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The European Public Prosecutor's Office as a Global Actor

From the Fight Against Financial Crimes to the Repression
of Other Serious Transnational Crimes

Emanuele Vannata

Ph.D. Candidate; Honorary Fellow in EU Law and
International and European Criminal Law,
University of Salerno

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**EU
GLOBACT**
TRANSNATIONAL CRIME AND EU LAW:
towards Global Action against Cross-border Threats to
common security, rule of law, and human rights



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The Institution

- The Council of the European Union established the European Public Prosecutor's Office (EPPO) **to investigate and prosecute the perpetrators of fraud affecting EU revenue and expenditure**, in many cases involving multiple EU countries, and often committed by organized criminal networks.
- The establishment of a European Prosecutor's Office has been a matter of **academic and political discussion** for nearly twenty years. The debate began in 1997 with a *Corpus Juris* project presented by a group of experts directed by Professor Delmas-Marty and was relaunched in 2009 after the Treaty of Lisbon provided the legal basis for such a Union-level prosecution system. In 2013, the European Commission launched its proposal for setting up the EPPO under Article 86 of the Treaty on the Functioning of the European Union (TFEU) and in 2017, the EU Council established the European Public Prosecutor pursuant to the TFEU's "enhanced cooperation" mechanism between seventeen EU member states.
- The EPPO is located in Luxembourg and **began its operational activities** on 1st June 2021.



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- According to art.86 TFEU:

“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. The Council shall act unanimously after obtaining the consent of the European Parliament.

In the absence of unanimity in the Council, a group of at least nine Member States may request that the draft regulation be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft regulation concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply”.



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The Main Steps

- On 17 July 2013, the Commission adopted a Proposal for a Council Regulation establishing the European Public Prosecutor's Office (EPPO).
- At its meeting on 7 February 2017, the Council noted the lack of unanimity on the draft regulation.
- In accordance with art. Article 86(1) TFEU, a group of seventeen Member States requested, by letter of 14 February 2017, that the draft regulation be referred to the European Council.
- On 9 March 2017, the European Council discussed the draft regulation and noted the absence of agreement pursuant to art. 86(1), third paragraph, TFEU.



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- On 3 April 2017, Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Germany, Greece, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain notified the European Parliament, the Council and the Commission of their wish to establish **enhanced cooperation** on the establishment of the EPPO. Therefore, pursuant to art. 86(1) TFEU, authorisation to proceed with enhanced cooperation under art. 20(2) of the Treaty on European Union (TEU) and art. 329(1) TEU shall be deemed to have been granted.
- By letters of 19 April 2017, 10 June 2017, 9 June 2017 and 22 June 2017 respectively, Latvia, Estonia, Austria and Italy indicated their intention to participate in the establishment of enhanced cooperation.



