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How enhanced cooperation on the EPPO began, and paid off.

4 Marzo 2025

EPPO Regulation: internal adaptation in Italy and Spain and operational activity compared

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EPPO Regulation: internal adaptation in Italy and Spain and operational activity compared



The impact of the Court of Justice's ruling on the EPPO in Italy and Spain.



EPPO Regulations: officially started its activities on June 1, 2021.

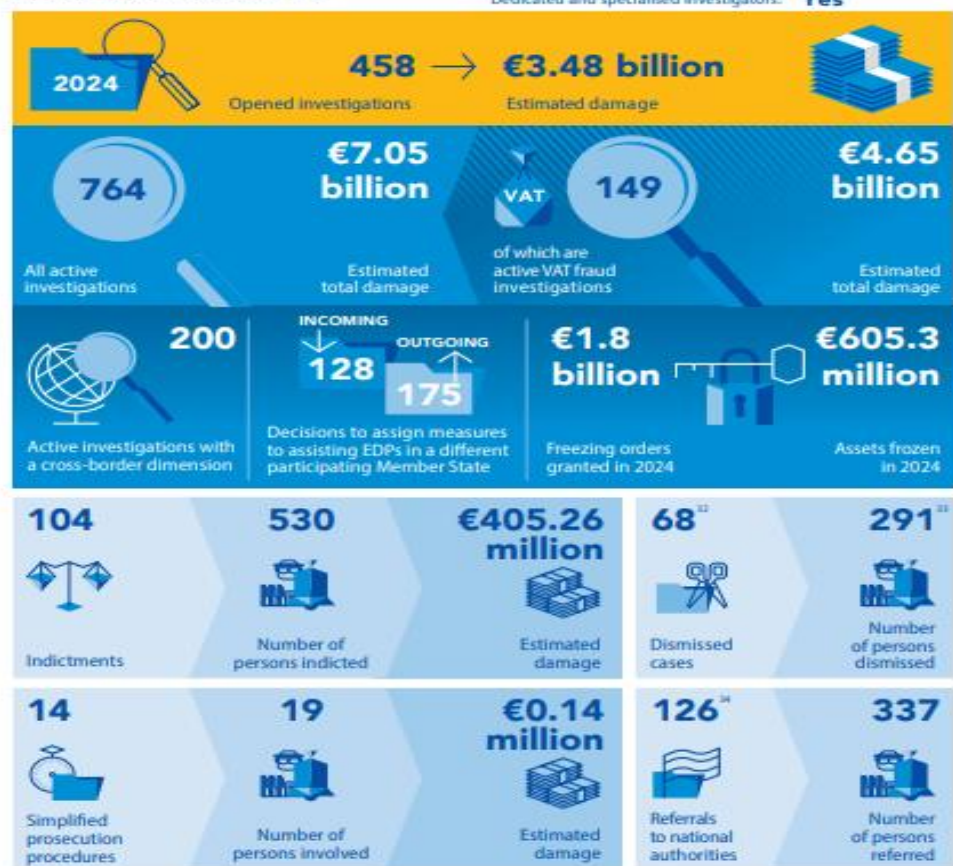
EPPO Annual Report 2024



OPERATIONAL ACTIVITY

DATA VALID ON 31 DECEMBER 2024

European Delegated Prosecutors (Active): 20
National European Delegated Prosecutors' Assistants (FTE): 47
Dedicated and specialised investigators: Yes



RECEIVED REPORTS/COMPLAINTS

From EU institutions, bodies, offices and agencies	8	From private parties	108
From national authorities	579	Ex officio	3
TOTAL			698

JUDICIAL ACTIVITY IN CRIMINAL CASES

Ongoing cases in the trial phase	175
Number of first court decisions	28
Number of appeals against first court decisions	1
Number of ongoing cases in the appeal phase	4
Number of final court decisions	24
Number of extraordinary legal remedies against court decisions	0
Convictions	22
Number of persons convicted	38
Acquittals	2
Number of persons acquitted	4

TYPLOGIES IDENTIFIED IN ACTIVE EPPO CASES

NUMBER OF INVESTIGATED OFFENCES BROKEN DOWN BY TYPE



ACTIVE FUNDING FRAUD INVESTIGATIONS

BROKEN DOWN BY PROGRAMME

Agricultural and rural development programmes	117	Climate and environment programmes	0
Maritime and fisheries programmes	15	Recovery and resilience programmes	228
International cooperation programmes	6	Mobility and transport, energy and digitalisation programmes	0
Regional and urban development programmes	32	Asylum, migration and integration programmes	1
Education and culture-related programmes	0	Industry, entrepreneurship and SME programmes	6
Research and innovation programmes	7	Security and defence programmes	0
Employment, social cohesion, inclusion and values programmes	10	Other programmes/doubt cases	105

