPO is one of, if not the main principle.

While the EPPO Regulation certainly leaves open the legal possibility for European Delegated Prosecutors ('EDP') to be part of both the national judiciary and of EPPO, the College decided not to follow this legal possibility. This was for the purpose of enhancing and protecting the independence of EPPO and of the EDPs in all Member States, particularly in Member States where the judiciary is not properly structured.

Further, it is important to highlight that EPPO is a supranational (EU) Prosecutor's Office, entirely independent from the European and national authorities, including the national prosecution and judicial authorities. For example, in the Italian context, an Italian EDP, is not bound anymore by the local hierarchical structure, which ensured a level of dependence on the local Chief Prosecutor and General Prosecutor's Office. We are entirely independent.

EPPO's independence can best be visualised through its single office structure with both a central and a decentralised level. The central level comprises the Chief Prosecutor, two Deputy European Chief Prosecutors and one European Prosecutor for each Member State (22 Member States). They form part of the College. The College of the EPPO has an important place and has important competences itself. It is chaired by the European Chief Prosecutor. At the decentralised level, there are currently 140 EDPs in Member States, who are in charge or the investigation and prosecution.

The EPPO's independence is further enforced by the fact that since the beginning of the EPPO's operational activity on June 1st, 2021, the EPPO has worked as a single office. In practice, this means discussing, deciding how to proceed and how to investigate specific offences with colleagues in other Member States.



This involves not just cooperation and mutual legal assistance, but it also must involve a change of mind and approach in the way in which an investigation is led by the prosecution service. For example, EDPs have concurrent/exclusive competence for investigating, prosecuting, and bringing to judgment 'PIF offences' up to the final judgment, when the case has been fully disposed of.

It is however important to highlight that national authorities still have an authority to investigate and prosecute these offences if the EPPO decided not to exercise its competence. However, if the EPPO does decide to exercise its competence in a particular case, the EPPO is entitled and obliged to bring the case to Court up to the final judgment, which means not just the phase, but the Court of Appeal and Court of Cassation.

One interesting aspect of the EPPO's operational capacity are cross-border investigations. This is a very specific and difficult matter, but indeed, is an interesting one for the development of the EPPO's activities.

Traditionally, the matter was in determining how public prosecutors in different countries across the European Community could cooperate with each other for an investigation. Through the creation of the EPPO and its single office structure, EPPO can carry out a single investigation across borders. In doing so, the first question needing to be answered is 'how can we find the competent office?'

For this question, there is an answer in Article 26(2) of the EPPO Regulation. This Article notes that there will be a 'handling' prosecutor in the jurisdiction in which the crime has been committed. Further, there will be an 'assistant prosecutor' in the other Member State where the crime has also been committed. When one speaks of cooperation between countries, while there may always be the same problem surrounding which kind of rules need to be applied, the EPPO Regulation is a step forward in not just EU integration but in how Member States can effectively collaborate to investigate and prosecute crimes that affect the financial interests of the Community.

THE AUTHOR

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Head of the Economic and Financial Police Unit - Guardia di Finanza - Milan

The Guardia di Finanza is a military Police Force reporting directly to the Minister of Economy and Finance, with general economic and financial crime-fighting competences.

According to Law nr. 189/1959, the Corps carries out the primary functions of the prevention, investigation and the reporting of financial evasions and violations, vigilance over the observance of economic-political laws and surveillance of the seas for financial police activities.

Moreover, pursuant to Law nr. 78/2000, which foresaw the adjustment and integration of the institutional responsibilities, the Corps has responsibility over the "*functions of economic and financial police work in protection of the finances of the State and of the European Union*".

The legislative framework, within which the Corps performs its strategic missions, is completed by Legislative Decree nr. 68/2001, foreseeing *i.e.*:

- the mission of the Guardia di Finanza as a Police Force with general responsibilities covering all economic and financial matters;
- the extension of the means and powers recognized by law to the Corps members in the area of taxation to all sectors in which the operational projects of the economic-financial police are involved;
- the legitimation of the Corps to promote and develop, as the competent national authority, initiatives for international cooperation with collateral foreign organs in the fight against economic and financial crime.

At this regard, it is worth pointing out that the primary goal of fighting against tax evasion and tax avoidance has progressively widened its scope towards all economic and financial misconducts and illegal activities. In this context, the Corps, as per the indications of the Government Authority, is daily committed to tackle:

- ***tax evasion, dodging and frauds***, including inspections, criminal police investigations, and supervision on the various tax sectors, and economic control of the territory, extended to the monitoring of payments circuits other than the financial system and the prevention and countering of illegal trafficking of various types of goods;
- ***offences and crimes related to the public expenditure,*** including all the interventions, criminal police investigations and the other assessments aimed at preventing and repressing undue collections and embezzlement in relation to local, national and EU balance sheet outgoings, and loss of revenue for the State, corruption and other crimes against the Public Administration;
- ***economic and financial unlawful deeds in general***, including investigations against organized crime, financial assessments and prevention activities as per the anti-mafia regulations, anti-money-laundering controls and inspections, follow-ups on suspicious transaction reports aimed at preventing and countering the use of the financial system to launder money and fund terrorism.

  Furthermore, the Corps performs services in relations to cross border currency transfers, actions to protect the circulation of the euro and other payment means, interventions to counter counterfeiting, audio and video piracy and the sale of unsafe and dangerous products, investigations on corporate, bankruptcy and financial offences, and liability of agencies for administrative unlawful deeds deriving from an offence.

That being said, it is quite apparent how the aforementioned strategic missions of Guardia di Finanza is, at a large extent, overlapping and complementary with European Public Prosecutor's Office (EPPO)'s mandate, as depicted by the Regulation (EU) 2017/1939 (EPPO Regulation).

As known, the EPPO Regulation has established indeed an independent prosecution office of the European Union (EU) with the power to investigate, prosecute and bring to judgment crimes against the EU's financial interests, set forth by Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law.

In this respect, it is relevant to note how EPPO represents a huge step forward a fully effective judicial and police cooperation in the EU

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scenario. Unlike existing EU bodies, such as the European Anti-Fraud Office (OLAF), the European Union Agency for Criminal Justice Cooperation (Eurojust) and the European Union Agency for Law Enforcement Cooperation (Europol), EPPO has indeed the power to conduct criminal investigations and prosecutions, mainly by employing law enforcement agencies of the EU Member States. As a result, EPPO has established close relationships with the abovementioned bodies, based on mutual cooperation within their respective mandates.

Given the strong similarity between the mandates of Guardia di Finanza and the new Prosecution Office, the Corps could be regarded as the "*natural partner*" of the latter, also thanks to its cross-sectoral approach in deploying the aforementioned duties.

Consequently, once EPPO has been established in June 2021, the Corp's General Headquarter has taken the strategic decision of putting at disposal of EPPO its full operational capacity, namely 106 Provincial Headquarters and their depending Command (*i.e.* 106 Tax Police squads, responsible for the most significant investigation services, as well as Companies, Lieutenancies, and Brigades).

The strong synergy between EPPO and Guardia di Finanza is a part of the judicial and police cooperation framework within which the Corps currently operates.

In more detail, the Guardia di Finanza ensures consistent information sharing, also by means of ongoing cooperation with the international organizations involved in the struggle against cross-border crime, using administrative and police instruments provided by- among others - O.I.P.C. – Interpol, Europol, OLAF, and the *World Customs Organization* (including its network of regional intelligence liaison offices, RILO).

Moreover, the Corps provides active and passive cooperation with tax administrations, foreign police and customs forces allowed to provide information to the operating Units of the Corps, to carry out the relevant investigations and share data with the requesting foreign counterparts.

In this respect, the European regulations are extremely effective in the fight against cross-border crimes, by providing a set of operational tools like:

- the special net of **Asset Recovery Offices (AROs)**, which provide a "*dedicated*" channel for the exchange of information for the purpose of seizing and confiscating proceeds from crime and other related assets, unlawfully acquired by organized crime;
- the execution of **European Investigation Orders (EIOs)**, by virtue of Directive (EU) 2014/41, which enables judicial authorities in one EU country ('*the issuing state*') to request that evidence be gathered in and transferred from another EU country ('*the executing state*').

  As the EIO is based on the mutual recognition principle, each EU country is obliged in principle to recognise and carry out such a request, swiftly and without any further formality;
- the constitution of **Joint Investigation Teams (JITs)**, initially set up by Council Framework Decision of 13 June 2002. The rationale is that certain types of crime within the EU can be more effectively investigated by a team set up for a fixed period, according to an agreement between competent authorities – both judicial (judges, prosecutors, investigative judges *et similia*) and law enforcement – of two or more States;
- the execution of **European arrest warrants (EAWs)**, initially foreseen by Council Framework Decision nr. 2002/584, whose primary goal is to improve and simplify judicial procedures to speed up the return of people from another country who have committed a serious crime

According to this scenario, the "*investigative alliance*" between Corps and EPPO has the potential to bring the fight against financial crime to a next level, by experimenting a grade of potential cooperation and collaboration never seen before.

THE EUROPEAN PROSECUTOR'S OFFICE COMPETENCES

E.P.P.O.'s Competences: Art. 22 of Council Regulation (EU) 2017/1939 (EPPO Regulation)

Crimes under Directive (EU) 2017/1371 (PIF Directive) **[PIF Crimes]** ⇨ **Associated Crimes related to the commission of PIF crimes** ⇨ **any other 'inextricably linked" crime, if punished with a lesser penalty than the PIF offense, or if it is 'instrumental' to the commission of the PIF crime** ⇨ **in the case of crimes relating to budget revenue, where the damage to the EU budget exceeds the "national" damage**

As regards to VAT fraud, EPPO has jurisdiction only where the intentional actions or omissions defined in that provision relate to the territory of two or more Member States and involve a total loss of at least EUR 10 million

EPPO is not responsibile for offences relating to direct national taxes

WHY DID (DO) WE NEED AN EU PROSECUTOR?

2ND MARCH, 2022

Objectives

The second session looks at the events leading to the establishment of EPPO, including evolving case law of the European Court of Justice and the meanings of 'fraud' and 'financial interests'.

THE AUTHORS

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The establishment of EPPO is a major change and improvement in protecting the Union's financial interests. However, the legal framework and the judicial response to crimes affecting the Union's financial interests developed long before EPPO, dating back to the 1970s as part of EU policies. As we take a retrospective look to this long path, it is fair to say that the Court, as it has happened in many areas of the EU law, has fostered the creation of this policy[1].

In particular, it can be said that the case law of the ECJ has had a significant impact on the evolution of what is captured by the meaning of 'fraud affecting the financial interests of the EU'. This case law has also affected the evolution of the EU legal framework.

Before looking to this case law, it is important to look at the evolution of the EU legal framework, in order to check when and how the ECJ has played a role. Specifically, this evolution can be assessed across three time periods. During the first period from the 1970s to the 1990s, there was no legal framework, neither in the original treaties nor in other legislative acts. From 1990 to 2000, the second time period, the Maastricht Treaty was adopted, enshrining the principle of equivalence in the field of the protection of the EU financial interests: "*[m]ember States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.*" Additionally, in 1995, the PIF convention[2] was adopted and, even if the ratification process proceeded slowly, it is important to point out that the Convention provided the first definition of 'fraud'. The third and current time period can be considered from 2000 to the present day, and represents the period in which the most important evolution in the fight against acts affecting the financial interests of the EU occurred. This was the introduction of the Lisbon Treaty which marked a decisive step forward in the combating of fraud against financial interests of the EU introducing a new article 86, which provide legal basis for the establishment of EPPO, and extending the principle of equivalence in Article 325 TFEU.

Two other major legislative acts have been adopted recently. These acts are the PIF Directive (EU) 2017/1371[3] on the fight against fraud to the Union's financial interests by means of criminal law, which defines which crimes are considered crimes affecting the EU budget, and Council Regulation (EU) 2017/1939[4] of 12 October 2017 setting the basis for EPPO. How the ECJ case law evolved along those 3 periods? The ECJ case law is mostly concentrated in the third period, since it was only with the introduction of the Maastricht Treaty that there was a clear provision in the Treaty concerning fraud to the financial interests of the EU.

So what has the role of the ECJ been in the development of this notion of 'fraud'? Firstly, the ECJ extended the scope of what is meant by the term 'financial interest', stating that this expression must be interpreted widely and

[1] Term « policy » is hereby used even if its debated the intervention at issue is a "policy" or simply an "action" of the EU .
[2] Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, OJ C 316, 27.11.1995, p. 49–57.
[3] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29–41.
[4] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, OJ L 283, 31.10.2017, p. 1–71.

EVOLUTION OF 'FRAUD' IN THE EU LEGAL FRAMEWORK

1 1970s-1990s

2 1990s - 2000s

3 2000s - present

considered as different from the notion of the budgetary interests of the EU, strictly speaking. The relevant judgment of the Court regarding this notion of 'financial interests' is ***C-15/00, Commission/EIB***.

In this case, the Court concluded that the notion of 'financial interests' of the Community is not restricted exclusively to the budget of the European Community, but also covers resources and expenditure covered by the budget of other bodies, offices and agencies established by the EC Treaty.

Second, the ECJ extended the notion of 'fraud'. The ECJ has extended the notion of 'fraud', both under a subjective as well an objective point of view. Under a subjective point of view, ECJ stated that the author of the fraud can be not only any EU citizen but also, within the EU institutions and bodies, a member of the EU staff (ECJ, ***C-15/00, Commission/BEI***). Under an objective point of view, ECJ has interpreted that notion of 'fraud' widely and as encompassing also, for example, the infringements detrimental to income coming from the application of the VAT (ECJ, ***C-617/10, Åkerberg Fransson***), or Common Customs Tariff duties (ECJ, ***C-612/15, Kolev***).

One important consequence of the ECJ's role in the development of this field is the granting the Member States with the possibility of adopting criminal penalties in a generally non-harmonized domain. This was made possible through the limitation of the procedural autonomy of the Member States and the application of the principles of effectiveness and equivalence.

In areas where harmonization of national laws hasn't been undertaken, the ECJ via the limitations of procedural autonomy, rendered effective the protection of the rights conferred upon individuals by EU provisions having direct effect. An example of this is Article 101(1) of the TFEU.

In the area of the protection of the EU financial interests, the ECJ limited, in concreto, the procedural autonomy of the Member States, by establishing the direct effect of Article 325 of the TFEU, and by imposing further obligations on Member States, both on their judges as well as on national legislators. As a first step for instance, the Court found in ***C-617/10, Åkerberg Fransson***, at paragraph 26 that "*[a]rticle 325 TFEU obliges the Member States to counter illegal activities affecting the financial interests of the European Union through effective deterrent measures and, in particular, obliges them to take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own interests*".

Following this outcome, there was a second, more effective step, in the ECJ's judgement ***C-105/14, Taricco***. In paragraph 50 of this judgment, the Court observed that "*[m]ember States have an obligation to counter illegal activities affecting the financial interests of the European Union through dissuasive and effective measures.*" Then, in paragraphs 51 and 52 of this judgment the ECJ stated that article 325 TFEU provide a precise obligation as to the result to be achieved that is not subject to any condition regarding application of the rule set forth in paragraph 50. Therefore, Article 325 has the effect, in accordance with the principle of the precedence of EU law, of rendering automatically inapplicable any conflicting provision of national law.

By looking at the subsequent ***M.A.S and M.B***. case (***C-42/17***, often referred

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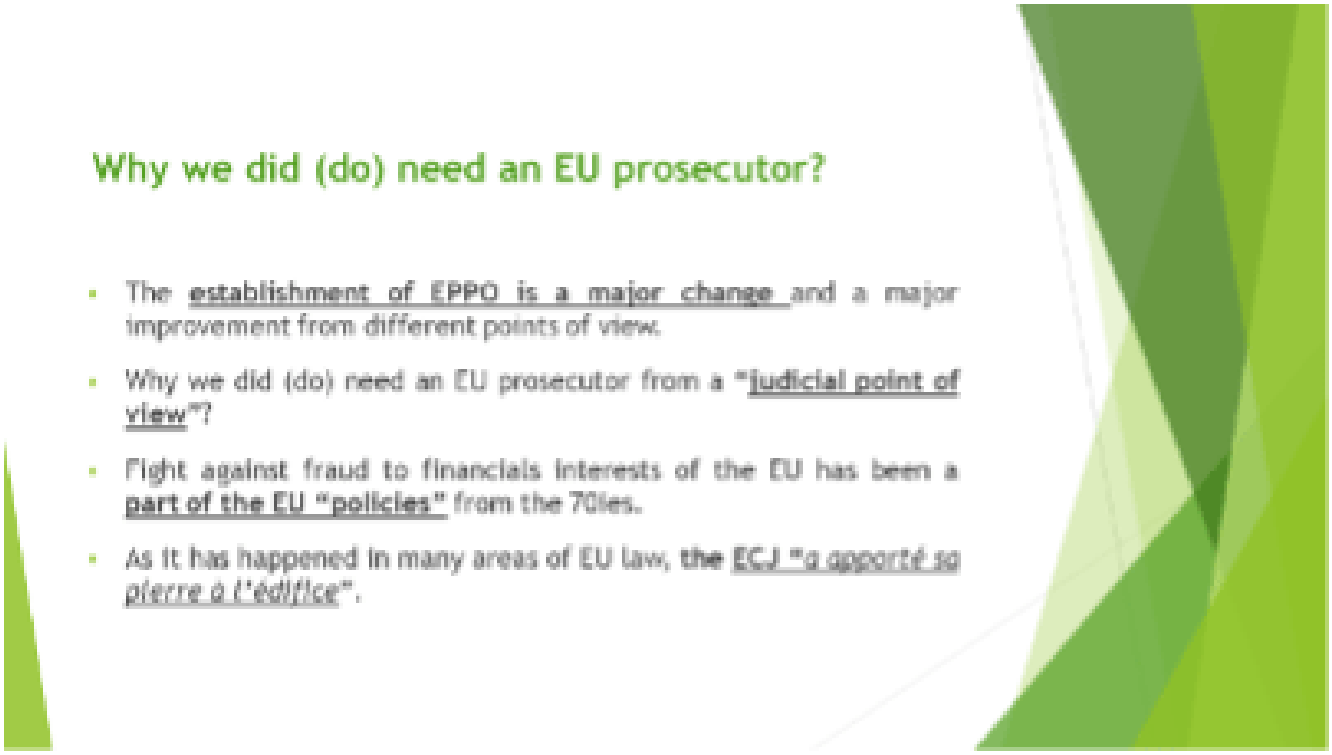


to as the 'Taricco II case'), two important messages can be extrapolated. First, Member States must ensure effective collection of the Union's own resources. Second, "*where the imposition of criminal penalties is concerned, the competent national courts must ensure that the rights of defendants flowing from the principle that offences and penalties must be defined by law are guaranteed.*"

While the ECJ has contributed and stimulated the evolution of the legal framework aimed at the protection of the financial interests of the European Union, what can be seen is that this development over the three time periods also serves as a basis for the justification of why the European Union needed a prosecutor like EPPO. The ECJ enhanced the fight against fraud to financial interest of the EU through the limitation of the principle of procedural autonomy. However, before the establishment of EPPO the responsibility for carrying out the fight fell only on the Member States, this creating differences in the 'effectiveness' of the fight at the national level. Said establishment of EPPO, centralizing the combatting of crimes provided by the PIF directive is an important goal that has been reached.

THE EPPO REGULATION: RULES ON THE LAW TO BE APPLIED BY EUROPEAN DELEGATED PROSECUTORS

7TH MARCH, 2022

Objectives

This third session looks at the events leading to the use of 'enhanced cooperation' in order to establish EPPO and what the consequences of using enhanced cooperation were.

THE AUTHOR

Professor Enrico Traversa
Former Director of the "Justice" Team of the European Commission Legal Service;
Professor of European Labour Law - University of Bologna

The legal basis establishing the EPPO can be found in Article 82 of the TFEU. This provides limits to the legislative power of the EU Council of Minister. Hence, the functions of prosecution are exercised in the criminal courts of Member States. This article provides that the Regulation shall determine, 1) the general rules (Statute) applicable to the EPPO, 2) the performance of EPPO's functions, 3) general rules of procedure and evidence admissibility and 4) rules applicable to judicial review of the EPPO's procedural acts.

The first institutional aspect is the identification of applicable law. This is particularly affected by the relationship between the EPPO Regulation and Member States' laws (a vertical relationship can be observed in Article 5(3)) of the EPPO Regulation. In order of priority, this vertical relationship prioritises a) rules of the EPPO Regulation, b) rules of national law, c) in the case of concurrent legislation, EU rules shall prevail. In instances where the rules of national law applies, where 1) the principle is consistent (with EU law), interpretation does not apply.

Additionally, 2) the Charter of Fundamental Rights is applicable by virtue of the institutional obligation provided for by Article 51(1) of the Charter and Article 5(1) of the EPPO Regulation. The third group of rules of the EPPO Regulation govern only part of a given category of the EPPO investigative acts (EU + national law) and include investigative measures (Article 30), cross border investigations (Articles 31 and 32) and simplified prosecution procedures (Article 40). Articles of the EPPO Regulation referring to EU Directives as implemented by national laws include Article 22(1), the material competence of the EPPO, with reference to the PIF Directive (n. 2017/1371). For example, offences harmonized by the PIF Directive include Article 3 (Frauds related to EU subsidies, public procurements, EU budget "own resources" other than VAT (custom duties), VAT revenue including a) VAT cross-border frauds, b) involving a 'total damage' of at least 10 million Euro. These offences are in addition to Article 4 (other offences) which include money laundering, active and passive corruption of public officials and misappropriation of EU funds or assets. Finally, Article 5 includes investigation, aiding and abetting in criminal offences.

Yet, there are several problems with the articles of the EPPO Regulation referring to EU Directives. These problems include the identification of rules of national law that transpose the PIF Directive 2017/1371. This raises the question of whether all PIF offences are already correctly and fully provided for in the Criminal Code of Member States of the European Delegated Prosecutor. Additionally, there is an incomplete transposition of the PIF Directive into national law, such that conduct constituting a PIF offence may not be provided for as an offence by the legislation of the Member State of the European Delegated Prosecutor handling an investigation and/or prosecution. It must instead be strictly excluded, a direct effect of Articles 3-5 of the PIF Directive.

Regarding references in the EPPO Regulation to Directives concerning the rights of defendants, there are three levels of guarantees. First, the EU Charter of Fundamental Rights ('CFR'). Second, Article 41 of the EPPO Regulation, which includes five EU Directives on the rights of defendants as implemented into national law and third, the procedural rights provided by national law. In the event of incomplete or incorrect transposition, the principle of the direct effect of the five EU Directives applies, as they award rights. In this regard, the CJEU's principle of *consistent interpretation* is important.

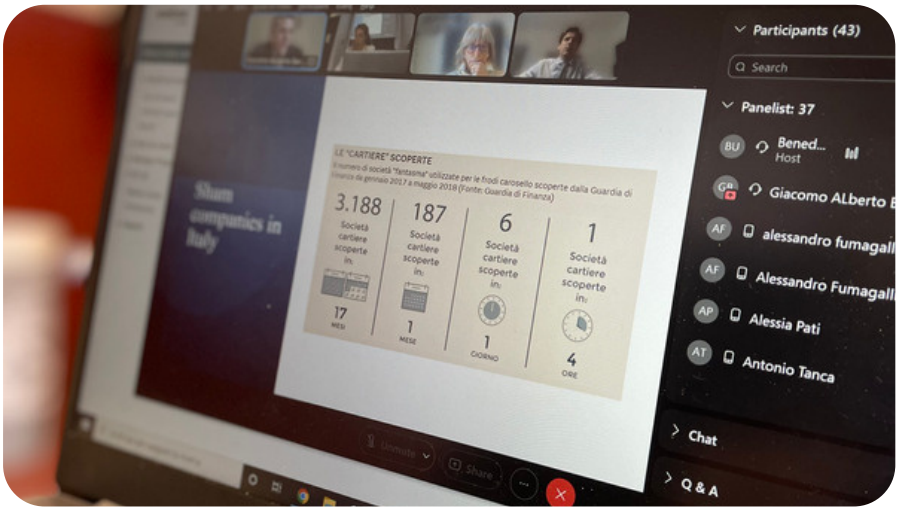
The second institutional aspect is the system of judicial review, provided for in Article 42 of the EPPO Regulation. This provision shows that, as a general rule, there will be a review by the criminal courts of the Member States of a) the procedural acts of the European Prosecutor, b) intended to produce legal effects vis-à-vis third parties including the decision to choose the Member State in which to prosecute. Regarding the specific competence of the CJEU, a category of procedural acts is included, such as appeals against decisions to dismiss proceedings if contested directly on the basis of Union law.

ARTICLE 42- EPPO REGULATION

Shows that:

a) there will be a review by the criminal courts of Member States of the procedural acts of the European Prosecutor

b) this review is intended to product legal effects vis-a-vis third parties including the decision to choose the Member State in which to prosecute.



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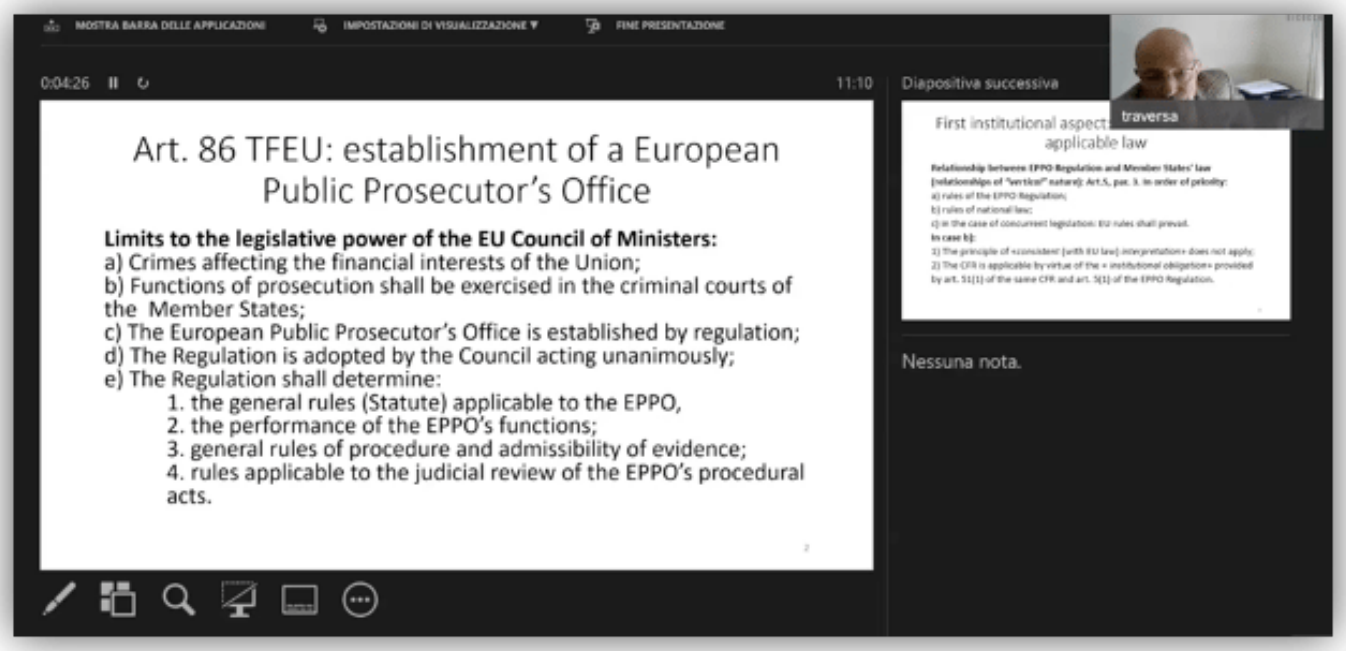


With respect to prosecution before national courts, Article 36 of the EPPO Regulation applies. Generally, the Permanent Chamber shall bring the case to prosecution before a criminal court in the Member State of the handling European Delegated Prosecutor. The exception to this rule is the same criteria set out in Article 26(4) and (5) (residence or nationality of the accused person etc.), where the Chief Prosecutor may bring the case to prosecution in a Member State other than the one of the European Delegated Prosecutor who conducted the investigation under sufficiently justified grounds.

The second exception is where several EDPs have conducted investigations against the same person. In this instance, the Chief Prosecutor may join the cases, and bring them to prosecution before a court of a single Member State if it has jurisdiction for each case.

A third institutional aspect, is the resolution of competence conflicts, including in Articles 22 and 25 of the EPPO Regulation. Dispute resolution procedures are accounted for in Articles 25.6 and 42.2C of the EPPO Regulation.

Under these procedures, there are critical considerations, including the difficulty of interpreting Articles 22 and 25 and a danger of eroding the EPPO competences. Transitioning from exclusive to concurrent competence between the EPPO and national prosecutors requires a review of the appropriateness of the procedure under Article 26.5 of the EPPO Regulation.

To conclude, despite the EPPO Regulation serving as the basis for the establishment of the EPPO and its competence, there are several problems with the Articles of the Regulation. These include not just how the EPPO Regulation and national laws of Member States interact through a vertical relationship.

In fact, one of the main institutional challenges for the EPPO remains the capacity of European Delegated Prosecutors to carry out investigations and prosecutions in a system where the EPPO Regulation often needs to be implemented into national legal frameworks. As such, if Member States implement national law which does not fully implement the EPPO Regulation or offences from the PIF Directive, then the function of the EDP is restricted.

2

The EPPO

Objectives

This second topic explores the structure and functions of EPPO, the European Public Prosecutor's Office, including its mandate and competences.