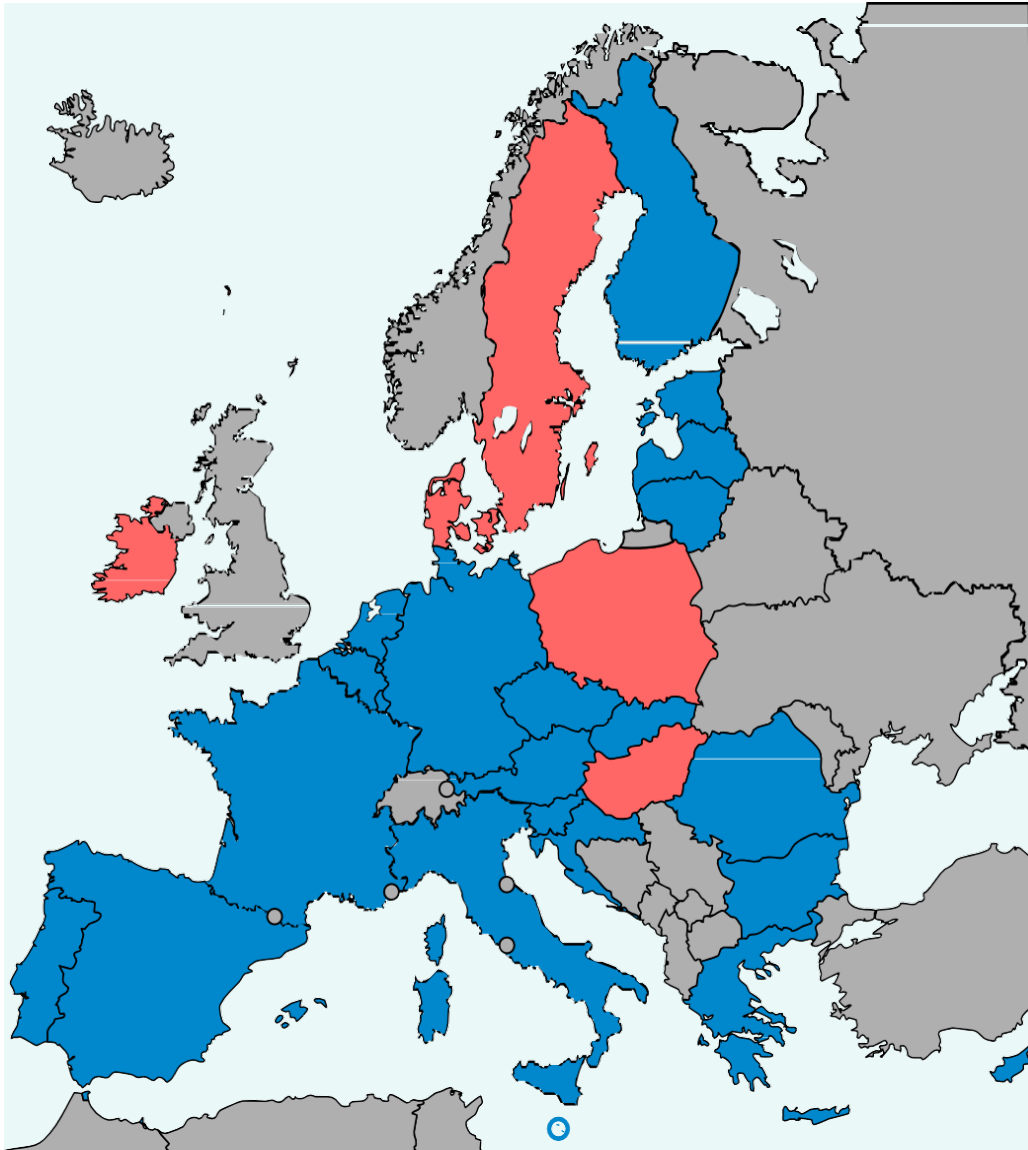
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The Map

- 22 PARTICIPATING MEMBER STATES:

Austria	Estonia	Latvia	Romania
Belgium	Finland	Lithuania	Slovakia
Bulgaria	France	Luxembourg	Slovenia
Croatia	Germany	Malta	Spain
Cyprus	Greece	Netherlands	
Czechia	Italy	Portugal	

- 5 NOT-PARTICIPATING MEMBER STATES:

Denmark
Ireland
Poland
Sweden
Hungary



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The EPPO, in number

- The [EPPO's Annual Report 2023](#) demonstrates that **serious organised crime continues to feast on EU revenue**. Of the total estimated financial damage corresponding to the EPPO's active investigations during the reporting period, **€11.5 billion (59%) was linked to cross-border VAT fraud**. This type of crime is nearly impossible to uncover from a purely national perspective, and often involves sophisticated criminal organisations, who do not shy away from extreme violence when it comes to protecting their interests, and have almost unlimited means of corrupting our democratic institutions.
- The level of awareness about the EPPO among European citizens increased, as indicated by the **2 494 crime reports from private parties** (29% more than in 2022). The detection of EU fraud by the responsible national authorities has also continued to improve, with **1 562 crime reports** (24% more than in 2022). In total, EPPO received and processed **4 187 crime reports** (26% more than in 2022).
- By 31 December 2023, EPPO had **1 927 active investigations**, for estimated **damage of over €19.2 billion**. With **139 indictments filed** (over 50% more than in 2022), the EPPO started to bring more perpetrators of EU fraud to judgment in front of national courts. Ultimately, in line with the EPPO's objective to focus on damage recovery, judges granted European Delegated Prosecutors **freezing orders worth €1.5 billion**, which is over four times more than in 2022.