The intervention of the Court of Justice

Art. 31 of the EPPO Regulation

Court of Justice. EU, Grand Chamber, judgment of 21 December 2023, G.K. and Others (European Public Prosecutor's Office), Case C281/22

- The German PED instructed the Austrian PED to carry out searches and seizures.
- The measures were authorised by the Austrian national courts, but not by the German courts.
 - The defendants challenged the measures for various reasons (the absence of circumstantial evidence, the insufficient statement of reasons, including the violation of Article 8 ECHR).
 - The Vienna District Court raised doubts as to the limits of the judicial review of the assistance PED State.

Art. 31 of the EPPO Regulation

- ****Request for assistance**** :
 - PED in charge of the investigation transmits the request to the PED of the Member State concerned.
 - Necessary assistance provided under national law.
- ****Different regimes for investigative measures****:
 - If it requires prior judicial authorisation → follows the national procedure.
 - If it does not require direct execution authorization → by PED in charge.
- ****Features of cooperation****:
 - Atypical, not based on mutual recognition.
 - Foundation: direct coordination between the PEDs.
 - Permanent Chamber intervenes in the event of disagreement.



PRINCIPLE OF APPLICATION OF NATIONAL LAW:

- Art. 5, par. 3 EPPO Reg. → reference to national regulations:
- 'Investigations and prosecutions on behalf of the EPPO shall be governed by this Regulation. National law shall apply to matters not covered by this Regulation. Unless otherwise provided for in this Regulation, the applicable national law shall be the law of the Member State whose European Delegated Prosecutor is responsible for the case pursuant to Article 13(1). Where an aspect is governed by both national law and this Regulation, the latter shall prevail.'
- - Primacy of the EPPO Regulation over aspects regulated at EU level

Mutual recognition:

a cardinal principle within the European judicial area; the EPPO Regulation provides for the use of cross-border cooperation or mutual recognition instruments, provided that they do not overlap with the specific rules on cross-border investigations provided for by the Regulation itself.



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CROSS-BORDER INVESTIGATIONS

ART. 31 EPPO REGULATION:

Paragraph 2: justification and adoption of the measure are governed by the law of each Member State in which the PED carrying out the investigation operates

ART. 32 EPPO REGULATION:

- the methods of execution are governed by the legislation of the country in which the PED called upon to provide assistance operates

- paragraph 3:











- If judicial authorisation is required by the law of the country in which the PED assistant operates (paragraph 1), it is up to the PED assistant to request it. In the event of a refusal, the measure must be revoked by the PED in charge of the investigation.
- If the authorisation is required exclusively by the legislation of the State of the PED in charge of the investigation (paragraph 3), the latter will have to obtain it before transmitting it, together with the deed of assignment, to the PED in charge of carrying out the investigative measure.









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LIMITS AND MODALITIES OF JUDICIAL REVIEW OF THE ACTIVITIES OF THE EUROPEAN PUBLIC PROSECUTOR: "double authorization"

-  Fundamental principles
-  Proportionality and necessity must be ensured in the adoption of investigative measures.
-  Measures with a serious impact on fundamental rights require prior judicial review.
-  Measures Requiring Prior Judicial Review
 -  Searches of private homes
 -  Precautionary measures on personal property
 -  Asset freeze
 -  Tapping
 -  Access to sensitive data (banking, health)
 -  Seizures of private communications

-  Open questions
-  For other investigative measures not subject to prior judicial review, are forms of ad hoc control necessary?
-  What criteria determine the need for a preventive control for less invasive investigative acts?
-  Competence
 -  Judicial review takes place in the Member State of the responsible EDP.
 -  Objective: to balance the effectiveness of investigations and the protection of fundamental rights.

Internal adaptation to the EPPO Regulation: ITALY AND SPAIN COMPARED

ITALY

- 📌 Exclusive jurisdiction of ordinary prosecutors' offices for offences not within the competence of the EPPO.
- 📌 Risk of preferring national jurisdiction for more streamlined investigative measures (e.g. European Investigation Order).
- 📌 Need for loyal cooperation between the EPPO and national authorities to avoid interpretative and strategic conflicts.