THE SESSIONS

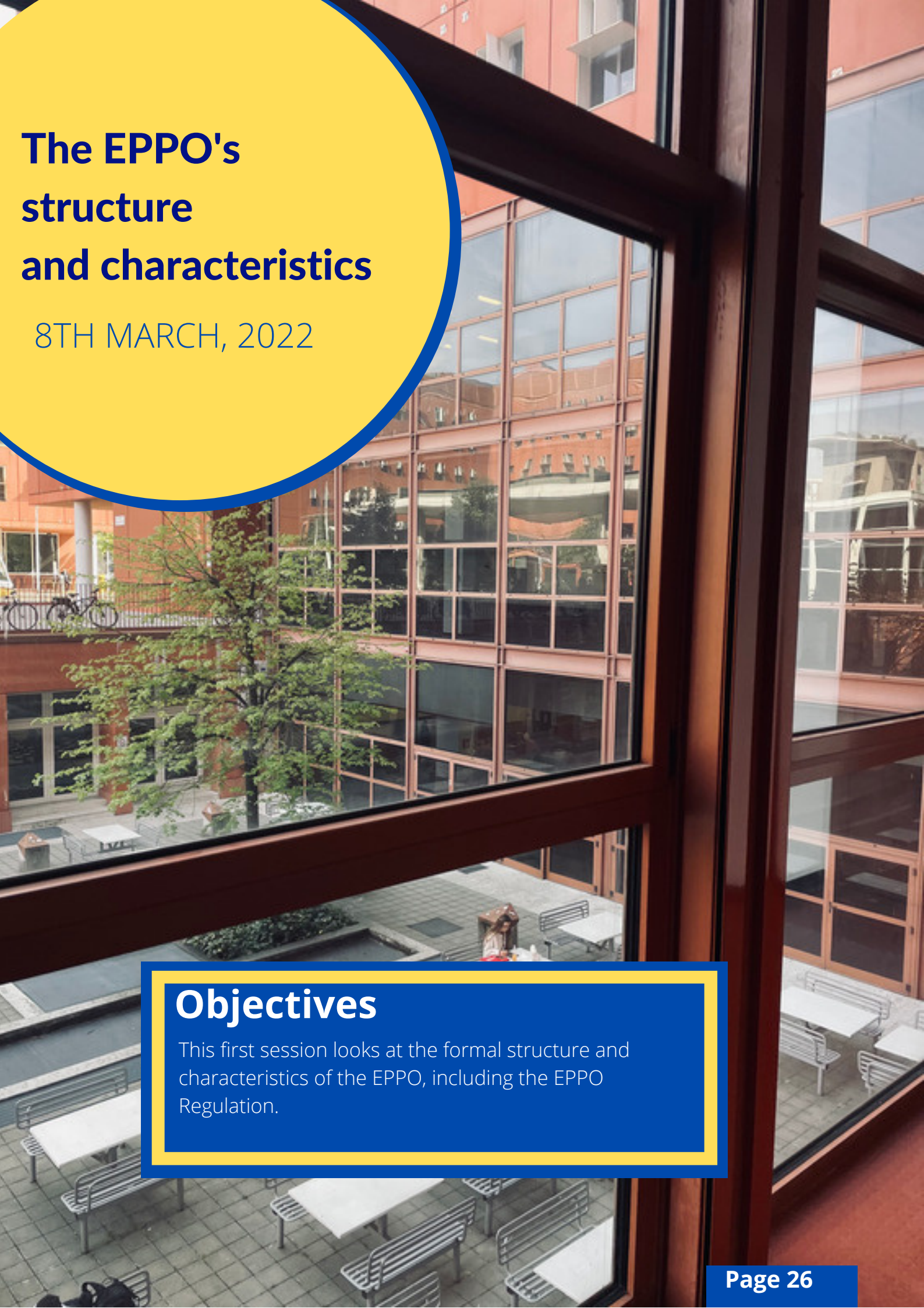
The EPPO's structure and characteristics

The EPPO's role and mandate

The EPPO functioning: a practical overview

The EPPO's structure and characteristics

8TH MARCH, 2022



Objectives

This first session looks at the formal structure and characteristics of the EPPO, including the EPPO Regulation.

THE AUTHOR

Mr. Alejandro Hernández López
(PhD in Law – Postdoctoral Researcher "Margarita Salas")

The relevant legal framework concerning the EPPO can be found in Article 86 of the TFEU, as well as in Chapters II and III of Regulation (EU) 2017/1939. Additionally, internal rules of procedure of the EPPO (consolidated version) are relevant, particularly Title II, and Decisions of the College.

Firstly, Article 86 of the TFEU can be considered as a primary law characteristic. Article 86(2) stated that *'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.'*

However, an interesting element of Article 86(1) TFEU is its reference to Eurojust when it says, '*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...*' What specifically does this mean? The EPPO was not established to derive from Eurojust as a subsidiary body, but instead, was established to work as a complimentary body to Eurojust.

This relationship can be observed by looking to the two Regulations concerning first, the establishment of the EPPO, (Regulation (EU) 2017/1939 (EPPO Regulation) and comparing this with the Regulation establishing Eurojust, Regulation (EU) 2018/1727 (Eurojust Regulation). Specifically, Recital 10 of the EPPO Regulation provides '*in accordance with Article 86 TFEU, the EPPO should be established from Eurojust.'* What can be implied from these two Regulations is that the relationship between the EPPO and Eurojust is a close one, based on mutual cooperation. Yet, 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.

Regarding the main characteristics of the EPPO, the EPPO is an independent body of the European Union, with its own legal personality. It is the prosecution office of the European Union, and the material scope of competence is currently limited to PIF crimes. Hence, territoriality and active personality principles also apply. There are currently 22 participant Member States, with non-participants including Hungary, Ireland, Poland, and Sweden. Denmark has an opt-out clause. The operational phase of the EPPO started on 1 June 2021.

'EPPO's material scope of competence is currently limited to PIF crimes.'

EPPO was **not** established **from** Eurojust, but instead the EPPO Regulation **implies** that the regulation itself should establish a close relationship between them based on **mutual cooperation.**

The basic principles of the EPPO include independence, respect the rights enshrined in the CFREU, proportionality, impartiality, shared competence with national authorities and sincere cooperation, before moving onto the second part of the presentation on the structure of the EPPO.

As a brief overview, the EPPO is an indivisible Union body, which operates as one single office with a decentralized structure. The Central structure consists of the College, European Chief Prosecutor, European Prosecutors, Permanent Chambers and Administrative Director. The Decentralised structure includes the European Delegated Prosecutors. These EDPs are assisted in their work by a number of experts in areas including administrative, technical, operational, and legal-technical support. The College is composed of the European Chief Prosecutor (Chair) and one European Prosecutor per participating Member State (22). The main tasks of the College are to provide a general oversight of the activities of EPPO, determine the priorities and the investigation and prosecution policy of the EPPO, take decisions on strategic matters, take decisions on general issues arising from individual cases (not operational decisions), set up Permanent Chambers and adopt internal rules of procedure by a two-thirds majority.

Additionally, the European Chief Prosecutor can be summarised as organising and directing the work of the EPPO. As a point of interest, the European Chief Prosecutor may delegate her tasks to one of the Deputy European Chief Prosecutors (2) or to a European Prosecutor. Regarding the European Prosecutors, the national candidates for these posts 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. The tasks of the European Prosecutors (EP) include supervising, on behalf of the Permanent Chamber, the investigations, and prosecutions for which the EDP handling the case in their Member State of origin are responsible.

They also review 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. Regarding the structure of the Permanent Chambers, It is composed of three members, including one chair and two permanent members. Decisions of the Permanent Chambers are taken by a simple majority, and each member has one vote. The tasks of the Permanent Chambers are to monitor and direct the investigations and prosecutions conducted by the European Delegated Prosecutor, as well as ensuring the coordination of investigations and prosecutions in cross-border cases.

Regarding the decentralised level, this level consists of the European Delegated Prosecutors. The EDPs act on behalf of the EPPO in Member States and are responsible for investigating, prosecuting, and bringing to judgment cases. The College appoints the EDPs nominated by Member States upon a proposal by the ECP. Their tasks primarily consist of acting on behalf of the EPPO in their respective Member States and shall have "at least" the same powers as national prosecutors in respect of

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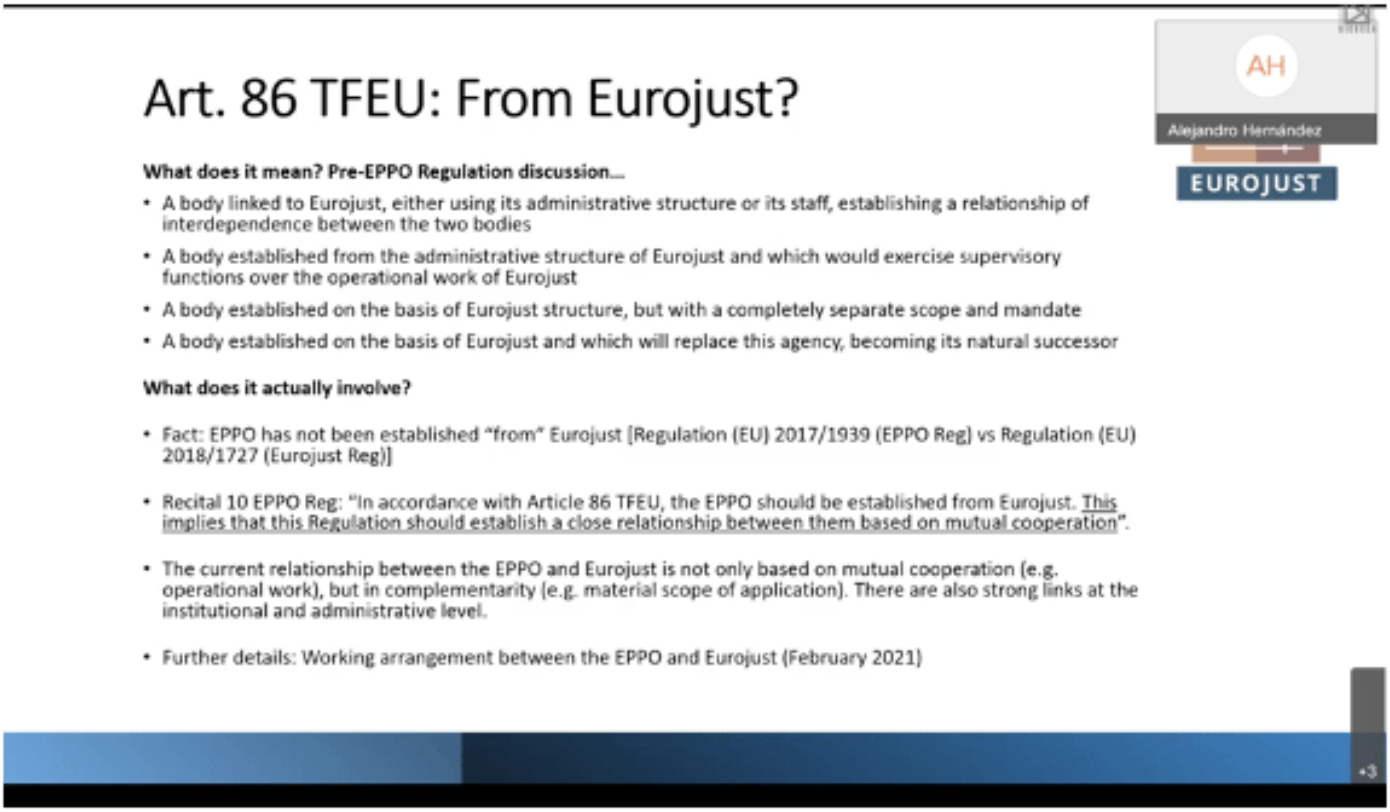

investigations, prosecutions and bringing cases to judgment. They are essentially, in charge of the EPPO investigations.

Finally, the judicial review system combines the national judicial review (main) with supranational judicial review (specific acts). In the 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. At the supranational judicial review level (ECJ), in accordance with Article 267 of the 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.

Additionally, in accordance with Article 263 TFEU (annulment): any natural or legal person may institute proceedings against decisions that affect their rights or decisions that are not procedural acts (For example, a decision dismissing an EDP).

What the structure and characteristics of EPPO reveals is that the central and decentralised levels and working modalities strengthen and contribute to EPPO's independence, while also providing EPPO flexibility in how it exercises its mandate.

The EPPO's role and mandate

9TH MARCH, 2022

Objectives

This second session looks at the EPPO's role, and analyses EPPO's mandate as per the EPPO Regulation and the crimes within the PIF Directive.

THE AUTHORS

Ms. Giordana Aquilea
Référendaire (law clerk), Chambers of Judge Niilo Jääskinen

Mr. Alessandro Marciano
Référendaire (law clerk), Chambers of Judge Alexander Arabadjiev

EPPO and the ECJ are neighbours, with their buildings near to each other. But do they also share similar structure, principles and missions?

Firstly, it is interesting to analyse where these two entities are disciplined and their role in the EU institutional framework. Concerning EPPO, the legal basis for its establishment is found in Article 86 of the Treaty on the Functioning of the European Union (TFUE) but it is Council Regulation (EU) 2017/1939[1] that sets the basis for its functioning. Particularly, its Article 3(1) provides that "*[t]he EPPO is hereby established as a body of the Union*". When it comes to European Court of Justice (ECJ) instead, said institution is not just mentioned in the treaties but the TFEU includes an entire section 5 dedicated to this court. Furthermore, the Protocol n°3 to the Treaties provides the Statute of the Court. Finally, Article 13(1) of the Treaty on European Union provides, "*[t]he Union's institutions shall be [...] the Court of Justice of the European Union*". Therefore, the ECJ is an 'institution' of the Union.

What are the consequences deriving from this distinction between 'body' and 'institution'? The first one concerns the procedure to amend the structure and the functioning of EPPO or the ECJ. For EPPO, the procedure is always the same i.e. the one described in article 86 TFUE. For the ECJ things are more complex: for minor changes there is a special procedure to amend the Statute, but for major changes a revision of the Treaties is necessary and this procedure, described at article 48 TUE, is much more complex and requires that EU countries must unanimously agree on the revision of the relevant Treaty provisions. The second consequence is related to the so called 'aquis' because the ECJ can be considered without any doubts as a apart of it and so an applicant country willing to join the EU could not refuse to accept the case law and the jurisdiction of the ECJ. This is not the case for the EPPO, as it is shown also by the fact that not all member states are participating to said body of the EU.

Regarding the 'missions' of both institutions, EPPO is the EU body responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the EU. According to the PIF Directive[2], these include several types of fraud, VAT fraud with damages above 10-million-euro, money laundering and corruption among others. This is provided for in Article 4 of Council Regulation (EU) 2017/1939.

The ECJ's mission is wider and goes from reviewing the legality of the acts of the institutions of the European Union to adjudicating on disputes between the Union and its servants. To summarize, the ECJ's mission is to ensure 1) that 'the law is observed' in the interpretation and application of the Treaties as well as 2) that EU law is applied and interpreted in an uniform manner, in cooperation with the courts and tribunals of the Member States. But, in view of the fact that the ECJ is the sole judicial institution in the EU, it must also keep the house running and must therefore also deal with all these disputes which concern day-to-day problems (contracts, relations with staff). In this sense, the ECJ and EPPO both accomplish a mission which is more useful to the EU understood as an institutional entity than to its citizens.

Addressing the 'principles' of both, Article 5 of Council Regulation (EU) 2017/1939 regarding EPPO provides these principles. For instance, Article 5(1) says, "*[t]he EPPO shall ensure that its activities respect the rights enshrined in the Charter*". Additionally, Article 5(4) states, "*[t]he EPPO shall conduct its investigations in an impartial manner*". Regarding the ECJ, even if there's no specific provision concerning the applicability of the Charter to this institution neither in the treaties nor in the Protocol (i.e. Statute) we can find an indirect confirmation of the fact that rights enshrined in the Charter also applies to the Court in the case law, for example, ***C-58/12P, Groupe Gascogne/Commission***, on the need to respect article 47 of the Charter and namely

[1] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, OJ L 283, 31.10.2017, p. 1–71.

[2] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29–41.

EPPO and the ECJ are ***neighbours.*** Not only physically, but they also share similar principles, missions and legal bases for their establishment.

on the failure to adjudicate within a reasonable time.

Principle of impartiality can be derived instead directly from Article 2 of the ECJ's Statute which states, "*[b]efore 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.*" Further, Article 6 of EPPO's founding instrument highlights how EPPO shall be independent. This principle of independence can also be found in Article 253 of the ECJ's Statute, which notes that "*[t]he Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt.*" Having regard to the aforementioned provisions it can be stated that clearly EPPO and the ECJ share a common group of principles.

It is interesting to compare EPPO and the ECJ regarding their structure, their competences, their working language and their relations with other institutions. Turning to the ECJ, this latter is a single and centralized institution of the EU, with seat in Luxembourg. The ECJ consists of two courts, the Court of Justice, and the General Court, which was created in 1988. The Court of Justice includes 27 judges (1 per Member State) and 11 Advocates General (Articles 19 and 252 TFEU and Council Decision 2013/336/EU). The General Court is made up of two judges from each Member State (per Article 48 of the Statute). EPPO is an independent EU body operating as one single office with decentralized structure. Its centralized level consists of the College, the Permanent chambers, the European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors and Administrative director. The Decentralized level consists of European Delegated Prosecutors in each Member States, as per article 8 of the EPPO regulation.

Regarding the material competences of EPPO, these are found in Article 22 of the EPPO Regulation, and include criminal offences provided for in the PIF Directive, offences regarding participation in a criminal organization as defined in framework decision 2008/841 [3] . Territorial and personal competences are provided for by Article 23 of the EPPO Regulation and include offences committed in whole or in part within the territory of one or several Member States, offences committed by a national of a Member State and offences committed by European Union staff provided that a Member State has jurisdiction for such offences if committed outside its territory. Regarding the ECJ's material competence this could be defined as a competence 'by elimination': i.e. the ECJ is competent whenever EU law applies, with the few exceptions provided for by the Treaties, such as articles 275 and 276 of the TFEU. Regarding territorial competences, Ireland and Denmark do not participate in full to the cooperation in the Freedom Security and Justice area.

Regarding the relations with other institutions, as far as EPPO is concerned, articles 99 to 105 of the EPPO Regulation provides the framework for EPPO's cooperation with Eurojust, OLAF, EUROPOL, other institutions and bodies of the EU, third countries and international organizations, Member States not participating in the enhanced cooperation on the establishment of EPPO. Further, Article 108 of the EPPO regulation provides that EPPO may conclude working arrangements in particular to facilitate cooperation and the exchange of information. This however has no binding effects on Member States or the Union. Regarding the ECJ, as the principle of independence of this institution has to be guaranteed, it has to be pointed out that the ECJ shall not enter into cooperation agreements with actors that can become parties. To such regard, Article 253 of the TFEU provides that the "*[j]udges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt*".

Although the EPPO and the ECJ are geographic neighbours there are several defining features which distinguish them. However, both are independent entities within the EU institutional framework, which foster the fight to fraud and the protection of the financial interests of the Union.

[3] Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, 11.11.2008, p. 42–45.

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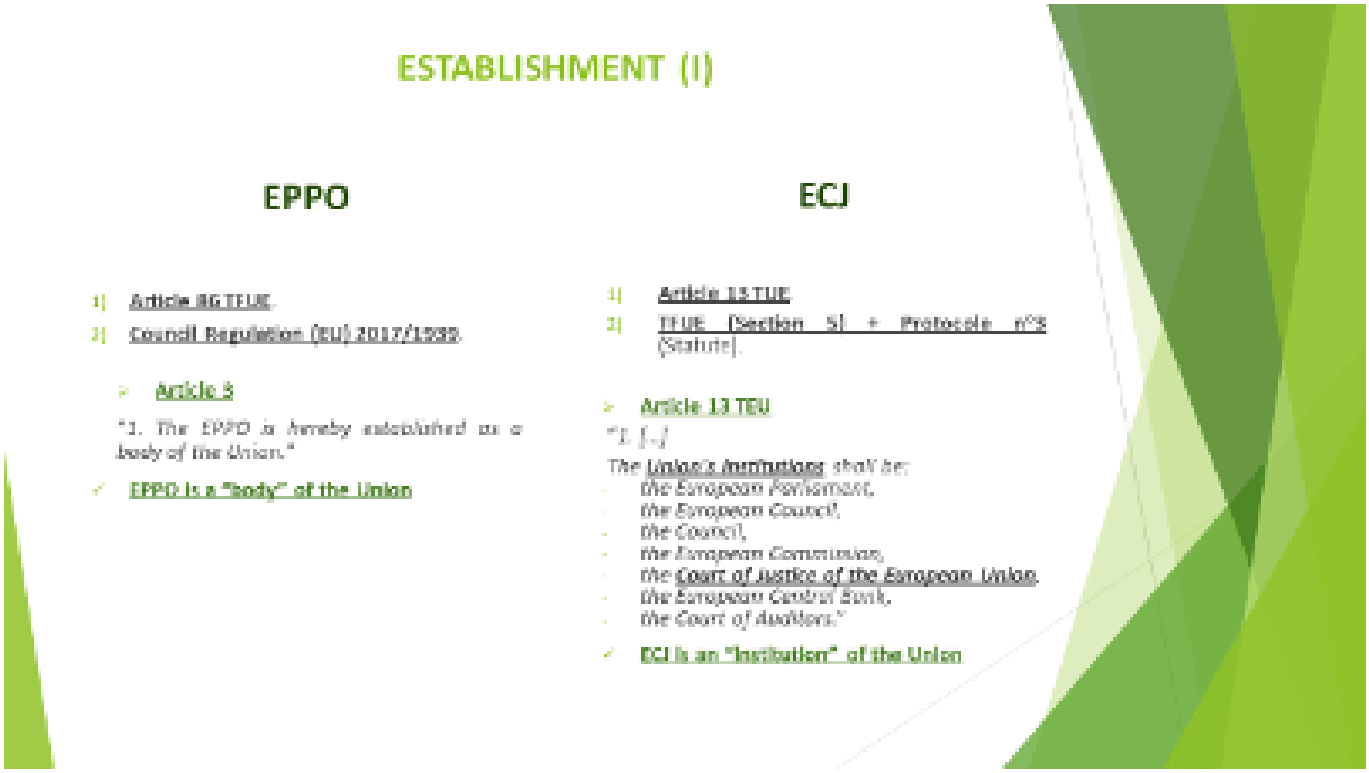
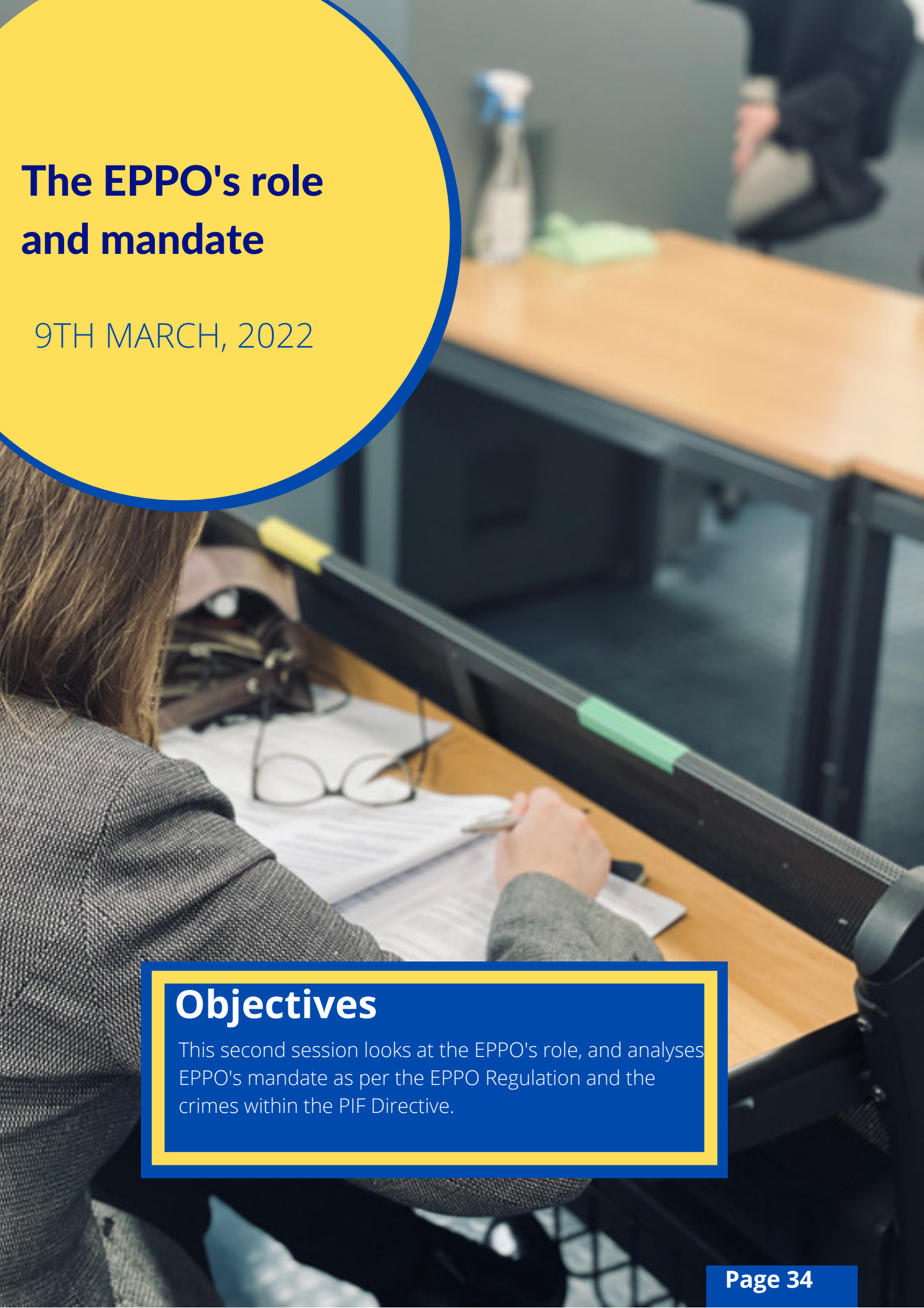


The EPPO's role and mandate

9TH MARCH, 2022



Objectives

This second session looks at the EPPO's role, and analyses EPPO's mandate as per the EPPO Regulation and the crimes within the PIF Directive.

THE AUTHOR

Professor Oliviero Mazza
Full- tenured professor of Criminal Procedure, Milano-Bicocca School of Law)

In Italy, the status and powers of the European Prosecutor and EDPs are regulated by the Legislative Decree n.9 of the 2nd February 2021. The European Prosecutor and the EDPs are members of the Italian Judicial Order. This means that they have all prosecutorial powers provided for under the Italian legislation. Unlike other national prosecutors, and in accordance with Article 6 of the EPPO Regulation, when the European Prosecutor or EDPs perform their functions under the EPPO Regulation, they are independent and subject to the special discipline provided by the Regulation and by Legislative Decree 9/2021.

Further, the EPPO is competence for offences that are also criminalised under national law and fall within the minimum definition contained in the PIF Directive (Art. 3). Article 22(1) determines the EPPO's scope of competence through a dynamic reference to the PIF Directive's criminal offences affecting the financial interests of the Union, by stating that the EPPO 'shall be competent in respect of the criminal offences affecting the financial interests of the Union that are provided for in Directive (EU) 2017/1371.' Amendments to the PIF Directive might indirectly impact the competence of the EPPO as well, except for VAT frauds and any change in the Directive which is not related to the protection of the Union's financial interests.

The Directive also does not contain self-standing criminal provisions. Instead, it describes the minimum common elements of the conducts that the Member States are obliged to criminalise through their national laws. Then, each Member State is responsible for incorporating them into its legal system, even by adopting more stringent rules.

As such, the PIF Directive requires the criminalisation of four offences, all requiring an intentional behaviour (thus excluding recklessness and gross negligence). A common definition of intent is not available, so it will be up to national courts to provide it. The four offences at stake are: EU fraud (including VAT fraud over the threshold), money laundering involving property derived from the (other) criminal offences covered by the PIF Directive, active and passive corruption, and misappropriation of funds.

So then, how are these crimes incorporated into the Italian Criminal Code? According to the Italian Criminal Code, all crimes against the financial interests of the EU are intentional crimes. Further, the attempt and implication in their participation is always punishable. Some of these crimes are defined as acts against the property/means from funds belonging to the EU or provided by the EU. Some also include an additional element – the property or means may have a mixed character. This means that part of them belong to the EU and part, of other public bodies. Many of them can therefore leave a competence dispute between national authorities and the EPPO.

Hence, criminal offences against the financial interests of the EU can be at least presented in two groups. The first one includes crimes that directly affects the financial interests of the EU in accordance with article 3(2) of the PIF Directive. The second group of criminal offences includes the criminal activity in accordance with article 4 of the PIF Directive and article 22(2) of the EPPO Regulation, that falls within the

competence of the EPPO only if they are related with PIF offences. As such, article 117 of the EPPO Regulation references a national list of crimes that falls in the competence of the EPPO when conditions are met. The list of offences provided by the Italian legislation that may be covered by the EPPO according to the criteria set out in Directive (EU) 2017/1371 are found in the Italian Criminal Code, and various Legislative Decrees including Legislative Decree no. 74 of 10 March 2000, and Art.2 of Law no. 898 of 23 December 1986.

With respect to the EPPO's competence, in accordance with article 2(2) of the PIF Directive, the EPPO shall be the competent authority if the criminal activity meets the criteria of article 3(2)(d) of the Directive. Further, liability is established in Legislative Decree n.231 of 2001. In accordance with article 6(3) of the PIF Directive, "liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude the possibility of criminal proceedings against natural persons who are perpetrators of the criminal offences referred to in Articles 3 and 4 or who are criminally liable under Article 5."

Further, Legislative Decree no.9 of February 2021 establishes the powers, procedural acts, and control over the acts of the EPPO and EDPs considering both their status as national prosecutors and as bodies of the EPPO. The Italian legislator limited their intervention to what is strictly necessary to define the procedure for the designation of the European Prosecutor and the EDPs, regulate the flow of communication of the offence notices and to solve conflicts of competence. Consequently, the discipline relating to investigations is minimum due to the decision not to merely reproduce the European regulation. Article 9 of Legislative Decree no.9 establishes that the superior national authorities cannot exercise control of a European Prosecutor and EDPs when they perform functions under Regulation (EU) 2017/1939. Therefore, the EDPs do not operate under the direction of the heads of the national public prosecutor's offices and are not subject to the supervision of the General Prosecutor at the Court of Appeal.

Therefore, a series of provisions of the criminal procedure code are inapplicable. These include Article 53, concerning autonomy of the public prosecutor at the hearing, Article 371, concerning the coordination activity of the national anti-mafia and anti-terrorism prosecutor and Articles 372, 412, 413 and 421, in the matter of avocation of the investigations by the General Prosecutor at the Court of Appeal. In proceedings where the EPPO starts an investigation or exercises the right of evocation, EDPs operate, exclusively and until the end of the proceeding, in the interest of the EPPO, but with the functions and the powers of the national prosecutors. This means that all provisions related to investigation, admissibility of evidence and judicial review that are applicable to national prosecutors apply.