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A Step Back: The Enhanced Cooperation

Article 20, TEU

1. *Member States which wish to establish enhanced cooperation between themselves **within the framework of the Union's non-exclusive competences** may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union.*

*Enhanced cooperation shall aim **to further the objectives of the Union, protect its interests and reinforce its integration process**. Such cooperation shall be open at any time to all Member States, in accordance with Article 328 of the Treaty on the Functioning of the European Union.*

2. *The **decision** authorising enhanced cooperation shall be **adopted by the Council** as a last resort, **when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it**. The Council shall act in accordance with the procedure laid down in Article 329 of the Treaty on the Functioning of the European Union.*



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- Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Treaties, with the exception of fields of exclusive competence and the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed (art. 329, par. 1 TFEU);
- **Authorisation to proceed with the enhanced cooperation shall be granted by the Council, on a proposal from the Commission and after obtaining the consent of the European Parliament** (art. 329, par. 2 TFEU);
- In some cases the authorisazion shall be considered granted *de iure* (e.g., within the framework of criminal, police and judicial cooperation, as the case of EPPO).



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- The enhanced cooperation:
 - **shall not undermine the internal market or economic, social and territorial cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them (art. 326 TFEU);**
 - **shall respect the competences, rights and obligations of those Member States which do not participate in it.** Those Member States shall not impede its implementation by the participating Member States (art. 327 TFEU).
 - **shall be open to all Member States,** subject to compliance with any conditions of participation laid down by the authorising decision. It **shall also be open to them at any other time,** subject to compliance with the acts already adopted within that framework, in addition to those conditions (art. 328 TFEU).



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The EPPO Legal Framework

- The Council [Regulation \(EU\) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office \('the EPPO Regulation'\)](#), sets the basis for the functioning of the EPPO.
- The [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 \('the PIF Directive'\)](#) defines which crimes are considered crimes affecting the EU budget.
- The EPPO Regulation provides for further legal instruments that refine and guide the EPPO's internal decision-making. The most important of them are:
 - the [Internal Rules of Procedure of the European Public Prosecutor's Office](#), as amended in the meantime;
 - the [Decision on the Permanent Chambers](#), as amended in the meantime;
 - the [Decision on the Functions and Procedures of the Permanent Chambers](#), as amended in the meantime;
 - various Guidelines, e.g. the [Operational Guidelines on Investigation, Evocation Policy and Referral of Cases](#), the [Guidelines on Simplified Procedures and on the Delegation of Powers of the Permanent Chambers Respectively](#) and the [Guidelines of the College on the Application of Article 31 of the EPPO Regulation](#).



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The Role

- The EPPO is a "body of the Union" with a separate legal personality. It conducts its activities impartially and in compliance with the rights enshrined in the Charter of Fundamental Rights of the European Union and the principles of rule of law and proportionality.
- The EPPO is tasked to act in the interests of the EU as a whole and may not seek or take instructions from any person external to the Office; any member state; or any institution, body, office, or agency of the EU. The regulation also stresses the independence beyond doubt of candidates in the appointment procedure.
- The European Prosecutor is granted remarkable autonomy in exercising its powers of investigation and prosecution, including the power to initiate *proprio motu* an investigation and take over a case from national authorities. Enforcement authorities of EU member states are required to inform the European Prosecutor's Office of any investigation they undertake in respect of a criminal offence for which the EPPO could exercise its competence.



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According to art.86(2) TFEU:

“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”.



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The Competence

Article 22, EPPO Regulation

Material competence of the EPPO

1. 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, as implemented by national law, irrespective of whether the same criminal conduct could be classified as another type of offence under national law. As regards offences referred to in point (d) of Article 3(2) of Directive (EU) 2017/1371, as implemented by national law, the EPPO shall only be competent when the intentional acts or omissions defined in that provision are connected with the territory of two or more Member States and involve a total damage of at least EUR 10 million.



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2. The EPPO shall also be competent for offences regarding participation in a criminal organisation as defined in Framework Decision 2008/841/JHA, as implemented in national law, if the focus of the criminal activity of such a criminal organisation is to commit any of the offences referred to in paragraph 1.

3. The EPPO shall also be competent for any other criminal offence that is inextricably linked to criminal conduct that falls within the scope of paragraph 1 of this Article. The competence with regard to such criminal offences may only be exercised in conformity with Article 25(3).

4. In any case, the EPPO shall not be competent for criminal offences in respect of national direct taxes including offences inextricably linked thereto. The structure and functioning of the tax administration of the Member States shall not be affected by this Regulation.