SPAIN

- 📌 Legislative reforms:
 - ◆ Ley de Enjuiciamiento Criminal → reform project in 2020 (not yet final).
 - ◆ Ley Orgánica 9/2021 → ad hoc discipline for the EPPO Regulation.
- 📌 The problem of the overlap between the Fiscal Europeo Delegado (FED) and the investigating judge, who in Spain has a central role in the management of evidence.
- 📌 Limitations for the FED in evidentiary initiatives if not compatible with Spanish practice.

- 🎯 Common objective (Italy and Spain):
 - ✅ Ensuring the effectiveness of the EPPO.
 - ✅ Preserve the specificities of the respective legal systems.



Judicial Review of EPPO Investigations: Italy and Spain

Principles of the CJEU Judgment on Cross-Border Investigations

- 📌 Distinction of responsibilities:
 - ◆ PED in charge → justifies and adopts the measure.
 - ◆ PED assistant → performs the measurement, with control limited to execution.
- 📌 Invasive measures (interceptions, searches, seizures) → They require prior judicial review to ensure legality and necessity (Articles 7 and 17 of the EU Charter).

ITALY:

- 📌 The GIP assumes a central role in the protection of fundamental rights.
- 📌 Relevant standards:
 - ◆ Article 266 of the Code of Criminal Procedure → limits of admissibility of interceptions.
 - ◆ Article 267 of the Code of Criminal Procedure → authorisation of the GIP at the request of the Public Prosecutor.
- 📌 Need for internal harmonization:
 - ✓ Coordination between PED and Judicial Police.
 - ✓ Avoid duplication and overlapping of competences.

SPAIN:

- 📌 Judicial review traditionally entrusted to investigating judges.
- 📌 The CJEU ruling requires a review of the coordination between the European Fiscal Delegado (FED) and national jurisdiction.
- 📌 Practical problems:
 - ◆ Authorization of investigative measures → There is a lack of clear discipline, generating conflicts of interpretation.
 - ◆ Competence of the EDF limited to EU financial crimes (Articles 22-25 of the EPPO Regulation).
 - ◆ Difficulties in managing mixed crime (both EU and national).
 - ◆ Discretion of the investigating judge → may limit the intervention of the EDF.

Request for a preliminary ruling from the *Juzgado Central de Instrucción n° 6 de la Audiencia Nacional* (Spain) lodged on 3 May 2023

Subject: Interpretation of art. 42.1 of the EPPO

⚖️ Regulation Problem Raised:

- 📌 Judicial review of the witness statements of suspects.
- 📌 Spanish Rule (Art. 90 Ley Orgánica 9/2021)

⚖️ **Possible Guidelines of the European Court of Justice.**

-All EPPO acts affecting the rights of third parties (including witness statements) must be subject to national judicial review.

-Margin of discretion for Member States in determining the acts subject to judicial review, respecting the principle of effective judicial protection.

🔔 **Criticality**

- 📌 Strict control of evidence in Spain → Investigating judges are responsible for authorising the most intrusive investigative measures (e.g. wiretapping, searches).
- 📌 Conflict with the EPPO Regulation → The need for prior judicial authorisation may hinder the swift adoption of urgent transnational measures.
- 📌 Potential nullity of evidence → Evidence collected without the court's authorisation could be declared null and void (Article 11 of the Criminal Enforcement Act).



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Italy: Greater Flexibility and Role of the GIP

Role of the GIP:

He does not actively direct the investigation.

Guarantee function: verification of the legitimacy and proportionality of the investigative measures requested by the Public Prosecutor.

Greater operational autonomy for the PED (compared to Spain).

Procedural differences:

Less formalism than the Spanish system.

Greater flexibility in cross-border testing, with less rigidity than Spanish standards.

Spain: Greater Formalism and the Role of the Investigating Judge

Role of the Investigating Judge:

It actively directs investigations and has direct control over the most intrusive investigative measures.

A more rigid system than in Italy, with a greater procedural formalism.

Criticality:

Potential obstacle to the rapid adoption of transnational investigative measures.

Increased rigidity in the treatment of evidence, possibly in contrast with the flexibility of the EPPO Regulation.



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CONCLUDING THOUGHTS

Need for harmonization:

- Article 82 TFEU: Creation of common procedural rules or a European criminal procedure.
- Specific training for magistrates and lawyers
- Create a common set of procedural rules

Reforms: The CJEU ruling could spur further reforms to better harmonise the Italian and Spanish systems with the European framework.



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Thank you for the attention

Serena Cacciatore