Following the introduction of Legislative Decree no 9 in 2021, it can be seen that a number of important provisions, particularly concerning the EPPO's competence concerning the four core crimes contained within the PIF Directive have been translated into Italy's domestic law. However, a number of procedural provisions remain inapplicable and such present ongoing challenges to the EPPO exercising its competence and functions.

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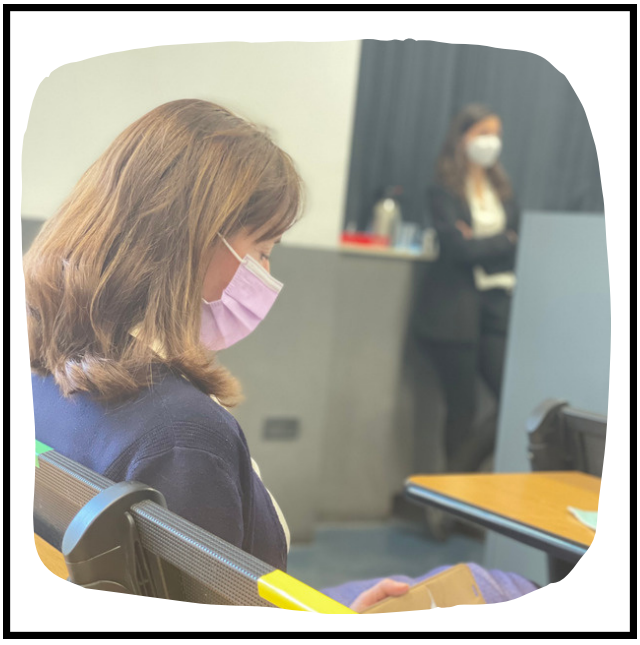
Legislative Decree N.9

- In Italy the status and the powers of the European Prosecutor and European Delegated Prosecutors (EDPs) are regulated by the Legislative Decree n. 9 of the 2nd of February 2021.
- The European Prosecutor and the EDPs are members of the **Italian Judicial Order**.
  - They have all prosecutorial powers provided under the Italian legislation,
- Unlike other national prosecutors, and in accordance with Art. 6 of EPPO Regulation:
  - when European Prosecutor or EDPs perform their functions under the EPPO Regulation, they are independent and subject to the special discipline provided by the Regulation and by Legislative Decree 9/2021 and also concerning hierarchical and disciplinary issues.



The EPPO functioning: a practical overview

14TH MARCH, 2022

Objectives

This third session looks at how the EPPO functions, including limitations to its existing mandate in practice.

THE AUTHOR

Mr. Danilo Ceccarelli
Deputy European Chief Prosecutor

Investigations conducted by the EPPO include four key steps. Firstly, information comes to EPPO. This information may come from private parties, via the *Report a Crime* web form. It may come from national authorities from EU agencies, including OLAF, Europol, EIB etc, and it may come from any other source or ex officio. Once this information has been received by the EPPO, it will be verified and registered in the digital Case Management System and assigned to a European Delegated Prosecutor. If the case is opened, the European Delegated Prosecutor will investigate the case from the start to finish. They are supported by the EPPO financial investigators and case analysts, as well as by national police, customs and tax services, and are supervised by the Permanent Chamber. Last, the case will be tried before the national court of the relevant Member State.

In exercising the EPPO's competence, attention must be given to Article 3(2) of the PIF Directive (EU) 2017/1371 for an elaboration of the crimes. These include (a) expenditure – non-procurement related, (b) expenditure – procurement related, (c) revenue (own resources) other than VAT, (d) in respect of revenue arising from VAT – acts or omissions connected with the territory of two or more Member States and involve a total damage of at least EUR 10 million (Article 22(1) EPPO Regulation.

In exercising the competence of the EPPO regarding expenditure related fraud, it is important to identify the source. This can be achieved by either (a) direct management: EU funding is managed directly by the European Commission, (b) shared management: the European Commission and national authorities jointly manage the funding or (c) indirect management: funding is managed by partner organisations or other authorities inside or outside of the EU.

Regarding VAT related frauds, identifying the source can occur via (a) VAT MTIC (Missing Trade Intra Community) fraud – carousel frauds (b) Import VAT frauds (undervalued goods, abuse of temporary admission) (c) Custom frauds abusing Custom Procedure 42 – the regime used in order to obtain a VAT exemption when the imported goods will be transported to another Member State, where VAT will be due. Additionally, with respect to exercising competence regarding revenues – smuggling, one can look to the European Union Customs Union (EUCU). Smuggling is the only case where the criterion of the highest damage caused by a single offence applies. Here, the EPPO can exercise competence with the consent of national authorities.

Article 3(2) of the PIF Directive (EU) 2017/1371 elaborates the core crimes

a) expenditure: non-procurement related
b) expenditure: procurement related
c) revenue (own resources) other than VAT
d) revenue arising from VAT

So then, what happens when there are inextricably interlinked offences? The EPPO can exercise competence, and one can look to Recital 54 Regulation. This Recital of the Regulation provides the case-law of the EU Court of Justice for the application of the *ne bis in idem* principle. This principle notes that the identity of the material facts (or facts which are substantially the same), are understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together in time and space. For example, the EPPO Guidelines provides on this principle applies where the set of facts composing those offences were carried out as parts of the execution of the same criminal plan in order to achieve the same common goal. Additionally, offences which are linked in time, in space and by subject matter, make them inseparable.

So then, how does this competence work? One can look to the Allocation Rule to the Member State. In principle, where multiple offences are concerned, only one the EPPO case should be opened, due to their interlinked nature. When for instance, more than one Member State has jurisdiction, the case is allocated to the Member State where the focus of the criminal activity is or where the bulk of the offences have been committed (in addition to additional criteria for possible deviation). This includes the fact that there exists an autonomous legal concept of EU Law under article 26(4) of the Regulation. Additionally, 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 (Recital 88 and Article 42).

This also relates to procedural act relates to the choice of the Member State whose courts will be competent to hear the prosecution are subject to judicial review by national courts, at the latest at the trial stage (Recital 87). However, this raises the potential negative conflict between national judges on the allocation, for example would the Court of Justice have jurisdiction pursuant to Article 42(2)(b)?

Regarding cross-border investigations, investigation measures are provided for in Article 31 of the Regulation. During cross-border investigations, the EPPO acts as a single office, and not as external cooperation. In this framework, EDPs act in close cooperation by assisting and regularly consulting each other, while there is immediate involvement of the central level. In an instance where a measure needs to be carried out in another Member State, the European Delegated Prosecutor handling the investigation will assign the measure to a EDP in that Member State. These measures, as well as the justification and adoption of such measures, is governed by the law of the handling European Delegated Prosecutor.

Finally, it is worth mentioning that Articles 99 to 105 of the EPPO Regulation provide the legal framework for cooperation and working agreements with a number of partners including EU partners, non-participating Member States, third countries and international organisations. Such partners currently include Europol, OLAF and Eurojust, for example.

Interesting?
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3

The EPPO and National Authorities: Opportunities and Challenges

Objectives

This third topic critically explores the relationship between EPPO and national authorities, including issues of jurisdiction and challenges to the EPPO's capacity to investigate and prosecute.

THE SESSIONS

The interplay between the EPPO and authorities of participating Member States

The EPPO working arrangements with authorities of participating Member States notably, the Excise, Customs and Monopolies Agency (ADM)

The EPPO and the authorities of non-participating Member States and third States

THE INTERPLAY BETWEEN THE EPPO AND AUTHORITIES OF PARTICIPATING MEMBER STATES

15TH MARCH, 2022

Objectives

This initial session looks at the relationship between the EPPO and the authorities of participating Member States.

THE AUTHOR

Professor Enrico Traversa
Former Director of the "Justice" Team of the European Commission Legal Service;
Professor of European Labour Law - University of Bologna

While this program has already explored the legal basis for establishing EPPO, which is found in Article 86 of the TFEU, this presentation focuses particularly on several institutional aspects of the EPPO Regulation. Firstly, the relationship between the EPPO Regulation and Member States' law (relationship of *'vertical'* nature) are governed by Article 5(3) of the EPPO Regulation. In order of priority of the applicable law, the rules of the EPPO Regulation are prioritised before the rules of national law and in the case of concurrent legislation, EU rules shall prevail.

When considering the trial detention under Article 33(1) of the EPPO Regulation. Third, rules of the Regulation governing only part of a given category of EPPO investigate acts (EU law and national law). For example, there are six categories of investigative measures (IM) provided for in Article 30 of the EPPO Regulation. Additionally, cross-border investigations are provided for in Articles. 31 and 32 of the EPPO Regulation, while simplified prosecution procedures are provided for in Article 40.

Regarding the third group of rules, there are a number of Articles in the EPPO Regulation which refer to EU directives. These include for example, Article 22(1) which concerns the material competences of the EPPO with reference to the PIF Directive 2017/1371. However, a number of offences have indeed been harmonized by the PIF Directive. These include Article 3, frauds related to 1) EU subsidies, 2) public procurements, 3) EU budget "own resources" other than VAT (customs duties), and 4) VAT revenue. Additionally, Article 4 (other offences) including money laundering, active and passive corruption of public officials, misappropriation of EU funds or assets and ancillary offences have all been harmonized between the PIF Directive and EPPO Regulation.

Yet, there are a number of problems with these articles of the EPPO Regulation which refer to the EU Directives. First, there is a problem with the identification of the rules in national law that transpose the PIF Directive 2017/1371. Were all PIF offences **already** correctly and fully provided for in the Criminal Code of the Member State of the European Delegated Prosecutor? Secondly, what about an instance where there is the **incomplete** transposition of the PIF Directive into national law? In this instance, conduct constituting a PIF offence is **not** provided for as an offence by the legislation of the Member State of the European Delegated Prosecutor. It would need to be strictly excluded a **direct** effect of Articles 3-5 of the PIF Directive. Third, what about when there is the **incorrect** transposition of the PIF Directive into national law? An example would be an excessively restrictive definition of *civil servant.*

However, what about references to directives concerning the rights of defendants? There are currently three levels of guarantees. First, there is the EU Charter of Fundamental Rights (CFR); Second, there is Article 41 of the EPPO Regulation, which references five EU directives on the rights of defendants *as implemented into national laws* and third, all procedural rights provided by national law. In the event however, of incomplete or incorrect transposition, the principle of **the direct effect** of the five EU directives applies, as they award **rights.**

There is an interesting question raised here. Can a European Delegated Prosecutor directly disregard an incompatible national rule and directly apply the provision of an EU directive? Probably, yes. This is because EPPO is an EU body, article 5(3) of the EPPO Regulation provides that EU law shall prevail and the five directives award **rights** (they do not impose obligations). This approach is consistent with the principle of *consistent interpretation* by the ECJ. A second interesting question raised is, in a case where there are several Member States concerned, which of the several national laws is applicable? Under Article 26 of the EPPO Regulation on the initiation of investigations, the national law of the Member States where the *focus of the criminal activity* is will be applicable. In the case of several connected offences, the European Delegated Prosecutor of the Member State where the *bulk of the offenses has been committed* will lead the investigation. There are however, three possible exceptions to this. The first concerns the Member State of residence of the accused person. Second concerns the Member State of nationality of the accused person and third concerns the Member State of the *main financial damage.*

Regarding a prosecution before national Courts under Article 36 of the EPPO Regulation, as a general rule, the Permanent Chamber shall bring a case to prosecution before a criminal court in the Member State of the *handling* European Delegated Prosecutor. There are two exceptions, however. The first exception would be on the basis of the same criteria set out in Article 26(4) of the EPPO Regulation and 26(5) regarding the residence or nationality of the accused person. In this instance, the Permanent Chamber may bring the case to prosecution in a Member State other than the one of the European Delegated Prosecutor who conducted the investigation on *sufficiently justified grounds.* The second exception is where several European Delegated Prosecutors have conducted investigations against the same persons. In this instance, the Permanent Chamber may join the cases and bring them to prosecution before a court of a single Member State if it has jurisdiction for each of those cases.

In these cases, there is wide discretion left to the Permanent Chamber. There is also the danger of violation of the rights of the defence, which are guaranteed under Article 38(2) of the Charter of Fundamental Rights.

EPPO Regulation's rules, they can be classified into three groups. First, rules governing exhaustively a given activity of EPPO. For example, Articles 43-46 of the EPPO Regulation concern the processing of information and automatic file management systems, while Articles 47-89 concern personal data protection. Second, rules of the Regulation which refer in full to the law of the Member States (enforcement of investigated acts). These include urgent measures which are necessary to ensure effective investigations under Article 28(2) of the EPPO Regulation.

Can a European Delegated Prosecutor directly disregard an incompatible national rule and directly apply the provision of an EU Directive?

In a case where there are several Member States concerned, what is the applicable law?

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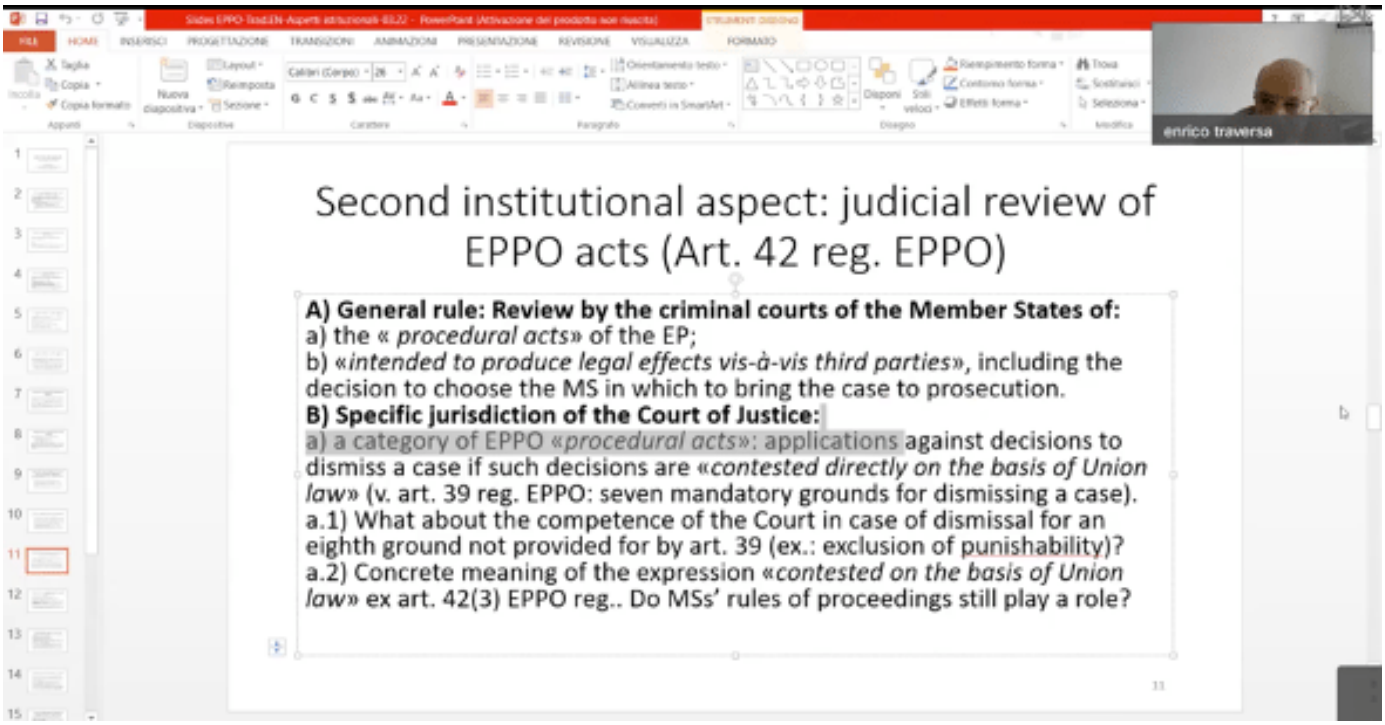

THE INTERPLAY BETWEEN THE EPPO AND AUTHORITIES OF PARTICIPATING MEMBER STATES

15TH MARCH, 2022

Objectives

This initial session looks at the relationship between the EPPO and the authorities of participating Member States.

THE AUTHOR

Mr. Antonio Leo Tarasco
Deputy Head - Minister for the South and Territorial Cohesion, Italy; Full Professor Administrative Law

The need for having the EPPO arises out from the absence of having in the EU legal system an institution that is capable of bringing into justice criminal fraud related to financial interests. In fact, the legal institution that is established in the TFEU that is the Court of Auditors, cannot carry out such investigation of financial fraud and in that sense, the Court of Auditors of the EU is not the same as the Court of Auditors in Italy. It is very important to understand the difference of functions between the Court of Auditors in Italy and the Court of Auditors in the EU, precisely to understand the relevance of the EPPO for the EU legal system.

The criminal fraud that the EPPO can investigate have several points of contact with the financial frauds that the Court of Auditors in Italy can investigate. So there are several points of contact between the two different institutions. If you go and have a look at article 285 of the TFEU, the Court of Auditors can exercise a control over the budget of the EU but doesn't have any powers related to investigations. So the Court of Auditors cannot carry out investigations in the EU. So if we examine article 287 of the TFEU, we can see that the Court of Auditors just exercises controlling functions. In that sense, it is a parallel to what a College of Auditors or a Board of Auditors does rather than a prosecutor.

It is true that the Court of Auditors can assert their legitimacy and regularity of their entrance and expenses, but it doesn't exercise any investigation action for fraud. And in any case despite all of that the need of the European Union to carry out investigations to tackle financial fraud was immediately perceived in the treaty as well and precisely in article 325. So that article mentions that there is a need to tackle financial crimes, however the institution that can do that is not the Court of Auditors. The relevant body that was appointed to carry out such financial investigations was OLAF, which was instituted in 1999 with a Decision. What is OLAF, however? It is not a prosecutor as the EPPO, and the Italian Court of Auditors are, but carries out a function of liaison between different relevant judicial bodies. This is explicitly mentioned in the Decision instituting OLAF. Article 2 of the Decision instituting OLAF mentions what OLAF is doing to connect different legal institutions.

Article 3 mentions that OLAF has independence of investigative functions. So like a court, it has independent characteristics, but OLAF is not a court. In that sense, OLAF is not something that substitutes the EPPO and our Court of Auditors. On the contrary, it is something that complements both institutions. In fact, in 2006, there was an agreement between OLAF and the Italian Court of Auditors. Yet, we would risk having something like a confusing image of what those institutions are if we didn't carefully analyse the same functions of each institutions. So, we need to analyse the functions of each institution to have a clearer image in mind. In fact, if in the European legal system, fraud is to be investigated and therefore intentional activities on behalf of OLAF and the EPPO, so both institutions are investigating intentional activities such as fraud, the Italian Court of Auditors is not only competent for fraud but also for which damages arise for the State.

It is important to carefully analyse which are the functions and the responsibilities of each and every institution. We also have to take into account that in Italy we have a peculiarity, which is not present in the EU. This peculiarity is precisely that we have a body, the Court of Auditors, that carries out investigative activities and carries out prosecutions for crimes at the same time. So the EPPO just carries out investigations, however the Court of Auditors in Italy also adjudicates crimes, so they do something that is different than the EPPO. Also, the Court of Auditors in the EU does something that is different to the Court of Auditors in Italy, because the Court of Auditors of the EU does not carry out investigations. On the one side, we have criminal fraud that is investigated and adjudicated by the EPPO. On the other side, we have damages to the State that are investigated and adjudicated by the Court of Auditors in Italy. So the

difference between criminal fraud and damages to the State is the element of intentionality. The Court of Auditors in Italy carries out an activity that is not limited to intentionality but is also comprising of negligence and even gross negligence, but not necessarily intentionality. Of course the damages to the State can also include crimes that are committed with intentionality. The difference is that criminal fraud can only be committed with intentionality, and in contrast, damages to the State can be committed also just by having negligence or gross negligence, without intentionality.

Having rendered clear the premises, if we think about the role of the EPPO, I would like to offer a suggestion. If we look at Directive (EU) 2017/1371, we can see in the recital of the Directive, you can see that number one mentions that the protection of the EU's financial interests concerns not only the management of budget appropriations but extends to all measures which negatively affect or which threaten to negatively affects its assets and those of the Member States to the extent that those measures are of relevance to Union policies. If we take this recital one of this Directive, it includes a notion of financial interests of the EU which is completely analogous to relevant notions in the Italian legal system, and in particular in as much the Italian Court of Auditors can assert the relevant crimes and damages to the State that are related to similar financial interests of the Italian State.

However later on, in the text of the articles in this Directive relating to financial crimes is reduced a bit. If you have a look at Article 3 of the Directive, it mentions that Member States shall take the necessary measures to ensure that fraud affecting the Union's interests constitutes a criminal offence when committed intentionally. The element of intentionality is inserted in Article 3, which reduces the scope of recital one, and distinguishes financial fraud of the EU to those of the Court of Auditors in Italy, which are related to a broader notion where intentionality does not play an exclusive role. It is interesting to analyse intentionality, taking the crimes related to paragraph 2 of the same article and in particular paragraph 2(c). The EU adopts a notion of revenue that is restricted in comparison to that adopted by the Italian legal system, which includes a notion of revenues which is broad enough to include all relevant revenue for the Italian State.

As you can see through this comparison, the adoption of several definitions by the EU serve to limit the scope of their application, when compared to such notions in the Italian legal system. These include what criminal conduct is captured by the notion of financial crimes, as well as that which is captured by the notion of revenue under the Directive (EU) 2017/1371. As such, we need to ensure that we are conducting a thorough analysis of these institutions both at the EU level and Italian national system to compare and contrast how notions of fraud and financial crimes affecting the EU have been interpreted and applied by these institutions.

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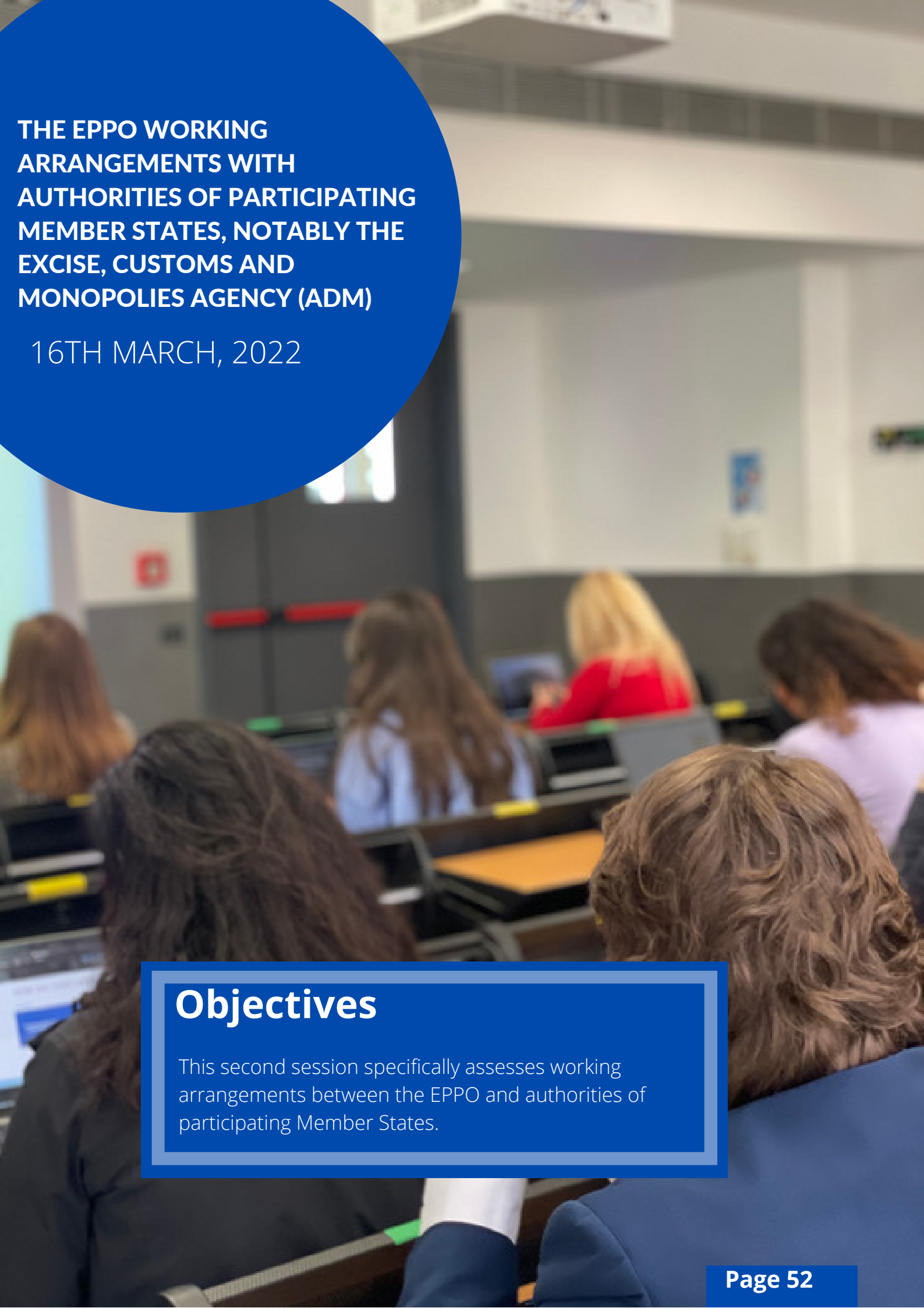

THE EPPO WORKING ARRANGEMENTS WITH AUTHORITIES OF PARTICIPATING MEMBER STATES, NOTABLY THE EXCISE, CUSTOMS AND MONOPOLIES AGENCY (ADM)

16TH MARCH, 2022

Objectives

This second session specifically assesses working arrangements between the EPPO and authorities of participating Member States.

THE AUTHOR

Mr. Michele Petito
ADM - EPPO Reporting Office

The establishment of the EPPO has necessitated the restructuring of the Anti-Fraud Directorate of the Excise, Customs and Monopolies Agency. As part of this restructuring, the EPPO Office has been placed within the Anti-Fraud Directorate, with its main task of overseeing relations with the EPPO. At present, the Anti-Fraud Directorate's office is composed of General Affairs, Intelligence, Investigations, Laboratories, DNA-DDA Reports and EPPO Reports.

The establishment of a management level office, in this case being the EPPO Office, within the Anti-Fraud Directorate represents the Agency's maximum effort and commitment to the effective and efficient fight against criminal organisation who commit crimes that harm the financial interests of the EU. The Agency's decision to set up the EPPO Reports Office are also underpinned by the priority objectives of the Agency, which include combating smuggling and VAT evasion.

In Italy's legal system, Regulations find their legal basis in the combined provisions of Article 11 and Article 117 of the Italian Constitution. Article 11 of the Constitution provides that Italy accepts limitation to its sovereignty which are necessary for the establishment of a legal order guaranteeing peace and justice. This notion of limitations to state sovereignty are further enumerated in Article 117 of the Italian Constitution which notes that the States and the regions exercise their legislative function in accordance with the constitutional principles and constraints deriving from the Union's legal order and generally recognized international agreements.

But what does this Article 11 limitation on sovereignty mean? It means that Italy, France, Germany, Austria, Spain, Portugal, the Netherlands, and all European Union countries have renounced their sovereignty in customs matters. In customs matters we have a single legislator, which is the Union legislator. Yet, national legislation regulates matters which the Union legislature has deliberately left to the discretion of the Member States.

'The establishment of a management office within the Agency, represents the maximum effort that the Agency wants to make and above all, the maximum commitment to effectiveness and efficiency in the fight against crime that affects the financial interests of the EU.'

One particular matter which is left to the discretion of Member States is penalties. Considering the application of Union rules for a moment, the Union legislator has given Member States Article 7 within the PIF Directive. This Article outlines the crimes which harm the financial interests of the Union, including what is encompassed within the concept of VAT and the concept of a serious offence for other resources, which includes taxation.

Therefore, the PIF Directive does have an important effect on national legal systems. For example, in Italy the national legislator, through Legislative Decree No 08/2016 had completely decriminalized smuggling. This Decree noted that the offenses were merely administrative offences and crimes which were punishable by a fine alone. Yet that same crime in its more aggravated form was excluded from decriminalisation and is punishable with a prison sentence. What can be seen here is that there are two types of smuggling offences in the Italian decree, and for less serious forms of smuggling, it is punishable by a fine, whereby the more aggravating type of smuggling is punishable by 3 to 5 years of imprisonment.

Article 325 of the Taxation and Customs Union notes a commitment by Member States to undertake to combat Union fraud using the same measures as those which affect national financial interests. In light of this Article, Italy is subject to this commitment. Further, the CJEU has repeatedly ruled on the possibility for national courts to disregard rules which infringe the principle of assimilation, and which result in Member States failing to fulfil their obligations.

Within the Italian context therefore, the PIF Directive has been transcribed into the domestic legal system by Legislative Decree No 75/2020. In fact, all criminal penalties of simple smuggling and aggravated smuggling have been brought into line with the principles laid down in the Directive itself.

Let us now look at the institutional aspects of the Customs Union. Customs have the primary responsibility for overseeing international trade. What does that mean? Customs must guarantee free and fair trade and must only pursue conduct of unfair and illegal trade. Customs must therefore protect the financial interests of the Union.

Now, I have brought to your attention Article 325 of the single text within the EU for customs laws. This is Article 325 of the Taxation and Customs Union ('TULD'), which clarifies that the competence to investigate infringements in customs areas (when speaking of infringements, this is both criminal and administrative), is the exclusive competence of the customs officer. This competence extends not just to customs matters, but also to other law whose application is left to customs. Translating this in a simple way, if in the customs area, the police force accept smuggling has occurred or find counterfeit goods, under Article 325 of the TUD, they must report it to the customs authorities.