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Article 23, EPPO Regulation

Territorial and personal competence of the EPPO

The EPPO shall be competent for the offences referred to in Article 22 where such offences:

(a) were committed in whole or in part within the territory of one or several Member States;

(b) were committed by a national of a Member State, provided that a Member State has jurisdiction for such offences when committed outside its territory, or

(c) were committed outside the territories referred to in point (a) by a person who was subject to the Staff Regulations or to the Conditions of Employment, at the time of the offence, provided that a Member State has jurisdiction for such offences when committed outside its territory.

STRATEGY



European Chief Prosecutor
(supported by 2 Deputies)

- > Heading the EPPD, organising the work.
- > Contacts EU, EU countries and third parties.



College of Prosecutors

(one European Prosecutor per participating country)

- > Decision-making on strategic matters to ensure coherence, consistency and efficiency within and between cases.
- > Adoption of internal rules of procedure.

OPERATIONS



Permanent Chambers

(3 members: 2 European Prosecutors and chaired by the Chief Prosecutor, one of the Deputies, or another European Prosecutor)

- > Monitor and direct the investigations and prosecutions by the European Delegated Prosecutors (EDPs).
- > Operational decisions: bringing a case to judgment, dismissing a case, applying simplified procedure, refer case to national authorities, instruct EDPs to initiate investigation or exercise right of evocation.
- > European Prosecutor from the EU countries concerned supervises the EDP on behalf of the Permanent Chamber.



European Delegated Prosecutors (EDPs)

(at least two prosecutors per participating country)

- > Responsible for investigating, prosecuting and bringing to judgment cases falling within EPPO's competence.



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The Structure

Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')

- The EPPO is an indivisible Union body operating as one single Office with a decentralised structure.
- The EPPO is organised at a **central level** and at a **decentralised level**.



EPPO

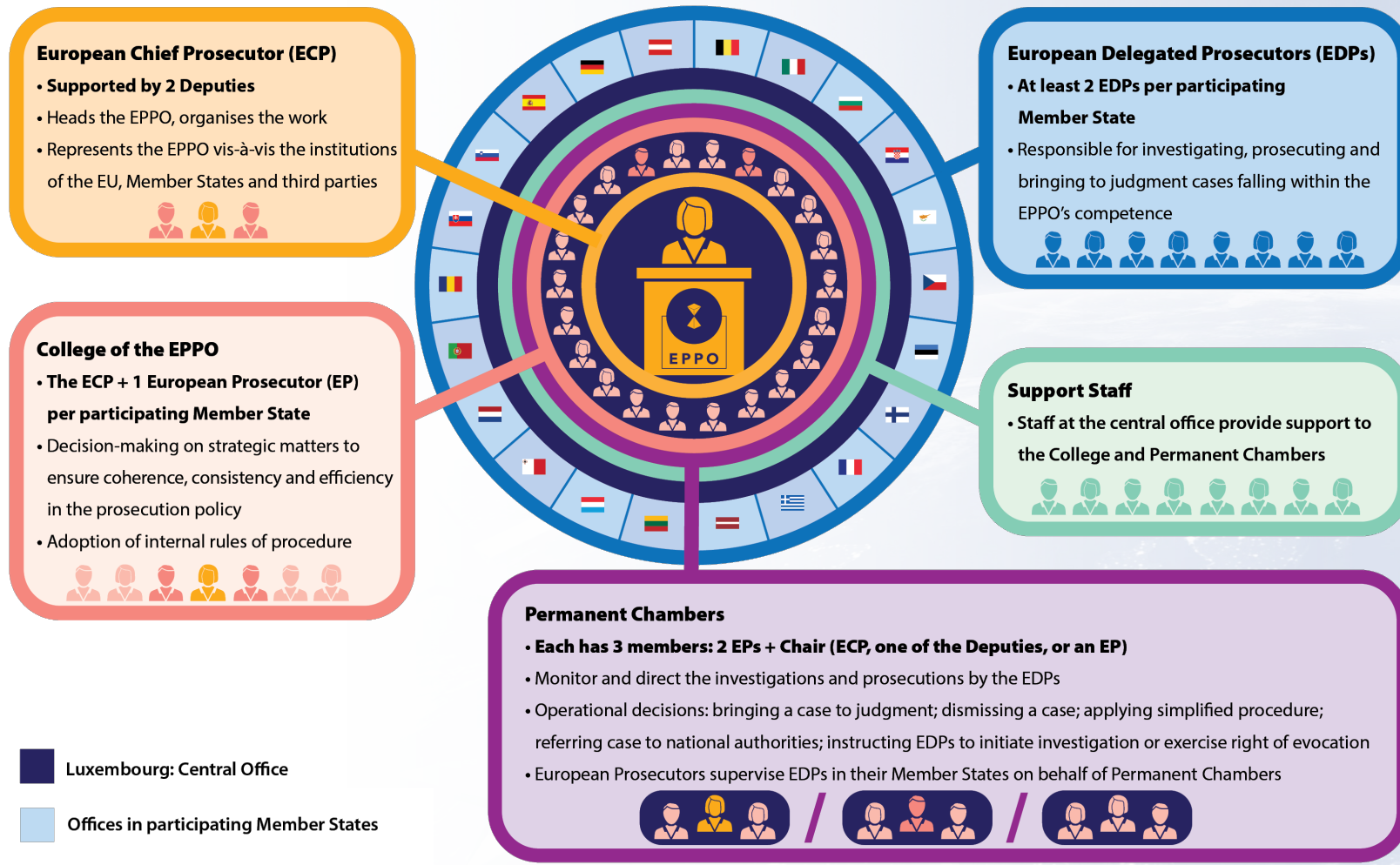
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- The Central Office comprises the **College**, the **Permanent Chambers**, the **European Chief Prosecutor**, the **Deputy European Chief Prosecutors**, the **European Prosecutors**, and the **Administrative Director**.
- The decentralized level includes the **European Delegated Prosecutors** located in the member states who serve as both domestic prosecutors and EPPO prosecutors.