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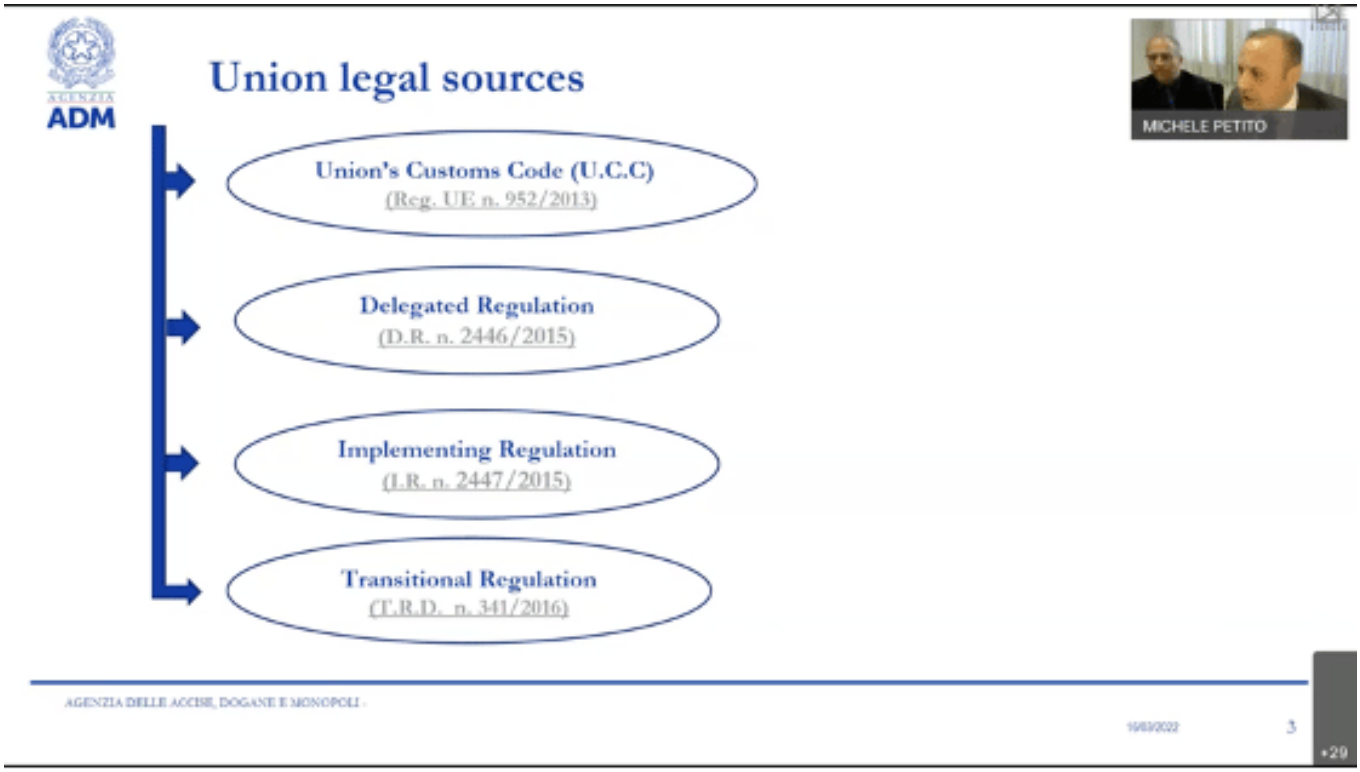
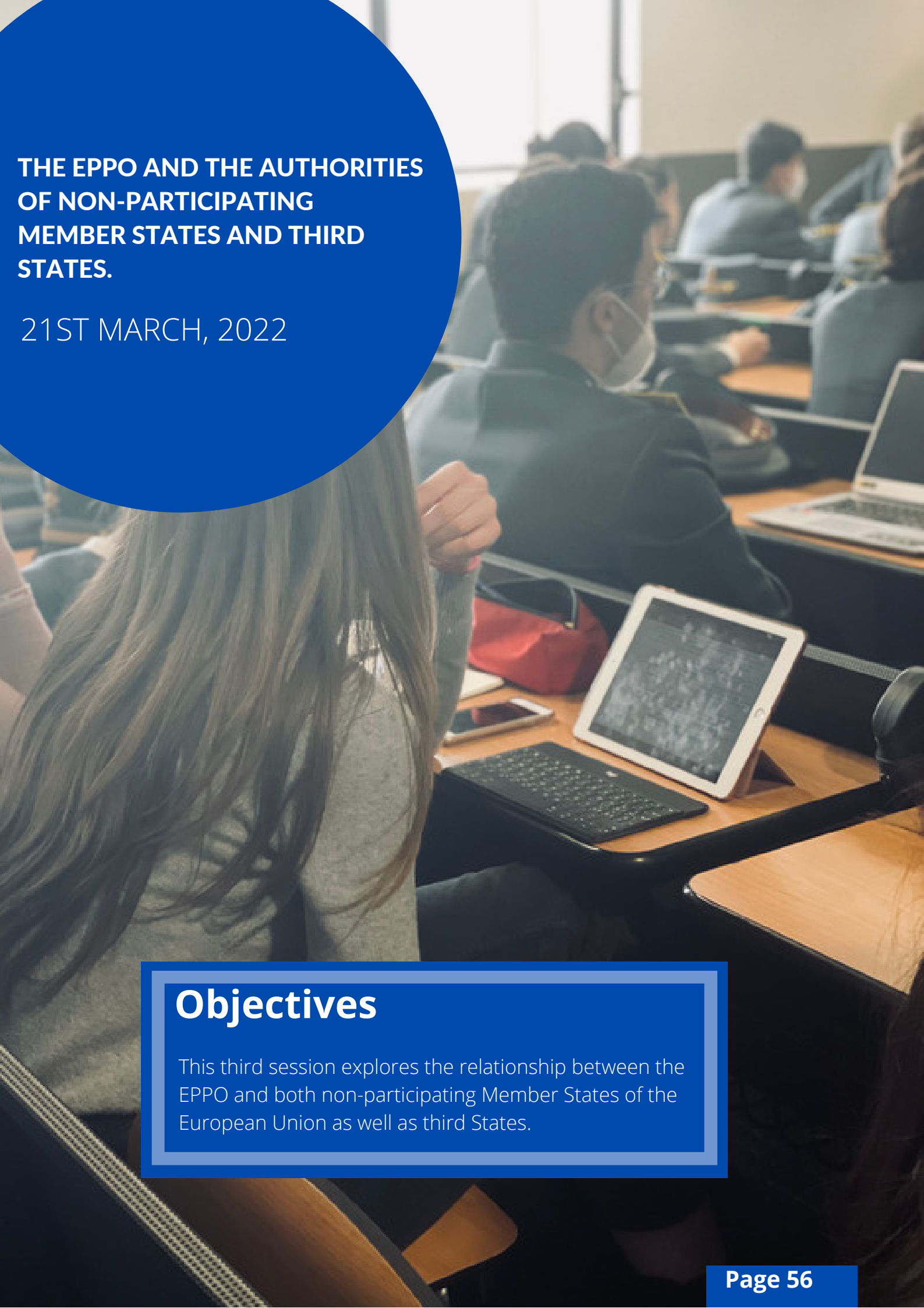


What happens if this rule is not respect? If an administrative investigation is made without consulting customs and without this violation being ascertained by customs, the act can be annulled. There is in fact provision in Legislative Decree No 241/1990 that regulates the administrative procedure that provides for the annulment of such an act in cases where the law has been violated. Within Article 21g of the Legislative Decree, there are three cases covered. First is infringement of the law, second is excess of power and third is relative lack of competence.

Therefore, the establishment of the EPPO has produced changes in Italy's domestic context. Not only has Italy's Anti-Fraud Directorate shown its commitment to fighting crimes that affect the financial interests of the European Community by establishing an EPPO Office within the Anti-Fraud Directorate of the Excise, Customs and Monopolies Agency, but changes to law at the EU level, including the implementation of the PIF Directive have resulted in amendments to Italy's domestic legal framework.



THE EPPO AND THE AUTHORITIES OF NON-PARTICIPATING MEMBER STATES AND THIRD STATES.

21ST MARCH, 2022

Objectives

This third session explores the relationship between the EPPO and both non-participating Member States of the European Union as well as third States.

THE AUTHOR

Dr. Florin-Răzvan RADU
Principal Legal Officer, EPPO Legal Service

For effective investigative and prosecutorial functions, EPPO needs to cooperate with a number of partners who are not participating Member States of EPPO. First, there are non-participating Member States in the EU. The three out of the five non-participating Member States, Hungary, Poland and Sweden, decided not to join the enhanced cooperation, but may join at any time. Sweden for example, has expressed its willingness to join EPPO soon. Denmark does not take part in the area of freedom, security and justice of the EU, in accordance with Protocol no. 22 to TFEU, and Ireland is a non-participating Member State, in accordance with Protocol no.21 to TFEU, but, in theory, this Member State may *opt-in* at a later stage. While the non-participating Member States are not bound by the EPPO Regulation, they have an obligation of sincere cooperation with the EPPO under Article 4 of the TEU.

Then, we can look at this cooperation with the non-participating Member States from the EPPO Regulation's perspective. For example, Article 99, and Article 105(1 & 2) provide for working arrangements with relevant authorities of the non-participating Member States, in particular on exchange of strategic information, secondment to EPPO of liaison officers from these Member States, designation of EPPO Contact Points in these Member States and so forth. Additionally, Article 105(3) foresees that the operational judicial cooperation in criminal matters shall be primarily based on EU acts and other instruments for which the participating Member States notified the EPPO as a competent authority.

Adding onto EPPO's approach and view, the goal for EPPO is to conclude working arrangements with relevant authorities of the non-participating Member States which aim to 1) facilitate and foster operational judicial cooperation and 2) to strengthen strategic and institutional relations. Additionally, the EPPO is the competent authority for the application of all EU acts mentioned in the Report of the German Presidency of the EU Council (2020), and the EPPO has to be recognised as a competent judicial authority by the non-participating Member States, having regard for their obligation of sincere cooperation. There are also interesting legal and operational challenges to this cooperation with non-participating Member States. These include the (partially) different interpretation by some non-participating Member States on the legal avenues for judicial cooperation with the EPPO, as well as internal legal obstacles to cooperate with the EPPO as an EU body from the perspective of the Irish and Polish authorities.

So then, what is the current state of play? Currently[1], a working arrangement has been signed with the Office of the Prosecutor's General of Hungary. There are also ongoing negotiations aiming to conclude working arrangements with the relevant authorities of Ireland, Poland and Denmark. EPPO has good operational cooperation with Hungary and Sweden. On the other hand, EOIs issued so far by the EPPO have not been executed by the Polish authorities, as a consequence of their interpretation of the legal framework (the Polish authorities consider that their national legislation has to be amended in order to regulate the cooperation with the

[1] As of 21 March 2022.

Article 99 and Article 105(1 & 2) provide for working arrangements with relevant authorities of the non-participating Member States.

EPPO in application of the EIO Directive and other EU instruments). But, what about cooperation with the third countries? Additionally what are the legal avenues available as per the EPPO Regulation? The main legal avenue he highlights is mutual legal assistance (MLA). These include international agreements on cooperation in criminal matters with the EPPO concluded by the Union, or to which the Union has acceded (Article 104(3) of the Regulation.

But what about working arrangements? Looking to Article 99 and Article 104(1 & 2) of the EPPO Regulation, which acknowledge that working arrangements with the competent authorities of third countries, with similar scope as the working arrangements with the non-participating Member States. He gave the example of the working arrangement signed on 18 March 2022 with the Prosecutor's General Office of Ukraine. Additionally, Dr. RADU highlights how the working arrangements have limited scope and several constraints. These include the fact that these working arrangements cannot serve, per se, as basis for transfer of personal data. The working arrangements are binding only for the respective national authority and for the EPPO and not for all authorities of the third country concerned.

Additionally, there are key legal challenges to cooperation with third countries. These challenges centre around the fact that to date, there is no international agreement concluded by the Union with a third country expressly regulating the cooperation in criminal matters with the EPPO, except for the EU-UK Trade and Cooperation Agreement, for which the EPPO was notified as competent authority. The Union, however, is Party to UNCAC and UNTOC, but the revised declaration of competence including the EPPO is yet to be submitted.

Likewise, certain third countries invoke internal legal obstacles to providing legal assistance to the EPPO and to accept the notifications of the Member States designating the EPPO as competent judicial authority. As a concrete example, Dr. RADU mentioned the declaration of Switzerland, registered at the CoE General Secretariat on 1.02.2022, which stated the legal obstacles for this country to provide legal assistance to

EPPO and to accept the notifications made the Member States designating the EPPO as a competent authority for the 1959 Convention and its additional Protocols. He then mentioned the operational challenges of cooperation with third countries. This includes the rejection of several mutual legal assistance requests made by the EPPO, as a consequence of the position of certain third countries regarding the recognition of the EPPO as a competent authority for (existing) multilateral conventions to which the participating Member States are parties.

What is the current state of play? There are ongoing negotiations with a view of concluding working arrangements between the EPPO and relevant authorities of a number of third countries. Additionally, discussions are ongoing with and within the Council of Europe on the application of the CoE legal instruments to cooperation in criminal matters between the EPPO and third countries that are Parties to those instruments.

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4

The EPPO Programming: 2021-2023: Highlights

Objectives

This fourth topic explores the European Commission's Anti Fraud Strategy 2019, the digitalisation of criminal justice and the EPPO in the global anti-fraud structure.

THE SESSIONS

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

The EPPO and the digitalisation of criminal justice

The EPPO in the global anti-fraud architecture

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

22ND MARCH, 2022

Objectives

The first session looks at the European Commission's Anti-Fraud Strategy 2019 and how it affects and influences EPPO's competence.

THE AUTHOR

Ms. Fabrizia Bemer
Senior Manager of the Office of International Judicial Cooperation Office - Public Prosecutor's Office of Florence.

The idea of EPPO can be linked back to 1997, reaching 2000 and the 2001 Green Paper of the Commission and its integration in Article 86 of the TFEU, reaching to the 2013 Commission Proposal for a Regulation on the establishment of EPPO. In Italy, the implementation Decree is the Decree 29/01/2021 N.9. Firstly, EPPO comes from enhanced cooperation. It's not simple cooperation, it is enhanced. It is something more.

When thinking about EPPO, there is room for negotiations with those countries which at present are not part of 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. This includes for example the EIO and EAW.

Regarding EPPO and Eurojust, many experts argue that it is a double or a second judicial body. The question to ask here is whether the two bodies can become one with overlapping mandates. This question is raised because Article 83 of the TFEU extends competency on serious crimes to the EPPO and it is interesting to consider here the types of crimes included. For example, could terrorism be included in the future? Or the trafficking of human beings, which have traditionally both been under the competence of Eurojust.

In the EPPO Regulation, it is written that the Regulation provides for a system of shared competence between EPPO and national authorities. This is good! In Recital 14, it is established that *"in light of the principle of sincere cooperation, both 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."*

But I have to have the instruments to cooperate, and I don't have the instruments. Instead, I can inform the EPPO that there has been this case, but I cannot give this case to the EPPO. This principle of sincere cooperation is something on which the European Commission should work. In any case, we can cooperate with EPPO through the European Judicial Network (EJN) and the European Bars of Lawyer (CCBE).

The problem is that the Commission hasn't had, let's say, the courage. When there is an appeal, it's not against EPPO, it is against the national authorities. So this is very strange. Why? Some procedural acts are to national courts. Here the Commission should have had the courage for having a different view, because if you want to make preliminary ruling procedures in front of the CJEU, this is something which is a bit confusing. Also, in respect of the right of the people, because in this case, the right to information, right to access a lawyer, how can you appeal to the national court? The solution must be discussed at the Commission level, because then the Commission has to discuss with the Parliament.

Can the EPPO and Eurojust, two bodies, become one with their overlapping mandates?

The relationship with EU institutions, of course it is important, and the EPPO has relations with all EU institutions, because it is considered a judicial and European institution. In any case, it is embedded in the EU infrastructure and imbedded in the Commission. Actually, it is a very well-defined entity. I have tried to make you understand what the Commission has intended when the EPPO was developed.

Now, the Anti-Fraud Strategy. It is composed of many interesting points. Some are implemented, some have to yet be implemented, or haven't been implemented as they should have been. In any case, the IT tools is of extreme importance. This is important for evidence. Now, everyone is speaking of evidence and how evidence is collected. So, the Commission has put at the service of the Member States this IT system (ARACHINE system). This is very important. On this, Member States should collaborate. It is important because if we have all of these threats, and if all of the Member States can supply information, then everything at the end is in the hands of EPPO. This is important to combine the investigations. If there was a system where the police could have access to this mutual system, then it would save time, resources, and duplication.

Conferences and studies are very important as well. This is because not all countries have the same level of cooperation. It is important to try find a common level of understanding how crimes are perceived. For example, in the context of European investigation orders, some countries ask for 2000 euro and some others for 200,000 euros, so it is completely different.

Regarding point 8 of the Strategy, country profiles of Member States should be developed to better analyse and assess Member States' antifraud actions to avoid a lack of uniformity between Member States. This is very important. It is a better understanding for the system in general. In this way, the Anti-Fraud system can be better developed and also used in this sense.

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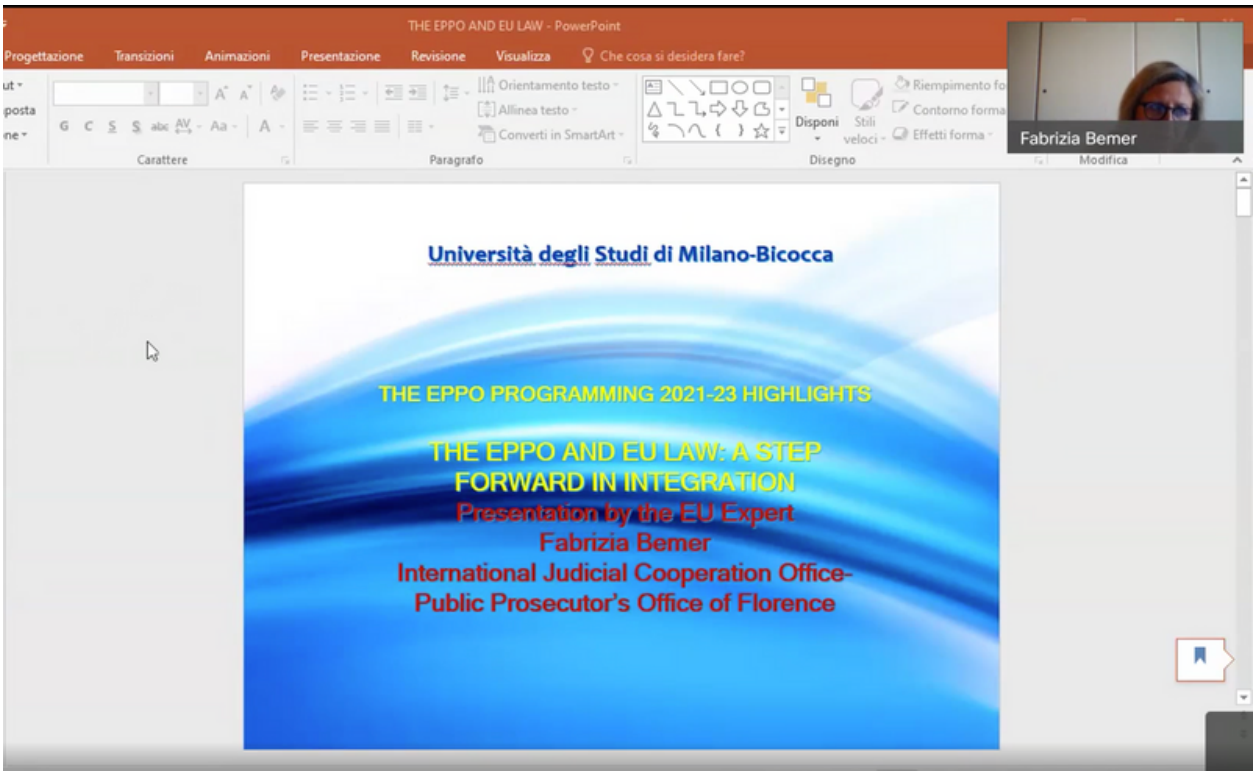


The EPPO and the digitalisation of criminal justice

23RD MARCH, 2022

Objectives

The second session looks at the EU's strategy for enhancing access to criminal justice through digitalisation strategies, and how COVID-19 advanced this initiative.

THE AUTHOR

Mr. Giulio Tagliabue
Lawyer and President of the Forensic Foundation - Monza Bar Assocation

One of the key areas of the European Commission's Program Guidelines 2013-2021 includes the digitalisation of criminal justice. As such, the organizational foundation of EPPO builds upon broader EU-level efforts towards the digitalisation of justice, and criminal justice in particular. On this, the European Commission, in December 2020, adopted a package of initiatives to modernize the EU justice systems, including the Communication on the Digitalisation of Justice in the EU. To capitalise on new possibilities, including through the extra impetus to digitisation efforts made by the COVID-19 pandemic, EPPO will continue to develop and consolidate its in-house capabilities to support the Office's operational and strategic goals. Currently, this consists primarily of the setup of a high-performing case management system, as well as improvements to its inter-operability both at the Member State and at the EU level, in spite of highly divergent IT infrastructures.

The Commission's 2020 Communication focuses on improving access to justice, building effective judicial systems which protect rights and facilitate economic growth, and enhancing access to justice to keep pace with changes including the development of digital systems. For the citizen, this may include the possibility to remotely consult the file relating to its criminal proceedings and to extract copies of acts , as well as the possibility to participate in proceedings or proceedings remotely or without going directly to the judicial offices. For the lawyer, this may include remote access to documents on file, the possibility of interacting with the Magistrate and with the judicial offices through digital systems (e-mail), presenting procedural documents (applications, pleadings, appeals) and the process through digital systems, and the possibility to process all or some of the steps of the process remotely through audio or video conferencing systems.

There are three distinct measures envisioned by this Communication. First, the digitalisation of cross-border judicial cooperation. In particular, in making the European Arrest Warrant available online in civil matters for the resolution of small claims and in criminal matters (with the possibility of citizens and businesses communicating directly with the competent authorities online). Second, exchanging digital information in cross-border terrorism cases (including strengthening the role of Eurojust and improving the functioning of the Counter-Terrorism Registry). Third, developing a collaborative platform for Joint Investigation Teams (JITs) with a specific IT tool to facilitate information and evidence sharing (database, videoconferencing system for JITs participation in digital mode).

The EPPO contributes towards broader EU level efforts in digitalising justice, particularly criminal justice.

The European Commission therefore has a twofold objective. First, to support Member States in advancing their national legal systems by strengthening the adoption of digital solutions and second, to improve cross-border judicial cooperation by an extended digitization of public justice services. This however highlights the need for a common approach between Eurojust, EPPO, OLAF and Europol.

What instruments then can help to achieve these two objectives? One instrument is to provide financial support to Member States. Additionally, the existence of legislative initiatives to establish requirements for digitalization is another instrument, alongside the promotion of national coordination and monitoring instruments (with information sharing to improve the service).

How then does the Italian State respond to address the needs of citizens, lawyers, and the broader Italian justice system regarding the use of digital services to enhance access to justice?

In November 2021, the National Forensic Council of Italy signed a Memorandum of Understanding with the European Prosecutor (Italian decentralised offices) for a three-year duration. Under this memorandum of understanding, offences which may potentially fall within the scope of those of EPPO is transmitted to both the national and the delegated European Public Prosecutor's Office. The Ministry of Justice, with a special decree, has made available to EPPO for instance, the SICP computer register (an information system of criminal knowledge).

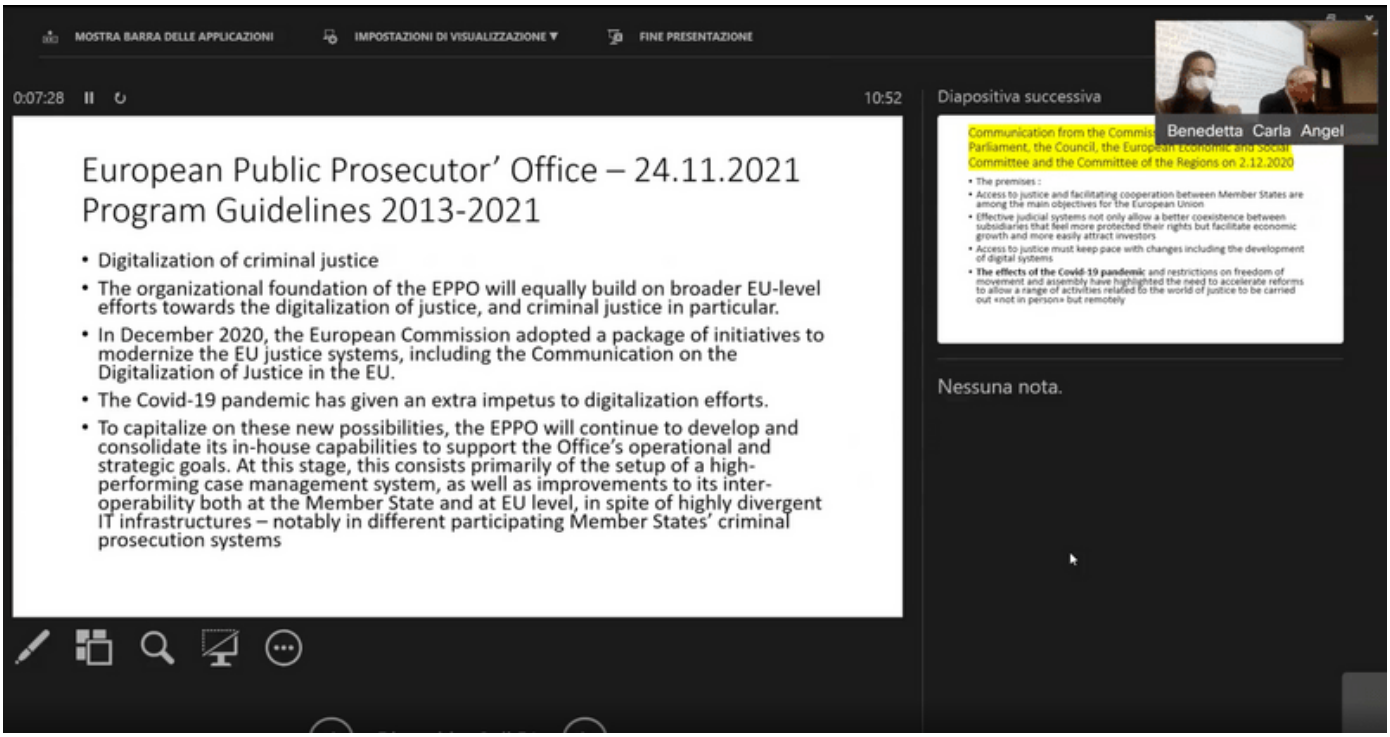
Additionally, the National Forensic Council and the Delegated European Prosecutor have signed a **protocol** aimed at enhancing the regulation of requests for information pursuant to article 335 c.p.p. formulated by defenders of persons registered in the register of suspects of EPPO. This article concerns the register of offence reports. Given the importance for citizens to be able to acquire information about the status of any criminal proceedings against them, the Memorandum of Understanding provides for a mutual commitment between the parties to 1) organize and speed up the presentation of the dispatch of the attestation from the competent judicial offices; 2) favour the wider diffusion of the good practices in use in the national territory in order to promote the diffusion of positive experiences and 2) to organise common training events aimed at informing about the activities carried out by EPPO and on the issues of the right of defence within this new system.

Further, the legislation introduced in Italy following the COVID-19 pandemic emergency, although not directly linked to the digitalization of EPPO, can help one to understand what the problems are, also in the European context, that the legislator and jurists will face. Regarding the preparatory phase of the process that is most relevant to the activities of the Prosecutor's Office (including EPPO), Italy established a system of filing documents in digital form (Criminal Record Filing Portal).

Additionally, Decree-Law 137/2020 – converted with Law 716/2020 (extension until 31.12.2022 with D.L.228/2021), provides the optional filing of a series of acts by dedicated pEC. The jurisprudence has always opposed the filing of documents by e-mail, so these legislative amendments should be highlighted as examples of how the COVID-19 pandemic helped to advance the digitalisation of justice in the EU context. But which documents can be filed? All of those for which there is no mandatory deposit on the portal of filing criminal records. By way of example, these documents may include requests for referral for legitimate impediment/notices of adherence to abstention from hearings as well as witness lists.

A very important addition introduced with the amendments to the Decree-Law concerns appeals. Previously the Court of Cassation in 2020 had deemed an appeal inadmissible if it was presented by certified email. With the amendments, pleas in law (to those on appeal) and the pleadings, opposition to the criminal decree of conviction and complaints provided for by the Penitentiary Order may be transmitted by a digital native document or as attached documents.

What this amendment in the Italian context reveals is that the COVID-19 pandemic has helped to speed up the process of digitalisation of criminal justice. While these amendments were designed initially for the national context, they also present opportunities at the EU level, particularly with respect to EPPO's mandate.



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The EPPO in the global anti-fraud architecture

28th MARCH, 2022

Objectives

The third session looks at the EPPO's role in responding to the evolving nature of the global anti-fraud architecture.

THE AUTHOR

Mr. Petr Klement
European Public Prosecutor - Czech Republic

With the creation of the EPPO, there were also a number of questions raised about overlapping mandates between EPPO and other European institutions, including OLAF, the European Anti-Fraud Office. The legal basis for OLAF is Commission Decision 1999/352/EC1 (Establishment) and Regulation 883/2013, as amended by Regulation 2020/2223 (legal basis for conducting investigations, guarantees, information duties...) Acknowledging an overlap in mandates, OLAF and the EPPO signed a working agreement on 5th July 2021.

First, the two offices of OLAF and the EPPO are distinct offices. OLAF is an EU body and is highly prestigious. On the one hand, it is a European Directorate General of the Commission. On the other hand, it is independent in its investigative activities. It is important to add that EPPO has a smaller budget than OLAF, but the costs of the EPPO are borne to a large extent by the Member States. The office of the EPPO is still under construction and new people are coming. There are about 122 employees at the central level and about 93 EDPs in the Member States so far.

When we speak about OLAF, it is very difficult not to tell the story about how it was established. Between 1995 and 1999, the Commission of the EU focused mainly on the financial interests of the European Union. During the mandate of that particular Commission, the Convention on the Protection of the European Community's Financial Interests was adapted. At the same time, there was a debate in the European Parliament addressing allegations of corruption, nepotism, and irregularities in the Agencies and in the Commission itself.

From this, the Parliament established a Committee of independent experts whose task was to seek to establish to what extent the Commission as a body or the Commissioners individually, bore specific responsibility for examples of fraud, mismanagement and nepotism raised in the Parliamentary discussions at the time. The report of the independent experts clearly showed the Commission's inability to detect and deal with corruption inside the Commission itself.

As a consequence, OLAF was established by the Commission Decision 1999/352/EC1 to protect the EU's financial interests by 1) investigating fraud to the detriment of the EU budget, corruption and serious misconduct within the European institutions, bodies, offices, and agencies and 2) develop an anti-fraud policy for the Commission.

OLAF is therefore a supranational body established to overcome the obstacles which exist in any domestic response. This includes internal and external investigations, coordination of cases, mixed inspections and OLAD also supports and complements investigations to the EPPO. OLAF cannot use force or coercion when conducting its investigations, and it cannot fine witnesses. For example, assistance of national authorities may be necessary. It is evident that in order to assess the full scope of OLAF's investigative powers as well as the obligation of national enforcement authorities, it is necessary to examine national laws.

In the short term, there is a need to strengthen the interaction between OLAF and EPPO. This includes the interaction of their databases and the exchange of data.

It is also interesting that several pieces of legislation give the Commission and OLAF the mandate to investigate irregularities outside of the EU. The legal basis for conducting such investigations are bilateral and multilateral agreements and framework agreements between the Commission and beneficiary countries.

In the past six years, the number of OLAF judicial recommendations has decreased. The answer why is quite complex, and it is not black and white. In the past, some of the parliamentary groups, some of the academics, some of the professionals who were blaming OLAF, were pointing to the quality of their reports, and pointed to the limited admissibility of reports. On the other hand, OLAF was defending itself by saying that they don't receive enough direct assistance by the Member States. The national authorities repeat collecting the evidence that OLAF have already gathered, and so they don't need to. Each case was and is always a little bit different. It is about the entire system which we have to analyse and ask the question, whether, with the existence of the EPPO, we still need to protect the status quo or whether the system should be changed.

Even if OLAF's investigations are labelled administrative, it is difficult to deny that these competences are closely aligned with criminal investigation competences. Whatever the name of OLAF's competences and actions, they may well be put under these standards.

But what about OLAF's competence after EPPO? OLAF conducts internal investigations (including with EPPO), administrative investigation of irregularities followed by financial, administrative, or disciplinary recommendations, coordinating the actions of Member States' authorities in coordination of cases (according to Article 1(2) of the OLAF Regulation. Additionally, OLAF also has full competence over cases/PIF offences less than 10,000 Euro and has full competence in the non-participating Member States of the EPPO. OLAF also assists the EY institutions, bodies, offices, and agencies with the preliminary evaluation of suspicions of offences and complements the competence of the EPPO.

Regarding a future outlook, this includes both short horizon outlooks as well as long horizon outlooks. In the short horizon, there is a need to strengthen interactivity of the EPPO/OLAF databases and the exchange of data. Additionally, there is a need for accommodating OLAF support to the needs and rules of criminal proceedings including deadlines and making EDP's expectations realistic. In the long horizon, we should look to the Report on the application and impact of the OLAF Regulation (until November 2026) and the Evaluation and Report on the implementation and impact of the EPPO Regulation (November 2026).

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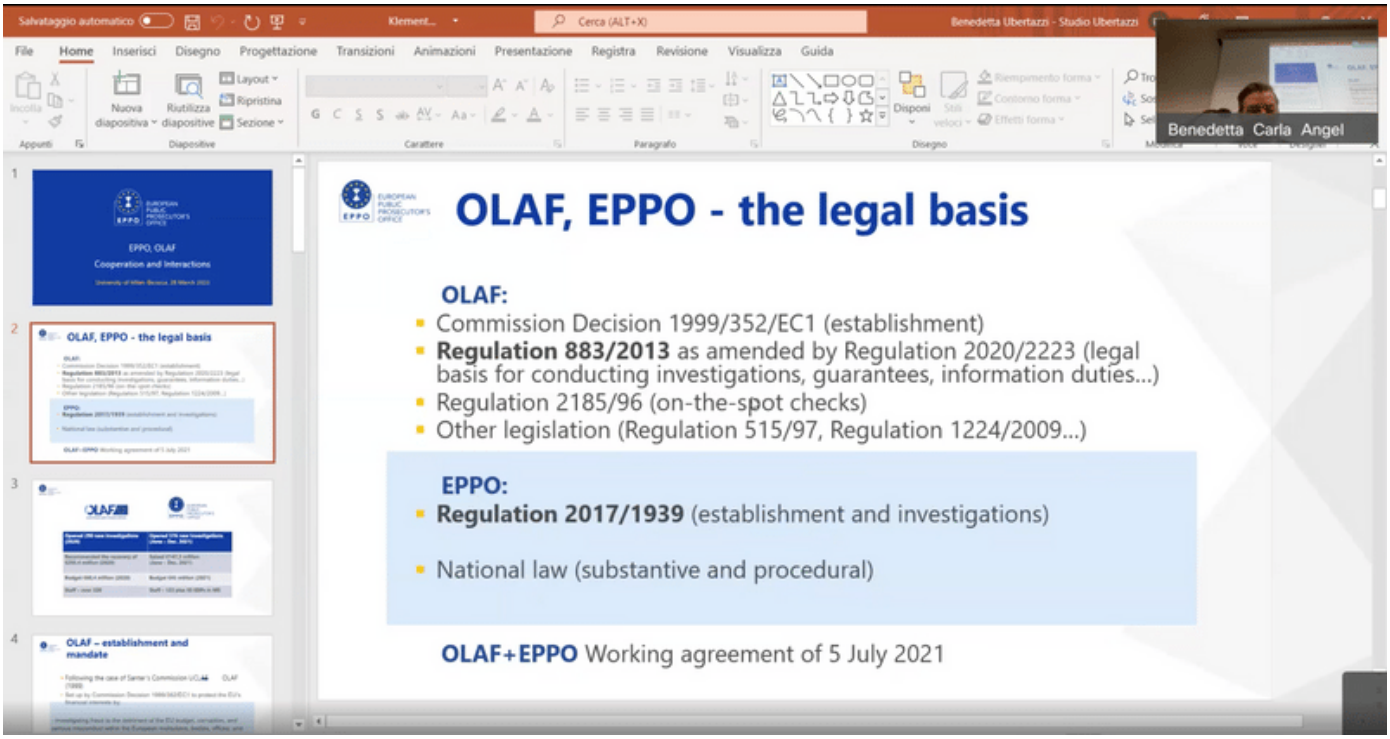

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The EPPO, Judicial Cooperation and Internal and External Security

Objectives

The fifth topic critically explores the EPPO's role in the internal and external security nexus of the European Union, as well as judicial cooperation with national authorities of Member States, non-participating Member States and third States.

THE SESSIONS

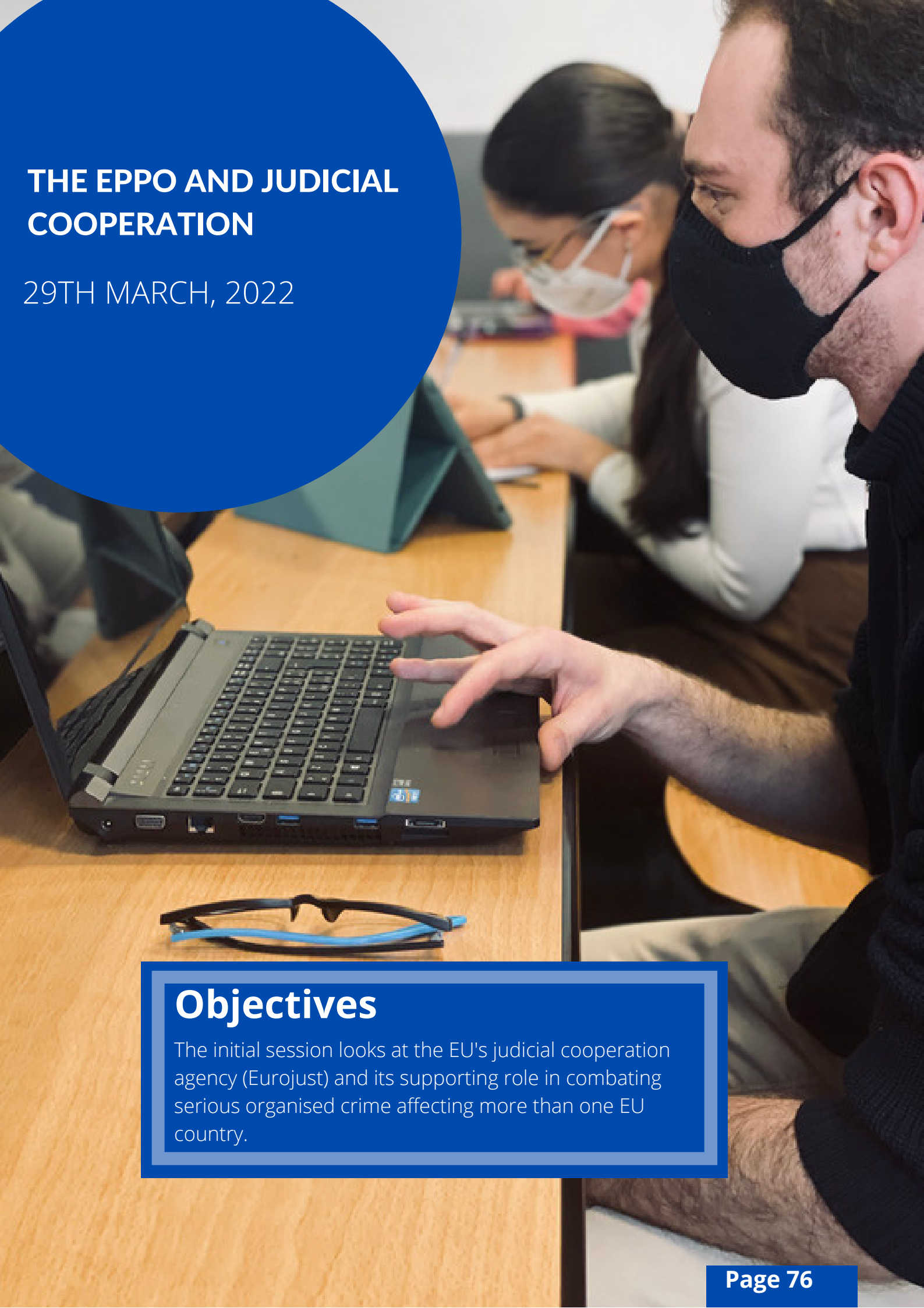
The EPPO and judicial cooperation

The EPPO cooperation with Europol, OLAF and Eurojust

The EPPO between EU internal and external security

THE EPPO AND JUDICIAL COOPERATION

29TH MARCH, 2022



Objectives

The initial session looks at the EU's judicial cooperation agency (Eurojust) and its supporting role in combating serious organised crime affecting more than one EU country.

THE AUTHOR

Ms. Patricia Donata Costa
Public Prosecutor - Prosecution Office Milano - First Department - Economic Crimes

Judicial cooperation is fundamental in all investigations as cross-border crimes are increasingly prevalent. We must facilitate cooperation in an easy manner. As such, we now have many tools to conduct this, including treaties and international laws. Since 2005, Italy has been a part of Eurojust, which helps Member States and Magistrates of the Member States in cooperating with authorities abroad.

Normally, one would facilitate this cooperation through writing a letter. The letter usually goes through the Ministry, and diplomatic channels to other Member States and their judicial authorities. This formal mechanism is a very useful cooperation tool with third party nations like the USA, Argentina, Brazil etc. due to the difficulty in knowing the abroad procedures and correct abroad correspondents. Now we have several connections with abroad judicial authorities thus resulting in less difficulty requesting cooperation with letters.

In Europe, we have another important tool, European Investigation Orders ('EIO'). These orders simplify judicial cooperation significantly because in Europe we have the principle of recognition of judicial decisions made in other EU countries. For this reason, we adopt tools, including the EIOs. This means as an Italian prosecutor, I can issue an EIO to investigate in another Member State of Europe. To do this, I issue the EIO to the other Member State's authorities, and they will execute the EIO automatically.

The role of Eurojust in this cooperation is to help the Public Prosecutor of each Member State cooperate and assist in coordinating a response. This is where the authorities of each Member State can work together to conduct the investigation. Furthermore, since EPPO became active on June 1st, 2021, other tools continue to evolve. For example, Article 31 of the EPPO Regulation provides a new way of cooperation, a self-standing sui generis legal basis of EPPO and for EPPO's cross-border investigations. Now, when I need to conduct an investigation abroad, say in Germany, Croatia, or Slovenia, I can use the Article 31 tool.

Of course, we have these tools available for our use because the EPPO is one office. So, what is provided in Article 31? Here there are some issues of interpretation. First, I can assign the measure to be taken in France or Germany or in any other EPPO Member State, by asking my EDP colleague in that Member State. But how can I do that? We work in a system called the Case Management System. This is an informatic place where we have all of our cases, and we can discuss them with the College of EPPO and our colleagues. In this system, I can create a team of people who are dealing with prevalent cases.

This includes the EDP, investigators and the officer who analyses the collected documents. For example, I conducted a search in Germany in addition to collecting bank documents in Croatia. Using the CMS, I added my colleagues from Germany and Croatia into my team, and then I assigned to them investigations to be undertaken by them in their respective nations through the CMS. They then conducted the investigations and uploaded the results to the CMS, so that I could see everything that was conducted abroad. As you can see, it is quite quick and effective.

The Case Management System is a quick and effective measure for conducting cross-border investigations at EPPO.

However, we have some issues with the interpretation of Article 31. The first point says, "The European Delegated Prosecutors shall act in close cooperation by assisting and regularly consulting each other in cross border cases". As stated, we are one office and must share and discuss everything before deciding to do anything. It is important to clarify we are the same office and discuss everything together before formalizing anything.

The European Delegated Prosecutor is the prosecutor dealing with the case. For example, I am a prosecutor in Venice and have a case dealing with fraud. The people committing the tax crimes are living in Venice, however, some of the false invoices come from other Member States, the Czech Republic for example. The goods are delivered to Italy through the Port in Slovenia, thus involving more countries. I handle the European Delegated Prosecutor because the case at this moment and stage of the investigation is located in my country, and I have a judge in Venice. However, I can decide on the adoption of necessary measures to assign colleagues abroad. In my example, I am dealing with fraud crimes. I need to find out if the company located abroad in Slovakia is a real company or a missing trader. I need Slovakia's EDP to find out if the company is real, when it was established, where it is located, if there is an office or production, or if it is a ghost company.

Of course, to do this, they must conduct an investigation, perhaps interview relevant associates, or even search the company.

We must then discuss and following this I can assign measures. The second point of Article 31 provides that a handling EDP can "assign any measure, which is available to him/her in accordance with Article 30". Article 30 provides a list of tools recognized in almost all Member States.

Article 31(3) notes that the EDP needs to use their Member States' law to decide the available investigations. Thus, the law of the investigation is the law of the Member State of the handling EDP. For example, if for this type of crime, I can use telephone interception, I must use my nation's law to conclude if this is possible, which condition, the type of interception, and so on.

Another important matter is my ability to assign different measures to different member states, for example to Slovenia, Slovakia etc. However, I then must inform my supervising European Prosecutor. We have a supervising European Prosecutor in Luxemburg at the College. Article 31 is not without its interpretational challenges. It must be noted that Article 31(3) and Article 31(4) often require a strict interpretation and can raise various questions about how Member States interpret these provisions into their national laws.

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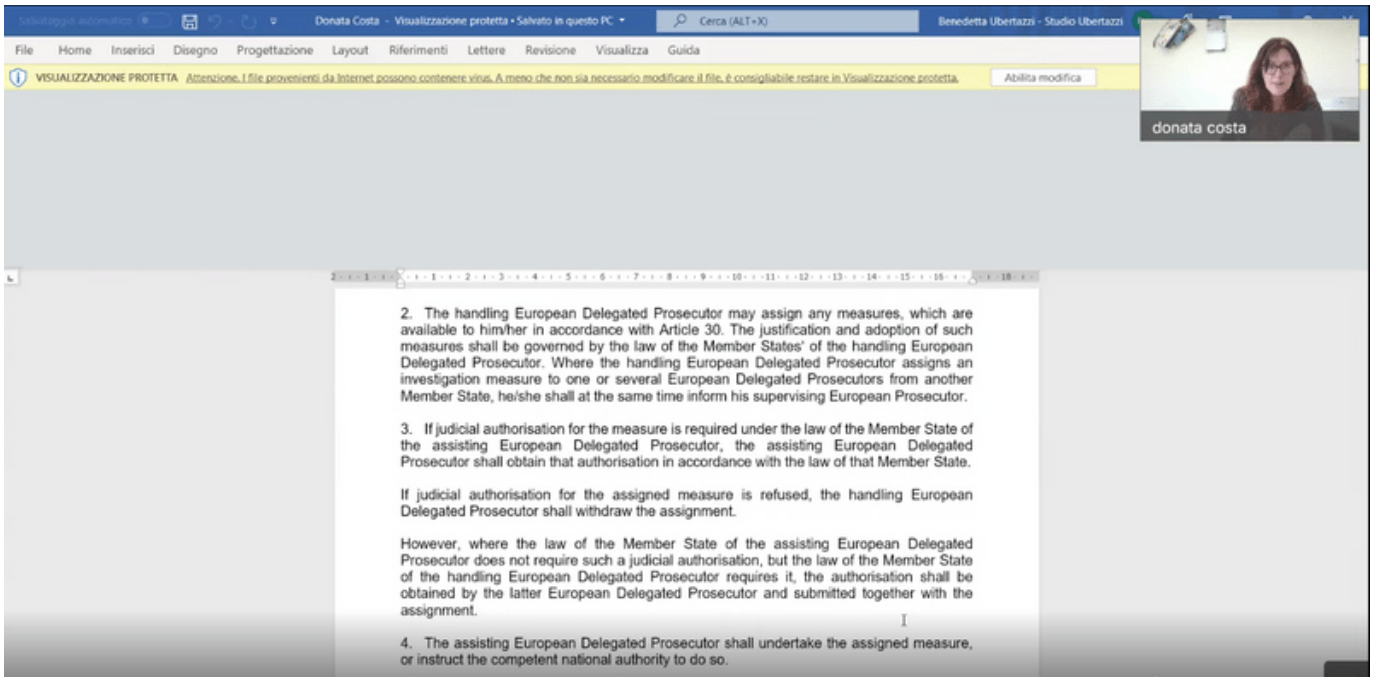

THE AUTHOR

Professor Pietro Suchan

Professor of "Legislation for the protection of the economy and security" - Academy of Financial Police; former magistrate-assistant in the Italian representative - Eurojust

The EPPO is now and has recently become one of the most important bodies in the European judicial cooperation system. Yet, the EPPO has to develop its strengths and links with the so-called traditional agencies of judicial and law enforcement cooperation of the EU. These include Eurojust, Europol and OLAF, as well as the European Justice Network ('EJN').

The EPPO needs to cooperate with Eurojust in order to produce concrete results in the framework of its tasks and competences. But Eurojust also needs the EPPO due to the differences in their competences. This cooperation is foreseen by Article 86 of the TFEU. Eurojust is legally considered the 'mother' of the EPPO. While such a definition stresses the special link between these two agencies, I don't think that this definition is realistically appropriate.

The mother, Eurojust, is at the moment in almost perfect health. There are a number of ways in which Eurojust brings value to the EPPO. Article 31 of the EPPO Regulation is one way in which Eurojust can assist in the EPPO investigations. This could be for example if the assisting EDP is having difficulties, legal or practical, to execute an investigation order to them by the EDP in another Member State, the Permanent Chamber might insist that we have to go on and execute that order. However, this could be perhaps a very theoretical example of a conflict between two EDPs and also a conflict with the national authorities of a Member State, because Article 31 has taught us that this investigation can also be conducted by the national authorities. It is therefore not necessary that the assisting EDP has to be an EPPO prosecutor. Therefore, this could be a very specific example in which Eurojust could, if requested, play a fundamental role.

It is also interesting that a collegial management structure has been privileged to EPPO, compared with the traditional management model. The recent entry into force of the new Eurojust Regulation in September 2019 introduced strong changes to Eurojust's structure. Normally, the powers and competences of Eurojust were not of a direct investigative nature, but now due to the new Regulation, could be and it is similar to what we will find in the relationship between the national judicial authority that acts on behalf of the EPPO, and the EPPO itself. The management structure is an important point to raise because it raises the important question of to what extent this choice of collegiality, which must make choices of an immediate nature, avoids blocks and delays in the EPPO exercising its competence.

Further, Eurojust could be asked in the near future to support particular actions of concrete cooperation between national judicial authorities, police and the EPPO. The legal basis for such requests could derive from Article 13 of the EPPO Regulation. The EDPs act on behalf of the EPPO in the respective Member States and have the same powers as prosecutors regarding investigative powers and acts with the aim of bringing it forward to trial. As far as Italy is concerned, the EDPs are completely disposed of the laws of the national law enforcement agencies. Rather, they place themselves in a relationship of dependence by the Permanent Chambers.

Interesting?
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Article 28(2) of the same Regulation notes that every single EDP may adapt investigation measures in person or instruct the competent authorities. This is not just for law enforcement agencies, but also for judicial ones. Additionally, at any time during investigations conducted by the EPPO, national authorities shall, in accordance with national law, take urgent effective measures to conduct investigations even if they do not act specifically on the instructions of the relevant EDP.

This field, of criminal investigations conducted by national authorities on behalf of EDPs, can also produce challenges. Regarding these challenges, Eurojust, on the request of one of the parties involved in the investigations, can play a relevant role and this capacity to play this role should be remembered when thinking about the relationship between Eurojust and the EPPO.

THE EPPO COOPERATION WITH EUROPOL, OLAF AND EUROJUST

30TH MARCH, 2022

Objectives

This second session looks at the basis for cooperation between the EPPO and three EU agencies - specifically, EUROPOL, OLAF and EUROJUST.

THE AUTHOR

Professor Pietro Suchan

Professor of "Legislation for the protection of the economy and security" - Academy of Financial Police; former magistrate-assistant in the Italian representative - Eurojust

Just like any relationship, the relationship between the EPPO and Europol needs to be developed. It has only been a few months since a working agreement was signed between Europol and the EPPO. Therefore, it is too early to be able to fully understand if the relationship will work well or not. Before discussing this relationship, I must mention that there is a specific potential criminal element which can be drawn out of OLAF's role and mandate.

For example, even though it focuses specifically on administrative investigations, if during an administrative investigation criminal elements are derived, OLAF will interact with the EPPO. OLAF will send to the EPPO a crime record template ('ECR') notifying them of this criminal element for which the EPPO has competence to investigate and/or prosecute. There is a specific team at EPPO responsible for the ECR.

Before speaking about the relationship between Europol and the EPPO, we need to understand what Europol is. Europol consists of more than 1,000 staff members and more than 100 analysts. There are more than 100 analysists specialising in crime based in the Hague. Hence, Europol was established to provide support for investigations, even if only potentially for those investigations which have a cross-border element.

Therefore, the EPPO has a special interest. This is because Europol currently coordinates around 50,000 investigations per year on an international scale, mainly between the 27 Member States of the Union. This is in addition to the other international agencies and organisations and under certain conditions, third states, which is are the subject of those criminal investigations.

When we think about the fight against serious crimes, what we are talking about are terrorism offences, international drug trafficking, money laundering, relevant tax fraud on an organised basis and therefore the so-called, 'fraud carousel'. Fraud carousels are very important in the fight against tax evasion. Human trafficking as well as computer and cyber-crimes are also crimes serious crimes affecting the EU. These are the main crimes in which Europol is active. There are a number of ways in which Europol implements appropriate response mechanisms in fighting those main crimes.

Just like any relationship, the relationship between EPPO and Eurojust needs to be developed.

There are multiple ways in which Europol responds to such crimes. First, there is an operational support centre for the implementation of effective means of law enforcement. Second, a computer centre on criminal and analytical activities. Europol, like Interpol is engaged on two primary tasks. First, is to offer services and support to the national judicial authorities and law enforcement agencies by the highly developed computer system.

If at any moment, we have to execute letters like EAs, EIOs or certificates of seizure orders on the same day in several European countries, which cannot be executed in different moments, we have to execute them simultaneously at the same moment. Europol provides support through mobile officers.

Second, Europol conducts analytical work, which is important, because this aspect is at the heart of Europol's requests and is at the basis of the links between other investigations carried out elsewhere and which are considered connected to each other.

This aspect, of identifying the links between different investigations is also important for the EPPO, because the EPPO needs to know what happens at the national level in several Member States.

Yet, the creation of the EPPO presents an interesting observation. Based on Article 88 of the TFEU, Europol maintains a relationship with the USA, the biggest and most important partner of exchange data concerning terrorism. While the EPPO has become the main holder of computer equipment data from all European police forces for the prevention of serious financial crimes, you cannot suddenly announce that the EPPO has become the main actor in this field, replacing the role of Europol, particularly in this relationship with the USA.

As a result, we still do not know if the working agreement between the EPPO and Europol is efficient or effective yet. Further, on the 5th of July 2021, a first cooperation agreement was signed between the EPPO and OLAF, with which it is expressly agree a) the suspension of OLAF investigations (basically of an administrative nature) if the EPPO initiates a criminal investigation into the same subject, b) the extension of the delegation of the EPPO investigations to OLAF, but not in a general way.

The added value of such a relationship is represented by the fact that OLAF has not to respect by itself the " immunity principle" towards UE staff. Additionally, in February 2021, a first working agreement was been stipulated between Eurojust and the EPPO and has as its main purpose the possibility of mutual access to the respective computer systems with exchange of useful information data, including personal data and with the result that the EPPO will acquire a lot of the news of crimes of its competence on the basis of Ej data, which becomes one of the main sources in this regard , while the EPPO will inform Ej about the outcome of its investigations and mainly about the transmission of them to the competent national judicial authority, in this way strengthening the coordination work of Ej. Finally, in January 2021, an important working-agreement has been signed between the EPPO and Europol.

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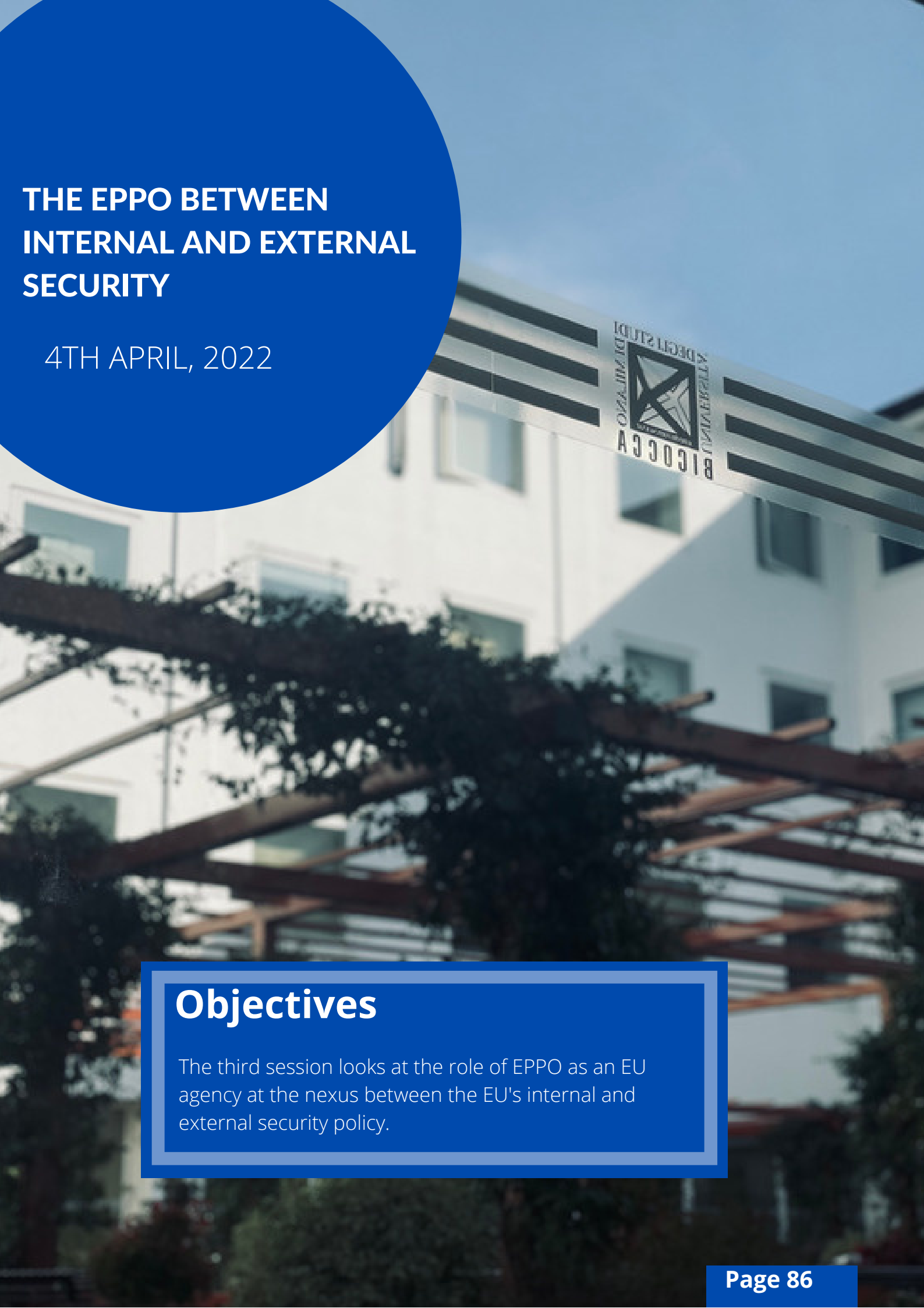
THE EPPO BETWEEN INTERNAL AND EXTERNAL SECURITY

4TH APRIL, 2022



Objectives

The third session looks at the role of EPPO as an EU agency at the nexus between the EU's internal and external security policy.

THE AUTHOR

Professor Antonio Tanca
Professor of European Union Common Security and Defence Policy - University of Milan-Bicocca

Today we are going to discuss the relationship between the EU's internal and external security, which are closely related. Areas of interest between the internal and external security of the EU include the fight against terrorism, cross-border crime, cyber security, and countering foreign interference (hybrid threats). Why is the Common Foreign and Security Policy, in particular the Common Security and Defence Policy ('CSDP'), considered important? It is important because we need cooperation between Member States within the EU in the area of security in the wide sense.

The same applies to our relationship with third States. This includes for example, our relationship with so called failed or failing States. I wouldn't say we are surrounded by, but we do in fact have quite a few examples of States which experience a kind of breakdown in law and order and who have serious security issues. When this happens, these countries can become a kind of basis for a number of illegal activities, including becoming potential hosts of terrorist groups. Additionally, an insecure internal context can lead to waves of migration.