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Article 9, EPPO Regulation

The College

1. The College of the EPPO shall consist of the European Chief Prosecutor and one European Prosecutor per Member State. The European Chief Prosecutor shall chair the meetings of the College and shall be responsible for their preparation.

2. The College shall meet regularly and shall be responsible for the general oversight of the activities of the EPPO. It shall take decisions on strategic matters, and on general issues arising from individual cases, in particular with a view to ensuring coherence, efficiency and consistency in the prosecution policy of the EPPO throughout the Member States, as well on other matters as specified in this Regulation. The College shall not take operational decisions in individual cases. The internal rules of procedure of the EPPO shall provide for modalities on the exercise by the College of the general oversight activities and for taking decisions on strategic matters and general issues in accordance with this Article.



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Article 10, EPPO Regulation

The Permanent Chambers

1. The Permanent Chambers shall be chaired by the European Chief Prosecutor or one of the Deputy European Chief Prosecutors, or a European Prosecutor appointed as Chair in accordance with the internal rules of procedure of the EPPO. In addition to the Chair, the Permanent Chambers shall have two permanent Members. The number of Permanent Chambers, and their composition, as well as the division of competences between the Chambers, shall take due account of the functional needs of the EPPO and be determined in accordance with the internal rules of procedure of the EPPO.

2. The Permanent Chambers shall monitor and direct the investigations and prosecutions conducted by the European Delegated Prosecutors in accordance with paragraphs 3, 4 and 5 of this Article. They shall also ensure the coordination of investigations and prosecutions in cross-border cases, and shall ensure the implementation of decisions taken by the College in accordance with Article 9(2).



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- In accordance with the conditions and procedures set out by the EPPO Regulation, where applicable after reviewing a draft decision proposed by the handling European Delegated Prosecutor, the Permanent Chambers shall decide on the following issues:
 - a) to bring a case to judgment in accordance with Article 36(1), (3) and (4);
 - b) to dismiss a case in accordance with point (a) to (g) of Article 39(1);
 - c) to apply a simplified prosecution procedure and to instruct the European Delegated Prosecutor to act with a view to finally dispose of the case in accordance with Article 40;
 - d) to refer a case to the national authorities in accordance with Article 34(1), (2), (3) or (6);
 - e) to reopen an investigation in accordance with Article 39(2).
- Where necessary, the Permanent Chambers shall take the following decisions, in accordance with the conditions and procedures set out in the EPPO Regulation:
 - a) to instruct the European Delegated Prosecutor to initiate an investigation in accordance with the rules in Article 26(1) to (4) where no investigation has been initiated;
 - b) to instruct the European Delegated Prosecutor to exercise the right of evocation in accordance with Article 27(6) where the case has not been evoked;
 - c) to refer to the College strategic matters or general issues arising from individual cases in accordance with Article 9(2);
 - d) to allocate a case in accordance with Article 26(3);
 - e) to reallocate a case in accordance with Article 26(5) or 28(3);
 - f) to approve the decision of a European Prosecutor to conduct the investigation himself or herself in accordance with Article 28(4).