It can be said then that in a way, when the EU is acting in its relationship with these countries within the CFSP and CSDP contexts, this relationship is to prevent and limit a number of activities which are strictly linked to the EU's internal security as well. So, as we can see, the two internal aspects, internal and external security, are closely related. Furthermore, the EPPO has a role to play here, particularly in the EU's CSDP when CSDP missions involve addressing crimes affecting the financial interests of the EU. If we think about what the EPPO's role is, one element

its role is to enhance judicial cooperation in criminal matters affecting the financial interests of the EU. So, judicial cooperation in criminal matters is also a general aspect of the EU's Area of Freedom, Security and Justice ('AFSJ'). The AFSJ also derives its legal basis from Article 3(2) of the TEU as well as in Articles 67 to 89 of the TFEU. In a way, we can therefore say that the EPPO is the main agency established to address judicial cooperation regarding crimes affecting the financial interests of the EU and EPPO engages in the EU's external security through the CFSP/CSDP when those crimes affect the EU's security.

You can have the appropriate machinery and military capabilities in place, but do you have the political will of the Member States?

But, more broadly speaking, to what extent can the CSDP be used to address these threats and challenges? Firstly, it is important to understand what the CSDP is. The CSDP is part of the EU's CFSP. The provisions are set out in Title V. Chapter 2, Section 2 of the TEU. The main goals of this are set out in Article 42, and the main tasks are set out in Article 43. Further, delegation to Member States is found in Article 44, while military capabilities are found in Article 45 and permanent structured cooperation is provided for in Article 46. In these articles, you have the main tenants of the CSDP.

Yet, it is important to note that what we are talking about here is not the creation of an EU army. These means, both civilian and military, must be provided by the Member States themselves. We are talking about the possible actions and operations with the means provided by the Member States. It is clearly part of foreign policy. This means these military and civilian assets are going to be used outside the Union, so not for any event which might take place inside European territory. Basically, the kind of actions which can be undertaken are fundamentally peacekeeping, conflict prevention and actions for strengthening international security, but with the capabilities provided by the Member States.

For the time being, this is relatively limited in capacity. The means must be given by the Member States and is restricted to actions outside the territory of the EU. But what if an EU State is the subject of an armed attack? Can the EU do anything about it? The answer is yes, from a legal viewpoint. There is an article, Article 42(7) of the TEU which says that if a Member State is the subject of an armed attack, the other Member States may act by providing aid and armed assistance by all means in their power. So, in accordance with Article 51 of the UN Charter, there is an obligation to help.

This obligation to help does not include the obligation to use armed force to help. Yet, what is clear is that the treaty (the TEU) does provide for, not right now but in the near future possibly, the progressive framing of a common defence policy. Essentially, the legal basis for a basic a common defence policy is already there, but practically speaking, we are not there yet. If Member States decide through a European Council Decision what we have now can become more, then it would be subject to ratification by Member States. For the time being, however, there is still the obligation of mutual assistance. This obligation might go as far as providing military help in case of an aggression, but there is not yet any specific obligation to provide military assistance.

If we look to the experience of the past twenty years of the CSDP, every time there has been a serious situation in which the EU could actually have done something, we have noticed that there are some really strong gaps and lots of duplication. Member States show that they have some capabilities which are in excess, but they lack other crucial capabilities for which they would need, if they wanted to act effectively and to be able to project military force even further away. For example, one crucial capability is the capability to coordinate the expenses of Member States to make this process efficient.

If for example, we wanted an efficient European defence framework, we would firstly need military capabilities

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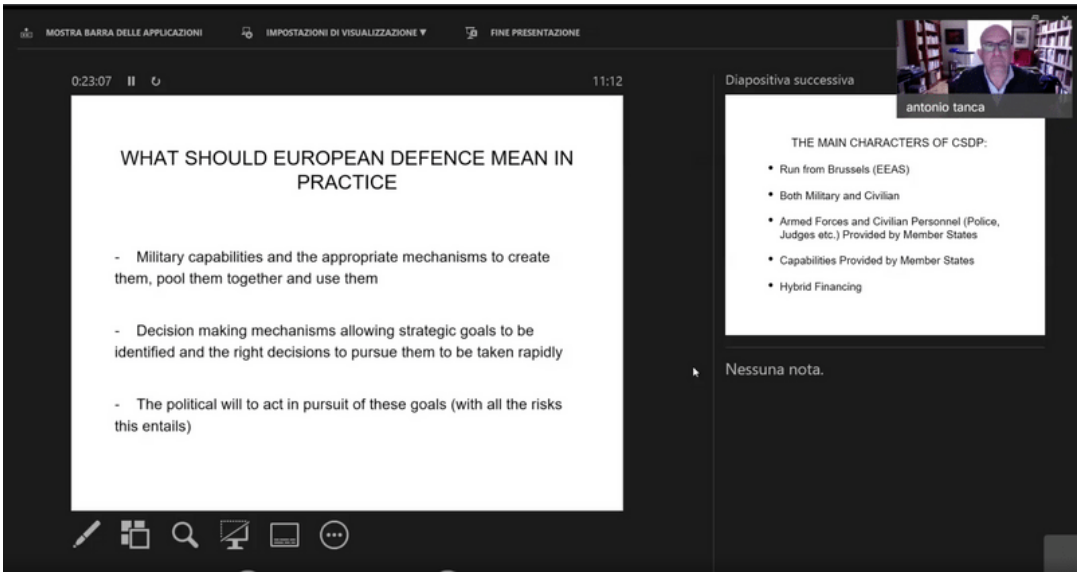

and the appropriate mechanisms to create them, pull them together and use them. Second, decision making mechanisms which allow strategic goals to be identified and the right decisions to pursue them need to be taken rapidly.

Finally, the political will to act in pursuit of these goals must be present. The military capabilities of Member States at the moment is a glass that is half empty. Effort has been made, but more needs to be invested. At the moment, what we find is that the appropriate mechanisms to establish these capabilities have been set up but are underutilised. For example, one area which would enhance the usefulness of EPPO in implementing the EU's CFSP/CDSP is the creation of a cooperation agreement between the European External Action Service ('EEAS') and EPPO. Such an agreement could for example provide two main areas of cooperation. The first would be an opportunity to raise awareness in CSDP Missions on the dynamics of judicial cooperation, while a second would be sharing knowledge, in particular in the planning phase of future CSDP Missions, through the exchange of strategic and non-operational information.

Further, decision-making mechanisms are something which we already have in place. Certainly, a lot has been done not only to create the appropriate decision-making mechanisms, but to make sure that all European Union machinery to make decisions can actually move faster if it is needed and if the situation so requires.

Additionally, you can have a very good machinery in place, and the necessary military capabilities in place, but the question is, will there ever be a situation whereby Member States are prepared to go ahead and use them all? That is something that depends very much on the political situation, but it is also in a way a function of the way or degree to which Member States share the same strategic assessment of the situation. Do they have the same views of what constitutes a threat and if they have the same views, are they prepared to do something about it?

These are some fundamental questions and considerations, particularly as we consider the role of the EPPO within the EU's common defence policy, and what that would look like in practice.

6

The EPPO And Other Bodies Joining Forces

Objectives

This sixth topic explores the relationship between the EPPO and other bodies, including the European Court of Auditors, banking authorities and EPPO's working agreement with the European Commission.

THE SESSIONS

The EPPO working agreement with the European Commission

The EPPO working arrangements with the European Court of Auditors and Italian General Prosecutor's Office of the Court of Auditors

The EPPO and banking supervisory authorities

The EPPO working agreement with the European Commission

5TH APRIL, 2022

Objectives

The first session looks at the European Commission's Anti-Fraud Strategy 2019 and how it implicates the EPPO's competence.

THE AUTHOR

Ms. Federica Iorio
Lecturer at the College of Europe (Bruges Campus)

When we think of EPPO's main purpose, we immediately think that EPPO's main purpose is the fight of criminal offences against the EU's financial interests as defined in Article 4 of the EPPO Regulation.

So then, one question must be asked: why an agreement with the EU Commission? The European Commission has a primary role in the elaboration and implementation of the EU budget. For example, Articles 313-316 of the TFEU states that the EU Commission drafts the EU budget.

Furthermore, Article 317 TFUE provides that the Commission shall 'implement the budget in cooperation with the Member States, in accordance with the provision of the regulations made pursuant to Article 322'.

So, the next question is: what does 'implementation of the budget' imply? First, it implies a commitment of expenditure, where a decision is taken to use a particular sum from a specific budgetary line in order to finance a specific activity. Second, it implies that the Commission is charged with the authorisation of the performance of a payment after a service has been rendered or a good has been supplied.

The EU Commission may do so in several ways. The first way is through direct management, which is the case when the Commission manages directly the funds via its department or executive agencies. Approximately 20% of the budget is spent through direct management.

The second way is through the so-called 'shared management', whereby the EU Commission jointly manages the budget along with the Member States. Approximately 70% of the budget is spent through indirect management.

The third way is the 'the shared management' whereby the Commission entrusts budget implementation tasks to entities and organization or even third countries. Approximately 10% of the budget is spent through indirect management.

All considered, is therefore obvious that there is an obvious link between the EU Commission's actions and EPPO's mission to fight financial crimes.

Concerning the legal basis, Article 130 of the EPPO Regulation explicitly provides that the EPPO shall establish and maintain a cooperative relationship with the Commission for the purpose of protecting the financial interests of the Union. To that end, the EU Commission and the EPPO shall therefore conclude an agreement setting out the modalities for their cooperation.

The Agreement between the EPPO and the EU Commission has been finally executed in June 2018 and includes five chapters: 1) purpose and scope, 2) modalities of cooperation, 3) data protection, 4) institutional provisions and 5) final provisions.

The purpose of the Agreement is outlined in Article 1 of the Agreement which reads: "in accordance with Article 103(1) of the [EPPO Regulation], the purpose of this Agreement is 'to establish and maintain a cooperative relationship between the Parties for the purpose of protecting the financial interests of the Union.' It should therefore be noted that the EPPO/EU Commission agreement is different in nature from the EPPO/OLAF Agreement. While the EPPO/OLAF Agreement has, as main purpose, the coordination of the investigative activities of the two entities, the EPPO/EU Commission agreement aims at establishing a more general

"The cooperation between EPPO and the EU Commission revolves around mutual communication and information sharing before and during investigations".

framework for the cooperation of the two bodies. Such cooperation, as we will see, is it mostly based on the continuous exchange of information.

Such difference is further reflected in the fact that the EPPO/OLAF Agreement has its own distinct legal basis, in Article 101 of the EPPO Regulation.

Regarding the scope of the EPPO Agreement with the EU Commission, such scope is very large as it encompasses any aspect which is not already dealt with by a specific other agreement (Article 3 of the Agreement). The Agreement specifies that there are two axes of cooperation. Firstly, the cooperation provides for the exchange of information and, secondly, the Agreement provides for the collaboration in the performance of the tasks. Article 4 of the Agreement summarizes the fact that there are two axes.

Regarding the first modality of cooperation, Article 10 of the Agreement lays out the basis for this cooperation, and makes it explicit that all the information exchanged between the Parties shall be subject to the rules of confidentiality and professional secrecy.

The Agreement regulates the modalities of cooperation in lune with the general rules found in the EPPO Regulation.

Article 24 of the EPPO Regulation lays out a general obligation of the EU institutions to report to EPPO ant criminal conduct that may fall within the competence of the EPPO. Article 5 of the Agreement translates this specific obligation for the Commission and makes it clear that the latter is expected to share with the EPPO any information that may be relevant to the exercise of its mission.

Following the reporting of a crime, the EPPO may request further information – also outside of the scope of the competence – for investigation purposes and/or for the purposes of elaborating guidelines for the institutions

The contact points for information sharing is identified in Annex I of the Agreement (the Director-General of OLAF from the Commission's side and the Head of Operations in the Central Office of the EPPO from the EPPO's side).

The Commission shall continue to cooperate also during the investigations and prosecutions (Article 5a of the Agreement). To this purpose, the Commission should enable its staff members to share information in line with the Staff Regulation requirements and lift privileges and immunities.

At last, Article 9 of the Agreement provides for EPPO's access to a series of databases identified in Annex VIII. Such databases may be accessed either directly by the EPPO or indirectly through the Commission's Cooperation.

Concerning the EPPO's obligations vis-à-vis the Commission, in line with Article 25 and 26 of the EPPO Regulation, Article 6 of the Agreement provides that EPPO must inform the Commission if, following a report for a criminal conduct, it decides that there are no grounds to initiate investigations (Article 6 of the Agreement).

Furthermore, in case EPPO starts an investigation, and regardless of whether the Commission had previously filed a criminal complaint report, the EPPO is under the obligation to keep the Commission informed of the cases where the Commission's responsibility to implement the budget may be affected and where a case involves a potentially serious reputational risk for the Union, EPPO is also required to keep the Commission informed. Given that, potentially, any infringement linked to the mismanagement of EU budget may potentially cause a

"The EU Commission is a major actor in the implementation of the EU budget and cooperation with EPPO is thus key for the protection of EU financial interests".

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reputational risk for the EU, in the end, EPPO is required to constantly keep the EU Commission informed. The Annexes to the Agreement provide for a series of templates to identify the type of information to share.

In addition to ensuring a continuous flow of information on the infringements that have occurred. The Agreement between the EPPO and the EU Commission shall also aim at preventing the commission of an infringement or reduce the impact of a fraud. In this respect, Article 6a of the Agreement, provides that the EPPO is also required to transmit any information deemed necessary for the Commission to adopt measures for the protection of the interests of the Union. Such measures may include termination of ongoing business relations or refusal of payment.

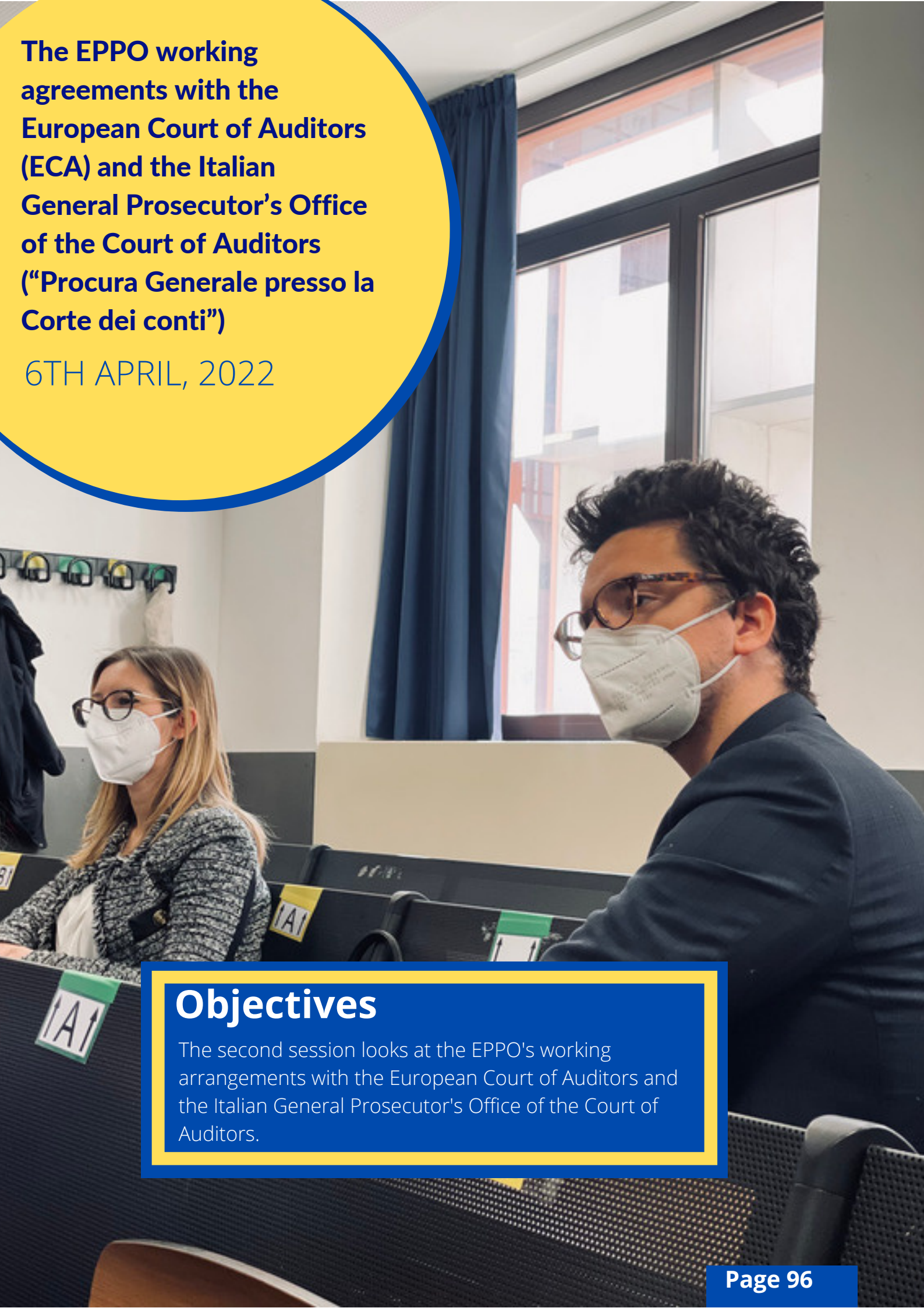
In the same line, if the EPPO is made aware that a member of the Commission's staff is in violation of the code of ethics and/or have acted at the detriment of the EU's monetary interests, Article 6b of the Agreement requires EPPO to share such information with the Commission to enable the latter to start disciplinary proceedings.

At last, in light of the so-called "Conditionality Regulation", which aims at ensuring that Member States that do not respect the principle of the rule of law benefit from the EU budget, Article 14 of the Agreement sets out a general obligation of continuous cooperation between the parties to verify whether the conditions of the rule of law are, indeed, respected by the EU Member States. More specifically, the EPPO – whose investigations are performed at the national level by the Member States police forces – will have a privileged position to verify, first-hand, if the judicial system of the Member States participating in the EPPO cooperation are effectively in line with the rule of law. If that is not the case, the EPPO will have the opportunity to timely inform the Commission which, in turn, may take the necessary steps to suspend the disbursement of EU funds towards that State.

In light of the above, it remains therefore to see whether the EPPO, in addition to actively fighting against frauds at the detriment of EU budget, may play a role in the promotion of the rule of law at the EU level.

The EPPO working agreements with the European Court of Auditors (ECA) and the Italian General Prosecutor's Office of the Court of Auditors ("Procura Generale presso la Corte dei conti")

6TH APRIL, 2022



Objectives

The second session looks at the EPPO's working arrangements with the European Court of Auditors and the Italian General Prosecutor's Office of the Court of Auditors.

THE AUTHOR

Mr. Angelo Canale
Italian General Prosecutor of the Court of Auditors

Within the special accounting jurisdiction provided for in Article 103 of the Italian Constitution, which is exercised by the Court of Auditors, the Public Prosecutor's Office performs the functions of a public prosecutor in an appellate capacity. This is both through the appeal of judgments of first instance (the drafting of written acts for example) and orally, on the occasion of appeal hearings. The Attorney General also has a particular function, which is the general coordination of the regional prosecutors of the office.

The Regional Prosecutor's Office is our operating arm. Precisely because of this role of general coordination, the General Prosecutor's Office assumes the responsibility of signing the act which references the Public Prosecutor's Office as a direct contact. Yesterday, we had a meeting with the EPPO on operational issues. I am referring in particular to the regulatory framework that specifically concerns us here. This regulatory framework is with respect to the Public Prosecutor's Office, which is provided by a separate article of the Constitution, Article 103. Further, it is provided by Laws 19 and 20 of 1994, which have designated both supervisory and judicial functions.

Third, there is also the Accounting Justice Code. Article 325 of the TEU acts as an obligation for Member States to use all substantive legal and procedural instruments that are available to protect European financial interests with the same instruments and means that are used to protect, say, national public resources.

Therefore, according to Article 325, we also act for the protection of European financial interests, and this is the basic premise of the agreement with the EPPO. This is now a function that the regional prosecutors are carrying out and have been for about 10 to 15 years now. In the last 10 years, there have been claims of damages for fraud, both at the national and Community level. These claims have amounted to approximately 1.5 billion Euros.

As you can see, this is a fairly challenging activity that last year absorbed about 20% of our inquiries which resulted in summons to trial. It is therefore a new frontier of absolute important, and this is made clear to us by the EPPO and OLAF, both of whom we have established relationships with.

It is indeed a new frontier in light of the National Recovery and Resilience Plan, which will involve the Public Prosecutor's Office in the coming years. We have to also keep in mind that our actions are compensatory actions, so these actions do not have a function to prevent criminal activity. We intervene based on reporting and complaints that come to use from police authorities or from entities or private citizens who have experienced damage, and then we intervene after the fact.

This may seem like a limit, but this is ultimately a limit to our jurisdiction, to exercise action once there is an existing situation. The prosecutor works a lot on these issues and is certainly at the forefront of the fight against European fraud. This was the meaning that motivated my predecessors above all to establish with the European bodies a synergistic relationship of collaboration that has also become a relationship of friendship and connection.

From this friendship, we can expect in the future years a stronger relationship with the EPPO in investigating and prosecuting crimes against the financial interests of the European Community.

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THE AUTHOR

Mr. Arturo Iadecola
Italian General Vice-Prosecutor of the Court of Auditors

The Italian Constitution guarantees the Court of Auditors, as a judicial body, independence. We are a judicial body which distinguishes us from similar institutions which are in function in other EU countries, but which do not work as judicial bodies. For example, in Germany or the Netherlands, we have similar institutions which carry out audit work, but they are not judicial bodies. They do not exercise judicial functions and they do not have the same guarantees that the Italian Constitution guarantees to the Court of Auditors as a judicial body. So, we have the same independence guarantees that the Constitution grants to civil, criminal, and administrative judges, for example.

Article 100 of the Constitution establishes the independence of the Court of Auditors and its members from the Government and Article 101 specifies that the judges are subject only to the law. This is a norm that applies to the Court of Auditors as a judicial body. Then, Article 104 provides that 'the magistracy is autonomous and independent of other powers'. This refers to Corte Dei Conti too. Additionally, Article 107 provides for the immovability of the magistrates. This means that we cannot be moved to another job or place without our consent.

The Court of Auditors manages its budget autonomously. We are not subject to the decisions of Government, for example. Another element of independence is that most magistrates of the Court of Auditors are appointed following an open competition. So, just a few of us are appointed by the Government according to the choice of that Government. However, most of us become magistrates of the Court of Auditors after an ordinary competition.

So then, what about our jurisdiction? Under the Italian Constitution, the Court of Auditors has quite a wide jurisdiction. Our jurisdiction includes public accounting, including administrative liability. There are other matters within our jurisdiction which are determined by specific acts of the Parliament. Today, we will talk about administrative liability, which is the field the Court of Auditors makes its best efforts in to counter fraud which is contrary to the financial interests of EU funds.

What then is administrative liability? Administrative liability implies a damage to public funds and entails its reparation. It is governed by special rules, difference to the ones governing civil liability. In certain cases of private enterprises too, for having caused damage to public funds, this entails the duty to reparate and restore the damage. Criminal liability has the duty to impose a criminal sanction. In this case, what we carry on is something similar to a civil action. Our action is intended to obtain a reparation of the damage that has been caused by these offenders. What the law entitles us to do is not to impose sanctions, but to ask for reparation for the damage. So, both individuals and companies are subject to this responsibility.

When we refer to individuals, I refer to the historical duty of the Court of Auditors to adjudicate on the mismanagement of public resources to civil servants. Traditionally, the Court of Auditors has adjudicated on the responsibility of civil servants, but in later years, our jurisdiction has extended to individuals who are members of the private sector. This includes enterprises and companies too, when they benefit from illicit behaviour in order to obtain or misuse public funds, including EU funds.

Unlike other EU Member States, the Court of Auditor's independence is established in the Italian Constitution as an independent judicial body.

CORTE DEI CONTI

We could say that today we have two different paths for our jurisdiction, the traditional path which relates to the liability of civil servants, and the new path, which leads to judgments against private individuals or companies who have illicitly obtained public money. Of course, this kind of jurisdiction which leads to the restoration of the damage, pursues the further objective of ensuring the sound management of public resources.

We have a structure which is similar to a civil judgment, and we ask for the damage to be restored. We do not impose sanctions for example. This leads to a general prevention function, indirectly.

This is because the misuse of public funds is discouraged by the possibility of being condemned to restore these damages. Another point which is important to stress is that our jurisdiction exists not only when the damage has been caused intentionally, but also in cases of gross negligence.

The damage caused by unlawful acts can include illegal expenses or waste of money, loss, or reduction of income. Then we have the detriment caused by inefficiency of the public service and the loss of reputation of the entity involved. It has been reduced to certain cases because the law intervened and reduced the types of cases where one can be condemned for this.

The Court of Auditor's jurisdiction exists not only when damage has been caused intentionally, but also in cases of gross negligence.

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CORTE DEI CONTI

The EPPO working arrangement with the General Prosecutor's Office

VPG Arturo Iadecola – 6 April 2022

So then, what are the links between the criminal court and the financial public prosecutor (FPP)? First, the FPP's activity is independent from the Criminal Prosecutor's investigations. There are, however, important procedural links between the criminal and financial public prosecutors which guarantee adequate protection of public resources. The Criminal Prosecution Office is therefore particularly obliged to inform the FPP when public resources are involved in criminal proceedings. Further, the FPP is, on the other hand, obliged to report to the CPO any crimes it is made aware of.

Our collaboration with the EPPO has a legal basis in Article 24(1) of the EPPO Regulation. This Article provides that 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 (...)' This is more or less the equivalent to our criminal prosecution code rule which was mentioned before. We as a Member State authority have the duty to report to EPPO any criminal conduct of which it could exercise its competence, that we are made aware of. But there are two other rules that I would like to recall. The first is Article 36(6) of the EPPO Regulation.

What does the EPPO have to do towards national authorities? Do they have a duty to report to national authorities? Well this article 36(6) provision established that '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

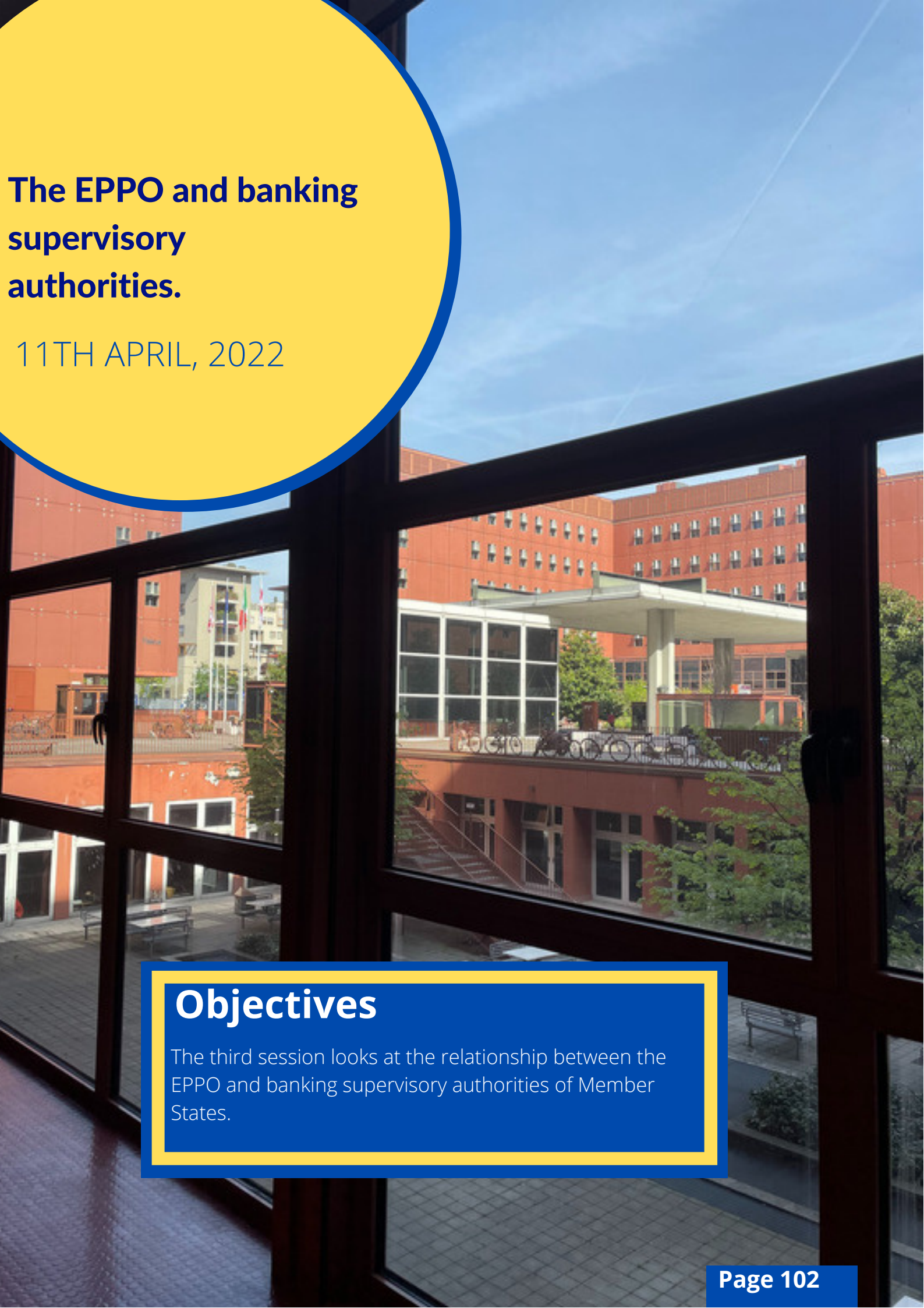
agencies of the Union of the decision to prosecute. We therefore have a connection between the EPPO Regulation and national legislation establishing the relationship and duties between the criminal prosecution office and the administrative bodies of that State.

Another example of the EPPO reporting to national authorities is derived from Article 39(4) of the EPPO Regulation. This provision notes that '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 competence national administrative or judicial authorities for recovery or another administrative follow-up.'

Our collaboration with the EPPO, particularly the interaction of the EPPO Regulation with Italy's domestic legislation regulating the duty to notify is important to consider and question. This is particularly important now since we have entered a new phase with the EPPO following the signing of our agreement on 13 September 2021.

The EPPO and banking supervisory authorities.

11TH APRIL, 2022



Objectives

The third session looks at the relationship between the EPPO and banking supervisory authorities of Member States.

THE AUTHOR

Mr. Fabio Recine
Director, Head of External Relations Division, Supervisory Department, Bank of Italy

Opinions expressed are solely my own and do not express the views or opinions of Bank of Italy or ECB.

When thinking about the cooperation between judicial authorities such as EPPO and banking supervisory authorities, there are three main reasons for this cooperation. First is the general shared interest to preserve legality as a condition of economic growth. Second, is the core principle for effective supervision and third is the legal obligation to report crimes.

On this first reason, criminal activity acts like a tax on the entire economy: it discourages domestic and foreign direct investments, it reduces firms' competitiveness and reallocates resources creating uncertainty and inefficiency. The integrity of the banking and financial services marketplace depends heavily on the perception that it functions within a framework of high legal, professional, and ethical standards. A reputation for integrity is the one of the most valuable assets of a financial institution. Additionally, the (real or perceived) lack of integrity of a financial institution may lead to a loss of confidence by investors and depositors and ultimately to its financial crisis.

When considering the second reason, on the core principle for effective supervision, we can look to the BIS/Basel Principle 29. The Core Principles for the Effective Banking Supervision (Core Principles) were originally issued by the Basel Committee on Banking Supervision in 1997, and are used by the IMF and World Bank, in the context of the Financial Sector Assessment Programme (FSAP), to assess the effectiveness of countries' banking supervisory systems and practices. Principle 29 relates to abuse of financial services. This Principle notes that 'the supervisor determines that banks have adequate policies and processes to promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities.'

The Basel "Essential criteria" used for the FSAP principles assessment further develop the principle, noting: 1) banks duty to report '*Banks policies and processes should include the prevention and detection of criminal activity, and reporting of such suspected activities to the appropriate authorities'* and 2) supervisors cooperation with judicial authorities, '*the supervisor, directly or indirectly, shares information related to suspected or actual criminal activities with relevant authorities'*.

On the third point of the legal obligation to report crimes, in some countries (such as Italy), the supervisors as public officials have an obligation to report crimes to judicial authorities. There is, notably an interplay between judicial and supervisory authorities and their functions. While the supervisory authorities have a wide range of powers and tools to intervene in a timely manner to restore legality and sound and prudent management, this role interplays with the judicial authorities and their role in preventing financial crimes and collecting information deemed relevant for institutions purposes.

As a result, there is a two-way information exchange between the judicial and supervisory authorities. The supervisory authorities may benefit from knowing the outcomes of the investigations carried out upon supervisory authorities' input. This allows for tailored supervisory actions and closer monitoring of certain intermediaries/ specific phenomenon.

So then, how does this cooperation between judicial and supervisory authorities work in practice? The cooperation between the Bank of Italy and Investigative Authorities centres on a) reports of possible offences detected in supervisory activities and information exchange, b) advisory activities and technical assistance in the context of investigations, c) training activities and d) cooperation arrangements.

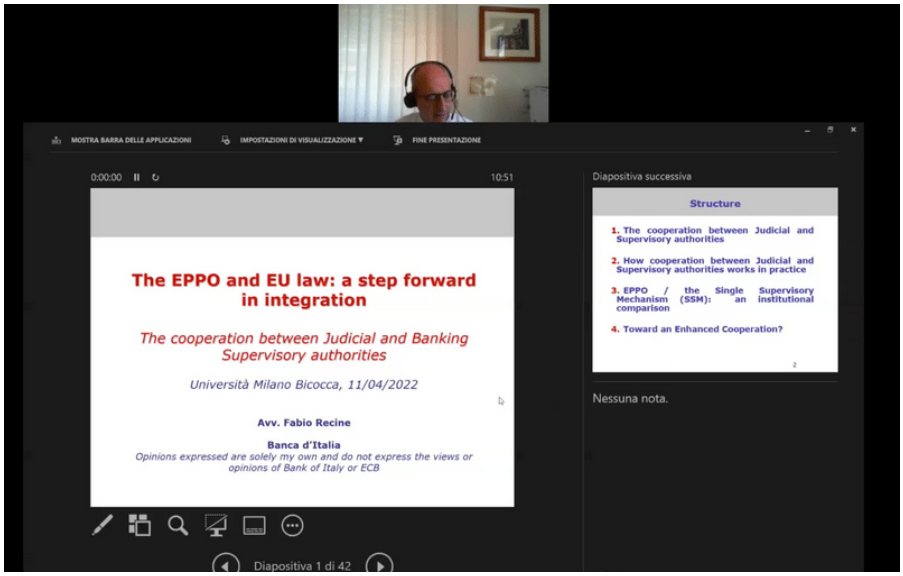
Criminal activity acts like a tax on the entire economy: it discourages domestic and foreign direct investments.

What is even more relevant to consider is how EPPO compares with the Single Supervisory Mechanism (SSM). The Single Supervisory Mechanism was established in the aftermath of the financial crisis – with the EU Council Regulation 1024/2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (on the basis of article 127(6) of TFEU. The SSM is composed of the European Central Bank and national banking supervisory authorities of the Euro area countries (including Banca d'Italia). The objectives of the SSM are to firstly, improve EMU functioning by providing for smooth monetary policy transmission and functioning of money markets; containing imbalances.

Second, it helps to break negative feedback loops between governments and banks (together with the Single Resolution Mechanism). Third, it substantially reduces the supervisory 'burden' for cross-border banks (through the Supervisory Manual) and fourth, it reduces crisis coordination failures among national supervisors.

So then, what is the interplay between the ECB and NCAs? There are three main forms. First, the day-to-day supervision on significant banks is made through the Joint Supervisory Teams (JST). Second, supervision on less significant banks remains under the responsibility of NCAs. The ECB may issue regulations, guidelines and general instructions. Third, common procedures (e.g authorisation of new banks) with participation of both the ECB and NCAs. There are in total 115 significant banks. These are just some of the important aspects on how judicial authorities work with supervisory authorities both at the national and EU level.

Interesting?
Watch the session online here
Get the presentation here



A recurring question in the EU is finding the balance between supranationalism and transnationalism. The history of EU integration is struggling between national interests and European interests. Very often we have had to compromise. We know of course European bodies such as the Commission and the EU agencies, which of course do have their own limitations. These are examples of supranationalism, however. National bodies and authorities have been left in charge for different reasons, however. This creates another level of bureaucratic decision making though. In this case, we have what we can call, transnationalism.

Looking at the SSM, the way in which it was structured, we can describe it as a mix between supranationalism and transnationalism. At the supranational level, it involves the ECB and the SSM's decision-making functions are centralized. This ensures that strong powers are attributed to the ECB and there is a full integration of administrative EU and national structures, including the ECB JST coordinator lead. But then there are also elements of transnationalism. There is still a strong role of national authorities because NCAs are still represented in decision-making bodies. Additionally, the NCA Sub coordinator and staff play a key role in preparing supervisory decisions.

In comparing the SSM and EPPO, we can compare the legal basis, legal nature, and independence of both. EPPO's legal basis derives from Article 86 of the TFEU and Council Regulation (EU) 2017/1939, while SSM's legal basis derives from Article 127(6) TFEU and Council Regulation 1024/2013. While both enjoy institutional and personal independence, EPPO is a Body of the Union, while the SSM is an EU Institution, which shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities.

Further, looking at the structure of both, EPPO has a key distinction from the SSM and other bodies. Recital 13 of the Regulation sets out that EPPO should have shared competence between EPPO and national authorities. The SSM Regulation on the other hand, does not include the same kind of wording.

By looking to these differences, what we can see is that EPPO can be considered as a mix between supranationalism and transnationalism, with powers attributed to both a centralised level and decentralised level. This will continue to influence the administrative execution of EU law and the relationship between judicial and supervisory bodies in fighting crimes that affect the financial interests of the EU.

7

The EPPO Protecting European Taxpayers' Money from Criminals

Objectives

The seventh and final topic closely examines the main EPPO cases and convictions while also looking at the EPPO, one year into its operation, including the role and competence of the EPPO in the context of the Russia-Ukraine conflict.

THE SESSIONS

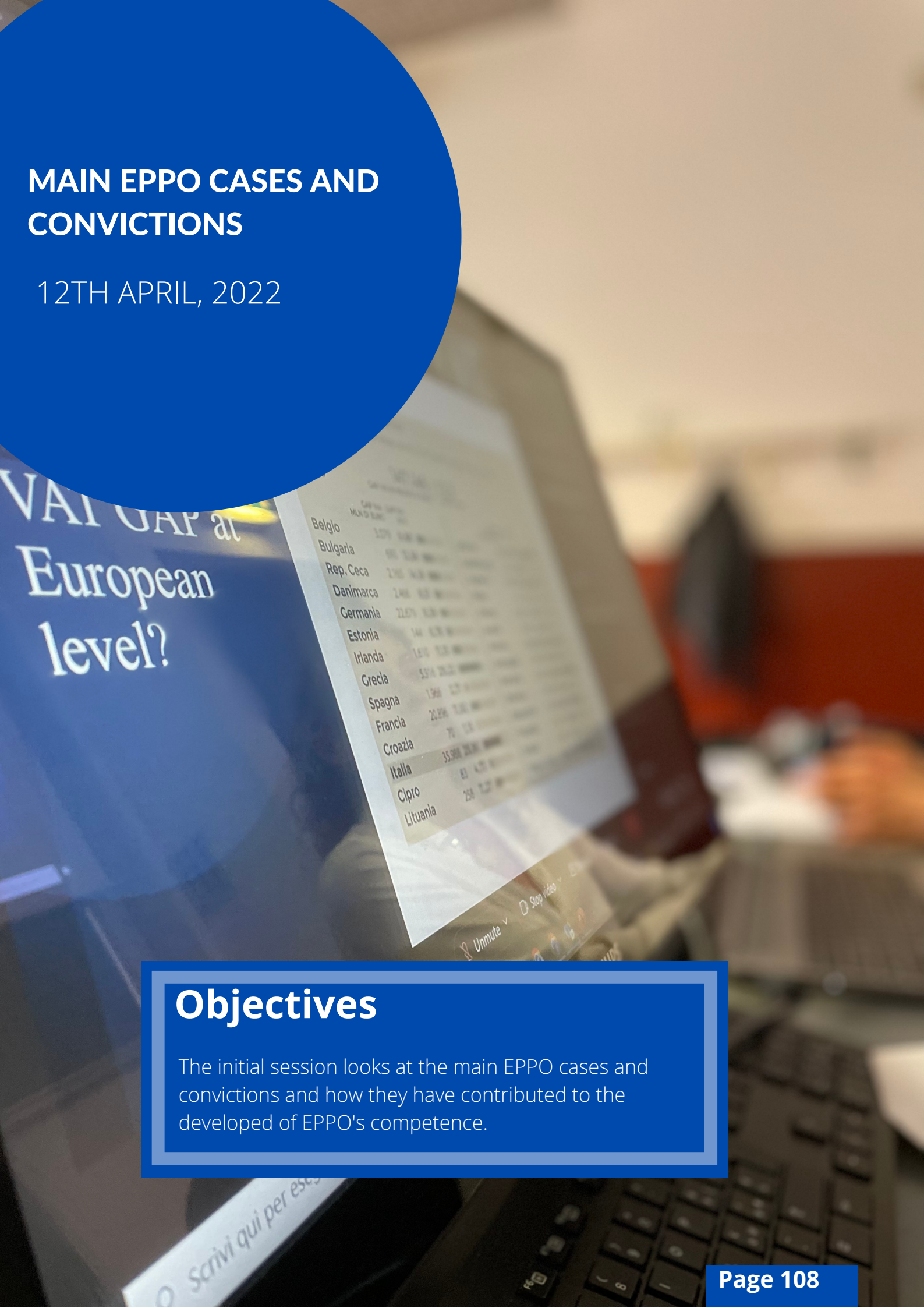
Main EPPO cases and convictions

The role of EPPO in Operation Malino

The first year of EPPO: Crimes against the financial interests of the EU in the context of the Russia-Ukraine conflict

MAIN EPPO CASES AND CONVICTIONS

12TH APRIL, 2022



Objectives

The initial session looks at the main EPPO cases and convictions and how they have contributed to the developed of EPPO's competence.

THE AUTHOR

Mr. Giacomo Bermone
Chartered Accountant and Statutory Auditor

There are widespread economic implications when VAT fraud occurs. When we talk about VAT fraud, it is important to understand that the main objective at the EU level is to protect Europe's single market. A large element of this is to remove obstacles which promote unfair competition in Europe's single market.

The loss of tax revenue at the European level has recently reached 150 billion Euros, with 50 billion Euros of this ascribed to cross-border VAT fraud. In the Italian context, the Italian Tax Office, in the period 2011-2016, lost 213 billion Euros due to fraud. This is a big gap. Further, the Italian Tax Office recently recorded that in a 17-month period, there were approximately 187 sham companies discovered monthly. This is 3188 sham companies discovered over this 17-month period. To break this down further, a sham company was discovered in Italy every four hours. What then are the main consequences of VAT fraud?

VAT fraud is the biggest problem facing Italy and Europe with respect to financial crimes, because it generates losses of tax revenue for the Tax Office. It undermines the principle of fairness and tax justice. It also feeds organized crime, distorts the economy by altering the mechanisms of fair competition, and supports extra-fiscal goals of creating slush funds, accessing public funds and money laundering from such crimes.

The main function of VAT is tax consumption in a neutral way with the purpose of reducing duplication of tax charges. The final consumer pays VAT at the end of trade and in an intra-Community trade, there is a reverse charge mechanism. So then, what are the prerequisites of intra-Community trade? There is a subjective condition where both parties are holders of a VAT number (VIES). Additionally, there is an objective condition, requiring the transfer of moveable property in exchange for payment. Further, there is a territorial condition, that being the place of departure and destination both need to be within the European Union.

An example of a transaction under the intra-EU trade regime may be where a trader buys goods from an EU supplier and resells them to a consumer. In this example, the trader who bought from the EU supplier resells to the purchaser assuming full tax liability. The purchaser here has the right to deduct the VAT paid.

An interesting example of VAT fraud is 'Carousel Fraud'. This type of fraud is where an EU supplied A sells goods to trader B (missing trader), based in another EU Member State. Trader B buys the goods without VAT and then resells the goods domestically to a third-party C (intermediary), issuing a regular invoice including VAT. Trader B is paid for the invoice with VAT, however, does not pay that VAT to the Taxation Office, and disappears from the market. This is an example of carousel fraud in an 'open-loop system'.

Another example of carousel fraud would be where an EU supplied A sells goods to a trader B (missing trader). Trader B buys the goods without VAT and then resells the goods domestically to a third-party C (intermediary), issuing a regular invoice which includes VAT. Trader B is paid for the invoice with VAT without in turn paying it to the Taxation Office and disappears from the market. In addition to the previous example however, the intermediary C sells the goods to another EU customer across borders, asking for a tax refund the VAT

Over a 17 month period, there were approximately 3188 sham companies created in Italy.

previously paid to Trader B. This an example of a 'closed-loop system'.

When thinking about the operation of sham companies, it is important to think about their common characteristics. There is no one single model for sham corporations. However, common features include having the status of a limited company with a single shareholder. They also make significant purchases, but do not have adequate assets for their operations. Further, their headquarters' location is usually in a professional office, for example, that of an accountant or lawyer. These offices are often located in urban areas with a high concentration of VAT number holders. The payment of goods is made by means of urgent bank transfers with dates close to the purchase and sale transaction dates. Additionally, the bank accounts of the missing company (B) are managed by the directors of the company (C) buying the goods. Finally, these sham companies often do not file tax returns.

The products most used in VAT fraud can include any type of product, but the most used ones are high-tech and rapidly obsolete products. A regular exporter would be a VAT holder who, in the previous 12 months, has carried out exports or other similar transactions for an amount exceeding 10% of their turnover sent to a supplier a document called a 'Letter of Intent'. The letter of intent is the document whereby a trader declares under their own responsibility, that they are eligible to be a regular exporter and expresses to the supplier their willingness to purchase goods and services without paying VAT.

What then is the connection between a regular exporter and VAT fraud? The fake regular exporter sends false letters of intent to the Taxation Office, even though they haven't carried out transactions in the previous year. The fake regular exporter buys the goods without VAT, sells them in the domestic market (generally at lower prices than those normally charged). They are paid for the invoice with VAT, without in turn paying that VAT to the Taxation Office, and then disappears from the market (missing trader).

How then, can VAT fraud be combatted? One particular tool is the refusal of a VAT deduction. This is arguably the main tool for the Taxation Office. The refusal applies in cases where there are objectively non-existent transactions, and it applies to the transferee who knowingly participated in VAT fraud. Consequently, the instrument of refusing a VAT deduction is a penalty, rather than a prevention tool, because it applies once the transaction has been concluded and not before. There are prevention tools, such as the obligation to communicate any data relevant for VAT purposes. This obligation is operationalised in a number of forms that are mandatory for a VAT number holder to complete.

These forms include the 'Spesometro' return, which has since been replaced by the communication of all invoices issued and received. Further, VAT number holders must complete an 'Esterometro' return is a statement containing information of the transaction between an operator in Italy and an operator in another EU Member State or third State. The other very important statement is the quarterly VAT statement, which contains the amount of VAT credit and VAT debt of the previous quarter.

Interesting?
Watch the session online here
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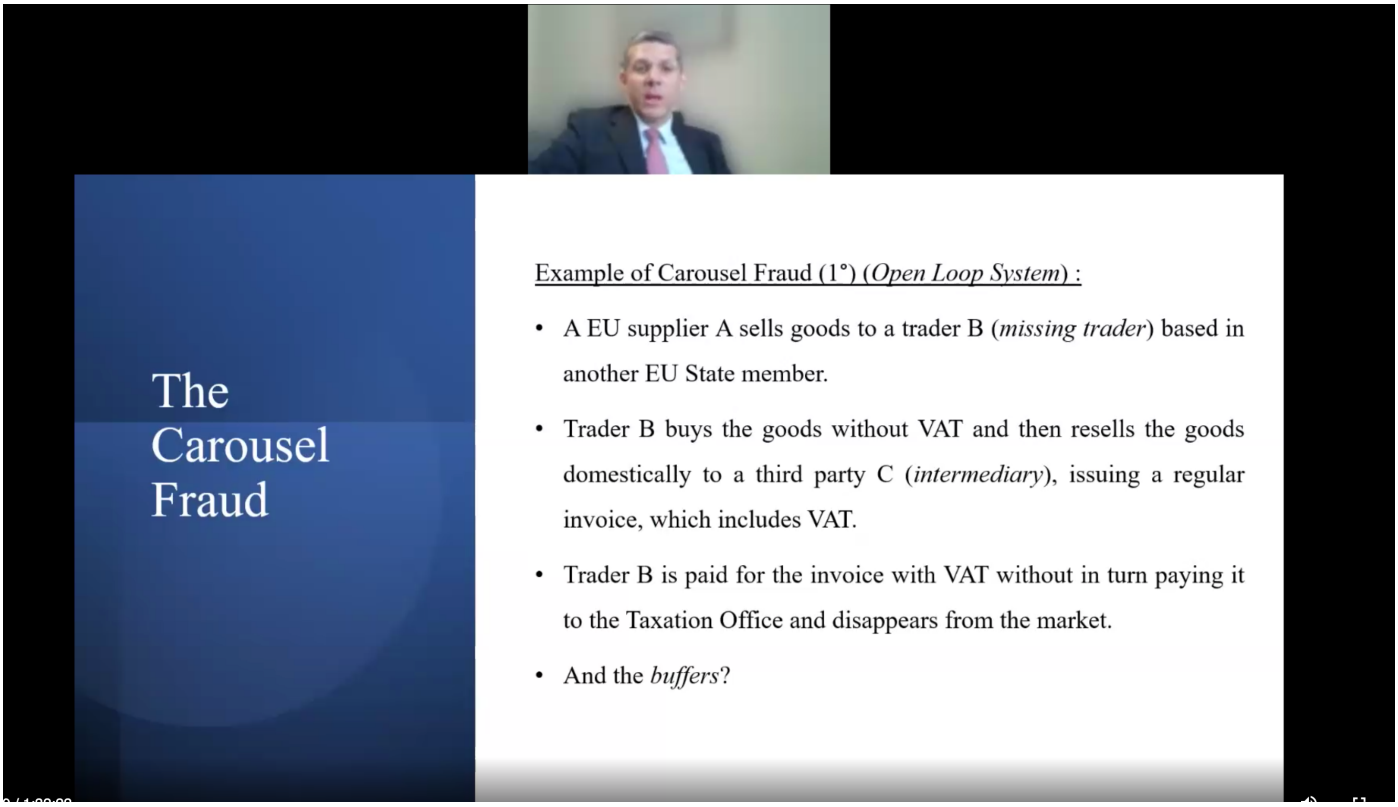
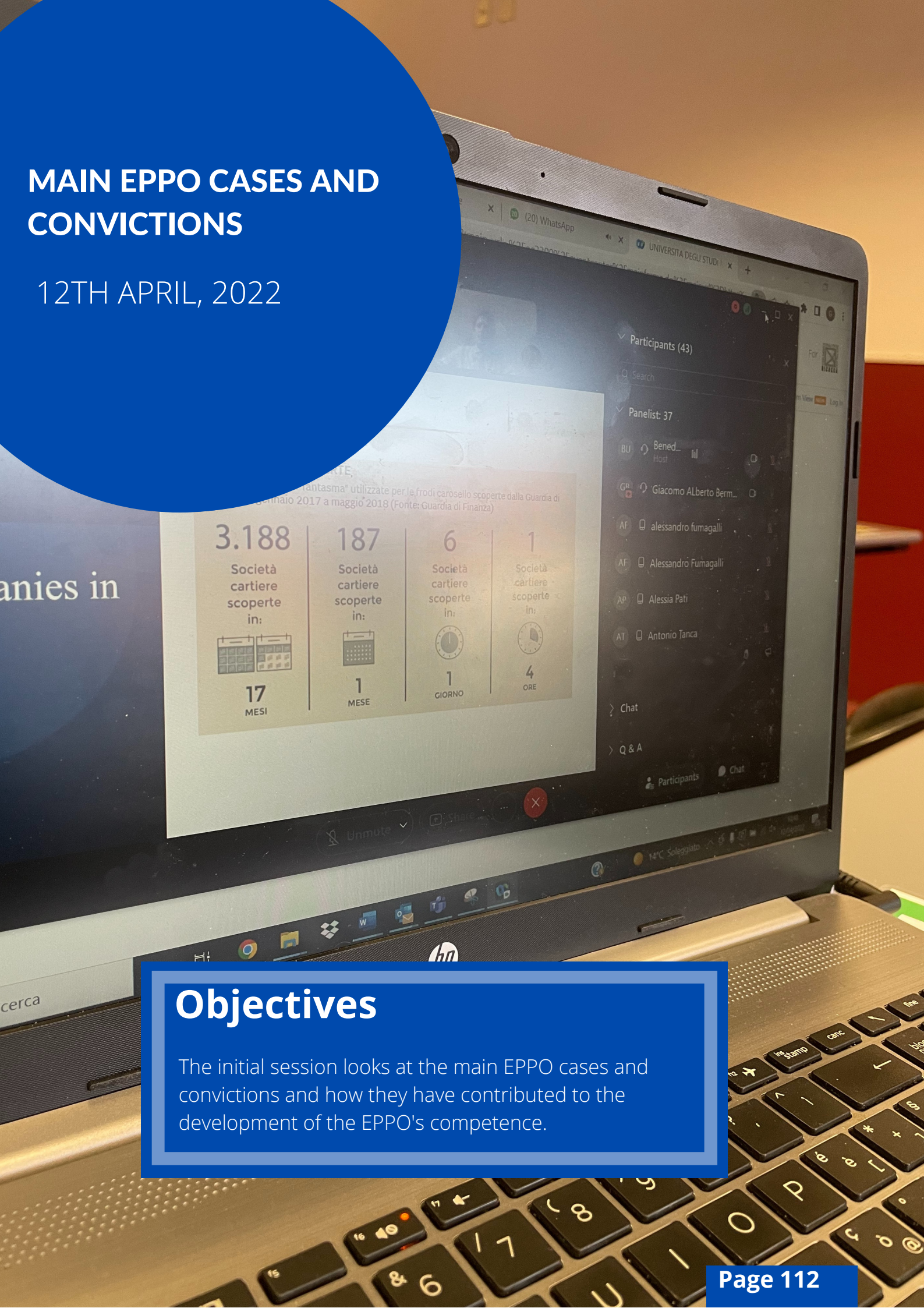


After this tax return, the Taxation Office can compare the information with the payment form that the VAT number holder paid previously. If there is a discrepancy between the amount declared and amount paid, the tax payer will receive a letter of compliance from the Italian Taxation Office. These new e-invoices help the Taxation Office to collect and compare data, which will inevitably contribute in helping to stem VAT fraud in the EU Community.

MAIN EPPO CASES AND CONVICTIONS

12TH APRIL, 2022



Objectives

The initial session looks at the main EPPO cases and convictions and how they have contributed to the development of the EPPO's competence.

THE AUTHOR

Mr. Gaetano Ruta
European Delegated Prosecutor Milan

The EPPO began to operate on June 01, 2021. With the introduction of the EPPO, there were also a number of provisions in national legislation which needed to be adapted in order to accommodate the implementation of the EPPO Regulation.

In the Italian context, the EDPs are distributed in nine cities (Palermo, Catanzaro, Bari, Naples, Rome, Bologna, Venice, Turin, and Milan). In Palermo, the EDPs are Calogero Ferrara and Amelia Luise. In Naples, the EDPs are Maria Teresa Orlando and Valeria Sico. In Rome, the EDPs are Alberto Pioletti, Francesco Testa and Maria Rosaria Guglielmi. In Bologna, the EDPs are Elisa Francesca Moretti and Pasquale Profiti. In Venice, the EDPs are Donata Patricia Costa and Emma Rizzato. In Turin, the EDPs are Stefano Castellani and Adriano Scudieri. Finally, in Milan, the EDPs are Giordano Ernesto Baggio, Sergio Spadaro and Gaetano Ruta.

Article 9 of the Legislative Decree No. 9 of 2 February 20121 is the legal basis for the powers of the EDPs and of the European Prosecutor. Article 9(1) provides that in relation to the proceedings in which EPPO decides to open an investigation, the EDPs shall act exclusively in the interest of the EPPO and in accordance with the Regulation in order to exercise the functions and powers of national public prosecutors.

Article 9(2) provides that without prejudice in any case to the ordinary rules of jurisdiction of the court, the EDPs shall exercise their functions throughout the national territory, irrespective of the place of assignment. Third, Article 9(3) provides that EDPs, in exercising the functions referred to in 9(1), shall not be subject to the powers

of direction conferred on the Chief Prosecutor, nor to the supervisory activity of the General Prosecutor of the Court of Appeal.

Article 15 of the Legislative Decree No. 9 of 2 February 2021 provides the provisions for the European Arrest Warrant ('EAW') Specifically, Article 15(1) provides that the surrender procedures concerning EAWs issued by EDPs are governed by Law No 69 of 22 April 2005.

Further, Article 15(2) provides with respect to surrender procedures, the 'issuing Member State' shall mean the Member State of the EU in which the EDP who issued the EAW is located. The competent authority for the EAW in Italy is therefore the Court of Appeal.

Regarding the implementation of the PIF Directive (EU) 2017/1371 on combating fraud to the detriment of the financial interests of the EU through criminal law, there is no detailed list of offences for which the EPPO has competence. The unifying element of competence is damage to the financial interests of the EU.

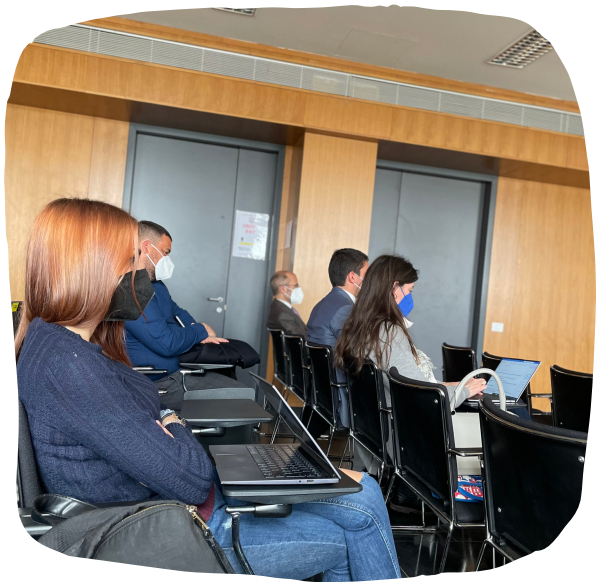
This damage is interpreted according to quantitative thresholds of importance and are contained in both the PIF Directive and the domestic implementing legislation. Therefore, in order to establish the competence of EPPO, it is essential to check whether the financial resources of the EU have been affected.

The European Delegated Prosecutors are distributed in 9 cities in Italy - Palermo, Catanzaro, Bari, Naples, Rome, Bologna, Venice, Turin and Milan.

Additionally, Articles 14 and 16 of the Legislative Decree No 9 of 2nd February 2021 provides for the division of competences between National Prosecutors and the EPPO. The competence of the EPPO 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. Articles 16 refers to the conflicts of competence between the EPPO and the national prosecutor. According to this provision, "The Chief Public Prosecutor at the Court of Cessation shall be the competent authority to decide in cases of conflict between the EPPO and one or more national prosecutors' offices according to Article 25(6) of the Regulation."

So then, what is the meaning of inextricable connection and the difference with the provision of the joining of proceedings in the Italian Code of Criminal Procedure? 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.

These are just a couple of key concerns and provisions with respect to the relationship between the EPPO and national judicial authorities needing to be explored one year into the EPPO.