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Article 11, EPPO Regulation

The European Chief Prosecutor and the Deputy European Chief Prosecutors

- 1. The European Chief Prosecutor shall be the Head of the EPPO. The European Chief Prosecutor shall organise the work of the EPPO, direct its activities, and take decisions in accordance with this Regulation and the internal rules of procedure of the EPPO.*
- 2. Two Deputy European Chief Prosecutors shall be appointed to assist the European Chief Prosecutor in the discharge of his/her duties and to act as replacement when he/she is absent or is prevented from attending to those duties.*
- 3. The European Chief Prosecutor shall represent the EPPO vis-à-vis the institutions of the Union and of the Member States of the European Union, and third parties. The European Chief Prosecutor may delegate his/her tasks relating to representation to one of the Deputy European Chief Prosecutors or to a European Prosecutor.*



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Article 12, EPPO Regulation

The European Prosecutors

1. On behalf of the Permanent Chamber and in compliance with any instructions it has given in accordance with Article 10(3), (4) and (5), the European Prosecutors shall supervise the investigations and prosecutions for which the European Delegated Prosecutors handling the case in their Member State of origin are responsible. The European Prosecutors shall present summaries of the cases under their supervision and, where applicable, proposals for decisions to be taken by the said Chamber, on the basis of draft decisions prepared by the European Delegated Prosecutors.



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Article 13, EPPO Regulation

The European Delegated Prosecutors

1. The European Delegated Prosecutors shall act on behalf of the EPPO in their respective Member States and shall have the same powers as national prosecutors in respect of investigations, prosecutions and bringing cases to judgment, in addition and subject to the specific powers and status conferred on them, and under the conditions set out in this Regulation.

The European Delegated Prosecutors shall be responsible for those investigations and prosecutions that they have initiated, that have been allocated to them or that they have taken over using their right of evocation. The European Delegated Prosecutors shall follow the direction and instructions of the Permanent Chamber in charge of a case as well as the instructions from the supervising European Prosecutor.

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The European Delegated Prosecutors shall also be responsible for bringing a case to judgment, in particular have the power to present trial pleas, participate in taking evidence and exercise the available remedies in accordance with national law.

2. There shall be two or more European Delegated Prosecutors in each Member State. The European Chief Prosecutor shall, after consulting and reaching an agreement with the relevant authorities of the Member States, approve the number of European Delegated Prosecutors, as well as the functional and territorial division of competences between the European Delegated Prosecutors within each Member State.



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The Functioning

- The EPPO manages investigations and prosecutions through the European Delegated Prosecutors from the EU member state where the focus of the criminal activity is or, if several connected offences within the competences of the EPPO have been committed, the member state where the bulk of the offences have been committed.
- In fighting financial transnational offences, the EPPO and competent national authorities should support and inform each other in compliance with the "principle of mutual cooperation". However, the EPPO's jurisdiction trumps that of national prosecutorial systems. Hence, when the EPPO initiates or evokes an investigation, it automatically pre-empts any national action for the same criminal conduct.



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The EPPO exercises its competence by initiating an investigation:

- in accordance with art. 26, if, in accordance with applicable national law, there are reasonable grounds to believe that an offence falling within the competence of the EPPO is or has been committed. In such a case, a European Delegated Public Prosecutor of a Member State who, under its national law, has jurisdiction for the offence, without prejudice to the rules referred to in Article 25(2) and (3), shall open an investigation and record it in the automated case management system;
- Pursuant to art. 27, by exercising his "right of call" (Evocation).



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- The evocation is an action of a court in summoning a case from another, usually lower, for purposes of complete review and decision, as on an appeal in which the issue is incidental or procedural and the court of first instance has not yet rendered a decision on its merits; or the removal of a case from one court to another.
- The right of evocation set out in art. 27 of EPPO Regulation may be exercised by a European Delegated Prosecutor from any Member State whose competent authorities have initiated an investigation in respect of an offence that falls within the scope of Articles 22 and 23.
- Upon receiving all relevant information in accordance with Article 24(2), the EPPO shall take its decision on whether to exercise its right of evocation as soon as possible, but no later than 5 days after receiving the information from the national authorities and shall inform the national authorities of that decision.
- The European Chief Prosecutor may in a specific case take a reasoned decision to prolong the time limit by a maximum period of 5 days, and shall inform the national authorities accordingly.
- Where the EPPO exercises its right of evocation, the competent authorities of the Member States shall transfer the file to the EPPO and refrain from carrying out further acts of investigation in respect of the same offence.



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- The EPPO will bring prosecutions before the national courts, pursuant to the substantive criminal law of the member state implementing the relevant EU legislation (including the PIF Directive), and determine the applicable penalties. With respect to procedural law, European Delegated Prosecutors act in compliance with the Regulation and, as regards matters not covered by this Regulation, in accordance with applicable national law.
- For its investigations and prosecutions, the EPPO works with many partners from within the European Union (authorities of participating and non-participating Member States, European Union institutions, bodies, offices and agencies) and beyond (authorities of third countries, international organisations). To facilitate the cooperation, the EPPO has concluded a number of [working arrangements](#) of a technical and/or operational nature with authorities of both participating and non-participating Member States, as well as with partners at European Union level, e.g. the the European Anti-Fraud Office (OLAF), Eurojust, Europol, the European Court of Auditors and the European Investment Bank Group, to support or complement the Office's activity, for instance, providing information, analyses (including forensic), expertise and operational support.



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The EPPO is **independent** (art. 6, para. 1, EPPO Regulation).

- In the performance of their duties, the European Chief Prosecutor, the Deputy European Chief Prosecutor, the European Prosecutors, the European Delegated Prosecutors, the Administrative Director and the staff of the EPPO shall **act in the interest of the Union and shall neither seek nor take instructions from persons outside the EPPO** (Member States of the European Union, institutions, bodies, offices or agencies of the European Union);
- The Member States of the European Union, the institutions, bodies, offices and agencies of the Union shall respect the independence of the EPPO and shall not seek to influence it in the performance of its tasks.



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The EPPO is obliged, however, to account for its actions (art. 6, para. 2, EPPO Regulation).

- It is accountable to the European Parliament, the Council and the European Commission for its general activities
- Each year, it draws up and publishes an annual report on its general activities and forwards it to the European Parliament and the national parliaments, as well as to the Council and the Commission.
- Once a year, the European Chief Prosecutor shall appear before the European Parliament and the Council, as well as before the national parliaments of the Member States at their request, to report on the general activities of the EPPO, without prejudice to the obligation of secrecy and confidentiality that is incumbent on individual cases and personal data.



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The Expansion of the EPPO Competence

- The limitation of the competence of the EPPO to offences affecting the financial interests of the EU, codified in Article 86(1) TFEU, is not without possible exceptions. The European legislator has handed over to the Council, the appropriate and incontrovertible legal basis for enlargement, with an express provision.
- In fact, according to paragraph 4 of Article 86 TFEU, it is established that:

“The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension [...]”.



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- A first reading makes it possible to outline the requirements necessary for a new crime to fall within the scope of the powers of the Public Prosecutor's Office:
 - i) gravity;
 - ii) the transnational nature.

- However, nor the Article 86 TFEU or Chapter 4 TFEU (in particular Articles 83 and 85 TFEU) – which refers several times to “serious crime” and the “transnational dimension” – provide a definition which makes it possible to circumscribe those criteria.



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- The European legislator has not introduced, in fact, any definition of “transnational crimes” nor a particular qualification of seriousness.
- Anyway, in Article 83 TFEU, we find a list of **serious crimes with a cross-border dimension** – the so called “Eurocrimes”: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime – in the norm through which the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the mentioned areas of crime in order to combat them on a common basis.



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WHAT ARE THE FACTS?

- The EPPO competences, according to art. 86, para. 4, TFEU, **can be extended to other serious crime having a cross-border dimension.**
- The extension procedure provides for a decision of the Council amending paragraph 1 of art. 86 TFEU, that is in concrete a **simplified Treaty amendment procedure**, according to art. 48 TEU.
- The European Commission in 2018 by a Communication ([COM/2018/641](#)) launched an initiative to extend EPPO competence to **cross-border terrorist crimes**, still pending.
- European Parliament in 2023 by a Resolution ([2022/2051\(INL\)](#)) proposed to expand the list of well-known "Euro-crimes", including environmental crimes.



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THANKS FOR YOUR ATTENTION!

evannata@unisa.it