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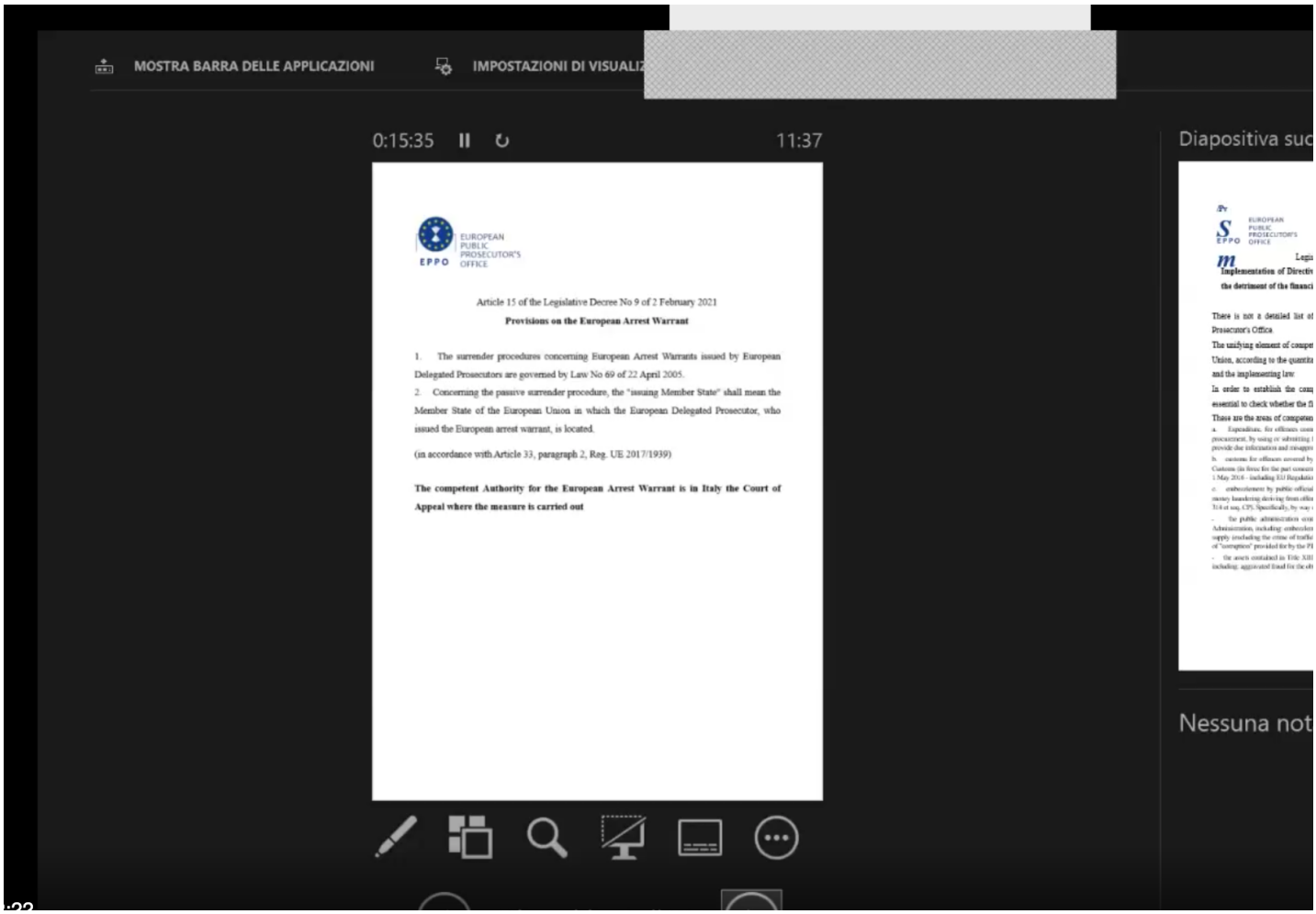

THE ROLE OF EPPO IN OPERATION MALINO

13TH APRIL, 2022

Objectives

The second session continues to look at the EPPO cases with a particular focus on the role of the EPPO in Operation Malino.

THE AUTHOR

Colonel; t. ST Fabio Seragusa
Lieutenant Colonel Head of the third budget protection group within the Economic and Financial Unit - Guardia di Finanza - Milan.

If one thinks about traditional methods of cooperation, we have in the past at the international level, had administrative cooperation, police cooperation and we also had intelligence cooperation. Further, we have judicial cooperation, which is perhaps the best level of cooperation that we currently have been judicial authorities of different countries, when those judicial authorities decide to exchange information. We also have the EPPO. It is completely different and presents a major change game in how countries cooperate with each other on criminal matters.

With respect to administrative cooperation, there is a principle within that which permits EU Member States to exchange information on an administrative basis. This means that during a tax audit, if information is exchanged from one Member State to another for administrative purposes, then this information could also be used for criminal cases. This means that if I am running tax audits and I have invoices originating from France, they arrive in Italy to the GDF or Tax Revenue Office and we understand that in those invoices there is evidence which can be useful for a criminal procedure, we can use that information.

There are obvious limits to this use, and there are procedures which must be followed to allow us to use that information. This principle, which has existed in EU law since 1977, has only as recently as 2013 been embraced by the rest of the world, with amendments to Article 26 of the Model Tax Convention of the OECD. This principle was already a part of EU thinking about integration when the rest of the world embraced it almost one decade ago.

So then, why is EPPO so different? One operation which highlights EPPO 'in action' and underlines its differences to these traditional methods of cooperation is Operation Malino. The investigation was a really simple investigation. It was the first investigation by the EPPO which arrived at our office. It started as a normal investigation against an organised crime group which the EPPO was investigating for drug trafficking. A warrant of investigation was issued by the Antimafia Prosecution Office of Milan in relation to this organised crime group operating in Italy, Germany, Portugal, and other EU countries in the field of drugs. During the investigation, which was conducted by the GICO of the Nucleo PEF Milan, it emerged that there was a connection between this investigation and another ongoing investigation in Germany.

A member of the organised crime group was the contact point for the two different illegal activities. When there was a change in the investigation, this change occurred in June 2021 when the German judicial authority decided that VAT fraud carried out by the organised crime group fell within the jurisdiction of the EPPO. The moment that the EPPO became involved in the investigation, everything changed. The investigation changed because we have two different judicial authorities working together on the same organised crime group regarding two different areas of crime – drug trafficking and financial crimes. First, we had the Italian Antimafia Prosecution Office of Milan working on the drug trafficking and the EPPO in Munich and Milan working on VAT fraud.

Without EPPO, this investigation could have taken months, if not years to conclude.

So, what was the fraud scheme? The organised crime group whose ringleader is a presumed member of the 'Ndrangheta Organised Group' operated a Valued Added Tax carousel fraud system, which delivered vehicles to different companies based in Italy, Belgium, Bulgaria, France, and Portugal through companies based in Germany. These cars however were actually sold to other people or companies. There was a suspicion that these vehicles did not leave Germany and that the tax exemption of the vehicle deliveries was claimed only with the objective that the criminal organisation gained a marketing advantage for the vehicles by being able to sell them at a price reduced by 19%. Additionally, the vehicles were sold in Germany and in other countries illegally by applying a margin scheme.

The scheme itself is easy. The organised crime group is based in Italy with important links in Germany. They had two different companies. The larger one was real while the other company was fake. They used the fake company to send invoices to an Italian nominee who was completely unaware that they had 40 or 50 cars in their name. One case, the organised crime group had stollen someone's identity. Next, the fake company sells to the Italian nominee.

The Italian nominee sells to the missing trader, then the missing trader sells to a real company in Italy. So, the scheme is a very simple one. However, for the Italian side, we would have never discovered this because in Italy, apart from some very few details in the final step of the scheme, there wasn't actually that much VAT loss. The majority of the VAT loss was in Germany. From the Italian point of view, this investigation wasn't that important for Italy, however, it was important for Germany.

With respect to operational aspects of Operation Malino, we did conduct phone tapping as well as seizing and tapping email addressed. We also conducted observations of all suspected, used technical observation (IMSI monitoring) and money flow and STRs analysis. Regarding open field operations, there was a search of 14 locations in Germany as well as a search of 31 locations in Italy. This Operation reveals that without the EPPO, this investigation would have been longer than eight months. If you have to perform for example police cooperation, judicial cooperation and so on, it would have taken perhaps years. Here, in less than one year, we conducted the investigation and concluded everything. This is a big change indeed. EPPO represents a big change in mutual cooperation for criminal offences across EU Member States.

Interesting?
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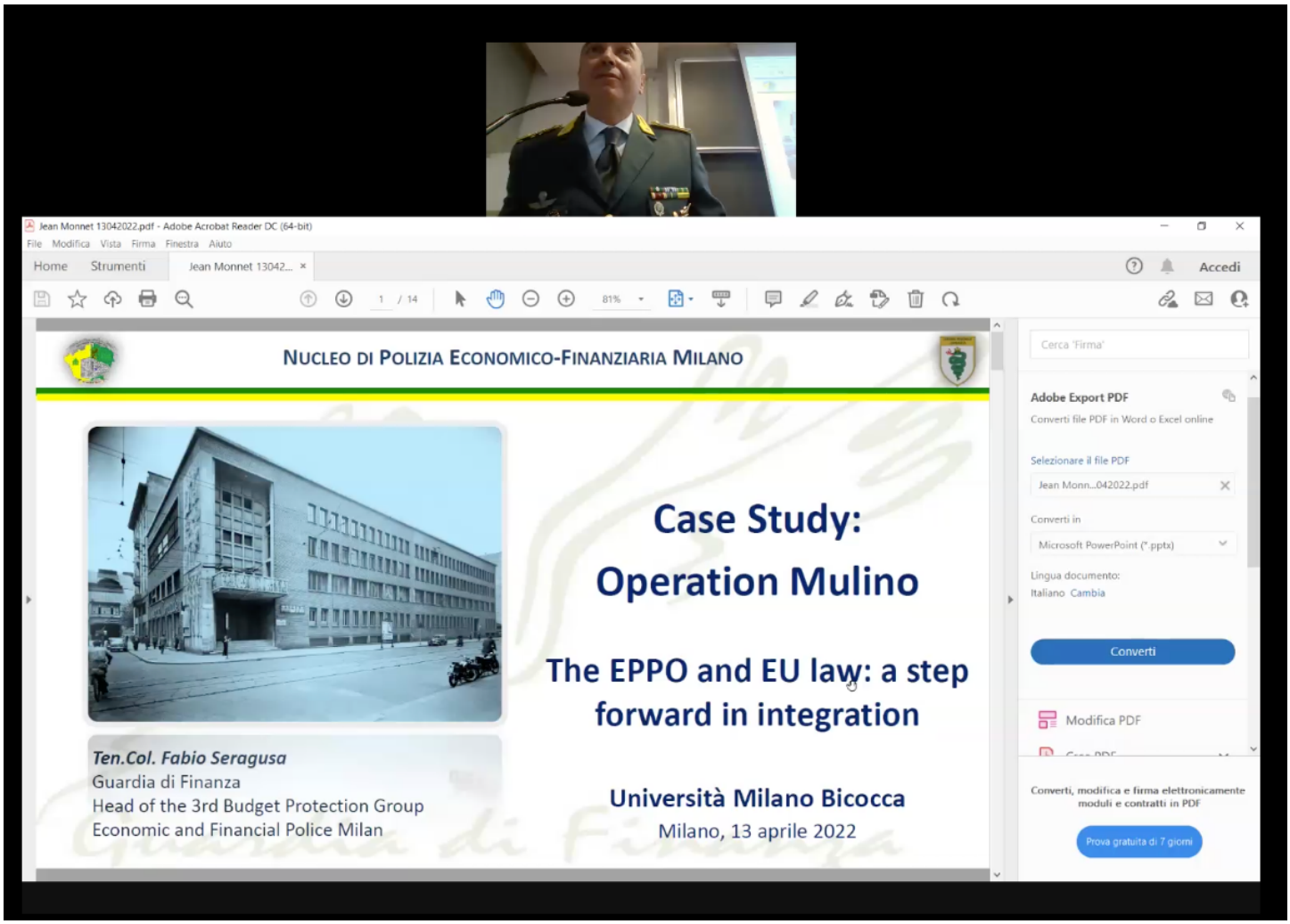

THE ROLE OF EPPO IN OPERATION MALINO

13TH APRIL, 2022

Objectives

The second session continues to look at the EPPO cases with a particular focus on the role of the EPPO in Operation Malino.

THE AUTHOR

Colonel t.ST Giuseppe D'Urso
Head of the Economic and Financial Police Unit - Guardia di Finanza - Milan

As an example, let me cite the operation called "KOMOSECHIAMA-MULINO", coordinated by EPPO and carried out by Nucleo di Polizia Economico-Finanziaria of Guardia di Finanza of Milan and Criminal Investigation Department of the Police Headquarters of Upper Bavaria North. The operation allowed seizures worth more than €13 million in Germany, Italy and Bulgaria, as well as the arrest of 10 people suspected of forming a criminal organisation and evading taxes, by setting up a so-called VAT carousel fraud to re-sell cars multiple times across different EU countries.

The operation has a great relevance not only because is the first case where an EPPO's investigation ended with precautionary measures, but also because – as pointed out by European Chief Prosecutor Laura Kövesi – it reveals "*the paradigm shift that the creation of the EPPO has brought about for cross-border investigations. This is the new reality of the EPPO zone: no more cumbersome mutual legal assistance formalities; speedy and decisive action; and focus on effective damage recovery.*"

Although it is hard to predict how the new cooperation will evolve, it is apparent that "*in this new reality*", Guardia di Finanza is called to play an increasing crucial role.

ONE YEAR OF THE EPPO

20TH APRIL, 2022

Objectives

The final session engages a panel discussion on one year of EPPO, particularly focusing on the EPPO's competence within the context of the Russia-Ukraine conflict.

THE AUTHOR

Mr. Francisco Fonseca Morillo
Director of the European Studies Institute at the University of Valladolid; Former Deputy Director General in DG Justice at the European Commission

THE EUROPEAN PUBLIC PROSECUTOR ONE YEAR AFTER

We always stand and wait

John Milton. The Lost Paradise

Is EPPO really going to be a European central actor. What do we need it?

Let me begin with the following declaration of Laura Kövesi, European Chief Prosecutor during the ceremony taking oath of the European Public Prosecutor's college before the European Court of Justice. Luxembourg, 28 September 2020.

"Public concerns related to financial frauds, corruption and Rule of Law have grown stronger than ever. By protecting the European Union's budget, we will play an essential role in making the European citizens' trust in the Union stronger than ever".

The EPPO was conceived as an ambitious project focused on filling an important black hole in terms of fight against financial crime. [1] Despite the enormous efforts having been necessities for its creation, the need was there. The real question is whether the EPPO is fulfilling high expectations.

The baby is born

The EPPO is nowadays a reality. In September 2020 a long and windy process began after the adoption on 12 October 2017 of the Council Regulation 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office[2], arrived at a successful birth in conformity with Article 120.2 of the Regulation.

This three year 'pregnant period' correspond with the ambitious project setting up a 'federal machine,' responsible for investigating, prosecuting, and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union" (art. 2 of the Regulation).

But itself shows the "vis atractiva" of the EPPO:

- From an Office with only 16 Members formally notifying their wish to establish it in enhanced cooperation in April 2017[3], to the current 22.[4] The paradox is that into the Internal Market, even the 5 countries non-participating in the EPPO are affected for the development of its operational activities If the financial crime is transborder by nature, EPPO and these countries will be obliged to work together frequently.[i]
- From a 'real professional and independent' procedure of selection of the European Chief Prosecutor based on expertise and merit only, to the appointment of a solid "hard core" of European delegated prosecutors and national offices in the 22 participating States[ii]
- From a certain 'administrative scepticism' coming from 'mentoring' attitudes, at the European bodies level, as well as from National Administrations, to an EPPO "coming in town". The difficult drafting of Chapter X "Provisions on the relations of the EPPO with its partners" has

[1] See Peter CSONKA "*Le parquet européen: le nouvel acteur de l'espace judiciaire européen*". L'Observateur de Bruxelles nº 112, abril 2018, p. 16

[2] Official Journal of the EU L 283 of 1.10.2017, L 283 p 1

[3] Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Germany, Finland, France, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain

[4] Austria, Estonia, Italy, Latvia, Malta and Netherlands, having joined too the enhanced cooperation.

been fundamental to set up a "mutual trust" between European bodies with sectorial competences in this area. The contrary would have been irresponsible[iii].

In a nutshell, the EPPO has quickly found its place in the European universe.

So, what next? From expectations to a delivery exercise:

If the first year of activity has shown how the baby was progressing. From now EPPO must be at the level of expectations raised.

In particular, the EPPO must qualitatively move forward its activities in three clusters, as developed in the Single Programming Document of the EPPO 2021-2023[iv]:

- Process caseloads timely and efficiently, and conduct impartial, independent, high-quality investigations and prosecutions, progressively leading to more convictions, improved recovery of fraudulently obtained Union funds and enhanced deterrence of committing offences affecting the EU's financial interests.
- Develop strong and smooth cooperation with key partners, with a view to ensuring effective exchange of information between the European and national competent authorities, support core EPPO activities, and address existing gaps in the protection of the Union budget.
- Achieve an organisational and management model that can respond to the demands placed upon the Office so that it may perform its functions with the required quality, effectiveness, and efficiency. Ensure excellent IT and communication capacities to tackle existing and anticipated challenges arising from the complex environment in which the EPPO operates.

Used correctly and proactively, this will allow us to keep trusting in the potential success of the EPPO. The EPPO's success is a matter of high importance to reinforce the confidence of European citizens and public stakeholders in the added value of a 'federal machine' able to tackle organized crime (1); recover public money in the benefit of National and European budgets (2); and reinforce in these troubled times the necessity of the European project against populists and antidemocratic threats.

Valladolid, 15 May 2022

Francisco Fonseca Morillo

European Law Professor

University of Valladolid

[i] See, for instance, Article 99 of the Regulation. At the end of 2021, these countries were involved in a total of 48 EPPO cases (EPPO Annual Report 2021, p. 45)

[ii] 94 European Delegated Prosecutors and 35 National Offices at the moment of the publication of the EPPO Annual Report 2021

[iii] According to the EPPO Annual Report 2021 there is a total of 190 crime reporting statistics where EPPO has collaborated with OLAF, European Court of Auditors European Investment Bank and European Central Bank until the end of 2021 (EPPO Annual Report 2021, p. 88)

[iv] Decision 119/2021 of the College of the EPPO of 24 November 2021

PANEL:

THE RUSSIA-UKRAINE CONFLICT: THE EPPO AND CRIMES AGAINST THE FINANCIAL INTERESTS OF THE EUROPEAN UNION.

AUTHORS

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MODERATOR:

Mr. Francisco Fonseca Morillo

Director of the European Studies Institute at the University of Valladolid; Former Deputy Director General in DG Justice at the European Commission

How could OLAF assist the EPPO in the identification and reporting of PIF offences related to the conflict in Ukraine?

THE AUTHOR

Mr. Petr Klement
European Public Prosecutor
Czech Republic

Thank-you for the question. It is an interesting question, and even the topic is more topical than it may seem at first instance. This is because the underlying topic, of the EPPO's competence, is there. I think we could spend the whole day discussing the competence of the EPPO in participating Member States, and in relation to inextricably linked offences.

In general, I would say that where there is money, there is fraud. We can see that there is quite a lot of money connected to Ukraine, not necessarily to the conflict itself. I think it has already been stated that the EPPO will barely have competence over the war crimes, and I think that would be mere speculation that the EPPO competence could or should be extended in that way.

It is true that the Commission set up a freeze and seize taskforce in March 2022. This task force has met several times, and it also met with USA authorities in order to coordinate the imposition of sanctions and the freezing of property in possession by Russian and Belarusian individuals and companies. They also explored the interaction of sanctions with criminal law measures. As of now, approximately 30 billion Euro was frozen until about three weeks ago. Further, about 196 billion Euro in financial transactions has been blocked, in cooperation with financial intelligence units. As you can see, there is a lot of money and property in question.

It should therefore be emphasised in relation to the detection and freezing of property that EPPO has already signed a working agreement with Ukraine's General Prosecutor's Office. This occurred approximately a month ago, directly after the conflict first arose. So the EPPO is in touch with Ukrainian authorities and would like to and will assist if required.

It is also true that there was and is a mission of the EU in Ukraine, and there were investments in Ukraine even before the war. As it was also mentioned earlier, there are ongoing discussions with Member States and the Commission on whether the Member States can use already received subsidies for social projects to help Ukrainian refugees. It seems like these Member States will receive more money from the Commission.

So, we should territorially distinguish between an investigation within participating Member States and in Ukraine itself. As for OLAF, it is true that the Commission often relies on OLAF for detecting and investigating the irregularities, but there is of course the underlying issue of whether there is the existence of competence for the EPPO. This is because the EPPO's competence is of crimes affecting the EU budget.

Several pieces of EU legislation have given the Commission and OLAF a mandate to investigate irregularities outside of the EU. The legal basis for the conducting of such investigations is bilateral stabilisation association agreements between the Commission and beneficiary countries seeking membership in the EU. OLAF has also already developed anti-fraud cooperation clauses in agreements between the EU and third countries, and Ukraine is one of them. So cases of EU investments in Ukraine would be no exception. It would be dealt with as any other external investment of the EU, and of course those frauds potentially taking place in the territory of a participating Member State would be dealt with as classical frauds.

At which specific moment and in which concrete circumstances of the Ukraine-Russia conflict could arise the EPPO competence, and which would be then the main financial crimes of real interest to EPPO?

THE AUTHOR

Professor Pietro Suchan

Professor of "Legislation for the protection of the economy and security" - Academy of Financial Police; former magistrate-assistant in the Italian representative - Eurojust

EPPO may have judicial competence in the misuse of European funds, corruption, embezzlement etc., but for these crimes of course, to be investigated and prosecuted by the EPPO, competence needs to be established in the Ukraine-Russia conflict.

In the current conflict, we cannot establish this competence at this moment. We need to wait for the conflict to finish. It is practically and completely, in my point of view, nearly impossible to start a criminal investigation in Ukraine, concerning these crimes at this very moment. Further, Ukraine could become a Member State of the EU. However, it has not been said whether Ukraine would enter the enhanced cooperation underpinning the EPPO, if ever. We have Member States like Poland and Hungary, where the EPPO's competence is not established.

When the conflict ends, we will then be presented with real possibilities to start a criminal investigation by OLAF, the EPPO or even Eurojust. Europol is a very important institution/agency that has a very highly developed working agreement with the EPPO.

Further, Eurojust is present in a lot of situations. For example, Eurojust is currently present in one joint investigation team between Lithuania, Hungary, and Ukraine. This is the first step for Eurojust in the current Ukraine-Russia conflict. Of course, the main financial crimes that could come out of such investigations in this context may include bribery and the misuse of EU funds.

But another really important aspect of this conflict to remember is the relevant tax fraud concerning petrol, gas and wheat revenue. These are goods that arise and feed the appetite of organised criminal groups. Regarding these goods, attention across the EU has been on high alert, particularly around establishing whether there are any fraud carousels in operations, and whether those are valued at over 10 million Euros. Therefore, the EPPO could play a relevant role in these investigations and prosecutions at the conclusion of the conflict as this type of fraud would likely fall within the EPPO's competence.

At this specific moment however, we need to wait for a calm situation because it is not possible for this conflict to continue forever.

In light of the recent events and in light of the working agreement signed between the EU and Ukraine, how can the work of the EPPO be considered?

THE AUTHOR

Ms. Fabrizia Bemer
Senior Manager of the Office of International Judicial Cooperation Office -
Public Prosecutor's Office of Florence.

I agree with my colleagues about needing to first establish the EPPO's competence after the conflict has ended. Everyday I see European Investigation Orders. Why do I mention this? Well Poland, which is not a Member State of the EPPO, is now sending lots of EIOs. This is a problem, because they have yet to understand the significant potential of joining the EPPO. As the previous speakers have noted, the EPPO is not important now, during the conflict. However, what will be important is what happens after the conflict ends.

After the conflict, there will be a lot of work for the EPPO, because the financial interests, we have spoken about EU funds used for reconstruction for instance, must be scrutinised and protected. In some cases, it is impossible to follow the money. I think for the future, EIOs, especially for the EPPO, will be important because they help in effective and efficient cooperation between Member States. So, it will be important for the EPPO to use these.

If we look to articles about the EPPO's activities, we can actually derive some important lessons, because these articles themselves provide hints and ideas about how people think and where they want to place their interests. The golden rule, as it has been stated already, is to follow the money.

For instance, there is an article dated 28th March 2022, where Eurojust communicated that there was a joint investigation team between Poland, Ukraine, and Lithuania, to enable the exchange of information. It was said to be about war crimes. Well, on the surface, they are not financial crimes and therefore they are not of interest to the EPPO.

However, there has been an exchange of information for the joint investigation team, which could be used as evidence for future investigations by the EPPO. Further, if we analyse that evidence, perhaps we will see that there are potentially crimes being conducted which are important for the EPPO.

Another article Europol published on April 18th, 2022, focuses on an operation supported by Eurojust. It was signed to target criminal assets owned by individuals and legal entities sanctioned for the Russian invasion of Ukraine. Then, there are many other examples of organised crime, such as fraud in funds provided for reconstruction efforts. When reconstruction occurs, it will be very difficult to follow the money, so we must be very careful and strict. The EPPO is important here, as this type of fraud is something that the EPPO must consider. So the public prosecutor's office in Member States must understand how collaboration can be maximised with the EPPO. To conclude, I will say that if we do not collaborate with the EPPO or each other, then criminals will. Collaboration is fundamental.

The EU has approved a large amount of money for Member States to send aid to Ukraine. Corruption may be present in these business relations through the collection of illegal commissions. The question arises as to whether the European Public Prosecutor's Office is competent and what its role is.

THE AUTHOR

Ms. Begoña Vidal Fernandez

Academic Secretary of the Institute of European Studies of the University of Valladolid; Coordinator of the Master of Advanced Studies in the EU of the University of Valladolid and Associate Professor of Procedural Law University of Valladolid

The competence of the European Public Prosecutor's Office needs clarification. Specifically, the first point needing clarification is whether the EPPO would be competent to investigate/prosecute for such crimes. The second point needing clarification is whether the EPPO would be competent to this crime relating to Ukraine, regardless of whether the crime was committed in an EPPO Member State.

Regarding the material and territorial competence of the EPPO, there are two points of concern. Firstly, with respect to the crime itself, the European standard indicating the offences over which the EPPO would have jurisdiction is Directive 2017/1371, on the fight against fraud to the Union's financial interests by means of criminal law.

Second, concerning the EPPO's competence regardless of the Member State's territory in which the offence was committed, the EPPO is competent to investigate and to prosecute any corruption against financial interest of the EU (artide 22.1 EPPO Regulation).

The offense of corruption can be fraud against the interests of the EU, but also bribery or trading influence, which are the responsibility of the national prosecutor's office. However, if the offense of corruption appears inextricably linked to European fraud, the investigation and prosecution is the responsibility of the EPPO (article 22.3 EPPO Reg.). A problem arises because the Regulation does not define criteria for determining when this inseparable connection exists. In cases of discrepancy, who decides?

According to the EPPO Regulation, the national authority is competent to decide the attribution of competences concerning prosecution at the national level (article 22.6). Member States specify the national authority. In cases of conflict of competence, the CJEU shall have jurisdiction to give preliminary rulings ((article 42.2-c) EPPO Reg.). So, it is necessary to have a judicial resolution. But what about when there is no judicial resolution?

The Regulation is always thinking on a judicial body as a national competent authority. But there are Member States where this national authority is not a judicial body, as is the case in Spain, where it is the General Prosecutor. The EPPO has no right to ask for preliminary rulings, nor do national prosecutors. In such a case, the CJEU cannot fulfil its role as the final interpreter of EU law. And if there is not any national judicial remedy against the competent national authority, the only solution is for the Commission to bring an infringement action against that Member State.

If it happens in Poland, we have the problem that the EPPO is not "aquis communautaire" but an enhanced cooperation in which Poland not only does not participate, but does not cooperate, as so far there are problems in obtaining its cooperation for investigations of crimes against EU financial interests located on its territory (according to the EPPO'S Annual Report 2021).
To conclude on a positive note, the SPTO has started negotiations with the aim of reaching working arrangements with the Ukrainian authorities.

QUES

"I would like to get your comments about the response that you have received from national police authorities, because the investigations have been going on in the national territories, so I'm curious to know how the national police authorities have been responding, whether the cooperation has been going well or whether there is some room for improvement, considering each national system has very different and very specific police authorities."

Well this question is quite easy to answer, otherwise there have been quite a lot of topics from my personal point of view mixed entirely together. When dealing with the cases themselves, we simply don't have enough space, time and competence to deal with let's say the future policies of EU and Member States themselves and their abilities to investigate. When deciding on our competence over the cases, we have to have a sort of tunnel vision of the case. Before going back to the question, I think we should speak about the EPPO competence from the point of view of territoriality about cases related to the Ukraine and PIF interests of EU in participating Member States, in Ukrainian territory and maybe in non-participating Member States. In view of Article 23(C), there always has to be the existence of a participating Member State competence in all aspects, including temporal competence and so on. As for national authorities, there is a different situation in all 22 participating Member States, but as far as I could see, there have not been any particular problems apart from the problems of EPPO competence, or even as you know, the very well-known problem of Slovenia. So I would say if there's enough political will, and there is enough political will, the cooperation itself with national police and authorities is usually very good, and I would say even better than with the standing structures of prosecution. This is because the EPPO is something new and something with which local police and national authorities connect their hopes. This is a very important aspect in any sensitive situation, which is confidence and mutual trust. The more specialised investigators need to have confidence and trust that the prosecutor would not disregard the case or deconstruct or spoil the investigation by any means or actions. So I would say that the cooperation, is very, very good. We are in new terms; we are building new relationships. We have a good team, reliable prosecutors, and I believe it is the same case in Italy for example. The hopes are high. As for the investigations in relation to the topic in Ukraine let's say, or in any post war country. It is a complex one and very difficult. The environment is corrupt by the war, by the experience of the people

TIONS

""The EPPO must continue expanding its competence. So, would it be possible in the future to have more competence for crimes like human trafficking, terrorism etc? "

The problem is Article 23. We cannot discuss in an abstract form, crimes of corruption, bribery committed in Ukraine or indeed the expansion of the EPPO's competence, if we do not have a link with a Member State of enhanced cooperation. We have to start from our country. The investigation has to start from Italy, Spain, Belgium etc. But let's just start from our country, our point of view. This, concerning the corruptive crimes, carousel fraud is different. This is a very tricky question. I think from this point of view, at the moment, we do not have elements to have a clear opinion about misuse of funds by the banks. These are the topics we have to control we the misuse of funds not justified. In this field, of course the bank is of course very right. The question of the role of the bank system is fundamental, but also from this point of view, I appreciate very much your observation, we have to start not just from the abstract, but from the reality of the practice.

There are many areas of this conflict and the EPPO's competence we can speak on. We can speak of cryptocurrencies for example. It is also increasing, especially now because following cryptocurrencies is very difficult. This is something that is in parallel to the war for instance. This could give more importance to the EPPO. This is the system where many EU countries are altogether in this system to exchange EIOs and also EAWs are trying. This is interesting.

"How do you see the EU's efforts advance the digitalisation of justice enhancing the EPPO's work moving forward?"

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